
HOUSE BILL 1325

State of Washington

58th Legislature

2003 Regular Session

By Representatives Darneille, Campbell, Pettigrew, Skinner, Benson and Bush

Read first time 01/22/2003. Referred to Committee on Health Care.

1 AN ACT Relating to certificate of need exemptions for nursing
2 facilities; amending RCW 70.38.111; and declaring an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 70.38.111 and 1997 c 210 s 1 are each amended to read
5 as follows:

6 (1) The department shall not require a certificate of need for the
7 offering of an inpatient tertiary health service by:

8 (a) A health maintenance organization or a combination of health
9 maintenance organizations if (i) the organization or combination of
10 organizations has, in the service area of the organization or the
11 service areas of the organizations in the combination, an enrollment of
12 at least fifty thousand individuals, (ii) the facility in which the
13 service will be provided is or will be geographically located so that
14 the service will be reasonably accessible to such enrolled individuals,
15 and (iii) at least seventy-five percent of the patients who can
16 reasonably be expected to receive the tertiary health service will be
17 individuals enrolled with such organization or organizations in the
18 combination;

1 (b) A health care facility if (i) the facility primarily provides
2 or will provide inpatient health services, (ii) the facility is or will
3 be controlled, directly or indirectly, by a health maintenance
4 organization or a combination of health maintenance organizations which
5 has, in the service area of the organization or service areas of the
6 organizations in the combination, an enrollment of at least fifty
7 thousand individuals, (iii) the facility is or will be geographically
8 located so that the service will be reasonably accessible to such
9 enrolled individuals, and (iv) at least seventy-five percent of the
10 patients who can reasonably be expected to receive the tertiary health
11 service will be individuals enrolled with such organization or
12 organizations in the combination; or

13 (c) A health care facility (or portion thereof) if (i) the facility
14 is or will be leased by a health maintenance organization or
15 combination of health maintenance organizations which has, in the
16 service area of the organization or the service areas of the
17 organizations in the combination, an enrollment of at least fifty
18 thousand individuals and, on the date the application is submitted
19 under subsection (2) of this section, at least fifteen years remain in
20 the term of the lease, (ii) the facility is or will be geographically
21 located so that the service will be reasonably accessible to such
22 enrolled individuals, and (iii) at least seventy-five percent of the
23 patients who can reasonably be expected to receive the tertiary health
24 service will be individuals enrolled with such organization;
25 if, with respect to such offering or obligation by a nursing home, the
26 department has, upon application under subsection (2) of this section,
27 granted an exemption from such requirement to the organization,
28 combination of organizations, or facility.

29 (2) A health maintenance organization, combination of health
30 maintenance organizations, or health care facility shall not be exempt
31 under subsection (1) of this section from obtaining a certificate of
32 need before offering a tertiary health service unless:

33 (a) It has submitted at least thirty days prior to the offering of
34 services reviewable under RCW 70.38.105(4)(d) an application for such
35 exemption; and

36 (b) The application contains such information respecting the
37 organization, combination, or facility and the proposed offering or
38 obligation by a nursing home as the department may require to determine

1 if the organization or combination meets the requirements of subsection
2 (1) of this section or the facility meets or will meet such
3 requirements; and

4 (c) The department approves such application. The department shall
5 approve or disapprove an application for exemption within thirty days
6 of receipt of a completed application. In the case of a proposed
7 health care facility (or portion thereof) which has not begun to
8 provide tertiary health services on the date an application is
9 submitted under this subsection with respect to such facility (or
10 portion), the facility (or portion) shall meet the applicable
11 requirements of subsection (1) of this section when the facility first
12 provides such services. The department shall approve an application
13 submitted under this subsection if it determines that the applicable
14 requirements of subsection (1) of this section are met.

15 (3) A health care facility (or any part thereof) with respect to
16 which an exemption was granted under subsection (1) of this section may
17 not be sold or leased and a controlling interest in such facility or in
18 a lease of such facility may not be acquired and a health care facility
19 described in (1)(c) which was granted an exemption under subsection (1)
20 of this section may not be used by any person other than the lessee
21 described in (1)(c) unless:

22 (a) The department issues a certificate of need approving the sale,
23 lease, acquisition, or use; or

24 (b) The department determines, upon application, that (i) the
25 entity to which the facility is proposed to be sold or leased, which
26 intends to acquire the controlling interest, or which intends to use
27 the facility is a health maintenance organization or a combination of
28 health maintenance organizations which meets the requirements of
29 (1)(a)(i), and (ii) with respect to such facility, meets the
30 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)
31 and (ii).

32 (4) In the case of a health maintenance organization, an ambulatory
33 care facility, or a health care facility, which ambulatory or health
34 care facility is controlled, directly or indirectly, by a health
35 maintenance organization or a combination of health maintenance
36 organizations, the department may under the program apply its
37 certificate of need requirements only to the offering of inpatient

1 tertiary health services and then only to the extent that such offering
2 is not exempt under the provisions of this section.

3 (5)(a) The department shall not require a certificate of need for
4 the construction, development, or other establishment of a nursing
5 home, or the addition of beds to an existing nursing home, that is
6 owned and operated by a continuing care retirement community that:

7 (i) Offers services only to contractual members;

8 (ii) Provides its members a contractually guaranteed range of
9 services from independent living through skilled nursing, including
10 some assistance with daily living activities;

11 (iii) Contractually assumes responsibility for the cost of services
12 exceeding the member's financial responsibility under the contract, so
13 that no third party, with the exception of insurance purchased by the
14 retirement community or its members, but including the medicaid
15 program, is liable for costs of care even if the member depletes his or
16 her personal resources;

17 (iv) Has offered continuing care contracts and operated a nursing
18 home continuously since January 1, 1988, or has obtained a certificate
19 of need to establish a nursing home;

20 (v) Maintains a binding agreement with the state assuring that
21 financial liability for services to members, including nursing home
22 services, will not fall upon the state;

23 (vi) Does not operate, and has not undertaken a project that would
24 result in a number of nursing home beds in excess of one for every four
25 living units operated by the continuing care retirement community,
26 exclusive of nursing home beds; and

27 (vii) Has obtained a professional review of pricing and long-term
28 solvency within the prior five years which was fully disclosed to
29 members.

30 (b) A continuing care retirement community shall not be exempt
31 under this subsection from obtaining a certificate of need unless:

32 (i) It has submitted an application for exemption at least thirty
33 days prior to commencing construction of, is submitting an application
34 for the licensure of, or is commencing operation of a nursing home,
35 whichever comes first; and

36 (ii) The application documents to the department that the
37 continuing care retirement community qualifies for exemption.

1 (c) The sale, lease, acquisition, or use of part or all of a
2 continuing care retirement community nursing home that qualifies for
3 exemption under this subsection shall require prior certificate of need
4 approval to qualify for licensure as a nursing home unless the
5 department determines such sale, lease, acquisition, or use is by a
6 continuing care retirement community that meets the conditions of (a)
7 of this subsection.

8 (6) A rural hospital, as defined by the department, reducing the
9 number of licensed beds to become a rural primary care hospital under
10 the provisions of Part A Title XVIII of the Social Security Act Section
11 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction
12 of beds licensed under chapter 70.41 RCW, increase the number of
13 licensed beds to no more than the previously licensed number without
14 being subject to the provisions of this chapter.

15 (7) A rural health care facility licensed under RCW 70.175.100
16 formerly licensed as a hospital under chapter 70.41 RCW may, within
17 three years of the effective date of the rural health care facility
18 license, apply to the department for a hospital license and not be
19 subject to the requirements of RCW 70.38.105(4)(a) as the construction,
20 development, or other establishment of a new hospital, provided there
21 is no increase in the number of beds previously licensed under chapter
22 70.41 RCW and there is no redistribution in the number of beds used for
23 acute care or long-term care, the rural health care facility has been
24 in continuous operation, and the rural health care facility has not
25 been purchased or leased.

26 (8)(a) A nursing home that voluntarily reduces the number of its
27 licensed beds to provide assisted living, licensed boarding home care,
28 adult day care, adult day health, respite care, hospice, outpatient
29 therapy services, congregate meals, home health, or senior wellness
30 clinic, or to reduce to one or two the number of beds per room or to
31 otherwise enhance the quality of life for residents in the nursing
32 home, may convert the original facility or portion of the facility
33 back, and thereby increase the number of nursing home beds to no more
34 than the previously licensed number of nursing home beds without
35 obtaining a certificate of need under this chapter, provided the
36 facility has been in continuous operation and has not been purchased or
37 leased. Any conversion to the original licensed bed capacity, or to
38 any portion thereof, shall comply with the same life and safety code

1 requirements as existed at the time the nursing home voluntarily
2 reduced its licensed beds; unless waivers from such requirements were
3 issued, in which case the converted beds shall reflect the conditions
4 or standards that then existed pursuant to the approved waivers.

5 (b) To convert beds back to nursing home beds under this
6 subsection, the nursing home must:

7 (i) Give notice of its intent to preserve conversion options to the
8 department of health no later than thirty days after the effective date
9 of the license reduction; and

10 (ii) Give notice to the department of health and to the department
11 of social and health services of the intent to convert beds back. If
12 construction is required for the conversion of beds back, the notice of
13 intent to convert beds back must be given, at a minimum, one year prior
14 to the effective date of license modification reflecting the restored
15 beds; otherwise, the notice must be given a minimum of ninety days
16 prior to the effective date of license modification reflecting the
17 restored beds. Prior to any license modification to convert beds back
18 to nursing home beds under this section, the licensee must demonstrate
19 that the nursing home meets the certificate of need exemption
20 requirements of this section.

21 The term "construction," as used in (b)(ii) of this subsection, is
22 limited to those projects that are expected to equal or exceed the
23 expenditure minimum amount, as determined under this chapter.

24 (c) Conversion of beds back under this subsection must be completed
25 no later than ~~((four))~~ twenty years after the effective date of the
26 license reduction. However, for good cause shown, the ~~((four-year))~~
27 twenty-year period for conversion may be extended by the department of
28 health for one additional four-year period. When beds have been
29 voluntarily reduced to enhance resident quality of life, including
30 reducing the number of beds per room to one or two, the beds may be
31 converted back to nursing home use at any time, as long as the notice
32 requirements are met under (b) of this subsection.

33 (d) Nursing home beds that have been voluntarily reduced under this
34 section shall be counted as available nursing home beds for the purpose
35 of evaluating need under RCW 70.38.115(2) (a) and (k) so long as the
36 facility retains the ability to convert them back to nursing home use
37 under the terms of this section.

1 (e) When a building owner has secured an interest in the nursing
2 home beds, which are intended to be voluntarily reduced by the licensee
3 under (a) of this subsection, the applicant shall provide the
4 department with a written statement indicating the building owner's
5 approval of the bed reduction.

6 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
7 preservation of the public peace, health, or safety, or support of the
8 state government and its existing public institutions, and takes effect
9 immediately.

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