

---

ENGROSSED SUBSTITUTE HOUSE BILL 2851

---

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Clibborn, Campbell, Darneille and Edwards; by request of Department of Health)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to removing certificate of need limitations on bed  
2 capacity and redistribution for federally certified critical access  
3 hospitals; and amending RCW 70.38.105.

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

5 **Sec. 1.** RCW 70.38.105 and 1996 c 50 s 1 are each amended to read  
6 as follows:

7 (1) The department is authorized and directed to implement the  
8 certificate of need program in this state pursuant to the provisions of  
9 this chapter.

10 (2) There shall be a state certificate of need program which is  
11 administered consistent with the requirements of federal law as  
12 necessary to the receipt of federal funds by the state.

13 (3) No person shall engage in any undertaking which is subject to  
14 certificate of need review under subsection (4) of this section without  
15 first having received from the department either a certificate of need  
16 or an exception granted in accordance with this chapter.

17 (4) The following shall be subject to certificate of need review  
18 under this chapter:

1 (a) The construction, development, or other establishment of a new  
2 health care facility;

3 (b) The sale, purchase, or lease of part or all of any existing  
4 hospital as defined in RCW 70.38.025;

5 (c) Any capital expenditure for the construction, renovation, or  
6 alteration of a nursing home which substantially changes the services  
7 of the facility after January 1, 1981, provided that the substantial  
8 changes in services are specified by the department in rule;

9 (d) Any capital expenditure for the construction, renovation, or  
10 alteration of a nursing home which exceeds the expenditure minimum as  
11 defined by RCW 70.38.025. However, a capital expenditure which is not  
12 subject to certificate of need review under (a), (b), (c), or (e) of  
13 this subsection and which is solely for any one or more of the  
14 following is not subject to certificate of need review:

15 (i) Communications and parking facilities;

16 (ii) Mechanical, electrical, ventilation, heating, and air  
17 conditioning systems;

18 (iii) Energy conservation systems;

19 (iv) Repairs to, or the correction of, deficiencies in existing  
20 physical plant facilities which are necessary to maintain state  
21 licensure, however, other additional repairs, remodeling, or  
22 replacement projects that are not related to one or more deficiency  
23 citations and are not necessary to maintain state licensure are not  
24 exempt from certificate of need review except as otherwise permitted by  
25 (d)(vi) of this subsection or RCW 70.38.115(13);

26 (v) Acquisition of equipment, including data processing equipment,  
27 which is not or will not be used in the direct provision of health  
28 services;

29 (vi) Construction or renovation at an existing nursing home which  
30 involves physical plant facilities, including administrative, dining  
31 areas, kitchen, laundry, therapy areas, and support facilities, by an  
32 existing licensee who has operated the beds for at least one year;

33 (vii) Acquisition of land; and

34 (viii) Refinancing of existing debt;

35 (e) A change in bed capacity of a health care facility which  
36 increases the total number of licensed beds or redistributes beds among  
37 acute care, nursing home care, and boarding home care if the bed  
38 redistribution is to be effective for a period in excess of six months,

1 or a change in bed capacity of a rural health care facility licensed  
2 under RCW 70.175.100 that increases the total number of nursing home  
3 beds or redistributes beds from acute care or boarding home care to  
4 nursing home care if the bed redistribution is to be effective for a  
5 period in excess of six months. A health care facility certified as a  
6 critical access hospital under 42 U.S.C. 1395i-4 may increase its total  
7 number of licensed beds to the total number of beds permitted under 42  
8 U.S.C. 1395i-4 for acute care and may redistribute beds permitted under  
9 42 U.S.C. 1395i-4 among acute care and nursing home care without being  
10 subject to certificate of need review. If there is a nursing home  
11 licensed under chapter 18.51 RCW within twenty-seven miles of the  
12 critical access hospital, the critical access hospital is subject to  
13 certificate of need review except for:

14 (i) Critical access hospitals which had designated beds to provide  
15 nursing home care, in excess of five swing beds, prior to December 31,  
16 2003; or

17 (ii) Up to five swing beds.

18 Critical access hospital beds not subject to certificate of need  
19 review under this subsection (4)(e) will not be counted as either acute  
20 care or nursing home care for certificate of need review purposes. If  
21 a health care facility ceases to be certified as a critical access  
22 hospital under 42 U.S.C. 1395i-4, the hospital may revert back to the  
23 type and number of licensed hospital beds as it had when it requested  
24 critical access hospital designation;

25 (f) Any new tertiary health services which are offered in or  
26 through a health care facility or rural health care facility licensed  
27 under RCW 70.175.100, and which were not offered on a regular basis by,  
28 in, or through such health care facility or rural health care facility  
29 within the twelve-month period prior to the time such services would be  
30 offered;

31 (g) Any expenditure for the construction, renovation, or alteration  
32 of a nursing home or change in nursing home services in excess of the  
33 expenditure minimum made in preparation for any undertaking under  
34 subsection (4) of this section and any arrangement or commitment made  
35 for financing such undertaking. Expenditures of preparation shall  
36 include expenditures for architectural designs, plans, working  
37 drawings, and specifications. The department may issue certificates of

1 need permitting predevelopment expenditures, only, without authorizing  
2 any subsequent undertaking with respect to which such predevelopment  
3 expenditures are made; and

4 (h) Any increase in the number of dialysis stations in a kidney  
5 disease center.

6 (5) The department is authorized to charge fees for the review of  
7 certificate of need applications and requests for exemptions from  
8 certificate of need review. The fees shall be sufficient to cover the  
9 full cost of review and exemption, which may include the development of  
10 standards, criteria, and policies.

11 (6) No person may divide a project in order to avoid review  
12 requirements under any of the thresholds specified in this section.

--- END ---