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SENATE BILL 5790

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State of Washington

58th Legislature

2003 Regular Session

By Senators Franklin, Deccio, Winsley and Kline

Read first time 02/12/2003. Referred to Committee on Health & Long-Term 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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