
SUBSTITUTE HOUSE BILL 2100

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Health Care & Wellness (originally sponsored by Representatives Cody, Morrell, Quall, Kenney, Linville and Ormsby)

READ FIRST TIME 02/19/07.

1 AN ACT Relating to establishing a statewide health resources
2 strategy; amending RCW 70.38.015, 70.38.025, 70.38.115, 70.38.135, and
3 70.38.105; and adding a new chapter to Title 43 RCW.

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

5 NEW SECTION. **Sec. 1.** A strategic health planning process that is
6 responsive to changing health and social needs and conditions is
7 essential to the health, safety, and welfare of the people of the
8 state. The strategic health planning process must be concerned with
9 the performance of the health system, encompassing health care
10 financing, quality, and the availability of information and services
11 for all residents. The strategic health planning process must ensure
12 the involvement of both consumers and health care providers in the
13 health planning process. The outcomes of the strategic health planning
14 process must be clearly articulated and available for public use and
15 review.

16 Such strategic health planning, when informed by relevant data
17 about the state's health system, shall guide the state in establishing
18 objectives and strategies to:

- 1 (1) Promote, maintain, and assure the health of all citizens in the
2 state;
- 3 (2) Provide accessible health services through the maintenance of
4 an adequate supply of health facilities and an adequate workforce;
- 5 (3) Apply specific quality criteria and population health
6 indicators;
- 7 (4) Recognize prevention as a high priority in health programs;
- 8 (5) Address periodic priority issues including disaster planning,
9 public health threats, and public safety dilemmas;
- 10 (6) Coordinate efforts among state agencies including those tasked
11 with facility, services, and professional provider licensing; state and
12 federal reimbursement; health service utilization data systems; and
13 other functions relevant to health planning;
- 14 (7) Recognize the close interrelationship of health planning
15 concerns and emphasize health care expenditure control, including cost-
16 effectiveness and cost-benefit analysis;
- 17 (8) Integrate criteria for evidence-based medicine; and
- 18 (9) Regularly evaluate the impact of capacity management on health
19 service expenditures, access, quality, and innovation.

20 NEW SECTION. **Sec. 2.** The definitions in this section apply
21 throughout this chapter unless the context clearly requires otherwise.

22 (1) "Commission" means the Washington health resource strategy
23 commission.

24 (2) "Health care provider" means an individual who holds a license
25 issued by a disciplining authority identified in RCW 18.130.040 and who
26 practices his or her profession in a health care facility or provides
27 a health service.

28 (3) "Health facility" or "facility" means hospices licensed under
29 chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural
30 health care facilities as defined in RCW 70.175.020, psychiatric
31 hospitals licensed under chapter 71.12 RCW, nursing homes licensed
32 under chapter 18.51 RCW, community mental health centers licensed under
33 chapter 71.05 or 71.24 RCW, kidney disease treatment centers,
34 ambulatory diagnostic, treatment, or surgical facilities, drug and
35 alcohol treatment facilities licensed under chapter 70.96A RCW, and
36 home health agencies licensed under chapter 70.127 RCW, and includes
37 such facilities if owned and operated by a political subdivision,

1 including a public hospital district, or instrumentality of the state
2 and such other facilities as required by federal law and implementing
3 regulations.

4 (3) "Health service" or "service" means that service, including
5 primary care service, offered or provided by health care facilities and
6 health care providers relating to the prevention, cure, or treatment of
7 illness, injury, or disease.

8 (4) "Office" means the office of strategic health resource
9 coordination.

10 (5) "Strategy" means the statewide health resources strategy.

11 NEW SECTION. **Sec. 3.** (1) The office of strategic health resource
12 coordination is created in the office of the governor. The office
13 shall serve as a coordinating body for public and private efforts to
14 improve quality in health care, promote cost-effectiveness in health
15 care, and plan health facility and health service availability. In
16 addition, the office shall facilitate access to health care data
17 collected by public and private organizations as needed to conduct its
18 planning responsibilities.

19 (2) The office shall:

20 (a) Assist the commission with its strategic health planning
21 responsibilities and the preparation of the strategy;

22 (b) Develop a computerized system for accessing, analyzing, and
23 disseminating data relevant to strategic health planning
24 responsibilities. The office may contract with an organization to
25 create the computerized system capable of meeting the needs of the
26 office;

27 (c) Maintain access to deidentified data collected and stored by
28 any public and private organizations as necessary to support the
29 planning responsibilities of the commission, including state-purchased
30 health care program data, hospital discharge data, and private efforts
31 to collect utilization and claims-related data. The office is
32 authorized to enter into any data sharing agreements and contractual
33 arrangements necessary to obtain data or to distribute data. Among the
34 sources of deidentified data that the office may access are any
35 databases established pursuant to the recommendations of the health
36 information infrastructure advisory board established by chapter 261,
37 laws of 2005. The office may store limited data sets as necessary to

1 support its activities. Unless specifically authorized, the office
2 shall not collect data directly from the records of health care
3 providers and health care facilities, but shall make use of databases
4 that have already collected such information;

5 (d) Conduct research and analysis or arrange for research and
6 analysis projects to be conducted by public or private organizations to
7 further the purposes of the commission;

8 (e) Provide administrative and technical support to the commission.

9 NEW SECTION. **Sec. 4.** (1) The health resource strategy commission
10 is created consisting of nineteen members appointed by the governor.
11 The commission shall be comprised of members from geographically
12 diverse regions of the state and shall include:

- 13 (a) Three health economists or health planners;
- 14 (b) Three representatives of nongovernment health care purchasers;
- 15 (c) One representative of the department of health;
- 16 (d) One representative of the department of social and health
17 services;
- 18 (e) One representative of the health care authority;
- 19 (f) One representative of the office of the insurance commissioner;
- 20 (g) One representative of acute care facilities;
- 21 (h) One representative of long-term care facilities;
- 22 (i) One representative of community-based long-term care providers;
- 23 (j) One representative of health care providers;
- 24 (k) One representative of a federally recognized Indian tribe; and
- 25 (l) Four representatives of health care consumers.

26 (2) Members of the initial commission may be appointed to staggered
27 terms of one to four years, and thereafter all terms of appointment are
28 for four years. No member may serve more than two consecutive full
29 terms. Each member shall hold office until a successor is appointed.
30 In appointing members, the governor shall make reasonable efforts to
31 select individuals with experience with health planning or health
32 economics. Members of the commission shall be compensated in
33 accordance with RCW 43.03.250 and shall be reimbursed for their travel
34 expenses while on official business in accordance with RCW 43.03.050
35 and 43.03.060. The commission shall elect a chair from its members to
36 serve for a term of one year or until a successor is elected. Meetings
37 of the commission shall be at the call of the chair.

1 NEW SECTION. **Sec. 5.** (1) The commission shall develop a statewide
2 health resources strategy. The strategy shall establish statewide
3 health planning policies and goals related to the availability of
4 health care facilities and services, quality of care, and cost of care.
5 The strategy shall identify needs according to geographic regions
6 suitable for comprehensive health planning as designated by the
7 commission.

8 (2) The development of the strategy shall consider the following
9 general goals and principles:

10 (a) That the structural limitations of health care financing limit
11 the effect of free market competition and raise the need for carefully
12 tailored government planning and regulation to control costs,
13 utilization, and distribution of health care services and facilities;

14 (b) That excess capacity of health services and facilities place
15 considerable economic burden on the public who pay for the construction
16 and operation of these facilities as patients, health insurance
17 purchasers, carriers, and taxpayers;

18 (c) That the development and ongoing maintenance of current and
19 accurate health care information and statistics related to cost and
20 quality of health care, as well as projections of need for health
21 facilities and services, are essential to effective strategic health
22 planning; and

23 (d) That an informed understanding of the state's health system can
24 promote the development of a competitive health care system that is
25 affordable, offers high quality services, and operates in a cost-
26 effective manner.

27 (3) The strategy shall include:

28 (a) A health system assessment and objectives component that:

29 (i) Describes state and regional population demographics, health
30 status indicators, and trends in health status and health care needs;
31 and

32 (ii) Identifies key policy objectives for the state health system
33 related to access to care, health outcomes, quality, and cost-
34 effectiveness;

35 (b) A health care facilities and services plan that shall assess
36 the demand for health care facilities and services to inform state
37 health planning efforts and direct certificate of need determinations.
38 The plan shall include:

1 (i) An inventory of each geographic region's existing health care
2 facilities and services;

3 (ii) Projections of need for each category of health care facility
4 and service, including those subject to certificate of need;

5 (iii) Policies to guide the addition of new or expanded health care
6 facilities and services to promote the use of quality, evidence-based,
7 cost-effective health care delivery options, including any
8 recommendations for criteria, standards, and methods relevant to the
9 certificate of need review process; and

10 (iv) An assessment of the availability of health care providers,
11 public health resources, transportation infrastructure, and other
12 considerations necessary to support the needed health care facilities
13 and services in each region;

14 (c) A health care data resource plan that identifies data elements
15 necessary to properly conduct planning activities and to review
16 certificate of need applications, including data related to inpatient
17 and outpatient utilization and outcomes information, and financial and
18 utilization information related to charity care, quality, and cost.
19 The plan shall inventory existing data resources, both public and
20 private, that store and disclose information relevant to the health
21 planning process, including information necessary to conduct
22 certificate of need activities pursuant to chapter 70.38 RCW. The plan
23 shall identify any deficiencies in the inventory of existing data
24 resources and the data necessary to conduct comprehensive health
25 planning activities. The plan may recommend that the office be
26 authorized to access existing data sources and conduct appropriate
27 analyses of such data or that other agencies expand their data
28 collection activities as statutory authority permits. The plan may
29 identify any computing infrastructure deficiencies that impede the
30 proper storage, transmission, and analysis of health planning data.
31 The plan shall provide recommendations for increasing the availability
32 of data related to health planning to provide greater community
33 involvement in the health planning process and consistency in data used
34 for certificate of need applications and determinations;

35 (d) An assessment of emerging trends in health care delivery and
36 technology as they relate to access to health care facilities and
37 services, quality of care, and costs of care. The assessment shall
38 recommend any changes to the scope of health care facilities and

1 services covered by the certificate of need program that may be
2 warranted by these emerging trends. In addition, the assessment may
3 recommend any changes to criteria used by the department to review
4 certificate of need applications, as necessary;

5 (e) A rural health resource plan to assess the availability of
6 health resources in rural areas of the state, assess the unmet needs of
7 these communities, and evaluate how federal and state reimbursement
8 policies can be modified, if necessary, to more efficiently and
9 effectively meet the health care needs of rural communities. The plan
10 shall consider the unique health care needs of rural communities, the
11 adequacy of the rural health workforce, and transportation needs for
12 accessing appropriate care.

13 (4) The commission shall submit the final strategy to the governor
14 by January 1, 2009. Every two years the commission shall submit a
15 strategy. The health care facilities and services plan as it pertains
16 to a distinct geographic planning region may be updated by individual
17 categories on a rotating, biannual schedule.

18 (5) The commission shall hold at least one public hearing and allow
19 opportunity to submit written comments prior to the issuance of the
20 initial strategy or an updated strategy. A public hearing shall be
21 held prior to issuing a draft of an updated health care facilities and
22 services plan, and another public hearing shall be held before final
23 adoption of an updated health care facilities and services plan. Any
24 hearing related to updating a health care facilities and services plan
25 for a specific planning region shall be held in that region with
26 sufficient notice to the public and an opportunity to comment.

27 NEW SECTION. **Sec. 6.** The commission shall submit the strategy to
28 the department of health to direct its activities related to the
29 certificate of need review program under chapter 70.38 RCW. As the
30 health care facilities and services plan is updated for any specific
31 geographic planning region, the commission shall submit that plan to
32 the department of health to direct its activities related to the
33 certificate of need review program under chapter 70.38 RCW. The
34 commission shall not issue determinations of the merits of specific
35 project proposals submitted by applicants for certificates of need.

1 NEW SECTION. **Sec. 7.** (1) The office may respond to requests for
2 data and other information from its computerized system for special
3 studies and analysis consistent with requirements for confidentiality
4 of patient, provider, and facility-specific records. The office may
5 require requestors to pay any or all of the reasonable costs associated
6 with such requests that might be approved.

7 (2) Data elements related to the identification of individual
8 patient's, provider's, and facility's care outcomes are confidential,
9 are exempt from RCW 42.56.030 through 42.56.570 and 42.17.350 through
10 42.17.450, and are not subject to discovery by subpoena or admissible
11 as evidence.

12 **Sec. 8.** RCW 70.38.015 and 1989 1st ex.s. c 9 s 601 are each
13 amended to read as follows:

14 It is declared to be the public policy of this state:

15 (1) That strategic health planning ((~~to~~)) efforts must be supported
16 by appropriately tailored regulatory activities that can effectuate the
17 goals and principles of the statewide health resources strategy
18 developed pursuant to chapter 43.-- RCW (sections 1 through 7 of this
19 act). The realization of such strategic health planning can promote,
20 maintain, and assure the health of all citizens in the state, ((~~to~~))
21 provide accessible health services, health manpower, health facilities,
22 and other resources while controlling ((~~excessive~~)) increases in costs,
23 and ((~~to~~)) recognize prevention as a high priority in health
24 programs((~~, is essential to the health, safety, and welfare of the~~
25 people of the state. Health planning should be responsive to changing
26 health and social needs and conditions. Involvement in health planning
27 from both consumers and providers throughout the state should be
28 encouraged));

29 (2) ~~((That the development of health services and resources,~~
30 ~~including the construction, modernization, and conversion of health~~
31 ~~facilities, should be accomplished in a planned, orderly fashion,~~
32 ~~consistent with identified priorities and without unnecessary~~
33 ~~duplication or fragmentation)) That the certificate of need program is
34 a component of a health planning regulatory process that is consistent
35 with the statewide health resources strategy and public policy goals
36 that are clearly articulated and regularly updated;~~

1 (3) That the development and maintenance of adequate health care
2 information, statistics and projections of need for health facilities
3 and services is essential to effective health planning and resources
4 development;

5 (4) That the development of nonregulatory approaches to health care
6 cost containment should be considered, including the strengthening of
7 price competition; and

8 (5) That health planning should be concerned with public health and
9 health care financing, access, and quality, recognizing their close
10 interrelationship and emphasizing cost control of health services,
11 including cost-effectiveness and cost-benefit analysis.

12 **Sec. 9.** RCW 70.38.025 and 2000 c 175 s 22 are each amended to read
13 as follows:

14 When used in this chapter, the terms defined in this section shall
15 have the meanings indicated.

16 (1) "Board of health" means the state board of health created
17 pursuant to chapter 43.20 RCW.

18 (2) "Capital expenditure" is an expenditure, including a force
19 account expenditure (i.e., an expenditure for a construction project
20 undertaken by a nursing home facility as its own contractor) which,
21 under generally accepted accounting principles, is not properly
22 chargeable as an expense of operation or maintenance. Where a person
23 makes an acquisition under lease or comparable arrangement, or through
24 donation, which would have required review if the acquisition had been
25 made by purchase, such expenditure shall be deemed a capital
26 expenditure. Capital expenditures include donations of equipment or
27 facilities to a nursing home facility which if acquired directly by
28 such facility would be subject to certificate of need review under the
29 provisions of this chapter and transfer of equipment or facilities for
30 less than fair market value if a transfer of the equipment or
31 facilities at fair market value would be subject to such review. The
32 cost of any studies, surveys, designs, plans, working drawings,
33 specifications, and other activities essential to the acquisition,
34 improvement, expansion, or replacement of any plant or equipment with
35 respect to which such expenditure is made shall be included in
36 determining the amount of the expenditure.

1 (3) "Continuing care retirement community" means an entity which
2 provides shelter and services under continuing care contracts with its
3 members and which sponsors or includes a health care facility or a
4 health service. A "continuing care contract" means a contract to
5 provide a person, for the duration of that person's life or for a term
6 in excess of one year, shelter along with nursing, medical, health-
7 related, or personal care services, which is conditioned upon the
8 transfer of property, the payment of an entrance fee to the provider of
9 such services, or the payment of periodic charges for the care and
10 services involved. A continuing care contract is not excluded from
11 this definition because the contract is mutually terminable or because
12 shelter and services are not provided at the same location.

13 (4) "Department" means the department of health.

14 (5) "Expenditure minimum" means, for the purposes of the
15 certificate of need program, one million dollars adjusted by the
16 department by rule to reflect changes in the United States department
17 of commerce composite construction cost index; or a lesser amount
18 required by federal law and established by the department by rule.

19 (6) "Health care facility" means hospices, hospice care centers,
20 hospitals, psychiatric hospitals, nursing homes, kidney disease
21 treatment centers, ambulatory surgical facilities, and home health
22 agencies, and includes such facilities when owned and operated by a
23 political subdivision or instrumentality of the state and such other
24 facilities as required by federal law and implementing regulations, but
25 does not include any health facility or institution conducted by and
26 for those who rely exclusively upon treatment by prayer or spiritual
27 means in accordance with the creed or tenets of any well-recognized
28 church or religious denomination, or any health facility or institution
29 operated for the exclusive care of members of a convent as defined in
30 RCW 84.36.800 or rectory, monastery, or other institution operated for
31 the care of members of the clergy. In addition, the term does not
32 include any nonprofit hospital: (a) Which is operated exclusively to
33 provide health care services for children; (b) which does not charge
34 fees for such services; and (c) if not contrary to federal law as
35 necessary to the receipt of federal funds by the state.

36 (7) "Health maintenance organization" means a public or private
37 organization, organized under the laws of the state, which:

1 (a) Is a qualified health maintenance organization under Title
2 XIII, section 1310(d) of the Public Health Services Act; or

3 (b)(i) Provides or otherwise makes available to enrolled
4 participants health care services, including at least the following
5 basic health care services: Usual physician services, hospitalization,
6 laboratory, X-ray, emergency, and preventive services, and out-of-area
7 coverage; (ii) is compensated (except for copayments) for the provision
8 of the basic health care services listed in (b)(i) to enrolled
9 participants by a payment which is paid on a periodic basis without
10 regard to the date the health care services are provided and which is
11 fixed without regard to the frequency, extent, or kind of health
12 service actually provided; and (iii) provides physicians' services
13 primarily (A) directly through physicians who are either employees or
14 partners of such organization, or (B) through arrangements with
15 individual physicians or one or more groups of physicians (organized on
16 a group practice or individual practice basis).

17 (8) "Health services" means clinically related (i.e., preventive,
18 diagnostic, curative, rehabilitative, or palliative) services and
19 includes alcoholism, drug abuse, and mental health services and as
20 defined in federal law.

21 (9) "Health service area" means a geographic region appropriate for
22 effective health planning which includes a broad range of health
23 services.

24 (10) "Person" means an individual, a trust or estate, a
25 partnership, a corporation (including associations, joint stock
26 companies, and insurance companies), the state, or a political
27 subdivision or instrumentality of the state, including a municipal
28 corporation or a hospital district.

29 (11) "Provider" generally means a health care professional or an
30 organization, institution, or other entity providing health care but
31 the precise definition for this term shall be established by rule of
32 the department, consistent with federal law.

33 (12) "Public health" means the level of well-being of the general
34 population; those actions in a community necessary to preserve,
35 protect, and promote the health of the people for which government is
36 responsible; and the governmental system developed to guarantee the
37 preservation of the health of the people.

1 (13) "Secretary" means the secretary of health or the secretary's
2 designee.

3 (14) "Statewide health resource strategy" or "strategy" means the
4 statewide health resource strategy developed by the Washington health
5 resource strategy commission pursuant to chapter 43.-- RCW (sections 1
6 through 7 of this act).

7 (15) "Tertiary health service" means a specialized service that
8 meets complicated medical needs of people and requires sufficient
9 patient volume to optimize provider effectiveness, quality of service,
10 and improved outcomes of care.

11 ((+15+)) (16) "Hospital" means any health care institution which is
12 required to qualify for a license under RCW 70.41.020((+2+)); or as a
13 psychiatric hospital under chapter 71.12 RCW.

14 **Sec. 10.** RCW 70.38.115 and 1996 c 178 s 22 are each amended to
15 read as follows:

16 (1) Certificates of need shall be issued, denied, suspended, or
17 revoked by the designee of the secretary in accord with the provisions
18 of this chapter and rules of the department which establish review
19 procedures and criteria for the certificate of need program.

20 (2) Criteria for the review of certificate of need applications,
21 except as provided in subsection (3) of this section for health
22 maintenance organizations, shall include but not be limited to
23 consideration of the following:

24 (a) The need that the population served or to be served by such
25 services has for such services;

26 (b) The availability of less costly or more effective alternative
27 methods of providing such services;

28 (c) The financial feasibility and the probable impact of the
29 proposal on the cost of and charges for providing health services in
30 the community to be served;

31 (d) In the case of health services to be provided,

32 (i) the availability of alternative uses of project resources for
33 the provision of other health services,

34 (ii) the extent to which such proposed services will be accessible
35 to all residents of the area to be served, and

36 (iii) the need for and the availability in the community of
37 services and facilities for osteopathic physicians and surgeons and

1 allopathic physicians and their patients. The department shall consider
2 the application in terms of its impact on existing and proposed
3 institutional training programs for doctors of osteopathic medicine and
4 surgery and medicine at the student, internship, and residency training
5 levels;

6 (e) In the case of a construction project, the costs and methods of
7 the proposed construction, including the cost and methods of energy
8 provision, and the probable impact of the construction project reviewed
9 (i) on the cost of providing health services by the person proposing
10 such construction project and (ii) on the cost and charges to the
11 public of providing health services by other persons;

12 (f) The special needs and circumstances of osteopathic hospitals,
13 nonallopathic services and children's hospitals;

14 (g) Improvements or innovations in the financing and delivery of
15 health services which foster cost containment and serve to promote
16 quality assurance and cost-effectiveness;

17 (h) In the case of health services proposed to be provided, the
18 efficiency and appropriateness of the use of existing services and
19 facilities similar to those proposed;

20 (i) In the case of existing services or facilities, the quality of
21 care provided by such services or facilities in the past;

22 (j) In the case of hospital certificate of need applications,
23 whether the hospital meets or exceeds the regional average level of
24 charity care, as determined by the secretary; and

25 (k) In the case of nursing home applications:

26 (i) The availability of other nursing home beds in the planning
27 area to be served; and

28 (ii) The availability of other services in the community to be
29 served. Data used to determine the availability of other services will
30 include but not be limited to data provided by the department of social
31 and health services.

32 (3) A certificate of need application of a health maintenance
33 organization or a health care facility which is controlled, directly or
34 indirectly, by a health maintenance organization, shall be approved by
35 the department if the department finds:

36 (a) Approval of such application is required to meet the needs of
37 the members of the health maintenance organization and of the new

1 members which such organization can reasonably be expected to enroll;
2 and

3 (b) The health maintenance organization is unable to provide,
4 through services or facilities which can reasonably be expected to be
5 available to the organization, its health services in a reasonable and
6 cost-effective manner which is consistent with the basic method of
7 operation of the organization and which makes such services available
8 on a long-term basis through physicians and other health professionals
9 associated with it.

10 A health care facility, or any part thereof, with respect to which
11 a certificate of need was issued under this subsection may not be sold
12 or leased and a controlling interest in such facility or in a lease of
13 such facility may not be acquired unless the department issues a
14 certificate of need approving the sale, acquisition, or lease.

15 ~~(4) ((Until the final expiration of the state health plan as
16 provided under RCW 70.38.919, the decision of the department on a
17 certificate of need application shall be consistent with the state
18 health plan in effect, except in emergency circumstances which pose a
19 threat to the public health.))~~ Effective January 1, 2009, certificate
20 of need determinations must be consistent with the statewide health
21 resources strategy developed pursuant to section 5 of this act,
22 including any health planning policies and goals identified in the
23 statewide health resources strategy in effect at the time of
24 application. The department may waive specific terms of the strategy
25 if the applicant demonstrates that consistency with those terms will
26 create an undue burden on the population that a particular project
27 would serve, or in emergency circumstances which pose a threat to
28 public health.

29 (5) The department in making its final decision may issue a
30 conditional certificate of need if it finds that the project is
31 justified only under specific circumstances. The conditions shall
32 directly relate to the project being reviewed. The conditions may be
33 released if it can be substantiated that the conditions are no longer
34 valid and the release of such conditions would be consistent with the
35 purposes of this chapter.

36 ~~((+5))~~ (6) Criteria adopted for review in accordance with
37 subsection (2) of this section may vary according to the purpose for

1 which the particular review is being conducted or the type of health
2 service reviewed.

3 ~~((+6+))~~ (7) The department shall specify information to be required
4 for certificate of need applications. Within fifteen days of receipt
5 of the application, the department shall request additional information
6 considered necessary to the application or start the review process.
7 Applicants may decline to submit requested information through written
8 notice to the department, in which case review starts on the date of
9 receipt of the notice. Applications may be denied or limited because
10 of failure to submit required and necessary information.

11 ~~((+7+))~~ (8) Concurrent review is for the purpose of comparative
12 analysis and evaluation of competing or similar projects in order to
13 determine which of the projects may best meet identified needs.
14 Categories of projects subject to concurrent review include at least
15 new health care facilities, new services, and expansion of existing
16 health care facilities. The department shall specify time periods for
17 the submission of applications for certificates of need subject to
18 concurrent review, which shall not exceed ninety days. Review of
19 concurrent applications shall start fifteen days after the conclusion
20 of the time period for submission of applications subject to concurrent
21 review. Concurrent review periods shall be limited to one hundred
22 fifty days, except as provided for in rules adopted by the department
23 authorizing and limiting amendment during the course of the review, or
24 for an unresolved pivotal issue declared by the department.

25 ~~((+8+))~~ (9) Review periods for certificate of need applications
26 other than those subject to concurrent review shall be limited to
27 ninety days. Review periods may be extended up to thirty days if
28 needed by a review agency, and for unresolved pivotal issues the
29 department may extend up to an additional thirty days. A review may be
30 extended in any case if the applicant agrees to the extension.

31 ~~((+9+))~~ (10) The department or its designee, shall conduct a public
32 hearing on a certificate of need application if requested unless the
33 review is expedited or subject to emergency review. The department by
34 rule shall specify the period of time within which a public hearing
35 must be requested and requirements related to public notice of the
36 hearing, procedures, recordkeeping and related matters.

37 ~~((+10+))~~ (11)(a) Any applicant denied a certificate of need or

1 whose certificate of need has been suspended or revoked has the right
2 to an adjudicative proceeding. The proceeding is governed by chapter
3 34.05 RCW, the Administrative Procedure Act.

4 (b) Any health care facility or health maintenance organization
5 that: (i) Provides services similar to the services provided by the
6 applicant and under review pursuant to this subsection; (ii) is located
7 within the applicant's health service area; and (iii) testified or
8 submitted evidence at a public hearing held pursuant to subsection
9 ~~((9))~~ (10) of this section, shall be provided an opportunity to
10 present oral or written testimony and argument in a proceeding under
11 this subsection: PROVIDED, That the health care facility or health
12 maintenance organization had, in writing, requested to be informed of
13 the department's decisions.

14 (c) If the department desires to settle with the applicant prior to
15 the conclusion of the adjudicative proceeding, the department shall so
16 inform the health care facility or health maintenance organization and
17 afford them an opportunity to comment, in advance, on the proposed
18 settlement.

19 ~~((11))~~ (12) An amended certificate of need shall be required for
20 the following modifications of an approved project:

21 (a) A new service requiring review under this chapter;

22 (b) An expansion of a service subject to review beyond that
23 originally approved;

24 (c) An increase in bed capacity;

25 (d) A significant reduction in the scope of a nursing home project
26 without a commensurate reduction in the cost of the nursing home
27 project, or a cost increase (as represented in bids on a nursing home
28 construction project or final cost estimates acceptable to the person
29 to whom the certificate of need was issued) if the total of such
30 increases exceeds twelve percent or fifty thousand dollars, whichever
31 is greater, over the maximum capital expenditure approved. The review
32 of reductions or cost increases shall be restricted to the continued
33 conformance of the nursing home project with the review criteria
34 pertaining to financial feasibility and cost containment.

35 ~~((12))~~ (13) An application for a certificate of need for a
36 nursing home capital expenditure which is determined by the department
37 to be required to eliminate or prevent imminent safety hazards or

1 correct violations of applicable licensure and accreditation standards
2 shall be approved.

3 ~~((+13+))~~ (14)(a) Replacement of existing nursing home beds in the
4 same planning area by an existing licensee who has operated the beds
5 for at least one year shall not require a certificate of need under
6 this chapter. The licensee shall give written notice of its intent to
7 replace the existing nursing home beds to the department and shall
8 provide the department with information as may be required pursuant to
9 rule. Replacement of the beds by a party other than the licensee is
10 subject to certificate of need review under this chapter, except as
11 otherwise permitted by subsection ~~((+14+))~~ (15) of this section.

12 (b) When an entire nursing home ceases operation, the licensee or
13 any other party who has secured an interest in the beds may reserve his
14 or her interest in the beds for eight years or until a certificate of
15 need to replace them is issued, whichever occurs first. However, the
16 nursing home, licensee, or any other party who has secured an interest
17 in the beds must give notice of its intent to retain the beds to the
18 department of health no later than thirty days after the effective date
19 of the facility's closure. Certificate of need review shall be
20 required for any party who has reserved the nursing home beds except
21 that the need criteria shall be deemed met when the applicant is the
22 licensee who had operated the beds for at least one year, who has
23 operated the beds for at least one year immediately preceding the
24 reservation of the beds, and who is replacing the beds in the same
25 planning area.

26 ~~((+14+))~~ (15) In the event that a licensee, who has provided the
27 department with notice of his or her intent to replace nursing home
28 beds under subsection ~~((+13+))~~ (14)(a) of this section, engages in
29 unprofessional conduct or becomes unable to practice with reasonable
30 skill and safety by reason of mental or physical condition, pursuant to
31 chapter 18.130 RCW, or dies, the building owner shall be permitted to
32 complete the nursing home bed replacement project, provided the
33 building owner has secured an interest in the beds.

34 **Sec. 11.** RCW 70.38.135 and 1989 1st ex.s. c 9 s 607 are each
35 amended to read as follows:

36 The secretary shall have authority to:

1 (1) Provide when needed temporary or intermittent services of
2 experts or consultants or organizations thereof, by contract, when such
3 services are to be performed on a part time or fee-for-service basis;

4 (2) Make or cause to be made such on-site surveys of health care or
5 medical facilities as may be necessary for the administration of the
6 certificate of need program;

7 (3) Upon review of recommendations, if any, from the board of
8 health or the Washington health resource strategy commission:

9 (a) Promulgate rules under which health care facilities providers
10 doing business within the state shall submit to the department such
11 data related to health and health care as the department finds
12 necessary to the performance of its functions under this chapter;

13 (b) Promulgate rules pertaining to the maintenance and operation of
14 medical facilities which receive federal assistance under the
15 provisions of Title XVI;

16 (c) Promulgate rules in implementation of the provisions of this
17 chapter, including the establishment of procedures for public hearings
18 for predecisions and post-decisions on applications for certificate of
19 need;

20 (d) Promulgate rules providing circumstances and procedures of
21 expedited certificate of need review if there has not been a
22 significant change in existing health facilities of the same type or in
23 the need for such health facilities and services;

24 (4) Grant allocated state funds to qualified entities, as defined
25 by the department, to fund not more than seventy-five percent of the
26 costs of regional planning activities, excluding costs related to
27 review of applications for certificates of need, provided for in this
28 chapter or approved by the department; and

29 (5) Contract with and provide reasonable reimbursement for
30 qualified entities to assist in determinations of certificates of need.

31 **Sec. 12.** RCW 70.38.105 and 2004 c 261 s 6 are each amended to read
32 as follows:

33 (1) The department is authorized and directed to implement the
34 certificate of need program in this state pursuant to the provisions of
35 this chapter.

36 (2) There shall be a state certificate of need program which is

1 administered consistent with the requirements of federal law as
2 necessary to the receipt of federal funds by the state.

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

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

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

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

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

17 (d) Any capital expenditure for the construction, renovation, or
18 alteration of a nursing home which exceeds the expenditure minimum as
19 defined by RCW 70.38.025. However, a capital expenditure which is not
20 subject to certificate of need review under (a), (b), (c), or (e) of
21 this subsection and which is solely for any one or more of the
22 following is not subject to certificate of need review:

23 (i) Communications and parking facilities;

24 (ii) Mechanical, electrical, ventilation, heating, and air
25 conditioning systems;

26 (iii) Energy conservation systems;

27 (iv) Repairs to, or the correction of, deficiencies in existing
28 physical plant facilities which are necessary to maintain state
29 licensure, however, other additional repairs, remodeling, or
30 replacement projects that are not related to one or more deficiency
31 citations and are not necessary to maintain state licensure are not
32 exempt from certificate of need review except as otherwise permitted by
33 (d)(vi) of this subsection or RCW 70.38.115(~~(+13)~~) (14);

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

37 (vi) Construction or renovation at an existing nursing home which

1 involves physical plant facilities, including administrative, dining
2 areas, kitchen, laundry, therapy areas, and support facilities, by an
3 existing licensee who has operated the beds for at least one year;

4 (vii) Acquisition of land; and

5 (viii) Refinancing of existing debt;

6 (e) A change in bed capacity of a health care facility which
7 increases the total number of licensed beds or redistributes beds among
8 acute care, nursing home care, and boarding home care if the bed
9 redistribution is to be effective for a period in excess of six months,
10 or a change in bed capacity of a rural health care facility licensed
11 under RCW 70.175.100 that increases the total number of nursing home
12 beds or redistributes beds from acute care or boarding home care to
13 nursing home care if the bed redistribution is to be effective for a
14 period in excess of six months. A health care facility certified as a
15 critical access hospital under 42 U.S.C. 1395i-4 may increase its total
16 number of licensed beds to the total number of beds permitted under 42
17 U.S.C. 1395i-4 for acute care and may redistribute beds permitted under
18 42 U.S.C. 1395i-4 among acute care and nursing home care without being
19 subject to certificate of need review. If there is a nursing home
20 licensed under chapter 18.51 RCW within twenty-seven miles of the
21 critical access hospital, the critical access hospital is subject to
22 certificate of need review except for:

23 (i) Critical access hospitals which had designated beds to provide
24 nursing home care, in excess of five swing beds, prior to December 31,
25 2003; or

26 (ii) Up to five swing beds.

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

34 (f) Any new tertiary health services which are offered in or
35 through a health care facility or rural health care facility licensed
36 under RCW 70.175.100, and which were not offered on a regular basis by,
37 in, or through such health care facility or rural health care facility

1 within the twelve-month period prior to the time such services would be
2 offered;

3 (g) Any expenditure for the construction, renovation, or alteration
4 of a nursing home or change in nursing home services in excess of the
5 expenditure minimum made in preparation for any undertaking under
6 subsection (4) of this section and any arrangement or commitment made
7 for financing such undertaking. Expenditures of preparation shall
8 include expenditures for architectural designs, plans, working
9 drawings, and specifications. The department may issue certificates of
10 need permitting predevelopment expenditures, only, without authorizing
11 any subsequent undertaking with respect to which such predevelopment
12 expenditures are made; and

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

15 (5) The department is authorized to charge fees for the review of
16 certificate of need applications and requests for exemptions from
17 certificate of need review. The fees shall be sufficient to cover the
18 full cost of review and exemption, which may include the development of
19 standards, criteria, and policies.

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

22 NEW SECTION. **Sec. 13.** Sections 1 through 7 of this act constitute
23 a new chapter in Title 43 RCW.

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