
SENATE BILL 5144

State of Washington

60th Legislature

2007 Regular Session

By Senators Carrell, Kastama, Stevens, Hargrove, Marr, McAuliffe, Shin and Rasmussen

Read first time 01/11/2007. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to certificates of need criteria for nursing home
2 beds; amending RCW 70.38.115; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that:

5 (1) The intent of our state's certificate of need is to be
6 responsive to the changing health and social conditions of our aging
7 population and to ensure access to quality long-term care services.

8 (2) Married couples currently use state licensed residential long-
9 term care facilities at a lower rate than the general population.
10 Married couples may be unable to continue to live together when one
11 needs skilled nursing care.

12 (3) In order to be more responsive to changing health and social
13 conditions of our state aging population, the criteria of awarding a
14 certificate of need must be changed to encourage the maintenance of
15 elder families in our state long-term care facilities and ensure access
16 to those facilities that meet the needs of all people.

17 **Sec. 2.** RCW 70.38.115 and 1996 c 178 s 22 are each amended to read
18 as follows:

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

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

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

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

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

16 (d) In the case of health services to be provided, (i) the
17 availability of alternative uses of project resources for the provision
18 of other health services, (ii) the extent to which such proposed
19 services will be accessible to all residents of the area to be served,
20 and (iii) the need for and the availability in the community of
21 services and facilities for osteopathic physicians and surgeons and
22 allopathic physicians and their patients. The department shall
23 consider the application in terms of its impact on existing and
24 proposed institutional training programs for doctors of osteopathic
25 medicine and surgery and medicine at the student, internship, and
26 residency training levels;

27 (e) In the case of a construction project, the costs and methods of
28 the proposed construction, including the cost and methods of energy
29 provision, and the probable impact of the construction project reviewed
30 (i) on the cost of providing health services by the person proposing
31 such construction project and (ii) on the cost and charges to the
32 public of providing health services by other persons;

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

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

1 (h) In the case of health services proposed to be provided, the
2 efficiency and appropriateness of the use of existing services and
3 facilities similar to those proposed;

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

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

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

10 (i) The availability of other nursing home beds in the planning
11 area to be served; (~~and~~)

12 (ii) For applications from boarding homes licensed under chapter
13 18.20 RCW providing independent living and assisted services at the
14 same location, the number and needs of married couples residing in the
15 boarding home; and

16 (iii) The availability of other services in the community to be
17 served. Data used to determine the availability of other services will
18 include but not be limited to data provided by the department of social
19 and health services.

20 (3) A certificate of need application of a health maintenance
21 organization or a health care facility which is controlled, directly or
22 indirectly, by a health maintenance organization, shall be approved by
23 the department if the department finds:

24 (a) Approval of such application is required to meet the needs of
25 the members of the health maintenance organization and of the new
26 members which such organization can reasonably be expected to enroll;
27 and

28 (b) The health maintenance organization is unable to provide,
29 through services or facilities which can reasonably be expected to be
30 available to the organization, its health services in a reasonable and
31 cost-effective manner which is consistent with the basic method of
32 operation of the organization and which makes such services available
33 on a long-term basis through physicians and other health professionals
34 associated with it.

35 A health care facility, or any part thereof, with respect to which
36 a certificate of need was issued under this subsection may not be sold
37 or leased and a controlling interest in such facility or in a lease of

1 such facility may not be acquired unless the department issues a
2 certificate of need approving the sale, acquisition, or lease.

3 (4) Until the final expiration of the state health plan as provided
4 under RCW 70.38.919, the decision of the department on a certificate of
5 need application shall be consistent with the state health plan in
6 effect, except in emergency circumstances which pose a threat to the
7 public health. The department in making its final decision may issue
8 a conditional certificate of need if it finds that the project is
9 justified only under specific circumstances. The conditions shall
10 directly relate to the project being reviewed. The conditions may be
11 released if it can be substantiated that the conditions are no longer
12 valid and the release of such conditions would be consistent with the
13 purposes of this chapter.

14 (5) Criteria adopted for review in accordance with subsection (2)
15 of this section may vary according to the purpose for which the
16 particular review is being conducted or the type of health service
17 reviewed.

18 (6) The department shall specify information to be required for
19 certificate of need applications. Within fifteen days of receipt of
20 the application, the department shall request additional information
21 considered necessary to the application or start the review process.
22 Applicants may decline to submit requested information through written
23 notice to the department, in which case review starts on the date of
24 receipt of the notice. Applications may be denied or limited because
25 of failure to submit required and necessary information.

26 (7) Concurrent review is for the purpose of comparative analysis
27 and evaluation of competing or similar projects in order to determine
28 which of the projects may best meet identified needs. Categories of
29 projects subject to concurrent review include at least new health care
30 facilities, new services, and expansion of existing health care
31 facilities. The department shall specify time periods for the
32 submission of applications for certificates of need subject to
33 concurrent review, which shall not exceed ninety days. Review of
34 concurrent applications shall start fifteen days after the conclusion
35 of the time period for submission of applications subject to concurrent
36 review. Concurrent review periods shall be limited to one hundred
37 fifty days, except as provided for in rules adopted by the department

1 authorizing and limiting amendment during the course of the review, or
2 for an unresolved pivotal issue declared by the department.

3 (8) Review periods for certificate of need applications other than
4 those subject to concurrent review shall be limited to ninety days.
5 Review periods may be extended up to thirty days if needed by a review
6 agency, and for unresolved pivotal issues the department may extend up
7 to an additional thirty days. A review may be extended in any case if
8 the applicant agrees to the extension.

9 (9) The department or its designee, shall conduct a public hearing
10 on a certificate of need application if requested unless the review is
11 expedited or subject to emergency review. The department by rule shall
12 specify the period of time within which a public hearing must be
13 requested and requirements related to public notice of the hearing,
14 procedures, recordkeeping and related matters.

15 (10)(a) Any applicant denied a certificate of need or whose
16 certificate of need has been suspended or revoked has the right to an
17 adjudicative proceeding. The proceeding is governed by chapter 34.05
18 RCW, the Administrative Procedure Act.

19 (b) Any health care facility or health maintenance organization
20 that: (i) Provides services similar to the services provided by the
21 applicant and under review pursuant to this subsection; (ii) is located
22 within the applicant's health service area; and (iii) testified or
23 submitted evidence at a public hearing held pursuant to subsection (9)
24 of this section, shall be provided an opportunity to present oral or
25 written testimony and argument in a proceeding under this subsection:
26 PROVIDED, That the health care facility or health maintenance
27 organization had, in writing, requested to be informed of the
28 department's decisions.

29 (c) If the department desires to settle with the applicant prior to
30 the conclusion of the adjudicative proceeding, the department shall so
31 inform the health care facility or health maintenance organization and
32 afford them an opportunity to comment, in advance, on the proposed
33 settlement.

34 (11) An amended certificate of need shall be required for the
35 following modifications of an approved project:

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

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

1 (c) An increase in bed capacity;

2 (d) A significant reduction in the scope of a nursing home project
3 without a commensurate reduction in the cost of the nursing home
4 project, or a cost increase (as represented in bids on a nursing home
5 construction project or final cost estimates acceptable to the person
6 to whom the certificate of need was issued) if the total of such
7 increases exceeds twelve percent or fifty thousand dollars, whichever
8 is greater, over the maximum capital expenditure approved. The review
9 of reductions or cost increases shall be restricted to the continued
10 conformance of the nursing home project with the review criteria
11 pertaining to financial feasibility and cost containment.

12 (12) An application for a certificate of need for a nursing home
13 capital expenditure which is determined by the department to be
14 required to eliminate or prevent imminent safety hazards or correct
15 violations of applicable licensure and accreditation standards shall be
16 approved.

17 (13)(a) Replacement of existing nursing home beds in the same
18 planning area by an existing licensee who has operated the beds for at
19 least one year shall not require a certificate of need under this
20 chapter. The licensee shall give written notice of its intent to
21 replace the existing nursing home beds to the department and shall
22 provide the department with information as may be required pursuant to
23 rule. Replacement of the beds by a party other than the licensee is
24 subject to certificate of need review under this chapter, except as
25 otherwise permitted by subsection (14) of this section.

26 (b) When an entire nursing home ceases operation, the licensee or
27 any other party who has secured an interest in the beds may reserve his
28 or her interest in the beds for eight years or until a certificate of
29 need to replace them is issued, whichever occurs first. However, the
30 nursing home, licensee, or any other party who has secured an interest
31 in the beds must give notice of its intent to retain the beds to the
32 department of health no later than thirty days after the effective date
33 of the facility's closure. Certificate of need review shall be
34 required for any party who has reserved the nursing home beds except
35 that the need criteria shall be deemed met when the applicant is the
36 licensee who had operated the beds for at least one year, who has
37 operated the beds for at least one year immediately preceding the

1 reservation of the beds, and who is replacing the beds in the same
2 planning area.

3 (14) In the event that a licensee, who has provided the department
4 with notice of his or her intent to replace nursing home beds under
5 subsection (13)(a) of this section, engages in unprofessional conduct
6 or becomes unable to practice with reasonable skill and safety by
7 reason of mental or physical condition, pursuant to chapter 18.130 RCW,
8 or dies, the building owner shall be permitted to complete the nursing
9 home bed replacement project, provided the building owner has secured
10 an interest in the beds.

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