
HOUSE BILL 3137

State of Washington

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By Representative Seaquist

1 AN ACT Relating to review of certificate of need applications; and
2 amending RCW 70.38.115.

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

4 **Sec. 1.** RCW 70.38.115 and 1996 c 178 s 22 are each amended to read
5 as follows:

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

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

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

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

18 (c) The financial feasibility and the probable impact of the

1 proposal on the cost of and charges for providing health services in
2 the community to be served;

3 (d) In the case of health services to be provided, (i) the
4 availability of alternative uses of project resources for the provision
5 of other health services, (ii) the extent to which such proposed
6 services will be accessible to all residents of the area to be served,
7 and (iii) the need for and the availability in the community of
8 services and facilities for osteopathic physicians and surgeons and
9 allopathic physicians and their patients. The department shall
10 consider the application in terms of its impact on existing and
11 proposed institutional training programs for doctors of osteopathic
12 medicine and surgery and medicine at the student, internship, and
13 residency training levels;

14 (e) In the case of a construction project, the costs and methods of
15 the proposed construction, including the cost and methods of energy
16 provision, and the probable impact of the construction project reviewed
17 (i) on the cost of providing health services by the person proposing
18 such construction project and (ii) on the cost and charges to the
19 public of providing health services by other persons;

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

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

25 (h) In the case of health services proposed to be provided, the
26 efficiency and appropriateness of the use of existing services and
27 facilities similar to those proposed;

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

30 (j) In the case of hospital certificate of need applications,
31 whether the hospital meets or exceeds the regional average level of
32 charity care, as determined by the secretary; (~~and~~)

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

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

36 (ii) The availability of other services in the community to be
37 served. Data used to determine the availability of other services will

1 include but not be limited to data provided by the department of social
2 and health services;

3 (1) Whether or not the project or facility is expected to help
4 reduce disparate health outcomes among minority or underserved
5 populations; and

6 (m) Whether or not the facility or project is expected to relieve
7 health care shortages in or among medically underserved areas or
8 medically underserved populations as designated by the health resources
9 and services administration of the United States department of health
10 and human services.

11 (3) A certificate of need application of a health maintenance
12 organization or a health care facility which is controlled, directly or
13 indirectly, by a health maintenance organization, shall be approved by
14 the department if the department finds:

15 (a) Approval of such application is required to meet the needs of
16 the members of the health maintenance organization and of the new
17 members which such organization can reasonably be expected to enroll;
18 and

19 (b) The health maintenance organization is unable to provide,
20 through services or facilities which can reasonably be expected to be
21 available to the organization, its health services in a reasonable and
22 cost-effective manner which is consistent with the basic method of
23 operation of the organization and which makes such services available
24 on a long-term basis through physicians and other health professionals
25 associated with it.

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

31 (4) Until the final expiration of the state health plan as provided
32 under RCW (~~(70.38.919)~~) 70.38.018, the decision of the department on a
33 certificate of need application shall be consistent with the state
34 health plan in effect, except in emergency circumstances which pose a
35 threat to the public health. The department in making its final
36 decision may issue a conditional certificate of need if it finds that
37 the project is justified only under specific circumstances. The
38 conditions shall directly relate to the project being reviewed. The

1 conditions may be released if it can be substantiated that the
2 conditions are no longer valid and the release of such conditions would
3 be consistent with the purposes of this chapter.

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

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

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

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

36 (9) The department or its designee, shall conduct a public hearing
37 on a certificate of need application if requested unless the review is
38 expedited or subject to emergency review. The department by rule shall

1 specify the period of time within which a public hearing must be
2 requested and requirements related to public notice of the hearing,
3 procedures, recordkeeping and related matters.

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

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

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

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

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

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

28 (c) An increase in bed capacity;

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

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

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

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

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

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