
SENATE BILL 5673

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By Senators Pridemore, Zarelli, Keiser, Murray, Rockefeller, Hobbs, Regala, and Shin

Read first time 01/28/09. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to requiring certificates of need for certain
2 hospitals; and amending RCW 70.38.105 and 70.38.111.

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

4 **Sec. 1.** RCW 70.38.105 and 2004 c 261 s 6 are each amended to read
5 as follows:

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

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

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

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

18 (a) The construction, development, or other establishment of a new

1 health care facility including, but not limited to, a hospital
2 constructed, developed, or established by a health maintenance
3 organization or by a combination of health maintenance organizations;

4 (b) The sale, purchase, or lease of part or all of any existing
5 hospital as defined in RCW 70.38.025 including, but not limited to, a
6 hospital sold, purchased, or leased by a health maintenance
7 organization or by a combination of health maintenance organizations;

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

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

18 (i) Communications and parking facilities;

19 (ii) Mechanical, electrical, ventilation, heating, and air
20 conditioning systems;

21 (iii) Energy conservation systems;

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

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

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

36 (vii) Acquisition of land; and

37 (viii) Refinancing of existing debt;

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

18 (i) Critical access hospitals which had designated beds to provide
19 nursing home care, in excess of five swing beds, prior to December 31,
20 2003; or

21 (ii) Up to five swing beds.

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

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

35 (g) Any expenditure for the construction, renovation, or alteration
36 of a nursing home or change in nursing home services in excess of the
37 expenditure minimum made in preparation for any undertaking under
38 subsection (4) of this section and any arrangement or commitment made

1 for financing such undertaking. Expenditures of preparation shall
2 include expenditures for architectural designs, plans, working
3 drawings, and specifications. The department may issue certificates of
4 need permitting predevelopment expenditures, only, without authorizing
5 any subsequent undertaking with respect to which such predevelopment
6 expenditures are made; and

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

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

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

16 **Sec. 2.** RCW 70.38.111 and 1997 c 210 s 1 are each amended to read
17 as follows:

18 (1) The department shall not require a certificate of need for the
19 offering of an inpatient tertiary health service by:

20 (a) A health maintenance organization or a combination of health
21 maintenance organizations if (i) the organization or combination of
22 organizations has, in the service area of the organization or the
23 service areas of the organizations in the combination, an enrollment of
24 at least fifty thousand individuals, (ii) the facility in which the
25 service will be provided is or will be geographically located so that
26 the service will be reasonably accessible to such enrolled individuals,
27 and (iii) at least seventy-five percent of the patients who can
28 reasonably be expected to receive the tertiary health service will be
29 individuals enrolled with such organization or organizations in the
30 combination;

31 (b) A health care facility if (i) the facility primarily provides
32 or will provide inpatient health services, (ii) the facility is or will
33 be controlled, directly or indirectly, by a health maintenance
34 organization or a combination of health maintenance organizations which
35 has, in the service area of the organization or service areas of the
36 organizations in the combination, an enrollment of at least fifty
37 thousand individuals, (iii) the facility is or will be geographically

1 located so that the service will be reasonably accessible to such
2 enrolled individuals, and (iv) at least seventy-five percent of the
3 patients who can reasonably be expected to receive the tertiary health
4 service will be individuals enrolled with such organization or
5 organizations in the combination; or

6 (c) A health care facility (or portion thereof) if (i) the facility
7 is or will be leased by a health maintenance organization or
8 combination of health maintenance organizations which has, in the
9 service area of the organization or the service areas of the
10 organizations in the combination, an enrollment of at least fifty
11 thousand individuals and, on the date the application is submitted
12 under subsection (2) of this section, at least fifteen years remain in
13 the term of the lease, (ii) the facility is or will be geographically
14 located so that the service will be reasonably accessible to such
15 enrolled individuals, and (iii) at least seventy-five percent of the
16 patients who can reasonably be expected to receive the tertiary health
17 service will be individuals enrolled with such organization;
18 if, with respect to such offering or obligation by a nursing home, the
19 department has, upon application under subsection (2) of this section,
20 granted an exemption from such requirement to the organization,
21 combination of organizations, or facility.

22 (2) A health maintenance organization, combination of health
23 maintenance organizations, or health care facility shall not be exempt
24 under subsection (1) of this section from obtaining a certificate of
25 need before offering a tertiary health service unless:

26 (a) It has submitted at least thirty days prior to the offering of
27 services reviewable under RCW 70.38.105(4)(d) an application for such
28 exemption; and

29 (b) The application contains such information respecting the
30 organization, combination, or facility and the proposed offering or
31 obligation by a nursing home as the department may require to determine
32 if the organization or combination meets the requirements of subsection
33 (1) of this section or the facility meets or will meet such
34 requirements; and

35 (c) The department approves such application. The department shall
36 approve or disapprove an application for exemption within thirty days
37 of receipt of a completed application. In the case of a proposed
38 health care facility (or portion thereof) which has not begun to

1 provide tertiary health services on the date an application is
2 submitted under this subsection with respect to such facility (or
3 portion), the facility (or portion) shall meet the applicable
4 requirements of subsection (1) of this section when the facility first
5 provides such services. The department shall approve an application
6 submitted under this subsection if it determines that the applicable
7 requirements of subsection (1) of this section are met.

8 (3) A health care facility (or any part thereof) with respect to
9 which an exemption was granted under subsection (1) of this section may
10 not be sold or leased and a controlling interest in such facility or in
11 a lease of such facility may not be acquired and a health care facility
12 described in (1)(c) which was granted an exemption under subsection (1)
13 of this section may not be used by any person other than the lessee
14 described in (1)(c) unless:

15 (a) The department issues a certificate of need approving the sale,
16 lease, acquisition, or use; or

17 (b) The department determines, upon application, that (i) the
18 entity to which the facility is proposed to be sold or leased, which
19 intends to acquire the controlling interest, or which intends to use
20 the facility is a health maintenance organization or a combination of
21 health maintenance organizations which meets the requirements of
22 (1)(a)(i), and (ii) with respect to such facility, meets the
23 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)
24 and (ii).

25 (4) In the case of a health maintenance organization, an ambulatory
26 care facility, or a health care facility, which ambulatory or health
27 care facility is controlled, directly or indirectly, by a health
28 maintenance organization or a combination of health maintenance
29 organizations, the department may under the program apply its
30 certificate of need requirements (~~(only)~~) to the offering of inpatient
31 tertiary health services (~~(and then only)~~) to the extent that such
32 offering is not exempt under the provisions of this section.

33 (5)(a) The department shall not require a certificate of need for
34 the construction, development, or other establishment of a nursing
35 home, or the addition of beds to an existing nursing home, that is
36 owned and operated by a continuing care retirement community that:

37 (i) Offers services only to contractual members;

1 (ii) Provides its members a contractually guaranteed range of
2 services from independent living through skilled nursing, including
3 some assistance with daily living activities;

4 (iii) Contractually assumes responsibility for the cost of services
5 exceeding the member's financial responsibility under the contract, so
6 that no third party, with the exception of insurance purchased by the
7 retirement community or its members, but including the medicaid
8 program, is liable for costs of care even if the member depletes his or
9 her personal resources;

10 (iv) Has offered continuing care contracts and operated a nursing
11 home continuously since January 1, 1988, or has obtained a certificate
12 of need to establish a nursing home;

13 (v) Maintains a binding agreement with the state assuring that
14 financial liability for services to members, including nursing home
15 services, will not fall upon the state;

16 (vi) Does not operate, and has not undertaken a project that would
17 result in a number of nursing home beds in excess of one for every four
18 living units operated by the continuing care retirement community,
19 exclusive of nursing home beds; and

20 (vii) Has obtained a professional review of pricing and long-term
21 solvency within the prior five years which was fully disclosed to
22 members.

23 (b) A continuing care retirement community shall not be exempt
24 under this subsection from obtaining a certificate of need unless:

25 (i) It has submitted an application for exemption at least thirty
26 days prior to commencing construction of, is submitting an application
27 for the licensure of, or is commencing operation of a nursing home,
28 whichever comes first; and

29 (ii) The application documents to the department that the
30 continuing care retirement community qualifies for exemption.

31 (c) The sale, lease, acquisition, or use of part or all of a
32 continuing care retirement community nursing home that qualifies for
33 exemption under this subsection shall require prior certificate of need
34 approval to qualify for licensure as a nursing home unless the
35 department determines such sale, lease, acquisition, or use is by a
36 continuing care retirement community that meets the conditions of (a)
37 of this subsection.

1 (6) A rural hospital, as defined by the department, reducing the
2 number of licensed beds to become a rural primary care hospital under
3 the provisions of Part A Title XVIII of the Social Security Act Section
4 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction
5 of beds licensed under chapter 70.41 RCW, increase the number of
6 licensed beds to no more than the previously licensed number without
7 being subject to the provisions of this chapter.

8 (7) A rural health care facility licensed under RCW 70.175.100
9 formerly licensed as a hospital under chapter 70.41 RCW may, within
10 three years of the effective date of the rural health care facility
11 license, apply to the department for a hospital license and not be
12 subject to the requirements of RCW 70.38.105(4)(a) as the construction,
13 development, or other establishment of a new hospital, provided there
14 is no increase in the number of beds previously licensed under chapter
15 70.41 RCW and there is no redistribution in the number of beds used for
16 acute care or long-term care, the rural health care facility has been
17 in continuous operation, and the rural health care facility has not
18 been purchased or leased.

19 (8)(a) A nursing home that voluntarily reduces the number of its
20 licensed beds to provide assisted living, licensed boarding home care,
21 adult day care, adult day health, respite care, hospice, outpatient
22 therapy services, congregate meals, home health, or senior wellness
23 clinic, or to reduce to one or two the number of beds per room or to
24 otherwise enhance the quality of life for residents in the nursing
25 home, may convert the original facility or portion of the facility
26 back, and thereby increase the number of nursing home beds to no more
27 than the previously licensed number of nursing home beds without
28 obtaining a certificate of need under this chapter, provided the
29 facility has been in continuous operation and has not been purchased or
30 leased. Any conversion to the original licensed bed capacity, or to
31 any portion thereof, shall comply with the same life and safety code
32 requirements as existed at the time the nursing home voluntarily
33 reduced its licensed beds; unless waivers from such requirements were
34 issued, in which case the converted beds shall reflect the conditions
35 or standards that then existed pursuant to the approved waivers.

36 (b) To convert beds back to nursing home beds under this
37 subsection, the nursing home must:

1 (i) Give notice of its intent to preserve conversion options to the
2 department of health no later than thirty days after the effective date
3 of the license reduction; and

4 (ii) Give notice to the department of health and to the department
5 of social and health services of the intent to convert beds back. If
6 construction is required for the conversion of beds back, the notice of
7 intent to convert beds back must be given, at a minimum, one year prior
8 to the effective date of license modification reflecting the restored
9 beds; otherwise, the notice must be given a minimum of ninety days
10 prior to the effective date of license modification reflecting the
11 restored beds. Prior to any license modification to convert beds back
12 to nursing home beds under this section, the licensee must demonstrate
13 that the nursing home meets the certificate of need exemption
14 requirements of this section.

15 The term "construction," as used in (b)(ii) of this subsection, is
16 limited to those projects that are expected to equal or exceed the
17 expenditure minimum amount, as determined under this chapter.

18 (c) Conversion of beds back under this subsection must be completed
19 no later than four years after the effective date of the license
20 reduction. However, for good cause shown, the four-year period for
21 conversion may be extended by the department of health for one
22 additional four-year period.

23 (d) Nursing home beds that have been voluntarily reduced under this
24 section shall be counted as available nursing home beds for the purpose
25 of evaluating need under RCW 70.38.115(2) (a) and (k) so long as the
26 facility retains the ability to convert them back to nursing home use
27 under the terms of this section.

28 (e) When a building owner has secured an interest in the nursing
29 home beds, which are intended to be voluntarily reduced by the licensee
30 under (a) of this subsection, the applicant shall provide the
31 department with a written statement indicating the building owner's
32 approval of the bed reduction.

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