
SENATE BILL 6671

State of Washington

61st Legislature

2010 Regular Session

By Senators Pflug, Marr, and Keiser

Read first time 01/20/10. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to emergency departments that are not physically
2 connected to a hospital; amending RCW 70.38.025; reenacting and
3 amending RCW 70.38.105; adding a new section to chapter 70.38 RCW; and
4 creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that freestanding
7 emergency rooms are a growing phenomenon across the country and in this
8 state, as hospital networks seek to expand emergency outpatient
9 services into growing suburban communities.

10 The legislature further finds that hospital networks can use
11 freestanding emergency rooms to grow market share in rapidly growing
12 communities with an eye toward future development plans.

13 The legislature further finds that overdevelopment of freestanding
14 emergency departments could potentially undermine community hospitals
15 in the same service area that also serve many uninsured and
16 underinsured patients and may suffer a disparate impact based on
17 referral patterns and other business practices of the freestanding
18 emergency room.

1 The legislature further finds that there is a clear public interest
2 in subjecting freestanding emergency room plans to the certificate of
3 need process to ensure that an adequate health planning process can
4 occur, being mindful of existing community-based health care facilities
5 as well as the vital needs of rapidly growing communities for both
6 inpatient and outpatient health care services.

7 **Sec. 2.** RCW 70.38.105 and 2009 c 315 s 1 and 2009 c 242 s 3 are
8 each reenacted and amended to read as follows:

9 (1) The department is authorized and directed to implement the
10 certificate of need program in this state pursuant to the provisions of
11 this chapter.

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

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

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

21 (a) The construction, development, or other establishment of a new
22 health care facility including, but not limited to, a hospital
23 constructed, developed, or established by a health maintenance
24 organization or by a combination of health maintenance organizations
25 except as provided in subsection (7)(a) of this section;

26 (b) The sale, purchase, or lease of part or all of any existing
27 hospital as defined in RCW 70.38.025 including, but not limited to, a
28 hospital sold, purchased, or leased by a health maintenance
29 organization or by a combination of health maintenance organizations
30 except as provided in subsection (7)(b) of this section;

31 (c) The construction, development, or other establishment of a
32 freestanding emergency room, including the continued operation any
33 existing freestanding emergency room that was established before July
34 1, 2010, upon the next relicensing period;

35 (d) The sale, purchase, or lease of part or all of any existing
36 freestanding emergency room;

1 (e) Any capital expenditure for the construction, renovation, or
2 alteration of a nursing home which substantially changes the services
3 of the facility after January 1, 1981, provided that the substantial
4 changes in services are specified by the department in rule;

5 ~~((d))~~ (f) Any capital expenditure for the construction,
6 renovation, or alteration of a nursing home which exceeds the
7 expenditure minimum as defined by RCW 70.38.025. However, a capital
8 expenditure which is not subject to certificate of need review under
9 (a), (b), ~~((e))~~ (e), or ~~((e))~~ (g) of this subsection and which is
10 solely for any one or more of the following is not subject to
11 certificate of need review:

12 (i) Communications and parking facilities;

13 (ii) Mechanical, electrical, ventilation, heating, and air
14 conditioning systems;

15 (iii) Energy conservation systems;

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

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

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

30 (vii) Acquisition of land; and

31 (viii) Refinancing of existing debt;

32 ~~((e))~~ (g) A change in bed capacity of a health care facility
33 which increases the total number of licensed beds or redistributes beds
34 among acute care, nursing home care, and boarding home care if the bed
35 redistribution is to be effective for a period in excess of six months,
36 or a change in bed capacity of a rural health care facility licensed
37 under RCW 70.175.100 that increases the total number of nursing home
38 beds or redistributes beds from acute care or boarding home care to

1 nursing home care if the bed redistribution is to be effective for a
2 period in excess of six months. A health care facility certified as a
3 critical access hospital under 42 U.S.C. 1395i-4 may increase its total
4 number of licensed beds to the total number of beds permitted under 42
5 U.S.C. 1395i-4 for acute care and may redistribute beds permitted under
6 42 U.S.C. 1395i-4 among acute care and nursing home care without being
7 subject to certificate of need review. If there is a nursing home
8 licensed under chapter 18.51 RCW within twenty-seven miles of the
9 critical access hospital, the critical access hospital is subject to
10 certificate of need review except for:

11 (i) Critical access hospitals which had designated beds to provide
12 nursing home care, in excess of five swing beds, prior to December 31,
13 2003;

14 (ii) Up to five swing beds; or

15 (iii) Up to twenty-five swing beds for critical access hospitals
16 which do not have a nursing home licensed under chapter 18.51 RCW
17 within the same city or town limits. Up to one-half of the additional
18 beds designated for swing bed services under this subsection (4)~~((e))~~
19 (g)(iii) may be so designated before July 1, 2010, with the balance
20 designated on or after July 1, 2010.

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

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

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

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

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

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

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

15 (7)(a) The requirement that a health maintenance organization
16 obtain a certificate of need under subsection (4)(a) of this section
17 for the construction, development, or other establishment of a hospital
18 does not apply to a health maintenance organization operating a group
19 practice that has been continuously licensed as a health maintenance
20 organization since January 1, 2009;

21 (b) The requirement that a health maintenance organization obtain
22 a certificate of need under subsection (4)(b) of this section to sell,
23 purchase, or lease a hospital does not apply to a health maintenance
24 organization operating a group practice that has been continuously
25 licensed as a health maintenance organization since January 1, 2009.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.38 RCW
27 to read as follows:

28 To promote the stability of Washington's health care delivery
29 system, by January 1, 2011, the department of health shall adopt rules
30 establishing criteria for the issuance of a certificate of need for
31 freestanding emergency rooms, as provided in RCW 70.38.105.

32 **Sec. 4.** RCW 70.38.025 and 2000 c 175 s 22 are each amended to read
33 as follows:

34 When used in this chapter, the terms defined in this section shall
35 have the meanings indicated.

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

3 (2) "Capital expenditure" is an expenditure, including a force
4 account expenditure (i.e., an expenditure for a construction project
5 undertaken by a nursing home facility as its own contractor) which,
6 under generally accepted accounting principles, is not properly
7 chargeable as an expense of operation or maintenance. Where a person
8 makes an acquisition under lease or comparable arrangement, or through
9 donation, which would have required review if the acquisition had been
10 made by purchase, such expenditure shall be deemed a capital
11 expenditure. Capital expenditures include donations of equipment or
12 facilities to a nursing home facility which if acquired directly by
13 such facility would be subject to certificate of need review under the
14 provisions of this chapter and transfer of equipment or facilities for
15 less than fair market value if a transfer of the equipment or
16 facilities at fair market value would be subject to such review. The
17 cost of any studies, surveys, designs, plans, working drawings,
18 specifications, and other activities essential to the acquisition,
19 improvement, expansion, or replacement of any plant or equipment with
20 respect to which such expenditure is made shall be included in
21 determining the amount of the expenditure.

22 (3) "Continuing care retirement community" means an entity which
23 provides shelter and services under continuing care contracts with its
24 members and which sponsors or includes a health care facility or a
25 health service. A "continuing care contract" means a contract to
26 provide a person, for the duration of that person's life or for a term
27 in excess of one year, shelter along with nursing, medical, health-
28 related, or personal care services, which is conditioned upon the
29 transfer of property, the payment of an entrance fee to the provider of
30 such services, or the payment of periodic charges for the care and
31 services involved. A continuing care contract is not excluded from
32 this definition because the contract is mutually terminable or because
33 shelter and services are not provided at the same location.

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

35 (5) "Expenditure minimum" means, for the purposes of the
36 certificate of need program, one million dollars adjusted by the
37 department by rule to reflect changes in the United States department

1 of commerce composite construction cost index; or a lesser amount
2 required by federal law and established by the department by rule.

3 (6) "Health care facility" means hospices, hospice care centers,
4 hospitals, psychiatric hospitals, nursing homes, kidney disease
5 treatment centers, ambulatory surgical facilities, and home health
6 agencies, and includes such facilities when owned and operated by a
7 political subdivision or instrumentality of the state and such other
8 facilities as required by federal law and implementing regulations, but
9 does not include any health facility or institution conducted by and
10 for those who rely exclusively upon treatment by prayer or spiritual
11 means in accordance with the creed or tenets of any well-recognized
12 church or religious denomination, or any health facility or institution
13 operated for the exclusive care of members of a convent as defined in
14 RCW 84.36.800 or rectory, monastery, or other institution operated for
15 the care of members of the clergy. In addition, the term does not
16 include any nonprofit hospital: (a) Which is operated exclusively to
17 provide health care services for children; (b) which does not charge
18 fees for such services; and (c) if not contrary to federal law as
19 necessary to the receipt of federal funds by the state.

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

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

24 (b)(i) Provides or otherwise makes available to enrolled
25 participants health care services, including at least the following
26 basic health care services: Usual physician services, hospitalization,
27 laboratory, X-ray, emergency, and preventive services, and out-of-area
28 coverage; (ii) is compensated (except for copayments) for the provision
29 of the basic health care services listed in (b)(i) to enrolled
30 participants by a payment which is paid on a periodic basis without
31 regard to the date the health care services are provided and which is
32 fixed without regard to the frequency, extent, or kind of health
33 service actually provided; and (iii) provides physicians' services
34 primarily (A) directly through physicians who are either employees or
35 partners of such organization, or (B) through arrangements with
36 individual physicians or one or more groups of physicians (organized on
37 a group practice or individual practice basis).

1 (8) "Health services" means clinically related (i.e., preventive,
2 diagnostic, curative, rehabilitative, or palliative) services and
3 includes alcoholism, drug abuse, and mental health services and as
4 defined in federal law.

5 (9) "Health service area" means a geographic region appropriate for
6 effective health planning which includes a broad range of health
7 services.

8 (10) "Person" means an individual, a trust or estate, a
9 partnership, a corporation (including associations, joint stock
10 companies, and insurance companies), the state, or a political
11 subdivision or instrumentality of the state, including a municipal
12 corporation or a hospital district.

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

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

22 (13) "Secretary" means the secretary of health or the secretary's
23 designee.

24 (14) "Tertiary health service" means a specialized service that
25 meets complicated medical needs of people and requires sufficient
26 patient volume to optimize provider effectiveness, quality of service,
27 and improved outcomes of care.

28 (15) "Hospital" means any health care institution which is required
29 to qualify for a license under RCW 70.41.020(~~(+2)~~) (4); or as a
30 psychiatric hospital under chapter 71.12 RCW.

31 (16) "Freestanding emergency room" means an emergency department
32 that is not physically connected or adjacent to a hospital licensed
33 under chapter 70.41 RCW.

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