

**SHB 2450 - H AMD 988**

By Representative Short

ADOPTED 03/29/2016

1 Strike everything after the enacting clause and insert the  
2 following:

3  
4 "NEW SECTION. **Sec. 1.** The legislature finds that small  
5 critical access hospitals provide essential services to their  
6 communities. The legislature recognizes the need to offer small  
7 critical access hospitals the opportunity to pilot different  
8 delivery and payment models than may be currently allowed under the  
9 critical access hospital program. The legislature also intends to  
10 allow these participating hospitals to return to the critical access  
11 hospital program if they so choose.

12  
13 **Sec. 2.** RCW 74.09.5225 and 2014 c 57 s 2 are each amended to  
14 read as follows:

15 (1) Payments for recipients eligible for medical assistance  
16 programs under this chapter for services provided by hospitals,  
17 regardless of the beneficiary's managed care enrollment status,  
18 shall be made based on allowable costs incurred during the year,  
19 when services are provided by a rural hospital certified by the  
20 centers for medicare and medicaid services as a critical access  
21 hospital. Any additional payments made by the authority for the  
22 healthy options program shall be no more than the additional amounts  
23 per service paid under this section for other medical assistance  
24 programs.

25 (2)(a) Beginning on July 24, 2005, except as provided in (b) of  
26 this subsection, a moratorium shall be placed on additional hospital  
27 participation in critical access hospital payments under this

1 section. However, rural hospitals that applied for certification to  
2 the centers for medicare and medicaid services prior to January 1,  
3 2005, but have not yet completed the process or have not yet been  
4 approved for certification, remain eligible for medical assistance  
5 payments under this section.

6 (b)(i) For the purposes of state law, any rural hospital  
7 approved by the department of health for participation in critical  
8 access hospital payments under this section that participates in the  
9 Washington rural health access preservation pilot identified by the  
10 state office of rural health and ceases to participate in critical  
11 access hospital payments may renew participation in critical access  
12 hospital associated payment methodologies under this section at any  
13 time.

14 (ii) The Washington rural health access preservation pilot is  
15 subject to the following requirements:

16 (A) In the pilot formation or development, the department of  
17 health, health care authority, and Washington state hospital  
18 association will identify goals for the pilot project before any  
19 hospital joins the pilot project;

20 (B) Participation in the pilot is optional and no hospital may  
21 be required to join the pilot;

22 (C) Before a hospital enters the pilot program, the health care  
23 authority must provide information to the hospital regarding how the  
24 hospital could end its participation in the pilot if the pilot is  
25 not working in its community; and

26 (D) The department of health, health care authority, and  
27 Washington state hospital association will report interim progress  
28 to the legislature no later than December 1, 2018, and will report  
29 on the results of the pilot no later than six months following the  
30 conclusion of the pilot. The reports will describe any policy  
31 changes identified during the course of the pilot that would support  
32 small critical access hospitals.

33 (3)(a) Beginning January 1, 2015, payments for recipients  
34 eligible for medical assistance programs under this chapter for

1 services provided by a hospital, regardless of the beneficiary's  
2 managed care enrollment status, shall be increased to one hundred  
3 twenty-five percent of the hospital's fee-for-service rates, when  
4 services are provided by a rural hospital that:

5 (i) Was certified by the centers for medicare and medicaid  
6 services as a sole community hospital as of January 1, 2013;

7 (ii) Had a level III adult trauma service designation from the  
8 department of health as of January 1, 2014;

9 (iii) Had less than one hundred fifty acute care licensed beds  
10 in fiscal year 2011; and

11 (iv) Is owned and operated by the state or a political  
12 subdivision.

13 (b) The enhanced payment rates under this subsection shall be  
14 considered the hospital's medicaid payment rate for purposes of any  
15 other state or private programs that pay hospitals according to  
16 medicaid payment rates.

17 (c) Hospitals participating in the certified public expenditures  
18 program may not receive the increased reimbursement rates provided  
19 in this subsection (3) for inpatient services.

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21 **Sec. 3.** RCW 70.41.090 and 1992 c 27 s 3 are each amended to  
22 read as follows:

23 (1) No person or governmental unit of the state of Washington,  
24 acting separately or jointly with any other person or governmental  
25 unit, shall establish, maintain, or conduct a hospital in this  
26 state, or use the word "hospital" to describe or identify an  
27 institution, without a license under this chapter: PROVIDED, That  
28 the provisions of this section shall not apply to state mental  
29 institutions and psychiatric hospitals which come within the scope  
30 of chapter 71.12 RCW.

31 (2) After June 30, 1989, no hospital shall initiate a tertiary  
32 health service as defined in RCW 70.38.025(14) unless it has  
33 received a certificate of need as provided in RCW 70.38.105 and  
34 70.38.115.

1 (3) A rural health care facility licensed under RCW 70.175.100  
2 formerly licensed as a hospital under this chapter may, within three  
3 years of the effective date of the rural health care facility  
4 license, apply to the department for a hospital license and not be  
5 required to meet certificate of need requirements under chapter  
6 70.38 RCW as a new health care facility and not be required to meet  
7 new construction requirements as a new hospital under this chapter.  
8 These exceptions are subject to the following: The facility at the  
9 time of initial conversion was considered by the department to be in  
10 compliance with the hospital licensing rules and the condition of  
11 the physical plant and equipment is equal to or exceeds the level of  
12 compliance that existed at the time of conversion to a rural health  
13 care facility. The department shall inspect and determine compliance  
14 with the hospital rules prior to reissuing a hospital license.

15 (4) A rural hospital, as defined by the department, reducing the  
16 number of licensed beds to become a rural primary care hospital  
17 under the provisions of Part A Title XVIII of the Social Security  
18 Act Section 1820, 42 U.S.C., 1395c et seq. may, within three years  
19 of the reduction of licensed beds, increase the number of beds  
20 licensed under this chapter to no more than the previously licensed  
21 number of beds without being subject to the provisions of chapter  
22 70.38 RCW and without being required to meet new construction  
23 requirements under this chapter. These exceptions are subject to the  
24 following: The facility at the time of the reduction in licensed  
25 beds was considered by the department to be in compliance with the  
26 hospital licensing rules and the condition of the physical plant and  
27 equipment is equal to or exceeds the level of compliance that  
28 existed at the time of the reduction in licensed beds. The  
29 department may inspect and determine compliance with the hospital  
30 rules prior to increasing the hospital license.

31 (5) If a rural hospital is determined to no longer meet critical  
32 access hospital status for state law purposes as a result of  
33 participation in the Washington rural health access preservation  
34 pilot identified by the state office of rural health, the rural

1 hospital may renew its license by applying to the department for a  
2 hospital license and the previously licensed number of beds without  
3 being subject to the provisions of chapter 70.38 RCW and without  
4 being required to meet new construction review requirements under  
5 this chapter. These exceptions are subject to the following: The  
6 hospital, at the time it began participation in the pilot, was  
7 considered by the department to be in compliance with the hospital  
8 licensing rules, and the condition of the physical plant and  
9 equipment is equal to or exceeds the level of compliance that  
10 existed at the time of the reduction in licensed beds. The  
11 department may inspect and determine compliance with the hospital  
12 licensing rules. If all or part of a formerly licensed rural  
13 hospital is sold, purchased, or leased during the period the rural  
14 hospital does not meet critical access hospital status as a result  
15 of participation in the Washington rural health access preservation  
16 pilot and the new owner or lessor applies to renew the rural  
17 hospital's license, then the sale, purchase, or lease of part or all  
18 of the rural hospital is subject to the provisions of chapter 70.38  
19 RCW.

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21 **Sec. 4.** RCW 70.38.111 and 2014 c 225 s 106 are each amended to  
22 read as follows:

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

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

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1 service will be individuals enrolled with such organization or  
2 organizations in the combination;

3 (b) A health care facility if (i) the facility primarily  
4 provides or will provide inpatient health services, (ii) the  
5 facility is or will be controlled, directly or indirectly, by a  
6 health maintenance organization or a combination of health  
7 maintenance organizations which has, in the service area of the  
8 organization or service areas of the organizations in the  
9 combination, an enrollment of at least fifty thousand individuals,  
10 (iii) the facility is or will be geographically located so that the  
11 service will be reasonably accessible to such enrolled individuals,  
12 and (iv) at least seventy-five percent of the patients who can  
13 reasonably be expected to receive the tertiary health service will  
14 be individuals enrolled with such organization or organizations in  
15 the combination; or

16 (c) A health care facility (or portion thereof) if (i) the  
17 facility is or will be leased by a health maintenance organization  
18 or combination of health maintenance organizations which has, in the  
19 service area of the organization or the service areas of the  
20 organizations in the combination, an enrollment of at least fifty  
21 thousand individuals and, on the date the application is submitted  
22 under subsection (2) of this section, at least fifteen years remain  
23 in the term of the lease, (ii) the facility is or will be  
24 geographically located so that the service will be reasonably  
25 accessible to such enrolled individuals, and (iii) at least seventy-  
26 five percent of the patients who can reasonably be expected to  
27 receive the tertiary health service will be individuals enrolled  
28 with such organization;

29 if, with respect to such offering or obligation by a nursing home,  
30 the department has, upon application under subsection (2) of this  
31 section, granted an exemption from such requirement to the  
32 organization, combination of organizations, or facility.

33 (2) A health maintenance organization, combination of health  
34 maintenance organizations, or health care facility shall not be

1 exempt under subsection (1) of this section from obtaining a  
2 certificate of need before offering a tertiary health service  
3 unless:

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

7 (b) The application contains such information respecting the  
8 organization, combination, or facility and the proposed offering or  
9 obligation by a nursing home as the department may require to  
10 determine if the organization or combination meets the requirements  
11 of subsection (1) of this section or the facility meets or will meet  
12 such requirements; and

13 (c) The department approves such application. The department  
14 shall approve or disapprove an application for exemption within  
15 thirty days of receipt of a completed application. In the case of a  
16 proposed health care facility (or portion thereof) which has not  
17 begun to provide tertiary health services on the date an application  
18 is submitted under this subsection with respect to such facility (or  
19 portion), the facility (or portion) shall meet the applicable  
20 requirements of subsection (1) of this section when the facility  
21 first provides such services. The department shall approve an  
22 application submitted under this subsection if it determines that  
23 the applicable requirements of subsection (1) of this section are  
24 met.

25 (3) A health care facility (or any part thereof) with respect to  
26 which an exemption was granted under subsection (1) of this section  
27 may not be sold or leased and a controlling interest in such  
28 facility or in a lease of such facility may not be acquired and a  
29 health care facility described in (1)(c) which was granted an  
30 exemption under subsection (1) of this section may not be used by  
31 any person other than the lessee described in (1)(c) unless:

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

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1 (b) The department determines, upon application, that (i) the  
2 entity to which the facility is proposed to be sold or leased, which  
3 intends to acquire the controlling interest, or which intends to use  
4 the facility is a health maintenance organization or a combination  
5 of health maintenance organizations which meets the requirements of  
6 (1)(a)(i), and (ii) with respect to such facility, meets the  
7 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)  
8 and (ii).

9 (4) In the case of a health maintenance organization, an  
10 ambulatory care facility, or a health care facility, which  
11 ambulatory or health care facility is controlled, directly or  
12 indirectly, by a health maintenance organization or a combination of  
13 health maintenance organizations, the department may under the  
14 program apply its certificate of need requirements to the offering  
15 of inpatient tertiary health services to the extent that such  
16 offering is not exempt under the provisions of this section or RCW  
17 70.38.105(7).

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

23 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

22 (c) The sale, lease, acquisition, or use of part or all of a  
23 continuing care retirement community nursing home that qualifies for  
24 exemption under this subsection shall require prior certificate of  
25 need approval to qualify for licensure as a nursing home unless the  
26 department determines such sale, lease, acquisition, or use is by a  
27 continuing care retirement community that meets the conditions of  
28 (a) of this subsection.

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

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

14 (8) A rural hospital determined to no longer meet critical  
15 access hospital status for state law purposes as a result of  
16 participation in the Washington rural health access preservation  
17 pilot identified by the state office of rural health and formerly  
18 licensed as a hospital under chapter 70.41 RCW may apply to the  
19 department to renew its hospital license and not be subject to the  
20 requirements of RCW 70.38.105(4)(a) as the construction,  
21 development, or other establishment of a new hospital, provided  
22 there is no increase in the number of beds previously licensed under  
23 chapter 70.41 RCW. If all or part of a formerly licensed rural  
24 hospital is sold, purchased, or leased during the period the rural  
25 hospital does not meet critical access hospital status as a result  
26 of participation in the Washington rural health access preservation  
27 pilot and the new owner or lessor applies to renew the rural  
28 hospital's license, then the sale, purchase, or lease of part or all  
29 of the rural hospital is subject to the provisions of chapter 70.38  
30 RCW.

31 (9)(a) A nursing home that voluntarily reduces the number of its  
32 licensed beds to provide assisted living, licensed assisted living  
33 facility care, adult day care, adult day health, respite care,  
34 hospice, outpatient therapy services, congregate meals, home health,

1 or senior wellness clinic, or to reduce to one or two the number of  
2 beds per room or to otherwise enhance the quality of life for  
3 residents in the nursing home, may convert the original facility or  
4 portion of the facility back, and thereby increase the number of  
5 nursing home beds to no more than the previously licensed number of  
6 nursing home beds without obtaining a certificate of need under this  
7 chapter, provided the facility has been in continuous operation and  
8 has not been purchased or leased. Any conversion to the original  
9 licensed bed capacity, or to any portion thereof, shall comply with  
10 the same life and safety code requirements as existed at the time  
11 the nursing home voluntarily reduced its licensed beds; unless  
12 waivers from such requirements were issued, in which case the  
13 converted beds shall reflect the conditions or standards that then  
14 existed pursuant to the approved waivers.

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

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

20 (ii) Give notice to the department of health and to the  
21 department of social and health services of the intent to convert  
22 beds back. If construction is required for the conversion of beds  
23 back, the notice of intent to convert beds back must be given, at a  
24 minimum, one year prior to the effective date of license  
25 modification reflecting the restored beds; otherwise, the notice  
26 must be given a minimum of ninety days prior to the effective date  
27 of license modification reflecting the restored beds. Prior to any  
28 license modification to convert beds back to nursing home beds under  
29 this section, the licensee must demonstrate that the nursing home  
30 meets the certificate of need exemption requirements of this  
31 section.

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

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

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

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

16 ~~((+9))~~ (10)(a) The department shall not require a certificate  
17 of need for a hospice agency if:

18 (i) The hospice agency is designed to serve the unique religious  
19 or cultural needs of a religious group or an ethnic minority and  
20 commits to furnishing hospice services in a manner specifically  
21 aimed at meeting the unique religious or cultural needs of the  
22 religious group or ethnic minority;

23 (ii) The hospice agency is operated by an organization that:

24 (A) Operates a facility, or group of facilities, that offers a  
25 comprehensive continuum of long-term care services, including, at a  
26 minimum, a licensed, medicare-certified nursing home, assisted  
27 living, independent living, day health, and various community-based  
28 support services, designed to meet the unique social, cultural, and  
29 religious needs of a specific cultural and ethnic minority group;

30 (B) Has operated the facility or group of facilities for at  
31 least ten continuous years prior to the establishment of the hospice  
32 agency;

33 (iii) The hospice agency commits to coordinating with existing  
34 hospice programs in its community when appropriate;

1 (iv) The hospice agency has a census of no more than forty  
2 patients;

3 (v) The hospice agency commits to obtaining and maintaining  
4 medicare certification;

5 (vi) The hospice agency only serves patients located in the same  
6 county as the majority of the long-term care services offered by the  
7 organization that operates the agency; and

8 (vii) The hospice agency is not sold or transferred to another  
9 agency.

10 (b) The department shall include the patient census for an  
11 agency exempted under this subsection (~~((9))~~) (10) in its  
12 calculations for future certificate of need applications.

13 (~~((10))~~) (11) To alleviate the need to board psychiatric  
14 patients in emergency departments, for fiscal year 2015 the  
15 department shall suspend the certificate of need requirement for a  
16 hospital licensed under chapter 70.41 RCW that changes the use of  
17 licensed beds to increase the number of beds to provide psychiatric  
18 services, including involuntary treatment services. A certificate of  
19 need exemption under this section shall be valid for two years."

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21 Correct the title.

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EFFECT: Establishes legislative findings about the importance  
of small critical access hospitals and recognizes the need to allow  
them to test different delivery and payment models with the ability  
to return to critical access hospital status.

Establishes requirements for the Washington Rural Health Access  
Preservation pilot program, including (1) requiring the Department  
of Health (DOH), the Health Care Authority (HCA), and the Washington  
State Hospital Association (WSHA) to establish goals for the pilot;  
(2) stating that participation in the pilot is optional; (3)  
informing hospitals of the method for terminating participation in  
the pilot; and (4) reporting progress by the DOH, the HCA, and the  
WSHA by December 1, 2018 and within six months of the conclusion of  
the pilot, including changes that could support small critical  
access hospitals.

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