

SHB 1547 - H AMD 58

By Representative Schmick

ADOPTED 02/27/2017

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

3

4 "Sec. 1. RCW 70.38.111 and 2016 sp.s. c 31 s 4 are each amended
5 to read as follows:

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

8 (a) A health maintenance organization or a combination of health
9 maintenance organizations if (i) the organization or combination of
10 organizations has, in the service area of the organization or the
11 service areas of the organizations in the combination, an enrollment
12 of at least fifty thousand individuals, (ii) the facility in which
13 the service will be provided is or will be geographically located so
14 that the service will be reasonably accessible to such enrolled
15 individuals, and (iii) at least seventy-five percent of the patients
16 who can reasonably be expected to receive the tertiary health
17 service will be individuals enrolled with such organization or
18 organizations in the combination;

19 (b) A health care facility if (i) the facility primarily
20 provides or will provide inpatient health services, (ii) the
21 facility is or will be controlled, directly or indirectly, by a
22 health maintenance organization or a combination of health
23 maintenance organizations which has, in the service area of the
24 organization or service areas of the organizations in the
25 combination, an enrollment of at least fifty thousand individuals,
26 (iii) the facility is or will be geographically located so that the
27 service will be reasonably accessible to such enrolled individuals,

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

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

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

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

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

3 (c) The department approves such application. The department
4 shall approve or disapprove an application for exemption within
5 thirty days of receipt of a completed application. In the case of a
6 proposed health care facility (or portion thereof) which has not
7 begun to provide tertiary health services on the date an application
8 is submitted under this subsection with respect to such facility (or
9 portion), the facility (or portion) shall meet the applicable
10 requirements of subsection (1) of this section when the facility
11 first provides such services. The department shall approve an
12 application submitted under this subsection if it determines that
13 the applicable requirements of subsection (1) of this section are
14 met.

15 (3) A health care facility (or any part thereof) with respect to
16 which an exemption was granted under subsection (1) of this section
17 may not be sold or leased and a controlling interest in such
18 facility or in a lease of such facility may not be acquired and a
19 health care facility described in (1)(c) which was granted an
20 exemption under subsection (1) of this section may not be used by
21 any person other than the lessee described in (1)(c) unless:

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

24 (b) The department determines, upon application, that (i) the
25 entity to which the facility is proposed to be sold or leased, which
26 intends to acquire the controlling interest, or which intends to use
27 the facility is a health maintenance organization or a combination
28 of health maintenance organizations which meets the requirements of
29 (1)(a)(i), and (ii) with respect to such facility, meets the
30 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)
31 and (ii).

32 (4) In the case of a health maintenance organization, an
33 ambulatory care facility, or a health care facility, which
34 ambulatory or health care facility is controlled, directly or

1 indirectly, by a health maintenance organization or a combination of
2 health maintenance organizations, the department may under the
3 program apply its certificate of need requirements to the offering
4 of inpatient tertiary health services to the extent that such
5 offering is not exempt under the provisions of this section or RCW
6 70.38.105(7).

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

12 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

9 (c) The sale, lease, acquisition, or use of part or all of a
10 continuing care retirement community nursing home that qualifies for
11 exemption under this subsection shall require prior certificate of
12 need approval to qualify for licensure as a nursing home unless the
13 department determines such sale, lease, acquisition, or use is by a
14 continuing care retirement community that meets the conditions of
15 (a) of this subsection.

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

23 (7) A rural health care facility licensed under RCW 70.175.100
24 formerly licensed as a hospital under chapter 70.41 RCW may, within
25 three years of the effective date of the rural health care facility
26 license, apply to the department for a hospital license and not be
27 subject to the requirements of RCW 70.38.105(4)(a) as the
28 construction, development, or other establishment of a new hospital,
29 provided there is no increase in the number of beds previously
30 licensed under chapter 70.41 RCW and there is no redistribution in
31 the number of beds used for acute care or long-term care, the rural
32 health care facility has been in continuous operation, and the rural
33 health care facility has not been purchased or leased.

34

1 (8) A rural hospital determined to no longer meet critical
2 access hospital status for state law purposes as a result of
3 participation in the Washington rural health access preservation
4 pilot identified by the state office of rural health and formerly
5 licensed as a hospital under chapter 70.41 RCW may apply to the
6 department to renew its hospital license and not be subject to the
7 requirements of RCW 70.38.105(4)(a) as the construction,
8 development, or other establishment of a new hospital, provided
9 there is no increase in the number of beds previously licensed under
10 chapter 70.41 RCW. If all or part of a formerly licensed rural
11 hospital is sold, purchased, or leased during the period the rural
12 hospital does not meet critical access hospital status as a result
13 of participation in the Washington rural health access preservation
14 pilot and the new owner or lessor applies to renew the rural
15 hospital's license, then the sale, purchase, or lease of part or all
16 of the rural hospital is subject to the provisions of this chapter
17 (~~(70.38-RCW)~~).

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

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

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

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

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

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

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

33 (e) When a building owner has secured an interest in the nursing
34 home beds, which are intended to be voluntarily reduced by the

1 licensee under (a) of this subsection, the applicant shall provide
2 the department with a written statement indicating the building
3 owner's approval of the bed reduction.

4 (10)(a) The department shall not require a certificate of need
5 for a hospice agency if:

6 (i) The hospice agency is designed to serve the unique religious
7 or cultural needs of a religious group or an ethnic minority and
8 commits to furnishing hospice services in a manner specifically
9 aimed at meeting the unique religious or cultural needs of the
10 religious group or ethnic minority;

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

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

18 (B) Has operated the facility or group of facilities for at
19 least ten continuous years prior to the establishment of the hospice
20 agency;

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

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

25 (v) The hospice agency commits to obtaining and maintaining
26 medicare certification;

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

30 (vii) The hospice agency is not sold or transferred to another
31 agency.

32 (b) The department shall include the patient census for an
33 agency exempted under this subsection (10) in its calculations for
34 future certificate of need applications.

1 (11) To alleviate the need to board psychiatric patients in
2 emergency departments, (~~for fiscal year 2015~~) for the period of
3 time from the effective date of this section through June 30, 2019:

4 (a) The department shall suspend the certificate of need
5 requirement for a hospital licensed under chapter 70.41 RCW that
6 changes the use of licensed beds to increase the number of beds to
7 provide psychiatric services, including involuntary treatment
8 services. A certificate of need exemption under this (~~section~~)
9 subsection (11)(a) shall be valid for two years.

10 (b) The department may not require a certificate of need for:

11 (i) The addition of beds as described in RCW 70.38.260 (2) and
12 (3); or

13 (ii) The construction, development, or establishment of a
14 psychiatric hospital licensed as an establishment under chapter
15 71.12 RCW that will have no more than sixteen beds and provide
16 treatment to adults on ninety or one hundred eighty-day involuntary
17 commitment orders, as described in RCW 70.38.260(4).

18

19 **Sec. 2.** RCW 70.38.260 and 2015 3rd sp.s. c 22 s 2 are each
20 amended to read as follows:

21 (1) For a grant awarded during fiscal years 2016 and 2017 by the
22 department of commerce under this section, hospitals licensed under
23 chapter 70.41 RCW and psychiatric hospitals licensed as
24 establishments under chapter 71.12 RCW are not subject to
25 certificate of need requirements for the addition of the number of
26 new psychiatric beds indicated in the grant. The department of
27 commerce may not make a prior approval of a certificate of need
28 application a condition for a grant application under this
29 section. The period during which an approved hospital or psychiatric
30 hospital project qualifies for a certificate of need exemption under
31 this section is two years from the date of the grant award.

32 (2)(a) Until June 30, 2019, a hospital licensed under chapter
33 70.41 RCW is exempt from certificate of need requirements for the
34 addition of new psychiatric beds.

1 (b) A hospital that adds new psychiatric beds under this
2 subsection (2) must:

3 (i) Notify the department of the addition of new psychiatric
4 beds. The department shall provide the hospital with a notice of
5 exemption within thirty days; and

6 (ii) Commence the project within two years of the date of
7 receipt of the notice of exemption.

8 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must
9 remain psychiatric beds unless a certificate of need is granted to
10 change their use or the hospital voluntarily reduces its licensed
11 capacity.

12 (3)(a) Until June 30, 2019, a psychiatric hospital licensed as
13 an establishment under chapter 71.12 RCW is exempt from certificate
14 of need requirements for the one-time addition of up to thirty new
15 psychiatric beds, if it demonstrates to the satisfaction of the
16 department:

17 (i) That its most recent two years of publicly available fiscal
18 year-end report data as required under RCW 70.170.100 and 43.70.050
19 reported to the department by the psychiatric hospital, show a payer
20 mix of a minimum of fifty percent medicare and medicaid based on a
21 calculation using patient days; and

22 (ii) A commitment to maintaining the payer mix in (a) of this
23 subsection for a period of five consecutive years after the beds are
24 made available for use by patients.

25 (b) A psychiatric hospital that adds new psychiatric beds under
26 this subsection (3) must:

27 (i) Notify the department of the addition of new psychiatric
28 beds. The department shall provide the psychiatric hospital with a
29 notice of exemption within thirty days; and

30 (ii) Commence the project within two years of the date of
31 receipt of the notice of exemption.

32 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must
33 remain psychiatric beds unless a certificate of need is granted to
34

1 change their use or the psychiatric hospital voluntarily reduces its
2 licensed capacity.

3 (4)(a) Until June 30, 2019, an entity seeking to construct,
4 develop, or establish a psychiatric hospital licensed as an
5 establishment under chapter 71.12 RCW is exempt from certificate of
6 need requirements if the proposed psychiatric hospital will have no
7 more than sixteen beds and dedicate a portion of the beds to
8 providing treatment to adults on ninety or one hundred eighty-day
9 involuntary commitment orders. The psychiatric hospital may also
10 provide treatment to adults on a seventy-two hour detention or
11 fourteen-day involuntary commitment order.

12 (b) An entity that seeks to construct, develop, or establish a
13 psychiatric hospital under this subsection (4) must:

14 (i) Notify the department of the addition of construction,
15 development, or establishment. The department shall provide the
16 entity with a notice of exemption within thirty days; and

17 (ii) Commence the project within two years of the date of
18 receipt of the notice of exemption.

19 (c) Entities granted an exemption under RCW 70.38.111(11)(b)(ii)
20 may not exceed sixteen beds unless a certificate of need is granted
21 to increase the psychiatric hospital's capacity.

22 (5) This section expires June 30, ((2019)) 2022.

23
24 NEW SECTION. Sec. 3. This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of
26 the state government and its existing public institutions, and takes
27 effect immediately."

28

29 Correct the title.

30

EFFECT: Clarifies that references to "establishments" only
refers to establishments that are psychiatric hospitals. Changes the
term "begins" to "commences."

31 Requires that an entity constructing a new psychiatric hospital with

16 beds or fewer, pursuant to the certificate of need exemption, must dedicate a portion of those beds to patients on a 90 or 180-day involuntary commitment order.

Makes referential corrections.

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