

# SENATE BILL REPORT

## HB 2894

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As of February 22, 2018

**Title:** An act relating to certificate of need exemptions for certain ambulatory facilities and centers.

**Brief Description:** Concerning certificate of need exemptions for certain ambulatory facilities and centers.

**Sponsors:** Representatives Schmick and Cody.

**Brief History:** Passed House: 2/12/18, 98-0.

**Committee Activity:** Health & Long Term Care: 2/22/18.

### Brief Summary of Bill

- Exempts certain ambulatory surgical facilities from certificate of need requirements.

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### SENATE COMMITTEE ON HEALTH & LONG TERM CARE

**Staff:** Evan Klein (786-7483)

**Background:** Certificate of Need. The certificate of need program is a regulatory process that requires certain healthcare providers to get state approval before building certain types of facilities or offering new or expanded services. The certificate of need process is intended to help ensure that facilities and new services proposed by healthcare providers are needed for quality patient care within a particular region or community. A certificate of need from the Department of Health (DOH) is required for construction, development, or establishment of hospitals, nursing homes, kidney dialysis centers, Medicare or Medicaid home health agencies and hospice agencies, ambulatory surgical centers, and hospice care centers.

Under the program, DOH must review the project under specific criteria related to community need, quality of services, financial feasibility, and the impact on health care costs in the community. Certain facilities are exempt from the certificate of need requirement. These include certain facilities offering inpatient tertiary health services, nursing homes that are owned and operated by a continuing care retirement community, and certain hospice agencies.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Ambulatory Surgical Facilities. Ambulatory surgical facilities are any free-standing entity, including an ambulatory surgery center that operates primarily for the purpose of performing surgical procedures to treat patients not requiring hospitalization. The term does not include a facility in the offices of private physicians or dentists if the privilege of using the facility is not extended to physicians or dentists outside the individual or group practice.

On January 19, 2018, DOH issued an interpretive statement regarding ambulatory surgical facilities owned and exclusively used by physicians. According to the statement, such ambulatory surgical facilities are not exempt from certificate of need review.

**Summary of Bill:** DOH may not require a certificate of need for an ambulatory surgical facility or center wholly owned, fully operated, and used exclusively by a practice of physicians or dentists with two or fewer operating rooms, and no more than two surgical specialties.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:** PRO: This bill codifies the previous practice before the new interpretation. This bill clarifies what types of ambulatory surgical facilities (ASF) are exempted from Certificate of Need (CON) review in law. The state CON regulations define what an ASF is, and provides for a specific exclusion. The DOH has found it difficult to know whether a facility falls within or outside of the definition of ASF. Having specific direction in statute will provide for predictable outcomes and will decrease litigation costs. The DOH interpretative statement was an attempt to bring clarity and comply with existing laws. This bill is a positive and narrowly crafted solution and represents the majority of facilities that qualify for the exemption. This will maintain the policy status quo, will not expand the exemption, and will merely make the law clear. This bill language is a compromise after significant negotiations. The historical exemption, and this bill, protect 70 percent of the market. Society should not want to limit ASFs because they provide cost-effective care to patients and the government. If this bill does not pass, the cost savings related to ASFs will be significantly diminished.

OTHER: This bill should be amended to more accurately reflect the status quo. There is no desire to stand in the way of the compromise that was reached, but existing facilities that are already granted an exemption need to still be protected under future law. There should be consideration of a grandfather clause to protect existing facilities that relied on a previous interpretation by the DOH. There are a number of facilities at risk if this bill passes. The bill, as written, fails to preserve the status quo, and subjects existing ASFs to CON laws. The bill, if amended would be supported.

**Persons Testifying:** PRO: Representative Joe Schmick, Prime Sponsor; Emily Studebaker, Washington Ambulatory Surgery Center Association; Dave Fitzgerald, Washington Ambulatory Surgery Center Association; John Wiesman, Secretary of Health.

OTHER: Amber Carter, Amber Carter Government Relations; Sharon Crowell, MD, The Vancouver Clinic; Tracy Corgiat, The Polyclinic.

**Persons Signed In To Testify But Not Testifying:** No one.