

# SENATE BILL REPORT

## SB 5638

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As of February 22, 2017

**Title:** An act relating to exempting certain skilled nursing facilities from certificate of need requirements for the addition of beds for a limited period of time.

**Brief Description:** Exempting certain skilled nursing facilities from certificate of need requirements for the addition of beds for a limited period of time.

**Sponsors:** Senators Becker, Rivers, O'Ban, Miloscia, Walsh and Bailey.

**Brief History:**

**Committee Activity:** Ways & Means: 2/21/17.

**Brief Summary of Bill**

- Exempts nursing facilities from certificate of need requirements if specific criteria are met.
- Allows facilities to add up to 30 additional skilled nursing beds.
- Creates additional capacity to alleviate the number of patients in acute care hospitals awaiting transfer to a skilled nursing facility.
- Establishes that the exemption expires June 30, 2019.

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**SENATE COMMITTEE ON WAYS & MEANS**

**Staff:** James Kettel (786-7459)

**Background:** The certificate of need program is a regulatory process that requires certain healthcare providers to obtain 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 the following healthcare facilities: hospitals; nursing homes; kidney dialysis centers; Medicare or Medicaid home health agencies and hospice agencies; ambulatory surgical centers; and hospice care centers. Certificate of need review is also necessary for increases in the number of stations at a kidney dialysis center; sale, purchase, or lease of all or part of

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an existing hospital; increases in the number of licensed beds at a hospital, nursing home, or hospice care center; offering a tertiary health service such as rehabilitation programs, open heart surgery, therapeutic cardiac catheterization, organ transplantation, specialty burn services, intermediate care nursery or obstetric services, neonatal intensive care nursery or obstetric services, and specialized in-patient pediatric services; a capital expenditure made by a nursing home exceeding an established threshold; nursing home bed banking transactions; and nursing home replacements.

Under the certificate of need program, the 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 in-patient tertiary health services; nursing homes that are owned and operated by a continuing care retirement community; and certain hospice agencies.

**Summary of Bill:** Until June 30, 2019, a nursing home licensed under chapter 18.51 RCW is exempt from certificate of need requirements. The nursing home may add up to 30 new skilled nursing beds, but only if two requirements are met. First, based on a calculation of patient days, the nursing home must provide cost report data that certifies a minimum 50 percent Medicare and Medicaid payer mix. Second, the nursing home must commit to maintaining the certified payer mix for at least five consecutive years after the additional skilled nursing beds are made available for new residents.

The additional capacity in the nursing home industry is intended to alleviate the number of patients in acute care hospitals awaiting transfer to a skilled nursing facility.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** CON: The Washington Healthcare Association (WHCA) represents 80 percent of the skilled nursing home providers in the state. WHCA has some issues with the certificate of need process. WHCA also has some concerns about the potential impacts of this bill. The statewide occupancy percentage for skilled nursing is at approximately 81 percent. By reviewing data from each county, it is clear that there is sufficient capacity available throughout the state. If the goal is to increase the ability for nursing homes to provide care for behavioral and mental health clients, the solution does not lie in an increase in beds. Rather, there is a need to modify the payment methodology for nursing homes. The modification should eliminate the disincentive to take clients with behavioral or mental health needs. This methodology change may actually save the state some money, while at the same time avoiding the disruption of adding beds. Additional training to enhance the skillset of nursing home workers could also help with the placement of clients out of acute care settings and into skilled nursing facilities. A number of facilities around the state, like Tico Care Center and Delta Rehab, focus on serving residents who have

behavioral or mental health needs. These facilities are stressed. Modifying the payment methodology would assist Tico Care Center and Delta Rehab, because there are already beds available at both facilities. The rate actually comes in pretty low for a behavioral or mental health resident. Unlike physical care needs, it is more difficult to judge the amount of staff time needed to provide care for residents who are routinely combative or presenting other behavioral challenges.

**Persons Testifying:** CON: Robin Dale, Washington Health Care Association.

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