
HOUSE BILL 2589

State of Washington

65th Legislature

2018 Regular Session

By Representatives Caldier, Appleton, Jinkins, and Cody

Read first time 01/10/18. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to certificates of need; and amending RCW
2 70.38.105, 70.38.115, and 70.38.125.

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

4 **Sec. 1.** RCW 70.38.105 and 2012 c 10 s 47 are each amended to
5 read as follows:

6 (1) The department is authorized and directed to implement the
7 certificate of need program in this state pursuant to the provisions
8 of this chapter.

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

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

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

19 (a) The construction, development, or other establishment of a
20 new health care facility including, but not limited to, a hospital
21 constructed, developed, or established by a health maintenance

1 organization or by a combination of health maintenance organizations
2 except as provided in subsection (7)(a) of this section;

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

8 (c) Any capital expenditure for the construction, renovation, or
9 alteration of a nursing home which substantially changes the services
10 of the facility after January 1, 1981, provided that the substantial
11 changes in services are specified by the department in rule;

12 (d) Any capital expenditure for the construction, renovation, or
13 alteration of a nursing home which exceeds the expenditure minimum as
14 defined by RCW 70.38.025. However, a capital expenditure which is not
15 subject to certificate of need review under (a), (b), (c), or (e) of
16 this subsection and which is solely for any one or more of the
17 following is not subject to certificate of need review:

18 (i) Communications and parking facilities;

19 (ii) Mechanical, electrical, ventilation, heating, and air
20 conditioning systems;

21 (iii) Energy conservation systems;

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

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

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

36 (vii) Acquisition of land; and

37 (viii) Refinancing of existing debt;

38 (e) A change in bed capacity of a health care facility which
39 increases the total number of licensed beds or redistributes beds
40 among acute care, nursing home care, and assisted living facility

1 care if the bed redistribution is to be effective for a period in
2 excess of six months, or a change in bed capacity of a rural health
3 care facility licensed under RCW 70.175.100 that increases the total
4 number of nursing home beds or redistributes beds from acute care or
5 assisted living facility care to nursing home care if the bed
6 redistribution is to be effective for a period in excess of six
7 months. A health care facility certified as a critical access
8 hospital under 42 U.S.C. 1395i-4 may increase its total number of
9 licensed beds to the total number of beds permitted under 42 U.S.C.
10 1395i-4 for acute care and may redistribute beds permitted under 42
11 U.S.C. 1395i-4 among acute care and nursing home care without being
12 subject to certificate of need review. If there is a nursing home
13 licensed under chapter 18.51 RCW within twenty-seven miles of the
14 critical access hospital, the critical access hospital is subject to
15 certificate of need review except for:

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

19 (ii) Up to five swing beds; or

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

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

33 (f) The relocation of licensed beds to a new or existing health
34 care facility;

35 (g) Any new tertiary health services which are offered in or
36 through a health care facility or rural health care facility licensed
37 under RCW 70.175.100, and which were not offered on a regular basis
38 by, in, or through such health care facility or rural health care
39 facility within the twelve-month period prior to the time such
40 services would be offered;

1 ~~((g))~~ (h) Any expenditure for the construction, renovation, or
2 alteration of a nursing home or change in nursing home services in
3 excess of the expenditure minimum made in preparation for any
4 undertaking under this subsection (4) ~~((of this section))~~ and any
5 arrangement or commitment made for financing such undertaking.
6 Expenditures of preparation shall include expenditures for
7 architectural designs, plans, working drawings, and specifications.
8 The department may issue certificates of need permitting
9 predevelopment expenditures, only, without authorizing any subsequent
10 undertaking with respect to which such predevelopment expenditures
11 are made; and

12 ~~((h))~~ (i) Any increase in the number of dialysis stations in a
13 kidney disease center.

14 (5) The department is authorized to charge fees for the review of
15 certificate of need applications and requests for exemptions from
16 certificate of need review. The fees shall be sufficient to cover the
17 full cost of review and exemption, which may include the development
18 of standards, criteria, and policies.

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

21 (7)(a) The requirement that a health maintenance organization
22 obtain a certificate of need under subsection (4)(a) of this section
23 for the construction, development, or other establishment of a
24 hospital does not apply to a health maintenance organization
25 operating a group practice that has been continuously licensed as a
26 health maintenance organization since January 1, 2009;

27 (b) The requirement that a health maintenance organization obtain
28 a certificate of need under subsection (4)(b) of this section to
29 sell, purchase, or lease a hospital does not apply to a health
30 maintenance organization operating a group practice that has been
31 continuously licensed as a health maintenance organization since
32 January 1, 2009.

33 **Sec. 2.** RCW 70.38.115 and 1996 c 178 s 22 are each amended to
34 read as follows:

35 (1) Certificates of need shall be issued, denied, suspended, or
36 revoked by the designee of the secretary in accord with the
37 provisions of this chapter and rules of the department which
38 establish review procedures and criteria for the certificate of need
39 program.

1 (2) Criteria for the review of certificate of need applications,
2 except as provided in subsection (3) of this section for health
3 maintenance organizations, shall include but not be limited to
4 consideration of the following:

5 (a) The need that the population served or to be served by such
6 services has for such services;

7 (b) The availability of less costly or more effective alternative
8 methods of providing such services;

9 (c) The financial feasibility and the probable impact of the
10 proposal on the cost of and charges for providing health services in
11 the community to be served;

12 (d) In the case of health services to be provided, (i) the
13 availability of alternative uses of project resources for the
14 provision of other health services, (ii) the extent to which such
15 proposed services will be accessible to all residents of the area to
16 be served, and (iii) the need for and the availability in the
17 community of services and facilities for osteopathic physicians and
18 surgeons and allopathic physicians and their patients. The department
19 shall consider the application in terms of its impact on existing and
20 proposed institutional training programs for doctors of osteopathic
21 medicine and surgery and medicine at the student, internship, and
22 residency training levels;

23 (e) In the case of a construction project, the costs and methods
24 of the proposed construction, including the cost and methods of
25 energy provision, and the probable impact of the construction project
26 reviewed (i) on the cost of providing health services by the person
27 proposing such construction project and (ii) on the cost and charges
28 to the public of providing health services by other persons;

29 (f) The special needs and circumstances of osteopathic hospitals,
30 nonallopathic services and children's hospitals;

31 (g) Improvements or innovations in the financing and delivery of
32 health services which foster cost containment and serve to promote
33 quality assurance and cost-effectiveness;

34 (h) In the case of health services proposed to be provided, the
35 efficiency and appropriateness of the use of existing services and
36 facilities similar to those proposed;

37 (i) In the case of existing services or facilities, the quality
38 of care provided by such services or facilities in the past;

1 (j) In the case of hospital certificate of need applications,
2 whether the hospital meets or exceeds the regional average level of
3 charity care, as determined by the secretary; (~~and~~)

4 (k) In the case of nursing home applications:

5 (i) The availability of other nursing home beds in the planning
6 area to be served; and

7 (ii) The availability of other services in the community to be
8 served. Data used to determine the availability of other services
9 will include but not be limited to data provided by the department of
10 social and health services; and

11 (l) In the case of relocating beds to a new or existing health
12 care facility, the effect on the ability of the population presently
13 served to reasonably access health care services. This includes
14 consideration of the ability of low-income persons, minorities,
15 handicapped persons, other underserved groups, and the elderly to
16 reasonably access health care services based on proximity and
17 available transportation.

18 (3) A certificate of need application of a health maintenance
19 organization or a health care facility which is controlled, directly
20 or indirectly, by a health maintenance organization, shall be
21 approved by the department if the department finds:

22 (a) Approval of such application is required to meet the needs of
23 the members of the health maintenance organization and of the new
24 members which such organization can reasonably be expected to enroll;
25 and

26 (b) The health maintenance organization is unable to provide,
27 through services or facilities which can reasonably be expected to be
28 available to the organization, its health services in a reasonable
29 and cost-effective manner which is consistent with the basic method
30 of operation of the organization and which makes such services
31 available on a long-term basis through physicians and other health
32 professionals associated with it.

33 A health care facility, or any part thereof, with respect to
34 which a certificate of need was issued under this subsection may not
35 be sold or leased and a controlling interest in such facility or in a
36 lease of such facility may not be acquired unless the department
37 issues a certificate of need approving the sale, acquisition, or
38 lease.

39 (4) Until the final expiration of the state health plan as
40 provided under RCW 70.38.919, the decision of the department on a

1 certificate of need application shall be consistent with the state
2 health plan in effect, except in emergency circumstances which pose a
3 threat to the public health. The department in making its final
4 decision may issue a conditional certificate of need if it finds that
5 the project is justified only under specific circumstances. The
6 conditions shall directly relate to the project being reviewed. The
7 conditions may be released if it can be substantiated that the
8 conditions are no longer valid and the release of such conditions
9 would be consistent with the purposes of this chapter.

10 (5) Criteria adopted for review in accordance with subsection (2)
11 of this section may vary according to the purpose for which the
12 particular review is being conducted or the type of health service
13 reviewed.

14 (6) The department shall specify information to be required for
15 certificate of need applications. Within fifteen days of receipt of
16 the application, the department shall request additional information
17 considered necessary to the application or start the review process.
18 Applicants may decline to submit requested information through
19 written notice to the department, in which case review starts on the
20 date of receipt of the notice. Applications may be denied or limited
21 because of failure to submit required and necessary information.

22 (7) Concurrent review is for the purpose of comparative analysis
23 and evaluation of competing or similar projects in order to determine
24 which of the projects may best meet identified needs. Categories of
25 projects subject to concurrent review include at least new health
26 care facilities, new services, and expansion of existing health care
27 facilities. The department shall specify time periods for the
28 submission of applications for certificates of need subject to
29 concurrent review, which shall not exceed ninety days. Review of
30 concurrent applications shall start fifteen days after the conclusion
31 of the time period for submission of applications subject to
32 concurrent review. Concurrent review periods shall be limited to one
33 hundred fifty days, except as provided for in rules adopted by the
34 department authorizing and limiting amendment during the course of
35 the review, or for an unresolved pivotal issue declared by the
36 department.

37 (8) Review periods for certificate of need applications other
38 than those subject to concurrent review shall be limited to ninety
39 days. Review periods may be extended up to thirty days if needed by a
40 review agency, and for unresolved pivotal issues the department may

1 extend up to an additional thirty days. A review may be extended in
2 any case if the applicant agrees to the extension.

3 (9) The department or its designee, shall conduct a public
4 hearing on a certificate of need application if requested unless the
5 review is expedited or subject to emergency review. The department by
6 rule shall specify the period of time within which a public hearing
7 must be requested and requirements related to public notice of the
8 hearing, procedures, recordkeeping and related matters.

9 (10)(a) Any applicant denied a certificate of need or whose
10 certificate of need has been suspended or revoked has the right to an
11 adjudicative proceeding. The proceeding is governed by chapter 34.05
12 RCW, the Administrative Procedure Act.

13 (b) Any health care facility or health maintenance organization
14 that: (i) Provides services similar to the services provided by the
15 applicant and under review pursuant to this subsection; (ii) is
16 located within the applicant's health service area; and (iii)
17 testified or submitted evidence at a public hearing held pursuant to
18 subsection (9) of this section, shall be provided an opportunity to
19 present oral or written testimony and argument in a proceeding under
20 this subsection: PROVIDED, That the health care facility or health
21 maintenance organization had, in writing, requested to be informed of
22 the department's decisions.

23 (c) If the department desires to settle with the applicant prior
24 to the conclusion of the adjudicative proceeding, the department
25 shall so inform the health care facility or health maintenance
26 organization and afford them an opportunity to comment, in advance,
27 on the proposed settlement.

28 (11) An amended certificate of need shall be required for the
29 following modifications of an approved project:

30 (a) A new service requiring review under this chapter;

31 (b) An expansion of a service subject to review beyond that
32 originally approved;

33 (c) An increase in bed capacity;

34 (d) A significant reduction in the scope of a nursing home
35 project without a commensurate reduction in the cost of the nursing
36 home project, or a cost increase (as represented in bids on a nursing
37 home construction project or final cost estimates acceptable to the
38 person to whom the certificate of need was issued) if the total of
39 such increases exceeds twelve percent or fifty thousand dollars,
40 whichever is greater, over the maximum capital expenditure approved.

1 The review of reductions or cost increases shall be restricted to the
2 continued conformance of the nursing home project with the review
3 criteria pertaining to financial feasibility and cost containment.

4 (12) An application for a certificate of need for a nursing home
5 capital expenditure which is determined by the department to be
6 required to eliminate or prevent imminent safety hazards or correct
7 violations of applicable licensure and accreditation standards shall
8 be approved.

9 (13)(a) Replacement of existing nursing home beds in the same
10 planning area by an existing licensee who has operated the beds for
11 at least one year shall not require a certificate of need under this
12 chapter. The licensee shall give written notice of its intent to
13 replace the existing nursing home beds to the department and shall
14 provide the department with information as may be required pursuant
15 to rule. Replacement of the beds by a party other than the licensee
16 is subject to certificate of need review under this chapter, except
17 as otherwise permitted by subsection (14) of this section.

18 (b) When an entire nursing home ceases operation, the licensee or
19 any other party who has secured an interest in the beds may reserve
20 his or her interest in the beds for eight years or until a
21 certificate of need to replace them is issued, whichever occurs
22 first. However, the nursing home, licensee, or any other party who
23 has secured an interest in the beds must give notice of its intent to
24 retain the beds to the department of health no later than thirty days
25 after the effective date of the facility's closure. Certificate of
26 need review shall be required for any party who has reserved the
27 nursing home beds except that the need criteria shall be deemed met
28 when the applicant is the licensee who had operated the beds for at
29 least one year, who has operated the beds for at least one year
30 immediately preceding the reservation of the beds, and who is
31 replacing the beds in the same planning area.

32 (14) In the event that a licensee, who has provided the
33 department with notice of his or her intent to replace nursing home
34 beds under subsection (13)(a) of this section, engages in
35 unprofessional conduct or becomes unable to practice with reasonable
36 skill and safety by reason of mental or physical condition, pursuant
37 to chapter 18.130 RCW, or dies, the building owner shall be permitted
38 to complete the nursing home bed replacement project, provided the
39 building owner has secured an interest in the beds.

1 **Sec. 3.** RCW 70.38.125 and 1989 1st ex.s. c 9 s 606 are each
2 amended to read as follows:

3 (1) A certificate of need shall be valid for two years. One six-
4 month extension may be made if it can be substantiated that
5 substantial and continuing progress toward commencement of the
6 project has been made as defined by regulations to be adopted
7 pursuant to this chapter.

8 (a) Upon completion of the construction of the project, if the
9 number of beds is less than the number allowed by the certificate of
10 need, the remaining beds are forfeited and the bed capacity meeting
11 the licensing requirements at the time shall be the facility's final
12 certificate of need authorized bed count.

13 (b) If the project is approved in phases by the department, the
14 department may require all phases to be commenced or completed within
15 a specified time period.

16 (2) A project for which a certificate of need has been issued
17 shall be commenced during the validity period for the certificate of
18 need.

19 (3) The department shall monitor the approved projects to assure
20 conformance with certificates of need that have been issued. Rules
21 and regulations adopted shall specify when changes in the project
22 require reevaluation of the project. The department may require
23 applicants to submit periodic progress reports on approved projects
24 or other information as may be necessary to effectuate its monitoring
25 responsibilities.

26 (4) The secretary, in the case of a new health facility, shall
27 not issue any license unless and until a prior certificate of need
28 shall have been issued by the department for the offering or
29 development of such new health facility.

30 (5) Any person who engages in any undertaking which requires
31 certificate of need review without first having received from the
32 department either a certificate of need or an exception granted in
33 accordance with this chapter shall be liable to the state in an
34 amount not to exceed one hundred dollars a day for each day of such
35 unauthorized offering or development. Such amounts of money shall be
36 recoverable in an action brought by the attorney general on behalf of
37 the state in the superior court of any county in which the
38 unauthorized undertaking occurred. Any amounts of money so recovered
39 by the attorney general shall be deposited in the state general fund.

1 (6) The department may bring any action to enjoin a violation or
2 the threatened violation of the provisions of this chapter or any
3 rules and regulations adopted pursuant to this chapter, or may bring
4 any legal proceeding authorized by law, including but not limited to
5 the special proceedings authorized in Title 7 RCW, in the superior
6 court in the county in which such violation occurs or is about to
7 occur, or in the superior court of Thurston county.

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