
SENATE BILL 6358

State of Washington

65th Legislature

2018 Regular Session

By Senator O'Ban

1 AN ACT Relating to eliminating certificate of need requirements;
2 and amending RCW 70.38.025 and 70.38.105.

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

4 **Sec. 1.** RCW 70.38.025 and 2000 c 175 s 22 are each amended to
5 read as follows:

6 When used in this chapter, the terms defined in this section
7 shall have the meanings indicated.

8 (1) "Board of health" means the state board of health created
9 pursuant to chapter 43.20 RCW.

10 (2) "Capital expenditure" is an expenditure, including a force
11 account expenditure (i.e., an expenditure for a construction project
12 undertaken by a nursing home facility as its own contractor) which,
13 under generally accepted accounting principles, is not properly
14 chargeable as an expense of operation or maintenance. Where a person
15 makes an acquisition under lease or comparable arrangement, or
16 through donation, which would have required review if the acquisition
17 had been made by purchase, such expenditure shall be deemed a capital
18 expenditure. Capital expenditures include donations of equipment or
19 facilities to a nursing home facility which if acquired directly by
20 such facility would be subject to certificate of need review under
21 the provisions of this chapter and transfer of equipment or

1 facilities for less than fair market value if a transfer of the
2 equipment or facilities at fair market value would be subject to such
3 review. The cost of any studies, surveys, designs, plans, working
4 drawings, specifications, and other activities essential to the
5 acquisition, improvement, expansion, or replacement of any plant or
6 equipment with respect to which such expenditure is made shall be
7 included in determining the amount of the expenditure.

8 (3) "Continuing care retirement community" means an entity which
9 provides shelter and services under continuing care contracts with
10 its members and which sponsors or includes a health care facility or
11 a health service. A "continuing care contract" means a contract to
12 provide a person, for the duration of that person's life or for a
13 term in excess of one year, shelter along with nursing, medical,
14 health-related, or personal care services, which is conditioned upon
15 the transfer of property, the payment of an entrance fee to the
16 provider of such services, or the payment of periodic charges for the
17 care and services involved. A continuing care contract is not
18 excluded from this definition because the contract is mutually
19 terminable or because shelter and services are not provided at the
20 same location.

21 (4) "Department" means the department of health.

22 (5) "Expenditure minimum" means, for the purposes of the
23 certificate of need program, one million dollars adjusted by the
24 department by rule to reflect changes in the United States department
25 of commerce composite construction cost index; or a lesser amount
26 required by federal law and established by the department by rule.

27 (6) "Health care facility" means hospices, hospice care centers,
28 hospitals, psychiatric hospitals, nursing homes, (~~(kidney disease~~
29 ~~treatment centers,~~) ambulatory surgical facilities, and home health
30 agencies, and includes such facilities when owned and operated by a
31 political subdivision or instrumentality of the state and such other
32 facilities as required by federal law and implementing regulations,
33 but does not include any health facility or institution conducted by
34 and for those who rely exclusively upon treatment by prayer or
35 spiritual means in accordance with the creed or tenets of any well-
36 recognized church or religious denomination, or any health facility
37 or institution operated for the exclusive care of members of a
38 convent as defined in RCW 84.36.800 or rectory, monastery, or other
39 institution operated for the care of members of the clergy. In
40 addition, the term does not include any nonprofit hospital: (a) Which

1 is operated exclusively to provide health care services for children;
2 (b) which does not charge fees for such services; and (c) if not
3 contrary to federal law as necessary to the receipt of federal funds
4 by the state.

5 (7) "Health maintenance organization" means a public or private
6 organization, organized under the laws of the state, which:

7 (a) Is a qualified health maintenance organization under Title
8 XIII, section 1310(d) of the public health service(~~(s—[Service])~~)
9 act; or

10 (b)(i) Provides or otherwise makes available to enrolled
11 participants health care services, including at least the following
12 basic health care services: Usual physician services,
13 hospitalization, laboratory, X-ray, emergency, and preventive
14 services, and out-of-area coverage; (ii) is compensated (except for
15 copayments) for the provision of the basic health care services
16 listed in (b)(i) to enrolled participants by a payment which is paid
17 on a periodic basis without regard to the date the health care
18 services are provided and which is fixed without regard to the
19 frequency, extent, or kind of health service actually provided; and
20 (iii) provides physicians' services primarily (A) directly through
21 physicians who are either employees or partners of such organization,
22 or (B) through arrangements with individual physicians or one or more
23 groups of physicians (organized on a group practice or individual
24 practice basis).

25 (8) "Health services" means clinically related (i.e., preventive,
26 diagnostic, curative, rehabilitative, or palliative) services and
27 includes alcoholism, drug abuse, and mental health services and as
28 defined in federal law.

29 (9) "Health service area" means a geographic region appropriate
30 for effective health planning which includes a broad range of health
31 services.

32 (10) "Person" means an individual, a trust or estate, a
33 partnership, a corporation (including associations, joint stock
34 companies, and insurance companies), the state, or a political
35 subdivision or instrumentality of the state, including a municipal
36 corporation or a hospital district.

37 (11) "Provider" generally means a health care professional or an
38 organization, institution, or other entity providing health care but
39 the precise definition for this term shall be established by rule of
40 the department, consistent with federal law.

1 (12) "Public health" means the level of well-being of the general
2 population; those actions in a community necessary to preserve,
3 protect, and promote the health of the people for which government is
4 responsible; and the governmental system developed to guarantee the
5 preservation of the health of the people.

6 (13) "Secretary" means the secretary of health or the secretary's
7 designee.

8 (14) "Tertiary health service" means a specialized service that
9 meets complicated medical needs of people and requires sufficient
10 patient volume to optimize provider effectiveness, quality of
11 service, and improved outcomes of care.

12 (15) "Hospital" means any health care institution which is
13 required to qualify for a license under RCW 70.41.020(~~(+2)~~) (7); or
14 as a psychiatric hospital under chapter 71.12 RCW.

15 **Sec. 2.** RCW 70.38.105 and 2012 c 10 s 47 are each amended to
16 read as follows:

17 (1) The department is authorized and directed to implement the
18 certificate of need program in this state pursuant to the provisions
19 of this chapter.

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

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

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

30 (a) The construction, development, or other establishment of a
31 new health care facility including, but not limited to, a hospital
32 constructed, developed, or established by a health maintenance
33 organization or by a combination of health maintenance organizations
34 except as provided in subsection (7)(a) of this section;

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

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

5 (d) Any capital expenditure for the construction, renovation, or
6 alteration of a nursing home which exceeds the expenditure minimum as
7 defined by RCW 70.38.025. However, a capital expenditure which is not
8 subject to certificate of need review under (a), (b), (c), or (e) of
9 this subsection and which is solely for any one or more of the
10 following is not subject to certificate of need review:

11 (i) Communications and parking facilities;

12 (ii) Mechanical, electrical, ventilation, heating, and air
13 conditioning systems;

14 (iii) Energy conservation systems;

15 (iv) Repairs to, or the correction of, deficiencies in existing
16 physical plant facilities which are necessary to maintain state
17 licensure, however, other additional repairs, remodeling, or
18 replacement projects that are not related to one or more deficiency
19 citations and are not necessary to maintain state licensure are not
20 exempt from certificate of need review except as otherwise permitted
21 by (d)(vi) of this subsection or RCW 70.38.115(13);

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

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

29 (vii) Acquisition of land; and

30 (viii) Refinancing of existing debt;

31 (e) A change in bed capacity of a health care facility which
32 increases the total number of licensed beds or redistributes beds
33 among acute care, nursing home care, and assisted living facility
34 care if the bed redistribution is to be effective for a period in
35 excess of six months, or a change in bed capacity of a rural health
36 care facility licensed under RCW 70.175.100 that increases the total
37 number of nursing home beds or redistributes beds from acute care or
38 assisted living facility care to nursing home care if the bed
39 redistribution is to be effective for a period in excess of six
40 months. A health care facility certified as a critical access

1 hospital under 42 U.S.C. 1395i-4 may increase its total number of
2 licensed beds to the total number of beds permitted under 42 U.S.C.
3 1395i-4 for acute care and may redistribute beds permitted under 42
4 U.S.C. 1395i-4 among acute care and nursing home care without being
5 subject to certificate of need review. If there is a nursing home
6 licensed under chapter 18.51 RCW within twenty-seven miles of the
7 critical access hospital, the critical access hospital is subject to
8 certificate of need review except for:

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

12 (ii) Up to five swing beds; or

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

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

26 (f) Any new tertiary health services which are offered in or
27 through a health care facility or rural health care facility licensed
28 under RCW 70.175.100, and which were not offered on a regular basis
29 by, in, or through such health care facility or rural health care
30 facility within the twelve-month period prior to the time such
31 services would be offered; and

32 (g) Any expenditure for the construction, renovation, or
33 alteration of a nursing home or change in nursing home services in
34 excess of the expenditure minimum made in preparation for any
35 undertaking under this subsection (4) (~~of this section~~) and any
36 arrangement or commitment made for financing such undertaking.
37 Expenditures of preparation shall include expenditures for
38 architectural designs, plans, working drawings, and specifications.
39 The department may issue certificates of need permitting
40 predevelopment expenditures, only, without authorizing any subsequent

1 undertaking with respect to which such predevelopment expenditures
2 are made(~~(; and~~

3 ~~(h) Any increase in the number of dialysis stations in a kidney~~
4 ~~disease center)).~~

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

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

12 (7)(a) The requirement that a health maintenance organization
13 obtain a certificate of need under subsection (4)(a) of this section
14 for the construction, development, or other establishment of a
15 hospital does not apply to a health maintenance organization
16 operating a group practice that has been continuously licensed as a
17 health maintenance organization since January 1, 2009;

18 (b) The requirement that a health maintenance organization obtain
19 a certificate of need under subsection (4)(b) of this section to
20 sell, purchase, or lease a hospital does not apply to a health
21 maintenance organization operating a group practice that has been
22 continuously licensed as a health maintenance organization since
23 January 1, 2009.

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