

# HOUSE BILL REPORT

## EHB 1777

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### As Passed Legislature

**Title:** An act relating to exempting certain existing ambulatory surgical facilities from certificate of need.

**Brief Description:** Exempting certain existing ambulatory surgical facilities from certificate of need.

**Sponsors:** Representatives Cody, Harris, Macri, Schmick, Vick, Appleton and Robinson.

**Brief History:**

**Committee Activity:**

Health Care & Wellness: 2/19/19, 2/20/19 [DP].

**Floor Activity:**

Passed House: 3/8/19, 98-0.

Passed Senate: 4/3/19, 47-0.

Passed Legislature.

<p style="text-align: center;"><b>Brief Summary of Engrossed Bill</b></p> <ul style="list-style-type: none"><li>• Exempts certain ambulatory surgical facilities from certificate of need requirements.</li></ul>
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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** Do pass. Signed by 14 members: Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers, Davis, Harris, Jinkins, Maycumber, Riccelli, Robinson, Stonier, Thai and Tharinger.

**Staff:** Jim Morishima (786-7191).

**Background:**

Before a health care facility, including an ambulatory surgical facility, may be constructed, renovated, or sold, the Department of Health (DOH) must issue a certificate of need. When

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determining whether to issue a certificate of need, the DOH must consider a variety of factors, including:

- the population's need for the service;
- the availability of less costly or more effective methods of providing the service;
- the financial feasibility and probable impact of the proposal on the cost of health care in the community;
- the need and availability of services and facilities for physicians and patients in the community;
- the efficiency and appropriateness of the use of existing similar services and facilities; and
- improvements in the financing and delivery of health services that contain costs and promote quality assurance.

For purposes of the certificate of need program, the DOH has defined "ambulatory surgical facility" as 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, the 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 Engrossed Bill:**

An ambulatory surgery facility is exempt from all certificate of need requirements if it:

- is an individual practice and, if the facility is a group practice, the privilege of using the facility is not extended to physicians outside of the group practice;
- operated or received approval to operate prior to January 19, 2018; and
- was exempt from certificate of need requirements prior to January 19, 2018, because the facility was determined to be exempt pursuant to a determination of reviewability issued by the Department of Health or was a single-specialty endoscopy center in existence prior to January 14, 2003.

The exemption applies regardless of future changes of ownership, corporate structure, or affiliations of the individual or group practice as long as the use of the facility remains limited to physicians in the group practice. The exemption does not apply to changes in services, specialties, or number of operating rooms.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This addresses a situation that arose last year when the Department of Health (DOH) issued an interpretive statement that caused tremendous upheaval. Seventy-five percent of the ambulatory surgical facilities in the state relied on the exemption that was repealed by the interpretive statement. These facilities are now unsure of whether they can make changes without losing their grandfathered status or even if they are grandfathered at all. This bill puts the grandfathering language in statute—anything operating prior to the interpretive statement will be able to continue to operate. The bill also exempts certain colonoscopy centers that were traditionally exempt from the certificate of need requirement. Colonoscopy centers are currently exempt from the need calculation, so their applications for a certificate of need are rarely denied anyway. This bill will help the DOH reduce the certificate of need backlog.

(Opposed) None.

**Persons Testifying:** Representative Cody, prime sponsor; Emily Studebaker, Washington Ambulatory Surgery Center Association; Roman Daniels-Brown, The Polyclinic; and Jonathan Seib, The Vancouver Clinic.

**Persons Signed In To Testify But Not Testifying:** None.