
SENATE BILL 6060

State of Washington

66th Legislature

2020 Regular Session

By Senators Becker, Brown, Frockt, and Wilson, L.

Prefiled 12/10/19. Read first time 01/13/20. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to removing ambulatory surgical facilities from
2 the certificate of need program; amending RCW 70.38.025; and
3 reenacting and amending RCW 70.38.111.

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

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

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

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

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

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

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

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

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

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

1 addition, the term does not include any nonprofit hospital: (a) Which
2 is operated exclusively to provide health care services for children;
3 (b) which does not charge fees for such services; and (c) if not
4 contrary to federal law as necessary to the receipt of federal funds
5 by the state.

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

8 (a) Is a qualified health maintenance organization under Title
9 XIII, section 1310(d) of the Public Health (~~Services~~[Service])
10 Service Act; or

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

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

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

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

38 (11) "Provider" generally means a health care professional or an
39 organization, institution, or other entity providing health care but

1 the precise definition for this term shall be established by rule of
2 the department, consistent with federal law.

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

8 (13) "Secretary" means the secretary of health or the secretary's
9 designee.

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

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

17 **Sec. 2.** RCW 70.38.111 and 2019 c 324 s 8 and 2019 c 31 s 1 are
18 each reenacted and amended to read as follows:

19 (1) The department shall not require a certificate of need for
20 the offering of an inpatient tertiary health service by:

21 (a) A health maintenance organization or a combination of health
22 maintenance organizations if (i) the organization or combination of
23 organizations has, in the service area of the organization or the
24 service areas of the organizations in the combination, an enrollment
25 of at least fifty thousand individuals, (ii) the facility in which
26 the service will be provided is or will be geographically located so
27 that the service will be reasonably accessible to such enrolled
28 individuals, and (iii) at least seventy-five percent of the patients
29 who can reasonably be expected to receive the tertiary health service
30 will be individuals enrolled with such organization or organizations
31 in the combination;

32 (b) A health care facility if (i) the facility primarily provides
33 or will provide inpatient health services, (ii) the facility is or
34 will be controlled, directly or indirectly, by a health maintenance
35 organization or a combination of health maintenance organizations
36 which has, in the service area of the organization or service areas
37 of the organizations in the combination, an enrollment of at least
38 fifty thousand individuals, (iii) the facility is or will be
39 geographically located so that the service will be reasonably

1 accessible to such enrolled individuals, and (iv) at least seventy-
2 five percent of the patients who can reasonably be expected to
3 receive the tertiary health service will be individuals enrolled with
4 such organization or organizations in the combination; or

5 (c) A health care facility (or portion thereof) if (i) the
6 facility is or will be leased by a health maintenance organization or
7 combination of health maintenance organizations which has, in the
8 service area of the organization or the service areas of the
9 organizations in the combination, an enrollment of at least fifty
10 thousand individuals and, on the date the application is submitted
11 under subsection (2) of this section, at least fifteen years remain
12 in the term of the lease, (ii) the facility is or will be
13 geographically located so that the service will be reasonably
14 accessible to such enrolled individuals, and (iii) at least seventy-
15 five percent of the patients who can reasonably be expected to
16 receive the tertiary health service will be individuals enrolled with
17 such organization;

18 if, with respect to such offering or obligation by a nursing home,
19 the department has, upon application under subsection (2) of this
20 section, granted an exemption from such requirement to the
21 organization, combination of organizations, or facility.

22 (2) A health maintenance organization, combination of health
23 maintenance organizations, or health care facility shall not be
24 exempt under subsection (1) of this section from obtaining a
25 certificate of need before offering a tertiary health service unless:

26 (a) It has submitted at least thirty days prior to the offering
27 of services reviewable under RCW 70.38.105(4)(d) an application for
28 such exemption; and

29 (b) The application contains such information respecting the
30 organization, combination, or facility and the proposed offering or
31 obligation by a nursing home as the department may require to
32 determine if the organization or combination meets the requirements
33 of subsection (1) of this section or the facility meets or will meet
34 such requirements; and

35 (c) The department approves such application. The department
36 shall approve or disapprove an application for exemption within
37 thirty days of receipt of a completed application. In the case of a
38 proposed health care facility (or portion thereof) which has not
39 begun to provide tertiary health services on the date an application
40 is submitted under this subsection with respect to such facility (or

1 portion), the facility (or portion) shall meet the applicable
2 requirements of subsection (1) of this section when the facility
3 first provides such services. The department shall approve an
4 application submitted under this subsection if it determines that the
5 applicable requirements of subsection (1) of this section are met.

6 (3) A health care facility (or any part thereof) with respect to
7 which an exemption was granted under subsection (1) of this section
8 may not be sold or leased and a controlling interest in such facility
9 or in a lease of such facility may not be acquired and a health care
10 facility described in (1)(c) which was granted an exemption under
11 subsection (1) of this section may not be used by any person other
12 than the lessee described in (1)(c) unless:

13 (a) The department issues a certificate of need approving the
14 sale, lease, acquisition, or use; or

15 (b) The department determines, upon application, that (i) the
16 entity to which the facility is proposed to be sold or leased, which
17 intends to acquire the controlling interest, or which intends to use
18 the facility is a health maintenance organization or a combination of
19 health maintenance organizations which meets the requirements of
20 (1)(a)(i), and (ii) with respect to such facility, meets the
21 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)
22 and (ii).

23 (4) In the case of a health maintenance organization, an
24 ambulatory care facility, or a health care facility, which ambulatory
25 or health care facility is controlled, directly or indirectly, by a
26 health maintenance organization or a combination of health
27 maintenance organizations, the department may under the program apply
28 its certificate of need requirements to the offering of inpatient
29 tertiary health services to the extent that such offering is not
30 exempt under the provisions of this section or RCW 70.38.105(7).

31 (5)(a) The department shall not require a certificate of need for
32 the construction, development, or other establishment of a nursing
33 home, or the addition of beds to an existing nursing home, that is
34 owned and operated by a continuing care retirement community that:

35 (i) Offers services only to contractual members;

36 (ii) Provides its members a contractually guaranteed range of
37 services from independent living through skilled nursing, including
38 some assistance with daily living activities;

39 (iii) Contractually assumes responsibility for the cost of
40 services exceeding the member's financial responsibility under the

1 contract, so that no third party, with the exception of insurance
2 purchased by the retirement community or its members, but including
3 the medicaid program, is liable for costs of care even if the member
4 depletes his or her personal resources;

5 (iv) Has offered continuing care contracts and operated a nursing
6 home continuously since January 1, 1988, or has obtained a
7 certificate of need to establish a nursing home;

8 (v) Maintains a binding agreement with the state assuring that
9 financial liability for services to members, including nursing home
10 services, will not fall upon the state;

11 (vi) Does not operate, and has not undertaken a project that
12 would result in a number of nursing home beds in excess of one for
13 every four living units operated by the continuing care retirement
14 community, exclusive of nursing home beds; and

15 (vii) Has obtained a professional review of pricing and long-term
16 solvency within the prior five years which was fully disclosed to
17 members.

18 (b) A continuing care retirement community shall not be exempt
19 under this subsection from obtaining a certificate of need unless:

20 (i) It has submitted an application for exemption at least thirty
21 days prior to commencing construction of, is submitting an
22 application for the licensure of, or is commencing operation of a
23 nursing home, whichever comes first; and

24 (ii) The application documents to the department that the
25 continuing care retirement community qualifies for exemption.

26 (c) The sale, lease, acquisition, or use of part or all of a
27 continuing care retirement community nursing home that qualifies for
28 exemption under this subsection shall require prior certificate of
29 need approval to qualify for licensure as a nursing home unless the
30 department determines such sale, lease, acquisition, or use is by a
31 continuing care retirement community that meets the conditions of (a)
32 of this subsection.

33 (6) A rural hospital, as defined by the department, reducing the
34 number of licensed beds to become a rural primary care hospital under
35 the provisions of Part A Title XVIII of the Social Security Act
36 Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the
37 reduction of beds licensed under chapter 70.41 RCW, increase the
38 number of licensed beds to no more than the previously licensed
39 number without being subject to the provisions of this chapter.

1 (7) A rural health care facility licensed under RCW 70.175.100
2 formerly licensed as a hospital under chapter 70.41 RCW may, within
3 three years of the effective date of the rural health care facility
4 license, apply to the department for a hospital license and not be
5 subject to the requirements of RCW 70.38.105(4)(a) as the
6 construction, development, or other establishment of a new hospital,
7 provided there is no increase in the number of beds previously
8 licensed under chapter 70.41 RCW and there is no redistribution in
9 the number of beds used for acute care or long-term care, the rural
10 health care facility has been in continuous operation, and the rural
11 health care facility has not been purchased or leased.

12 (8) A rural hospital determined to no longer meet critical access
13 hospital status for state law purposes as a result of participation
14 in the Washington rural health access preservation pilot identified
15 by the state office of rural health and formerly licensed as a
16 hospital under chapter 70.41 RCW may apply to the department to renew
17 its hospital license and not be subject to the requirements of RCW
18 70.38.105(4)(a) as the construction, development, or other
19 establishment of a new hospital, provided there is no increase in the
20 number of beds previously licensed under chapter 70.41 RCW. If all or
21 part of a formerly licensed rural hospital is sold, purchased, or
22 leased during the period the rural hospital does not meet critical
23 access hospital status as a result of participation in the Washington
24 rural health access preservation pilot and the new owner or lessor
25 applies to renew the rural hospital's license, then the sale,
26 purchase, or lease of part or all of the rural hospital is subject to
27 the provisions of this chapter.

28 (9)(a) A nursing home that voluntarily reduces the number of its
29 licensed beds to provide assisted living, licensed assisted living
30 facility care, adult day care, adult day health, respite care,
31 hospice, outpatient therapy services, congregate meals, home health,
32 or senior wellness clinic, or to reduce to one or two the number of
33 beds per room or to otherwise enhance the quality of life for
34 residents in the nursing home, may convert the original facility or
35 portion of the facility back, and thereby increase the number of
36 nursing home beds to no more than the previously licensed number of
37 nursing home beds without obtaining a certificate of need under this
38 chapter, provided the facility has been in continuous operation and
39 has not been purchased or leased. Any conversion to the original
40 licensed bed capacity, or to any portion thereof, shall comply with

1 the same life and safety code requirements as existed at the time the
2 nursing home voluntarily reduced its licensed beds; unless waivers
3 from such requirements were issued, in which case the converted beds
4 shall reflect the conditions or standards that then existed pursuant
5 to the approved waivers.

6 (b) To convert beds back to nursing home beds under this
7 subsection, the nursing home must:

8 (i) Give notice of its intent to preserve conversion options to
9 the department of health no later than thirty days after the
10 effective date of the license reduction; and

11 (ii) Give notice to the department of health and to the
12 department of social and health services of the intent to convert
13 beds back. If construction is required for the conversion of beds
14 back, the notice of intent to convert beds back must be given, at a
15 minimum, one year prior to the effective date of license modification
16 reflecting the restored beds; otherwise, the notice must be given a
17 minimum of ninety days prior to the effective date of license
18 modification reflecting the restored beds. Prior to any license
19 modification to convert beds back to nursing home beds under this
20 section, the licensee must demonstrate that the nursing home meets
21 the certificate of need exemption requirements of this section.

22 The term "construction," as used in (b)(ii) of this subsection,
23 is limited to those projects that are expected to equal or exceed the
24 expenditure minimum amount, as determined under this chapter.

25 (c) Conversion of beds back under this subsection must be
26 completed no later than four years after the effective date of the
27 license reduction. However, for good cause shown, the four-year
28 period for conversion may be extended by the department of health for
29 one additional four-year period.

30 (d) Nursing home beds that have been voluntarily reduced under
31 this section shall be counted as available nursing home beds for the
32 purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so long
33 as the facility retains the ability to convert them back to nursing
34 home use under the terms of this section.

35 (e) When a building owner has secured an interest in the nursing
36 home beds, which are intended to be voluntarily reduced by the
37 licensee under (a) of this subsection, the applicant shall provide
38 the department with a written statement indicating the building
39 owner's approval of the bed reduction.

1 (10)(a) The department shall not require a certificate of need
2 for a hospice agency if:

3 (i) The hospice agency is designed to serve the unique religious
4 or cultural needs of a religious group or an ethnic minority and
5 commits to furnishing hospice services in a manner specifically aimed
6 at meeting the unique religious or cultural needs of the religious
7 group or ethnic minority;

8 (ii) The hospice agency is operated by an organization that:

9 (A) Operates a facility, or group of facilities, that offers a
10 comprehensive continuum of long-term care services, including, at a
11 minimum, a licensed, medicare-certified nursing home, assisted
12 living, independent living, day health, and various community-based
13 support services, designed to meet the unique social, cultural, and
14 religious needs of a specific cultural and ethnic minority group;

15 (B) Has operated the facility or group of facilities for at least
16 ten continuous years prior to the establishment of the hospice
17 agency;

18 (iii) The hospice agency commits to coordinating with existing
19 hospice programs in its community when appropriate;

20 (iv) The hospice agency has a census of no more than forty
21 patients;

22 (v) The hospice agency commits to obtaining and maintaining
23 medicare certification;

24 (vi) The hospice agency only serves patients located in the same
25 county as the majority of the long-term care services offered by the
26 organization that operates the agency; and

27 (vii) The hospice agency is not sold or transferred to another
28 agency.

29 (b) The department shall include the patient census for an agency
30 exempted under this subsection (10) in its calculations for future
31 certificate of need applications.

32 (11) To alleviate the need to board psychiatric patients in
33 emergency departments and increase capacity of hospitals to serve
34 individuals on ninety-day or one hundred eighty-day commitment
35 orders, for the period of time from May 5, 2017, through June 30,
36 2021:

37 (a) The department shall suspend the certificate of need
38 requirement for a hospital licensed under chapter 70.41 RCW that
39 changes the use of licensed beds to increase the number of beds to
40 provide psychiatric services, including involuntary treatment

1 services. A certificate of need exemption under this subsection
2 (11) (a) shall be valid for two years.

3 (b) The department may not require a certificate of need for:

4 (i) The addition of beds as described in RCW 70.38.260 (2) and
5 (3); or

6 (ii) The construction, development, or establishment of a
7 psychiatric hospital licensed as an establishment under chapter 71.12
8 RCW that will have no more than sixteen beds and provide treatment to
9 adults on ninety or one hundred eighty-day involuntary commitment
10 orders, as described in RCW 70.38.260(4).

11 ~~((12) (a) An ambulatory surgical facility is exempt from all
12 certificate of need requirements if the facility:~~

13 ~~(i) Is an individual or group practice and, if the facility is a
14 group practice, the privilege of using the facility is not extended
15 to physicians outside the group practice;~~

16 ~~(ii) Operated or received approval to operate, prior to January
17 19, 2018; and~~

18 ~~(iii) Was exempt from certificate of need requirements prior to
19 January 19, 2018, because the facility either:~~

20 ~~(A) Was determined to be exempt from certificate of need
21 requirements pursuant to a determination of reviewability issued by
22 the department; or~~

23 ~~(B) Was a single-specialty endoscopy center in existence prior to
24 January 14, 2003, when the department determined that endoscopy
25 procedures were surgeries for purposes of certificate of need.~~

26 ~~(b) The exemption under this subsection:~~

27 ~~(i) Applies regardless of future changes of ownership, corporate
28 structure, or affiliations of the individual or group practice as
29 long as the use of the facility remains limited to physicians in the
30 group practice; and~~

31 ~~(ii) Does not apply to changes in services, specialties, or
32 number of operating rooms.))~~

--- END ---