

SSB 5236 - H COMM AMD

By Committee on Health Care & Wellness

ADOPTED 03/28/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 70.38.111 and 2020 c 258 s 1 are each amended to
4 read as follows:

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

7 (a) A health maintenance organization or a combination of health
8 maintenance organizations if (i) the organization or combination of
9 organizations has, in the service area of the organization or the
10 service areas of the organizations in the combination, an enrollment
11 of at least fifty thousand individuals, (ii) the facility in which
12 the service will be provided is or will be geographically located so
13 that the service will be reasonably accessible to such enrolled
14 individuals, and (iii) at least seventy-five percent of the patients
15 who can reasonably be expected to receive the tertiary health service
16 will be individuals enrolled with such organization or organizations
17 in the combination;

18 (b) A health care facility if (i) the facility primarily provides
19 or will provide inpatient health services, (ii) the facility is or
20 will be controlled, directly or indirectly, by a health maintenance
21 organization or a combination of health maintenance organizations
22 which has, in the service area of the organization or service areas
23 of the organizations in the combination, an enrollment of at least
24 fifty thousand individuals, (iii) the facility is or will be
25 geographically located so that the service will be reasonably
26 accessible to such enrolled individuals, and (iv) at least seventy-
27 five percent of the patients who can reasonably be expected to
28 receive the tertiary health service will be individuals enrolled with
29 such organization or organizations in the combination; or

30 (c) A health care facility (or portion thereof) if (i) the
31 facility is or will be leased by a health maintenance organization or
32 combination of health maintenance organizations which has, in the

1 service area of the organization or the service areas of the
2 organizations in the combination, an enrollment of at least fifty
3 thousand individuals and, on the date the application is submitted
4 under subsection (2) of this section, at least fifteen years remain
5 in the term of the lease, (ii) the facility is or will be
6 geographically located so that the service will be reasonably
7 accessible to such enrolled individuals, and (iii) at least seventy-
8 five percent of the patients who can reasonably be expected to
9 receive the tertiary health service will be individuals enrolled with
10 such organization;

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

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

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

22 (b) The application contains such information respecting the
23 organization, combination, or facility and the proposed offering or
24 obligation by a nursing home as the department may require to
25 determine if the organization or combination meets the requirements
26 of subsection (1) of this section or the facility meets or will meet
27 such requirements; and

28 (c) The department approves such application. The department
29 shall approve or disapprove an application for exemption within
30 thirty days of receipt of a completed application. In the case of a
31 proposed health care facility (or portion thereof) which has not
32 begun to provide tertiary health services on the date an application
33 is submitted under this subsection with respect to such facility (or
34 portion), the facility (or portion) shall meet the applicable
35 requirements of subsection (1) of this section when the facility
36 first provides such services. The department shall approve an
37 application submitted under this subsection if it determines that the
38 applicable requirements of subsection (1) of this section are met.

39 (3) A health care facility (or any part thereof) with respect to
40 which an exemption was granted under subsection (1) of this section

1 may not be sold or leased and a controlling interest in such facility
2 or in a lease of such facility may not be acquired and a health care
3 facility described in (1)(c) which was granted an exemption under
4 subsection (1) of this section may not be used by any person other
5 than the lessee described in (1)(c) unless:

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

8 (b) The department determines, upon application, that (i) the
9 entity to which the facility is proposed to be sold or leased, which
10 intends to acquire the controlling interest, or which intends to use
11 the facility is a health maintenance organization or a combination of
12 health maintenance organizations which meets the requirements of
13 (1)(a)(i), and (ii) with respect to such facility, meets the
14 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)
15 and (ii).

16 (4) In the case of a health maintenance organization, an
17 ambulatory care facility, or a health care facility, which ambulatory
18 or health care facility is controlled, directly or indirectly, by a
19 health maintenance organization or a combination of health
20 maintenance organizations, the department may under the program apply
21 its certificate of need requirements to the offering of inpatient
22 tertiary health services to the extent that such offering is not
23 exempt under the provisions of this section or RCW 70.38.105(7).

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

28 (i) Offers services only to contractual members;

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

32 (iii) Contractually assumes responsibility for the cost of
33 services exceeding the member's financial responsibility under the
34 contract, so that no third party, with the exception of insurance
35 purchased by the retirement community or its members, but including
36 the medicaid program, is liable for costs of care even if the member
37 depletes his or her personal resources;

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

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

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

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

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

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

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

19 (c) The sale, lease, acquisition, or use of part or all of a
20 continuing care retirement community nursing home that qualifies for
21 exemption under this subsection shall require prior certificate of
22 need approval to qualify for licensure as a nursing home unless the
23 department determines such sale, lease, acquisition, or use is by a
24 continuing care retirement community that meets the conditions of (a)
25 of this subsection.

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

33 (7) A rural health care facility licensed under RCW 70.175.100
34 formerly licensed as a hospital under chapter 70.41 RCW may, within
35 three years of the effective date of the rural health care facility
36 license, apply to the department for a hospital license and not be
37 subject to the requirements of RCW 70.38.105(4)(a) as the
38 construction, development, or other establishment of a new hospital,
39 provided there is no increase in the number of beds previously
40 licensed under chapter 70.41 RCW and there is no redistribution in

1 the number of beds used for acute care or long-term care, the rural
2 health care facility has been in continuous operation, and the rural
3 health care facility has not been purchased or leased.

4 (8) A rural hospital determined to no longer meet critical access
5 hospital status for state law purposes as a result of participation
6 in the Washington rural health access preservation pilot identified
7 by the state office of rural health and formerly licensed as a
8 hospital under chapter 70.41 RCW may apply to the department to renew
9 its hospital license and not be subject to the requirements of RCW
10 70.38.105(4)(a) as the construction, development, or other
11 establishment of a new hospital, provided there is no increase in the
12 number of beds previously licensed under chapter 70.41 RCW. If all or
13 part of a formerly licensed rural hospital is sold, purchased, or
14 leased during the period the rural hospital does not meet critical
15 access hospital status as a result of participation in the Washington
16 rural health access preservation pilot and the new owner or lessor
17 applies to renew the rural hospital's license, then the sale,
18 purchase, or lease of part or all of the rural hospital is subject to
19 the provisions of this chapter.

20 (9)(a) A nursing home that voluntarily reduces the number of its
21 licensed beds to provide assisted living, licensed assisted living
22 facility care, adult day care, adult day health, respite care,
23 hospice, outpatient therapy services, congregate meals, home health,
24 or senior wellness clinic, or to reduce to one or two the number of
25 beds per room or to otherwise enhance the quality of life for
26 residents in the nursing home, may convert the original facility or
27 portion of the facility back, and thereby increase the number of
28 nursing home beds to no more than the previously licensed number of
29 nursing home beds without obtaining a certificate of need under this
30 chapter, provided the facility has been in continuous operation and
31 has not been purchased or leased. Any conversion to the original
32 licensed bed capacity, or to any portion thereof, shall comply with
33 the same life and safety code requirements as existed at the time the
34 nursing home voluntarily reduced its licensed beds; unless waivers
35 from such requirements were issued, in which case the converted beds
36 shall reflect the conditions or standards that then existed pursuant
37 to the approved waivers.

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

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

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

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

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

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

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

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

35 (i) The hospice agency is designed to serve the unique religious
36 or cultural needs of a religious group or an ethnic minority and
37 commits to furnishing hospice services in a manner specifically aimed
38 at meeting the unique religious or cultural needs of the religious
39 group or ethnic minority;

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

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

7 (B) Has operated the facility or group of facilities for at least
8 ten continuous years prior to the establishment of the hospice
9 agency;

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

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

14 (v) The hospice agency commits to obtaining and maintaining
15 medicare certification;

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

19 (vii) The hospice agency is not sold or transferred to another
20 agency.

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

24 (11) To alleviate the need to board psychiatric patients in
25 emergency departments and increase capacity of hospitals to serve
26 individuals on ninety-day or one hundred eighty-day commitment
27 orders, for the period of time from May 5, 2017, through June 30,
28 ((2021)) 2023:

29 (a) The department shall suspend the certificate of need
30 requirement for a hospital licensed under chapter 70.41 RCW that
31 changes the use of licensed beds to increase the number of beds to
32 provide psychiatric services, including involuntary treatment
33 services. A certificate of need exemption under this subsection
34 (11) (a) shall be valid for two years.

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

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

38 (ii) The construction, development, or establishment of a
39 psychiatric hospital licensed as an establishment under chapter 71.12
40 RCW that will have no more than sixteen beds and provide treatment to

1 adults on ninety or one hundred eighty-day involuntary commitment
2 orders, as described in RCW 70.38.260(4).

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

5 (i) Is an individual or group practice and, if the facility is a
6 group practice, the privilege of using the facility is not extended
7 to physicians outside the group practice;

8 (ii) Operated or received approval to operate, prior to January
9 19, 2018; and

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

12 (A) Was determined to be exempt from certificate of need
13 requirements pursuant to a determination of reviewability issued by
14 the department; or

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

18 (b) The exemption under this subsection:

19 (i) Applies regardless of future changes of ownership, corporate
20 structure, or affiliations of the individual or group practice as
21 long as the use of the facility remains limited to physicians in the
22 group practice; and

23 (ii) Does not apply to changes in services, specialties, or
24 number of operating rooms.

25 (13) A rural health clinic providing health services in a home
26 health shortage area as declared by the department pursuant to
27 C.F.R. Sec. 405.2416 is not subject to certificate of need review
28 under this chapter.

29 **Sec. 2.** RCW 70.38.260 and 2019 c 324 s 9 are each amended to
30 read as follows:

31 (1) For a grant awarded during fiscal years 2018 and 2019 by the
32 department of commerce under this section, hospitals licensed under
33 chapter 70.41 RCW and psychiatric hospitals licensed as
34 establishments under chapter 71.12 RCW are not subject to certificate
35 of need requirements for the addition of the number of new
36 psychiatric beds indicated in the grant. The department of commerce
37 may not make a prior approval of a certificate of need application a
38 condition for a grant application under this section. The period
39 during which an approved hospital or psychiatric hospital project

1 qualifies for a certificate of need exemption under this section is
2 two years from the date of the grant award.

3 (2) (a) Until June 30, (~~(2021)~~) 2023, a hospital licensed under
4 chapter 70.41 RCW is exempt from certificate of need requirements for
5 the addition of new psychiatric beds.

6 (b) A hospital that adds new psychiatric beds under this
7 subsection (2) must:

8 (i) Notify the department of the addition of new psychiatric
9 beds. The department shall provide the hospital with a notice of
10 exemption within thirty days; and

11 (ii) Commence the project within two years of the date of receipt
12 of the notice of exemption.

13 (c) Beds granted an exemption under RCW 70.38.111(1)(b) must
14 remain psychiatric beds unless a certificate of need is granted to
15 change their use or the hospital voluntarily reduces its licensed
16 capacity.

17 (3) (a) Until June 30, (~~(2021)~~) 2023, a psychiatric hospital
18 licensed as an establishment under chapter 71.12 RCW is exempt from
19 certificate of need requirements for the one-time addition of up to
20 (~~(thirty)~~) 30 new psychiatric beds (~~(, and for the one-time addition~~
21 ~~of up to sixty psychiatric beds devoted solely to ninety-day and one~~
22 ~~hundred eighty-day civil commitment patients if the hospital was~~
23 ~~awarded any grant by the department of commerce to increase~~
24 ~~behavioral health capacity in fiscal year 2019 and)~~) devoted solely
25 for 90-day and 180-day civil commitment services and for the one-time
26 addition of up to 30 new voluntary psychiatric beds or involuntary
27 psychiatric beds for patients on a 120 hour detention or 14-day civil
28 commitment order, if the hospital makes a commitment to maintain a
29 payer mix of at least fifty percent medicare and medicaid based on a
30 calculation using patient days for a period of five consecutive years
31 after the beds are made available for use by patients, if it
32 demonstrates to the satisfaction of the department:

33 (i) That its most recent two years of publicly available fiscal
34 year-end report data as required under RCW 70.170.100 and 43.70.050
35 reported to the department by the psychiatric hospital, show a payer
36 mix of a minimum of fifty percent medicare and medicaid based on a
37 calculation using patient days; and

38 (ii) A commitment to maintaining the payer mix in (a) of this
39 subsection for a period of five consecutive years after the beds are
40 made available for use by patients.

1 (b) A psychiatric hospital that adds new psychiatric beds under
2 this subsection (3) must:

3 (i) Notify the department of the addition of new psychiatric
4 beds. The department shall provide the psychiatric hospital with a
5 notice of exemption within thirty days; and

6 (ii) Commence the project within two years of the date of receipt
7 of the notice of exemption.

8 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must
9 remain the types of psychiatric beds indicated to the department in
10 the original exemption application unless a certificate of need is
11 granted to change their use or the psychiatric hospital voluntarily
12 reduces its licensed capacity.

13 (4)(a) Until June 30, (~~(2021)~~) 2023, an entity seeking to
14 construct, develop, or establish a psychiatric hospital licensed as
15 an establishment under chapter 71.12 RCW is exempt from certificate
16 of need requirements if the proposed psychiatric hospital will have
17 no more than sixteen beds and dedicate a portion of the beds to
18 providing treatment to adults on ninety or one hundred eighty-day
19 involuntary commitment orders. The psychiatric hospital may also
20 provide treatment to adults on a (~~(seventy-two)~~) 120 hour detention
21 or (~~(fourteen-day)~~) 14-day involuntary commitment order.

22 (b) An entity that seeks to construct, develop, or establish a
23 psychiatric hospital under this subsection (4) must:

24 (i) Notify the department of the addition of construction,
25 development, or establishment. The department shall provide the
26 entity with a notice of exemption within thirty days; and

27 (ii) Commence the project within two years of the date of receipt
28 of the notice of exemption.

29 (c) Entities granted an exemption under RCW 70.38.111(11)(b)(ii)
30 may not exceed sixteen beds unless a certificate of need is granted
31 to increase the psychiatric hospital's capacity.

32 (5) This section expires June 30, 2025.

33 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
34 preservation of the public peace, health, or safety, or support of
35 the state government and its existing public institutions, and takes
36 effect July 1, 2021."

37 Correct the title.

EFFECT: Adds an emergency clause to establish an effective date for the act of July 1, 2021. Corrects an outdated reference to the 72 hour detention standard with a reference to the new 120 hour detention standard.

--- END ---