

HOUSE BILL REPORT

ESSB 5178

As Passed House - Amended:

April 9, 2021

Title: An act relating to establishing automatic waivers of select state health care laws to enable timely response by the health care system during a governor-declared statewide state of emergency.

Brief Description: Establishing timely considerations of waivers of select state health care laws to enable timely response by the health care system during a governor-declared statewide state of emergency.

Sponsors: Senate Committee on Health & Long Term Care (originally sponsored by Senators Cleveland, Muzzall and Wilson, C.).

Brief History:

Committee Activity:

Health Care & Wellness: 3/22/21, 3/25/21 [DPA].

Floor Activity:

Passed House: 4/9/21, 91-6.

Brief Summary of Engrossed Substitute Bill (As Amended By House)

- Requires the Governor when declaring or amending a statewide state of emergency to determine if the emergency demands immediate action by hospitals to prevent critical system failures, and if so, to specify within the emergency order which statutes and substantially equivalent regulations must be waived or suspended.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass as amended. Signed by 12 members: Representatives Cody, Chair; Bateman, Vice Chair; Schmick, Ranking Minority Member; Bronoske, Davis, Harris,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Macri, Riccelli, Rude, Simmons, Stonier and Tharinger.

Minority Report: Without recommendation. Signed by 3 members: Representatives Caldier, Assistant Ranking Minority Member; Maycumber and Ybarra.

Staff: Kim Weidenaar (786-7120).

Background:

The Governor's Emergency Powers.

The Governor has statutory authority to proclaim a state of emergency when a public disorder, disaster, energy emergency, or riot exists within the state and it affects life, health, property, or the public peace. An emergency proclamation permits the Governor to exercise the office's emergency powers, which are also provided by statute. These emergency powers fall into two general categories: the power to prohibit certain activities; and the power to waive or suspend certain statutory or regulatory provisions of law.

The Governor's power to waive or suspend provisions of law includes both statutes and agency rules. Specifically, the Governor may waive or suspend statutory and regulatory obligations or limitations that prescribe the procedures for conduct of state business, and the Governor may waive or suspend state agency orders, rules, or regulations—but only if certain conditions are met. Those conditions are:

- strict compliance with the statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;
- authority to waive or suspend a specific provision has not already been expressly granted to another statewide elected official;
- the waiver or suspension would not conflict with federal requirements for federal funds to the state; and
- the waiver or suspension would not conflict with First Amendment rights to freedom of speech or peaceable assembly.

A state of emergency terminates when the Governor proclaims that the emergency is over. The Governor must terminate the state of emergency proclamation when order has been restored in the affected area. The willful violation of a provision of an order issued under the Governor's emergency powers is a gross misdemeanor.

Coronavirus Disease 2019 Proclamations.

On February 29, 2020, Governor Jay Inslee issued Proclamation 20-05, which declared a state of emergency throughout Washington as a result of the Coronavirus Disease 2019 (COVID-19) pandemic. The Governor has since exercised his emergency powers through a number of proclamations that prohibit certain activities and waive or suspend certain laws and regulations, including waiving certain statutes and regulations related to health care facilities and providers.

Summary of Amended Bill:

If when declaring or amending a statewide state of emergency, the Governor determines that the emergency demands immediate action by hospitals to prevent critical system failures and ensure hospitals' ability to work with emergency management, the Governor must, either simultaneously or within five days of the determination, specify within the emergency order which of the following statutes and substantially equivalent regulations must be waived or suspended based on the nature of the emergency:

- certificate of need requirements for:
 - the construction, development, or opening of a new health care facility;
 - changes in bed capacity for a health care facility that increases the total number of licensed beds or redistributes beds among acute care, nursing home care, and assisted living facilities; and
 - increases in the number of dialysis stations in a kidney disease center;
- certificate of need and construction review requirements for:
 - a rural health care facility formerly licensed as an acute care hospital to apply for a hospital license;
 - a rural hospital that reduced beds to become a rural primary care hospital to increase the number of beds licensed to the previously licensed number of beds; and
 - a rural hospital participating in the Washington Rural Health Access Preservation pilot to renew its license;
- hospital licensure and regulatory requirements that:
 - limit acute care hospital licenses to only the named premises; and
 - require a hospital to request clinical privilege information on physicians, physician assistants, or advanced registered nurse practitioners before granting privileges;
- pharmacy licensure requirements that:
 - limit pharmacy and hospital pharmacy licenses to only the location listed; and
 - the requirement to exhibit the pharmacy license on the premises; and
- health care provider requirements that:
 - require any extension or modification of the duration of any licensing, certification, or registration period to be completed by rule or regulation; and
 - require a health care provider supervising a medical assistant to be physically present and in the facility.

Hospitals that rely on any of the above waivers or suspensions must notify the Department of Health within 14 days. The above waivers or suspensions do not apply except to projects undertaken to provide or respond to surge capacity, including temporary increases in bed capacity, during the state of emergency. These projects and increases in bed capacity must comply with these statutory and regulatory provisions after the termination of the state of emergency.

The act does not prevent the Governor from waiving or suspending any statutes or

substantially equivalent regulations outside the time frames established in the bill. The Governor may waive or suspend any additional statutes as the Governor deems necessary.

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) When the Governor declared a state of emergency for COVID-19, a lot of time and energy from the Governor's Office, agencies, and stakeholders went into determining which statutes needed to be waived in order to respond. The goal of this bill was to memorialize the statutes and regulations that were most critical to waive. During the process this bill has been revised and it no longer includes an automatic on/off switch that would waive certain statutes and regulations during a state of emergency. Now the bill is more of a planning document, which will help speed up the response during the next emergency.

(Opposed) None.

Persons Testifying: Zosia Stanley, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying: None.