

SENATE BILL REPORT

SB 5178

As Reported by Senate Committee On:
Health & Long Term Care, January 29, 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 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.

Sponsors: Senators Cleveland, Muzzall and Wilson, C..

Brief History:

Committee Activity: Health & Long Term Care: 1/25/21, 1/29/21 [DPS].

Brief Summary of First Substitute Bill

- Allows automatic waivers for certain certificate of need, facility licensure, pharmacy licensure, and health care provider licensure statutes during a Governor declared statewide state of emergency.
- Provides protection for health care facilities from state sanctions if the health care facility relies on the waiver of a federal statute during an emergency when the corresponding state statute has not been waived.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5178 be substituted therefor, and the substitute bill do pass.

Signed by Senators Cleveland, Chair; Frockt, Vice Chair; Muzzall, Ranking Member; Conway, Holy, Keiser, Padden, Randall, Rivers, Robinson, Van De Wege and Wilson, J.

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.

Staff: Ricci Crinzi (786-7253)

Background: 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.

In response to the COVID-19 pandemic and the state of emergency declared in Washington State, the Governor waived certain statutes related to health care facilities and providers. When determining what health care related statutes would be waived, the Governor's Office worked with the Department of Health, the State Board of Health, and health care professional regulatory boards and commissions, and stakeholders, to decide which statutes would be waived.

Summary of Bill (First Substitute): Select state health care laws addressing certificate of need, facility, and provider licensure, are automatically waived or suspended upon the governor's declaration of a statewide state of emergency unless:

- the Governor issues an order rejecting the waiver of all or some of the statutes based on a finding that compliance would not prevent, hinder, or delay necessary action in responding to the emergency or disaster; or
- the statute relies on a federal statute that has not been waived and the waiver would result in failure to comply with federal law.

Certificate of need requirements are waived for:

- the construction, development, or opening of a new health care facility, or the reopening of a shuttered facility;
- the establishment of a new health care facility including hospice care centers,

- hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers, ambulatory surgical facilities, and home health agencies;
- 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;
 - bed capacities;
 - critical access hospital bed limitations of twenty-five beds; and
 - dialysis chair limitations at kidney dialysis centers.

Facility licensure requirements are waived for:

- acute care facility licenses that have a 36 month duration;
- licensed premises requirements for hospice care centers, hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers, ambulatory surgical facilities, and home health agencies;
- acute care bed capacities that must be approved by the Department of Health or the Medicare provider agreement;
- requiring acute care facilities to wait for approval before inpatient beds are added;
- limitations on specialty hospital inpatient bed limitations;
- hospital physical location requirements to provide for storage, plumbing, water supply, ventilation, clean interior surfaces and finishes, and a functional patient call system;
- acute care building construction regulations and fire inspections;
- requiring a hospital to request clinical privilege information on physicians, physician assistants, or advanced registered nurse practitioners before granting privileges;
- license requirements and certificate of need requirements for rural health care facilities participating in the Washington rural health access preservation pilot; and
- notifications of adverse health events when a medical facility confirms that an adverse event has occurred and the timing of submitting that information to the Department of Health.

Pharmacy licensure requirements are waived for:

- pharmacy license locations;
- hospital pharmacy license locations; and
- license of location exhibition requirements.

Health care provider requirements are waived for:

- specific due dates required for health care professional credentials;
- medical assistant supervision;
- the renewal of retired active health care professional credentials;
- the renewal of retired volunteer medical worker licenses; and
- the continuing competency for retired volunteered medical workers.

The select state health care laws that are automatically waived or suspended upon the Governor's declaration of a statewide state of emergency do not apply except to projects

undertaken to provide or respond to surge capacity, including temporary increases in bed capacity, during the Governor's declaration of a statewide state of emergency. Projects and increases in bed capacity must comply with these statutory and regulatory provisions after the termination of the state of emergency.

If the Governor's proclamation of a state of emergency coincides with a state of emergency declaration by the President of the United States, that includes the state of Washington and any agency of the federal government that waives or suspends statutory and regulatory obligations or limitations that apply to the health care system operating in this state, for which there is a corresponding state statute or regulation that has not been automatically waived under this section, the state may not penalize a health care facility or a health care provider for acting in reliance on the federal waiver or suspension until the state explicitly declines to waive or suspend the corresponding state statute or regulation.

EFFECT OF CHANGES MADE BY HEALTH & LONG TERM CARE COMMITTEE (First Substitute):

- Changes the statutory authority from the emergency management chapter to the Governor's powers chapter.
- Clarifies that waivers and suspensions of select health care laws applies to projects undertaken to provide or respond to surge capacity.
- Adds two additional pharmacy statutes and regulations automatically waived or suspended during a governor declared state of emergency.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill provides guidance for future statewide catastrophes. It is now known what is needed of the healthcare system to respond to an emergency. Health care facilities need the ability to move beds, repurpose space, modify pharmacy locations, and bring on workforce quickly. It took state waivers too long to be issued during the onset of the COVID-19 pandemic. Hospitals had to make changes without state waivers to address the surge of people who had COVID-19 and figure out how to protect people at the hospital who did not have COVID-19. These are key healthcare waivers for the health system to be prepared for the future.

Persons Testifying: PRO: Senator Annette Cleveland, Prime Sponsor; Zosia Stanley, Washington State Hospital Association; Julie Petersen, Kittitas Valley Healthcare; Jeff

Tomlin, EvergreenHealth; Roman Daniels-Brown, Washington Ambulatory Surgery Centers.

Persons Signed In To Testify But Not Testifying: No one.