

SENATE BILL REPORT

ESSB 5178

As Passed Senate, March 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 & Long Term Care: 1/25/21, 1/29/21 [DPS].

Floor Activity: Passed Senate: 3/9/21, 47-2.

Brief Summary of Engrossed First Substitute Bill

- Requires the Governor, within five days of declaring a state of emergency, to determine if specified health care statutes and corresponding regulations will be 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.

Staff: Ricci Crinzi (786-7253)

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.

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 Engrossed First Substitute 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 health system failures and ensure hospitals' ability to work with emergency management in responding to the emergency, the Governor shall, either simultaneously or within five days of that determination, specify within the emergency order or amended emergency order which of the following health care related statutes and substantially equivalent regulations shall be waived or suspended based on the nature of the declared emergency.

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;
- 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.

Facility licensure requirements are waived for:

- hospital premise license requirements;
- requiring a hospital to request clinical privilege information on physicians, physician assistants, or advanced registered nurse practitioners before granting privileges; and
- license requirements and certificate of need requirements for rural health care facilities participating in the Washington Rural Health Access Preservation pilot.

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; and
- medical assistant supervision.

Hospitals that rely on waivers or suspensions of select state health care laws shall notify the Department of Health within 14 days of initiating such reliance.

The Governor is not prevented from waving or suspending any statutes and substantially equivalent regulations outside the established time frames and may waive or suspend any additional statutes, without limitation, as the Governor deems necessary to address the emergency.

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.

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.