

E2SHB 2128 - S COMM AMD

By Committee on Health & Long Term Care

NOT CONSIDERED 03/07/2024

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

3 "NEW SECTION. **Sec. 1.** (1) The certificate of need modernization
4 advisory committee is established with members as provided in this
5 subsection:

6 (a) The speaker of the house of representatives shall appoint one
7 member from each of the two largest caucuses of the house of
8 representatives;

9 (b) The president of the senate shall appoint one member from
10 each of the two largest caucuses of the senate;

11 (c) The secretary of the department of health, or the secretary's
12 designee;

13 (d) The director of the health care authority, or the director's
14 designee;

15 (e) The secretary of the department of social and health
16 services, or the secretary's designee;

17 (f) The insurance commissioner, or the commissioner's designee;
18 and

19 (g) The following individuals appointed by the governor:

20 (i) A representative from the governor's office;

21 (ii) A representative from the office of financial management;

22 (iii) A representative of a large private employer-sponsored
23 health benefits purchaser;

24 (iv) A representative of a small private employer-sponsored
25 health benefits purchaser;

26 (v) A representative of labor organizations;

27 (vi) A representative of health carriers;

28 (vii) A representative of health maintenance organizations;

29 (viii) A tribal representative;

30 (ix) Two health care consumers;

1 (x) A representative of an organization that represents health
2 care consumers or a patient coalition group;

3 (xi) A representative of an association representing physicians
4 in Washington; and

5 (xii) One representative from each category of health care
6 facility, as specified in the definition of "health care facility" in
7 RCW 70.38.025. For this purpose, acute care hospitals licensed under
8 chapter 70.41 RCW and psychiatric hospitals are separate categories,
9 and for-profit and nonprofit kidney disease centers are separate
10 categories.

11 (2)(a) The governor shall appoint the chair of the advisory
12 committee. The chair is responsible for convening advisory committee
13 meetings every two months.

14 (b) The office of financial management shall contract with a
15 contractor with relevant expertise to complete the review of items
16 found in subsection (3) of this section, to the extent information
17 and research is available, and provide a report of all research and
18 findings. The contractor shall interview every member of the advisory
19 committee for their input on the review, in addition to other
20 stakeholders as determined by the contractor. The contractor shall
21 provide regular progress reports to the advisory committee and by
22 December 15, 2024, shall submit initial findings to the advisory
23 committee and relevant policy committees of the legislature. The
24 contract is exempt from the competitive procurement requirements in
25 chapter 39.26 RCW.

26 (c) The office of financial management shall contract or hire
27 dedicated staff to facilitate and provide staff support to the
28 nonlegislative members and for facilitation and project management
29 support of the committee. Senate committee services and the house of
30 representatives office of program research shall provide staff
31 support to the legislative members of the committee. The contractor
32 shall support the work of all members of the committee, legislative
33 and nonlegislative.

34 (3) The contractor shall provide the following information to the
35 advisory committee to inform their deliberations:

36 (a) Research on the role and impact of certificate of need
37 programs in other states, including:

38 (i) The scope of each reviewed state's certificate of need
39 legislation, including covered facility types and services;

1 (ii) Factors considered in reviewing certificate of need
2 applications;

3 (iii) The process for reviewing certificate of need applications
4 and appeals of initial certificate of need determinations and the
5 average review timeline for a decision;

6 (iv) The scope of authority regarding conditions that can be
7 included in any certificate of need approval and mechanisms to
8 monitor and enforce compliance with such conditions;

9 (v) Any reports or studies regarding the function and outcome of
10 the state's certificate of need program; and

11 (vi) For states that have repealed their certificate of need
12 programs, the state's experience since repeal with respect to
13 expansion or contraction of supply of those services and facilities
14 no longer subject to a certificate of need; and

15 (b) A review of recent research related to the impacts of
16 certificate of need programs on access, quality, and cost of health
17 care services. To the extent information and research is available,
18 the review should include available information and research on the
19 issues referenced in subsection (4) of this section related to
20 Washington's certificate of need program.

21 (4) The advisory committee shall consider and review the
22 following issues:

23 (a) The role that the certificate of need program may or may not
24 have in the current health care system with respect to containing
25 health care costs associated with the health care system as a whole
26 and for each category of health care facility, health service, or
27 other activity subject to the certificate of need program under RCW
28 70.38.105;

29 (b) Whether the certificate of need program promotes and
30 facilitates patient care in urban, suburban, and rural parts of
31 Washington for each category of health care facility, health service,
32 or other activity subject to the certificate of need program under
33 RCW 70.38.105;

34 (c) Whether the certificate of need program increases the quality
35 of health care services;

36 (d) Whether patients have more health care choices because of the
37 certificate of need program;

38 (e) Whether the certificate of need program facilitates the
39 adoption of innovative and cost-effective new health care
40 technologies;

1 (f) Whether the certificate of need program reduces the
2 duplication or oversaturation of health care services;

3 (g) Whether the certificate of need program assists in the
4 establishment of an adequate health care workforce;

5 (h) Whether the certificate of need program creates an
6 unnecessary barrier to the establishment of needed health care
7 facilities and health services;

8 (i) Whether the certificate of need program facilitates or
9 creates barriers for new forms of providing care, such as telehealth
10 services and stand-alone emergency rooms;

11 (j) Whether and how the certificate of need program addresses
12 equitable access to care for consumers who are uninsured or receiving
13 coverage through the medicaid and medicare programs;

14 (k) Whether and how the certificate of need program impacts a
15 health care facility's payor mix; and

16 (l) Ways to modernize the certificate of need program to improve
17 its performance with respect to the items identified in (a) through
18 (k) of this subsection, including:

19 (i) Consideration of the need to continue to require the coverage
20 of each category of health care facility, health service, or other
21 activity subject to the certificate of need program under RCW
22 70.38.105, and consideration of the elimination of any categories
23 from certificate of need coverage or elimination of the certificate
24 of need program, as a whole;

25 (ii) Consideration of the need to expand the certificate of need
26 program to include other health care facilities, health services, or
27 other activities;

28 (iii) Ways to improve the certificate of need program through
29 modernizing its goals, criteria, and processes; and

30 (iv) Options to make the certificate of need program work better
31 to meet the needs of patients in Washington.

32 (5) The advisory committee and contractor shall review the items
33 in this section in light of:

34 (a) Recent and projected population and demographic trends in
35 Washington, including age, race, ethnicity, gender, and geographic
36 population density; and

37 (b) Recent and projected developments in the health care system
38 in Washington and nationally, including health care workforce
39 shortages, health care provider consolidation within the health care
40 system, the increased use of telemedicine and other new methods of

1 accessing and providing care, the increased availability of
2 information for patients about health care provider and facility cost
3 and quality, state and national health care initiatives since 2010,
4 and the increased availability of data related to the delivery and
5 cost of health care.

6 (6) (a) Members are not entitled to reimbursement for travel
7 expenses if they are compensated or reimbursed for participating on
8 behalf of an employer, governmental entity, or other organization.

9 (b) Any reimbursement for members not identified in (a) of this
10 subsection is subject to chapter 43.03 RCW.

11 (7) The advisory committee is subject to the requirements of
12 chapters 42.30 and 42.56 RCW.

13 (8) The department of health shall provide the contractor with
14 any nonconfidential data or information in the department of health's
15 possession as needed to complete the review under this section. The
16 contractor shall sign a data sharing agreement with the department of
17 health to access this data or information.

18 (9) The contractor shall submit their findings and
19 recommendations to the governor and each chamber of the legislature
20 in two phases.

21 (a) By December 15, 2024, the contractor shall submit a
22 preliminary report summarizing the findings based on the review of
23 items identified in subsection (3) of this section. This report must
24 be submitted to the governor and relevant committees of the
25 legislature and presented to the advisory committee.

26 (b) By October 15, 2025:

27 (i) The contractor shall formally present their findings based on
28 the review of items identified in subsection (3) of this section and
29 their recommendations to the advisory committee. The recommendations
30 must focus on whether to modernize, expand, reduce, eliminate, or
31 maintain the certificate of need program based on access to care,
32 quality of care, and total health care expenditures. The advisory
33 committee must have an opportunity to provide feedback to the
34 contractor on all recommendations.

35 (ii) A final report must be submitted to the advisory committee,
36 the governor, and relevant committees of the legislature. The final
37 report to the legislature must include the contractor's findings,
38 recommendations, and any feedback from the advisory committee on the
39 recommendations.

40 (10) This section expires July 1, 2026.

1 NEW SECTION. **Sec. 2.** If specific funding for the purposes of
2 this act, referencing this act by bill or chapter number, is not
3 provided by June 30, 2024, in the omnibus appropriations act, this
4 act is null and void."

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5 On page 1, line 2 of the title, after "program;" strike the
6 remainder of the title and insert "creating new sections; and
7 providing an expiration date."

EFFECT: Requires the Governor to appoint members to the Certificate of Need Modernization Advisory Committee representing both for-profit and nonprofit kidney disease centers.

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