

SENATE BILL REPORT

SSB 5920

As Passed Senate, February 7, 2024

Title: An act relating to lifting certificate of need requirements for the construction of psychiatric hospitals and the addition of psychiatric beds.

Brief Description: Lifting certificate of need requirements for psychiatric hospitals and beds.

Sponsors: Senate Committee on Health & Long Term Care (originally sponsored by Senators Padden, Fortunato, Keiser, Warnick and Wilson, L.).

Brief History:

Committee Activity: Health & Long Term Care: 1/18/24, 1/25/24 [DPS].

Floor Activity: Passed Senate: 2/7/24, 47-0.

Brief Summary of First Substitute Bill

- Reinstates Department of Health authority until June 30, 2028 to grant certificate of need exemptions related to increasing psychiatric bed capacity by allowing addition of psychiatric beds or construction of a new psychiatric hospital.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5920 be substituted therefor, and the substitute bill do pass.

Signed by Senators Cleveland, Chair; Robinson, Vice Chair; Rivers, Ranking Member; Muzzall, Assistant Ranking Member; Conway, Dhingra, Holy, Padden, Randall and Van De Wege.

Staff: Kevin Black (786-7747)

Background: Certificate of Need. A certificate of need is a health planning regulatory

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process administered by the Department of Health (DOH) in which entities undertaking to construct, develop, establish, sell, purchase, lease, renovate, or alter a health care facility, hospital, or nursing home must apply for a certificate of need or exemption from DOH before proceeding, subject to certain exceptions and limitations. DOH must charge a fee for reviewing certificate of need applications and applications for exemptions which is sufficient to cover the full cost of the review and exemption. The statutory declared purpose for the certificate of need policy is to promote, maintain, and assure the health of all citizens in Washington while controlling increases in health care costs and recognizing prevention as a priority.

History. The first certificate of need program in the United States was enacted in New York in 1964. For a period of time starting in 1974, the federal government required all states to establish and maintain certificate of need programs in order to receive federal funds to support state and local health planning activities. Washington State's certificate of need program was enacted in 1979. Federal certificate of need mandates were repealed in 1987. Washington is part of 35 states and the District of Columbia which still maintain certificate of need programs. According to the National College of State Legislatures, there are no certificate of need programs or similar programs in California, Colorado, Idaho, Kansas, New Hampshire, New Mexico, North Dakota, Pennsylvania, South Dakota, Texas, Utah, and Wyoming.

Exemptions for Increases in Psychiatric Beds or Construction of Psychiatric Hospitals Available From 2014 to 2023. The Legislature suspended the certificate of need requirement for increasing psychiatric beds within a hospital in 2014. Initially applicable for only one year, the exemption was extended by the Legislature in 2017, and expanded to include construction, development, or establishment of psychiatric hospitals. Similar extensions were enacted in 2019 and 2021. The authority to grant exemptions was subject to certain conditions related to notification and timing. Psychiatric hospitals were limited to a one-time addition of up to 30 new psychiatric beds, and in exchange the psychiatric hospital was required to commit to maintain a payer mix of at least 50 percent Medicare and Medicaid and to agree to let beds remain dedicated to psychiatric services unless the psychiatric hospital applied for a new certificate of need or voluntarily reduced its licensed capacity. DOH's authority to grant new certificate of need exemptions related to psychiatric beds or psychiatric hospitals expired in law on June 30, 2023.

Summary of First Substitute Bill: DOH authority to grant certificate of need exemptions which expired on June 30, 2023, is reinstated until June 30, 2028, allowing DOH to grant exemptions for:

- adding new psychiatric beds to a hospital;
- changing the use of beds within a hospital to increase the number of psychiatric beds;
- or
- constructing, developing, or establishing a new psychiatric hospital.

This authority is subject to the same limitations and restrictions as the authority which

expired in 2023.

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: A couple of years ago a company was deterred from building a psychiatric hospital in Spokane Valley due to the certificate of need process. It was built in California instead, which does not require a certificate of need. The federal government figured out that certificates of need do not work and repealed federal certificate of need requirements in 1987. Overall certificate of need requirements do not serve consumers well, raise the cost of health care services, and shield incumbent facilities from competition which would benefit consumers. The laws are subject to overreach; the Washington Supreme Court previously ruled against DOH's former certificate of need practices. This bill is part of a larger trend and is consistent with principles of free markets and reducing regulatory burdens on businesses. This bill addresses a need for vulnerable people and illustrates how certificates of need hurt Washingtonians. The need for more beds is clear, and the certificate of need law is an unnecessary barrier. States with these laws have higher costs and fewer medical services. The state should pursue full repeal.

CON: Our hospital made significant investments in our business following a certificate of need process which lasted several years. To repeal it now would create an uneven playing field. Increased competition would strain the workforce and lead to unsustainable higher costs. Please do not tamper with these laws until a comprehensive review is completed. Repeal would negatively impact hospitals with an oversupply of psychiatric beds. Excess beds cannot be staffed and will force existing hospitals to close. Historically you have provided for a waiver of certificate of need requirements, not a repeal. The conditions for waiver help ensure services are dedicated for Medicaid patients.

Persons Testifying: PRO: Senator Mike Padden, Prime Sponsor; Jackson Maynard, Citizen Action Defense Fund; Elizabeth Hovde, Washington Policy Center.

CON: Lisa Thatcher, Washington State Hospital Association; Neil Lacanlale, South Sound Behavioral Hospital; Austin Martin, Smokey Point Behavioral Hospital.

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