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**SENATE BILL 6101**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Senators Cleveland, Rivers, Hasegawa, Kuderer, Randall, Robinson, Salomon, Van De Wege, and Wellman

Read first time 01/09/24. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to establishing a regulatory structure for  
2 licensed acute care hospitals to provide hospital at-home services;  
3 amending RCW 70.127.040 and 70.38.111; adding a new section to  
4 chapter 70.41 RCW; adding a new section to chapter 70.126 RCW;  
5 creating a new section; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

8 (a) "Hospital at home" is a service that provides safe and  
9 effective care, improves outcomes, and benefits patients. It was  
10 developed by Johns Hopkins healthcare solutions and has been used by  
11 the veteran's health administration and medical centers in the United  
12 States and around the world;

13 (b) Washington hospitals began offering this service following  
14 the launch of the centers for medicare and medicaid services acute  
15 hospital care at-home program in response to the COVID-19 pandemic.  
16 Since that time, participating Washington patients have experienced  
17 fewer readmissions and shorter treatment periods and report high  
18 rates of satisfaction;

19 (c) Authorizing the continuation of this service would benefit  
20 patients in Washington, a state with one of the lowest number of beds

1 per patient population in the country and a track record of providing  
2 high quality inpatient care; and

3 (d) Immediate authorization of this service is necessary to  
4 preserve continuity of care and provision of services without  
5 disruption.

6 (2) It is the intent of the legislature to authorize acute care  
7 hospitals licensed under this chapter to continue providing hospital  
8 at-home services and direct the department to adopt rules including  
9 those services among those that may be offered by such hospitals.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.41  
11 RCW to read as follows:

12 (1) Hospitals subject to this chapter may provide hospital at-  
13 home services if they have secured a federal program waiver prior to  
14 when the department adopts rules pursuant to this section. Hospitals  
15 that have secured a federal program waiver and intend to operate  
16 hospital at-home services within Washington state shall notify the  
17 department within 30 days of the effective date of this section.

18 (2) (a) The department shall adopt rules by December 31, 2025, to  
19 implement this act and add hospital at-home services to those  
20 services that may be provided by an acute care hospital licensed  
21 under this chapter. The rules shall establish standards for the  
22 operation of a hospital at-home program. The standards must be  
23 substantially similar to the provisions of the federal program,  
24 including: Environment of care requirements; admission, transfer,  
25 discharge, and referral processes; inclusion and exclusion criteria;  
26 geographic criteria; and data reporting requirements. The standards  
27 shall not include requirements that would preclude a hospital from  
28 complying with the requirements of the federal program.

29 (b) Once rules are established, hospitals may apply to the  
30 department for approval to add hospital at-home services as a  
31 hospital service line. Hospitals that have secured a federal program  
32 waiver prior to rule adoption may provide hospital at-home services  
33 while applying for approval. The department shall approve a hospital  
34 to provide hospital at-home services if the application is consistent  
35 with the standards established in rule. RCW 43.70.115 and chapter  
36 34.05 RCW govern notice and adjudicative proceedings related to  
37 denial of an application. The department may set a one-time  
38 application fee in rule. The fees charged shall not exceed the actual

1 cost of staff time to review. The administration of the program must  
2 be covered by existing licensing fees.

3 (3) Hospital at-home services are not subject to chapter 70.126  
4 or 70.127 RCW.

5 (4) Hospital at-home services do not count as an increase in the  
6 number of the hospital's licensed beds and are not subject to chapter  
7 70.38 RCW.

8 (5) The definitions in this subsection apply throughout this  
9 section unless the context clearly requires otherwise.

10 (a) "Hospital at-home services" means acute care services  
11 provided by a licensed acute care hospital to a patient outside of  
12 the hospital's licensed facility and within a home or any location  
13 determined by the patient receiving the service.

14 (b) "Federal program" means the acute hospital care at-home  
15 program established by the federal centers for medicare and medicaid  
16 services under 42 U.S.C. Sec. 1320b-5 and extended by 42 U.S.C Sec.  
17 1395cc-7, or any successor program.

18 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.126  
19 RCW to read as follows:

20 This chapter does not apply to hospital at-home services provided  
21 by an acute care hospital licensed under chapter 70.41 RCW.

22 **Sec. 4.** RCW 70.127.040 and 2020 c 258 s 2 are each amended to  
23 read as follows:

24 The following are not subject to regulation for the purposes of  
25 this chapter:

26 (1) A family member providing home health, hospice, or home care  
27 services;

28 (2) A person who provides only meal services in an individual's  
29 permanent or temporary residence;

30 (3) An individual providing home care through a direct agreement  
31 with a recipient of care in an individual's permanent or temporary  
32 residence;

33 (4) A person furnishing or delivering home medical supplies or  
34 equipment that does not involve the provision of services beyond  
35 those necessary to deliver, set up, and monitor the proper  
36 functioning of the equipment and educate the user on its proper use;

37 (5) A person who provides services through a contract with a  
38 licensed agency;

- 1 (6) An employee or volunteer of a licensed agency who provides  
2 services only as an employee or volunteer;
- 3 (7) Facilities and institutions, including but not limited to  
4 nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41  
5 RCW, adult family homes under chapter 70.128 RCW, assisted living  
6 facilities under chapter 18.20 RCW, developmental disability  
7 residential programs under chapter 71A.12 RCW, other entities  
8 licensed under chapter 71.12 RCW, or other licensed facilities and  
9 institutions, only when providing services to persons residing within  
10 the facility or institution;
- 11 (8) Local and combined city-county health departments providing  
12 services under chapters 70.05 and 70.08 RCW;
- 13 (9) An individual providing care to ill individuals, individuals  
14 with disabilities, or vulnerable individuals through a contract with  
15 the department of social and health services;
- 16 (10) Nursing homes, hospitals, or other institutions, agencies,  
17 organizations, or persons that contract with licensed home health,  
18 hospice, or home care agencies for the delivery of services;
- 19 (11) In-home assessments of an ill individual, an individual with  
20 a disability, or a vulnerable individual that does not result in  
21 regular ongoing care at home;
- 22 (12) Services conducted by and for the adherents of a church or  
23 religious denomination that rely upon spiritual means alone through  
24 prayer for healing in accordance with the tenets and practices of  
25 such church or religious denomination and the bona fide religious  
26 beliefs genuinely held by such adherents;
- 27 (13) A medicare-approved dialysis center operating a medicare-  
28 approved home dialysis program;
- 29 (14) A person providing case management services. For the  
30 purposes of this subsection, "case management" means the assessment,  
31 coordination, authorization, planning, training, and monitoring of  
32 home health, hospice, and home care, and does not include the direct  
33 provision of care to an individual;
- 34 (15) Pharmacies licensed under RCW 18.64.043 that deliver  
35 prescription drugs and durable medical equipment that does not  
36 involve the use of professional services beyond those authorized to  
37 be performed by licensed pharmacists pursuant to chapter 18.64 RCW  
38 and those necessary to set up and monitor the proper functioning of  
39 the equipment and educate the person on its proper use;

1 (16) A volunteer hospice complying with the requirements of RCW  
2 70.127.050;

3 (17) A person who provides home care services without  
4 compensation;

5 (18) Nursing homes that provide telephone or web-based  
6 transitional care management services; (~~and~~)

7 (19) A rural health clinic providing health services in a home  
8 health shortage area as declared by the department pursuant to 42  
9 C.F.R. Sec. 405.2416; and

10 (20) Hospital at-home services provided by a hospital pursuant to  
11 section 2 of this act.

12 **Sec. 5.** RCW 70.38.111 and 2021 c 277 s 1 are each amended to  
13 read as follows:

14 (1) The department shall not require a certificate of need for  
15 the offering of an inpatient tertiary health service by:

16 (a) A health maintenance organization or a combination of health  
17 maintenance organizations if (i) the organization or combination of  
18 organizations has, in the service area of the organization or the  
19 service areas of the organizations in the combination, an enrollment  
20 of at least fifty thousand individuals, (ii) the facility in which  
21 the service will be provided is or will be geographically located so  
22 that the service will be reasonably accessible to such enrolled  
23 individuals, and (iii) at least seventy-five percent of the patients  
24 who can reasonably be expected to receive the tertiary health service  
25 will be individuals enrolled with such organization or organizations  
26 in the combination;

27 (b) A health care facility if (i) the facility primarily provides  
28 or will provide inpatient health services, (ii) the facility is or  
29 will be controlled, directly or indirectly, by a health maintenance  
30 organization or a combination of health maintenance organizations  
31 which has, in the service area of the organization or service areas  
32 of the organizations in the combination, an enrollment of at least  
33 fifty thousand individuals, (iii) the facility is or will be  
34 geographically located so that the service will be reasonably  
35 accessible to such enrolled individuals, and (iv) at least seventy-  
36 five percent of the patients who can reasonably be expected to  
37 receive the tertiary health service will be individuals enrolled with  
38 such organization or organizations in the combination; or

1 (c) A health care facility (or portion thereof) if (i) the  
2 facility is or will be leased by a health maintenance organization or  
3 combination of health maintenance organizations which has, in the  
4 service area of the organization or the service areas of the  
5 organizations in the combination, an enrollment of at least fifty  
6 thousand individuals and, on the date the application is submitted  
7 under subsection (2) of this section, at least fifteen years remain  
8 in the term of the lease, (ii) the facility is or will be  
9 geographically located so that the service will be reasonably  
10 accessible to such enrolled individuals, and (iii) at least seventy-  
11 five percent of the patients who can reasonably be expected to  
12 receive the tertiary health service will be individuals enrolled with  
13 such organization;  
14 if, with respect to such offering or obligation by a nursing home,  
15 the department has, upon application under subsection (2) of this  
16 section, granted an exemption from such requirement to the  
17 organization, combination of organizations, or facility.

18 (2) A health maintenance organization, combination of health  
19 maintenance organizations, or health care facility shall not be  
20 exempt under subsection (1) of this section from obtaining a  
21 certificate of need before offering a tertiary health service unless:

22 (a) It has submitted at least thirty days prior to the offering  
23 of services reviewable under RCW 70.38.105(4)(d) an application for  
24 such exemption; and

25 (b) The application contains such information respecting the  
26 organization, combination, or facility and the proposed offering or  
27 obligation by a nursing home as the department may require to  
28 determine if the organization or combination meets the requirements  
29 of subsection (1) of this section or the facility meets or will meet  
30 such requirements; and

31 (c) The department approves such application. The department  
32 shall approve or disapprove an application for exemption within  
33 thirty days of receipt of a completed application. In the case of a  
34 proposed health care facility (or portion thereof) which has not  
35 begun to provide tertiary health services on the date an application  
36 is submitted under this subsection with respect to such facility (or  
37 portion), the facility (or portion) shall meet the applicable  
38 requirements of subsection (1) of this section when the facility  
39 first provides such services. The department shall approve an

1 application submitted under this subsection if it determines that the  
2 applicable requirements of subsection (1) of this section are met.

3 (3) A health care facility (or any part thereof) with respect to  
4 which an exemption was granted under subsection (1) of this section  
5 may not be sold or leased and a controlling interest in such facility  
6 or in a lease of such facility may not be acquired and a health care  
7 facility described in subsection (1)(c) of this section which was  
8 granted an exemption under subsection (1) of this section may not be  
9 used by any person other than the lessee described in subsection  
10 (1)(c) of this section unless:

11 (a) The department issues a certificate of need approving the  
12 sale, lease, acquisition, or use; or

13 (b) The department determines, upon application, that (i) the  
14 entity to which the facility is proposed to be sold or leased, which  
15 intends to acquire the controlling interest, or which intends to use  
16 the facility is a health maintenance organization or a combination of  
17 health maintenance organizations which meets the requirements of  
18 subsection (1)(a)(i) of this section, and (ii) with respect to such  
19 facility, meets the requirements of subsection (1)(a)(ii) or (iii) of  
20 this section or the requirements of subsection (1)(b)(i) and (ii) of  
21 this section.

22 (4) In the case of a health maintenance organization, an  
23 ambulatory care facility, or a health care facility, which ambulatory  
24 or health care facility is controlled, directly or indirectly, by a  
25 health maintenance organization or a combination of health  
26 maintenance organizations, the department may under the program apply  
27 its certificate of need requirements to the offering of inpatient  
28 tertiary health services to the extent that such offering is not  
29 exempt under the provisions of this section or RCW 70.38.105(7).

30 (5)(a) The department shall not require a certificate of need for  
31 the construction, development, or other establishment of a nursing  
32 home, or the addition of beds to an existing nursing home, that is  
33 owned and operated by a continuing care retirement community that:

34 (i) Offers services only to contractual members;

35 (ii) Provides its members a contractually guaranteed range of  
36 services from independent living through skilled nursing, including  
37 some assistance with daily living activities;

38 (iii) Contractually assumes responsibility for the cost of  
39 services exceeding the member's financial responsibility under the  
40 contract, so that no third party, with the exception of insurance

1 purchased by the retirement community or its members, but including  
2 the medicaid program, is liable for costs of care even if the member  
3 depletes his or her personal resources;

4 (iv) Has offered continuing care contracts and operated a nursing  
5 home continuously since January 1, 1988, or has obtained a  
6 certificate of need to establish a nursing home;

7 (v) Maintains a binding agreement with the state assuring that  
8 financial liability for services to members, including nursing home  
9 services, will not fall upon the state;

10 (vi) Does not operate, and has not undertaken a project that  
11 would result in a number of nursing home beds in excess of one for  
12 every four living units operated by the continuing care retirement  
13 community, exclusive of nursing home beds; and

14 (vii) Has obtained a professional review of pricing and long-term  
15 solvency within the prior five years which was fully disclosed to  
16 members.

17 (b) A continuing care retirement community shall not be exempt  
18 under this subsection from obtaining a certificate of need unless:

19 (i) It has submitted an application for exemption at least thirty  
20 days prior to commencing construction of, is submitting an  
21 application for the licensure of, or is commencing operation of a  
22 nursing home, whichever comes first; and

23 (ii) The application documents to the department that the  
24 continuing care retirement community qualifies for exemption.

25 (c) The sale, lease, acquisition, or use of part or all of a  
26 continuing care retirement community nursing home that qualifies for  
27 exemption under this subsection shall require prior certificate of  
28 need approval to qualify for licensure as a nursing home unless the  
29 department determines such sale, lease, acquisition, or use is by a  
30 continuing care retirement community that meets the conditions of (a)  
31 of this subsection.

32 (6) A rural hospital, as defined by the department, reducing the  
33 number of licensed beds to become a rural primary care hospital under  
34 the provisions of Part A Title XVIII of the Social Security Act  
35 Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the  
36 reduction of beds licensed under chapter 70.41 RCW, increase the  
37 number of licensed beds to no more than the previously licensed  
38 number without being subject to the provisions of this chapter.

39 (7) A rural health care facility licensed under RCW 70.175.100  
40 formerly licensed as a hospital under chapter 70.41 RCW may, within



1 three years of the effective date of the rural health care facility  
2 license, apply to the department for a hospital license and not be  
3 subject to the requirements of RCW 70.38.105(4)(a) as the  
4 construction, development, or other establishment of a new hospital,  
5 provided there is no increase in the number of beds previously  
6 licensed under chapter 70.41 RCW and there is no redistribution in  
7 the number of beds used for acute care or long-term care, the rural  
8 health care facility has been in continuous operation, and the rural  
9 health care facility has not been purchased or leased.

10 (8) A rural hospital determined to no longer meet critical access  
11 hospital status for state law purposes as a result of participation  
12 in the Washington rural health access preservation pilot identified  
13 by the state office of rural health and formerly licensed as a  
14 hospital under chapter 70.41 RCW may apply to the department to renew  
15 its hospital license and not be subject to the requirements of RCW  
16 70.38.105(4)(a) as the construction, development, or other  
17 establishment of a new hospital, provided there is no increase in the  
18 number of beds previously licensed under chapter 70.41 RCW. If all or  
19 part of a formerly licensed rural hospital is sold, purchased, or  
20 leased during the period the rural hospital does not meet critical  
21 access hospital status as a result of participation in the Washington  
22 rural health access preservation pilot and the new owner or lessor  
23 applies to renew the rural hospital's license, then the sale,  
24 purchase, or lease of part or all of the rural hospital is subject to  
25 the provisions of this chapter.

26 (9)(a) A nursing home that voluntarily reduces the number of its  
27 licensed beds to provide assisted living, licensed assisted living  
28 facility care, adult day care, adult day health, respite care,  
29 hospice, outpatient therapy services, congregate meals, home health,  
30 or senior wellness clinic, or to reduce to one or two the number of  
31 beds per room or to otherwise enhance the quality of life for  
32 residents in the nursing home, may convert the original facility or  
33 portion of the facility back, and thereby increase the number of  
34 nursing home beds to no more than the previously licensed number of  
35 nursing home beds without obtaining a certificate of need under this  
36 chapter, provided the facility has been in continuous operation and  
37 has not been purchased or leased. Any conversion to the original  
38 licensed bed capacity, or to any portion thereof, shall comply with  
39 the same life and safety code requirements as existed at the time the  
40 nursing home voluntarily reduced its licensed beds; unless waivers

1 from such requirements were issued, in which case the converted beds  
2 shall reflect the conditions or standards that then existed pursuant  
3 to the approved waivers.

4 (b) To convert beds back to nursing home beds under this  
5 subsection, the nursing home must:

6 (i) Give notice of its intent to preserve conversion options to  
7 the department of health no later than thirty days after the  
8 effective date of the license reduction; and

9 (ii) Give notice to the department of health and to the  
10 department of social and health services of the intent to convert  
11 beds back. If construction is required for the conversion of beds  
12 back, the notice of intent to convert beds back must be given, at a  
13 minimum, one year prior to the effective date of license modification  
14 reflecting the restored beds; otherwise, the notice must be given a  
15 minimum of ninety days prior to the effective date of license  
16 modification reflecting the restored beds. Prior to any license  
17 modification to convert beds back to nursing home beds under this  
18 section, the licensee must demonstrate that the nursing home meets  
19 the certificate of need exemption requirements of this section.

20 The term "construction," as used in (b)(ii) of this subsection,  
21 is limited to those projects that are expected to equal or exceed the  
22 expenditure minimum amount, as determined under this chapter.

23 (c) Conversion of beds back under this subsection must be  
24 completed no later than four years after the effective date of the  
25 license reduction. However, for good cause shown, the four-year  
26 period for conversion may be extended by the department of health for  
27 one additional four-year period.

28 (d) Nursing home beds that have been voluntarily reduced under  
29 this section shall be counted as available nursing home beds for the  
30 purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so long  
31 as the facility retains the ability to convert them back to nursing  
32 home use under the terms of this section.

33 (e) When a building owner has secured an interest in the nursing  
34 home beds, which are intended to be voluntarily reduced by the  
35 licensee under (a) of this subsection, the applicant shall provide  
36 the department with a written statement indicating the building  
37 owner's approval of the bed reduction.

38 (10)(a) The department shall not require a certificate of need  
39 for a hospice agency if:

1 (i) The hospice agency is designed to serve the unique religious  
2 or cultural needs of a religious group or an ethnic minority and  
3 commits to furnishing hospice services in a manner specifically aimed  
4 at meeting the unique religious or cultural needs of the religious  
5 group or ethnic minority;

6 (ii) The hospice agency is operated by an organization that:

7 (A) Operates a facility, or group of facilities, that offers a  
8 comprehensive continuum of long-term care services, including, at a  
9 minimum, a licensed, medicare-certified nursing home, assisted  
10 living, independent living, day health, and various community-based  
11 support services, designed to meet the unique social, cultural, and  
12 religious needs of a specific cultural and ethnic minority group;

13 (B) Has operated the facility or group of facilities for at least  
14 ten continuous years prior to the establishment of the hospice  
15 agency;

16 (iii) The hospice agency commits to coordinating with existing  
17 hospice programs in its community when appropriate;

18 (iv) The hospice agency has a census of no more than forty  
19 patients;

20 (v) The hospice agency commits to obtaining and maintaining  
21 medicare certification;

22 (vi) The hospice agency only serves patients located in the same  
23 county as the majority of the long-term care services offered by the  
24 organization that operates the agency; and

25 (vii) The hospice agency is not sold or transferred to another  
26 agency.

27 (b) The department shall include the patient census for an agency  
28 exempted under this subsection (10) in its calculations for future  
29 certificate of need applications.

30 (11) To alleviate the need to board psychiatric patients in  
31 emergency departments and increase capacity of hospitals to serve  
32 individuals on ninety-day or one hundred eighty-day commitment  
33 orders, for the period of time from May 5, 2017, through June 30,  
34 2023:

35 (a) The department shall suspend the certificate of need  
36 requirement for a hospital licensed under chapter 70.41 RCW that  
37 changes the use of licensed beds to increase the number of beds to  
38 provide psychiatric services, including involuntary treatment  
39 services. A certificate of need exemption under this subsection  
40 (11) (a) shall be valid for two years.

1 (b) The department may not require a certificate of need for:

2 (i) The addition of beds as described in RCW 70.38.260 (2) and  
3 (3); or

4 (ii) The construction, development, or establishment of a  
5 psychiatric hospital licensed as an establishment under chapter 71.12  
6 RCW that will have no more than sixteen beds and provide treatment to  
7 adults on ninety or one hundred eighty-day involuntary commitment  
8 orders, as described in RCW 70.38.260(4).

9 (12)(a) An ambulatory surgical facility is exempt from all  
10 certificate of need requirements if the facility:

11 (i) Is an individual or group practice and, if the facility is a  
12 group practice, the privilege of using the facility is not extended  
13 to physicians outside the group practice;

14 (ii) Operated or received approval to operate, prior to January  
15 19, 2018; and

16 (iii) Was exempt from certificate of need requirements prior to  
17 January 19, 2018, because the facility either:

18 (A) Was determined to be exempt from certificate of need  
19 requirements pursuant to a determination of reviewability issued by  
20 the department; or

21 (B) Was a single-specialty endoscopy center in existence prior to  
22 January 14, 2003, when the department determined that endoscopy  
23 procedures were surgeries for purposes of certificate of need.

24 (b) The exemption under this subsection:

25 (i) Applies regardless of future changes of ownership, corporate  
26 structure, or affiliations of the individual or group practice as  
27 long as the use of the facility remains limited to physicians in the  
28 group practice; and

29 (ii) Does not apply to changes in services, specialties, or  
30 number of operating rooms.

31 (13) A rural health clinic providing health services in a home  
32 health shortage area as declared by the department pursuant to 42  
33 C.F.R. Sec. 405.2416 is not subject to certificate of need review  
34 under this chapter.

35 (14) Hospital at-home services, as defined in section 2 of this  
36 act, are not subject to certificate of need review under this  
37 chapter.

38 NEW SECTION. Sec. 6. This act is necessary for the immediate  
39 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes  
2 effect immediately.

--- **END** ---