CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6076

Chapter 27, Laws of 1992
52nd Legislature
1992 Regular Session

RURAL HEALTH FACILITIES--REVISED CERTIFICATE OF NEED REQUIREMENTS

EFFECTIVE DATE: 6/11/92

Passed by the Senate February 12, 1992
Yeas 43  Nays 0

JOEL PRITCHARD
President of the Senate

Passed by the House March 3, 1992
Yeas 96  Nays 0

JOE KING
Speaker of the House of Representatives

CERTIFICATE
I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SUBSTITUTE SENATE BILL 6076 as passed by the Senate and the House of Representatives on the dates hereon set forth.

GORDON A. GOLOB
Secretary

Approved March 20, 1992

FILED
March 20, 1992 - 9:51 a.m.

BOOTH GARDNER
Governor of the State of Washington

Secretary of State
State of Washington
AN ACT Relating to rural health care facilities; amending RCW
70.38.105, 70.38.111, 70.41.090, and 70.175.130; and adding a new
section to chapter 70.175 RCW.

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

Sec. 1. RCW 70.38.105 and 1991 sp.s. c 8 s 4 are each amended to
read as follows:

(1) The department is authorized and directed to implement the
certificate of need program in this state pursuant to the provisions of
this chapter.

(2) There shall be a state certificate of need program which is
administered consistent with the requirements of federal law as
necessary to the receipt of federal funds by the state.

(3) No person shall engage in any undertaking which is subject to
certificate of need review under subsection (4) of this section without
first having received from the department either a certificate of need or an exception granted in accordance with this chapter.

(4) The following shall be subject to certificate of need review under this chapter:

(a) The construction, development, or other establishment of a new health care facility;

(b) The sale, purchase, or lease of part or all of any existing hospital as defined in RCW 70.38.025;

(c) Any capital expenditure for the construction, renovation, or alteration of a nursing home which substantially changes the services of the facility after January 1, 1981, provided that the substantial changes in services are specified by the department in rule;

(d) Any capital expenditure for the construction, renovation, or alteration of a nursing home which exceeds the expenditure minimum as defined by RCW 70.38.025. However, a capital expenditure which is not subject to certificate of need review under (a), (b), (c), or (e) of this subsection and which is solely for any one or more of the following is not subject to certificate of need review except to the extent required by the federal government as a condition to receipt of federal assistance and does not substantially affect patient charges:

(i) Communications and parking facilities;

(ii) Mechanical, electrical, ventilation, heating, and air conditioning systems;

(iii) Energy conservation systems;

(iv) Repairs to, or the correction of, deficiencies in existing physical plant facilities which are necessary to maintain state licensure;

(v) Acquisition of equipment, including data processing equipment, which is not or will not be used in the direct provision of health services;
(vi) Construction which involves physical plant facilities, including administrative and support facilities, which are not or will not be used for the provision of health services;

(vii) Acquisition of land; and

(viii) Refinancing of existing debt;

e) A change in bed capacity of a health care facility which increases the total number of licensed beds or redistributes beds among acute care, nursing home care, and boarding home care if the bed redistribution is to be effective for a period in excess of six months, or a change in bed capacity of a rural health care facility licensed under RCW 70.175.100 that increases the total number of nursing home beds or redistributes beds from acute care or boarding home care to nursing home care if the bed redistribution is to be effective for a period in excess of six months;

f) Any new tertiary health services which are offered in or through a health care facility or rural health care facility licensed under RCW 70.175.100, and which were not offered on a regular basis by, in, or through such health care facility or rural health care facility within the twelve-month period prior to the time such services would be offered;

g) Any expenditure for the construction, renovation, or alteration of a nursing home or change in nursing home services in excess of the expenditure minimum made in preparation for any undertaking under subsection (4) of this section and any arrangement or commitment made for financing such undertaking. Expenditures of preparation shall include expenditures for architectural designs, plans, working drawings, and specifications. The department may issue certificates of need permitting predevelopment expenditures, only, without authorizing any subsequent undertaking with respect to which such predevelopment expenditures are made; and
Any increase in the number of dialysis stations in a kidney disease center.

The department is authorized to charge fees for the review of certificate of need applications and requests for exemptions from certificate of need review. The fees shall be sufficient to cover the full cost of review and exemption, which may include the development of standards, criteria, and policies.

No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section.

Sec. 2. RCW 70.38.111 and 1991 c 158 s 2 are each amended to read as follows:

The department shall not require a certificate of need for the offering of an inpatient tertiary health service by:

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

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

(c) A health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and, on the date the application is submitted under subsection (2) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization;

if, with respect to such offering or obligation by a nursing home, the department has, upon application under subsection (2) of this section, granted an exemption from such requirement to the organization, combination of organizations, or facility.

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

(a) It has submitted at least thirty days prior to the offering of services reviewable under RCW 70.38.105(4)(d) an application for such exemption; and
(b) The application contains such information respecting the organization, combination, or facility and the proposed offering or obligation by a nursing home as the department may require to determine if the organization or combination meets the requirements of subsection (1) of this section or the facility meets or will meet such requirements; and

(c) The department approves such application. The department shall approve or disapprove an application for exemption within thirty days of receipt of a completed application. In the case of a proposed health care facility (or portion thereof) which has not begun to provide tertiary health services on the date an application is submitted under this subsection with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of subsection (1) of this section when the facility first provides such services. The department shall approve an application submitted under this subsection if it determines that the applicable requirements of subsection (1) of this section are met.

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

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

(b) The department determines, upon application, that (i) the entity to which the facility is proposed to be sold or leased, which intends to acquire the controlling interest, or which intends to use the facility is a health maintenance organization or a combination of
health maintenance organizations which meets the requirements of
(1)(a)(i), and (ii) with respect to such facility, meets the
requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)
and (ii).

(4) In the case of a health maintenance organization, an ambulatory
care facility, or a health care facility, which ambulatory or health
care facility is controlled, directly or indirectly, by a health
maintenance organization or a combination of health maintenance
organizations, the department may under the program apply its
certificate of need requirements only to the offering of inpatient
tertiary health services and then only to the extent that such offering
is not exempt under the provisions of this section.

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

(i) Offers services only to contractual members;
(ii) Provides its members a contractually guaranteed range of
services from independent living through skilled nursing, including
some assistance with daily living activities;
(iii) Contractually assumes responsibility for the cost of services
exceeding the member’s financial responsibility under the contract, so
that no third party, with the exception of insurance purchased by the
retirement community or its members, but including the medicaid
program, is liable for costs of care even if the member depletes his or
her personal resources;
(iv) Has offered continuing care contracts and operated a nursing
home continuously since January 1, 1988, or has obtained a certificate
of need to establish a nursing home;
(v) Maintains a binding agreement with the state assuring that financial liability for services to members, including nursing home services, will not fall upon the state;

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

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

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

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

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

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

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

(7) A rural health care facility licensed under RCW 70.175.100
formerly licensed as a hospital under chapter 70.41 RCW may, within
three years of the effective date of the rural health care facility
license, apply to the department for a hospital license and not be
subject to the requirements of RCW 70.38.105(4)(a) as the construction,
development, or other establishment of a new hospital, provided there
is no increase in the number of beds previously licensed under chapter
70.41 RCW and there is no redistribution in the number of beds used for
acute care or long-term care, the rural health care facility has been
in continuous operation, and the rural health care facility has not
been purchased or leased.

Sec. 3. RCW 70.41.090 and 1989 1st ex.s. c 9 s 611 are each
amended to read as follows:

(1) No person or governmental unit of the state of Washington,
acting separately or jointly with any other person or governmental
unit, shall establish, maintain, or conduct a hospital in this state,
or use the word "hospital" to describe or identify an institution,
without a license under this chapter: PROVIDED, That the provisions of
this section shall not apply to state mental institutions and
psychiatric hospitals which come within the scope of chapter 71.12 RCW.

(2) After June 30, 1989, no hospital shall initiate a tertiary
health service as defined in RCW 70.38.025(14) unless it has received
a certificate of need as provided in RCW 70.38.105 and 70.38.115.

(3) A rural health care facility licensed under RCW 70.175.100
formerly licensed as a hospital under this chapter may, within three
years of the effective date of the rural health care facility license,
apply to the department for a hospital license and not be required to
meet certificate of need requirements under chapter 70.38 RCW as a new
health care facility and not be required to meet new construction
requirements as a new hospital under this chapter. These exceptions
are subject to the following: The facility at the time of initial
conversion was considered by the department to be in compliance with
the hospital licensing rules and the condition of the physical plant
and equipment is equal to or exceeds the level of compliance that
existed at the time of conversion to a rural health care facility. The
department shall inspect and determine compliance with the hospital
rules prior to reissuing a hospital license.

A rural hospital, as defined by the department, reducing the number
of licensed beds to become a rural primary care hospital under the
provisions of Part A Title XVIII of the Social Security Act Section
1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction
of licensed beds, increase the number of beds licensed under this
chapter to no more than the previously licensed number of beds without
being subject to the provisions of chapter 70.38 RCW and without being
required to meet new construction requirements under this chapter.
These exceptions are subject to the following: The facility at the
time of the reduction in licensed beds was considered by the department
to be in compliance with the hospital licensing rules and the condition
of the physical plant and equipment is equal to or exceeds the level of
compliance that existed at the time of the reduction in licensed beds.
The department may inspect and determine compliance with the hospital
rules prior to increasing the hospital license.

Sec. 4. RCW 70.175.130 and 1990 c 271 s 18 are each amended to
read as follows:
The department may develop and implement a rural health care plan
and may approve hospital and rural health care facility requests to be
designated as essential access community hospitals or rural primary care hospitals so that such facilities may form rural health networks to preserve health care services in rural areas and thereby be eligible for federal program funding and enhanced medicare reimbursement. The department may monitor any rural health care plan and designated facilities to assure continued compliance with the rural health care plan.

NEW SECTION. Sec. 5. A new section is added to chapter 70.175 RCW to read as follows:

Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities may contact the department for consultative advice before commencing such alteration, addition, or new construction.

Passed the Senate February 12, 1992.
Approved by the Governor March 20, 1992.
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