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SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1330

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State of Washington

54th Legislature

1995 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Dyer, Dellwo and Backlund; by request of Department of Health)

Read first time 03/06/95.

1 AN ACT Relating to health facilities and services; amending RCW  
2 70.38.025, 70.38.105, 70.38.115, and 70.38.135; adding a new chapter to  
3 Title 70 RCW; creating new sections; decodifying RCW 70.38.155,  
4 70.38.156, 70.38.157, 70.38.914, 70.38.915, 70.38.916, 70.38.917,  
5 70.38.918, and 70.38.919; repealing RCW 70.38.095; prescribing  
6 penalties; providing effective dates; and declaring an emergency.

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

8 **Sec. 1.** RCW 70.38.025 and 1991 c 158 s 1 are each amended to read  
9 as follows:

10 When used in this chapter, the terms defined in this section shall  
11 have the meanings indicated.

12 (1) "Board of health" means the state board of health created  
13 pursuant to chapter 43.20 RCW.

14 (2) "Capital expenditure" is an expenditure, including a force  
15 account expenditure (i.e., an expenditure for a construction project  
16 undertaken by a nursing home facility as its own contractor) which,  
17 under generally accepted accounting principles, is not properly  
18 chargeable as an expense of operation or maintenance. Where a person  
19 makes an acquisition under lease or comparable arrangement, or through

1 donation, which would have required review if the acquisition had been  
2 made by purchase, such expenditure shall be deemed a capital  
3 expenditure. Capital expenditures include donations of equipment or  
4 facilities to a nursing home facility which if acquired directly by  
5 such facility would be subject to certificate of need review under the  
6 provisions of this chapter and transfer of equipment or facilities for  
7 less than fair market value if a transfer of the equipment or  
8 facilities at fair market value would be subject to such review. The  
9 cost of any studies, surveys, designs, plans, working drawings,  
10 specifications, and other activities essential to the acquisition,  
11 improvement, expansion, or replacement of any plant or equipment with  
12 respect to which such expenditure is made shall be included in  
13 determining the amount of the expenditure.

14 (3) "Continuing care retirement community" means an entity which  
15 provides shelter and services under continuing care contracts with its  
16 members and which sponsors or includes a health care facility or a  
17 health service. A "continuing care contract" means a contract to  
18 provide a person, for the duration of that person's life or for a term  
19 in excess of one year, shelter along with nursing, medical, health-  
20 related, or personal care services, which is conditioned upon the  
21 transfer of property, the payment of an entrance fee to the provider of  
22 such services, or the payment of periodic charges for the care and  
23 services involved. A continuing care contract is not excluded from  
24 this definition because the contract is mutually terminable or because  
25 shelter and services are not provided at the same location.

26 (4) "Department" means the department of health.

27 (5) "Expenditure minimum" means, for the purposes of the  
28 certificate of need program, one million dollars adjusted by the  
29 department by rule to reflect changes in the United States department  
30 of commerce composite construction cost index; or a lesser amount  
31 required by federal law and established by the department by rule.

32 (6) "Health care facility" means hospices, (~~hospitals, psychiatric~~  
33 ~~hospitals,~~) nursing homes, kidney disease treatment centers,  
34 (~~ambulatory surgical facilities,~~) and home health agencies except a  
35 home health agency operated by the smaller public hospital district  
36 based on assessed valuation in a county with a population of under  
37 twenty thousand with two public hospital districts serving the entire  
38 county, and includes such facilities when owned and operated by a  
39 political subdivision or instrumentality of the state and such other

1 facilities as required by federal law and implementing regulations, but  
2 does not include Christian Science sanatoriums operated, listed, or  
3 certified by the First Church of Christ Scientist, Boston,  
4 Massachusetts. In addition, the term does not include any nonprofit  
5 hospital: (a) Which is operated exclusively to provide health care  
6 services for children; (b) which does not charge fees for such  
7 services; and (c) if not contrary to federal law as necessary to the  
8 receipt of federal funds by the state.

9 (7) "Health maintenance organization" means a public or private  
10 organization, organized under the laws of the state, which:

11 (a) Is a qualified health maintenance organization under Title  
12 XIII, section 1310(d) of the Public Health Services Act; or

13 (b)(i) Provides or otherwise makes available to enrolled  
14 participants health care services, including at least the following  
15 basic health care services: Usual physician services, hospitalization,  
16 laboratory, x-ray, emergency, and preventive services, and out-of-area  
17 coverage; (ii) is compensated (except for copayments) for the provision  
18 of the basic health care services listed in (b)(i) to enrolled  
19 participants by a payment which is paid on a periodic basis without  
20 regard to the date the health care services are provided and which is  
21 fixed without regard to the frequency, extent, or kind of health  
22 service actually provided; and (iii) provides physicians' services  
23 primarily (A) directly through physicians who are either employees or  
24 partners of such organization, or (B) through arrangements with  
25 individual physicians or one or more groups of physicians (organized on  
26 a group practice or individual practice basis).

27 (8) "Health services" means clinically related (i.e., preventive,  
28 diagnostic, curative, rehabilitative, or palliative) services and  
29 includes alcoholism, drug abuse, and mental health services and as  
30 defined in federal law.

31 (9) "Health service area" means a geographic region appropriate for  
32 effective health planning which includes a broad range of health  
33 services.

34 (10) "Person" means an individual, a trust or estate, a  
35 partnership, a corporation (including associations, joint stock  
36 companies, and insurance companies), the state, or a political  
37 subdivision or instrumentality of the state, including a municipal  
38 corporation or a hospital district.

1 (11) "Provider" (~~((generally))~~) means a health care professional or  
2 an organization, institution, or other entity providing health care  
3 (~~((but the precise definition for this term shall be established by rule~~  
4 ~~of the department, consistent with federal law))~~).

5 (12) "Public health" means the level of well-being of the general  
6 population; those actions in a community necessary to preserve,  
7 protect, and promote the health of the people for which government is  
8 responsible; and the governmental system developed to guarantee the  
9 preservation of the health of the people.

10 (13) "Secretary" means the secretary of health or the secretary's  
11 designee.

12 (14) "Tertiary health service" means a specialized service that  
13 meets complicated medical needs of people and requires sufficient  
14 patient volume to optimize provider effectiveness, quality of service,  
15 and improved outcomes of care.

16 (~~((15) "Hospital" means any health care institution which is~~  
17 ~~required to qualify for a license under RCW 70.41.020(2); or as a~~  
18 ~~psychiatric hospital under chapter 71.12 RCW.))~~)

19 **Sec. 2.** RCW 70.38.105 and 1992 c 27 s 1 are each amended to read  
20 as follows:

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

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

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

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

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

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

37 ~~(c))~~) Any capital expenditure for the construction, renovation, or  
38 alteration of a nursing home which substantially changes the services

1 of the facility (~~(after January 1, 1981,)~~) provided that the  
2 substantial changes in services are specified by the department in  
3 rule;

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

13 (i) Communications and parking facilities;

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

16 (iii) Energy conservation systems;

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

20 (v) Acquisition of equipment, including data processing equipment,  
21 which is not or will not be used in the direct provision of health  
22 services;

23 (vi) Construction which involves physical plant facilities,  
24 including administrative and support facilities, which are not or will  
25 not be used for the provision of health services;

26 (vii) Acquisition of land; and

27 (viii) Refinancing of existing debt;

28 (~~(e)~~) (d) A change in bed capacity of a health care facility  
29 which increases the total number of licensed beds or redistributes beds  
30 among acute care, nursing home care, and boarding home care if the bed  
31 redistribution is to be effective for a period in excess of six months,  
32 or a change in bed capacity of a rural health care facility licensed  
33 under RCW 70.175.100 that increases the total number of nursing home  
34 beds or redistributes beds from acute care or boarding home care to  
35 nursing home care if the bed redistribution is to be effective for a  
36 period in excess of six months;

37 (~~(f)~~) (e) Any new tertiary health services which are offered in  
38 or through a health care facility, hospital licensed under RCW  
39 70.41.020(2) or chapter 71.12 RCW, or rural health care facility

1 licensed under RCW 70.175.100(~~(, and which were not offered on a~~  
2 ~~regular basis by, in, or through such health care facility or rural~~  
3 ~~health care facility within the twelve month period prior to the time~~  
4 ~~such services would be offered;~~

5 (g) Any expenditure for the construction, renovation, or alteration  
6 of a nursing home or change in nursing home services in excess of the  
7 expenditure minimum made in preparation for any undertaking under  
8 subsection (4) of this section and any arrangement or commitment made  
9 for financing such undertaking. Expenditures of preparation shall  
10 include expenditures for architectural designs, plans, working  
11 drawings, and specifications. The department may issue certificates of  
12 need permitting predevelopment expenditures, only, without authorizing  
13 any subsequent undertaking with respect to which such predevelopment  
14 expenditures are made)); and

15 (~~(h))~~) (f) Any increase in the number of dialysis stations in a  
16 kidney disease center.

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

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

24 **Sec. 3.** RCW 70.38.115 and 1995 1st sp.s. c 18 s 72 are each  
25 amended to read as follows:

26 (1) Certificates of need shall be issued, denied, suspended, or  
27 revoked by the designee of the secretary in accord with the provisions  
28 of this chapter and rules of the department which establish review  
29 procedures and criteria for the certificate of need program.

30 (2) Criteria for the review of certificate of need applications,  
31 except as provided in subsection (3) of this section for health  
32 maintenance organizations, shall include but not be limited to  
33 consideration of the following:

34 (a) The need that the population served or to be served by such  
35 services has for such services;

36 (b) The availability of less costly or more effective alternative  
37 methods of providing such services;

1 (c) The financial feasibility and the probable impact of the  
2 proposal on the cost of and charges for providing health services in  
3 the community to be served;

4 (d) In the case of health services to be provided, (i) the  
5 availability of alternative uses of project resources for the provision  
6 of other health services, (ii) the extent to which such proposed  
7 services will be accessible to all residents of the area to be served,  
8 and (iii) the need for and the availability in the community of  
9 services and facilities for osteopathic and allopathic physicians and  
10 their patients. The department shall consider the application in terms  
11 of its impact on existing and proposed institutional training programs  
12 for doctors of osteopathy and medicine at the student, internship, and  
13 residency training levels;

14 (e) In the case of a construction project, the costs and methods of  
15 the proposed construction, including the cost and methods of energy  
16 provision, and the probable impact of the construction project reviewed  
17 (i) on the cost of providing health services by the person proposing  
18 such construction project and (ii) on the cost and charges to the  
19 public of providing health services by other persons;

20 ~~((The special needs and circumstances of osteopathic hospitals,  
21 nonallopathic services and children's hospitals;~~

22 ~~(g))~~ Improvements or innovations in the financing and delivery of  
23 health services which foster cost containment and serve to promote  
24 quality assurance and cost-effectiveness;

25 ~~((h))~~ (g) In the case of health services proposed to be provided,  
26 the efficiency and appropriateness of the use of existing services and  
27 facilities similar to those proposed;

28 ~~((i))~~ (h) In the case of existing services or facilities, the  
29 quality of care provided by such services or facilities in the past;  
30 and

31 ~~((j) In the case of hospital certificate of need applications,  
32 whether the hospital meets or exceeds the regional average level of  
33 charity care, as determined by the secretary; and~~

34 ~~(k))~~ (i) In the case of nursing home applications:

35 (i) The availability of other nursing home beds in the planning  
36 area to be served; and

37 (ii) The availability of other services in the community to be  
38 served. Data used to determine the availability of other services will

1 include but not be limited to data provided by the department of social  
2 and health services.

3 (3) A certificate of need application of a health maintenance  
4 organization or a health care facility which is controlled, directly or  
5 indirectly, by a health maintenance organization, shall be approved by  
6 the department if the department finds:

7 (a) Approval of such application is required to meet the needs of  
8 the members of the health maintenance organization and of the new  
9 members which such organization can reasonably be expected to enroll;  
10 and

11 (b) The health maintenance organization is unable to provide,  
12 through services or facilities which can reasonably be expected to be  
13 available to the organization, its health services in a reasonable and  
14 cost-effective manner which is consistent with the basic method of  
15 operation of the organization and which makes such services available  
16 on a long-term basis through physicians and other health professionals  
17 associated with it.

18 A health care facility, or any part thereof, with respect to which  
19 a certificate of need was issued under this subsection may not be sold  
20 or leased and a controlling interest in such facility or in a lease of  
21 such facility may not be acquired unless the department issues a  
22 certificate of need approving the sale, acquisition, or lease.

23 (4) ~~((Until the final expiration of the state health plan as  
24 provided under RCW 70.38.919, the decision of the department on a  
25 certificate of need application shall be consistent with the state  
26 health plan in effect, except in emergency circumstances which pose a  
27 threat to the public health.))~~ The department in making its final  
28 decision may issue a conditional certificate of need if it finds that  
29 the project is justified only under specific circumstances. The  
30 conditions shall directly relate to the project being reviewed. The  
31 conditions may be released if it can be substantiated that the  
32 conditions are no longer valid and the release of such conditions would  
33 be consistent with the purposes of this chapter.

34 (5) Criteria adopted for review in accordance with subsection (2)  
35 of this section may vary according to the purpose for which the  
36 particular review is being conducted or the type of health service  
37 reviewed.

38 (6) The department shall specify information to be required for  
39 certificate of need applications. Within fifteen days of receipt of



1 the application, the department shall request additional information  
2 considered necessary to the application or start the review process.  
3 Applicants may decline to submit requested information through written  
4 notice to the department, in which case review starts on the date of  
5 receipt of the notice. Applications may be denied or limited because  
6 of failure to submit required and necessary information.

7 (7) Concurrent review is for the purpose of comparative analysis  
8 and evaluation of competing or similar projects in order to determine  
9 which of the projects may best meet identified needs. Categories of  
10 projects subject to concurrent review include at least new health care  
11 facilities, new services, and expansion of existing health care  
12 facilities. The department shall specify time periods for the  
13 submission of applications for certificates of need subject to  
14 concurrent review, which shall not exceed ninety days. Review of  
15 concurrent applications shall start fifteen days after the conclusion  
16 of the time period for submission of applications subject to concurrent  
17 review. Concurrent review periods shall be limited to one hundred  
18 fifty days, except as provided for in rules adopted by the department  
19 authorizing and limiting amendment during the course of the review, or  
20 for an unresolved pivotal issue declared by the department.

21 (8) Review periods for certificate of need applications other than  
22 those subject to concurrent review shall be limited to ninety days.  
23 Review periods may be extended up to thirty days if needed by a review  
24 agency, and for unresolved pivotal issues the department may extend up  
25 to an additional thirty days. A review may be extended in any case if  
26 the applicant agrees to the extension.

27 (9) The department or its designee, shall conduct a public hearing  
28 on a certificate of need application if requested unless the review is  
29 expedited or subject to emergency review. The department by rule shall  
30 specify the period of time within which a public hearing must be  
31 requested and requirements related to public notice of the hearing,  
32 procedures, recordkeeping and related matters.

33 (10)(a) Any applicant denied a certificate of need or whose  
34 certificate of need has been suspended or revoked has the right to an  
35 adjudicative proceeding. The proceeding is governed by chapter 34.05  
36 RCW, the Administrative Procedure Act.

37 (b) Any health care facility or health maintenance organization  
38 that: (i) Provides services similar to the services provided by the  
39 applicant and under review pursuant to this subsection; (ii) is located

1 within the applicant's health service area; and (iii) testified or  
2 submitted evidence at a public hearing held pursuant to subsection (9)  
3 of this section, shall be provided an opportunity to present oral or  
4 written testimony and argument in a proceeding under this subsection:  
5 PROVIDED, That the health care facility or health maintenance  
6 organization had, in writing, requested to be informed of the  
7 department's decisions.

8 (c) If the department desires to settle with the applicant prior to  
9 the conclusion of the adjudicative proceeding, the department shall so  
10 inform the health care facility or health maintenance organization and  
11 afford them an opportunity to comment, in advance, on the proposed  
12 settlement.

13 (11) An amended certificate of need shall be required for the  
14 following modifications of an approved project:

15 ~~((a) A new service requiring review under this chapter;~~

16 ~~(b) An expansion of a service subject to review beyond that  
17 originally approved;~~

18 ~~(c) An increase in bed capacity;~~

19 ~~(d))~~ A significant reduction in the scope of a nursing home  
20 project without a commensurate reduction in the cost of the nursing  
21 home project, or a cost increase (as represented in bids on a nursing  
22 home construction project or final cost estimates acceptable to the  
23 person to whom the certificate of need was issued) if the total of such  
24 increases exceeds twelve percent or fifty thousand dollars, whichever  
25 is greater, over the maximum capital expenditure approved. The review  
26 of reductions or cost increases shall be restricted to the continued  
27 conformance of the nursing home project with the review criteria  
28 pertaining to financial feasibility and cost containment.

29 (12) An application for a certificate of need for a nursing home  
30 capital expenditure which is determined by the department to be  
31 required to eliminate or prevent imminent safety hazards or correct  
32 violations of applicable licensure and accreditation standards shall be  
33 approved.

34 (13)(a) Replacement of existing nursing home beds in the same  
35 planning area by an existing licensee who has operated the beds for at  
36 least one year shall not require a certificate of need under this  
37 chapter. The licensee shall give written notice of its intent to  
38 replace the existing nursing home beds to the department and shall  
39 provide the department with information as may be required pursuant to

1 rule. Replacement of the beds by a party other than the licensee is  
2 subject to certificate of need review under this chapter, except as  
3 otherwise permitted by subsection (14) of this section.

4 (b) When an entire nursing home ceases operation, the licensee or  
5 any other party who has secured an interest in the beds may reserve his  
6 or her interest in the beds for eight years or until a certificate of  
7 need to replace them is issued, whichever occurs first. However, the  
8 nursing home, licensee, or any other party who has secured an interest  
9 in the beds must give notice of its intent to retain the beds to the  
10 department of health no later than thirty days after the effective date  
11 of the facility's closure. Certificate of need review shall be  
12 required for any party who has reserved the nursing home beds except  
13 that the need criteria shall be deemed met when the applicant is the  
14 licensee who had operated the beds for at least one year, who has  
15 operated the beds for at least one year immediately preceding the  
16 reservation of the beds, and who is replacing the beds in the same  
17 planning area.

18 (14) In the event that a licensee, who has provided the department  
19 with notice of his or her intent to replace nursing home beds under  
20 subsection (13)(a) of this section, engages in unprofessional conduct  
21 or becomes unable to practice with reasonable skill and safety by  
22 reason of mental or physical condition, pursuant to chapter 18.130 RCW,  
23 or dies, the building owner shall be permitted to complete the nursing  
24 home bed replacement project, provided the building owner has secured  
25 an interest in the beds.

26 **Sec. 4.** RCW 70.38.135 and 1989 1st ex.s. c 9 s 607 are each  
27 amended to read as follows:

28 The secretary shall have authority to:

29 (1) ~~((Provide when needed))~~ Contract for temporary or intermittent  
30 services of experts or consultants or organizations ~~((thereof, by~~  
31 ~~contract, when such services are to be performed on a part time or fee-~~  
32 ~~for service basis));~~

33 (2) Make or cause to be made such on-site surveys of health care or  
34 medical facilities as may be necessary for the administration of the  
35 certificate of need program;

36 (3) ~~((Upon review of recommendations, if any, from the board of~~  
37 ~~health;~~

1       ~~(a))~~ Promulgate rules under which health care ~~((facilities))~~  
2 providers doing business within the state shall submit to the  
3 department such data ~~((related to health and health care))~~ as the  
4 department finds necessary to the performance of its functions under  
5 this chapter;

6       ~~((b))~~ (4) Promulgate rules pertaining to the maintenance and  
7 operation of medical facilities which receive federal assistance under  
8 the provisions of Title XVI;

9       ~~((c))~~ (5) Promulgate rules in implementation of the provisions of  
10 this chapter, including the establishment of procedures for public  
11 hearings for predecisions and post-decisions on applications for  
12 certificate of need; and

13       ~~((d))~~ (6) Promulgate rules providing circumstances and procedures  
14 of expedited certificate of need review if there has not been a  
15 significant change in existing health facilities of the same type or in  
16 the need for such health facilities and services(~~(+~~

17       ~~(4) Grant allocated state funds to qualified entities, as defined~~  
18 ~~by the department, to fund not more than seventy five percent of the~~  
19 ~~costs of regional planning activities, excluding costs related to~~  
20 ~~review of applications for certificates of need, provided for in this~~  
21 ~~chapter or approved by the department; and~~

22       ~~(5) Contract with and provide reasonable reimbursement for~~  
23 ~~qualified entities to assist in determinations of certificates of~~  
24 ~~need)).~~

25       NEW SECTION.     **Sec. 5.**     RCW 70.38.155, 70.38.156, 70.38.157,  
26 70.38.914, 70.38.915, 70.38.916, 70.38.917, 70.38.918, and 70.38.919  
27 are each decodified.

28       NEW SECTION.     **Sec. 6.**     RCW 70.38.095 and 1979 ex.s. c 161 s 9 are  
29 each repealed.

30       NEW SECTION.     **Sec. 7.**     The department of health, in cooperation  
31 with the house of representatives health care committee, shall evaluate  
32 the state's future role in identifying and evaluating community needs  
33 and capacity for health facilities and services. By December 1, 1996,  
34 the department shall provide recommendations on what, if any, system  
35 needs to be maintained that assists communities to make informed  
36 decisions regarding the need for future services and facilities. The

1 study shall include, but not be limited to, evaluating data from other  
2 states that have discontinued certificate of need, evaluate appropriate  
3 levels and provision of charity care in acute settings, looking at such  
4 factors as medicaid/medicare reimbursement rates, usage rates of  
5 facilities according to population and payer factors, and other  
6 indirect indicators of changes in accessibility and quality.

7 NEW SECTION. **Sec. 8.** (1) The enactment of this act shall not have  
8 the effect of terminating, or in any way modifying, the validity of any  
9 certificate of need that shall already have been issued before July 1,  
10 1997.

11 (2) Any certificate of need application that was submitted and  
12 declared complete, but upon which final action had not been taken  
13 before July 1, 1997, shall be reviewed and action taken based on  
14 chapter 70.38 RCW as in effect before July 1, 1997.

15 NEW SECTION. **Sec. 9.** If any part of this act is found to be in  
16 conflict with federal requirements that are a prescribed condition to  
17 the allocation of federal funds to the state, the conflicting part of  
18 this act is inoperative solely to the extent of the conflict and with  
19 respect to the agencies directly affected, and this finding does not  
20 affect the operation of the remainder of this act in its application to  
21 the agencies concerned. The rules under this act shall meet federal  
22 requirements that are a necessary condition to the receipt of federal  
23 funds by the state.

24 NEW SECTION. **Sec. 10.** If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 11.** Sections 1 through 6 and 8 of this act  
29 shall take effect July 1, 1997.

30 NEW SECTION. **Sec. 12.** The legislature finds that ambulatory  
31 surgical centers have provided the citizens of Washington state access  
32 to various routine surgical and similar invasive medical procedures not  
33 requiring hospitalization, resulting in reduced health care costs  
34 consistent with the intent of health care reform. However, the

1 delivery of these services may put patients at risk due to the invasive  
2 nature of the procedures performed or the use of general anesthesia and  
3 the short patient recovery time prior to discharge.

4 It is the intent of the legislature to protect the citizens of  
5 Washington state by licensing ambulatory surgical centers and by  
6 adopting and enforcing minimum standards for ambulatory surgical  
7 centers. Standards established are intended to be the minimum  
8 necessary to ensure a safe environment for the performance of surgical  
9 procedures and to ensure safe and competent care of patients.

10 NEW SECTION. **Sec. 13.** Unless the context clearly requires  
11 otherwise, the definitions in this section apply throughout this  
12 chapter.

13 (1) "Ambulatory surgical center" means any freestanding distinct  
14 entity that operates primarily for the purpose of performing surgical  
15 procedures to treat patients not requiring in-patient hospital care  
16 under normal circumstances, except:

17 (a) A health care facility otherwise licensed and regulated by the  
18 department to provide surgical services, including an ambulatory  
19 surgical facility operated by a hospital and regulated by the  
20 department according to chapter 70.41 RCW;

21 (b) A facility in the offices of either an individual or group  
22 practice of physicians licensed under chapter 18.71 RCW, osteopathic  
23 physicians or surgeons licensed under chapter 18.57 RCW, or podiatric  
24 physicians or surgeons licensed under chapter 18.22 RCW, including  
25 where the facility is physically separate from such a practice, if the  
26 privilege of using such a facility is not extended to such licensed  
27 practitioners outside the individual or group practice. However, such  
28 a facility may request licensure as an ambulatory surgical center if  
29 the facility meets the requirements of this chapter and rules adopted  
30 under this chapter; and

31 (c) A facility in which the services are provided solely by  
32 dentists licensed under chapter 18.32 RCW and persons assisting or  
33 under the supervision of dentists. However, such a facility may  
34 request licensure as an ambulatory surgical center if the facility  
35 meets the requirements of this chapter and rules adopted under this  
36 chapter.

37 (2) "Department" means the department of health.

1 (3) "Person" means an individual, firm, partnership, corporation,  
2 company, association, joint stock association, and the legal successor  
3 thereof.

4 (4) "Surgical procedure" means an invasive medical procedure that:

5 (a) Utilizes a knife, laser, cautery, cryogenics, or chemicals; and

6 (b) Removes, corrects, or facilitates the diagnosis or cure of a  
7 disease, process, or injury through that branch of medicine that treats  
8 diseases, injuries, and deformities by manual or operative methods.

9 NEW SECTION. **Sec. 14.** (1) Nothing in this chapter shall be  
10 construed in any manner to change or expand the scope of practice of a  
11 health care practitioner.

12 (2) Nothing in this chapter shall be construed to limit an  
13 ambulatory surgical center to performing only surgical procedures.

14 NEW SECTION. **Sec. 15.** After June 30, 1997, no person shall  
15 operate or maintain an ambulatory surgical center or advertise by using  
16 the term "licensed ambulatory surgery center," "licensed day surgery  
17 center," "licensed surgical center," "licensed surgery center," or  
18 other words conveying similar meaning without first obtaining an  
19 ambulatory surgical center license from the department.

20 NEW SECTION. **Sec. 16.** An applicant for an ambulatory surgical  
21 center license shall:

22 (1) Submit to the department a written application on a form  
23 provided by the department, including a list of surgical specialties  
24 offered;

25 (2) Submit to the department for review and approval building plans  
26 for new construction, alterations other than minor alterations, and  
27 additions to existing facilities prior to licensure and occupancy as  
28 prescribed by the department;

29 (3) Demonstrate ability to comply with this chapter and rules  
30 adopted under this chapter;

31 (4) Cooperate with the department during on-site surveys prior to  
32 licensure or renewal of licensure;

33 (5) Provide such proof as the department may require concerning  
34 organizational and governance structure, and the identity of the  
35 applicant, officers, directors, partners, managing employees, or owners  
36 of ten percent or more of the applicant's assets;

1 (6) Pay to the department a license fee and building plan review  
2 fee as prescribed by the department under the authority of RCW  
3 43.70.110 and 43.70.250; and

4 (7) Provide any other information the department may reasonably  
5 require.

6 NEW SECTION. **Sec. 17.** If the department determines that an  
7 applicant complies with the provisions of this chapter and rules  
8 adopted under this chapter, the department shall issue a license to the  
9 applicant. A license, unless suspended or revoked, is effective for a  
10 period of two years, however an initial license is only effective for  
11 twelve months. The department shall conduct at least one on-site  
12 survey within each licensure period, except as provided for in section  
13 21 of this act.

14 NEW SECTION. **Sec. 18.** The department shall establish and adopt  
15 such minimum standards and rules pertaining to the construction,  
16 maintenance, and operation of ambulatory surgical centers as are  
17 necessary for the safe and adequate care and treatment of patients:  
18 PROVIDED, That such minimum standards are no greater than federal  
19 medicare program standards as they existed on January 1, 1995, unless  
20 authorized by other state statute. The department shall adopt  
21 standards that are at least equal to recognized applicable national  
22 standards pertaining to medical gas piping systems. The department  
23 shall rescind, amend, or modify the rules as necessary.

24 NEW SECTION. **Sec. 19.** The department may, at any time, conduct an  
25 on-site survey of a licensee in order to determine compliance with this  
26 chapter and rules adopted under this chapter.

27 NEW SECTION. **Sec. 20.** The department may deny, suspend, or revoke  
28 a license under this chapter or, in lieu thereof or in addition  
29 thereto, assess civil monetary penalties in any case in which it finds  
30 the applicant or licensee:

31 (1) Failed or refused to comply with the requirements of this  
32 chapter or rules adopted under this chapter;

33 (2) Was the holder of a license issued according to this chapter  
34 that was revoked for cause and never reissued by the department, or



1 that was suspended for cause and the terms of the suspension were not  
2 fulfilled, and the licensee has continued to operate;

3 (3) Has knowingly or with reason to know made a false statement of  
4 material fact in the application for the license or any data attached  
5 thereto or in any record required by this chapter or matter under  
6 investigation by the department;

7 (4) Refused to allow representatives of the department to inspect  
8 any portion of the licensee's premises, or any book, record, or file  
9 required by this chapter to be maintained;

10 (5) Willfully prevented, interfered with, or attempted to impede in  
11 any way the work of any representative of the department and the lawful  
12 enforcement of any provision of this chapter;

13 (6) Willfully prevented, interfered with, or attempted to impede in  
14 any way any representative of the department in the preservation of  
15 evidence of any violation of this chapter or rules adopted under this  
16 chapter;

17 (7) Failed to pay any civil monetary penalty assessed by the  
18 department according to this chapter within ten days after the  
19 assessment becomes final;

20 (8) Used advertising that is false, fraudulent, or misleading;

21 (9) Has repeated incidents of personnel performing services beyond  
22 their scope of practice; or

23 (10) Misrepresented or was fraudulent in any aspect of the conduct  
24 of the licensee's business.

25 NEW SECTION. **Sec. 21.** (1) An ambulatory surgical center that is  
26 certified or accredited as an ambulatory surgical center by the federal  
27 medicare program or any private accrediting organization shall be  
28 granted the applicable renewal license without the necessity of an on-  
29 site state licensure survey if:

30 (a) The department determines that the applicable survey standards  
31 of the certification or accreditation program are substantially  
32 equivalent to those required by this chapter;

33 (b) An on-site survey has been conducted for the purposes of  
34 certification or accreditation during the previous twenty-four months;  
35 and

36 (c) The department receives directly from the certifying or  
37 accrediting entity or from the licensee or applicant copies of the

1 initial and subsequent survey reports and other relevant reports or  
2 findings that indicate compliance with licensure requirements.

3 (2) In reviewing whether the federal medicare program or any  
4 private accrediting organization has survey standards that are of  
5 substantial equivalency to those set forth in this chapter, the  
6 department is directed to provide the most liberal interpretation  
7 consistent with the intent of this chapter. In the event the  
8 department determines at any time that the survey standards are not  
9 substantially equivalent to those required by this chapter, the  
10 department is directed to notify the affected licensees. The  
11 notification shall contain a detailed description of the deficiencies  
12 in the alternative survey process, as well as an explanation concerning  
13 the risk to the consumer. The determination of substantial equivalency  
14 for an alternative survey process and lack of substantial equivalency  
15 are agency actions and subject to the provisions of chapter 34.05 RCW.

16 (3) Ambulatory surgical centers receiving a license without an on-  
17 site survey by the department under this chapter shall pay the same  
18 licensure fee as other ambulatory surgical centers.

19 (4) This section does not affect the department's enforcement  
20 authority for licensed ambulatory surgical centers.

21 NEW SECTION. **Sec. 22.** An ambulatory surgical center licensed by  
22 the department of health shall comply with the charity care delivery  
23 requirements found in RCW 70.170.060 (1), (5), and (6) for the care it  
24 provides in its center.

25 NEW SECTION. **Sec. 23.** Sections 12 through 22 of this act shall  
26 take effect July 1, 1996.

27 NEW SECTION. **Sec. 24.** Sections 12 through 22 of this act shall  
28 constitute a new chapter in Title 70 RCW.

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