
ENGROSSED SUBSTITUTE HOUSE BILL 1952

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Dyer, Morris, Backlund, Grant and Sherstad)

Read first time 03/05/97.

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; and providing an effective date.

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, and
35 includes such facilities when owned and operated by a political
36 subdivision or instrumentality of the state and such other facilities
37 as required by federal law and implementing regulations, but does not
38 include (~~Christian Science sanatoriums operated, listed, or certified~~
39 ~~by the First Church of Christ Scientist, Boston, Massachusetts~~) any

1 health facility or institution conducted by and for those who rely
2 exclusively upon treatment by prayer or spiritual means in accordance
3 with the creed or tenets of any well-recognized church or religious
4 denomination, or any health facility or institution operated for the
5 exclusive care of members of a convent as defined in RCW 84.36.800 or
6 rectory, monastery, or other institution operated for the care of
7 members of the clergy. In addition, the term does not include any
8 nonprofit hospital: (a) Which is operated exclusively to provide
9 health care services for children; (b) which does not charge fees for
10 such services; and (c) if not contrary to federal law as necessary to
11 the receipt of federal funds by the state.

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

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

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

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

34 (9) "Health service area" means a geographic region appropriate for
35 effective health planning which includes a broad range of health
36 services.

37 (10) "Person" means an individual, a trust or estate, a
38 partnership, a corporation (including associations, joint stock
39 companies, and insurance companies), the state, or a political

1 subdivision or instrumentality of the state, including a municipal
2 corporation or a hospital district.

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

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

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

14 (14) "Tertiary health service" means: (a) Speciality tertiary burn
15 services designed to treat complex burn cases; (b) tertiary neonatal
16 intensive care nursery or obstetric services designed to treat complex
17 nursery or obstetric cases; (c) transplantation of specific solid
18 organs, including heart, liver, pancreas, lung, small bowel, kidney,
19 and bone marrow; (d) open heart surgery, therapeutic cardiac
20 catheterization, or percutaneous transluminal coronary angioplasty; (e)
21 inpatient physical rehabilitation services for persons with usually
22 nonreversible, multiple function impairments of moderate-to-severe
23 complexity resulting in major changes in the patient's lifestyle and
24 requiring intervention by several rehabilitation disciplines; (f)
25 specialized tertiary inpatient pediatric service designed to treat
26 complex pediatric cases for more than twenty-four hours; or (g) a
27 similar specialized service that meets complicated medical needs of
28 people and requires sufficient patient volume to optimize provider
29 effectiveness, quality of service, and improved outcomes of care.

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

33 **Sec. 2.** RCW 70.38.105 and 1996 c 50 s 1 are each amended to read
34 as follows:

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

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

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

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

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

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

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

19 ~~((d))~~ (c) Any capital expenditure for the construction,
20 renovation, or alteration of a nursing home which exceeds the
21 expenditure minimum as defined by RCW 70.38.025. However, a capital
22 expenditure which is not subject to certificate of need review under
23 (a), (b), ~~((e),)~~ or ~~((e))~~ (d) of this subsection and which is
24 solely for any one or more of the following is not subject to
25 certificate of need review:

26 (i) Communications and parking facilities;

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

29 (iii) Energy conservation systems;

30 (iv) Repairs to, or the correction of, deficiencies in existing
31 physical plant facilities which are necessary to maintain state
32 licensure, however, other additional repairs, remodeling, or
33 replacement projects that are not related to one or more deficiency
34 citations and are not necessary to maintain state licensure are not
35 exempt from certificate of need review except as otherwise permitted by
36 ~~((d))~~ (c)(vi) of this subsection or RCW 70.38.115(13);

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

1 (vi) Construction or renovation at an existing nursing home which
2 involves physical plant facilities, including administrative, dining
3 areas, kitchen, laundry, therapy areas, and support facilities, by an
4 existing licensee who has operated the beds for at least one year;

5 (vii) Acquisition of land; and

6 (viii) Refinancing of existing debt;

7 ~~((e))~~ (d) A change in bed capacity of a health care facility
8 which increases the total number of licensed beds or redistributes beds
9 among acute care, nursing home care, and boarding home care if the bed
10 redistribution is to be effective for a period in excess of six months,
11 or a change in bed capacity of a rural health care facility licensed
12 under RCW 70.175.100 that increases the total number of nursing home
13 beds or redistributes beds from acute care or boarding home care to
14 nursing home care if the bed redistribution is to be effective for a
15 period in excess of six months;

16 ~~((f))~~ (e) Any new tertiary health services which are offered in
17 or through a health care facility, hospital licensed under RCW
18 70.41.020(2) or chapter 71.12 RCW, or rural health care facility
19 licensed under RCW 70.175.100 ~~((, and which were not offered on a~~
20 ~~regular basis by, in, or through such health care facility or rural~~
21 ~~health care facility within the twelve month period prior to the time~~
22 ~~such services would be offered;~~

23 (g) ~~Any expenditure for the construction, renovation, or alteration~~
24 ~~of a nursing home or change in nursing home services in excess of the~~
25 ~~expenditure minimum made in preparation for any undertaking under~~
26 ~~subsection (4) of this section and any arrangement or commitment made~~
27 ~~for financing such undertaking. Expenditures of preparation shall~~
28 ~~include expenditures for architectural designs, plans, working~~
29 ~~drawings, and specifications. The department may issue certificates of~~
30 ~~need permitting predevelopment expenditures, only, without authorizing~~
31 ~~any subsequent undertaking with respect to which such predevelopment~~
32 ~~expenditures are made)); and~~

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

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

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

3 **Sec. 3.** RCW 70.38.115 and 1996 c 178 s 22 are each amended to read
4 as follows:

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

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

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

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

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

20 (d) In the case of health services to be provided, (i) the
21 availability of alternative uses of project resources for the provision
22 of other health services, (ii) the extent to which such proposed
23 services will be accessible to all residents of the area to be served,
24 and (iii) the need for and the availability in the community of
25 services and facilities for osteopathic physicians and surgeons and
26 allopathic physicians and their patients. The department shall
27 consider the application in terms of its impact on existing and
28 proposed institutional training programs for doctors of osteopathic
29 medicine and surgery and medicine at the student, internship, and
30 residency training levels;

31 (e) In the case of a construction project, the costs and methods of
32 the proposed construction, including the cost and methods of energy
33 provision, and the probable impact of the construction project reviewed
34 (i) on the cost of providing health services by the person proposing
35 such construction project and (ii) on the cost and charges to the
36 public of providing health services by other persons;

37 (f) ~~((The special needs and circumstances of osteopathic hospitals,~~
38 ~~nonallopathic services and children's hospitals;~~

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

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

7 ~~((i))~~ (h) In the case of existing services or facilities, the
8 quality of care provided by such services or facilities in the past;

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

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

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

15 (ii) The availability of other services in the community to be
16 served. Data used to determine the availability of other services will
17 include but not be limited to data provided by the department of social
18 and health services.

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

23 (a) Approval of such application is required to meet the needs of
24 the members of the health maintenance organization and of the new
25 members which such organization can reasonably be expected to enroll;
26 and

27 (b) The health maintenance organization is unable to provide,
28 through services or facilities which can reasonably be expected to be
29 available to the organization, its health services in a reasonable and
30 cost-effective manner which is consistent with the basic method of
31 operation of the organization and which makes such services available
32 on a long-term basis through physicians and other health professionals
33 associated with it.

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

1 (4) (~~Until the final expiration of the state health plan as~~
2 ~~provided under RCW 70.38.919, the decision of the department on a~~
3 ~~certificate of need application shall be consistent with the state~~
4 ~~health plan in effect, except in emergency circumstances which pose a~~
5 ~~threat to the public health.)) The department in making its final
6 decision may issue a conditional certificate of need if it finds that
7 the project is justified only under specific circumstances. The
8 conditions shall directly relate to the project being reviewed. The
9 conditions may be released if it can be substantiated that the
10 conditions are no longer valid and the release of such conditions would
11 be consistent with the purposes of this chapter.~~

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

16 (6) The department shall specify information to be required for
17 certificate of need applications. Within fifteen days of receipt of
18 the application, the department shall request additional information
19 considered necessary to the application or start the review process.
20 Applicants may decline to submit requested information through written
21 notice to the department, in which case review starts on the date of
22 receipt of the notice. Applications may be denied or limited because
23 of failure to submit required and necessary information.

24 (7) Concurrent review is for the purpose of comparative analysis
25 and evaluation of competing or similar projects in order to determine
26 which of the projects may best meet identified needs. Categories of
27 projects subject to concurrent review include at least new health care
28 facilities, new services, and expansion of existing health care
29 facilities. The department shall specify time periods for the
30 submission of applications for certificates of need subject to
31 concurrent review, which shall not exceed ninety days. Review of
32 concurrent applications shall start fifteen days after the conclusion
33 of the time period for submission of applications subject to concurrent
34 review. Concurrent review periods shall be limited to one hundred
35 fifty days, except as provided for in rules adopted by the department
36 authorizing and limiting amendment during the course of the review, or
37 for an unresolved pivotal issue declared by the department.

38 (8) Review periods for certificate of need applications other than
39 those subject to concurrent review shall be limited to ninety days.

1 Review periods may be extended up to thirty days if needed by a review
2 agency, and for unresolved pivotal issues the department may extend up
3 to an additional thirty days. A review may be extended in any case if
4 the applicant agrees to the extension.

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

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

15 (b) Any health care facility or health maintenance organization
16 that: (i) Provides services similar to the services provided by the
17 applicant and under review pursuant to this subsection; (ii) is located
18 within the applicant's health service area; and (iii) testified or
19 submitted evidence at a public hearing held pursuant to subsection (9)
20 of this section, shall be provided an opportunity to present oral or
21 written testimony and argument in a proceeding under this subsection:
22 PROVIDED, That the health care facility or health maintenance
23 organization had, in writing, requested to be informed of the
24 department's decisions.

25 (c) If the department desires to settle with the applicant prior to
26 the conclusion of the adjudicative proceeding, the department shall so
27 inform the health care facility or health maintenance organization and
28 afford them an opportunity to comment, in advance, on the proposed
29 settlement.

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

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

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

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

36 ~~(d))~~ A significant reduction in the scope of a nursing home
37 project without a commensurate reduction in the cost of the nursing
38 home project, or a cost increase (as represented in bids on a nursing
39 home construction project or final cost estimates acceptable to the

1 person to whom the certificate of need was issued) if the total of such
2 increases exceeds twelve percent or fifty thousand dollars, whichever
3 is greater, over the maximum capital expenditure approved. The review
4 of reductions or cost increases shall be restricted to the continued
5 conformance of the nursing home project with the review criteria
6 pertaining to financial feasibility and cost containment.

7 (12) An application for a certificate of need for a nursing home
8 capital expenditure which is determined by the department to be
9 required to eliminate or prevent imminent safety hazards or correct
10 violations of applicable licensure and accreditation standards shall be
11 approved.

12 (13)(a) Replacement of existing nursing home beds in the same
13 planning area by an existing licensee who has operated the beds for at
14 least one year shall not require a certificate of need under this
15 chapter. The licensee shall give written notice of its intent to
16 replace the existing nursing home beds to the department and shall
17 provide the department with information as may be required pursuant to
18 rule. Replacement of the beds by a party other than the licensee is
19 subject to certificate of need review under this chapter, except as
20 otherwise permitted by subsection (14) of this section.

21 (b) When an entire nursing home ceases operation, the licensee or
22 any other party who has secured an interest in the beds may reserve his
23 or her interest in the beds for eight years or until a certificate of
24 need to replace them is issued, whichever occurs first. However, the
25 nursing home, licensee, or any other party who has secured an interest
26 in the beds must give notice of its intent to retain the beds to the
27 department of health no later than thirty days after the effective date
28 of the facility's closure. Certificate of need review shall be
29 required for any party who has reserved the nursing home beds except
30 that the need criteria shall be deemed met when the applicant is the
31 licensee who had operated the beds for at least one year, who has
32 operated the beds for at least one year immediately preceding the
33 reservation of the beds, and who is replacing the beds in the same
34 planning area.

35 (14) In the event that a licensee, who has provided the department
36 with notice of his or her intent to replace nursing home beds under
37 subsection (13)(a) of this section, engages in unprofessional conduct
38 or becomes unable to practice with reasonable skill and safety by
39 reason of mental or physical condition, pursuant to chapter 18.130 RCW,

1 or dies, the building owner shall be permitted to complete the nursing
2 home bed replacement project, provided the building owner has secured
3 an interest in the beds.

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

6 The secretary shall have authority to:

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

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

14 (3) ~~((Upon review of recommendations, if any, from the board of
15 health:~~

16 ~~(a))~~ Promulgate rules under which health care ~~((facilities))~~
17 providers doing business within the state shall submit to the
18 department such data ~~((related to health and health care))~~ as the
19 department finds necessary to the performance of its functions under
20 this chapter;

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

24 ~~((c))~~ (5) Promulgate rules in implementation of the provisions of
25 this chapter, including the establishment of procedures for public
26 hearings for predecisions and post-decisions on applications for
27 certificate of need; and

28 ~~((d))~~ (6) Promulgate rules providing circumstances and procedures
29 of expedited certificate of need review if there has not been a
30 significant change in existing health facilities of the same type or in
31 the need for such health facilities and services(~~(~~

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

1 ~~(5) Contract with and provide reasonable reimbursement for~~
2 ~~qualified entities to assist in determinations of certificates of~~
3 ~~need)).~~

4 NEW SECTION. **Sec. 5.** (1) The enactment of this act shall not have
5 the effect of terminating, or in any way modifying, the validity of any
6 certificate of need that shall already have been issued before January
7 1, 1998.

8 (2) Any certificate of need application that was submitted and
9 declared complete, but upon which final action had not been taken
10 before January 1, 1998, shall be reviewed and action taken based on
11 chapter 70.38 RCW as in effect before January 1, 1998.

12 NEW SECTION. **Sec. 6.** The legislature finds that ambulatory
13 surgical centers have provided the citizens of Washington state access
14 to various routine surgical and similar invasive medical procedures not
15 requiring hospitalization, resulting in reduced health care costs
16 consistent with the intent of health care reform. However, the
17 delivery of these services may put patients at risk due to the invasive
18 nature of the procedures performed or the use of general anesthesia and
19 the short patient recovery time prior to discharge.

20 It is the intent of the legislature to protect the citizens of
21 Washington state by licensing ambulatory surgical centers and by
22 adopting and enforcing minimum standards for ambulatory surgical
23 centers. Standards established are intended to be the minimum
24 necessary to ensure a safe environment for the performance of surgical
25 procedures and to ensure safe and competent care of patients.

26 NEW SECTION. **Sec. 7.** The definitions in this section apply
27 throughout this chapter unless the context clearly requires otherwise.

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

32 (a) A health care facility otherwise licensed and regulated by the
33 department to provide surgical services, including an ambulatory
34 surgical facility operated by a hospital and regulated by the
35 department according to chapter 70.41 RCW;

1 (b) A facility in the offices of either an individual or group
2 practice of physicians or other health care practitioners regulated
3 under Title 18 RCW, who are providing services within their scope of
4 practice, including a facility that is physically separate from the
5 practice, if the privilege of using the facility is not extended to
6 regulated practitioners outside the individual or group practice.
7 However, such a facility may request licensure as an ambulatory surgery
8 center if the facility meets the requirements of this chapter and rules
9 adopted under this chapter; and

10 (c) A facility in which the services are provided solely by
11 dentists licensed under chapter 18.32 RCW and persons assisting or
12 under the supervision of dentists. However, such a facility may
13 request licensure as an ambulatory surgical center if the facility
14 meets the requirements of this chapter and rules adopted under this
15 chapter.

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

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

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

21 (a) Utilizes surgical instruments, laser, cautery, cryogenics, or
22 chemicals; and

23 (b) Removes, corrects, or facilitates the diagnosis or cure of a
24 disease, condition, or injury through that branch of medicine that
25 treats diseases, injuries, and deformities by manual or operative
26 methods.

27 NEW SECTION. **Sec. 8.** (1) Nothing in this chapter shall be
28 construed in any manner to change, limit, or expand the scope of
29 practice of a health care practitioner.

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

32 NEW SECTION. **Sec. 9.** After June 30, 1998, no person shall operate
33 or maintain an ambulatory surgical center or advertise by using the
34 term "licensed ambulatory surgery center," "licensed day surgery
35 center," "licensed surgical center," "licensed surgery center," or
36 other words conveying similar meaning without first obtaining an
37 ambulatory surgical center license from the department.

1 NEW SECTION. **Sec. 10.** An applicant for an ambulatory surgical
2 center license shall:

3 (1) Submit to the department a written application on a form
4 provided by the department, including a list of surgical specialties
5 offered;

6 (2) Submit to the department for review and approval building plans
7 for new construction, alterations other than minor alterations, and
8 additions to existing facilities prior to licensure and occupancy as
9 prescribed by the department;

10 (3) Demonstrate ability to comply with this chapter and rules
11 adopted under this chapter;

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

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

18 (6) Pay to the department a license fee and building plan review
19 fee as prescribed by the department under the authority of RCW
20 43.70.110 and 43.70.250; and

21 (7) Provide any other information the department may reasonably
22 require.

23 NEW SECTION. **Sec. 11.** If the department determines that an
24 applicant complies with the provisions of this chapter and rules
25 adopted under this chapter, the department shall issue a license to the
26 applicant. A license, unless suspended or revoked, is effective for a
27 period of two years, however an initial license is only effective for
28 twelve months. The department shall conduct at least one on-site
29 survey within each licensure period, except as provided for in section
30 15 of this act.

31 NEW SECTION. **Sec. 12.** The department shall establish and adopt
32 such minimum standards and rules pertaining to the construction,
33 maintenance, and operation of ambulatory surgical centers as are
34 necessary for the safe and adequate care and treatment of patients:
35 PROVIDED, That such minimum standards are no greater than federal
36 medicare program standards as they existed on January 1, 1995, unless
37 authorized by other state statute.

1 NEW SECTION. **Sec. 13.** The department may, at any time, conduct an
2 on-site survey of a licensee in order to determine compliance with this
3 chapter and rules adopted under this chapter.

4 NEW SECTION. **Sec. 14.** The department may deny, suspend, or revoke
5 a license under this chapter or, in lieu thereof or in addition
6 thereto, assess civil monetary penalties in any case in which it finds
7 the applicant or licensee:

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

10 (2) Was the holder of a license issued according to this chapter
11 that was revoked for cause and never reissued by the department, or
12 that was suspended for cause and the terms of the suspension were not
13 fulfilled, and the licensee has continued to operate;

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

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

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

24 (6) Willfully prevented, interfered with, or attempted to impede in
25 any way any representative of the department in the preservation of
26 evidence of any violation of this chapter or rules adopted under this
27 chapter;

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

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

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

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

36 NEW SECTION. **Sec. 15.** (1) An ambulatory surgical center that is
37 certified or accredited as an ambulatory surgical center by the federal

1 medicare program or any private accrediting organization shall be
2 granted the applicable renewal license without the necessity of an on-
3 site state licensure survey if:

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

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

10 (c) The department receives directly from the certifying or
11 accrediting entity or from the licensee or applicant copies of the
12 initial and subsequent survey reports and other relevant reports or
13 findings that indicate compliance with licensure requirements.

14 (2) In reviewing whether the federal medicare program or any
15 private accrediting organization has survey standards that are of
16 substantial equivalency to those set forth in this chapter, the
17 department is directed to provide the most liberal interpretation
18 consistent with the intent of this chapter. In the event the
19 department determines at any time that the survey standards are not
20 substantially equivalent to those required by this chapter, the
21 department is directed to notify the affected licensees. The
22 notification shall contain a detailed description of the deficiencies
23 in the alternative survey process, as well as an explanation concerning
24 the risk to the consumer. The determination of substantial equivalency
25 for an alternative survey process and lack of substantial equivalency
26 are agency actions and subject to the provisions of chapter 34.05 RCW.

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

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

32 NEW SECTION. **Sec. 16.** An ambulatory surgical center licensed by
33 the department shall comply with the charity care delivery requirements
34 found in RCW 70.170.060 (1), (5), and (6) for the care it provides in
35 its center.

36 NEW SECTION. **Sec. 17.** The health care delivery system in
37 Washington has experienced a dramatic migration from a hospital based

1 to a nonhospital based system. Technological advances in the provision
2 of care and changes to health insurance reimbursement have transformed
3 how many people receive medical care. Services previously performed in
4 hospitals on an inpatient basis increasingly are provided as
5 outpatient, or "ambulatory," procedures in hospitals, emergency
6 departments, and freestanding ambulatory surgery centers. The state of
7 Washington does not currently have the capacity to analyze the cost,
8 quality, and access to health care services that are increasingly
9 occurring in the nonhospital setting.

10 National standards for ambulatory data exist. These standards
11 focus on collecting data regarding ambulatory services at sites
12 including hospital-based ambulatory surgery, ambulatory surgery
13 performed in freestanding clinics, and services delivered in hospital
14 emergency departments and hospital outpatient clinics.

15 The department of health shall study the feasibility of updating,
16 designing, and expanding the comprehensive hospital abstract reporting
17 system to include ambulatory data. The department shall submit a
18 preliminary report to the legislature by December 31, 1997, and a final
19 report July 1, 1998. The report shall be done in conjunction with
20 potential and current data providers and shall include a cost/benefit
21 analysis, data standards and reporting requirements, financing
22 alternatives, data access and dissemination requirements,
23 prioritization of data needs, and proposed implementation phases.

24 NEW SECTION. **Sec. 18.** If any part of this act is found to be in
25 conflict with federal requirements that are a prescribed condition to
26 the allocation of federal funds to the state, the conflicting part of
27 this act is inoperative solely to the extent of the conflict and with
28 respect to the agencies directly affected, and this finding does not
29 affect the operation of the remainder of this act in its application to
30 the agencies concerned. Rules adopted under this act must meet federal
31 requirements that are a necessary condition to the receipt of federal
32 funds by the state.

33 NEW SECTION. **Sec. 19.** RCW 70.38.155, 70.38.156, 70.38.157,
34 70.38.914, 70.38.915, 70.38.916, 70.38.917, 70.38.918, and 70.38.919
35 are each decodified.

1 NEW SECTION. **Sec. 20.** RCW 70.38.095 and 1979 ex.s. c 161 s 9 are
2 each repealed.

3 NEW SECTION. **Sec. 21.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 22.** This act takes effect January 1, 1998.

8 NEW SECTION. **Sec. 23.** Sections 6 through 16 of this act
9 constitute a new chapter in Title 70 RCW.

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