

HOUSE BILL REPORT

HB 2099

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to activities to support the certificate of need program.

Brief Description: Establishing activities to support the certificate of need program.

Sponsors: Representatives Cody, Morrell and Kenney.

Brief History:

Committee Activity:

Health Care & Wellness: 2/15/07 [DP].

Brief Summary of Bill

- Modifies the criteria for approving certificate of need applications, requires monitoring once a project is complete, and provides penalties for noncompliance.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 8 members: Representatives Cody, Chair; Morrell, Vice Chair; Barlow, Green, Moeller, Pedersen, Schual-Berke and Seaquist.

Minority Report: Do not pass. Signed by 3 members: Representatives Hinkle, Ranking Minority Member; Alexander, Assistant Ranking Minority Member and Condotta.

Staff: Chris Blake (786-7392).

Background:

Certificate of Need

Washington established its certificate of need program in 1971. In 1974 the federal government created incentives for states that adopted certificate of need programs and by 1980 all states were required to have such programs. When the federal requirements were eliminated in 1986, several states discontinued their certificate of need programs. Washington is one of 36 states that currently maintains a certificate of need program.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A certificate of need from the Department of Health (Department) is required prior to: the construction, renovation, or sale of a health care facility; changes in bed capacity at certain health care facilities; an increase in the number of dialysis stations at a kidney disease center; or the addition of specialized health services. Under the program, the Department must review the project under specific criteria related to community need, quality of services, financial feasibility, and the impact on health care costs in the community. A facility or service that is subject to the certificate of need program must be approved prior to beginning operations.

Certificate of Need Task Force

In 2005, the Legislature passed HB 1688 which created the Certificate of Need Task Force (Task Force) to make recommendations to the Governor and the Legislature related to improving and updating the certificate of need program. The Health Care Authority provided support to the Task Force which was directed to make recommendations by November 1, 2006, related to:

- the scope of facilities, services and capital expenditures that should be subject to certificate of need reviews;
- the criteria for reviewing certificate of need applications;
- the need for service and facility specific policies to guide certificate of need decisions;
- the purpose of the certificate of need program;
- the timeliness and consistency of certificate of need decisions; and
- mechanisms to monitor commitments made by health care facilities.

While the Task Force met, the Joint Legislative Audit and Review Committee (JLARC) conducted an independent performance audit of the certificate of need program. This audit assessed the process for reviewing applications; the consistency of decisions; monitoring of approved projects; and program performance measurements. The audit was completed in June 2006 and the JLARC recommendations were considered in the Task Force's report.

Summary of Bill:

The criteria for reviewing certificate of need applications are modified and several new criteria are added. Criteria related to a population's need shall be based upon current utilization data, evidence related to appropriate utilization, and utilization trends. Criteria requiring hospitals to meet or exceed average charity care levels are enhanced to review whether the applicant's policies exceed charity care requirements. The Department must consider the impact of a project on the health system infrastructure and the ability of existing providers to serve the underinsured and uninsured. Criteria are added to evaluate whether services other than hospitals shall provide charity care consistent with minimum standards for that type of service as determined by the Department. New criteria are added pertaining to whether the applicant agrees to provide services to Medicare and Medicaid enrollees and not to discriminate against them based upon having such coverage. The Department shall review the availability of health care providers to deliver the proposed service.

After a project has been completed, the Department must monitor the operation of the project and the provision of services for five years. The Department shall monitor the compliance with the terms and conditions of approved certificates of need, including the service of the intended population, the service of Medicare and Medicaid clients, the level of charity care, the utilization and volume of a tertiary service, and other conditions applicable to specific projects. The Department shall establish a reasonable fee for conducting monitoring activities.

The Department must adopt policies to inform both the public and affected parties of certificate of need activities. The policies must address the distribution of information related to applications, application status, findings and decisions, determinations of non-reviewability, appeals status, and monitoring status. Notifications may occur through postal mail, electronic mail, or a website. The Department must maintain a searchable database of previous certificates of need decisions.

If an applicant does not comply with certificate of need regulations or the terms and conditions of an approved certificate of need, the Department may suspend, revoke, or modify the certificate of need, impose a fine of up to \$10,000, or impose a moratorium on future applications for up to two years. The Department must notify agencies that issued a license for the project of any violations and the agencies may initiate their own disciplinary actions.

Applicants and affected parties who disagree with an action or failure to act by the Department have the right to an adjudicative proceeding. Violations of certificate of need laws are declared unfair methods of competition or unfair or deceptive acts under the Consumer Protection Act.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support, including testimony on similar bill HB 1415) The bill needs to have more clarity around the use of the term "competition" and the JLARC findings. This is a good bill, but needs some changes to make the bill clearer and reduce the risk of litigation. The bill addresses charity care and providing care for the uninsured and underinsured. The bill needs to address some of the Department's performance issues.

(With concerns) It will be difficult to establish a minimal community standard for charity care.

(Opposed, including testimony on similar bill HB 1415) The certificate of need process is not working and should not be expanded. The health care system should focus on competition,

innovation, and cost-effective delivery of services rather than regulatory burdens that do not work. Certificate of need is not an effective mechanism for controlling spending. There are many alternative approaches to certificate of need that focus on purchasing strategies. As a government-controlled program, certificate of need does not move quickly enough to benefit patients.

Persons Testifying: (In support, including testimony on similar bill HB 1415) Chuck Hawley, Providence Health and Services; Robb Menaul, Washington State Hospital Association; Janet Varon, Northwest Health Law Advocates; Jody Carona, Health Facilities Planning and Development; and Michael Shaw, American Heart Association.

(With concerns) Julie Peterson, Washington Association of Housing and Services for the Aging.

(Opposed, including testimony on similar bill HB 1415) Len Eddinger, Washington State Medical Association; and Jim Jesernig, Health Society, Olympic Ambulatory Surgery Center and Spokane Valley Surgery Center.

Persons Signed In To Testify But Not Testifying: Robin Appleford, Proliance Surgeon and Davita Incorporated; and Rob Quinton, PolyClinic.