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SENATE BILL 5340

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Keiser, Pflug, and Conway

Read first time 01/20/11. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to restraining health care costs and promoting  
2 necessary, effective care; amending RCW 70.38.115; and adding a new  
3 section to chapter 70.38 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.38 RCW  
6 to read as follows:

7 (1) The legislature finds that:

8 (a) In recent years, hospitals and their parent organizations have  
9 been rapidly expanding their operations and facilities; and

10 (b) Research has demonstrated that expansion of hospital beds and  
11 facilities, in the absence of documented need, leads to increased  
12 health expenditures with no concomitant increase in patient well-being.  
13 Furthermore, research, including the Dartmouth atlas, has shown that  
14 the provision of unnecessary care can lead to worse patient outcomes,  
15 including preventable injuries and death.

16 (2) Therefore, in order to constrain health care inflation and  
17 promote safe, effective care, the legislature intends to limit the  
18 growth of hospital and related systems to situations where there is  
19 clear, demonstrated need.

1           **Sec. 2.** RCW 70.38.115 and 1996 c 178 s 22 are each amended to read  
2 as follows:

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

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

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

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

15           (c) The financial feasibility and the probable impact of the  
16 proposal on the cost of and charges for providing health services in  
17 the community to be served. If the proposal is likely to promote  
18 unnecessary, excessive utilization of a service in a geographic area,  
19 the department shall deny the certificate of need;

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

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

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

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

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

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

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

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

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

35 (b) An expansion of a service subject to review beyond that  
36 originally approved;

37 (c) An increase in bed capacity;

1 (d) A significant reduction in the scope of a nursing home project  
2 without a commensurate reduction in the cost of the nursing home  
3 project, or a cost increase (as represented in bids on a nursing home  
4 construction project or final cost estimates acceptable to the person  
5 to whom the certificate of need was issued) if the total of such  
6 increases exceeds twelve percent or fifty thousand dollars, whichever  
7 is greater, over the maximum capital expenditure approved. The review  
8 of reductions or cost increases shall be restricted to the continued  
9 conformance of the nursing home project with the review criteria  
10 pertaining to financial feasibility and cost containment.

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

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

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

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

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