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SENATE BILL 6054

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State of Washington                      62nd Legislature                      2012 Regular Session

By Senators Benton, Carrell, Holmquist Newbry, Stevens, and Roach

Read first time 01/09/12. Referred to Committee on Health & Long-Term Care.

1            AN ACT Relating to eliminating the certificate of need review for  
2 all health care facilities except hospitals; amending RCW 70.38.018,  
3 70.38.025, 70.38.115, 70.38.118, 70.38.125, and 70.38.135; reenacting  
4 and amending RCW 70.38.105; and repealing RCW 70.38.111.

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

6            **Sec. 1.** RCW 70.38.018 and 2007 c 259 s 56 are each amended to read  
7 as follows:

8            (1) For the purposes of this section and RCW 70.38.015 and  
9 70.38.135, "statewide health resource strategy" or "strategy" means the  
10 statewide health resource strategy developed by the office of financial  
11 management pursuant to chapter 43.370 RCW.

12            (2) (~~Effective January 1, 2010, for those facilities and services~~  
13 ~~covered by the certificate of need programs,)) Certificate of need  
14 determinations must be consistent with the statewide health resources  
15 strategy developed pursuant to RCW 43.370.030, including any health  
16 planning policies and goals identified in the statewide health  
17 resources strategy in effect at the time of application. The  
18 department may waive specific terms of the strategy if the applicant~~

1 demonstrates that consistency with those terms will create an undue  
2 burden on the population that a particular project would serve, or in  
3 emergency circumstances which pose a threat to public health.

4 **Sec. 2.** RCW 70.38.025 and 2000 c 175 s 22 are each amended to read  
5 as follows:

6 When used in this chapter, the terms defined in this section shall  
7 have the meanings indicated.

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

10 (2) "Capital expenditure" is an expenditure, including a force  
11 account expenditure (i.e., an expenditure for a construction project  
12 undertaken by a ((nursing home facility)) hospital as its own  
13 contractor) which, under generally accepted accounting principles, is  
14 not properly chargeable as an expense of operation or maintenance.  
15 Where a person makes an acquisition under lease or comparable  
16 arrangement, or through donation, which would have required review if  
17 the acquisition had been made by purchase, such expenditure shall be  
18 deemed a capital expenditure. Capital expenditures include donations  
19 of equipment or facilities to a nursing home facility which if acquired  
20 directly by such facility would be subject to certificate of need  
21 review under the provisions of this chapter and transfer of equipment  
22 or facilities for less than fair market value if a transfer of the  
23 equipment or facilities at fair market value would be subject to such  
24 review. The cost of any studies, surveys, designs, plans, working  
25 drawings, specifications, and other activities essential to the  
26 acquisition, improvement, expansion, or replacement of any plant or  
27 equipment with respect to which such expenditure is made shall be  
28 included in determining the amount of the expenditure.

29 (~~(3) ("Continuing care retirement community" means an entity which~~  
30 ~~provides shelter and services under continuing care contracts with its~~  
31 ~~members and which sponsors or includes a health care facility or a~~  
32 ~~health service. A "continuing care contract" means a contract to~~  
33 ~~provide a person, for the duration of that person's life or for a term~~  
34 ~~in excess of one year, shelter along with nursing, medical, health-~~  
35 ~~related, or personal care services, which is conditioned upon the~~  
36 ~~transfer of property, the payment of an entrance fee to the provider of~~  
37 ~~such services, or the payment of periodic charges for the care and~~

1 ~~services involved. A continuing care contract is not excluded from~~  
2 ~~this definition because the contract is mutually terminable or because~~  
3 ~~shelter and services are not provided at the same location.~~

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

5 ~~((5)) (4) "Expenditure minimum" means, for the purposes of the~~  
6 ~~certificate of need program, one million dollars adjusted by the~~  
7 ~~department by rule to reflect changes in the United States department~~  
8 ~~of commerce composite construction cost index; or a lesser amount~~  
9 ~~required by federal law and established by the department by rule.~~

10 ~~((6) "Health care facility" means hospices, hospice care centers,~~  
11 ~~hospitals, psychiatric hospitals, nursing homes, kidney disease~~  
12 ~~treatment centers, ambulatory surgical facilities, and home health~~  
13 ~~agencies, and includes such facilities when owned and operated by a~~  
14 ~~political subdivision or instrumentality of the state and such other~~  
15 ~~facilities as required by federal law and implementing regulations, but~~  
16 ~~does not include any health facility or institution conducted by and~~  
17 ~~for those who rely exclusively upon treatment by prayer or spiritual~~  
18 ~~means in accordance with the creed or tenets of any well-recognized~~  
19 ~~church or religious denomination, or any health facility or institution~~  
20 ~~operated for the exclusive care of members of a convent as defined in~~  
21 ~~RCW 84.36.800 or rectory, monastery, or other institution operated for~~  
22 ~~the care of members of the clergy. In addition, the term does not~~  
23 ~~include any nonprofit hospital: (a) Which is operated exclusively to~~  
24 ~~provide health care services for children; (b) which does not charge~~  
25 ~~fees for such services; and (c) if not contrary to federal law as~~  
26 ~~necessary to the receipt of federal funds by the state.~~

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

29 ~~(a) Is a qualified health maintenance organization under Title~~  
30 ~~XIII, section 1310(d) of the Public Health Services [Service] Act; or~~

31 ~~(b)(i) Provides or otherwise makes available to enrolled~~  
32 ~~participants health care services, including at least the following~~  
33 ~~basic health care services: Usual physician services, hospitalization,~~  
34 ~~laboratory, X-ray, emergency, and preventive services, and out-of-area~~  
35 ~~coverage; (ii) is compensated (except for copayments) for the provision~~  
36 ~~of the basic health care services listed in (b)(i) to enrolled~~  
37 ~~participants by a payment which is paid on a periodic basis without~~  
38 ~~regard to the date the health care services are provided and which is~~

1 ~~fixed without regard to the frequency, extent, or kind of health~~  
2 ~~service actually provided; and (iii) provides physicians' services~~  
3 ~~primarily (A) directly through physicians who are either employees or~~  
4 ~~partners of such organization, or (B) through arrangements with~~  
5 ~~individual physicians or one or more groups of physicians (organized on~~  
6 ~~a group practice or individual practice basis).~~

7 ~~(8))~~ (5) "Health services" means clinically related (i.e.,  
8 preventive, diagnostic, curative, rehabilitative, or palliative)  
9 services and includes alcoholism, drug abuse, and mental health  
10 services and as defined in federal law.

11 ~~((9))~~ (6) "Health service area" means a geographic region  
12 appropriate for effective health planning which includes a broad range  
13 of health services.

14 ~~((10))~~ (7) "Person" means an individual, a trust or estate, a  
15 partnership, a corporation (including associations, joint stock  
16 companies, and insurance companies), the state, or a political  
17 subdivision or instrumentality of the state, including a municipal  
18 corporation or a hospital district.

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

23 ~~(12))~~ (8) "Public health" means the level of well-being of the  
24 general population; those actions in a community necessary to preserve,  
25 protect, and promote the health of the people for which government is  
26 responsible; and the governmental system developed to guarantee the  
27 preservation of the health of the people.

28 ~~((13))~~ (9) "Secretary" means the secretary of health or the  
29 secretary's designee.

30 ~~((14))~~ (10) "Tertiary health service" means a specialized service  
31 that meets complicated medical needs of people and requires sufficient  
32 patient volume to optimize provider effectiveness, quality of service,  
33 and improved outcomes of care.

34 ~~((15))~~ (11) "Hospital" means any health care institution which is  
35 required to qualify for a license under RCW 70.41.020 ~~((2))~~ (4); or as  
36 a psychiatric hospital under chapter 71.12 RCW. "Hospital" includes  
37 freestanding emergency rooms that advertise as emergency rooms, yet are

1 not physically connected or adjacent to a licensed hospital under  
2 chapter 70.41 RCW.

3 **Sec. 3.** RCW 70.38.105 and 2009 c 315 s 1 and 2009 c 242 s 3 are  
4 each reenacted and amended to read as follows:

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

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

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

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

17 (a) ~~The construction, development, or other establishment of a new~~  
18 ~~((health care facility including, but not limited to, a)) hospital~~  
19 ~~((constructed, developed, or established by a health maintenance~~  
20 ~~organization or by a combination of health maintenance organizations~~  
21 ~~except as provided in subsection (7)(a) of this section));~~

22 (b) ~~The sale, purchase, or lease of part or all of any existing~~  
23 ~~hospital ((as defined in RCW 70.38.025 including, but not limited to,~~  
24 ~~a hospital sold, purchased, or leased by a health maintenance~~  
25 ~~organization or by a combination of health maintenance organizations~~  
26 ~~except as provided in subsection (7)(b) of this section)); and~~

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

31 (d) ~~Any capital expenditure for the construction, renovation, or~~  
32 ~~alteration of a nursing home which exceeds the expenditure minimum as~~  
33 ~~defined by RCW 70.38.025. However, a capital expenditure which is not~~  
34 ~~subject to certificate of need review under (a), (b), (c), or (e) of~~  
35 ~~this subsection and which is solely for any one or more of the~~  
36 ~~following is not subject to certificate of need review:~~

37 (i) ~~Communications and parking facilities;~~

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

3       ~~(iii) Energy conservation systems;~~

4       ~~(iv) Repairs to, or the correction of, deficiencies in existing~~  
5 ~~physical plant facilities which are necessary to maintain state~~  
6 ~~licensure, however, other additional repairs, remodeling, or~~  
7 ~~replacement projects that are not related to one or more deficiency~~  
8 ~~citations and are not necessary to maintain state licensure are not~~  
9 ~~exempt from certificate of need review except as otherwise permitted by~~  
10 ~~(d)(vi) of this subsection or RCW 70.38.115(13);~~

11       ~~(v) Acquisition of equipment, including data processing equipment,~~  
12 ~~which is not or will not be used in the direct provision of health~~  
13 ~~services;~~

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

18       ~~(vii) Acquisition of land; and~~

19       ~~(viii) Refinancing of existing debt;~~

20       ~~(e) A change in bed capacity of a health care facility which~~  
21 ~~increases the total number of licensed beds or redistributes beds among~~  
22 ~~acute care, nursing home care, and boarding home care if the bed~~  
23 ~~redistribution is to be effective for a period in excess of six months,~~  
24 ~~or a change in bed capacity of a rural health care facility licensed~~  
25 ~~under RCW 70.175.100 that increases the total number of nursing home~~  
26 ~~beds or redistributes beds from acute care or boarding home care to~~  
27 ~~nursing home care if the bed redistribution is to be effective for a~~  
28 ~~period in excess of six months. A health care facility certified as a~~  
29 ~~critical access hospital under 42 U.S.C. 1395i-4 may increase its total~~  
30 ~~number of licensed beds to the total number of beds permitted under 42~~  
31 ~~U.S.C. 1395i-4 for acute care and may redistribute beds permitted under~~  
32 ~~42 U.S.C. 1395i-4 among acute care and nursing home care without being~~  
33 ~~subject to certificate of need review. If there is a nursing home~~  
34 ~~licensed under chapter 18.51 RCW within twenty seven miles of the~~  
35 ~~critical access hospital, the critical access hospital is subject to~~  
36 ~~certificate of need review except for:~~

37       ~~(i) Critical access hospitals which had designated beds to provide~~

1 nursing home care, in excess of five swing beds, prior to December 31,  
2 2003;

3 (ii) Up to five swing beds; or

4 (iii) Up to twenty five swing beds for critical access hospitals  
5 which do not have a nursing home licensed under chapter 18.51 RCW  
6 within the same city or town limits. Up to one half of the additional  
7 beds designated for swing bed services under this subsection  
8 (4)(e)(iii) may be so designated before July 1, 2010, with the balance  
9 designated on or after July 1, 2010.

10 Critical access hospital beds not subject to certificate of need  
11 review under this subsection (4)(e) will not be counted as either acute  
12 care or nursing home care for certificate of need review purposes. If  
13 a health care facility ceases to be certified as a critical access  
14 hospital under 42 U.S.C. 1395i-4, the hospital may revert back to the  
15 type and number of licensed hospital beds as it had when it requested  
16 critical access hospital designation;

17 (f)) Any new tertiary health services which are offered in or  
18 through a ((health care facility or rural health care facility licensed  
19 under RCW 70.175.100)) hospital, 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) Any increase in the number of dialysis stations in a kidney  
34 disease center)) hospital.

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

1 full cost of review and exemption, which may include the development of  
2 standards, criteria, and policies.

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

5 ~~((7)(a) The requirement that a health maintenance organization  
6 obtain a certificate of need under subsection (4)(a) of this section  
7 for the construction, development, or other establishment of a hospital  
8 does not apply to a health maintenance organization operating a group  
9 practice that has been continuously licensed as a health maintenance  
10 organization since January 1, 2009;~~

11 ~~(b) The requirement that a health maintenance organization obtain  
12 a certificate of need under subsection (4)(b) of this section to sell,  
13 purchase, or lease a hospital does not apply to a health maintenance  
14 organization operating a group practice that has been continuously  
15 licensed as a health maintenance organization since January 1, 2009.)~~

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

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

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

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

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

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

33 (d) In the case of health services to be provided, (i) the  
34 availability of alternative uses of project resources for the provision  
35 of other health services, (ii) the extent to which such proposed  
36 services will be accessible to all residents of the area to be served,  
37 and (iii) the need for and the availability in the community of

1 services and facilities for osteopathic physicians and surgeons and  
2 allopathic physicians and their patients. The department shall  
3 consider the application in terms of its impact on existing and  
4 proposed institutional training programs for doctors of osteopathic  
5 medicine and surgery and medicine at the student, internship, and  
6 residency training levels;

7 (e) In the case of a construction project, the costs and methods of  
8 the proposed construction, including the cost and methods of energy  
9 provision, and the probable impact of the construction project reviewed  
10 (i) on the cost of providing health services by the person proposing  
11 such construction project and (ii) on the cost and charges to the  
12 public of providing health services by other persons;

13 (f) The special needs and circumstances of osteopathic hospitals,  
14 nonallopathic services and children's hospitals;

15 (g) Improvements or innovations in the financing and delivery of  
16 health services which foster cost containment and serve to promote  
17 quality assurance and cost-effectiveness;

18 (h) In the case of health services proposed to be provided, the  
19 efficiency and appropriateness of the use of existing services and  
20 facilities similar to those proposed;

21 (i) In the case of existing services or facilities, the quality of  
22 care provided by such services or facilities in the past; and

23 ~~(j) ((In the case of hospital certificate of need applications,))~~  
24 Whether the hospital meets or exceeds the regional average level of  
25 charity care, as determined by the secretary((; and

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

27 ~~(i) The availability of other nursing home beds in the planning~~  
28 ~~area to be served; and~~

29 ~~(ii) The availability of other services in the community to be~~  
30 ~~served. Data used to determine the availability of other services will~~  
31 ~~include but not be limited to data provided by the department of social~~  
32 ~~and health services)).~~

33 ~~(3) ((A certificate of need application of a health maintenance~~  
34 ~~organization or a health care facility which is controlled, directly or~~  
35 ~~indirectly, by a health maintenance organization, shall be approved by~~  
36 ~~the department if the department finds:~~

37 ~~(a) Approval of such application is required to meet the needs of~~

1 ~~the members of the health maintenance organization and of the new~~  
2 ~~members which such organization can reasonably be expected to enroll;~~  
3 ~~and~~

4 ~~(b) The health maintenance organization is unable to provide,~~  
5 ~~through services or facilities which can reasonably be expected to be~~  
6 ~~available to the organization, its health services in a reasonable and~~  
7 ~~cost-effective manner which is consistent with the basic method of~~  
8 ~~operation of the organization and which makes such services available~~  
9 ~~on a long-term basis through physicians and other health professionals~~  
10 ~~associated with it.))~~

11 A ((~~health care facility~~)) hospital, or any part thereof, with  
12 respect to which a certificate of need was issued under this subsection  
13 may not be sold or leased and a controlling interest in such facility  
14 or in a lease of such facility may not be acquired unless the  
15 department issues a certificate of need approving the sale,  
16 acquisition, or lease.

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

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

32 (6) The department shall specify information to be required for  
33 certificate of need applications. Within fifteen days of receipt of  
34 the application, the department shall request additional information  
35 considered necessary to the application or start the review process.  
36 Applicants may decline to submit requested information through written  
37 notice to the department, in which case review starts on the date of

1 receipt of the notice. Applications may be denied or limited because  
2 of failure to submit required and necessary information.

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

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

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

29 (10)(a) Any applicant denied a certificate of need or whose  
30 certificate of need has been suspended or revoked has the right to an  
31 adjudicative proceeding. The proceeding is governed by chapter 34.05  
32 RCW, the administrative procedure act.

33 (b) Any (~~health care facility or health maintenance organization~~)  
34 hospital that: (i) Provides services similar to the services provided  
35 by the applicant and under review pursuant to this subsection; (ii) is  
36 located within the applicant's health service area; and (iii) testified  
37 or submitted evidence at a public hearing held pursuant to subsection  
38 (9) of this section, shall be provided an opportunity to present oral

1 or written testimony and argument in a proceeding under this  
2 subsection: PROVIDED, That the (~~health care facility or health~~  
3 ~~maintenance organization~~) hospital had, in writing, requested to be  
4 informed of the department's decisions.

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

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

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

13 (b) An expansion of a service subject to review beyond that  
14 originally approved(~~(+~~

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

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

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

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

1 ~~subject to certificate of need review under this chapter, except as~~  
2 ~~otherwise permitted by subsection (14) of this section.~~

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

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

25 **Sec. 5.** RCW 70.38.118 and 2000 c 175 s 23 are each amended to read  
26 as follows:

27 All certificate of need applications submitted by hospice agencies  
28 for the construction, development, or other establishment of a facility  
29 to be licensed as ~~((either))~~ a hospital under chapter 70.41 RCW ~~((or as~~  
30 ~~a nursing home under chapter 18.51 RCW))~~, for the purpose of operating  
31 the functional equivalent of a hospice care center, shall not require  
32 a separate certificate of need for a hospice care center provided the  
33 certificate of need application was declared complete prior to July 1,  
34 2001, the applicant has been issued a certificate of need, and has  
35 applied for and received an in-home services agency license by July 1,  
36 2002.

1           **Sec. 6.** RCW 70.38.125 and 1989 1st ex.s. c 9 s 606 are each  
2 amended to read as follows:

3           (1) A certificate of need shall be valid for two years. One six-  
4 month extension may be made if it can be substantiated that substantial  
5 and continuing progress toward commencement of the project has been  
6 made as defined by regulations to be adopted pursuant to this chapter.

7           (2) A project for which a certificate of need has been issued shall  
8 be commenced during the validity period for the certificate of need.

9           (3) The department shall monitor the approved projects to assure  
10 conformance with certificates of need that have been issued. Rules and  
11 regulations adopted shall specify when changes in the project require  
12 reevaluation of the project. The department may require applicants to  
13 submit periodic progress reports on approved projects or other  
14 information as may be necessary to effectuate its monitoring  
15 responsibilities.

16           (4) The secretary, in the case of a new (~~health facility~~)  
17 hospital, shall not issue any license unless and until a prior  
18 certificate of need shall have been issued by the department for the  
19 offering or development of such new (~~health facility~~) hospital.

20           (5) Any person who engages in any undertaking which requires  
21 certificate of need review without first having received from the  
22 department either a certificate of need or an exception granted in  
23 accordance with this chapter shall be liable to the state in an amount  
24 not to exceed one hundred dollars a day for each day of such  
25 unauthorized offering or development. Such amounts of money shall be  
26 recoverable in an action brought by the attorney general on behalf of  
27 the state in the superior court of any county in which the unauthorized  
28 undertaking occurred. Any amounts of money so recovered by the  
29 attorney general shall be deposited in the state general fund.

30           (6) The department may bring any action to enjoin a violation or  
31 the threatened violation of the provisions of this chapter or any rules  
32 and regulations adopted pursuant to this chapter, or may bring any  
33 legal proceeding authorized by law, including but not limited to the  
34 special proceedings authorized in Title 7 RCW, in the superior court in  
35 the county in which such violation occurs or is about to occur, or in  
36 the superior court of Thurston county.

1       **Sec. 7.** RCW 70.38.135 and 2007 c 259 s 57 are each amended to read  
2 as follows:

3       The secretary shall have authority to:

4       (1) Provide when needed temporary or intermittent services of  
5 experts or consultants or organizations thereof, by contract, when such  
6 services are to be performed on a part time or fee-for-service basis;

7       (2) Make or cause to be made such on-site surveys of (~~health care~~  
8 ~~or medical facilities~~) hospitals as may be necessary for the  
9 administration of the certificate of need program;

10       (3) Upon review of recommendations, if any, from the board of  
11 health or the office of financial management as contained in the  
12 Washington health resources strategy:

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

18       (b) Promulgate rules pertaining to the maintenance and operation of  
19 (~~medical facilities~~) hospitals which receive federal assistance under  
20 the provisions of Title XVI;

21       (c) Promulgate rules in implementation of the provisions of this  
22 chapter, including the establishment of procedures for public hearings  
23 for predecisions and post-decisions on applications for certificate of  
24 need;

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

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

35       (5) Contract with and provide reasonable reimbursement for  
36 qualified entities to assist in determinations of certificates of need.

1        NEW SECTION.    **Sec. 8.**    RCW 70.38.111 (Certificates of need--  
2 Exemptions) and 2009 c 315 s 2, 2009 c 89 s 1, 1997 c 210 s 1, 1995 1st  
3 sp.s. c 18 s 71, 1993 c 508 s 5, 1992 c 27 s 2, 1991 c 158 s 2, 1989  
4 1st ex.s. c 9 s 604, 1982 c 119 s 3, & 1980 c 139 s 9 are each  
5 repealed.

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