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HOUSE BILL 1416

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State of Washington                      54th Legislature                      1995 Regular Session

By Representatives Skinner, Foreman, Schoesler and Huff

Read first time 01/24/95. Referred to Committee on Health Care.

1            AN ACT Relating to certificate of need; and amending RCW 70.38.111  
2 and 70.38.115.

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

4            **Sec. 1.** RCW 70.38.111 and 1993 c 508 s 5 are each amended to read  
5 as follows:

6            (1) The department shall not require a certificate of need for the  
7 offering of an inpatient tertiary health service by:

8            (a) A health maintenance organization or a combination of health  
9 maintenance organizations if (i) the organization or combination of  
10 organizations has, in the service area of the organization or the  
11 service areas of the organizations in the combination, an enrollment of  
12 at least fifty thousand individuals, (ii) the facility in which the  
13 service will be provided is or will be geographically located so that  
14 the service will be reasonably accessible to such enrolled individuals,  
15 and (iii) at least seventy-five percent of the patients who can  
16 reasonably be expected to receive the tertiary health service will be  
17 individuals enrolled with such organization or organizations in the  
18 combination;

1 (b) A health care facility if (i) the facility primarily provides  
2 or will provide inpatient health services, (ii) the facility is or will  
3 be controlled, directly or indirectly, by a health maintenance  
4 organization or a combination of health maintenance organizations which  
5 has, in the service area of the organization or service areas of the  
6 organizations in the combination, an enrollment of at least fifty  
7 thousand individuals, (iii) the facility is or will be geographically  
8 located so that the service will be reasonably accessible to such  
9 enrolled individuals, and (iv) at least seventy-five percent of the  
10 patients who can reasonably be expected to receive the tertiary health  
11 service will be individuals enrolled with such organization or  
12 organizations in the combination; or

13 (c) A health care facility (or portion thereof) if (i) the facility  
14 is or will be leased by a health maintenance organization or  
15 combination of health maintenance organizations which has, in the  
16 service area of the organization or the service areas of the  
17 organizations in the combination, an enrollment of at least fifty  
18 thousand individuals and, on the date the application is submitted  
19 under subsection (2) of this section, at least fifteen years remain in  
20 the term of the lease, (ii) the facility is or will be geographically  
21 located so that the service will be reasonably accessible to such  
22 enrolled individuals, and (iii) at least seventy-five percent of the  
23 patients who can reasonably be expected to receive the tertiary health  
24 service will be individuals enrolled with such organization;  
25 if, with respect to such offering or obligation by a nursing home, the  
26 department has, upon application under subsection (2) of this section,  
27 granted an exemption from such requirement to the organization,  
28 combination of organizations, or facility.

29 (2) A health maintenance organization, combination of health  
30 maintenance organizations, or health care facility shall not be exempt  
31 under subsection (1) of this section from obtaining a certificate of  
32 need before offering a tertiary health service unless:

33 (a) It has submitted at least thirty days prior to the offering of  
34 services reviewable under RCW 70.38.105(4)(d) an application for such  
35 exemption; and

36 (b) The application contains such information respecting the  
37 organization, combination, or facility and the proposed offering or  
38 obligation by a nursing home as the department may require to determine  
39 if the organization or combination meets the requirements of subsection

1 (1) of this section or the facility meets or will meet such  
2 requirements; and

3 (c) The department approves such application. The department shall  
4 approve or disapprove an application for exemption within thirty days  
5 of receipt of a completed application. In the case of a proposed  
6 health care facility (or portion thereof) which has not begun to  
7 provide tertiary health services on the date an application is  
8 submitted under this subsection with respect to such facility (or  
9 portion), the facility (or portion) shall meet the applicable  
10 requirements of subsection (1) of this section when the facility first  
11 provides such services. The department shall approve an application  
12 submitted under this subsection if it determines that the applicable  
13 requirements of subsection (1) of this section are met.

14 (3) A health care facility (or any part thereof) with respect to  
15 which an exemption was granted under subsection (1) of this section may  
16 not be sold or leased and a controlling interest in such facility or in  
17 a lease of such facility may not be acquired and a health care facility  
18 described in (1)(c) which was granted an exemption under subsection (1)  
19 of this section may not be used by any person other than the lessee  
20 described in (1)(c) unless:

21 (a) The department issues a certificate of need approving the sale,  
22 lease, acquisition, or use; or

23 (b) The department determines, upon application, that (i) the  
24 entity to which the facility is proposed to be sold or leased, which  
25 intends to acquire the controlling interest, or which intends to use  
26 the facility is a health maintenance organization or a combination of  
27 health maintenance organizations which meets the requirements of  
28 (1)(a)(i), and (ii) with respect to such facility, meets the  
29 requirements of (1)(a) (ii) or (iii) or the requirements of (1)(b) (i)  
30 and (ii).

31 (4) In the case of a health maintenance organization, an ambulatory  
32 care facility, or a health care facility, which ambulatory or health  
33 care facility is controlled, directly or indirectly, by a health  
34 maintenance organization or a combination of health maintenance  
35 organizations, the department may under the program apply its  
36 certificate of need requirements only to the offering of inpatient  
37 tertiary health services and then only to the extent that such offering  
38 is not exempt under the provisions of this section.

1 (5)(a) The department shall not require a certificate of need for  
2 the construction, development, or other establishment of a nursing  
3 home, or the addition of beds to an existing nursing home, that is  
4 owned and operated by a continuing care retirement community that:

5 (i) Offers services only to contractual members;

6 (ii) Provides its members a contractually guaranteed range of  
7 services from independent living through skilled nursing, including  
8 some assistance with daily living activities;

9 (iii) Contractually assumes responsibility for the cost of services  
10 exceeding the member's financial responsibility under the contract, so  
11 that no third party, with the exception of insurance purchased by the  
12 retirement community or its members, but including the medicaid  
13 program, is liable for costs of care even if the member depletes his or  
14 her personal resources;

15 (iv) Has offered continuing care contracts and operated a nursing  
16 home continuously since January 1, 1988, or has obtained a certificate  
17 of need to establish a nursing home;

18 (v) Maintains a binding agreement with the state assuring that  
19 financial liability for services to members, including nursing home  
20 services, will not fall upon the state;

21 (vi) Does not operate, and has not undertaken a project that would  
22 result in a number of nursing home beds in excess of one for every four  
23 living units operated by the continuing care retirement community,  
24 exclusive of nursing home beds; and

25 (vii) Has obtained a professional review of pricing and long-term  
26 solvency within the prior five years which was fully disclosed to  
27 members.

28 (b) A continuing care retirement community shall not be exempt  
29 under this subsection from obtaining a certificate of need unless:

30 (i) It has submitted an application for exemption at least thirty  
31 days prior to commencing construction of, is submitting an application  
32 for the licensure of, or is commencing operation of a nursing home,  
33 whichever comes first; and

34 (ii) The application documents to the department that the  
35 continuing care retirement community qualifies for exemption.

36 (c) The sale, lease, acquisition, or use of part or all of a  
37 continuing care retirement community nursing home that qualifies for  
38 exemption under this subsection shall require prior certificate of need  
39 approval to qualify for licensure as a nursing home unless the

1 department determines such sale, lease, acquisition, or use is by a  
2 continuing care retirement community that meets the conditions of (a)  
3 of this subsection.

4 (6) A rural hospital, as defined by the department, reducing the  
5 number of licensed beds to become a rural primary care hospital under  
6 the provisions of Part A Title XVIII of the Social Security Act Section  
7 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction  
8 of beds licensed under chapter 70.41 RCW, increase the number of  
9 licensed beds to no more than the previously licensed number without  
10 being subject to the provisions of this chapter.

11 (7) A rural health care facility licensed under RCW 70.175.100  
12 formerly licensed as a hospital under chapter 70.41 RCW may, within  
13 three years of the effective date of the rural health care facility  
14 license, apply to the department for a hospital license and not be  
15 subject to the requirements of RCW 70.38.105(4)(a) as the construction,  
16 development, or other establishment of a new hospital, provided there  
17 is no increase in the number of beds previously licensed under chapter  
18 70.41 RCW and there is no redistribution in the number of beds used for  
19 acute care or long-term care, the rural health care facility has been  
20 in continuous operation, and the rural health care facility has not  
21 been purchased or leased.

22 (8)(a) A nursing home that voluntarily reduces the number of its  
23 licensed beds to provide assisted living, licensed boarding home care,  
24 adult day care, adult day health, respite care, hospice, outpatient  
25 therapy services, congregate meals, home health, or senior wellness  
26 clinic, or to reduce to one or two the number of beds per room or to  
27 otherwise enhance the quality of life for residents in the nursing  
28 home, may convert the original facility or portion of the facility  
29 back, and thereby increase the number of nursing home beds to no more  
30 than the previously licensed number of nursing home beds without being  
31 subject to the provisions of this chapter except under RCW  
32 70.38.105(4)(d), provided the facility has been in continuous operation  
33 and has not been purchased or leased. Any conversion to the original  
34 licensed bed capacity, or to any portion thereof, shall comply with the  
35 same life and safety code requirements as existed at the time the  
36 nursing home voluntarily reduced its licensed beds; unless waivers from  
37 such requirements were issued, in which case the converted beds shall  
38 reflect the conditions or standards that then existed pursuant to the  
39 approved waivers.

1 (b) To convert beds back to nursing home beds under this  
2 subsection, the nursing home must:

3 (i) Give notice of its intent to preserve conversion options to the  
4 department of health no later than thirty days after the effective date  
5 of the license reduction; and

6 (ii) Give notice to the department of health and to the department  
7 of social and health services of the intent to convert beds back. If  
8 construction is required for the conversion of beds back, the notice of  
9 intent to convert beds back must be given no later than two years prior  
10 to the effective date of license modification reflecting the restored  
11 beds; otherwise, the notice must be given no later than one year prior  
12 to the effective date of license modification reflecting the restored  
13 beds.

14 (c) Conversion of beds back under this subsection must be completed  
15 no later than four years after the effective date of the license  
16 reduction. However, for good cause shown, the four-year period for  
17 conversion may be extended by the department of health for one  
18 additional four-year period.

19 (d) Nursing home beds that have been voluntarily reduced under this  
20 section shall be counted as available nursing home beds for the purpose  
21 of evaluating need under RCW 70.38.115(2)(a) and (k) so long as the  
22 facility retains the ability to convert them back to nursing home use  
23 under the terms of this section.

24 **Sec. 2.** RCW 70.38.115 and 1993 c 508 s 6 are each amended to read  
25 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

33 (k) In the case of nursing home applications:

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

36 (ii) The availability of other services in the community to be  
37 served. Data used to determine the availability of other services will  
38 include but not be limited to data provided by the department of social  
39 and health services.

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

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

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

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

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

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

36 (6) The department shall specify information to be required for  
37 certificate of need applications. Within fifteen days of receipt of  
38 the application, the department shall request additional information  
39 considered necessary to the application or start the review process.

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

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

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

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

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

35 (b) Any health care facility or health maintenance organization  
36 that: (i) Provides services similar to the services provided by the  
37 applicant and under review pursuant to this subsection; (ii) is located  
38 within the applicant's health service area; and (iii) testified or  
39 submitted evidence at a public hearing held pursuant to subsection (9)

1 of this section, shall be provided an opportunity to present oral or  
2 written testimony and argument in a proceeding under this subsection:  
3 PROVIDED, That the health care facility or health maintenance  
4 organization had, in writing, requested to be informed of the  
5 department's decisions.

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

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

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

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

16 (c) An increase in bed capacity;

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

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

32 (13)(a) In the case of an application for a certificate of need to  
33 replace existing nursing home beds, all criteria must be met on the  
34 same basis as an application for a certificate of need for a new  
35 nursing home, except that the need criteria shall be deemed met if the  
36 applicant is an existing licensee who proposes to replace existing beds  
37 that the licensee has operated for at least one year with the same or  
38 fewer number of beds in the same planning area, provided that the  
39 ownership of the nursing home bed rights have not been contractually

1 secured by the building owner, the mortgagor, an individual or  
2 individuals, or a corporation or partnership. In the event the nursing  
3 home bed rights have been contractually secured by the building owner,  
4 the mortgagor, an individual or individuals, or a corporation or  
5 partnership, the building owner shall be considered the licensee for  
6 bed banking and replacement purposes.

7 (b) When an entire nursing home ceases operation, its beds shall be  
8 treated as existing nursing home beds for purposes of replacement for  
9 eight years or until a certificate of need to replace them is issued,  
10 whichever occurs first. However, the nursing home must give notice of  
11 its intent to retain the beds to the department of health no later than  
12 thirty days after the effective date of the facility's closure.

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