
SENATE BILL 6724

State of Washington

54th Legislature

1996 Regular Session

By Senators Moyer, Fairley, Wood and Winsley

Read first time 01/26/96. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to health facilities and services; amending RCW
2 70.38.025; adding a new chapter to Title 70 RCW; creating new sections;
3 decodifying RCW 70.38.155, 70.38.156, 70.38.157, 70.38.914, 70.38.915,
4 70.38.916, 70.38.917, 70.38.918, and 70.38.919; repealing RCW
5 70.38.095; prescribing penalties; and providing effective dates.

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

7 **Sec. 1.** RCW 70.38.025 and 1991 c 158 s 1 are each amended to read
8 as follows:

9 When used in this chapter, the terms defined in this section shall
10 have the meanings indicated.

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

13 (2) "Capital expenditure" is an expenditure, including a force
14 account expenditure (i.e., an expenditure for a construction project
15 undertaken by a nursing home facility as its own contractor) which,
16 under generally accepted accounting principles, is not properly
17 chargeable as an expense of operation or maintenance. Where a person
18 makes an acquisition under lease or comparable arrangement, or through
19 donation, which would have required review if the acquisition had been

1 made by purchase, such expenditure shall be deemed a capital
2 expenditure. Capital expenditures include donations of equipment or
3 facilities to a nursing home facility which if acquired directly by
4 such facility would be subject to certificate of need review under the
5 provisions of this chapter and transfer of equipment or facilities for
6 less than fair market value if a transfer of the equipment or
7 facilities at fair market value would be subject to such review. The
8 cost of any studies, surveys, designs, plans, working drawings,
9 specifications, and other activities essential to the acquisition,
10 improvement, expansion, or replacement of any plant or equipment with
11 respect to which such expenditure is made shall be included in
12 determining the amount of the expenditure.

13 (3) "Continuing care retirement community" means an entity which
14 provides shelter and services under continuing care contracts with its
15 members and which sponsors or includes a health care facility or a
16 health service. A "continuing care contract" means a contract to
17 provide a person, for the duration of that person's life or for a term
18 in excess of one year, shelter along with nursing, medical, health-
19 related, or personal care services, which is conditioned upon the
20 transfer of property, the payment of an entrance fee to the provider of
21 such services, or the payment of periodic charges for the care and
22 services involved. A continuing care contract is not excluded from
23 this definition because the contract is mutually terminable or because
24 shelter and services are not provided at the same location.

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

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

31 (6) "Health care facility" means hospices, hospitals, psychiatric
32 hospitals, nursing homes, kidney disease treatment centers,
33 (~~ambulatory surgical facilities,~~) and home health agencies except a
34 home health agency operated by the smaller public hospital district
35 based on assessed valuation in a county with a population of under
36 twenty thousand with two public hospital districts serving the entire
37 county, and includes such facilities when owned and operated by a
38 political subdivision or instrumentality of the state and such other
39 facilities as required by federal law and implementing regulations, but

1 does not include Christian Science sanatoriums operated, listed, or
2 certified by the First Church of Christ Scientist, Boston,
3 Massachusetts. In addition, the term does not include any nonprofit
4 hospital: (a) Which is operated exclusively to provide health care
5 services for children; (b) which does not charge fees for such
6 services; and (c) if not contrary to federal law as necessary to the
7 receipt of federal funds by the state.

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

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

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

26 (8) "Health services" means clinically related (i.e., preventive,
27 diagnostic, curative, rehabilitative, or palliative) services and
28 includes alcoholism, drug abuse, and mental health services and as
29 defined in federal law.

30 (9) "Health service area" means a geographic region appropriate for
31 effective health planning which includes a broad range of health
32 services.

33 (10) "Person" means an individual, a trust or estate, a
34 partnership, a corporation (including associations, joint stock
35 companies, and insurance companies), the state, or a political
36 subdivision or instrumentality of the state, including a municipal
37 corporation or a hospital district.

38 (11) "Provider" (~~generally~~) means a health care professional or
39 an organization, institution, or other entity providing health care

1 (~~but the precise definition for this term shall be established by rule~~
2 ~~of the department, consistent with federal law~~)).

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

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

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

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

17 NEW SECTION. **Sec. 2.** RCW 70.38.155, 70.38.156, 70.38.157,
18 70.38.914, 70.38.915, 70.38.916, 70.38.917, 70.38.918, and 70.38.919
19 are each decodified.

20 NEW SECTION. **Sec. 3.** RCW 70.38.095 and 1979 ex.s. c 161 s 9 are
21 each repealed.

22 NEW SECTION. **Sec. 4.** The department of health, in cooperation
23 with the house of representatives health care committee, shall evaluate
24 the state's future role in identifying and evaluating community needs
25 and capacity for health facilities and services. By December 1, 1996,
26 the department shall provide recommendations on what, if any, system
27 needs to be maintained that assists communities to make informed
28 decisions regarding the need for future services and facilities. The
29 study shall include, but not be limited to, evaluating data from other
30 states that have discontinued certificate of need, evaluate appropriate
31 levels and provision of charity care in acute settings, looking at such
32 factors as medicaid/medicare reimbursement rates, usage rates of
33 facilities according to population and payer factors, and other
34 indirect indicators of changes in accessibility and quality.

1 NEW SECTION. **Sec. 5.** (1) The enactment of this act shall not have
2 the effect of terminating, or in any way modifying, the validity of any
3 certificate of need that shall already have been issued before July 1,
4 1997.

5 (2) Any certificate of need application that was submitted and
6 declared complete, but upon which final action had not been taken
7 before July 1, 1997, shall be renewed and action taken based on chapter
8 70.38 RCW as in effect before July 1, 1997.

9 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
10 conflict with federal requirements that are a prescribed condition to
11 the allocation of federal funds to the state, the conflicting part of
12 this act is inoperative solely to the extent of the conflict and with
13 respect to the agencies directly affected, and this finding does not
14 affect the operation of the remainder of this act in its application to
15 the agencies concerned. The rules under this act shall meet federal
16 requirements that are a necessary condition to the receipt of federal
17 funds by the state.

18 NEW SECTION. **Sec. 7.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 8.** Sections 1 through 3 and 5 of this act shall
23 take effect July 1, 1997.

24 NEW SECTION. **Sec. 9.** The legislature finds that ambulatory
25 surgical centers have provided the citizens of Washington state access
26 to various routine surgical and similar invasive medical procedures not
27 requiring hospitalization, resulting in reduced health care costs
28 consistent with the intent of health care reform. However, the
29 delivery of these services may put patients at risk due to the invasive
30 nature of the procedures performed or the use of general anesthesia and
31 the short patient recovery time prior to discharge.

32 It is the intent of the legislature to protect the citizens of
33 Washington state by licensing ambulatory surgical centers and by
34 adopting and enforcing minimum standards for ambulatory surgical
35 centers. Standards established are intended to be the minimum

1 necessary to ensure a safe environment for the performance of surgical
2 procedures and to ensure safe and competent care of patients.

3 NEW SECTION. **Sec. 10.** Unless the context clearly requires
4 otherwise, the definitions in this section apply throughout this
5 chapter.

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

10 (a) A health care facility otherwise licensed and regulated by the
11 department to provide surgical services, including an ambulatory
12 surgical facility operated by a hospital and regulated by the
13 department according to chapter 70.41 RCW;

14 (b) A facility in the offices of either an individual or group
15 practice of physicians licensed under chapter 18.71 RCW, osteopathic
16 physicians or surgeons licensed under chapter 18.57 RCW, or podiatric
17 physicians or surgeons licensed under chapter 18.22 RCW, including
18 where the facility is physically separate from such a practice, if the
19 privilege of using such a facility is not extended to such licensed
20 practitioners outside the individual or group practice. However, such
21 a facility may request licensure as an ambulatory surgical center if
22 the facility meets the requirements of this chapter and rules adopted
23 under this chapter; and

24 (c) A facility in which the services are provided solely by
25 dentists licensed under chapter 18.32 RCW and persons assisting or
26 under the supervision of dentists. However, such a facility may
27 request licensure as an ambulatory surgical center if the facility
28 meets the requirements of this chapter and rules adopted under this
29 chapter.

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

31 (3) "Person" means an individual, firm, partnership, corporation,
32 company, association, joint stock association, and the legal successor
33 thereof.

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

35 (a) Utilizes a knife, laser, cautery, cryogenics, or chemicals; and

36 (b) Removes, corrects, or facilitates the diagnosis or cure of a
37 disease, process, or injury through that branch of medicine that treats
38 diseases, injuries, and deformities by manual or operative methods.

1 NEW SECTION. **Sec. 11.** (1) Nothing in this chapter shall be
2 construed in any manner to change or expand the scope of practice of a
3 health care practitioner.

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

6 NEW SECTION. **Sec. 12.** After June 30, 1997, no person shall
7 operate or maintain an ambulatory surgical center or advertise by using
8 the term "licensed ambulatory surgery center," "licensed day surgery
9 center," "licensed surgical center," "licensed surgery center," or
10 other words conveying similar meaning without first obtaining an
11 ambulatory surgical center license from the department.

12 NEW SECTION. **Sec. 13.** An applicant for an ambulatory surgical
13 center license shall:

14 (1) Submit to the department a written application on a form
15 provided by the department, including a list of surgical specialties
16 offered;

17 (2) Submit to the department for review and approval building plans
18 for new construction, alterations other than minor alterations, and
19 additions to existing facilities prior to licensure and occupancy as
20 prescribed by the department;

21 (3) Demonstrate ability to comply with this chapter and rules
22 adopted under this chapter;

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

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

29 (6) Pay to the department a license fee and building plan review
30 fee as prescribed by the department under the authority of RCW
31 43.70.110 and 43.70.250; and

32 (7) Provide any other information the department may reasonably
33 require.

34 NEW SECTION. **Sec. 14.** If the department determines that an
35 applicant complies with the provisions of this chapter and rules
36 adopted under this chapter, the department shall issue a license to the

1 applicant. A license, unless suspended or revoked, is effective for a
2 period of two years, however an initial license is only effective for
3 twelve months. The department shall conduct at least one on-site
4 survey within each licensure period, except as provided for in section
5 18 of this act.

6 NEW SECTION. **Sec. 15.** (1) The department shall establish and
7 adopt such minimum standards and rules pertaining to the construction,
8 maintenance, and operation of ambulatory surgical centers as are
9 necessary for the safe and adequate care and treatment of patients:
10 PROVIDED, That such minimum standards are no greater than federal
11 medicare program standards as they existed on January 1, 1995, unless
12 authorized by other state statute. The department shall adopt
13 standards that are at least equal to recognized applicable national
14 standards pertaining to medical gas piping systems. The department
15 shall rescind, amend, or modify the rules as necessary.

16 (2) Ambulatory care centers are exempt from certificate of need
17 requirements under chapter 70.38 RCW.

18 NEW SECTION. **Sec. 16.** The department may, at any time, conduct an
19 on-site survey of a licensee in order to determine compliance with this
20 chapter and rules adopted under this chapter.

21 NEW SECTION. **Sec. 17.** The department may deny, suspend, or revoke
22 a license under this chapter or, in lieu thereof or in addition
23 thereto, assess civil monetary penalties in any case in which it finds
24 the applicant or licensee:

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

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

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

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

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

7 (6) Willfully prevented, interfered with, or attempted to impede in
8 any way any representative of the department in the preservation of
9 evidence of any violation of this chapter or rules adopted under this
10 chapter;

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

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

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

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

19 NEW SECTION. **Sec. 18.** (1) An ambulatory surgical center that is
20 certified or accredited as an ambulatory surgical center by the federal
21 medicare program or any private accrediting organization shall be
22 granted the applicable renewal license without the necessity of an on-
23 site state licensure survey if:

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

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

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

34 (2) In reviewing whether the federal medicare program or any
35 private accrediting organization has survey standards that are of
36 substantial equivalency to those set forth in this chapter, the
37 department is directed to provide the most liberal interpretation
38 consistent with the intent of this chapter. In the event the

1 department determines at any time that the survey standards are not
2 substantially equivalent to those required by this chapter, the
3 department is directed to notify the affected licensees. The
4 notification shall contain a detailed description of the deficiencies
5 in the alternative survey process, as well as an explanation concerning
6 the risk to the consumer. The determination of substantial equivalency
7 for an alternative survey process and lack of substantial equivalency
8 are agency actions and subject to the provisions of chapter 34.05 RCW.

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

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

14 NEW SECTION. **Sec. 19.** An ambulatory surgical center licensed by
15 the department of health shall comply with the charity care delivery
16 requirements found in RCW 70.170.060 (1), (5), and (6) for the care it
17 provides in its center.

18 NEW SECTION. **Sec. 20.** Sections 9 through 19 of this act shall
19 take effect July 1, 1996.

20 NEW SECTION. **Sec. 21.** Sections 9 through 19 of this act shall
21 constitute a new chapter in Title 70 RCW.

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