
ENGROSSED SENATE BILL 5423

State of Washington

61st Legislature

2009 Regular Session

By Senators Pflug and Oemig

Read first time 01/21/09. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to critical access hospitals not subject to
2 certificate of need reviews; and amending RCW 70.38.105.

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

4 **Sec. 1.** RCW 70.38.105 and 2004 c 261 s 6 are each amended to read
5 as follows:

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

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

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

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

18 (a) The construction, development, or other establishment of a new
19 health care facility;

1 (b) The sale, purchase, or lease of part or all of any existing
2 hospital as defined in RCW 70.38.025;

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

7 (d) Any capital expenditure for the construction, renovation, or
8 alteration of a nursing home which exceeds the expenditure minimum as
9 defined by RCW 70.38.025. However, a capital expenditure which is not
10 subject to certificate of need review under (a), (b), (c), or (e) of
11 this subsection and which is solely for any one or more of the
12 following is not subject to certificate of need review:

13 (i) Communications and parking facilities;

14 (ii) Mechanical, electrical, ventilation, heating, and air
15 conditioning systems;

16 (iii) Energy conservation systems;

17 (iv) Repairs to, or the correction of, deficiencies in existing
18 physical plant facilities which are necessary to maintain state
19 licensure, however, other additional repairs, remodeling, or
20 replacement projects that are not related to one or more deficiency
21 citations and are not necessary to maintain state licensure are not
22 exempt from certificate of need review except as otherwise permitted by
23 (d)(vi) of this subsection or RCW 70.38.115(13);

24 (v) Acquisition of equipment, including data processing equipment,
25 which is not or will not be used in the direct provision of health
26 services;

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

31 (vii) Acquisition of land; and

32 (viii) Refinancing of existing debt;

33 (e) A change in bed capacity of a health care facility which
34 increases the total number of licensed beds or redistributes beds among
35 acute care, nursing home care, and boarding home care if the bed
36 redistribution is to be effective for a period in excess of six months,
37 or a change in bed capacity of a rural health care facility licensed
38 under RCW 70.175.100 that increases the total number of nursing home

1 beds or redistributes beds from acute care or boarding home care to
2 nursing home care if the bed redistribution is to be effective for a
3 period in excess of six months. A health care facility certified as a
4 critical access hospital under 42 U.S.C. 1395i-4 may increase its total
5 number of licensed beds to the total number of beds permitted under 42
6 U.S.C. 1395i-4 for acute care and may redistribute beds permitted under
7 42 U.S.C. 1395i-4 among acute care and nursing home care without being
8 subject to certificate of need review. If there is a nursing home
9 licensed under chapter 18.51 RCW within twenty-seven miles of the
10 critical access hospital, the critical access hospital is subject to
11 certificate of need review except for:

12 (i) Critical access hospitals which had designated beds to provide
13 nursing home care, in excess of five swing beds, prior to December 31,
14 2003; (~~(e)~~)

15 (ii) Up to five swing beds; or

16 (iii) Up to twenty-five swing beds for critical access hospitals
17 which do not have a nursing home licensed under chapter 18.51 RCW
18 within the same city or town limits. No more than one-half of the
19 additional beds designated for swing bed services under this subsection
20 (4)(e)(iii) may be so designated before July 1, 2009, with the balance
21 designated no sooner than July 1, 2010.

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

29 (f) Any new tertiary health services which are offered in or
30 through a health care facility or rural health care facility licensed
31 under RCW 70.175.100, and which were not offered on a regular basis by,
32 in, or through such health care facility or rural health care facility
33 within the twelve-month period prior to the time such services would be
34 offered;

35 (g) Any expenditure for the construction, renovation, or alteration
36 of a nursing home or change in nursing home services in excess of the
37 expenditure minimum made in preparation for any undertaking under
38 subsection (4) of this section and any arrangement or commitment made

1 for financing such undertaking. Expenditures of preparation shall
2 include expenditures for architectural designs, plans, working
3 drawings, and specifications. The department may issue certificates of
4 need permitting predevelopment expenditures, only, without authorizing
5 any subsequent undertaking with respect to which such predevelopment
6 expenditures are made; and

7 (h) Any increase in the number of dialysis stations in a kidney
8 disease center.

9 (5) The department is authorized to charge fees for the review of
10 certificate of need applications and requests for exemptions from
11 certificate of need review. The fees shall be sufficient to cover the
12 full cost of review and exemption, which may include the development of
13 standards, criteria, and policies.

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

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