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HOUSE BILL 2099

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State of Washington

64th Legislature

2015 Regular Session

By Representatives MacEwen and Schmick

Read first time 02/12/15. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to eliminating certificate of need requirements  
2 for kidney disease treatment centers in rural counties; and amending  
3 RCW 70.38.025 and 70.38.105.

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

5 **Sec. 1.** RCW 70.38.025 and 2000 c 175 s 22 are each amended to  
6 read as follows:

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

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

11 (2) "Capital expenditure" is an expenditure, including a force  
12 account expenditure (i.e., an expenditure for a construction project  
13 undertaken by a nursing home facility as its own contractor) which,  
14 under generally accepted accounting principles, is not properly  
15 chargeable as an expense of operation or maintenance. Where a person  
16 makes an acquisition under lease or comparable arrangement, or  
17 through donation, which would have required review if the acquisition  
18 had been made by purchase, such expenditure shall be deemed a capital  
19 expenditure. Capital expenditures include donations of equipment or  
20 facilities to a nursing home facility which if acquired directly by  
21 such facility would be subject to certificate of need review under

1 the provisions of this chapter and transfer of equipment or  
2 facilities for less than fair market value if a transfer of the  
3 equipment or facilities at fair market value would be subject to such  
4 review. The cost of any studies, surveys, designs, plans, working  
5 drawings, specifications, and other activities essential to the  
6 acquisition, improvement, expansion, or replacement of any plant or  
7 equipment with respect to which such expenditure is made shall be  
8 included in determining the amount of the expenditure.

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

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

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

28 (6) "Health care facility" means hospices, hospice care centers,  
29 hospitals, psychiatric hospitals, nursing homes, (~~(kidney disease~~  
30 ~~treatment centers,)~~) ambulatory surgical facilities, and home health  
31 agencies, and includes such facilities when owned and operated by a  
32 political subdivision or instrumentality of the state and such other  
33 facilities as required by federal law and implementing regulations,  
34 but does not include any health facility or institution conducted by  
35 and for those who rely exclusively upon treatment by prayer or  
36 spiritual means in accordance with the creed or tenets of any well-  
37 recognized church or religious denomination, or any health facility  
38 or institution operated for the exclusive care of members of a  
39 convent as defined in RCW 84.36.800 or rectory, monastery, or other  
40 institution operated for the care of members of the clergy. In

1 addition, the term does not include any nonprofit hospital: (a) Which  
2 is operated exclusively to provide health care services for children;  
3 (b) which does not charge fees for such services; and (c) if not  
4 contrary to federal law as necessary to the receipt of federal funds  
5 by the state.

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

8 (a) Is a qualified health maintenance organization under Title  
9 XIII, section 1310(d) of the public health service(~~(s—[Service])~~)  
10 act; or

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

1 the precise definition for this term shall be established by rule of  
2 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  
13 service, and improved outcomes of care.

14 (15) "Hospital" means any health care institution which is  
15 required to qualify for a license under RCW 70.41.020(~~(+2)~~) (4); or  
16 as a psychiatric hospital under chapter 71.12 RCW.

17 **Sec. 2.** RCW 70.38.105 and 2012 c 10 s 47 are each amended to  
18 read as follows:

19 (1) The department is authorized and directed to implement the  
20 certificate of need program in this state pursuant to the provisions  
21 of this chapter.

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

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

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

32 (a) The construction, development, or other establishment of a  
33 new health care facility including, but not limited to, a hospital  
34 constructed, developed, or established by a health maintenance  
35 organization or by a combination of health maintenance organizations  
36 except as provided in subsection (7)(a) of this section;

37 (b) The sale, purchase, or lease of part or all of any existing  
38 hospital as defined in RCW 70.38.025 including, but not limited to, a  
39 hospital sold, purchased, or leased by a health maintenance

1 organization or by a combination of health maintenance organizations  
2 except as provided in subsection (7)(b) of this section;

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  
23 by (d)(vi) of this subsection or RCW 70.38.115(13);

24 (v) Acquisition of equipment, including data processing  
25 equipment, which is not or will not be used in the direct provision  
26 of health 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  
35 among acute care, nursing home care, and assisted living facility  
36 care if the bed redistribution is to be effective for a period in  
37 excess of six months, or a change in bed capacity of a rural health  
38 care facility licensed under RCW 70.175.100 that increases the total  
39 number of nursing home beds or redistributes beds from acute care or  
40 assisted living facility care to nursing home care if the bed

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

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

14 (ii) Up to five swing beds; or

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

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

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

34 (g) Any expenditure for the construction, renovation, or  
35 alteration of a nursing home or change in nursing home services in  
36 excess of the expenditure minimum made in preparation for any  
37 undertaking under this subsection (4) (~~of this section~~) and any  
38 arrangement or commitment made for financing such undertaking.  
39 Expenditures of preparation shall include expenditures for  
40 architectural designs, plans, working drawings, and specifications.

1 The department may issue certificates of need permitting  
2 predevelopment expenditures, only, without authorizing any subsequent  
3 undertaking with respect to which such predevelopment expenditures  
4 are made(~~(; and~~

5 ~~(h) Any increase in the number of dialysis stations in a kidney~~  
6 ~~disease center)).~~

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

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

14 (7)(a) The requirement that a health maintenance organization  
15 obtain a certificate of need under subsection (4)(a) of this section  
16 for the construction, development, or other establishment of a  
17 hospital does not apply to a health maintenance organization  
18 operating a group practice that has been continuously licensed as a  
19 health maintenance organization since January 1, 2009;

20 (b) The requirement that a health maintenance organization obtain  
21 a certificate of need under subsection (4)(b) of this section to  
22 sell, purchase, or lease a hospital does not apply to a health  
23 maintenance organization operating a group practice that has been  
24 continuously licensed as a health maintenance organization since  
25 January 1, 2009.

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