
SECOND SUBSTITUTE HOUSE BILL 2128

State of Washington

68th Legislature

2024 Regular Session

By House Appropriations (originally sponsored by Representatives Schmick, Graham, Macri, Harris, Jacobsen, and Hutchins)

READ FIRST TIME 02/05/24.

1 AN ACT Relating to the modernization of the certificate of need
2 program; creating new sections; and providing an expiration date.

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

4 NEW SECTION. **Sec. 1.** (1) The certificate of need modernization
5 advisory committee is established with members as provided in this
6 subsection:

7 (a) The speaker of the house of representatives shall appoint one
8 member from each of the two largest caucuses of the house of
9 representatives;

10 (b) The president of the senate shall appoint one member from
11 each of the two largest caucuses of the senate;

12 (c) The secretary of the department of health, or the secretary's
13 designee;

14 (d) The director of the health care authority, or the director's
15 designee;

16 (e) The insurance commissioner, or the commissioner's designee;
17 and

18 (f) The following individuals appointed by the governor:

19 (i) A representative from the governor's office;

20 (ii) A representative from the office of financial management;

- 1 (iii) A representative of a large private employer-sponsored
2 health benefits purchaser;
- 3 (iv) A representative of a small private employer-sponsored
4 health benefits purchaser;
- 5 (v) A representative of labor organizations;
- 6 (vi) A representative of health carriers;
- 7 (vii) A representative of health maintenance organizations;
- 8 (viii) A tribal representative;
- 9 (ix) Two health care consumers;
- 10 (x) A representative of an organization that represents health
11 care consumers or a patient coalition group;
- 12 (xi) A representative of an association representing physicians
13 in Washington; and
- 14 (xii) One representative from each category of health care
15 facility, as specified in the definition of "health care facility" in
16 RCW 70.38.025. For this purpose, acute care hospitals licensed under
17 chapter 70.41 RCW and psychiatric hospitals are separate categories.
- 18 (2)(a) The governor shall appoint the chair of the advisory
19 committee. The chair is responsible for convening advisory committee
20 meetings every two months.
- 21 (b) The office of financial management shall contract with a
22 contractor with relevant expertise to complete the review of items
23 found in subsection (3) of this section, to the extent information
24 and research is available, and provide a report of all research and
25 findings. The contractor shall interview every member of the advisory
26 committee for their input on the review, in addition to other
27 stakeholders as determined by the contractor. The contractor shall
28 provide regular progress reports to the advisory committee and by
29 December 15, 2024, shall submit initial findings to the advisory
30 committee and relevant policy committees of the legislature. The
31 contract is exempt from the competitive procurement requirements in
32 chapter 39.26 RCW.
- 33 (c) The office of financial management shall contract or hire
34 dedicated staff to facilitate and provide staff support to the
35 nonlegislative members and for facilitation and project management
36 support of the committee. Senate committee services and the house of
37 representatives office of program research shall provide staff
38 support to the legislative members of the committee. The contractor
39 shall support the work of all members of the committee, legislative
40 and nonlegislative.

1 (3) The contractor shall provide the following information to the
2 advisory committee to inform their deliberations:

3 (a) Research on the role and impact of certificate of need
4 programs in other states, including:

5 (i) The scope of each reviewed state's certificate of need
6 legislation, including covered facility types and services;

7 (ii) Factors considered in reviewing certificate of need
8 applications;

9 (iii) The process for reviewing certificate of need applications
10 and appeals of initial certificate of need determinations;

11 (iv) The scope of authority regarding conditions that can be
12 included in any certificate of need approval and mechanisms to
13 monitor and enforce compliance with such conditions;

14 (v) Any reports or studies regarding the function and outcome of
15 the state's certificate of need program; and

16 (vi) For states that have repealed their certificate of need
17 programs, the state's experience since repeal with respect to
18 expansion or contraction of supply of those services and facilities
19 no longer subject to a certificate of need; and

20 (b) A review of recent research related to the impacts of
21 certificate of need programs on access, quality, and cost of health
22 care services. To the extent information and research is available,
23 the review should include available information and research on the
24 issues referenced in subsection (4) of this section related to
25 Washington's certificate of need program.

26 (4) The advisory committee shall consider and review the
27 following issues:

28 (a) The role that the certificate of need program may or may not
29 have in the current health care system with respect to containing
30 health care costs associated with the health care system as a whole
31 and for each category of health care facility, health service, or
32 other activity subject to the certificate of need program under RCW
33 70.38.105;

34 (b) Whether the certificate of need program promotes and
35 facilitates patient care in urban, suburban, and rural parts of
36 Washington for each category of health care facility, health service,
37 or other activity subject to the certificate of need program under
38 RCW 70.38.105;

39 (c) Whether the certificate of need program increases the quality
40 of health care services;

- 1 (d) Whether patients have more health care choices because of the
2 certificate of need program;
- 3 (e) Whether the certificate of need program facilitates the
4 adoption of innovative and cost-effective new health care
5 technologies;
- 6 (f) Whether the certificate of need program reduces the
7 overutilization of health care services;
- 8 (g) Whether the certificate of need program assists in the
9 establishment of an adequate health care workforce;
- 10 (h) Whether the certificate of need program creates an
11 unnecessary barrier to the establishment of needed health care
12 facilities and health services;
- 13 (i) Whether the certificate of need program facilitates or
14 creates barriers for new forms of providing care, such as telehealth
15 services and stand-alone emergency rooms;
- 16 (j) Whether and how the certificate of need program addresses
17 equitable access to care for consumers who are uninsured or receiving
18 coverage through the medicaid and medicare programs;
- 19 (k) Whether and how the certificate of need program impacts a
20 health care facility's payor mix; and
- 21 (l) Ways to modernize the certificate of need program to improve
22 its performance with respect to the items identified in (a) through
23 (k) of this subsection, including:
- 24 (i) Consideration of the need to continue to require the coverage
25 of each category of health care facility, health service, or other
26 activity subject to the certificate of need program under RCW
27 70.38.105, and consideration of the elimination of any categories
28 from certificate of need coverage or elimination of the certificate
29 of need program, as a whole;
- 30 (ii) Consideration of the need to expand the certificate of need
31 program to include other health care facilities, health services, or
32 other activities;
- 33 (iii) Ways to improve the certificate of need program through
34 modernizing its goals, criteria, and processes; and
- 35 (iv) Options to make the certificate of need program work better
36 to meet the needs of patients in Washington.
- 37 (5) The advisory committee and contractor shall review the items
38 in this section in light of:

1 (a) Recent and projected population and demographic trends in
2 Washington, including age, race, ethnicity, gender, and geographic
3 population density; and

4 (b) Recent and projected developments in the health care system
5 in Washington and nationally, including health care workforce
6 shortages, health care provider consolidation within the health care
7 system, the increased use of telemedicine and other new methods of
8 accessing and providing care, the increased availability of
9 information for patients about health care provider and facility cost
10 and quality, state and national health care initiatives since 2010,
11 and the increased availability of data related to the delivery and
12 cost of health care.

13 (6)(a) Members are not entitled to reimbursement for travel
14 expenses if they are compensated or reimbursed for participating on
15 behalf of an employer, governmental entity, or other organization.

16 (b) Any reimbursement for members not identified in (a) of this
17 subsection is subject to chapter 43.03 RCW.

18 (7) The advisory committee is subject to the requirements of
19 chapters 42.30 and 42.56 RCW.

20 (8) The department of health shall provide the contractor with
21 any nonconfidential data or information in the department of health's
22 possession as needed to complete the review under this section. The
23 contractor shall sign a data sharing agreement with the department of
24 health to access this data or information.

25 (9) The contractor shall submit their findings and
26 recommendations to the governor and each chamber of the legislature
27 in two phases.

28 (a) By December 15, 2024, the contractor shall submit a
29 preliminary report summarizing the findings based on the review of
30 items identified in subsection (3) of this section. This report must
31 be submitted to the governor and relevant committees of the
32 legislature and presented to the advisory committee.

33 (b) By October 15, 2025:

34 (i) The contractor shall formally present their findings based on
35 the review of items identified in subsection (3) of this section and
36 their recommendations to the advisory committee. The recommendations
37 must focus on whether to modernize, expand, reduce, eliminate, or
38 maintain the certificate of need program based on access to care,
39 quality of care, and total health care expenditures. The advisory

1 committee must have an opportunity to provide feedback to the
2 contractor on all recommendations.

3 (ii) A final report must be submitted to the advisory committee,
4 the governor, and relevant committees of the legislature. The final
5 report to the legislature must include the contractor's findings,
6 recommendations, and any feedback from the advisory committee on the
7 recommendations.

8 (10) This section expires July 1, 2026.

9 NEW SECTION. **Sec. 2.** If specific funding for the purposes of
10 this act, referencing this act by bill or chapter number, is not
11 provided by June 30, 2024, in the omnibus appropriations act, this
12 act is null and void.

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