
SUBSTITUTE HOUSE BILL 2295

State of Washington

68th Legislature

2024 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Bateman, Hutchins, Riccelli, Bronoske, Reed, Orwall, Davis, Tharinger, Simmons, Callan, and Macri)

READ FIRST TIME 01/31/24.

1 AN ACT Relating to establishing a regulatory structure for
2 licensed acute care hospitals to provide hospital at-home services;
3 amending RCW 70.127.040 and 70.38.111; adding a new section to
4 chapter 70.41 RCW; adding a new section to chapter 70.126 RCW;
5 creating a new section; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

8 (a) "Hospital at home" is a service that provides safe and
9 effective care, improves outcomes, and benefits patients. It was
10 developed by Johns Hopkins healthcare solutions and has been used by
11 the veteran's health administration and medical centers in the United
12 States and around the world;

13 (b) Washington hospitals began offering this service following
14 the launch of the centers for medicare and medicaid services acute
15 hospital care at-home program in response to the COVID-19 pandemic.
16 Since that time, participating Washington patients have experienced
17 fewer readmissions and shorter treatment periods and report high
18 rates of satisfaction;

19 (c) Authorizing the continuation of this service would benefit
20 patients in Washington, a state with one of the lowest number of beds

1 per patient population in the country and a track record of providing
2 high quality inpatient care; and

3 (d) Immediate authorization of this service is necessary to
4 preserve continuity of care and provision of services without
5 disruption.

6 (2) It is the intent of the legislature to authorize acute care
7 hospitals licensed under this chapter to continue providing hospital
8 at-home services and direct the department to adopt rules including
9 those services among those that may be offered by such hospitals.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.41
11 RCW to read as follows:

12 (1) Hospitals subject to this chapter may provide hospital at-
13 home services if they have an active federal program waiver prior to
14 when the department adopts rules pursuant to this section. Hospitals
15 that have an active federal program waiver and intend to operate
16 hospital at-home services within Washington state shall notify the
17 department within 30 days of the effective date of this section.

18 (2)(a) The department shall adopt rules by December 31, 2025, to
19 implement this act and add hospital at-home services to those
20 services that may be provided by an acute care hospital licensed
21 under this chapter. The rules shall establish standards for the
22 operation of a hospital at-home program. The standards must be
23 consistent with the provisions of the federal program and may not
24 include requirements that would make a hospital ineligible for or
25 preclude a hospital from complying with the requirements of the
26 federal program. The department may adopt additional standards to
27 address program safety concerns.

28 (b) In the event that the federal program expires before the
29 department establishes rules, hospitals shall continue to follow
30 federal program requirements that were in effect as of the date of
31 the federal program's expiration and the department shall enforce
32 such requirements until the department adopts rules.

33 (c) Once rules are established, hospitals that intend to offer or
34 continue offering hospital at-home services shall apply to the
35 department for approval to add hospital at-home services as a
36 hospital service line. Hospitals that have secured a federal program
37 waiver prior to rule adoption may provide hospital at-home services
38 while applying for approval. The department shall approve a hospital
39 to provide hospital at-home services if the application is consistent

1 with the standards established in rule. RCW 43.70.115 and chapter
2 34.05 RCW govern notice and adjudicative proceedings related to
3 denial of an application. The department may set a one-time
4 application fee in rule. The application fees charged shall not
5 exceed the actual cost of staff time to review. The administration of
6 the program must be covered by licensing fees set by the department
7 under the authority of RCW 70.41.100 and 43.70.250.

8 (3) Hospital at-home services are not subject to chapter 70.126
9 or 70.127 RCW.

10 (4) Hospital at-home services do not count as an increase in the
11 number of the hospital's licensed beds and are not subject to chapter
12 70.38 RCW.

13 (5) The definitions in this subsection apply throughout this
14 section unless the context clearly requires otherwise.

15 (a) "Hospital at-home services" means acute care services
16 provided by a licensed acute care hospital to a patient outside of
17 the hospital's licensed facility and within a home or any location
18 determined by the patient receiving the service.

19 (b) "Federal program" means the acute hospital care at-home
20 program established by the federal centers for medicare and medicaid
21 services under 42 U.S.C. Sec. 1320b-5 and extended by 42 U.S.C Sec.
22 1395cc-7, or any successor program.

23 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.126
24 RCW to read as follows:

25 This chapter does not apply to hospital at-home services provided
26 by an acute care hospital licensed under chapter 70.41 RCW.

27 **Sec. 4.** RCW 70.127.040 and 2020 c 258 s 2 are each amended to
28 read as follows:

29 The following are not subject to regulation for the purposes of
30 this chapter:

31 (1) A family member providing home health, hospice, or home care
32 services;

33 (2) A person who provides only meal services in an individual's
34 permanent or temporary residence;

35 (3) An individual providing home care through a direct agreement
36 with a recipient of care in an individual's permanent or temporary
37 residence;

- 1 (4) A person furnishing or delivering home medical supplies or
2 equipment that does not involve the provision of services beyond
3 those necessary to deliver, set up, and monitor the proper
4 functioning of the equipment and educate the user on its proper use;
- 5 (5) A person who provides services through a contract with a
6 licensed agency;
- 7 (6) An employee or volunteer of a licensed agency who provides
8 services only as an employee or volunteer;
- 9 (7) Facilities and institutions, including but not limited to
10 nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41
11 RCW, adult family homes under chapter 70.128 RCW, assisted living
12 facilities under chapter 18.20 RCW, developmental disability
13 residential programs under chapter 71A.12 RCW, other entities
14 licensed under chapter 71.12 RCW, or other licensed facilities and
15 institutions, only when providing services to persons residing within
16 the facility or institution;
- 17 (8) Local and combined city-county health departments providing
18 services under chapters 70.05 and 70.08 RCW;
- 19 (9) An individual providing care to ill individuals, individuals
20 with disabilities, or vulnerable individuals through a contract with
21 the department of social and health services;
- 22 (10) Nursing homes, hospitals, or other institutions, agencies,
23 organizations, or persons that contract with licensed home health,
24 hospice, or home care agencies for the delivery of services;
- 25 (11) In-home assessments of an ill individual, an individual with
26 a disability, or a vulnerable individual that does not result in
27 regular ongoing care at home;
- 28 (12) Services conducted by and for the adherents of a church or
29 religious denomination that rely upon spiritual means alone through
30 prayer for healing in accordance with the tenets and practices of
31 such church or religious denomination and the bona fide religious
32 beliefs genuinely held by such adherents;
- 33 (13) A medicare-approved dialysis center operating a medicare-
34 approved home dialysis program;
- 35 (14) A person providing case management services. For the
36 purposes of this subsection, "case management" means the assessment,
37 coordination, authorization, planning, training, and monitoring of
38 home health, hospice, and home care, and does not include the direct
39 provision of care to an individual;

1 (15) Pharmacies licensed under RCW 18.64.043 that deliver
2 prescription drugs and durable medical equipment that does not
3 involve the use of professional services beyond those authorized to
4 be performed by licensed pharmacists pursuant to chapter 18.64 RCW
5 and those necessary to set up and monitor the proper functioning of
6 the equipment and educate the person on its proper use;

7 (16) A volunteer hospice complying with the requirements of RCW
8 70.127.050;

9 (17) A person who provides home care services without
10 compensation;

11 (18) Nursing homes that provide telephone or web-based
12 transitional care management services; (~~and~~)

13 (19) A rural health clinic providing health services in a home
14 health shortage area as declared by the department pursuant to 42
15 C.F.R. Sec. 405.2416; and

16 (20) Hospital at-home services provided by a hospital pursuant to
17 section 2 of this act.

18 **Sec. 5.** RCW 70.38.111 and 2021 c 277 s 1 are each amended to
19 read as follows:

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

22 (a) A health maintenance organization or a combination of health
23 maintenance organizations if (i) the organization or combination of
24 organizations has, in the service area of the organization or the
25 service areas of the organizations in the combination, an enrollment
26 of at least fifty thousand individuals, (ii) the facility in which
27 the service will be provided is or will be geographically located so
28 that the service will be reasonably accessible to such enrolled
29 individuals, and (iii) at least seventy-five percent of the patients
30 who can reasonably be expected to receive the tertiary health service
31 will be individuals enrolled with such organization or organizations
32 in the combination;

33 (b) A health care facility if (i) the facility primarily provides
34 or will provide inpatient health services, (ii) the facility is or
35 will be controlled, directly or indirectly, by a health maintenance
36 organization or a combination of health maintenance organizations
37 which has, in the service area of the organization or service areas
38 of the organizations in the combination, an enrollment of at least
39 fifty thousand individuals, (iii) the facility is or will be

1 geographically located so that the service will be reasonably
2 accessible to such enrolled individuals, and (iv) at least seventy-
3 five percent of the patients who can reasonably be expected to
4 receive the tertiary health service will be individuals enrolled with
5 such organization or organizations in the combination; or

6 (c) A health care facility (or portion thereof) if (i) the
7 facility is or will be leased by a health maintenance organization or
8 combination of health maintenance organizations which has, in the
9 service area of the organization or the service areas of the
10 organizations in the combination, an enrollment of at least fifty
11 thousand individuals and, on the date the application is submitted
12 under subsection (2) of this section, at least fifteen years remain
13 in the term of the lease, (ii) the facility is or will be
14 geographically located so that the service will be reasonably
15 accessible to such enrolled individuals, and (iii) at least seventy-
16 five percent of the patients who can reasonably be expected to
17 receive the tertiary health service will be individuals enrolled with
18 such organization;

19 if, with respect to such offering or obligation by a nursing home,
20 the department has, upon application under subsection (2) of this
21 section, granted an exemption from such requirement to the
22 organization, combination of organizations, or facility.

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

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

30 (b) The application contains such information respecting the
31 organization, combination, or facility and the proposed offering or
32 obligation by a nursing home as the department may require to
33 determine if the organization or combination meets the requirements
34 of subsection (1) of this section or the facility meets or will meet
35 such requirements; and

36 (c) The department approves such application. The department
37 shall approve or disapprove an application for exemption within
38 thirty days of receipt of a completed application. In the case of a
39 proposed health care facility (or portion thereof) which has not
40 begun to provide tertiary health services on the date an application

1 is submitted under this subsection with respect to such facility (or
2 portion), the facility (or portion) shall meet the applicable
3 requirements of subsection (1) of this section when the facility
4 first provides such services. The department shall approve an
5 application submitted under this subsection if it determines that the
6 applicable requirements of subsection (1) of this section are met.

7 (3) A health care facility (or any part thereof) with respect to
8 which an exemption was granted under subsection (1) of this section
9 may not be sold or leased and a controlling interest in such facility
10 or in a lease of such facility may not be acquired and a health care
11 facility described in subsection (1)(c) of this section which was
12 granted an exemption under subsection (1) of this section may not be
13 used by any person other than the lessee described in subsection
14 (1)(c) of this section unless:

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

17 (b) The department determines, upon application, that (i) the
18 entity to which the facility is proposed to be sold or leased, which
19 intends to acquire the controlling interest, or which intends to use
20 the facility is a health maintenance organization or a combination of
21 health maintenance organizations which meets the requirements of
22 subsection (1)(a)(i) of this section, and (ii) with respect to such
23 facility, meets the requirements of subsection (1)(a)(ii) or (iii) of
24 this section or the requirements of subsection (1)(b)(i) and (ii) of
25 this section.

26 (4) In the case of a health maintenance organization, an
27 ambulatory care facility, or a health care facility, which ambulatory
28 or health care facility is controlled, directly or indirectly, by a
29 health maintenance organization or a combination of health
30 maintenance organizations, the department may under the program apply
31 its certificate of need requirements to the offering of inpatient
32 tertiary health services to the extent that such offering is not
33 exempt under the provisions of this section or RCW 70.38.105(7).

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

38 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

31 (c) The sale, lease, acquisition, or use of part or all of a
32 continuing care retirement community nursing home that qualifies for
33 exemption under this subsection shall require prior certificate of
34 need approval to qualify for licensure as a nursing home unless the
35 department determines such sale, lease, acquisition, or use is by a
36 continuing care retirement community that meets the conditions of (a)
37 of this subsection.

38 (6) A rural hospital, as defined by the department, reducing the
39 number of licensed beds to become a rural primary care hospital under
40 the provisions of Part A Title XVIII of the Social Security Act

1 Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the
2 reduction of beds licensed under chapter 70.41 RCW, increase the
3 number of licensed beds to no more than the previously licensed
4 number without being subject to the provisions of this chapter.

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

16 (8) A rural hospital determined to no longer meet critical access
17 hospital status for state law purposes as a result of participation
18 in the Washington rural health access preservation pilot identified
19 by the state office of rural health and formerly licensed as a
20 hospital under chapter 70.41 RCW may apply to the department to renew
21 its hospital license and not be subject to the requirements of RCW
22 70.38.105(4)(a) as the construction, development, or other
23 establishment of a new hospital, provided there is no increase in the
24 number of beds previously licensed under chapter 70.41 RCW. If all or
25 part of a formerly licensed rural hospital is sold, purchased, or
26 leased during the period the rural hospital does not meet critical
27 access hospital status as a result of participation in the Washington
28 rural health access preservation pilot and the new owner or lessor
29 applies to renew the rural hospital's license, then the sale,
30 purchase, or lease of part or all of the rural hospital is subject to
31 the provisions of this chapter.

32 (9)(a) A nursing home that voluntarily reduces the number of its
33 licensed beds to provide assisted living, licensed assisted living
34 facility care, adult day care, adult day health, respite care,
35 hospice, outpatient therapy services, congregate meals, home health,
36 or senior wellness clinic, or to reduce to one or two the number of
37 beds per room or to otherwise enhance the quality of life for
38 residents in the nursing home, may convert the original facility or
39 portion of the facility back, and thereby increase the number of
40 nursing home beds to no more than the previously licensed number of

1 nursing home beds without obtaining a certificate of need under this
2 chapter, provided the facility has been in continuous operation and
3 has not been purchased or leased. Any conversion to the original
4 licensed bed capacity, or to any portion thereof, shall comply with
5 the same life and safety code requirements as existed at the time the
6 nursing home voluntarily reduced its licensed beds; unless waivers
7 from such requirements were issued, in which case the converted beds
8 shall reflect the conditions or standards that then existed pursuant
9 to the approved waivers.

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

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

15 (ii) Give notice to the department of health and to the
16 department of social and health services of the intent to convert
17 beds back. If construction is required for the conversion of beds
18 back, the notice of intent to convert beds back must be given, at a
19 minimum, one year prior to the effective date of license modification
20 reflecting the restored beds; otherwise, the notice must be given a
21 minimum of ninety days prior to the effective date of license
22 modification reflecting the restored beds. Prior to any license
23 modification to convert beds back to nursing home beds under this
24 section, the licensee must demonstrate that the nursing home meets
25 the certificate of need exemption requirements of this section.

26 The term "construction," as used in (b)(ii) of this subsection,
27 is limited to those projects that are expected to equal or exceed the
28 expenditure minimum amount, as determined under this chapter.

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

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

39 (e) When a building owner has secured an interest in the nursing
40 home beds, which are intended to be voluntarily reduced by the

1 licensee under (a) of this subsection, the applicant shall provide
2 the department with a written statement indicating the building
3 owner's approval of the bed reduction.

4 (10)(a) The department shall not require a certificate of need
5 for a hospice agency if:

6 (i) The hospice agency is designed to serve the unique religious
7 or cultural needs of a religious group or an ethnic minority and
8 commits to furnishing hospice services in a manner specifically aimed
9 at meeting the unique religious or cultural needs of the religious
10 group or ethnic minority;

11 (ii) The hospice agency is operated by an organization that:

12 (A) Operates a facility, or group of facilities, that offers a
13 comprehensive continuum of long-term care services, including, at a
14 minimum, a licensed, medicare-certified nursing home, assisted
15 living, independent living, day health, and various community-based
16 support services, designed to meet the unique social, cultural, and
17 religious needs of a specific cultural and ethnic minority group;

18 (B) Has operated the facility or group of facilities for at least
19 ten continuous years prior to the establishment of the hospice
20 agency;

21 (iii) The hospice agency commits to coordinating with existing
22 hospice programs in its community when appropriate;

23 (iv) The hospice agency has a census of no more than forty
24 patients;

25 (v) The hospice agency commits to obtaining and maintaining
26 medicare certification;

27 (vi) The hospice agency only serves patients located in the same
28 county as the majority of the long-term care services offered by the
29 organization that operates the agency; and

30 (vii) The hospice agency is not sold or transferred to another
31 agency.

32 (b) The department shall include the patient census for an agency
33 exempted under this subsection (10) in its calculations for future
34 certificate of need applications.

35 (11) To alleviate the need to board psychiatric patients in
36 emergency departments and increase capacity of hospitals to serve
37 individuals on ninety-day or one hundred eighty-day commitment
38 orders, for the period of time from May 5, 2017, through June 30,
39 2023:

1 (a) The department shall suspend the certificate of need
2 requirement for a hospital licensed under chapter 70.41 RCW that
3 changes the use of licensed beds to increase the number of beds to
4 provide psychiatric services, including involuntary treatment
5 services. A certificate of need exemption under this subsection
6 (11) (a) shall be valid for two years.

7 (b) The department may not require a certificate of need for:

8 (i) The addition of beds as described in RCW 70.38.260 (2) and
9 (3); or

10 (ii) The construction, development, or establishment of a
11 psychiatric hospital licensed as an establishment under chapter 71.12
12 RCW that will have no more than sixteen beds and provide treatment to
13 adults on ninety or one hundred eighty-day involuntary commitment
14 orders, as described in RCW 70.38.260(4).

15 (12) (a) An ambulatory surgical facility is exempt from all
16 certificate of need requirements if the facility:

17 (i) Is an individual or group practice and, if the facility is a
18 group practice, the privilege of using the facility is not extended
19 to physicians outside the group practice;

20 (ii) Operated or received approval to operate, prior to January
21 19, 2018; and

22 (iii) Was exempt from certificate of need requirements prior to
23 January 19, 2018, because the facility either:

24 (A) Was determined to be exempt from certificate of need
25 requirements pursuant to a determination of reviewability issued by
26 the department; or

27 (B) Was a single-specialty endoscopy center in existence prior to
28 January 14, 2003, when the department determined that endoscopy
29 procedures were surgeries for purposes of certificate of need.

30 (b) The exemption under this subsection:

31 (i) Applies regardless of future changes of ownership, corporate
32 structure, or affiliations of the individual or group practice as
33 long as the use of the facility remains limited to physicians in the
34 group practice; and

35 (ii) Does not apply to changes in services, specialties, or
36 number of operating rooms.

37 (13) A rural health clinic providing health services in a home
38 health shortage area as declared by the department pursuant to
39 C.F.R. Sec. 405.2416 is not subject to certificate of need review
40 under this chapter.

1 (14) Hospital at-home services, as defined in section 2 of this
2 act, are not subject to certificate of need review under this
3 chapter.

4 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of
6 the state government and its existing public institutions, and takes
7 effect immediately.

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