
SUBSTITUTE SENATE BILL 5920

State of Washington

68th Legislature

2024 Regular Session

By Senate Health & Long Term Care (originally sponsored by Senators Padden, Fortunato, Keiser, Warnick, and L. Wilson)

READ FIRST TIME 01/29/24.

1 AN ACT Relating to lifting certificate of need requirements for
2 the construction of psychiatric hospitals and the addition of
3 psychiatric beds; amending RCW 70.38.111, 70.38.260, and 70.38.270;
4 and providing expiration dates.

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

6 **Sec. 1.** RCW 70.38.111 and 2021 c 277 s 1 are each amended to
7 read as follows:

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

10 (a) A health maintenance organization or a combination of health
11 maintenance organizations if (i) the organization or combination of
12 organizations has, in the service area of the organization or the
13 service areas of the organizations in the combination, an enrollment
14 of at least fifty thousand individuals, (ii) the facility in which
15 the service will be provided is or will be geographically located so
16 that the service will be reasonably accessible to such enrolled
17 individuals, and (iii) at least seventy-five percent of the patients
18 who can reasonably be expected to receive the tertiary health service
19 will be individuals enrolled with such organization or organizations
20 in the combination;

1 (b) A health care facility if (i) the facility primarily provides
2 or will provide inpatient health services, (ii) the facility is or
3 will be controlled, directly or indirectly, by a health maintenance
4 organization or a combination of health maintenance organizations
5 which has, in the service area of the organization or service areas
6 of the organizations in the combination, an enrollment of at least
7 fifty thousand individuals, (iii) the facility is or will be
8 geographically located so that the service will be reasonably
9 accessible to such enrolled individuals, and (iv) at least seventy-
10 five percent of the patients who can reasonably be expected to
11 receive the tertiary health service will be individuals enrolled with
12 such organization or organizations in the combination; or

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

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

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

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

37 (b) The application contains such information respecting the
38 organization, combination, or facility and the proposed offering or
39 obligation by a nursing home as the department may require to
40 determine if the organization or combination meets the requirements

1 of subsection (1) of this section or the facility meets or will meet
2 such requirements; and

3 (c) The department approves such application. The department
4 shall approve or disapprove an application for exemption within
5 thirty days of receipt of a completed application. In the case of a
6 proposed health care facility (or portion thereof) which has not
7 begun to provide tertiary health services on the date an application
8 is submitted under this subsection with respect to such facility (or
9 portion), the facility (or portion) shall meet the applicable
10 requirements of subsection (1) of this section when the facility
11 first provides such services. The department shall approve an
12 application submitted under this subsection if it determines that the
13 applicable requirements of subsection (1) of this section are met.

14 (3) A health care facility (or any part thereof) with respect to
15 which an exemption was granted under subsection (1) of this section
16 may not be sold or leased and a controlling interest in such facility
17 or in a lease of such facility may not be acquired and a health care
18 facility described in subsection (1)(c) of this section which was
19 granted an exemption under subsection (1) of this section may not be
20 used by any person other than the lessee described in subsection
21 (1)(c) of this section unless:

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

24 (b) The department determines, upon application, that (i) the
25 entity to which the facility is proposed to be sold or leased, which
26 intends to acquire the controlling interest, or which intends to use
27 the facility is a health maintenance organization or a combination of
28 health maintenance organizations which meets the requirements of
29 subsection (1)(a)(i) of this section, and (ii) with respect to such
30 facility, meets the requirements of subsection (1)(a)(ii) or (iii) of
31 this section or the requirements of subsection (1)(b)(i) and (ii) of
32 this section.

33 (4) In the case of a health maintenance organization, an
34 ambulatory care facility, or a health care facility, which ambulatory
35 or health care facility is controlled, directly or indirectly, by a
36 health maintenance organization or a combination of health
37 maintenance organizations, the department may under the program apply
38 its certificate of need requirements to the offering of inpatient
39 tertiary health services to the extent that such offering is not
40 exempt under the provisions of this section or RCW 70.38.105(7).

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

5 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

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

1 continuing care retirement community that meets the conditions of (a)
2 of this subsection.

3 (6) A rural hospital, as defined by the department, reducing the
4 number of licensed beds to become a rural primary care hospital under
5 the provisions of Part A Title XVIII of the Social Security Act
6 Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the
7 reduction of beds licensed under chapter 70.41 RCW, increase the
8 number of licensed beds to no more than the previously licensed
9 number without being subject to the provisions of this chapter.

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

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

37 (9) (a) A nursing home that voluntarily reduces the number of its
38 licensed beds to provide assisted living, licensed assisted living
39 facility care, adult day care, adult day health, respite care,
40 hospice, outpatient therapy services, congregate meals, home health,

1 or senior wellness clinic, or to reduce to one or two the number of
2 beds per room or to otherwise enhance the quality of life for
3 residents in the nursing home, may convert the original facility or
4 portion of the facility back, and thereby increase the number of
5 nursing home beds to no more than the previously licensed number of
6 nursing home beds without obtaining a certificate of need under this
7 chapter, provided the facility has been in continuous operation and
8 has not been purchased or leased. Any conversion to the original
9 licensed bed capacity, or to any portion thereof, shall comply with
10 the same life and safety code requirements as existed at the time the
11 nursing home voluntarily reduced its licensed beds; unless waivers
12 from such requirements were issued, in which case the converted beds
13 shall reflect the conditions or standards that then existed pursuant
14 to the approved waivers.

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

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

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

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

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

39 (d) Nursing home beds that have been voluntarily reduced under
40 this section shall be counted as available nursing home beds for the

1 purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so long
2 as the facility retains the ability to convert them back to nursing
3 home use under the terms of this section.

4 (e) When a building owner has secured an interest in the nursing
5 home beds, which are intended to be voluntarily reduced by the
6 licensee under (a) of this subsection, the applicant shall provide
7 the department with a written statement indicating the building
8 owner's approval of the bed reduction.

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

11 (i) The hospice agency is designed to serve the unique religious
12 or cultural needs of a religious group or an ethnic minority and
13 commits to furnishing hospice services in a manner specifically aimed
14 at meeting the unique religious or cultural needs of the religious
15 group or ethnic minority;

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

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

23 (B) Has operated the facility or group of facilities for at least
24 ten continuous years prior to the establishment of the hospice
25 agency;

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

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

30 (v) The hospice agency commits to obtaining and maintaining
31 medicare certification;

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

35 (vii) The hospice agency is not sold or transferred to another
36 agency.

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

1 (11) To alleviate the need to board psychiatric patients in
2 emergency departments and increase capacity of hospitals to serve
3 individuals on ninety-day or one hundred eighty-day commitment
4 orders, for the period of time from May 5, 2017, through June 30,
5 ((2023)) 2028:

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

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

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

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

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

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

25 (ii) Operated or received approval to operate, prior to January
26 19, 2018; and

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

29 (A) Was determined to be exempt from certificate of need
30 requirements pursuant to a determination of reviewability issued by
31 the department; or

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

35 (b) The exemption under this subsection:

36 (i) Applies regardless of future changes of ownership, corporate
37 structure, or affiliations of the individual or group practice as
38 long as the use of the facility remains limited to physicians in the
39 group practice; and

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

3 (13) A rural health clinic providing health services in a home
4 health shortage area as declared by the department pursuant to 42
5 C.F.R. Sec. 405.2416 is not subject to certificate of need review
6 under this chapter.

7 **Sec. 2.** RCW 70.38.260 and 2021 c 277 s 2 are each amended to
8 read as follows:

9 (1) For a grant awarded during fiscal years 2018 and 2019 by the
10 department of commerce under this section, hospitals licensed under
11 chapter 70.41 RCW and psychiatric hospitals licensed as
12 establishments under chapter 71.12 RCW are not subject to certificate
13 of need requirements for the addition of the number of new
14 psychiatric beds indicated in the grant. The department of commerce
15 may not make a prior approval of a certificate of need application a
16 condition for a grant application under this section. The period
17 during which an approved hospital or psychiatric hospital project
18 qualifies for a certificate of need exemption under this section is
19 two years from the date of the grant award.

20 (2)(a) Until June 30, (~~2023~~) 2028, a hospital licensed under
21 chapter 70.41 RCW is exempt from certificate of need requirements for
22 the addition of new psychiatric beds.

23 (b) A hospital that adds new psychiatric beds under this
24 subsection (2) must:

25 (i) Notify the department of the addition of new psychiatric
26 beds. The department shall provide the hospital with a notice of
27 exemption within thirty days; and

28 (ii) Commence the project within two years of the date of receipt
29 of the notice of exemption.

30 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must
31 remain psychiatric beds unless a certificate of need is granted to
32 change their use or the hospital voluntarily reduces its licensed
33 capacity.

34 (3)(a) Until June 30, (~~2023~~) 2028, a psychiatric hospital
35 licensed as an establishment under chapter 71.12 RCW is exempt from
36 certificate of need requirements for the one-time addition of up to
37 30 new psychiatric beds devoted solely for 90-day and 180-day civil
38 commitment services and for the one-time addition of up to 30 new
39 voluntary psychiatric beds or involuntary psychiatric beds for

1 patients on a 120 hour detention or 14-day civil commitment order, if
2 the hospital makes a commitment to maintain a payer mix of at least
3 fifty percent medicare and medicaid based on a calculation using
4 patient days for a period of five consecutive years after the beds
5 are made available for use by patients, if it demonstrates to the
6 satisfaction of the department:

7 (i) That its most recent two years of publicly available fiscal
8 year-end report data as required under RCW ((70.170.100—and))
9 43.70.050 reported to the department by the psychiatric hospital,
10 show a payer mix of a minimum of fifty percent medicare and medicaid
11 based on a calculation using patient days; and

12 (ii) A commitment to maintaining the payer mix in (a) of this
13 subsection for a period of five consecutive years after the beds are
14 made available for use by patients.

15 (b) A psychiatric hospital that adds new psychiatric beds under
16 this subsection (3) must:

17 (i) Notify the department of the addition of new psychiatric
18 beds. The department shall provide the psychiatric hospital with a
19 notice of exemption within thirty days; and

20 (ii) Commence the project within two years of the date of receipt
21 of the notice of exemption.

22 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must
23 remain the types of psychiatric beds indicated to the department in
24 the original exemption application unless a certificate of need is
25 granted to change their use or the psychiatric hospital voluntarily
26 reduces its licensed capacity.

27 (4)(a) Until June 30, ((2023)) 2028, an entity seeking to
28 construct, develop, or establish a psychiatric hospital licensed as
29 an establishment under chapter 71.12 RCW is exempt from certificate
30 of need requirements if the proposed psychiatric hospital will have
31 no more than sixteen beds and dedicate a portion of the beds to
32 providing treatment to adults on ninety or one hundred eighty-day
33 involuntary commitment orders. The psychiatric hospital may also
34 provide treatment to adults on a 120 hour detention or 14-day
35 involuntary commitment order.

36 (b) An entity that seeks to construct, develop, or establish a
37 psychiatric hospital under this subsection (4) must:

38 (i) Notify the department of the addition of construction,
39 development, or establishment. The department shall provide the
40 entity with a notice of exemption within thirty days; and

1 (ii) Commence the project within two years of the date of receipt
2 of the notice of exemption.

3 (c) Entities granted an exemption under RCW 70.38.111(11)(b)(ii)
4 may not exceed sixteen beds unless a certificate of need is granted
5 to increase the psychiatric hospital's capacity.

6 (5) This section expires June 30, (~~2025~~) 2029.

7 **Sec. 3.** RCW 70.38.270 and 2015 3rd sp.s. c 22 s 3 are each
8 amended to read as follows:

9 (1) New psychiatric beds added under RCW 70.38.260 must remain
10 psychiatric beds unless a certificate of need is granted to change
11 their use or the hospital or psychiatric hospital voluntarily reduces
12 its licensed capacity.

13 (2) This section expires June 30, 2029.

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