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HOUSE BILL 2738

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State of Washington                      53rd Legislature                      1994 Regular Session

By Representatives Flemming and Foreman

Read first time 01/21/94. Referred to Committee on Health Care.

1            AN ACT Relating to certificates of need; and amending RCW  
2 70.38.115.

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

4            **Sec. 1.** RCW 70.38.115 and 1993 c 508 s 6 are each amended to read  
5 as follows:

6            (1) Certificates of need shall be issued, denied, suspended, or  
7 revoked by the designee of the secretary in accord with the provisions  
8 of this chapter and rules of the department which establish review  
9 procedures and criteria for the certificate of need program.

10           (2) Criteria for the review of certificate of need applications,  
11 except as provided in subsection (3) of this section for health  
12 maintenance organizations, shall include but not be limited to  
13 consideration of the following:

14           (a) The need that the population served or to be served by such  
15 services has for such services;

16           (b) The availability of less costly or more effective alternative  
17 methods of providing such services;

1 (c) The financial feasibility and the probable impact of the  
2 proposal on the cost of and charges for providing health services in  
3 the community to be served;

4 (d) In the case of health services to be provided, (i) the  
5 availability of alternative uses of project resources for the provision  
6 of other health services, (ii) the extent to which such proposed  
7 services will be accessible to all residents of the area to be served,  
8 and (iii) the need for and the availability in the community of  
9 services and facilities for osteopathic and allopathic physicians and  
10 their patients. The department shall consider the application in terms  
11 of its impact on existing and proposed institutional training programs  
12 for doctors of osteopathy and medicine at the student, internship, and  
13 residency training levels;

14 (e) In the case of a construction project, the costs and methods of  
15 the proposed construction, including the cost and methods of energy  
16 provision, and the probable impact of the construction project reviewed  
17 (i) on the cost of providing health services by the person proposing  
18 such construction project and (ii) on the cost and charges to the  
19 public of providing health services by other persons;

20 (f) The special needs and circumstances of osteopathic hospitals,  
21 nonallopathic services and children's hospitals;

22 (g) Improvements or innovations in the financing and delivery of  
23 health services which foster cost containment and serve to promote  
24 quality assurance and cost-effectiveness;

25 (h) In the case of health services proposed to be provided, the  
26 efficiency and appropriateness of the use of existing services and  
27 facilities similar to those proposed;

28 (i) In the case of existing services or facilities, the quality of  
29 care provided by such services or facilities in the past;

30 (j) In the case of hospital certificate of need applications,  
31 whether the hospital meets or exceeds the regional average level of  
32 charity care, as determined by the secretary; and

33 (k) In the case of nursing home applications:

34 (i) The availability of other nursing home beds in the planning  
35 area to be served; and

36 (ii) The availability of other services in the community to be  
37 served. Data used to determine the availability of other services will  
38 include but not be limited to data provided by the department of social  
39 and health services.

1 (3) A certificate of need application of a health maintenance  
2 organization or a health care facility which is controlled, directly or  
3 indirectly, by a health maintenance organization, shall be approved by  
4 the department if the department finds:

5 (a) Approval of such application is required to meet the needs of  
6 the members of the health maintenance organization and of the new  
7 members which such organization can reasonably be expected to enroll;  
8 and

9 (b) The health maintenance organization is unable to provide,  
10 through services or facilities which can reasonably be expected to be  
11 available to the organization, its health services in a reasonable and  
12 cost-effective manner which is consistent with the basic method of  
13 operation of the organization and which makes such services available  
14 on a long-term basis through physicians and other health professionals  
15 associated with it.

16 A health care facility, or any part thereof, with respect to which  
17 a certificate of need was issued under this subsection may not be sold  
18 or leased and a controlling interest in such facility or in a lease of  
19 such facility may not be acquired unless the department issues a  
20 certificate of need approving the sale, acquisition, or lease.

21 (4) Until the final expiration of the state health plan as provided  
22 under RCW 70.38.919, the decision of the department on a certificate of  
23 need application shall be consistent with the state health plan in  
24 effect, except in emergency circumstances which pose a threat to the  
25 public health. The department in making its final decision may issue  
26 a conditional certificate of need if it finds that the project is  
27 justified only under specific circumstances. The conditions shall  
28 directly relate to the project being reviewed. The conditions may be  
29 released if it can be substantiated that the conditions are no longer  
30 valid and the release of such conditions would be consistent with the  
31 purposes of this chapter.

32 (5) Criteria adopted for review in accordance with subsection (2)  
33 of this section may vary according to the purpose for which the  
34 particular review is being conducted or the type of health service  
35 reviewed.

36 (6) The department shall specify information to be required for  
37 certificate of need applications. Within fifteen days of receipt of  
38 the application, the department shall request additional information  
39 considered necessary to the application or start the review process.

1 Applicants may decline to submit requested information through written  
2 notice to the department, in which case review starts on the date of  
3 receipt of the notice. Applications may be denied or limited because  
4 of failure to submit required and necessary information.

5 (7) Concurrent review is for the purpose of comparative analysis  
6 and evaluation of competing or similar projects in order to determine  
7 which of the projects may best meet identified needs. Categories of  
8 projects subject to concurrent review include at least new health care  
9 facilities, new services, and expansion of existing health care  
10 facilities. The department shall specify time periods for the  
11 submission of applications for certificates of need subject to  
12 concurrent review, which shall not exceed ninety days. Review of  
13 concurrent applications shall start fifteen days after the conclusion  
14 of the time period for submission of applications subject to concurrent  
15 review. Concurrent review periods shall be limited to one hundred  
16 fifty days, except as provided for in rules adopted by the department  
17 authorizing and limiting amendment during the course of the review, or  
18 for an unresolved pivotal issue declared by the department.

19 (8) Review periods for certificate of need applications other than  
20 those subject to concurrent review shall be limited to ninety days.  
21 Review periods may be extended up to thirty days if needed by a review  
22 agency, and for unresolved pivotal issues the department may extend up  
23 to an additional thirty days. A review may be extended in any case if  
24 the applicant agrees to the extension.

25 (9) The department or its designee, shall conduct a public hearing  
26 on a certificate of need application if requested unless the review is  
27 expedited or subject to emergency review. The department by rule shall  
28 specify the period of time within which a public hearing must be  
29 requested and requirements related to public notice of the hearing,  
30 procedures, recordkeeping and related matters.

31 (10) Any applicant denied a certificate of need or whose  
32 certificate of need has been suspended or revoked has the right to an  
33 adjudicative proceeding. Any health care facility or health  
34 maintenance organization providing services similar to the services  
35 under review and located in the health service area has the right to an  
36 adjudicative proceeding on the decision of the secretary's designee to  
37 issue or deny a certificate of need for a project or a separable  
38 portion of a project or to grant or deny an exception requested under

1 RCW 70.38.111. The proceeding is governed by chapter 34.05 RCW, the  
2 Administrative Procedure Act.

3 (11) An amended certificate of need shall be required for the  
4 following modifications of an approved project:

5 (a) A new service requiring review under this chapter;

6 (b) An expansion of a service subject to review beyond that  
7 originally approved;

8 (c) An increase in bed capacity;

9 (d) A significant reduction in the scope of a nursing home project  
10 without a commensurate reduction in the cost of the nursing home  
11 project, or a cost increase (as represented in bids on a nursing home  
12 construction project or final cost estimates acceptable to the person  
13 to whom the certificate of need was issued) if the total of such  
14 increases exceeds twelve percent or fifty thousand dollars, whichever  
15 is greater, over the maximum capital expenditure approved. The review  
16 of reductions or cost increases shall be restricted to the continued  
17 conformance of the nursing home project with the review criteria  
18 pertaining to financial feasibility and cost containment.

19 (12) An application for a certificate of need for a nursing home  
20 capital expenditure which is determined by the department to be  
21 required to eliminate or prevent imminent safety hazards or correct  
22 violations of applicable licensure and accreditation standards shall be  
23 approved.

24 (13) In the case of an application for a certificate of need to  
25 replace existing nursing home beds, all criteria must be met on the  
26 same basis as an application for a certificate of need for a new  
27 nursing home, except that the need criteria shall be deemed met if the  
28 applicant is an existing licensee who proposes to replace existing beds  
29 that the licensee has operated for at least one year with the same or  
30 fewer number of beds in the same planning area. When an entire nursing  
31 home ceases operation, its beds shall be treated as existing nursing  
32 home beds for purposes of replacement for eight years or until a  
33 certificate of need to replace them is issued, whichever occurs first.  
34 However, the nursing home must give notice of its intent to retain the  
35 beds to the department of health no later than thirty days after the  
36 effective date of the facility's closure.

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