

3 SB 5501 - H AMD

4 By

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6 On page 4, after line 4, insert the following:

7 "Sec. 7. RCW 70.38.025 and 1991 c 158 s 1 are each amended to read
8 as follows:

9 When used in this chapter, the terms defined in this section shall
10 have the meanings indicated.

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

13 (2) "Capital expenditure" is an expenditure, including a force
14 account expenditure (i.e., an expenditure for a construction project
15 undertaken by a nursing home facility as its own contractor) which,
16 under generally accepted accounting principles, is not properly
17 chargeable as an expense of operation or maintenance. Where a person
18 makes an acquisition under lease or comparable arrangement, or through
19 donation, which would have required review if the acquisition had been
20 made by purchase, such expenditure shall be deemed a capital
21 expenditure. Capital expenditures include donations of equipment or
22 facilities to a nursing home facility which if acquired directly by
23 such facility would be subject to certificate of need review under the
24 provisions of this chapter and transfer of equipment or facilities for
25 less than fair market value if a transfer of the equipment or
26 facilities at fair market value would be subject to such review. The
27 cost of any studies, surveys, designs, plans, working drawings,
28 specifications, and other activities essential to the acquisition,
29 improvement, expansion, or replacement of any plant or equipment with
30 respect to which such expenditure is made shall be included in
31 determining the amount of the expenditure.

32 (3) "Continuing care retirement community" means an entity which
33 provides shelter and services under continuing care contracts with its
34 members and which sponsors or includes a health care facility or a
35 health service. A "continuing care contract" means a contract to
36 provide a person, for the duration of that person's life or for a term
37 in excess of one year, shelter along with nursing, medical, health-

1 related, or personal care services, which is conditioned upon the
2 transfer of property, the payment of an entrance fee to the provider of
3 such services, or the payment of periodic charges for the care and
4 services involved. A continuing care contract is not excluded from
5 this definition because the contract is mutually terminable or because
6 shelter and services are not provided at the same location.

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

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

13 (6) "Health care facility" means hospices, (~~hospitals, psychiatric~~
14 ~~hospitals,~~) nursing homes, kidney disease treatment centers,
15 (~~ambulatory surgical facilities,~~) and home health agencies, except
16 those home health agencies operated by a hospital district in a county
17 with a population under twenty thousand, and includes such facilities
18 when owned and operated by a political subdivision or instrumentality
19 of the state and such other facilities as required by federal law and
20 implementing regulations, but does not include Christian Science
21 sanatoriums operated, listed, or certified by the First Church of
22 Christ Scientist, Boston, Massachusetts. (~~In addition, the term does~~
23 ~~not include any nonprofit hospital: (a) Which is operated exclusively~~
24 ~~to provide health care services for children; (b) which does not charge~~
25 ~~fees for such services; and (c) if not contrary to federal law as~~
26 ~~necessary to the receipt of federal funds by the state.))~~

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

29 (a) Is a qualified health maintenance organization under Title
30 XIII, section 1310(d) of the Public Health Services Act; or

31 (b)(i) Provides or otherwise makes available to enrolled
32 participants health care services, including at least the following
33 basic health care services: Usual physician services, hospitalization,
34 laboratory, x-ray, emergency, and preventive services, and out-of-area
35 coverage; (ii) is compensated (except for copayments) for the provision
36 of the basic health care services listed in (b)(i) to enrolled
37 participants by a payment which is paid on a periodic basis without
38 regard to the date the health care services are provided and which is
39 fixed without regard to the frequency, extent, or kind of health

1 service actually provided; and (iii) provides physicians' services
2 primarily (A) directly through physicians who are either employees or
3 partners of such organization, or (B) through arrangements with
4 individual physicians or one or more groups of physicians (organized on
5 a group practice or individual practice basis).

6 (8) "Health services" means clinically related (i.e., preventive,
7 diagnostic, curative, rehabilitative, or palliative) services and
8 includes alcoholism, drug abuse, and mental health services and as
9 defined in federal law.

10 (9) "Health service area" means a geographic region appropriate for
11 effective health planning which includes a broad range of health
12 services.

13 (10) "Person" means an individual, a trust or estate, a
14 partnership, a corporation (including associations, joint stock
15 companies, and insurance companies), the state, or a political
16 subdivision or instrumentality of the state, including a municipal
17 corporation or a hospital district.

18 (11) "Provider" generally means a health care professional or an
19 organization, institution, or other entity providing health care but
20 the precise definition for this term shall be established by rule of
21 the department, consistent with federal law.

22 (12) "Public health" means the level of well-being of the general
23 population; those actions in a community necessary to preserve,
24 protect, and promote the health of the people for which government is
25 responsible; and the governmental system developed to guarantee the
26 preservation of the health of the people.

27 (13) "Secretary" means the secretary of health or the secretary's
28 designee.

29 (14) "Tertiary health service" means a specialized service that
30 meets complicated medical needs of people and requires sufficient
31 patient volume to optimize provider effectiveness, quality of service,
32 and improved outcomes of care.

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

36 **Sec. 8.** RCW 70.38.105 and 1992 c 27 s 1 are each amended to read
37 as follows:

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

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

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

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

13 (a) The construction, development, or other establishment of a new
14 health care facility;

15 (b) ~~((The sale, purchase, or lease of part or all of any existing
16 hospital as defined in RCW 70.38.025;~~

17 ~~(e)))~~ Any capital expenditure for the construction, renovation, or
18 alteration of a nursing home which substantially changes the services
19 of the facility after January 1, 1981, provided that the substantial
20 changes in services are specified by the department in rule;

21 ~~((d)))~~ (c) Any capital expenditure for the construction,
22 renovation, or alteration of a nursing home which exceeds the
23 expenditure minimum as defined by RCW 70.38.025. However, a capital
24 expenditure which is not subject to certificate of need review under
25 (a), (b), ~~((e)),~~ or ~~((e)))~~ (d) of this subsection and which is
26 solely for any one or more of the following is not subject to
27 certificate of need review except to the extent required by the federal
28 government as a condition to receipt of federal assistance and does not
29 substantially affect patient charges:

30 (i) Communications and parking facilities;

31 (ii) Mechanical, electrical, ventilation, heating, and air
32 conditioning systems;

33 (iii) Energy conservation systems;

34 (iv) Repairs to, or the correction of, deficiencies in existing
35 physical plant facilities which are necessary to maintain state
36 licensure;

37 (v) Acquisition of equipment, including data processing equipment,
38 which is not or will not be used in the direct provision of health
39 services;

1 (vi) Construction which involves physical plant facilities,
2 including administrative and support facilities, which are not or will
3 not be used for the provision of health services;

4 (vii) Acquisition of land; and

5 (viii) Refinancing of existing debt;

6 (~~(e)~~) (d) A change in bed capacity of a health care facility
7 which increases the total number of licensed beds or redistributes beds
8 among acute care, nursing home care, and boarding home care if the bed
9 redistribution is to be effective for a period in excess of six months,
10 or a change in bed capacity of a rural health care facility licensed
11 under RCW 70.175.100 that increases the total number of nursing home
12 beds or redistributes beds from acute care or boarding home care to
13 nursing home care if the bed redistribution is to be effective for a
14 period in excess of six months;

15 (~~(f)~~) (e) Any new tertiary health services which are offered in
16 or through a health care facility or rural health care facility
17 licensed under RCW 70.175.100, and which were not offered on a regular
18 basis by, in, or through such health care facility or rural health care
19 facility within the twelve-month period prior to the time such services
20 would be offered;

21 (~~(g)~~) (f) Any expenditure for the construction, renovation, or
22 alteration of a nursing home or change in nursing home services in
23 excess of the expenditure minimum made in preparation for any
24 undertaking under subsection (4) of this section and any arrangement or
25 commitment made for financing such undertaking. Expenditures of
26 preparation shall include expenditures for architectural designs,
27 plans, working drawings, and specifications. The department may issue
28 certificates of need permitting predevelopment expenditures, only,
29 without authorizing any subsequent undertaking with respect to which
30 such predevelopment expenditures are made; and

31 (~~(h)~~) (g) Any increase in the number of dialysis stations in a
32 kidney disease center.

33 (5) The department is authorized to charge fees for the review of
34 certificate of need applications and requests for exemptions from
35 certificate of need review. The fees shall be sufficient to cover the
36 full cost of review and exemption, which may include the development of
37 standards, criteria, and policies.

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

1 **Sec. 9.** RCW 70.38.115 and 1993 c 508 s 6 are each amended to read
2 as follows:

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

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

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

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

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

18 (d) In the case of health services to be provided, (i) the
19 availability of alternative uses of project resources for the provision
20 of other health services, (ii) the extent to which such proposed
21 services will be accessible to all residents of the area to be served,
22 and (iii) the need for and the availability in the community of
23 services and facilities for osteopathic and allopathic physicians and
24 their patients. The department shall consider the application in terms
25 of its impact on existing and proposed institutional training programs
26 for doctors of osteopathy and medicine at the student, internship, and
27 residency training levels;

28 (e) In the case of a construction project, the costs and methods of
29 the proposed construction, including the cost and methods of energy
30 provision, and the probable impact of the construction project reviewed
31 (i) on the cost of providing health services by the person proposing
32 such construction project and (ii) on the cost and charges to the
33 public of providing health services by other persons;

34 (f) ~~((The special needs and circumstances of osteopathic hospitals,~~
35 ~~nonallopathic services and children's hospitals;~~

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

1 (~~(h)~~) (g) In the case of health services proposed to be provided,
2 the efficiency and appropriateness of the use of existing services and
3 facilities similar to those proposed;

4 (~~(i)~~) (h) In the case of existing services or facilities, the
5 quality of care provided by such services or facilities in the past;
6 and

7 (~~(j)~~ In the case of hospital certificate of need applications,
8 whether the hospital meets or exceeds the regional average level of
9 charity care, as determined by the secretary; and

10 (~~(k)~~) (i) In the case of nursing home applications:

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

13 (ii) The availability of other services in the community to be
14 served. Data used to determine the availability of other services will
15 include but not be limited to data provided by the department of social
16 and health services.

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

21 (a) Approval of such application is required to meet the needs of
22 the members of the health maintenance organization and of the new
23 members which such organization can reasonably be expected to enroll;
24 and

25 (b) The health maintenance organization is unable to provide,
26 through services or facilities which can reasonably be expected to be
27 available to the organization, its health services in a reasonable and
28 cost-effective manner which is consistent with the basic method of
29 operation of the organization and which makes such services available
30 on a long-term basis through physicians and other health professionals
31 associated with it.

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

37 (4) Until the final expiration of the state health plan as provided
38 under RCW 70.38.919, the decision of the department on a certificate of
39 need application shall be consistent with the state health plan in

1 effect, except in emergency circumstances which pose a threat to the
2 public health. The department in making its final decision may issue
3 a conditional certificate of need if it finds that the project is
4 justified only under specific circumstances. The conditions shall
5 directly relate to the project being reviewed. The conditions may be
6 released if it can be substantiated that the conditions are no longer
7 valid and the release of such conditions would be consistent with the
8 purposes of this chapter.

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

13 (6) The department shall specify information to be required for
14 certificate of need applications. Within fifteen days of receipt of
15 the application, the department shall request additional information
16 considered necessary to the application or start the review process.
17 Applicants may decline to submit requested information through written
18 notice to the department, in which case review starts on the date of
19 receipt of the notice. Applications may be denied or limited because
20 of failure to submit required and necessary information.

21 (7) Concurrent review is for the purpose of comparative analysis
22 and evaluation of competing or similar projects in order to determine
23 which of the projects may best meet identified needs. Categories of
24 projects subject to concurrent review include at least new health care
25 facilities, new services, and expansion of existing health care
26 facilities. The department shall specify time periods for the
27 submission of applications for certificates of need subject to
28 concurrent review, which shall not exceed ninety days. Review of
29 concurrent applications shall start fifteen days after the conclusion
30 of the time period for submission of applications subject to concurrent
31 review. Concurrent review periods shall be limited to one hundred
32 fifty days, except as provided for in rules adopted by the department
33 authorizing and limiting amendment during the course of the review, or
34 for an unresolved pivotal issue declared by the department.

35 (8) Review periods for certificate of need applications other than
36 those subject to concurrent review shall be limited to ninety days.
37 Review periods may be extended up to thirty days if needed by a review
38 agency, and for unresolved pivotal issues the department may extend up

1 to an additional thirty days. A review may be extended in any case if
2 the applicant agrees to the extension.

3 (9) The department or its designee, shall conduct a public hearing
4 on a certificate of need application if requested, unless the review is
5 expedited or subject to emergency review. The department by rule shall
6 specify the period of time within which a public hearing must be
7 requested and requirements related to public notice of the hearing,
8 procedures, recordkeeping and related matters.

9 (10) Any applicant denied a certificate of need or whose
10 certificate of need has been suspended or revoked has the right to an
11 adjudicative proceeding. The proceeding is governed by chapter 34.05
12 RCW, the Administrative Procedure Act.

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

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

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

18 (c) An increase in bed capacity;

19 (d) A significant reduction in the scope of a nursing home project
20 without a commensurate reduction in the cost of the nursing home
21 project, or a cost increase (as represented in bids on a nursing home
22 construction project or final cost estimates acceptable to the person
23 to whom the certificate of need was issued) if the total of such
24 increases exceeds twelve percent or fifty thousand dollars, whichever
25 is greater, over the maximum capital expenditure approved. The review
26 of reductions or cost increases shall be restricted to the continued
27 conformance of the nursing home project with the review criteria
28 pertaining to financial feasibility and cost containment.

29 (12) An application for a certificate of need for a nursing home
30 capital expenditure which is determined by the department to be
31 required to eliminate or prevent imminent safety hazards or correct
32 violations of applicable licensure and accreditation standards shall be
33 approved.

34 (13) In the case of an application for a certificate of need to
35 replace existing nursing home beds, all criteria must be met on the
36 same basis as an application for a certificate of need for a new
37 nursing home, except that the need criteria shall be deemed met if the
38 applicant is an existing licensee who proposes to replace existing beds
39 that the licensee has operated for at least one year with the same or

1 fewer number of beds in the same planning area. When an entire nursing
2 home ceases operation, its beds shall be treated as existing nursing
3 home beds for purposes of replacement for eight years or until a
4 certificate of need to replace them is issued, whichever occurs first.
5 However, the nursing home must give notice of its intent to retain the
6 beds to the department of health no later than thirty days after the
7 effective date of the facility's closure."

8 **SB 5501** - H AMD
9 By

10 ADOPTED 4/13/95

11 On page 1, line 2 of the title, after "70.41.120," strike "and
12 74.42.600" and insert "74.42.600, 70.38.025, 70.38.105, and 70.38.115"

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