
SENATE BILL 6857

State of Washington

56th Legislature

2000 Regular Session

By Senators Winsley and Franklin

Read first time 02/25/2000. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to nursing facility certificate of need
2 requirements; and amending RCW 70.38.111 and 70.38.115.

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

4 **Sec. 1.** RCW 70.38.111 and 1997 c 210 s 1 are each amended to read
5 as follows:

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

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

13 (c) A health care facility (or portion thereof) if (i) the facility
14 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 in
20 the term of the lease, (ii) the facility is or will be geographically
21 located so that the service will be reasonably accessible to such
22 enrolled individuals, and (iii) at least seventy-five percent of the
23 patients who can reasonably be expected to receive the tertiary health
24 service will be individuals enrolled with such organization;
25 if, with respect to such offering or obligation by a nursing home, the
26 department has, upon application under subsection (2) of this section,
27 granted an exemption from such requirement to the organization,
28 combination of organizations, or facility.

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

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

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

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

3 (c) The department approves such application. The department shall
4 approve or disapprove an application for exemption within thirty days
5 of receipt of a completed application. In the case of a proposed
6 health care facility (or portion thereof) which has not begun to
7 provide tertiary health services on the date an application is
8 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 first
11 provides such services. The department shall approve an application
12 submitted under this subsection if it determines that the applicable
13 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 may
16 not be sold or leased and a controlling interest in such facility or in
17 a lease of such facility may not be acquired and a health care facility
18 described in (1)(c) which was granted an exemption under subsection (1)
19 of this section may not be used by any person other than the lessee
20 described in (1)(c) unless:

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

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

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

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 services
10 exceeding the member's financial responsibility under the contract, so
11 that no third party, with the exception of insurance purchased by the
12 retirement community or its members, but including the medicaid
13 program, is liable for costs of care even if the member depletes his or
14 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 certificate
17 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 would
22 result in a number of nursing home beds in excess of one for every four
23 living units operated by the continuing care retirement community,
24 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 application
32 for the licensure of, or is commencing operation of a nursing home,
33 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 need
39 approval to qualify for licensure as a nursing home unless the

1 department determines such sale, lease, acquisition, or use is by a
2 continuing care retirement community that meets the conditions of (a)
3 of this subsection.

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

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

22 (8)(a) A nursing home that voluntarily reduces the number of its
23 licensed beds to provide assisted living, licensed boarding home care,
24 adult day care, adult day health, respite care, hospice, outpatient
25 therapy services, congregate meals, home health, or senior wellness
26 clinic, or to reduce to one or two the number of beds per room or to
27 otherwise enhance the quality of life for residents in the nursing
28 home, may convert the original facility or portion of the facility
29 back, and thereby increase the number of nursing home beds to no more
30 than the previously licensed number of nursing home beds without
31 obtaining a certificate of need under this chapter, provided the
32 facility has been in continuous operation and has not been purchased or
33 leased. Any conversion to the original licensed bed capacity, or to
34 any portion thereof, shall comply with the same life and safety code
35 requirements as existed at the time the nursing home voluntarily
36 reduced its licensed beds; unless waivers from such requirements were
37 issued, in which case the converted beds shall reflect the conditions
38 or standards that then existed pursuant to the approved waivers.

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

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

6 (ii) Give notice to the department of health and to the department
7 of social and health services of the intent to convert beds back. If
8 construction is required for the conversion of beds back, the notice of
9 intent to convert beds back must be given, at a minimum, one year prior
10 to the effective date of license modification reflecting the restored
11 beds; otherwise, the notice must be given a minimum of ninety days
12 prior to the effective date of license modification reflecting the
13 restored beds. Prior to any license modification to convert beds back
14 to nursing home beds under this section, the licensee must demonstrate
15 that the nursing home meets the certificate of need exemption
16 requirements of this section.

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

20 ~~(c) ((Conversion of beds back under this subsection must be
21 completed no later than four years after the effective date of the
22 license reduction. However, for good cause shown, the four year period
23 for conversion may be extended by the department of health for one
24 additional four year period.~~

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

30 ~~((e))~~ (d) When a building owner has secured an interest in the
31 nursing home beds, which are intended to be voluntarily reduced by the
32 licensee under (a) of this subsection, the applicant shall provide the
33 department with a written statement indicating the building owner's
34 approval of the bed reduction.

35 **Sec. 2.** RCW 70.38.115 and 1996 c 178 s 22 are each amended to read
36 as follows:

37 (1) Certificates of need shall be issued, denied, suspended, or
38 revoked by the designee of the secretary in accord with the provisions

1 of this chapter and rules of the department which establish review
2 procedures and criteria for the certificate of need program.

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

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

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

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

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

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

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

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

36 (h) In the case of health services proposed to be provided, the
37 efficiency and appropriateness of the use of existing services and
38 facilities similar to those proposed;

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

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

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

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

9 (ii) The availability of other services in the community to be
10 served. Data used to determine the availability of other services will
11 include but not be limited to data provided by the department of social
12 and health services.

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

17 (a) Approval of such application is required to meet the needs of
18 the members of the health maintenance organization and of the new
19 members which such organization can reasonably be expected to enroll;
20 and

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

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

33 (4) Until the final expiration of the state health plan as provided
34 under RCW 70.38.919, the decision of the department on a certificate of
35 need application shall be consistent with the state health plan in
36 effect, except in emergency circumstances which pose a threat to the
37 public health. The department in making its final decision may issue
38 a conditional certificate of need if it finds that the project is
39 justified only under specific circumstances. The conditions shall

1 directly relate to the project being reviewed. The conditions may be
2 released if it can be substantiated that the conditions are no longer
3 valid and the release of such conditions would be consistent with the
4 purposes of this chapter.

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

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

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

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

37 (9) The department or its designee, shall conduct a public hearing
38 on a certificate of need application if requested unless the review is
39 expedited or subject to emergency review. The department by rule shall

1 specify the period of time within which a public hearing must be
2 requested and requirements related to public notice of the hearing,
3 procedures, recordkeeping and related matters.

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

8 (b) Any health care facility or health maintenance organization
9 that: (i) Provides services similar to the services provided by the
10 applicant and under review pursuant to this subsection; (ii) is located
11 within the applicant's health service area; and (iii) testified or
12 submitted evidence at a public hearing held pursuant to subsection (9)
13 of this section, shall be provided an opportunity to present oral or
14 written testimony and argument in a proceeding under this subsection:
15 PROVIDED, That the health care facility or health maintenance
16 organization had, in writing, requested to be informed of the
17 department's decisions.

18 (c) If the department desires to settle with the applicant prior to
19 the conclusion of the adjudicative proceeding, the department shall so
20 inform the health care facility or health maintenance organization and
21 afford them an opportunity to comment, in advance, on the proposed
22 settlement.

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

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

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

28 (c) An increase in bed capacity;

29 (d) A significant reduction in the scope of a nursing home project
30 without a commensurate reduction in the cost of the nursing home
31 project, or a cost increase (as represented in bids on a nursing home
32 construction project or final cost estimates acceptable to the person
33 to whom the certificate of need was issued) if the total of such
34 increases exceeds twelve percent or fifty thousand dollars, whichever
35 is greater, over the maximum capital expenditure approved. The review
36 of reductions or cost increases shall be restricted to the continued
37 conformance of the nursing home project with the review criteria
38 pertaining to financial feasibility and cost containment.

1 (12) An application for a certificate of need for a nursing home
2 capital expenditure which is determined by the department to be
3 required to eliminate or prevent imminent safety hazards or correct
4 violations of applicable licensure and accreditation standards shall be
5 approved.

6 (13)(a) Replacement of existing nursing home beds in the same
7 planning area by an existing licensee who has operated the beds for at
8 least one year shall not require a certificate of need under this
9 chapter. The licensee shall give written notice of its intent to
10 replace the existing nursing home beds to the department and shall
11 provide the department with information as may be required pursuant to
12 rule. Replacement of the beds by a party other than the licensee is
13 subject to certificate of need review under this chapter, except as
14 otherwise permitted by subsection (14) of this section.

15 (b) When an entire nursing home ceases operation, the licensee or
16 any other party who has secured an interest in the beds may reserve his
17 or her interest in the beds for eight years or until a certificate of
18 need to replace them is issued, whichever occurs first. However, the
19 nursing home, licensee, or any other party who has secured an interest
20 in the beds must give notice of its intent to retain the beds to the
21 department of health no later than thirty days after the effective date
22 of the facility's closure. Certificate of need review shall be
23 required for any party who has reserved the nursing home beds except
24 that the need criteria shall be deemed met when the applicant is the
25 licensee who had operated the beds for at least one year, who has
26 operated the beds for at least one year immediately preceding the
27 reservation of the beds, and who is replacing the beds in the same
28 planning area.

29 (14) In the event that a licensee, who has provided the department
30 with notice of his or her intent to replace nursing home beds under
31 subsection (13)(a) of this section, engages in unprofessional conduct
32 or becomes unable to practice with reasonable skill and safety by
33 reason of mental or physical condition, pursuant to chapter 18.130 RCW,
34 (~~(or)~~) dies, or files for or otherwise declares bankruptcy, the
35 building owner shall be permitted to complete the nursing home bed
36 replacement project, provided the building owner has secured an
37 interest in the beds.

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