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SENATE BILL 5458

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State of Washington

58th Legislature

2003 Regular Session

By Senator Morton

Read first time 01/27/2003. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to exemptions to certificate of need requirements  
2 for conversions of boarding home beds to nursing home beds; and  
3 amending RCW 70.38.111.

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

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

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

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

1 individuals enrolled with such organization or organizations in the  
2 combination;

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

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

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

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

1 (b) The application contains such information respecting the  
2 organization, combination, or facility and the proposed offering or  
3 obligation by a nursing home as the department may require to determine  
4 if the organization or combination meets the requirements of subsection  
5 (1) of this section or the facility meets or will meet such  
6 requirements; and

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

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

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

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

35 (4) In the case of a health maintenance organization, an ambulatory  
36 care facility, or a health care facility, which ambulatory or health  
37 care facility is controlled, directly or indirectly, by a health  
38 maintenance organization or a combination of health maintenance

1 organizations, the department may under the program apply its  
2 certificate of need requirements only to the offering of inpatient  
3 tertiary health services and then only to the extent that such offering  
4 is not exempt under the provisions of this section.

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

9 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

3 (c) The sale, lease, acquisition, or use of part or all of a  
4 continuing care retirement community nursing home that qualifies for  
5 exemption under this subsection shall require prior certificate of need  
6 approval to qualify for licensure as a nursing home unless the  
7 department determines such sale, lease, acquisition, or use is by a  
8 continuing care retirement community that meets the conditions of (a)  
9 of this subsection.

10 (6) A rural hospital, as defined by the department, reducing the  
11 number of licensed beds to become a rural primary care hospital under  
12 the provisions of Part A Title XVIII of the Social Security Act Section  
13 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction  
14 of beds licensed under chapter 70.41 RCW, increase the number of  
15 licensed beds to no more than the previously licensed number without  
16 being subject to the provisions of this chapter.

17 (7) A rural health care facility licensed under RCW 70.175.100  
18 formerly licensed as a hospital under chapter 70.41 RCW may, within  
19 three years of the effective date of the rural health care facility  
20 license, apply to the department for a hospital license and not be  
21 subject to the requirements of RCW 70.38.105(4)(a) as the construction,  
22 development, or other establishment of a new hospital, provided there  
23 is no increase in the number of beds previously licensed under chapter  
24 70.41 RCW and there is no redistribution in the number of beds used for  
25 acute care or long-term care, the rural health care facility has been  
26 in continuous operation, and the rural health care facility has not  
27 been purchased or leased.

28 (8)(a) A nursing home that voluntarily reduces the number of its  
29 licensed beds to provide assisted living, licensed boarding home care,  
30 adult day care, adult day health, respite care, hospice, outpatient  
31 therapy services, congregate meals, home health, or senior wellness  
32 clinic, or to reduce to one or two the number of beds per room or to  
33 otherwise enhance the quality of life for residents in the nursing  
34 home, may convert the original facility or portion of the facility  
35 back, and thereby increase the number of nursing home beds to no more  
36 than the previously licensed number of nursing home beds without  
37 obtaining a certificate of need under this chapter, provided the  
38 facility has been in continuous operation and has not been purchased or

1 leased. Any conversion to the original licensed bed capacity, or to  
2 any portion thereof, shall comply with the same life and safety code  
3 requirements as existed at the time the nursing home voluntarily  
4 reduced its licensed beds; unless waivers from such requirements were  
5 issued, in which case the converted beds shall reflect the conditions  
6 or standards that then existed pursuant to the approved waivers.

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

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

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

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

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

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

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

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

4 (f) A licensed nursing home with an attached licensed boarding home  
5 may convert the licensed boarding home beds to licensed nursing home  
6 beds provided the number of licensed nursing home beds does not  
7 increase. Any conversion of the licensed boarding home to the licensed  
8 nursing home shall comply with the same life safety code and  
9 construction requirements as existing in the licensed nursing home,  
10 unless waivers from such requirements were issued, in which case the  
11 converted beds shall reflect the conditions or standards that then  
12 existed pursuant to the approved waivers.

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