
SECOND SUBSTITUTE HOUSE BILL 2100

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Cody, Morrell, Quall, Kenney, Linville and Ormsby)

READ FIRST TIME 03/05/07.

1 AN ACT Relating to establishing a statewide health resources
2 strategy; amending RCW 70.38.015, 70.38.025, 70.38.115, 70.38.135, and
3 70.38.105; adding a new chapter to Title 43 RCW; and creating a new
4 section.

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

6 NEW SECTION. **Sec. 1.** A strategic health planning process that is
7 responsive to changing health and social needs and conditions is
8 essential to the health, safety, and welfare of the people of the
9 state. The strategic health planning process must be concerned with
10 the performance of the health system, encompassing health care
11 financing, quality, and the availability of information and services
12 for all residents. The strategic health planning process must ensure
13 the involvement of both consumers and health care providers in the
14 health planning process. The outcomes of the strategic health planning
15 process must be clearly articulated and available for public use and
16 review.

17 Such strategic health planning, when informed by relevant data
18 about the state's health system, shall guide the state in establishing
19 objectives and strategies to:

- 1 (1) Promote, maintain, and assure the health of all citizens in the
2 state;
- 3 (2) Provide accessible health services through the maintenance of
4 an adequate supply of health facilities and an adequate workforce;
- 5 (3) Apply specific quality criteria and population health
6 indicators;
- 7 (4) Recognize prevention as a high priority in health programs;
- 8 (5) Address periodic priority issues including disaster planning,
9 public health threats, and public safety dilemmas;
- 10 (6) Coordinate efforts among state agencies including those tasked
11 with facility, services, and professional provider licensing; state and
12 federal reimbursement; health service utilization data systems; and
13 other functions relevant to health planning;
- 14 (7) Recognize the close interrelationship of health planning
15 concerns and emphasize health care expenditure control, including cost-
16 effectiveness and cost-benefit analysis;
- 17 (8) Integrate criteria for evidence-based medicine; and
- 18 (9) Regularly evaluate the impact of capacity management on health
19 service expenditures, access, quality, and innovation.

20 NEW SECTION. **Sec. 2.** The definitions in this section apply
21 throughout this chapter unless the context clearly requires otherwise.

22 (1) "Commission" means the Washington health resource strategy
23 commission.

24 (2) "Health care provider" means an individual who holds a license
25 issued by a disciplining authority identified in RCW 18.130.040 and who
26 practices his or her profession in a health care facility or provides
27 a health service.

28 (3) "Health facility" or "facility" means hospices licensed under
29 chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural
30 health care facilities as defined in RCW 70.175.020, psychiatric
31 hospitals licensed under chapter 71.12 RCW, nursing homes licensed
32 under chapter 18.51 RCW, community mental health centers licensed under
33 chapter 71.05 or 71.24 RCW, kidney disease treatment centers,
34 ambulatory diagnostic, treatment, or surgical facilities, drug and
35 alcohol treatment facilities licensed under chapter 70.96A RCW, and
36 home health agencies licensed under chapter 70.127 RCW, and includes
37 such facilities if owned and operated by a political subdivision,

1 including a public hospital district, or instrumentality of the state
2 and such other facilities as required by federal law and implementing
3 regulations.

4 (3) "Health service" or "service" means that service, including
5 primary care service, offered or provided by health care facilities and
6 health care providers relating to the prevention, cure, or treatment of
7 illness, injury, or disease.

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

11 (5) "Office" means the office of strategic health resource
12 coordination.

13 (6) "Strategy" means the statewide health resources strategy.

14 NEW SECTION. **Sec. 3.** (1) The office of strategic health resource
15 coordination is created in the office of the governor. The office
16 shall serve as a coordinating body for public and private efforts to
17 improve quality in health care, promote cost-effectiveness in health
18 care, and plan health facility and health service availability. In
19 addition, the office shall facilitate access to health care data
20 collected by public and private organizations as needed to conduct its
21 planning responsibilities.

22 (2) The office shall:

23 (a) Assist the commission with its strategic health planning
24 responsibilities and the preparation of the strategy;

25 (b) Develop a computerized system for accessing, analyzing, and
26 disseminating data relevant to strategic health planning
27 responsibilities. The office may contract with an organization to
28 create the computerized system capable of meeting the needs of the
29 office;

30 (c) Maintain access to deidentified data collected and stored by
31 any public and private organizations as necessary to support the
32 planning responsibilities of the commission, including state-purchased
33 health care program data, hospital discharge data, and private efforts
34 to collect utilization and claims-related data. The office is
35 authorized to enter into any data sharing agreements and contractual
36 arrangements necessary to obtain data or to distribute data. Among the
37 sources of deidentified data that the office may access are any

1 databases established pursuant to the recommendations of the health
2 information infrastructure advisory board established by chapter 261,
3 laws of 2005. The office may store limited data sets as necessary to
4 support its activities. Unless specifically authorized, the office
5 shall not collect data directly from the records of health care
6 providers and health care facilities, but shall make use of databases
7 that have already collected such information;

8 (d) Conduct research and analysis or arrange for research and
9 analysis projects to be conducted by public or private organizations to
10 further the purposes of the commission;

11 (e) Provide administrative and technical support to the commission.

12 NEW SECTION. **Sec. 4.** (1) The health resource strategy commission
13 is created consisting of nineteen members appointed by the governor.
14 The commission shall be comprised of members from geographically
15 diverse regions of the state and shall include:

16 (a) Two health economists or health planners;

17 (b) Three representatives of nongovernment health care purchasers;

18 (c) One representative of the department of health;

19 (d) One representative of the department of social and health
20 services;

21 (e) One representative of the health care authority;

22 (f) One representative of the office of the insurance commissioner;

23 (g) Two representatives of acute care facilities;

24 (h) One representative of long-term care facilities;

25 (i) One representative of community-based long-term care providers;

26 (j) One representative of health care providers;

27 (k) One representative of a federally recognized Indian tribe; and

28 (l) Four representatives of health care consumers.

29 (2) Members of the initial commission may be appointed to staggered
30 terms of one to four years, and thereafter all terms of appointment are
31 for four years. No member may serve more than two consecutive full
32 terms. Each member shall hold office until a successor is appointed.
33 In appointing members, the governor shall make reasonable efforts to
34 select individuals with experience with health planning or health
35 economics. Members of the commission shall be compensated in
36 accordance with RCW 43.03.250 and shall be reimbursed for their travel
37 expenses while on official business in accordance with RCW 43.03.050

1 and 43.03.060. The commission shall elect a chair from its members to
2 serve for a term of one year or until a successor is elected. Meetings
3 of the commission shall be at the call of the chair.

4 NEW SECTION. **Sec. 5.** (1) The commission shall develop a statewide
5 health resources strategy. The strategy shall establish statewide
6 health planning policies and goals related to the availability of
7 health care facilities and services, quality of care, and cost of care.
8 The strategy shall identify needs according to geographic regions
9 suitable for comprehensive health planning as designated by the
10 commission.

11 (2) The development of the strategy shall consider the following
12 general goals and principles:

13 (a) That the structural limitations of health care financing limit
14 the effect of free market competition and raise the need for carefully
15 tailored government planning and regulation to control costs,
16 utilization, and distribution of health care services and facilities;

17 (b) That excess capacity of health services and facilities place
18 considerable economic burden on the public who pay for the construction
19 and operation of these facilities as patients, health insurance
20 purchasers, carriers, and taxpayers; and

21 (c) That the development and ongoing maintenance of current and
22 accurate health care information and statistics related to cost and
23 quality of health care, as well as projections of need for health
24 facilities and services, are essential to effective strategic health
25 planning.

26 (3) The strategy shall include:

27 (a) A health system assessment and objectives component that:

28 (i) Describes state and regional population demographics, health
29 status indicators, and trends in health status and health care needs;
30 and

31 (ii) Identifies key policy objectives for the state health system
32 related to access to care, health outcomes, quality, and cost-
33 effectiveness;

34 (b) A health care facilities and services plan that shall assess
35 the demand for health care facilities and services to inform state
36 health planning efforts and direct certificate of need determinations,

1 for those facilities and services subject to certificate of need as
2 provided in chapter 70.38 RCW. The plan shall include:

3 (i) An inventory of each geographic region's existing health care
4 facilities and services;

5 (ii) Projections of need for each category of health care facility
6 and service, including those subject to certificate of need;

7 (iii) Policies to guide the addition of new or expanded health care
8 facilities and services to promote the use of quality, evidence-based,
9 cost-effective health care delivery options, including any
10 recommendations for criteria, standards, and methods relevant to the
11 certificate of need review process; and

12 (iv) An assessment of the availability of health care providers,
13 public health resources, transportation infrastructure, and other
14 considerations necessary to support the needed health care facilities
15 and services in each region;

16 (c) A health care data resource plan that identifies data elements
17 necessary to properly conduct planning activities and to review
18 certificate of need applications, including data related to inpatient
19 and outpatient utilization and outcomes information, and financial and
20 utilization information related to charity care, quality, and cost.
21 The plan shall inventory existing data resources, both public and
22 private, that store and disclose information relevant to the health
23 planning process, including information necessary to conduct
24 certificate of need activities pursuant to chapter 70.38 RCW. The plan
25 shall identify any deficiencies in the inventory of existing data
26 resources and the data necessary to conduct comprehensive health
27 planning activities. The plan may recommend that the office be
28 authorized to access existing data sources and conduct appropriate
29 analyses of such data or that other agencies expand their data
30 collection activities as statutory authority permits. The plan may
31 identify any computing infrastructure deficiencies that impede the
32 proper storage, transmission, and analysis of health planning data.
33 The plan shall provide recommendations for increasing the availability
34 of data related to health planning to provide greater community
35 involvement in the health planning process and consistency in data used
36 for certificate of need applications and determinations;

37 (d) An assessment of emerging trends in health care delivery and
38 technology as they relate to access to health care facilities and

1 services, quality of care, and costs of care. The assessment shall
2 recommend any changes to the scope of health care facilities and
3 services covered by the certificate of need program that may be
4 warranted by these emerging trends. In addition, the assessment may
5 recommend any changes to criteria used by the department to review
6 certificate of need applications, as necessary;

7 (e) A rural health resource plan to assess the availability of
8 health resources in rural areas of the state, assess the unmet needs of
9 these communities, and evaluate how federal and state reimbursement
10 policies can be modified, if necessary, to more efficiently and
11 effectively meet the health care needs of rural communities. The plan
12 shall consider the unique health care needs of rural communities, the
13 adequacy of the rural health workforce, and transportation needs for
14 accessing appropriate care.

15 (4) The commission shall submit the final strategy to the governor
16 by January 1, 2010. Every two years the commission shall submit a
17 strategy. The health care facilities and services plan as it pertains
18 to a distinct geographic planning region may be updated by individual
19 categories on a rotating, biannual schedule.

20 (5) The commission shall hold at least one public hearing and allow
21 opportunity to submit written comments prior to the issuance of the
22 initial strategy or an updated strategy. A public hearing shall be
23 held prior to issuing a draft of an updated health care facilities and
24 services plan, and another public hearing shall be held before final
25 adoption of an updated health care facilities and services plan. Any
26 hearing related to updating a health care facilities and services plan
27 for a specific planning region shall be held in that region with
28 sufficient notice to the public and an opportunity to comment.

29 NEW SECTION. **Sec. 6.** The commission shall submit the strategy to
30 the department of health to direct its activities related to the
31 certificate of need review program under chapter 70.38 RCW. As the
32 health care facilities and services plan is updated for any specific
33 geographic planning region, the commission shall submit that plan to
34 the department of health to direct its activities related to the
35 certificate of need review program under chapter 70.38 RCW. The
36 commission shall not issue determinations of the merits of specific
37 project proposals submitted by applicants for certificates of need.

1 NEW SECTION. **Sec. 7.** (1) The office may respond to requests for
2 data and other information from its computerized system for special
3 studies and analysis consistent with requirements for confidentiality
4 of patient, provider, and facility-specific records. The office may
5 require requestors to pay any or all of the reasonable costs associated
6 with such requests that might be approved.

7 (2) Data elements related to the identification of individual
8 patient's, provider's, and facility's care outcomes are confidential,
9 are exempt from RCW 42.56.030 through 42.56.570 and 42.17.350 through
10 42.17.450, and are not subject to discovery by subpoena or admissible
11 as evidence.

12 **Sec. 8.** RCW 70.38.015 and 1989 1st ex.s. c 9 s 601 are each
13 amended to read as follows:

14 It is declared to be the public policy of this state:

15 (1) That strategic health planning ((~~to~~)) ~~efforts must be supported~~
16 by appropriately tailored regulatory activities that can effectuate the
17 goals and principles of the statewide health resources strategy
18 developed pursuant to chapter 43.-- RCW (sections 1 through 7 of this
19 act). The implementation of the strategy can promote, maintain, and
20 assure the health of all citizens in the state, ((~~to~~)) provide
21 accessible health services, health manpower, health facilities, and
22 other resources while controlling ((~~excessive~~)) increases in costs, and
23 ((~~to~~)) recognize prevention as a high priority in health programs((~~, is~~
24 essential to the health, safety, and welfare of the people of the
25 state. Health planning should be responsive to changing health and
26 social needs and conditions)). Involvement in health planning from
27 both consumers and providers throughout the state should be encouraged;

28 ((~~That the development of health services and resources,~~
29 ~~including the construction, modernization, and conversion of health~~
30 ~~facilities, should be accomplished in a planned, orderly fashion,~~
31 ~~consistent with identified priorities and without unnecessary~~
32 ~~duplication or fragmentation)) That the certificate of need program is
33 a component of a health planning regulatory process that is consistent
34 with the statewide health resources strategy and public policy goals
35 that are clearly articulated and regularly updated;~~

36 (3) That the development and maintenance of adequate health care

1 information, statistics and projections of need for health facilities
2 and services is essential to effective health planning and resources
3 development;

4 (4) That the development of nonregulatory approaches to health care
5 cost containment should be considered, including the strengthening of
6 price competition; and

7 (5) That health planning should be concerned with public health and
8 health care financing, access, and quality, recognizing their close
9 interrelationship and emphasizing cost control of health services,
10 including cost-effectiveness and cost-benefit analysis.

11 **Sec. 9.** RCW 70.38.025 and 2000 c 175 s 22 are each amended to read
12 as follows:

13 When used in this chapter, the terms defined in this section shall
14 have the meanings indicated.

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

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

36 (3) "Continuing care retirement community" means an entity which
37 provides shelter and services under continuing care contracts with its

1 members and which sponsors or includes a health care facility or a
2 health service. A "continuing care contract" means a contract to
3 provide a person, for the duration of that person's life or for a term
4 in excess of one year, shelter along with nursing, medical, health-
5 related, or personal care services, which is conditioned upon the
6 transfer of property, the payment of an entrance fee to the provider of
7 such services, or the payment of periodic charges for the care and
8 services involved. A continuing care contract is not excluded from
9 this definition because the contract is mutually terminable or because
10 shelter and services are not provided at the same location.

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

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

17 (6) "Health care facility" means hospices, hospice care centers,
18 hospitals, psychiatric hospitals, nursing homes, kidney disease
19 treatment centers, ambulatory surgical facilities, and home health
20 agencies, and includes such facilities when owned and operated by a
21 political subdivision or instrumentality of the state and such other
22 facilities as required by federal law and implementing regulations, but
23 does not include any health facility or institution conducted by and
24 for those who rely exclusively upon treatment by prayer or spiritual
25 means in accordance with the creed or tenets of any well-recognized
26 church or religious denomination, or any health facility or institution
27 operated for the exclusive care of members of a convent as defined in
28 RCW 84.36.800 or rectory, monastery, or other institution operated for
29 the care of members of the clergy. In addition, the term does not
30 include any nonprofit hospital: (a) Which is operated exclusively to
31 provide health care services for children; (b) which does not charge
32 fees for such services; and (c) if not contrary to federal law as
33 necessary to the receipt of federal funds by the state.

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

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

1 (b)(i) Provides or otherwise makes available to enrolled
2 participants health care services, including at least the following
3 basic health care services: Usual physician services, hospitalization,
4 laboratory, X-ray, emergency, and preventive services, and out-of-area
5 coverage; (ii) is compensated (except for copayments) for the provision
6 of the basic health care services listed in (b)(i) to enrolled
7 participants by a payment which is paid on a periodic basis without
8 regard to the date the health care services are provided and which is
9 fixed without regard to the frequency, extent, or kind of health
10 service actually provided; and (iii) provides physicians' services
11 primarily (A) directly through physicians who are either employees or
12 partners of such organization, or (B) through arrangements with
13 individual physicians or one or more groups of physicians (organized on
14 a group practice or individual practice basis).

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

19 (9) "Health service area" means a geographic region appropriate for
20 effective health planning which includes a broad range of health
21 services.

22 (10) "Person" means an individual, a trust or estate, a
23 partnership, a corporation (including associations, joint stock
24 companies, and insurance companies), the state, or a political
25 subdivision or instrumentality of the state, including a municipal
26 corporation or a hospital district.

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

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

36 (13) "Secretary" means the secretary of health or the secretary's
37 designee.

1 (14) "Statewide health resource strategy" or "strategy" means the
2 statewide health resource strategy developed by the Washington health
3 resource strategy commission pursuant to chapter 43.-- RCW (sections 1
4 through 7 of this act).

5 (15) "Tertiary health service" means a specialized service that
6 meets complicated medical needs of people and requires sufficient
7 patient volume to optimize provider effectiveness, quality of service,
8 and improved outcomes of care.

9 (~~(15)~~) (16) "Hospital" means any health care institution which is
10 required to qualify for a license under RCW 70.41.020(~~(2)~~); or as a
11 psychiatric hospital under chapter 71.12 RCW.

12 **Sec. 10.** RCW 70.38.115 and 1996 c 178 s 22 are each amended to
13 read as follows:

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

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

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

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

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

29 (d) In the case of health services to be provided,

30 (i) the availability of alternative uses of project resources for
31 the provision of other health services,

32 (ii) the extent to which such proposed services will be accessible
33 to all residents of the area to be served, and

34 (iii) the need for and the availability in the community of
35 services and facilities for osteopathic physicians and surgeons and
36 allopathic physicians and their patients. The department shall consider
37 the application in terms of its impact on existing and proposed

1 institutional training programs for doctors of osteopathic medicine and
2 surgery and medicine at the student, internship, and residency training
3 levels;

4 (e) In the case of a construction project, the costs and methods of
5 the proposed construction, including the cost and methods of energy
6 provision, and the probable impact of the construction project reviewed
7 (i) on the cost of providing health services by the person proposing
8 such construction project and (ii) on the cost and charges to the
9 public of providing health services by other persons;

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

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

15 (h) In the case of health services proposed to be provided, the
16 efficiency and appropriateness of the use of existing services and
17 facilities similar to those proposed;

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

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

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

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

26 (ii) The availability of other services in the community to be
27 served. Data used to determine the availability of other services will
28 include but not be limited to data provided by the department of social
29 and health services.

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

34 (a) Approval of such application is required to meet the needs of
35 the members of the health maintenance organization and of the new
36 members which such organization can reasonably be expected to enroll;
37 and

1 (b) The health maintenance organization is unable to provide,
2 through services or facilities which can reasonably be expected to be
3 available to the organization, its health services in a reasonable and
4 cost-effective manner which is consistent with the basic method of
5 operation of the organization and which makes such services available
6 on a long-term basis through physicians and other health professionals
7 associated with it.

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

13 ~~(4) ((Until the final expiration of the state health plan as~~
14 ~~provided under RCW 70.38.919, the decision of the department on a~~
15 ~~certificate of need application shall be consistent with the state~~
16 ~~health plan in effect, except in emergency circumstances which pose a~~
17 ~~threat to the public health.))~~ Effective January 1, 2010, for those
18 facilities and services covered by the certificate of need programs,
19 certificate of need determinations must be consistent with the
20 statewide health resources strategy developed pursuant to section 5 of
21 this act, including any health planning policies and goals identified
22 in the statewide health resources strategy in effect at the time of
23 application. The department may waive specific terms of the strategy
24 if the applicant demonstrates that consistency with those terms will
25 create an undue burden on the population that a particular project
26 would serve, or in emergency circumstances which pose a threat to
27 public health.

28 (5) The department in making its final decision may issue a
29 conditional certificate of need if it finds that the project is
30 justified only under specific circumstances. The conditions shall
31 directly relate to the project being reviewed. The conditions may be
32 released if it can be substantiated that the conditions are no longer
33 valid and the release of such conditions would be consistent with the
34 purposes of this chapter.

35 ~~((+5))~~ (6) Criteria adopted for review in accordance with
36 subsection (2) of this section may vary according to the purpose for
37 which the particular review is being conducted or the type of health
38 service reviewed.

1 (~~(6)~~) (7) The department shall specify information to be required
2 for certificate of need applications. Within fifteen days of receipt
3 of the application, the department shall request additional information
4 considered necessary to the application or start the review process.
5 Applicants may decline to submit requested information through written
6 notice to the department, in which case review starts on the date of
7 receipt of the notice. Applications may be denied or limited because
8 of failure to submit required and necessary information.

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

23 (~~(8)~~) (9) Review periods for certificate of need applications
24 other than those subject to concurrent review shall be limited to
25 ninety days. Review periods may be extended up to thirty days if
26 needed by a review agency, and for unresolved pivotal issues the
27 department may extend up to an additional thirty days. A review may be
28 extended in any case if the applicant agrees to the extension.

29 (~~(9)~~) (10) The department or its designee, shall conduct a public
30 hearing on a certificate of need application if requested unless the
31 review is expedited or subject to emergency review. The department by
32 rule shall specify the period of time within which a public hearing
33 must be requested and requirements related to public notice of the
34 hearing, procedures, recordkeeping and related matters.

35 (~~(10)~~) (11)(a) Any applicant denied a certificate of need or
36 whose certificate of need has been suspended or revoked has the right
37 to an adjudicative proceeding. The proceeding is governed by chapter
38 34.05 RCW, the Administrative Procedure Act.

1 (b) Any health care facility or health maintenance organization
2 that: (i) Provides services similar to the services provided by the
3 applicant and under review pursuant to this subsection; (ii) is located
4 within the applicant's health service area; and (iii) testified or
5 submitted evidence at a public hearing held pursuant to subsection
6 (~~(9)~~) (10) of this section, shall be provided an opportunity to
7 present oral or written testimony and argument in a proceeding under
8 this subsection: PROVIDED, That the health care facility or health
9 maintenance organization had, in writing, requested to be informed of
10 the department's decisions.

11 (c) If the department desires to settle with the applicant prior to
12 the conclusion of the adjudicative proceeding, the department shall so
13 inform the health care facility or health maintenance organization and
14 afford them an opportunity to comment, in advance, on the proposed
15 settlement.

16 (~~(11)~~) (12) An amended certificate of need shall be required for
17 the following modifications of an approved project:

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

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

21 (c) An increase in bed capacity;

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

32 (~~(12)~~) (13) An application for a certificate of need for a
33 nursing home capital expenditure which is determined by the department
34 to be required to eliminate or prevent imminent safety hazards or
35 correct violations of applicable licensure and accreditation standards
36 shall be approved.

37 (~~(13)~~) (14)(a) Replacement of existing nursing home beds in the
38 same planning area by an existing licensee who has operated the beds

1 for at least one year shall not require a certificate of need under
2 this chapter. The licensee shall give written notice of its intent to
3 replace the existing nursing home beds to the department and shall
4 provide the department with information as may be required pursuant to
5 rule. Replacement of the beds by a party other than the licensee is
6 subject to certificate of need review under this chapter, except as
7 otherwise permitted by subsection (~~((+14+))~~) (15) of this section.

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

22 (~~((+14+))~~) (15) In the event that a licensee, who has provided the
23 department with notice of his or her intent to replace nursing home
24 beds under subsection (~~((+13+))~~) (14)(a) of this section, engages in
25 unprofessional conduct or becomes unable to practice with reasonable
26 skill and safety by reason of mental or physical condition, pursuant to
27 chapter 18.130 RCW, or dies, the building owner shall be permitted to
28 complete the nursing home bed replacement project, provided the
29 building owner has secured an interest in the beds.

30 **Sec. 11.** RCW 70.38.135 and 1989 1st ex.s. c 9 s 607 are each
31 amended to read as follows:

32 The secretary shall have authority to:

33 (1) Provide when needed temporary or intermittent services of
34 experts or consultants or organizations thereof, by contract, when such
35 services are to be performed on a part time or fee-for-service basis;

36 (2) Make or cause to be made such on-site surveys of health care or

1 medical facilities as may be necessary for the administration of the
2 certificate of need program;

3 (3) Upon review of recommendations, if any, from the board of
4 health or the Washington health resource strategy commission:

5 (a) Promulgate rules under which health care facilities providers
6 doing business within the state shall submit to the department such
7 data related to health and health care as the department finds
8 necessary to the performance of its functions under this chapter;

9 (b) Promulgate rules pertaining to the maintenance and operation of
10 medical facilities which receive federal assistance under the
11 provisions of Title XVI;

12 (c) Promulgate rules in implementation of the provisions of this
13 chapter, including the establishment of procedures for public hearings
14 for predecisions and post-decisions on applications for certificate of
15 need;

16 (d) Promulgate rules providing circumstances and procedures of
17 expedited certificate of need review if there has not been a
18 significant change in existing health facilities of the same type or in
19 the need for such health facilities and services;

20 (4) Grant allocated state funds to qualified entities, as defined
21 by the department, to fund not more than seventy-five percent of the
22 costs of regional planning activities, excluding costs related to
23 review of applications for certificates of need, provided for in this
24 chapter or approved by the department; and

25 (5) Contract with and provide reasonable reimbursement for
26 qualified entities to assist in determinations of certificates of need.

27 **Sec. 12.** RCW 70.38.105 and 2004 c 261 s 6 are each amended to read
28 as follows:

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

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

35 (3) No person shall engage in any undertaking which is subject to
36 certificate of need review under subsection (4) of this section without

1 first having received from the department either a certificate of need
2 or an exception granted in accordance with this chapter.

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

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

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

9 (c) Any capital expenditure for the construction, renovation, or
10 alteration of a nursing home which substantially changes the services
11 of the facility after January 1, 1981, provided that the substantial
12 changes in services are specified by the department in rule;

13 (d) Any capital expenditure for the construction, renovation, or
14 alteration of a nursing home which exceeds the expenditure minimum as
15 defined by RCW 70.38.025. However, a capital expenditure which is not
16 subject to certificate of need review under (a), (b), (c), or (e) of
17 this subsection and which is solely for any one or more of the
18 following is not subject to certificate of need review:

19 (i) Communications and parking facilities;

20 (ii) Mechanical, electrical, ventilation, heating, and air
21 conditioning systems;

22 (iii) Energy conservation systems;

23 (iv) Repairs to, or the correction of, deficiencies in existing
24 physical plant facilities which are necessary to maintain state
25 licensure, however, other additional repairs, remodeling, or
26 replacement projects that are not related to one or more deficiency
27 citations and are not necessary to maintain state licensure are not
28 exempt from certificate of need review except as otherwise permitted by
29 (d)(vi) of this subsection or RCW 70.38.115(~~(+13)~~) (14);

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

33 (vi) Construction or renovation at an existing nursing home which
34 involves physical plant facilities, including administrative, dining
35 areas, kitchen, laundry, therapy areas, and support facilities, by an
36 existing licensee who has operated the beds for at least one year;

37 (vii) Acquisition of land; and

38 (viii) Refinancing of existing debt;

1 (e) A change in bed capacity of a health care facility which
2 increases the total number of licensed beds or redistributes beds among
3 acute care, nursing home care, and boarding home care if the bed
4 redistribution is to be effective for a period in excess of six months,
5 or a change in bed capacity of a rural health care facility licensed
6 under RCW 70.175.100 that increases the total number of nursing home
7 beds or redistributes beds from acute care or boarding home care to
8 nursing home care if the bed redistribution is to be effective for a
9 period in excess of six months. A health care facility certified as a
10 critical access hospital under 42 U.S.C. 1395i-4 may increase its total
11 number of licensed beds to the total number of beds permitted under 42
12 U.S.C. 1395i-4 for acute care and may redistribute beds permitted under
13 42 U.S.C. 1395i-4 among acute care and nursing home care without being
14 subject to certificate of need review. If there is a nursing home
15 licensed under chapter 18.51 RCW within twenty-seven miles of the
16 critical access hospital, the critical access hospital is subject to
17 certificate of need review except for:

18 (i) Critical access hospitals which had designated beds to provide
19 nursing home care, in excess of five swing beds, prior to December 31,
20 2003; or

21 (ii) Up to five swing beds.

22 Critical access hospital beds not subject to certificate of need
23 review under this subsection (4)(e) will not be counted as either acute
24 care or nursing home care for certificate of need review purposes. If
25 a health care facility ceases to be certified as a critical access
26 hospital under 42 U.S.C. 1395i-4, the hospital may revert back to the
27 type and number of licensed hospital beds as it had when it requested
28 critical access hospital designation;

29 (f) Any new tertiary health services which are offered in or
30 through a health care facility or rural health care facility licensed
31 under RCW 70.175.100, and which were not offered on a regular basis by,
32 in, or through such health care facility or rural health care facility
33 within the twelve-month period prior to the time such services would be
34 offered;

35 (g) Any expenditure for the construction, renovation, or alteration
36 of a nursing home or change in nursing home services in excess of the
37 expenditure minimum made in preparation for any undertaking under
38 subsection (4) of this section and any arrangement or commitment made

1 for financing such undertaking. Expenditures of preparation shall
2 include expenditures for architectural designs, plans, working
3 drawings, and specifications. The department may issue certificates of
4 need permitting predevelopment expenditures, only, without authorizing
5 any subsequent undertaking with respect to which such predevelopment
6 expenditures are made; and

7 (h) Any increase in the number of dialysis stations in a kidney
8 disease center.

9 (5) The department is authorized to charge fees for the review of
10 certificate of need applications and requests for exemptions from
11 certificate of need review. The fees shall be sufficient to cover the
12 full cost of review and exemption, which may include the development of
13 standards, criteria, and policies.

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

16 NEW SECTION. **Sec. 13.** Sections 1 through 7 of this act constitute
17 a new chapter in Title 43 RCW.

18 NEW SECTION. **Sec. 14.** If specific funding for the purposes of
19 this act, referencing this act by bill or chapter number, is not
20 provided by June 30, 2007, in the omnibus appropriations act, this act
21 is null and void.

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