
SUBSTITUTE HOUSE BILL 2450

State of Washington 64th Legislature 2016 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Tharinger, Short, Cody, Schmick, Jenkins, and Blake)

READ FIRST TIME 02/03/16.

1 AN ACT Relating to allowing critical access hospitals
2 participating in the Washington rural health access preservation
3 pilot to resume critical access hospital payment and licensure; and
4 amending RCW 74.09.5225, 70.41.090, and 70.38.111.

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

6 **Sec. 1.** RCW 74.09.5225 and 2014 c 57 s 2 are each amended to
7 read as follows:

8 (1) Payments for recipients eligible for medical assistance
9 programs under this chapter for services provided by hospitals,
10 regardless of the beneficiary's managed care enrollment status, shall
11 be made based on allowable costs incurred during the year, when
12 services are provided by a rural hospital certified by the centers
13 for medicare and medicaid services as a critical access hospital. Any
14 additional payments made by the authority for the healthy options
15 program shall be no more than the additional amounts per service paid
16 under this section for other medical assistance programs.

17 (2)(a) Beginning on July 24, 2005, except as provided in (b) of
18 this subsection, a moratorium shall be placed on additional hospital
19 participation in critical access hospital payments under this
20 section. However, rural hospitals that applied for certification to
21 the centers for medicare and medicaid services prior to January 1,

1 2005, but have not yet completed the process or have not yet been
2 approved for certification, remain eligible for medical assistance
3 payments under this section.

4 (b) For the purposes of state law, any rural hospital approved by
5 the department of health for participation in critical access
6 hospital payments under this section that participates in the
7 Washington rural health access preservation pilot identified by the
8 state office of rural health and ceases to participate in critical
9 access hospital payments may renew participation in critical access
10 hospital associated payment methodologies under this section at any
11 time.

12 (3)(a) Beginning January 1, 2015, payments for recipients
13 eligible for medical assistance programs under this chapter for
14 services provided by a hospital, regardless of the beneficiary's
15 managed care enrollment status, shall be increased to one hundred
16 twenty-five percent of the hospital's fee-for-service rates, when
17 services are provided by a rural hospital that:

18 (i) Was certified by the centers for medicare and medicaid
19 services as a sole community hospital as of January 1, 2013;

20 (ii) Had a level III adult trauma service designation from the
21 department of health as of January 1, 2014;

22 (iii) Had less than one hundred fifty acute care licensed beds in
23 fiscal year 2011; and

24 (iv) Is owned and operated by the state or a political
25 subdivision.

26 (b) The enhanced payment rates under this subsection shall be
27 considered the hospital's medicaid payment rate for purposes of any
28 other state or private programs that pay hospitals according to
29 medicaid payment rates.

30 (c) Hospitals participating in the certified public expenditures
31 program may not receive the increased reimbursement rates provided in
32 this subsection (3) for inpatient services.

33 **Sec. 2.** RCW 70.41.090 and 1992 c 27 s 3 are each amended to read
34 as follows:

35 (1) No person or governmental unit of the state of Washington,
36 acting separately or jointly with any other person or governmental
37 unit, shall establish, maintain, or conduct a hospital in this state,
38 or use the word "hospital" to describe or identify an institution,
39 without a license under this chapter: PROVIDED, That the provisions

1 of this section shall not apply to state mental institutions and
2 psychiatric hospitals which come within the scope of chapter 71.12
3 RCW.

4 (2) After June 30, 1989, no hospital shall initiate a tertiary
5 health service as defined in RCW 70.38.025(14) unless it has received
6 a certificate of need as provided in RCW 70.38.105 and 70.38.115.

7 (3) A rural health care facility licensed under RCW 70.175.100
8 formerly licensed as a hospital under this chapter may, within three
9 years of the effective date of the rural health care facility
10 license, apply to the department for a hospital license and not be
11 required to meet certificate of need requirements under chapter 70.38
12 RCW as a new health care facility and not be required to meet new
13 construction requirements as a new hospital under this chapter. These
14 exceptions are subject to the following: The facility at the time of
15 initial conversion was considered by the department to be in
16 compliance with the hospital licensing rules and the condition of the
17 physical plant and equipment is equal to or exceeds the level of
18 compliance that existed at the time of conversion to a rural health
19 care facility. The department shall inspect and determine compliance
20 with the hospital rules prior to reissuing a hospital license.

21 (4) A rural hospital, as defined by the department, reducing the
22 number of licensed beds to become a rural primary care hospital under
23 the provisions of Part A Title XVIII of the Social Security Act
24 Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the
25 reduction of licensed beds, increase the number of beds licensed
26 under this chapter to no more than the previously licensed number of
27 beds without being subject to the provisions of chapter 70.38 RCW and
28 without being required to meet new construction requirements under
29 this chapter. These exceptions are subject to the following: The
30 facility at the time of the reduction in licensed beds was considered
31 by the department to be in compliance with the hospital licensing
32 rules and the condition of the physical plant and equipment is equal
33 to or exceeds the level of compliance that existed at the time of the
34 reduction in licensed beds. The department may inspect and determine
35 compliance with the hospital rules prior to increasing the hospital
36 license.

37 (5) If a rural hospital is determined to no longer meet critical
38 access hospital status for state law purposes as a result of
39 participation in the Washington rural health access preservation
40 pilot identified by the state office of rural health, the rural

1 hospital may renew its license by applying to the department for a
2 hospital license and the previously licensed number of beds without
3 being subject to the provisions of chapter 70.38 RCW and without
4 being required to meet new construction review requirements under
5 this chapter. These exceptions are subject to the following: The
6 hospital, at the time it began participation in the pilot, was
7 considered by the department to be in compliance with the hospital
8 licensing rules, and the condition of the physical plant and
9 equipment is equal to or exceeds the level of compliance that existed
10 at the time of the reduction in licensed beds. The department may
11 inspect and determine compliance with the hospital licensing rules.
12 If all or part of a formerly licensed rural hospital is sold,
13 purchased, or leased during the period the rural hospital does not
14 meet critical access hospital status as a result of participation in
15 the Washington rural health access preservation pilot and the new
16 owner or lessor applies to renew the rural hospital's license, then
17 the sale, purchase, or lease of part or all of the rural hospital is
18 subject to the provisions of chapter 70.38 RCW.

19 **Sec. 3.** RCW 70.38.111 and 2014 c 225 s 106 are each amended to
20 read as follows:

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

23 (a) A health maintenance organization or a combination of health
24 maintenance organizations if (i) the organization or combination of
25 organizations has, in the service area of the organization or the
26 service areas of the organizations in the combination, an enrollment
27 of at least fifty thousand individuals, (ii) the facility in which
28 the service will be provided is or will be geographically located so
29 that the service will be reasonably accessible to such enrolled
30 individuals, and (iii) at least seventy-five percent of the patients
31 who can reasonably be expected to receive the tertiary health service
32 will be individuals enrolled with such organization or organizations
33 in the combination;

34 (b) A health care facility if (i) the facility primarily provides
35 or will provide inpatient health services, (ii) the facility is or
36 will be controlled, directly or indirectly, by a health maintenance
37 organization or a combination of health maintenance organizations
38 which has, in the service area of the organization or service areas
39 of the organizations in the combination, an enrollment of at least

1 fifty thousand individuals, (iii) the facility is or will be
2 geographically located so that the service will be reasonably
3 accessible to such enrolled individuals, and (iv) at least seventy-
4 five percent of the patients who can reasonably be expected to
5 receive the tertiary health service will be individuals enrolled with
6 such organization or organizations in the combination; or

7 (c) A health care facility (or portion thereof) if (i) the
8 facility is or will be leased by a health maintenance organization or
9 combination of health maintenance organizations which has, in the
10 service area of the organization or the service areas of the
11 organizations in the combination, an enrollment of at least fifty
12 thousand individuals and, on the date the application is submitted
13 under subsection (2) of this section, at least fifteen years remain
14 in the term of the lease, (ii) the facility is or will be
15 geographically located so that the service will be reasonably
16 accessible to such enrolled individuals, and (iii) at least seventy-
17 five percent of the patients who can reasonably be expected to
18 receive the tertiary health service will be individuals enrolled with
19 such organization;

20 if, with respect to such offering or obligation by a nursing home,
21 the department has, upon application under subsection (2) of this
22 section, granted an exemption from such requirement to the
23 organization, combination of organizations, or facility.

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

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

31 (b) The application contains such information respecting the
32 organization, combination, or facility and the proposed offering or
33 obligation by a nursing home as the department may require to
34 determine if the organization or combination meets the requirements
35 of subsection (1) of this section or the facility meets or will meet
36 such requirements; and

37 (c) The department approves such application. The department
38 shall approve or disapprove an application for exemption within
39 thirty days of receipt of a completed application. In the case of a
40 proposed health care facility (or portion thereof) which has not

1 begun to provide tertiary health services on the date an application
2 is submitted under this subsection with respect to such facility (or
3 portion), the facility (or portion) shall meet the applicable
4 requirements of subsection (1) of this section when the facility
5 first provides such services. The department shall approve an
6 application submitted under this subsection if it determines that the
7 applicable requirements of subsection (1) of this section are met.

8 (3) A health care facility (or any part thereof) with respect to
9 which an exemption was granted under subsection (1) of this section
10 may not be sold or leased and a controlling interest in such facility
11 or in a lease of such facility may not be acquired and a health care
12 facility described in (1)(c) which was granted an exemption under
13 subsection (1) of this section may not be used by any person other
14 than the lessee described in (1)(c) unless:

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

17 (b) The department determines, upon application, that (i) the
18 entity to which the facility is proposed to be sold or leased, which
19 intends to acquire the controlling interest, or which intends to use
20 the facility is a health maintenance organization or a combination of
21 health maintenance organizations which meets the requirements of
22 (1)(a)(i), and (ii) with respect to such facility, meets the
23 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)
24 and (ii).

25 (4) In the case of a health maintenance organization, an
26 ambulatory care facility, or a health care facility, which ambulatory
27 or health care facility is controlled, directly or indirectly, by a
28 health maintenance organization or a combination of health
29 maintenance organizations, the department may under the program apply
30 its certificate of need requirements to the offering of inpatient
31 tertiary health services to the extent that such offering is not
32 exempt under the provisions of this section or RCW 70.38.105(7).

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

37 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

28 (c) The sale, lease, acquisition, or use of part or all of a
29 continuing care retirement community nursing home that qualifies for
30 exemption under this subsection shall require prior certificate of
31 need approval to qualify for licensure as a nursing home unless the
32 department determines such sale, lease, acquisition, or use is by a
33 continuing care retirement community that meets the conditions of (a)
34 of this subsection.

35 (6) A rural hospital, as defined by the department, reducing the
36 number of licensed beds to become a rural primary care hospital under
37 the provisions of Part A Title XVIII of the Social Security Act
38 Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the
39 reduction of beds licensed under chapter 70.41 RCW, increase the

1 number of licensed beds to no more than the previously licensed
2 number without being subject to the provisions of this chapter.

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

14 (8) A rural hospital determined to no longer meet critical access
15 hospital status for state law purposes as a result of participation
16 in the Washington rural health access preservation pilot identified
17 by the state office of rural health and formerly licensed as a
18 hospital under chapter 70.41 RCW may apply to the department to renew
19 its hospital license and not be subject to the requirements of RCW
20 70.38.105(4)(a) as the construction, development, or other
21 establishment of a new hospital, provided there is no increase in the
22 number of beds previously licensed under chapter 70.41 RCW. If all or
23 part of a formerly licensed rural hospital is sold, purchased, or
24 leased during the period the rural hospital does not meet critical
25 access hospital status as a result of participation in the Washington
26 rural health access preservation pilot and the new owner or lessor
27 applies to renew the rural hospital's license, then the sale,
28 purchase, or lease of part or all of the rural hospital is subject to
29 the provisions of chapter 70.38 RCW.

30 (9)(a) A nursing home that voluntarily reduces the number of its
31 licensed beds to provide assisted living, licensed assisted living
32 facility care, adult day care, adult day health, respite care,
33 hospice, outpatient therapy services, congregate meals, home health,
34 or senior wellness clinic, or to reduce to one or two the number of
35 beds per room or to otherwise enhance the quality of life for
36 residents in the nursing home, may convert the original facility or
37 portion of the facility back, and thereby increase the number of
38 nursing home beds to no more than the previously licensed number of
39 nursing home beds without obtaining a certificate of need under this
40 chapter, provided the facility has been in continuous operation and

1 has not been purchased or leased. Any conversion to the original
2 licensed bed capacity, or to any portion thereof, shall comply with
3 the same life and safety code requirements as existed at the time the
4 nursing home voluntarily reduced its licensed beds; unless waivers
5 from such requirements were issued, in which case the converted beds
6 shall reflect the conditions or standards that then existed pursuant
7 to the approved waivers.

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

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

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

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

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

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

37 (e) When a building owner has secured an interest in the nursing
38 home beds, which are intended to be voluntarily reduced by the
39 licensee under (a) of this subsection, the applicant shall provide

1 the department with a written statement indicating the building
2 owner's approval of the bed reduction.

3 ~~((+9+))~~ (10)(a) The department shall not require a certificate of
4 need for a hospice agency if:

5 (i) The hospice agency is designed to serve the unique religious
6 or cultural needs of a religious group or an ethnic minority and
7 commits to furnishing hospice services in a manner specifically aimed
8 at meeting the unique religious or cultural needs of the religious
9 group or ethnic minority;

10 (ii) The hospice agency is operated by an organization that:

11 (A) Operates a facility, or group of facilities, that offers a
12 comprehensive continuum of long-term care services, including, at a
13 minimum, a licensed, medicare-certified nursing home, assisted
14 living, independent living, day health, and various community-based
15 support services, designed to meet the unique social, cultural, and
16 religious needs of a specific cultural and ethnic minority group;

17 (B) Has operated the facility or group of facilities for at least
18 ten continuous years prior to the establishment of the hospice
19 agency;

20 (iii) The hospice agency commits to coordinating with existing
21 hospice programs in its community when appropriate;

22 (iv) The hospice agency has a census of no more than forty
23 patients;

24 (v) The hospice agency commits to obtaining and maintaining
25 medicare certification;

26 (vi) The hospice agency only serves patients located in the same
27 county as the majority of the long-term care services offered by the
28 organization that operates the agency; and

29 (vii) The hospice agency is not sold or transferred to another
30 agency.

31 (b) The department shall include the patient census for an agency
32 exempted under this subsection ~~((+9+))~~ (10) in its calculations for
33 future certificate of need applications.

34 ~~((+10+))~~ (11) To alleviate the need to board psychiatric patients
35 in emergency departments, for fiscal year 2015 the department shall
36 suspend the certificate of need requirement for a hospital licensed
37 under chapter 70.41 RCW that changes the use of licensed beds to
38 increase the number of beds to provide psychiatric services,

1 including involuntary treatment services. A certificate of need
2 exemption under this section shall be valid for two years.

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