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SENATE BILL 5446

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State of Washington                      65th Legislature                      2017 Regular Session

By Senators Becker, Frockt, Cleveland, Rivers, Keiser, and Mullet

Read first time 01/25/17. Referred to Committee on Health Care.

1            AN ACT Relating to exempting certain hospitals from certificate  
2 of need requirements for the addition of psychiatric beds until June  
3 2019; amending RCW 70.38.111 and 70.38.260; providing an expiration  
4 date; and declaring an emergency.

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

6            **Sec. 1.** RCW 70.38.111 and 2016 sp.s. c 31 s 4 are each amended  
7 to read as follows:

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

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

13 (c) A health care facility (or portion thereof) if (i) the  
14 facility 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  
20 in the term of the lease, (ii) the facility is or will be  
21 geographically located so that the service will be reasonably  
22 accessible to such enrolled individuals, and (iii) at least seventy-  
23 five percent of the patients who can reasonably be expected to  
24 receive the tertiary health service will be individuals enrolled with  
25 such organization;

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

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

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

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

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

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

21 (a) The department issues a certificate of need approving the  
22 sale, 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  
32 ambulatory care facility, or a health care facility, which ambulatory  
33 or health care facility is controlled, directly or indirectly, by a  
34 health maintenance organization or a combination of health  
35 maintenance organizations, the department may under the program apply  
36 its certificate of need requirements to the offering of inpatient  
37 tertiary health services to the extent that such offering is not  
38 exempt under the provisions of this section or RCW 70.38.105(7).

39 (5)(a) The department shall not require a certificate of need for  
40 the construction, development, or other establishment of a nursing

1 home, or the addition of beds to an existing nursing home, that is  
2 owned and operated by a continuing care retirement community that:

3 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (9)(a) A nursing home that voluntarily reduces the number of its  
36 licensed beds to provide assisted living, licensed assisted living  
37 facility care, adult day care, adult day health, respite care,  
38 hospice, outpatient therapy services, congregate meals, home health,  
39 or senior wellness clinic, or to reduce to one or two the number of  
40 beds per room or to otherwise enhance the quality of life for

1 residents in the nursing home, may convert the original facility or  
2 portion of the facility back, and thereby increase the number of  
3 nursing home beds to no more than the previously licensed number of  
4 nursing home beds without obtaining a certificate of need under this  
5 chapter, provided the facility has been in continuous operation and  
6 has not been purchased or leased. Any conversion to the original  
7 licensed bed capacity, or to any portion thereof, shall comply with  
8 the same life and safety code requirements as existed at the time the  
9 nursing home voluntarily reduced its licensed beds; unless waivers  
10 from such requirements were issued, in which case the converted beds  
11 shall reflect the conditions or standards that then existed pursuant  
12 to the approved waivers.

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

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

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

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

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

37 (d) Nursing home beds that have been voluntarily reduced under  
38 this section shall be counted as available nursing home beds for the  
39 purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so long

1 as the facility retains the ability to convert them back to nursing  
2 home use under the terms of this section.

3 (e) When a building owner has secured an interest in the nursing  
4 home beds, which are intended to be voluntarily reduced by the  
5 licensee under (a) of this subsection, the applicant shall provide  
6 the department with a written statement indicating the building  
7 owner's approval of the bed reduction.

8 (10)(a) The department shall not require a certificate of need  
9 for a hospice agency if:

10 (i) The hospice agency is designed to serve the unique religious  
11 or cultural needs of a religious group or an ethnic minority and  
12 commits to furnishing hospice services in a manner specifically aimed  
13 at meeting the unique religious or cultural needs of the religious  
14 group or ethnic minority;

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

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

22 (B) Has operated the facility or group of facilities for at least  
23 ten continuous years prior to the establishment of the hospice  
24 agency;

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

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

29 (v) The hospice agency commits to obtaining and maintaining  
30 medicare certification;

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

34 (vii) The hospice agency is not sold or transferred to another  
35 agency.

36 (b) The department shall include the patient census for an agency  
37 exempted under this subsection (10) in its calculations for future  
38 certificate of need applications.

1 (11) To alleviate the need to board psychiatric patients in  
2 emergency departments, (~~for fiscal year 2015~~) for the period of  
3 time from the effective date of this section through June 30, 2019:

4 (a) The department shall suspend the certificate of need  
5 requirement for a hospital licensed under chapter 70.41 RCW that  
6 changes the use of licensed beds to increase the number of beds to  
7 provide psychiatric services, including involuntary treatment  
8 services. A certificate of need exemption under this (~~section~~)  
9 subsection (11)(a) shall be valid for two years.

10 (b) The department may not require a certificate of need for the  
11 addition of beds as described in RCW 70.38.260 (2) and (3).

12 **Sec. 2.** RCW 70.38.260 and 2015 3rd sp.s. c 22 s 2 are each  
13 amended to read as follows:

14 (1) For a grant awarded during fiscal years 2016 and 2017 by the  
15 department of commerce under this section, hospitals licensed under  
16 chapter 70.41 RCW and psychiatric hospitals licensed under chapter  
17 71.12 RCW are not subject to certificate of need requirements for the  
18 addition of the number of new psychiatric beds indicated in the  
19 grant. The department of commerce may not make a prior approval of a  
20 certificate of need application a condition for a grant application  
21 under this section. The period during which an approved hospital  
22 project qualifies for a certificate of need exemption under this  
23 section is two years from the date of the grant award.

24 (2) Until June 30, 2019, a hospital licensed under chapter 70.41  
25 RCW is exempt from certificate of need requirements for the addition  
26 of new psychiatric beds.

27 (3) Until June 30, 2019, a hospital licensed under chapter 71.12  
28 RCW is exempt from certificate of need requirements for the one-time  
29 addition of up to thirty new psychiatric beds, if it demonstrates to  
30 the satisfaction of the department:

31 (a) That its most recent two years of publicly available cost  
32 report data from the centers for medicare and medicaid services,  
33 provided to the department by the hospital, show a payer mix of a  
34 minimum of fifty percent medicare and medicaid based on a calculation  
35 using patient days; and

36 (b) A commitment to maintaining the payer mix in (a) of this  
37 subsection for a period of five consecutive years after the beds are  
38 made available for use by patients. If a hospital is subsequently  
39 found by the department to have not maintained the required payer

1 mix, the exemption from certificate of need requirements by the  
2 department no longer applies.

3 (4) This section expires June 30, (~~2019~~) 2022.

4 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
5 preservation of the public peace, health, or safety, or support of  
6 the state government and its existing public institutions, and takes  
7 effect immediately.

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