

SB 6359 - H COMM AMD

By Committee on Health Care & Wellness

ADOPTED 03/05/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 70.38.111 and 2019 c 324 s 8 and 2019 c 31 s 1 are
4 each reenacted and amended to read as follows:

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

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

18 (b) A health care facility if (i) the facility primarily provides
19 or will provide inpatient health services, (ii) the facility is or
20 will be controlled, directly or indirectly, by a health maintenance
21 organization or a combination of health maintenance organizations
22 which has, in the service area of the organization or service areas
23 of the organizations in the combination, an enrollment of at least
24 fifty thousand individuals, (iii) the facility is or will be
25 geographically located so that the service will be reasonably
26 accessible to such enrolled individuals, and (iv) at least seventy-
27 five percent of the patients who can reasonably be expected to
28 receive the tertiary health service will be individuals enrolled with
29 such organization or organizations in the combination; or

30 (c) A health care facility (or portion thereof) if (i) the
31 facility is or will be leased by a health maintenance organization or

1 combination of health maintenance organizations which has, in the
2 service area of the organization or the service areas of the
3 organizations in the combination, an enrollment of at least fifty
4 thousand individuals and, on the date the application is submitted
5 under subsection (2) of this section, at least fifteen years remain
6 in the term of the lease, (ii) the facility is or will be
7 geographically located so that the service will be reasonably
8 accessible to such enrolled individuals, and (iii) at least seventy-
9 five percent of the patients who can reasonably be expected to
10 receive the tertiary health service will be individuals enrolled with
11 such organization;

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

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

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

23 (b) The application contains such information respecting the
24 organization, combination, or facility and the proposed offering or
25 obligation by a nursing home as the department may require to
26 determine if the organization or combination meets the requirements
27 of subsection (1) of this section or the facility meets or will meet
28 such requirements; and

29 (c) The department approves such application. The department
30 shall approve or disapprove an application for exemption within
31 thirty days of receipt of a completed application. In the case of a
32 proposed health care facility (or portion thereof) which has not
33 begun to provide tertiary health services on the date an application
34 is submitted under this subsection with respect to such facility (or
35 portion), the facility (or portion) shall meet the applicable
36 requirements of subsection (1) of this section when the facility
37 first provides such services. The department shall approve an
38 application submitted under this subsection if it determines that the
39 applicable requirements of subsection (1) of this section are met.

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

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

10 (b) The department determines, upon application, that (i) the
11 entity to which the facility is proposed to be sold or leased, which
12 intends to acquire the controlling interest, or which intends to use
13 the facility is a health maintenance organization or a combination of
14 health maintenance organizations which meets the requirements of
15 (1)(a)(i), and (ii) with respect to such facility, meets the
16 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)
17 and (ii).

18 (4) In the case of a health maintenance organization, an
19 ambulatory care facility, or a health care facility, which ambulatory
20 or health care facility is controlled, directly or indirectly, by a
21 health maintenance organization or a combination of health
22 maintenance organizations, the department may under the program apply
23 its certificate of need requirements to the offering of inpatient
24 tertiary health services to the extent that such offering is not
25 exempt under the provisions of this section or RCW 70.38.105(7).

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

30 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

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

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

36 (7) A rural health care facility licensed under RCW 70.175.100
37 formerly licensed as a hospital under chapter 70.41 RCW may, within
38 three years of the effective date of the rural health care facility
39 license, apply to the department for a hospital license and not be
40 subject to the requirements of RCW 70.38.105(4)(a) as the

1 construction, development, or other establishment of a new hospital,
2 provided there is no increase in the number of beds previously
3 licensed under chapter 70.41 RCW and there is no redistribution in
4 the number of beds used for acute care or long-term care, the rural
5 health care facility has been in continuous operation, and the rural
6 health care facility has not been purchased or leased.

7 (8) A rural hospital determined to no longer meet critical access
8 hospital status for state law purposes as a result of participation
9 in the Washington rural health access preservation pilot identified
10 by the state office of rural health and formerly licensed as a
11 hospital under chapter 70.41 RCW may apply to the department to renew
12 its hospital license and not be subject to the requirements of RCW
13 70.38.105(4) (a) as the construction, development, or other
14 establishment of a new hospital, provided there is no increase in the
15 number of beds previously licensed under chapter 70.41 RCW. If all or
16 part of a formerly licensed rural hospital is sold, purchased, or
17 leased during the period the rural hospital does not meet critical
18 access hospital status as a result of participation in the Washington
19 rural health access preservation pilot and the new owner or lessor
20 applies to renew the rural hospital's license, then the sale,
21 purchase, or lease of part or all of the rural hospital is subject to
22 the provisions of this chapter.

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

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

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

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

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

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

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

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

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

37 (i) The hospice agency is designed to serve the unique religious
38 or cultural needs of a religious group or an ethnic minority and
39 commits to furnishing hospice services in a manner specifically aimed

1 at meeting the unique religious or cultural needs of the religious
2 group or ethnic minority;

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

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

10 (B) Has operated the facility or group of facilities for at least
11 ten continuous years prior to the establishment of the hospice
12 agency;

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

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

17 (v) The hospice agency commits to obtaining and maintaining
18 medicare certification;

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

22 (vii) The hospice agency is not sold or transferred to another
23 agency.

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

27 (11) To alleviate the need to board psychiatric patients in
28 emergency departments and increase capacity of hospitals to serve
29 individuals on ninety-day or one hundred eighty-day commitment
30 orders, for the period of time from May 5, 2017, through June 30,
31 2021:

32 (a) The department shall suspend the certificate of need
33 requirement for a hospital licensed under chapter 70.41 RCW that
34 changes the use of licensed beds to increase the number of beds to
35 provide psychiatric services, including involuntary treatment
36 services. A certificate of need exemption under this subsection
37 (11) (a) shall be valid for two years.

38 (b) The department may not require a certificate of need for:

39 (i) The addition of beds as described in RCW 70.38.260 (2) and
40 (3); or

1 (ii) The construction, development, or establishment of a
2 psychiatric hospital licensed as an establishment under chapter 71.12
3 RCW that will have no more than sixteen beds and provide treatment to
4 adults on ninety or one hundred eighty-day involuntary commitment
5 orders, as described in RCW 70.38.260(4).

6 (12)(a) An ambulatory surgical facility is exempt from all
7 certificate of need requirements if the facility:

8 (i) Is an individual or group practice and, if the facility is a
9 group practice, the privilege of using the facility is not extended
10 to physicians outside the group practice;

11 (ii) Operated or received approval to operate, prior to January
12 19, 2018; and

13 (iii) Was exempt from certificate of need requirements prior to
14 January 19, 2018, because the facility either:

15 (A) Was determined to be exempt from certificate of need
16 requirements pursuant to a determination of reviewability issued by
17 the department; or

18 (B) Was a single-specialty endoscopy center in existence prior to
19 January 14, 2003, when the department determined that endoscopy
20 procedures were surgeries for purposes of certificate of need.

21 (b) The exemption under this subsection:

22 (i) Applies regardless of future changes of ownership, corporate
23 structure, or affiliations of the individual or group practice as
24 long as the use of the facility remains limited to physicians in the
25 group practice; and

26 (ii) Does not apply to changes in services, specialties, or
27 number of operating rooms.

28 (13) A rural health clinic providing health services in a home
29 health shortage area as declared by the department pursuant to 42
30 C.F.R. Sec. 405.2416 is not subject to certificate of need review
31 under this chapter.

32 **Sec. 2.** RCW 70.127.040 and 2012 c 10 s 54 are each amended to
33 read as follows:

34 The following are not subject to regulation for the purposes of
35 this chapter:

36 (1) A family member providing home health, hospice, or home care
37 services;

38 (2) A person who provides only meal services in an individual's
39 permanent or temporary residence;

1 (3) An individual providing home care through a direct agreement
2 with a recipient of care in an individual's permanent or temporary
3 residence;

4 (4) A person furnishing or delivering home medical supplies or
5 equipment that does not involve the provision of services beyond
6 those necessary to deliver, set up, and monitor the proper
7 functioning of the equipment and educate the user on its proper use;

8 (5) A person who provides services through a contract with a
9 licensed agency;

10 (6) An employee or volunteer of a licensed agency who provides
11 services only as an employee or volunteer;

12 (7) Facilities and institutions, including but not limited to
13 nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41
14 RCW, adult family homes under chapter 70.128 RCW, assisted living
15 facilities under chapter 18.20 RCW, developmental disability
16 residential programs under chapter 71A.12 RCW, other entities
17 licensed under chapter 71.12 RCW, or other licensed facilities and
18 institutions, only when providing services to persons residing within
19 the facility or institution;

20 (8) Local and combined city-county health departments providing
21 services under chapters 70.05 and 70.08 RCW;

22 (9) An individual providing care to ill individuals, individuals
23 with disabilities, or vulnerable individuals through a contract with
24 the department of social and health services;

25 (10) Nursing homes, hospitals, or other institutions, agencies,
26 organizations, or persons that contract with licensed home health,
27 hospice, or home care agencies for the delivery of services;

28 (11) In-home assessments of an ill individual, an individual with
29 a disability, or a vulnerable individual that does not result in
30 regular ongoing care at home;

31 (12) Services conducted by and for the adherents of a church or
32 religious denomination that rely upon spiritual means alone through
33 prayer for healing in accordance with the tenets and practices of
34 such church or religious denomination and the bona fide religious
35 beliefs genuinely held by such adherents;

36 (13) A medicare-approved dialysis center operating a medicare-
37 approved home dialysis program;

38 (14) A person providing case management services. For the
39 purposes of this subsection, "case management" means the assessment,
40 coordination, authorization, planning, training, and monitoring of

1 home health, hospice, and home care, and does not include the direct
2 provision of care to an individual;

3 (15) Pharmacies licensed under RCW 18.64.043 that deliver
4 prescription drugs and durable medical equipment that does not
5 involve the use of professional services beyond those authorized to
6 be performed by licensed pharmacists pursuant to chapter 18.64 RCW
7 and those necessary to set up and monitor the proper functioning of
8 the equipment and educate the person on its proper use;

9 (16) A volunteer hospice complying with the requirements of RCW
10 70.127.050;

11 (17) A person who provides home care services without
12 compensation; (~~and~~)

13 (18) Nursing homes that provide telephone or web-based
14 transitional care management services; and

15 (19) A rural health clinic providing health services in a home
16 health shortage area as declared by the department pursuant to 42
17 C.F.R. Sec. 405.2416."

18 Correct the title.

EFFECT: Makes a nonsubstantive technical change by moving the exemption from certificate of need requirements into the RCW section dealing with certificate of need exemptions.

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