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**SECOND SUBSTITUTE HOUSE BILL 2128**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Schmick, Graham, Macri, Harris, Jacobsen, and Hutchins)

AN ACT Relating to the modernization of the certificate of need program; creating new sections; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1) The certificate of need modernization advisory committee is established with members as provided in this subsection:

(a) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives;

(b) The president of the senate shall appoint one member from each of the two largest caucuses of the senate;

(c) The secretary of the department of health, or the secretary's designee;

(d) The director of the health care authority, or the director's designee;

(e) The insurance commissioner, or the commissioner's designee; and

(f) The following individuals appointed by the governor:

(i) A representative from the governor's office;

(ii) A representative from the office of financial management;

(iii) A representative of a large private employer-sponsored health benefits purchaser;

(iv) A representative of a small private employer-sponsored health benefits purchaser;

(v) A representative of labor organizations;

(vi) A representative of health carriers;

(vii) A representative of health maintenance organizations;

(viii) A tribal representative;

(ix) Two health care consumers;

(x) A representative of an organization that represents health care consumers or a patient coalition group;

(xi) A representative of an association representing physicians in Washington; and

(xii) One representative from each category of health care facility, as specified in the definition of "health care facility" in RCW 70.38.025. For this purpose, acute care hospitals licensed under chapter 70.41 RCW and psychiatric hospitals are separate categories.

(2)(a) The governor shall appoint the chair of the advisory committee. The chair is responsible for convening advisory committee meetings every two months.

(b) The office of financial management shall contract with a contractor with relevant expertise to complete the review of items found in subsection (3) of this section, to the extent information and research is available, and provide a report of all research and findings. The contractor shall interview every member of the advisory committee for their input on the review, in addition to other stakeholders as determined by the contractor. The contractor shall provide regular progress reports to the advisory committee and by December 15, 2024, shall submit initial findings to the advisory committee and relevant policy committees of the legislature. The contract is exempt from the competitive procurement requirements in chapter 39.26 RCW.

(c) The office of financial management shall contract or hire dedicated staff to facilitate and provide staff support to the nonlegislative members and for facilitation and project management support of the committee. Senate committee services and the house of representatives office of program research shall provide staff support to the legislative members of the committee. The contractor shall support the work of all members of the committee, legislative and nonlegislative.

(3) The contractor shall provide the following information to the advisory committee to inform their deliberations:

(a) Research on the role and impact of certificate of need programs in other states, including:

(i) The scope of each reviewed state's certificate of need legislation, including covered facility types and services;

(ii) Factors considered in reviewing certificate of need applications;

(iii) The process for reviewing certificate of need applications and appeals of initial certificate of need determinations;

(iv) The scope of authority regarding conditions that can be included in any certificate of need approval and mechanisms to monitor and enforce compliance with such conditions;

(v) Any reports or studies regarding the function and outcome of the state's certificate of need program; and

(vi) For states that have repealed their certificate of need programs, the state's experience since repeal with respect to expansion or contraction of supply of those services and facilities no longer subject to a certificate of need; and

(b) A review of recent research related to the impacts of certificate of need programs on access, quality, and cost of health care services. To the extent information and research is available, the review should include available information and research on the issues referenced in subsection (4) of this section related to Washington's certificate of need program.

(4) The advisory committee shall consider and review the following issues:

(a) The role that the certificate of need program may or may not have in the current health care system with respect to containing health care costs associated with the health care system as a whole and for each category of health care facility, health service, or other activity subject to the certificate of need program under RCW 70.38.105;

(b) Whether the certificate of need program promotes and facilitates patient care in urban, suburban, and rural parts of Washington for each category of health care facility, health service, or other activity subject to the certificate of need program under RCW 70.38.105;

(c) Whether the certificate of need program increases the quality of health care services;

(d) Whether patients have more health care choices because of the certificate of need program;

(e) Whether the certificate of need program facilitates the adoption of innovative and cost-effective new health care technologies;

(f) Whether the certificate of need program reduces the overutilization of health care services;

(g) Whether the certificate of need program assists in the establishment of an adequate health care workforce;

(h) Whether the certificate of need program creates an unnecessary barrier to the establishment of needed health care facilities and health services;

(i) Whether the certificate of need program facilitates or creates barriers for new forms of providing care, such as telehealth services and stand-alone emergency rooms;

(j) Whether and how the certificate of need program addresses equitable access to care for consumers who are uninsured or receiving coverage through the medicaid and medicare programs;

(k) Whether and how the certificate of need program impacts a health care facility's payor mix; and

(l) Ways to modernize the certificate of need program to improve its performance with respect to the items identified in (a) through (k) of this subsection, including:

(i) Consideration of the need to continue to require the coverage of each category of health care facility, health service, or other activity subject to the certificate of need program under RCW 70.38.105, and consideration of the elimination of any categories from certificate of need coverage or elimination of the certificate of need program, as a whole;

(ii) Consideration of the need to expand the certificate of need program to include other health care facilities, health services, or other activities;

(iii) Ways to improve the certificate of need program through modernizing its goals, criteria, and processes; and

(iv) Options to make the certificate of need program work better to meet the needs of patients in Washington.

(5) The advisory committee and contractor shall review the items in this section in light of:

(a) Recent and projected population and demographic trends in Washington, including age, race, ethnicity, gender, and geographic population density; and

(b) Recent and projected developments in the health care system in Washington and nationally, including health care workforce shortages, health care provider consolidation within the health care system, the increased use of telemedicine and other new methods of accessing and providing care, the increased availability of information for patients about health care provider and facility cost and quality, state and national health care initiatives since 2010, and the increased availability of data related to the delivery and cost of health care.

(6)(a) Members are not entitled to reimbursement for travel expenses if they are compensated or reimbursed for participating on behalf of an employer, governmental entity, or other organization.

(b) Any reimbursement for members not identified in (a) of this subsection is subject to chapter 43.03 RCW.

(7) The advisory committee is subject to the requirements of chapters 42.30 and 42.56 RCW.

(8) The department of health shall provide the contractor with any nonconfidential data or information in the department of health's possession as needed to complete the review under this section. The contractor shall sign a data sharing agreement with the department of health to access this data or information.

(9) The contractor shall submit their findings and recommendations to the governor and each chamber of the legislature in two phases.

(a) By December 15, 2024, the contractor shall submit a preliminary report summarizing the findings based on the review of items identified in subsection (3) of this section. This report must be submitted to the governor and relevant committees of the legislature and presented to the advisory committee.

(b) By October 15, 2025:

(i) The contractor shall formally present their findings based on the review of items identified in subsection (3) of this section and their recommendations to the advisory committee. The recommendations must focus on whether to modernize, expand, reduce, eliminate, or maintain the certificate of need program based on access to care, quality of care, and total health care expenditures. The advisory committee must have an opportunity to provide feedback to the contractor on all recommendations.

(ii) A final report must be submitted to the advisory committee, the governor, and relevant committees of the legislature. The final report to the legislature must include the contractor's findings, recommendations, and any feedback from the advisory committee on the recommendations.

(10) This section expires July 1, 2026.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2024, in the omnibus appropriations act, this act is null and void.

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