

SHB 2295 - S COMM AMD

By Committee on Health & Long Term Care

ADOPTED 02/22/2024

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

3 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

4 (a) "Hospital at home" is a service that provides safe and
5 effective care, improves outcomes, and benefits patients. It was
6 developed by Johns Hopkins healthcare solutions and has been used by
7 the veteran's health administration and medical centers in the United
8 States and around the world;

9 (b) Washington hospitals began offering this service following
10 the launch of the centers for medicare and medicaid services acute
11 hospital care at-home program in response to the COVID-19 pandemic.
12 Since that time, participating Washington patients have experienced
13 fewer readmissions and shorter treatment periods and report high
14 rates of satisfaction;

15 (c) Authorizing the continuation of this service would benefit
16 patients in Washington, a state with one of the lowest number of beds
17 per patient population in the country and a track record of providing
18 high quality inpatient care; and

19 (d) Immediate authorization of this service is necessary to
20 preserve continuity of care and provision of services without
21 disruption.

22 (2) It is the intent of the legislature to authorize acute care
23 hospitals licensed under this chapter to continue providing hospital
24 at-home services and direct the department to adopt rules including
25 those services among those that may be offered by such hospitals.

26 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.41
27 RCW to read as follows:

28 (1) Hospitals subject to this chapter may provide hospital at-
29 home services if they have an active federal program waiver prior to
30 when the department adopts rules pursuant to this section. Hospitals
31 that have an active federal program waiver and intend to operate

1 hospital at-home services within Washington state shall notify the
2 department within 30 days of receiving the waiver.

3 (2) (a) The department shall adopt rules by December 31, 2025, to
4 implement this act and add hospital at-home services to those
5 services that may be provided by an acute care hospital licensed
6 under this chapter. The rules shall establish standards for the
7 operation of a hospital at-home program. In establishing the initial
8 standards, the department shall consider the provisions of the
9 federal program and endeavor to make the standards substantially
10 similar. The standards may not include requirements that would make a
11 hospital ineligible for or preclude a hospital from complying with
12 the requirements of the federal program. The department may adopt
13 additional standards to promote safe care and treatment of patients
14 as needed.

15 (b) In the event that the federal program expires before the
16 department establishes rules, hospitals shall continue to follow
17 federal program requirements that were in effect as of the date of
18 the federal program's expiration and the department shall enforce
19 such requirements until the department adopts rules.

20 (c) Once rules are established, hospitals that intend to offer or
21 continue offering hospital at-home services shall apply to the
22 department for approval to add hospital at-home services as a
23 hospital service line. Hospitals that have secured a federal program
24 waiver prior to rule adoption may provide hospital at-home services
25 while applying for approval. The department shall approve a hospital
26 to provide hospital at-home services if the application is consistent
27 with the standards established in rule. RCW 43.70.115 and chapter
28 34.05 RCW govern notice and adjudicative proceedings related to
29 denial of an application. The department may set a one-time
30 application fee in rule. The application fees charged shall not
31 exceed the actual cost of staff time to review. The administration of
32 the program must be covered by licensing fees set by the department
33 under the authority of RCW 70.41.100 and 43.70.250.

34 (3) Hospital at-home services are not subject to chapter 70.126
35 or 70.127 RCW.

36 (4) Hospital at-home services do not count as an increase in the
37 number of the hospital's licensed beds and are not subject to chapter
38 70.38 RCW.

39 (5) The definitions in this subsection apply throughout this
40 section unless the context clearly requires otherwise.

1 (a) "Hospital at-home services" means acute care services
2 provided by a licensed acute care hospital to a patient outside of
3 the hospital's licensed facility and within a home or any location
4 determined by the patient receiving the service.

5 (b) "Federal program" means the acute hospital care at-home
6 program established by the federal centers for medicare and medicaid
7 services under 42 U.S.C. Sec. 1320b-5 and extended by 42 U.S.C Sec.
8 1395cc-7, or any successor program.

9 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.126
10 RCW to read as follows:

11 This chapter does not apply to hospital at-home services provided
12 by an acute care hospital licensed under chapter 70.41 RCW.

13 **Sec. 4.** RCW 70.127.040 and 2020 c 258 s 2 are each amended to
14 read as follows:

15 The following are not subject to regulation for the purposes of
16 this chapter:

17 (1) A family member providing home health, hospice, or home care
18 services;

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

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

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

28 (5) A person who provides services through a contract with a
29 licensed agency;

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

32 (7) Facilities and institutions, including but not limited to
33 nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41
34 RCW, adult family homes under chapter 70.128 RCW, assisted living
35 facilities under chapter 18.20 RCW, developmental disability
36 residential programs under chapter 71A.12 RCW, other entities
37 licensed under chapter 71.12 RCW, or other licensed facilities and

1 institutions, only when providing services to persons residing within
2 the facility or institution;

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

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

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

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

14 (12) Services conducted by and for the adherents of a church or
15 religious denomination that rely upon spiritual means alone through
16 prayer for healing in accordance with the tenets and practices of
17 such church or religious denomination and the bona fide religious
18 beliefs genuinely held by such adherents;

19 (13) A medicare-approved dialysis center operating a medicare-
20 approved home dialysis program;

21 (14) A person providing case management services. For the
22 purposes of this subsection, "case management" means the assessment,
23 coordination, authorization, planning, training, and monitoring of
24 home health, hospice, and home care, and does not include the direct
25 provision of care to an individual;

26 (15) Pharmacies licensed under RCW 18.64.043 that deliver
27 prescription drugs and durable medical equipment that does not
28 involve the use of professional services beyond those authorized to
29 be performed by licensed pharmacists pursuant to chapter 18.64 RCW
30 and those necessary to set up and monitor the proper functioning of
31 the equipment and educate the person on its proper use;

32 (16) A volunteer hospice complying with the requirements of RCW
33 70.127.050;

34 (17) A person who provides home care services without
35 compensation;

36 (18) Nursing homes that provide telephone or web-based
37 transitional care management services; ~~((and))~~

38 (19) A rural health clinic providing health services in a home
39 health shortage area as declared by the department pursuant to 42
40 C.F.R. Sec. 405.2416; and

1 (20) Hospital at-home services provided by a hospital pursuant to
2 section 2 of this act.

3 **Sec. 5.** RCW 70.38.111 and 2021 c 277 s 1 are each amended to
4 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
32 combination of health maintenance organizations which has, in the
33 service area of the organization or the service areas of the
34 organizations in the combination, an enrollment of at least fifty
35 thousand individuals and, on the date the application is submitted
36 under subsection (2) of this section, at least fifteen years remain
37 in the term of the lease, (ii) the facility is or will be
38 geographically located so that the service will be reasonably
39 accessible to such enrolled individuals, and (iii) at least seventy-

1 five percent of the patients who can reasonably be expected to
2 receive the tertiary health service will be individuals enrolled with
3 such organization;

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

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

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

15 (b) The application contains such information respecting the
16 organization, combination, or facility and the proposed offering or
17 obligation by a nursing home as the department may require to
18 determine if the organization or combination meets the requirements
19 of subsection (1) of this section or the facility meets or will meet
20 such requirements; and

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

32 (3) A health care facility (or any part thereof) with respect to
33 which an exemption was granted under subsection (1) of this section
34 may not be sold or leased and a controlling interest in such facility
35 or in a lease of such facility may not be acquired and a health care
36 facility described in subsection (1)(c) of this section which was
37 granted an exemption under subsection (1) of this section may not be
38 used by any person other than the lessee described in subsection
39 (1)(c) of this section unless:

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

3 (b) The department determines, upon application, that (i) the
4 entity to which the facility is proposed to be sold or leased, which
5 intends to acquire the controlling interest, or which intends to use
6 the facility is a health maintenance organization or a combination of
7 health maintenance organizations which meets the requirements of
8 subsection (1)(a)(i) of this section, and (ii) with respect to such
9 facility, meets the requirements of subsection (1)(a)(ii) or (iii) of
10 this section or the requirements of subsection (1)(b)(i) and (ii) of
11 this section.

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

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

24 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

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

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

30 (7) A rural health care facility licensed under RCW 70.175.100
31 formerly licensed as a hospital under chapter 70.41 RCW may, within
32 three years of the effective date of the rural health care facility
33 license, apply to the department for a hospital license and not be
34 subject to the requirements of RCW 70.38.105(4)(a) as the
35 construction, development, or other establishment of a new hospital,
36 provided there is no increase in the number of beds previously
37 licensed under chapter 70.41 RCW and there is no redistribution in
38 the number of beds used for acute care or long-term care, the rural
39 health care facility has been in continuous operation, and the rural
40 health care facility has not been purchased or leased.

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

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

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

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

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

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

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

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

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

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

32 (i) The hospice agency is designed to serve the unique religious
33 or cultural needs of a religious group or an ethnic minority and
34 commits to furnishing hospice services in a manner specifically aimed
35 at meeting the unique religious or cultural needs of the religious
36 group or ethnic minority;

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

38 (A) Operates a facility, or group of facilities, that offers a
39 comprehensive continuum of long-term care services, including, at a
40 minimum, a licensed, medicare-certified nursing home, assisted

1 living, independent living, day health, and various community-based
2 support services, designed to meet the unique social, cultural, and
3 religious needs of a specific cultural and ethnic minority group;

4 (B) Has operated the facility or group of facilities for at least
5 ten continuous years prior to the establishment of the hospice
6 agency;

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

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

11 (v) The hospice agency commits to obtaining and maintaining
12 medicare certification;

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

16 (vii) The hospice agency is not sold or transferred to another
17 agency.

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

21 (11) To alleviate the need to board psychiatric patients in
22 emergency departments and increase capacity of hospitals to serve
23 individuals on ninety-day or one hundred eighty-day commitment
24 orders, for the period of time from May 5, 2017, through June 30,
25 2023:

26 (a) The department shall suspend the certificate of need
27 requirement for a hospital licensed under chapter 70.41 RCW that
28 changes the use of licensed beds to increase the number of beds to
29 provide psychiatric services, including involuntary treatment
30 services. A certificate of need exemption under this subsection
31 (11) (a) shall be valid for two years.

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

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

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

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

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

6 (ii) Operated or received approval to operate, prior to January
7 19, 2018; and

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

10 (A) Was determined to be exempt from certificate of need
11 requirements pursuant to a determination of reviewability issued by
12 the department; or

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

16 (b) The exemption under this subsection:

17 (i) Applies regardless of future changes of ownership, corporate
18 structure, or affiliations of the individual or group practice as
19 long as the use of the facility remains limited to physicians in the
20 group practice; and

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

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

27 (14) Hospital at-home services, as defined in section 2 of this
28 act, are not subject to certificate of need review under this
29 chapter.

30 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of
32 the state government and its existing public institutions, and takes
33 effect immediately."

SHB 2295 - S COMM AMD

By Committee on Health & Long Term Care

ADOPTED 02/22/2024

1 On page 1, line 2 of the title, after "services;" strike the
2 remainder of the title and insert "amending RCW 70.127.040 and
3 70.38.111; adding a new section to chapter 70.41 RCW; adding a new
4 section to chapter 70.126 RCW; creating a new section; and declaring
5 an emergency."

EFFECT: Requires hospitals that have an active federal program waiver and intend to operate hospital at-home services within the state to notify the Department of Health (DOH) within 30 days of receiving the waiver.

Requires that when establishing initial standards, DOH must consider the federal program's provisions and endeavor to make the standards substantially similar to those provisions rather than require that the standards adopted by DOH be consistent with the federal program's provisions.

Allows DOH to adopt additional standards to promote safe care and treatment of patients as needed rather than adopt additional standards to address program safety concerns.

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