

SENATE BILL REPORT

SB 5569

As Reported by Senate Committee On:
Health & Long Term Care, February 14, 2023

Title: An act relating to creating temporary exemptions from certificate of need requirements for kidney disease centers due to emergency or surge situations.

Brief Description: Creating temporary exemptions from certificate of need requirements for kidney disease centers. [**Revised for 1st Substitute:** Creating exemptions from certificate of need requirements for kidney disease centers.]

Sponsors: Senators Rivers and Dozier.

Brief History:

Committee Activity: Health & Long Term Care: 2/09/23, 2/14/23 [DPS].

Brief Summary of First Substitute Bill

- Creates exemptions for temporarily increasing the number of dialysis stations in kidney disease centers due to emergency situations.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5569 be substituted therefor, and the substitute bill do pass.

Signed by Senators Cleveland, Chair; Robinson, Vice Chair; Rivers, Ranking Member; Muzzall, Assistant Ranking Member; Conway, Dhingra, Holy, Padden, Randall and Van De Wege.

Staff: Andie Parnell (786-7439)

Background: The certificate of need process evaluates proposals by certain health care providers to expand health care activities and reviews the potential impact of the expansion on a community's need for the service. A certificate of need from the Department of Health

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

(DOH) is required prior to:

- the construction, renovation, or sale of a health care facility;
- changes in bed capacity; and
- an increase in the number of dialysis stations at a kidney disease center, or the addition of specialized health services.

Under the program, DOH reviews the project under specific criteria related to community need, quality of services, financial feasibility, and the impact on health care costs in the community. A facility or service subject to the certificate of need program must be approved prior to beginning operations. DOH grants certificate of need exemptions based on health care facility, services offered, capacity, and other special circumstances.

A kidney disease center is defined under the certificate of need program as any place for providing services to persons who have end-stage renal disease. There is no state licensing requirements for kidney disease centers, other than to obtain a certificate of need for the establishment of a new kidney disease center, relocation of an existing kidney disease center, or increase in the number of stations at a kidney disease center.

On March 23, 2020, Governor Inslee signed Proclamation 20-36 relating to the COVID-19 public health emergency. Proclamation 20-36 waived and suspended the certificate of need requirements for health care facilities. These waivers and suspensions applied to temporary increases in bed capacity and projects undertaken to provide surge capacity for the COVID-19 response. Proclamation 20-36 was rescinded October 27, 2022.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): A kidney disease center may be granted an exemption to exceed its authorized number of dialysis stations during a temporary emergency situation. A temporary emergency situation includes:

- natural disasters, such as earthquakes, floods, fires, or snowstorms that limit or restrict access to one or more kidney disease centers thereby creating a need for additional capacity at other centers;
- power outages or water system shutdowns;
- mold remediations or other physical plant issues that would put patient safety at risk;
- staffing shortages that require kidney disease center reconfiguration to facilitate delivery of dialysis services as long as the facility does not exceed the number of patients served at the time of exemption request; and
- any additional temporary emergency situation included by DOH in rule.

If granted, a staffing shortage certificate of need exemption is valid for 90 days and may be extended at 90-day increments at DOH's discretion.

A kidney dialysis center must make a written request to DOH for an exemption that must include the following information:

- a brief description of the circumstances requiring the exemption;
- the number of additional dialysis stations required to meet patient needs;
- the expected duration that the additional stations will be required to address patient needs, except for staffing shortages situations; and
- an acknowledgment that patient safety, health, or well-being are not being threatened; fire and life safety regulations, infection control standards, or other applicable codes and regulations will not be reduced; and structural integrity of the building will not be impaired.

An approval of an exemption does not authorize a kidney disease center to permanently increase the number of dialysis stations. If a kidney disease center seeks a permanent increase in approved stations, a certificate of need review and approval is required. DOH may adopt rules necessary to implement this exemption process.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on First Substitute: PRO: Statutory change is necessary for addressing emergency situations and staffing shortages in kidney disease centers. Temporary certificate of need exemption would ration staff, relieve pressure from hospitals and ensure access to life sustaining dialysis. This bill creates flexibility when there are emergency situations, allowing kidney disease centers to respond to patient needs and serve patients better.

CON: The dialysis process is complex, and requires serious attention and care. An increase in dialysis stations would create more work, and less time with patients, for already limited staff.

Persons Testifying: PRO: Senator Ann Rivers, Prime Sponsor; Leslie Emerick, Fresenius Medical Care North America (FMCNA); Roman Daniels-Brown, DaVita.

CON: Ada Lin.

Persons Signed In To Testify But Not Testifying: No one.