
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2128

State of Washington

68th Legislature

2024 Regular Session

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

READ FIRST TIME 02/05/24.

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

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

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

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

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

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

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

16 (e) The secretary of the department of social and health
17 services, or the secretary's designee;

18 (f) The insurance commissioner, or the commissioner's designee;
19 and

20 (g) The following individuals appointed by the governor:

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

1 (ii) A representative from the office of financial management;
2 (iii) A representative of a large private employer-sponsored
3 health benefits purchaser;
4 (iv) A representative of a small private employer-sponsored
5 health benefits purchaser;
6 (v) A representative of labor organizations;
7 (vi) A representative of health carriers;
8 (vii) A representative of health maintenance organizations;
9 (viii) A tribal representative;
10 (ix) Two health care consumers;
11 (x) A representative of an organization that represents health
12 care consumers or a patient coalition group;
13 (xi) A representative of an association representing physicians
14 in Washington; and
15 (xii) One representative from each category of health care
16 facility, as specified in the definition of "health care facility" in
17 RCW 70.38.025. For this purpose, acute care hospitals licensed under
18 chapter 70.41 RCW and psychiatric hospitals are separate categories.

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

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

34 (c) The office of financial management shall contract or hire
35 dedicated staff to facilitate and provide staff support to the
36 nonlegislative members and for facilitation and project management
37 support of the committee. Senate committee services and the house of
38 representatives office of program research shall provide staff
39 support to the legislative members of the committee. The contractor

1 shall support the work of all members of the committee, legislative
2 and nonlegislative.

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

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

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

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

11 (iii) The process for reviewing certificate of need applications
12 and appeals of initial certificate of need determinations and the
13 average review timeline for a decision;

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

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

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

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

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

31 (a) The role that the certificate of need program may or may not
32 have in the current health care system with respect to containing
33 health care costs associated with the health care system as a whole
34 and for each category of health care facility, health service, or
35 other activity subject to the certificate of need program under RCW
36 70.38.105;

37 (b) Whether the certificate of need program promotes and
38 facilitates patient care in urban, suburban, and rural parts of
39 Washington for each category of health care facility, health service,

1 or other activity subject to the certificate of need program under
2 RCW 70.38.105;

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

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

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

10 (f) Whether the certificate of need program reduces the
11 duplication or oversaturation of health care services;

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

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

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

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

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

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

28 (i) Consideration of the need to continue to require the coverage
29 of each category of health care facility, health service, or other
30 activity subject to the certificate of need program under RCW
31 70.38.105, and consideration of the elimination of any categories
32 from certificate of need coverage or elimination of the certificate
33 of need program, as a whole;

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

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

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

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

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

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

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

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

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

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

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

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

35 (b) By October 15, 2025:

36 (i) The contractor shall formally present their findings based on
37 the review of items identified in subsection (3) of this section and
38 their recommendations to the advisory committee. The recommendations
39 must focus on whether to modernize, expand, reduce, eliminate, or
40 maintain the certificate of need program based on access to care,

1 quality of care, and total health care expenditures. The advisory
2 committee must have an opportunity to provide feedback to the
3 contractor on all recommendations.

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

9 (10) This section expires July 1, 2026.

10 NEW SECTION. **Sec. 2.** If specific funding for the purposes of
11 this act, referencing this act by bill or chapter number, is not
12 provided by June 30, 2024, in the omnibus appropriations act, this
13 act is null and void.

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