

RCW 70.38.105 Health services and facilities requiring

certificate of need—Fees. (1) The department is authorized and directed to implement the certificate of need program in this state pursuant to the provisions of this chapter.

(2) There shall be a state certificate of need program which is administered consistent with the requirements of federal law as necessary to the receipt of federal funds by the state.

(3) No person shall engage in any undertaking which is subject to certificate of need review under subsection (4) of this section without first having received from the department either a certificate of need or an exception granted in accordance with this chapter.

(4) The following shall be subject to certificate of need review under this chapter:

(a) The construction, development, or other establishment of a new health care facility including, but not limited to, a hospital constructed, developed, or established by a health maintenance organization or by a combination of health maintenance organizations except as provided in subsection (7)(a) of this section;

(b) The sale, purchase, or lease of part or all of any existing hospital as defined in RCW 70.38.025 including, but not limited to, a hospital sold, purchased, or leased by a health maintenance organization or by a combination of health maintenance organizations except as provided in subsection (7)(b) of this section;

(c) Any capital expenditure for the construction, renovation, or alteration of a nursing home which substantially changes the services of the facility after January 1, 1981, provided that the substantial changes in services are specified by the department in rule;

(d) Any capital expenditure for the construction, renovation, or alteration of a nursing home which exceeds the expenditure minimum as defined by RCW 70.38.025. However, a capital expenditure which is not subject to certificate of need review under (a), (b), (c), or (e) of this subsection and which is solely for any one or more of the following is not subject to certificate of need review:

(i) Communications and parking facilities;

(ii) Mechanical, electrical, ventilation, heating, and air conditioning systems;

(iii) Energy conservation systems;

(iv) Repairs to, or the correction of, deficiencies in existing physical plant facilities which are necessary to maintain state licensure, however, other additional repairs, remodeling, or replacement projects that are not related to one or more deficiency citations and are not necessary to maintain state licensure are not exempt from certificate of need review except as otherwise permitted by (d)(vi) of this subsection or RCW 70.38.115(13);

(v) Acquisition of equipment, including data processing equipment, which is not or will not be used in the direct provision of health services;

(vi) Construction or renovation at an existing nursing home which involves physical plant facilities, including administrative, dining areas, kitchen, laundry, therapy areas, and support facilities, by an existing licensee who has operated the beds for at least one year;

(vii) Acquisition of land; and

(viii) Refinancing of existing debt;

(e) A change in bed capacity of a health care facility which increases the total number of licensed beds or redistributes beds among acute care, nursing home care, and assisted living facility care

if the bed redistribution is to be effective for a period in excess of six months, or a change in bed capacity of a rural health care facility licensed under RCW 70.175.100 that increases the total number of nursing home beds or redistributes beds from acute care or assisted living facility care to nursing home care if the bed redistribution is to be effective for a period in excess of six months. A health care facility certified as a critical access hospital under 42 U.S.C. 1395i-4 may increase its total number of licensed beds to the total number of beds permitted under 42 U.S.C. 1395i-4 for acute care and may redistribute beds permitted under 42 U.S.C. 1395i-4 among acute care and nursing home care without being subject to certificate of need review. If there is a nursing home licensed under chapter 18.51 RCW within twenty-seven miles of the critical access hospital, the critical access hospital is subject to certificate of need review except for:

(i) Critical access hospitals which had designated beds to provide nursing home care, in excess of five swing beds, prior to December 31, 2003;

(ii) Up to five swing beds; or

(iii) Up to twenty-five swing beds for critical access hospitals which do not have a nursing home licensed under chapter 18.51 RCW within the same city or town limits. Up to one-half of the additional beds designated for swing bed services under this subsection

(4)(e)(iii) may be so designated before July 1, 2010, with the balance designated on or after July 1, 2010.

Critical access hospital beds not subject to certificate of need review under this subsection (4)(e) will not be counted as either acute care or nursing home care for certificate of need review purposes. If a health care facility ceases to be certified as a critical access hospital under 42 U.S.C. 1395i-4, the hospital may revert back to the type and number of licensed hospital beds as it had when it requested critical access hospital designation;

(f) Any new tertiary health services which are offered in or through a health care facility or rural health care facility licensed under RCW 70.175.100, and which were not offered on a regular basis by, in, or through such health care facility or rural health care facility within the twelve-month period prior to the time such services would be offered;

(g) Any expenditure for the construction, renovation, or alteration of a nursing home or change in nursing home services in excess of the expenditure minimum made in preparation for any undertaking under this subsection (4) of this section and any arrangement or commitment made for financing such undertaking. Expenditures of preparation shall include expenditures for architectural designs, plans, working drawings, and specifications. The department may issue certificates of need permitting predevelopment expenditures, only, without authorizing any subsequent undertaking with respect to which such predevelopment expenditures are made; and

(h) Any increase in the number of dialysis stations in a kidney disease center.

(5) The department is authorized to charge fees for the review of certificate of need applications and requests for exemptions from certificate of need review. The fees shall be sufficient to cover the full cost of review and exemption, which may include the development of standards, criteria, and policies.

(6) No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section.

(7) (a) The requirement that a health maintenance organization obtain a certificate of need under subsection (4) (a) of this section for the construction, development, or other establishment of a hospital does not apply to a health maintenance organization operating a group practice that has been continuously licensed as a health maintenance organization since January 1, 2009;

(b) The requirement that a health maintenance organization obtain a certificate of need under subsection (4) (b) of this section to sell, purchase, or lease a hospital does not apply to a health maintenance organization operating a group practice that has been continuously licensed as a health maintenance organization since January 1, 2009. [2012 c 10 § 47. Prior: 2009 c 315 § 1; 2009 c 242 § 3; 2009 c 54 § 1; 2004 c 261 § 6; 1996 c 50 § 1; 1992 c 27 § 1; 1991 sp.s. c 8 § 4; 1989 1st ex.s. c 9 § 603; 1984 c 288 § 21; 1983 c 235 § 7; 1982 c 119 § 2; 1980 c 139 § 7; 1979 ex.s. c 161 § 10.]

Application—2012 c 10: See note following RCW 18.20.010.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Severability—1984 c 288: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 288 § 27.]

Effective date—1980 c 139: See RCW 70.38.916.

Effective dates—1979 ex.s. c 161: See RCW 70.38.915.