

SENATE BILL REPORT

E2SHB 2128

As Reported by Senate Committee On:
Health & Long Term Care, February 20, 2024

Title: An act relating to the modernization of the certificate of need program.

Brief Description: Concerning the modernization of the certificate of need program.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Schmick, Graham, Macri, Harris, Jacobsen and Hutchins).

Brief History: Passed House: 2/12/24, 97-0.

Committee Activity: Health & Long Term Care: 2/16/24, 2/20/24 [DPA-WM].

Brief Summary of Amended Bill

- Directs the Office of Financial Management to contract with a consultant to issue reports on the Certificate of Need Program in 2024 and 2025.
- Establishes a Certificate of Need Modernization Advisory Committee to advise the consultant and provide feedback on the consultant's recommendations.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

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

Staff: Kevin Black (786-7747)

Background: The Certificate of Need Program. A certificate of need is a health planning regulatory process administered by the Department of Health (DOH) in which entities undertaking to construct, develop, establish, sell, purchase, lease, renovate, or alter a health

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care facility, hospital, or nursing home must first apply for a certificate of need or exemption from DOH before proceeding, subject to certain exceptions and limitations. DOH must charge a fee for reviewing certificate of need applications and applications for exemptions which is sufficient to cover the full cost of the review and exemption. The statutory declared purpose for the certificate of need policy is to promote, maintain, and assure the health of all citizens in Washington while controlling increases in health care costs and recognizing prevention as a priority.

The review of certificate of need applications for health care facilities must include but not be limited to consideration of the following:

- the need for such services;
- the availability of less costly or more effective alternative methods of providing such services;
- financial feasibility;
- the impact on health care costs in the community,
- quality assurance and cost-effectiveness;
- the use of existing services and facilities; and
- for hospitals, whether the hospital meets or exceeds the regional average level of charity care as well.

History. The first Certificate of Need Program in the United States was enacted in New York in 1964. For a period of time starting in 1974, the federal government required all states to establish and maintain certificate of need programs in order to receive federal funds to support state and local health planning activities. Washington State's Certificate of Need Program was enacted in 1979. Federal certificate of need mandates were repealed in 1987. Washington is part of 35 states and the District of Columbia which still maintain certificate of need programs. According to the National College of State Legislatures, there are no certificate of need programs or similar programs in California, Colorado, Idaho, Kansas, New Hampshire, New Mexico, North Dakota, Pennsylvania, South Dakota, Texas, Utah, and Wyoming.

Summary of Amended Bill: A Certificate of Need Modernization Advisory Committee (CONMAC) is established to consider and review issues related to the Certificate of Need Program and ways to modernize the program and improve its performance.

CONMAC must include four appointed Legislative members, four ex officio members from the leadership of executive branch agencies, and 21 members appointed by the Governor. The Governor must appoint the CONMAC chair.

The Office of Financial Management (OFM) must contract with a consultant to provide two reports consisting of:

- research on the role and impact of certificate of need programs in other states;
- a review of recent research related to the impacts of certificate of need programs; and
- recommendations relating to the Certificate of Need Program.

The contractor must interview every member of CONMAC and may interview other stakeholders. DOH must provide the contractor with any nonconfidential data in its possession, subject to a data sharing agreement. The contractor must provide its initial findings to CONMAC and the Legislature by December 15, 2024, and formally present its final report which includes findings and recommendations to CONMAC by October 15, 2025. The recommendations must focus on whether to modernize, expand, reduce, eliminate, or maintain the Certificate of Need Program. The contractor must receive feedback from CONMAC and incorporate a summary of this feedback before presenting its final report to the Governor and Legislature.

OFM must contract or hire for dedicated staff to facilitate CONMAC and provide support to all CONMAC members. Senate Committee Services and the Office of Program Research must support the Legislative members.

CONMAC is subject to the Open Public Meetings Act and the Public Records Act.

EFFECT OF HEALTH & LONG TERM CARE COMMITTEE AMENDMENT(S):

The Governor must appoint a representative of both for-profit and nonprofit kidney disease centers to the CONMAC.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

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

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* OTHER: We are the largest nonprofit kidney dialysis center in Washington State. The certificate of need program requires providers to prove there is a need in the community before opening a health care service, in order to avoid duplicating services and to control health care costs. Certificates of need affect for-profit and nonprofit kidney dialysis centers differently. In order to have a fair study of the program all voices which are financially impacted must be heard. Please amend the bill to include both for-profit and nonprofit dialysis voices in the study.

Persons Testifying: OTHER: Jessica Hostetler, Northwest Kidney Centers.

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