
SUBSTITUTE HOUSE BILL 2128

State of Washington

68th Legislature

2024 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Schmick, Graham, Macri, Harris, Jacobsen, and Hutchins)

READ FIRST TIME 01/31/24.

1 AN ACT Relating to the modernization of the certificate of need
2 program; creating a new section; 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 insurance commissioner, or the commissioner's designee;
17 and

18 (f) The following individuals appointed by the governor:

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

20 (ii) A representative from the office of financial management;

1 (iii) A representative of a large private employer-sponsored
2 health benefits purchaser;

3 (iv) A representative of a small private employer-sponsored
4 health benefits purchaser;

5 (v) A representative of labor organizations;

6 (vi) A representative of health carriers;

7 (vii) A representative of health maintenance organizations;

8 (viii) A tribal representative;

9 (ix) Two health care consumers;

10 (x) A representative of an organization that represents health
11 care consumers or a patient coalition group;

12 (xi) A representative of an association representing physicians
13 in Washington; and

14 (xii) One representative from each category of health care
15 facility, as specified in the definition of "health care facility" in
16 RCW 70.38.025. For this purpose, acute care hospitals licensed under
17 chapter 70.41 RCW and psychiatric hospitals are separate categories.

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

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

33 (c) The office of financial management shall provide staff
34 support to the advisory committee.

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

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

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

1 (ii) Factors considered in reviewing certificate of need
2 applications;

3 (iii) The process for reviewing certificate of need applications
4 and appeals of initial certificate of need determinations;

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

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

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

14 (b) A review of recent research related to the impacts of
15 certificate of need programs on access, quality, and cost of health
16 care services. To the extent research is available, the review should
17 include available research on the issues referenced in subsection (4)
18 of this section.

19 (4) The advisory committee shall consider and review the
20 following issues:

21 (a) The role that the certificate of need program may or may not
22 have in the current health care system with respect to containing
23 health care costs associated with the health care system as a whole
24 and for each category of health care facility, health service, or
25 other activity subject to the certificate of need program under RCW
26 70.38.105;

27 (b) Whether the certificate of need program promotes and
28 facilitates patient care in urban, suburban, and rural parts of
29 Washington for each category of health care facility, health service,
30 or other activity subject to the certificate of need program under
31 RCW 70.38.105;

32 (c) Whether the certificate of need program increases the quality
33 of health care services;

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

36 (e) Whether the certificate of need program facilitates the
37 adoption of innovative and cost-effective new health care
38 technologies;

39 (f) Whether the certificate of need program reduces the
40 overutilization of health care services;

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

3 (h) Whether the certificate of need program creates an
4 unnecessary barrier to the establishment of needed health care
5 facilities and health services;

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

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

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

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

17 (i) Consideration of the need to continue to require the coverage
18 of each category of health care facility, health service, or other
19 activity subject to the certificate of need program under RCW
20 70.38.105, and consideration of the elimination of any categories
21 from certificate of need coverage or elimination of the certificate
22 of need program, as a whole;

23 (ii) Consideration of the need to expand the certificate of need
24 program to include other health care facilities, health services, or
25 other activities;

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

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

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

32 (a) Recent and projected population and demographic trends in
33 Washington, including age, race, ethnicity, gender, and geographic
34 population density; and

35 (b) Recent and projected developments in the health care system
36 in Washington and nationally, including health care workforce
37 shortages, health care provider consolidation within the health care
38 system, the increased use of telemedicine and other new methods of
39 accessing and providing care, the increased availability of
40 information for patients about health care provider and facility cost

1 and quality, state and national health care initiatives since 2010,
2 and the increased availability of data related to the delivery and
3 cost of health care.

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

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

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

11 (8) The contractor shall submit their findings and
12 recommendations to the governor and each chamber of the legislature
13 in two phases.

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

19 (b) By October 15, 2025:

20 (i) The contractor shall formally present their findings based on
21 the review of items identified in subsection (3) of this section and
22 their recommendations to the advisory committee. The recommendations
23 must focus on whether to modernize, expand, reduce, eliminate, or
24 maintain the certificate of need program based on access to care,
25 quality of care, and total health care expenditures. The advisory
26 committee must have an opportunity to provide feedback to the
27 contractor on all recommendations.

28 (ii) A final report must be submitted to the advisory committee,
29 the governor, and relevant committees of the legislature. The final
30 report to the legislature must include the contractor's findings,
31 recommendations, and any feedback from the advisory committee on the
32 recommendations.

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

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