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SENATE BILL 5226

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State of Washington                      63rd Legislature                      2013 Regular Session

By Senators Becker, Bailey, Ericksen, and Carrell

Read first time 01/23/13. Referred to Committee on Health Care .

1            AN ACT Relating to exempting public hospital districts from  
2 certificate of need requirements; amending RCW 70.38.105 and 70.38.111;  
3 and creating a new section.

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

5            NEW SECTION.    **Sec. 1.** The legislature finds that:

6            (1) Public hospital districts were established to provide hospital  
7 and other health care services for the residents of such districts and  
8 other persons in need of such services under RCW 70.44.003;

9            (2) Public hospital districts are authorized to own and operate  
10 hospitals, nursing homes, extended care, long-term care, outpatient and  
11 rehabilitative facilities, ambulances, and other facilities as are  
12 appropriate to meet the health needs of the population served under RCW  
13 70.44.007(1);

14            (3) Public hospital districts are authorized to provide hospital,  
15 nursing home, extended care, long-term care, outpatient,  
16 rehabilitative, health maintenance, ambulance, and such other services  
17 as are appropriate to address the health needs of the population to be  
18 served under RCW 70.44.007(2);

1 (4) Public hospital districts are given broad powers to survey  
2 existing hospitals and facilities within and without such district; to  
3 construct, condemn, purchase, acquire, lease, add to, maintain,  
4 operate, develop and regulate, sell and convey all lands, property,  
5 property rights, equipment, hospital, and other facilities and systems;  
6 to exercise the right of eminent domain; to lease existing hospital and  
7 other health care facilities and equipment or other property used in  
8 connection therewith; to contract indebtedness or borrow money for  
9 corporate purposes; to raise revenue by the levy of an annual tax; to  
10 contract with other public bodies in order to carry out the powers and  
11 duties authorized by chapter 70.44 RCW;

12 (5) Public hospital districts are required, at all times, to make  
13 adequate provision for the needs of the district and residents and  
14 other people within the district under RCW 70.44.060;

15 (6) Public hospital districts are organized as municipal  
16 corporations, and as such, that all essential proceedings and documents  
17 of a public hospital district are open to close public scrutiny through  
18 public records and open public meetings laws;

19 (7) Public hospital districts are governed by locally elected  
20 commissioners who are charged with the solemn duty and obligation and  
21 are duly authorized to ensure the public hospital district meets its  
22 obligations under RCW 70.44.060;

23 (8) Changes in the health care market place demand locally elected  
24 public hospital district commissioners timely plan, develop and  
25 construct facilities, and implement services consistent with their  
26 obligations and authority; and

27 (9) The state certificate of need program is a significant and  
28 growing barrier to the effective and efficient governance and operation  
29 of public hospital districts in the state of Washington.

30 **Sec. 2.** RCW 70.38.105 and 2012 c 10 s 47 are each amended to read  
31 as follows:

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

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

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

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

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

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

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

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

27 (i) Communications and parking facilities;

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

30 (iii) Energy conservation systems;

31 (iv) Repairs to, or the correction of, deficiencies in existing  
32 physical plant facilities which are necessary to maintain state  
33 licensure, however, other additional repairs, remodeling, or  
34 replacement projects that are not related to one or more deficiency  
35 citations and are not necessary to maintain state licensure are not  
36 exempt from certificate of need review except as otherwise permitted by

37 (d)(vi) of this subsection or RCW 70.38.115(13);

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

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

8 (vii) Acquisition of land; and

9 (viii) Refinancing of existing debt;

10 (e) A change in bed capacity of a health care facility which  
11 increases the total number of licensed beds or redistributes beds among  
12 acute care, nursing home care, and assisted living facility care if the  
13 bed redistribution is to be effective for a period in excess of six  
14 months, or a change in bed capacity of a rural health care facility  
15 licensed under RCW 70.175.100 that increases the total number of  
16 nursing home beds or redistributes beds from acute care or assisted  
17 living facility care to nursing home care if the bed redistribution is  
18 to be effective for a period in excess of six months. A health care  
19 facility certified as a critical access hospital under 42 U.S.C. 1395i-  
20 4 may increase its total number of licensed beds to the total number of  
21 beds permitted under 42 U.S.C. 1395i-4 for acute care and may  
22 redistribute beds permitted under 42 U.S.C. 1395i-4 among acute care  
23 and nursing home care without being subject to certificate of need  
24 review. If there is a nursing home licensed under chapter 18.51 RCW  
25 within twenty-seven miles of the critical access hospital, the critical  
26 access hospital is subject to certificate of need review except for:

27 (i) Critical access hospitals which had designated beds to provide  
28 nursing home care, in excess of five swing beds, prior to December 31,  
29 2003;

30 (ii) Up to five swing beds; or

31 (iii) Up to twenty-five swing beds for critical access hospitals  
32 which do not have a nursing home licensed under chapter 18.51 RCW  
33 within the same city or town limits. Up to one-half of the additional  
34 beds designated for swing bed services under this subsection  
35 (4)(e)(iii) may be so designated before July 1, 2010, with the balance  
36 designated on or after July 1, 2010.

37 Critical access hospital beds not subject to certificate of need  
38 review under this subsection (4)(e) will not be counted as either acute

1 care or nursing home care for certificate of need review purposes. If  
2 a health care facility ceases to be certified as a critical access  
3 hospital under 42 U.S.C. 1395i-4, the hospital may revert back to the  
4 type and number of licensed hospital beds as it had when it requested  
5 critical access hospital designation;

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

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

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

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

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

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

37 (b) The requirement that a health maintenance organization obtain  
38 a certificate of need under subsection (4)(b) of this section to sell,

1 purchase, or lease a hospital does not apply to a health maintenance  
2 organization operating a group practice that has been continuously  
3 licensed as a health maintenance organization since January 1, 2009.

4 (8) Any facility operated or service provided by a public hospital  
5 district within its boundaries authorized under chapter 70.44 RCW is  
6 exempt from the provisions of this chapter.

7 **Sec. 3.** RCW 70.38.111 and 2012 c 10 s 48 are each amended to read  
8 as follows:

9 (1) The department shall not require a certificate of need for the  
10 offering of an inpatient tertiary health service by:

11 (a) A health maintenance organization or a combination of health  
12 maintenance organizations if (i) the organization or combination of  
13 organizations has, in the service area of the organization or the  
14 service areas of the organizations in the combination, an enrollment of  
15 at least fifty thousand individuals, (ii) the facility in which the  
16 service will be provided is or will be geographically located so that  
17 the service will be reasonably accessible to such enrolled individuals,  
18 and (iii) at least seventy-five percent of the patients who can  
19 reasonably be expected to receive the tertiary health service will be  
20 individuals enrolled with such organization or organizations in the  
21 combination;

22 (b) A health care facility if (i) the facility primarily provides  
23 or will provide inpatient health services, (ii) the facility is or will  
24 be controlled, directly or indirectly, by a health maintenance  
25 organization or a combination of health maintenance organizations which  
26 has, in the service area of the organization or service areas of the  
27 organizations in the combination, an enrollment of at least fifty  
28 thousand individuals, (iii) the facility is or will be geographically  
29 located so that the service will be reasonably accessible to such  
30 enrolled individuals, and (iv) at least seventy-five percent of the  
31 patients who can reasonably be expected to receive the tertiary health  
32 service will be individuals enrolled with such organization or  
33 organizations in the combination; (~~(e)~~)

34 (c) A health care facility (or portion thereof) if (i) the facility  
35 is or will be leased by a health maintenance organization or  
36 combination of health maintenance organizations which has, in the  
37 service area of the organization or the service areas of the

1 organizations in the combination, an enrollment of at least fifty  
2 thousand individuals and, on the date the application is submitted  
3 under subsection (2) of this section, at least fifteen years remain in  
4 the term of the lease, (ii) the facility is or will be geographically  
5 located so that the service will be reasonably accessible to such  
6 enrolled individuals, and (iii) at least seventy-five percent of the  
7 patients who can reasonably be expected to receive the tertiary health  
8 service will be individuals enrolled with such organization;  
9 if, with respect to such offering or obligation by a nursing home, the  
10 department has, upon application under subsection (2) of this section,  
11 granted an exemption from such requirement to the organization,  
12 combination of organizations, or facility; or

13 (d) A health care facility operated or service provided by a public  
14 hospital district authorized under chapter 70.44 RCW.

15 (2) A health maintenance organization, combination of health  
16 maintenance organizations, or health care facility shall not be exempt  
17 under subsection (1) of this section from obtaining a certificate of  
18 need before offering a tertiary health service unless:

19 (a) It has submitted at least thirty days prior to the offering of  
20 services reviewable under RCW 70.38.105(4)(d) an application for such  
21 exemption; and

22 (b) The application contains such information respecting the  
23 organization, combination, or facility and the proposed offering or  
24 obligation by a nursing home as the department may require to determine  
25 if the organization or combination meets the requirements of subsection  
26 (1) of this section or the facility meets or will meet such  
27 requirements; and

28 (c) The department approves such application. The department shall  
29 approve or disapprove an application for exemption within thirty days  
30 of receipt of a completed application. In the case of a proposed  
31 health care facility (or portion thereof) which has not begun to  
32 provide tertiary health services on the date an application is  
33 submitted under this subsection with respect to such facility (or  
34 portion), the facility (or portion) shall meet the applicable  
35 requirements of subsection (1) of this section when the facility first  
36 provides such services. The department shall approve an application  
37 submitted under this subsection if it determines that the applicable  
38 requirements of subsection (1) of this section are met.

1 (3) A health care facility (or any part thereof) with respect to  
2 which an exemption was granted under subsection (1) of this section may  
3 not be sold or leased and a controlling interest in such facility or in  
4 a lease of such facility may not be acquired and a health care facility  
5 described in (1)(c) which was granted an exemption under subsection (1)  
6 of this section may not be used by any person other than the lessee  
7 described in (1)(c) unless:

8 (a) The department issues a certificate of need approving the sale,  
9 lease, acquisition, or use; or

10 (b) The department determines, upon application, that (i) the  
11 entity to which the facility is proposed to be sold or leased, which  
12 intends to acquire the controlling interest, or which intends to use  
13 the facility is a health maintenance organization or a combination of  
14 health maintenance organizations which meets the requirements of  
15 (1)(a)(i), and (ii) with respect to such facility, meets the  
16 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)  
17 and (ii).

18 (4) In the case of a health maintenance organization, an ambulatory  
19 care facility, or a health care facility, which ambulatory or health  
20 care facility is controlled, directly or indirectly, by a health  
21 maintenance organization or a combination of health maintenance  
22 organizations, the department may under the program apply its  
23 certificate of need requirements to the offering of inpatient tertiary  
24 health services to the extent that such offering is not exempt under  
25 the provisions of this section or RCW 70.38.105(7).

26 (5)(a) The department shall not require a certificate of need for  
27 the construction, development, or other establishment of a nursing  
28 home, or the addition of beds to an existing nursing home, that is  
29 owned and operated by a continuing care retirement community that:

30 (i) Offers services only to contractual members;

31 (ii) Provides its members a contractually guaranteed range of  
32 services from independent living through skilled nursing, including  
33 some assistance with daily living activities;

34 (iii) Contractually assumes responsibility for the cost of services  
35 exceeding the member's financial responsibility under the contract, so  
36 that no third party, with the exception of insurance purchased by the  
37 retirement community or its members, but including the medicaid



1 program, is liable for costs of care even if the member depletes his or  
2 her personal resources;

3 (iv) Has offered continuing care contracts and operated a nursing  
4 home continuously since January 1, 1988, or has obtained a certificate  
5 of need to establish a nursing home;

6 (v) Maintains a binding agreement with the state assuring that  
7 financial liability for services to members, including nursing home  
8 services, will not fall upon the state;

9 (vi) Does not operate, and has not undertaken a project that would  
10 result in a number of nursing home beds in excess of one for every four  
11 living units operated by the continuing care retirement community,  
12 exclusive of nursing home beds; and

13 (vii) Has obtained a professional review of pricing and long-term  
14 solvency within the prior five years which was fully disclosed to  
15 members.

16 (b) A continuing care retirement community shall not be exempt  
17 under this subsection from obtaining a certificate of need unless:

18 (i) It has submitted an application for exemption at least thirty  
19 days prior to commencing construction of, is submitting an application  
20 for the licensure of, or is commencing operation of a nursing home,  
21 whichever comes first; and

22 (ii) The application documents to the department that the  
23 continuing care retirement community qualifies for exemption.

24 (c) The sale, lease, acquisition, or use of part or all of a  
25 continuing care retirement community nursing home that qualifies for  
26 exemption under this subsection shall require prior certificate of need  
27 approval to qualify for licensure as a nursing home unless the  
28 department determines such sale, lease, acquisition, or use is by a  
29 continuing care retirement community that meets the conditions of (a)  
30 of this subsection.

31 (6) A rural hospital, as defined by the department, reducing the  
32 number of licensed beds to become a rural primary care hospital under  
33 the provisions of Part A Title XVIII of the Social Security Act Section  
34 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction  
35 of beds licensed under chapter 70.41 RCW, increase the number of  
36 licensed beds to no more than the previously licensed number without  
37 being subject to the provisions of this chapter.

1 (7) A rural health care facility licensed under RCW 70.175.100  
2 formerly licensed as a hospital under chapter 70.41 RCW may, within  
3 three years of the effective date of the rural health care facility  
4 license, apply to the department for a hospital license and not be  
5 subject to the requirements of RCW 70.38.105(4)(a) as the construction,  
6 development, or other establishment of a new hospital, provided there  
7 is no increase in the number of beds previously licensed under chapter  
8 70.41 RCW and there is no redistribution in the number of beds used for  
9 acute care or long-term care, the rural health care facility has been  
10 in continuous operation, and the rural health care facility has not  
11 been purchased or leased.

12 (8)(a) A nursing home that voluntarily reduces the number of its  
13 licensed beds to provide assisted living, licensed assisted living  
14 facility care, adult day care, adult day health, respite care, hospice,  
15 outpatient therapy services, congregate meals, home health, or senior  
16 wellness clinic, or to reduce to one or two the number of beds per room  
17 or to otherwise enhance the quality of life for residents in the  
18 nursing home, may convert the original facility or portion of the  
19 facility back, and thereby increase the number of nursing home beds to  
20 no more than the previously licensed number of nursing home beds  
21 without obtaining a certificate of need under this chapter, provided  
22 the facility has been in continuous operation and has not been  
23 purchased or leased. Any conversion to the original licensed bed  
24 capacity, or to any portion thereof, shall comply with the same life  
25 and safety code requirements as existed at the time the nursing home  
26 voluntarily reduced its licensed beds; unless waivers from such  
27 requirements were issued, in which case the converted beds shall  
28 reflect the conditions or standards that then existed pursuant to the  
29 approved waivers.

30 (b) To convert beds back to nursing home beds under this  
31 subsection, the nursing home must:

32 (i) Give notice of its intent to preserve conversion options to the  
33 department of health no later than thirty days after the effective date  
34 of the license reduction; and

35 (ii) Give notice to the department of health and to the department  
36 of social and health services of the intent to convert beds back. If  
37 construction is required for the conversion of beds back, the notice of  
38 intent to convert beds back must be given, at a minimum, one year prior

1 to the effective date of license modification reflecting the restored  
2 beds; otherwise, the notice must be given a minimum of ninety days  
3 prior to the effective date of license modification reflecting the  
4 restored beds. Prior to any license modification to convert beds back  
5 to nursing home beds under this section, the licensee must demonstrate  
6 that the nursing home meets the certificate of need exemption  
7 requirements of this section.

8 The term "construction," as used in (b)(ii) of this subsection, is  
9 limited to those projects that are expected to equal or exceed the  
10 expenditure minimum amount, as determined under this chapter.

11 (c) Conversion of beds back under this subsection must be completed  
12 no later than four years after the effective date of the license  
13 reduction. However, for good cause shown, the four-year period for  
14 conversion may be extended by the department of health for one  
15 additional four-year period.

16 (d) Nursing home beds that have been voluntarily reduced under this  
17 section shall be counted as available nursing home beds for the purpose  
18 of evaluating need under RCW 70.38.115(2) (a) and (k) so long as the  
19 facility retains the ability to convert them back to nursing home use  
20 under the terms of this section.

21 (e) When a building owner has secured an interest in the nursing  
22 home beds, which are intended to be voluntarily reduced by the licensee  
23 under (a) of this subsection, the applicant shall provide the  
24 department with a written statement indicating the building owner's  
25 approval of the bed reduction.

26 (9)(a) The department shall not require a certificate of need for  
27 a hospice agency if:

28 (i) The hospice agency is designed to serve the unique religious or  
29 cultural needs of a religious group or an ethnic minority and commits  
30 to furnishing hospice services in a manner specifically aimed at  
31 meeting the unique religious or cultural needs of the religious group  
32 or ethnic minority;

33 (ii) The hospice agency is operated by an organization that:

34 (A) Operates a facility, or group of facilities, that offers a  
35 comprehensive continuum of long-term care services, including, at a  
36 minimum, a licensed, medicare-certified nursing home, assisted living,  
37 independent living, day health, and various community-based support

1 services, designed to meet the unique social, cultural, and religious  
2 needs of a specific cultural and ethnic minority group;

3 (B) Has operated the facility or group of facilities for at least  
4 ten continuous years prior to the establishment of the hospice agency;

5 (iii) The hospice agency commits to coordinating with existing  
6 hospice programs in its community when appropriate;

7 (iv) The hospice agency has a census of no more than forty  
8 patients;

9 (v) The hospice agency commits to obtaining and maintaining  
10 medicare certification;

11 (vi) The hospice agency only serves patients located in the same  
12 county as the majority of the long-term care services offered by the  
13 organization that operates the agency; and

14 (vii) The hospice agency is not sold or transferred to another  
15 agency.

16 (b) The department shall include the patient census for an agency  
17 exempted under this subsection (9) in its calculations for future  
18 certificate of need applications.

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