
SENATE BILL 5489

State of Washington

62nd Legislature

2011 Regular Session

By Senators Ericksen, Delvin, and Hewitt

Read first time 01/27/11. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to exempting public hospital districts from
2 certificate of need requirements; reenacting and amending RCW 70.38.105
3 and 70.38.111; 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 2009 c 315 s 1 and 2009 c 242 s 3 are
31 each reenacted and amended to read 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 boarding home care if the bed
13 redistribution is to be effective for a period in excess of six months,
14 or a change in bed capacity of a rural health care facility licensed
15 under RCW 70.175.100 that increases the total number of nursing home
16 beds or redistributes beds from acute care or boarding home care to
17 nursing home care if the bed redistribution is to be effective for a
18 period in excess of six months. A health care facility certified as a
19 critical access hospital under 42 U.S.C. 1395i-4 may increase its total
20 number of licensed beds to the total number of beds permitted under 42
21 U.S.C. 1395i-4 for acute care and may redistribute beds permitted under
22 42 U.S.C. 1395i-4 among acute care and nursing home care without being
23 subject to certificate of need review. If there is a nursing home
24 licensed under chapter 18.51 RCW within twenty-seven miles of the
25 critical access hospital, the critical access hospital is subject to
26 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 authorized under chapter 70.44 RCW is exempt from the
6 provisions of this chapter.

7 **Sec. 3.** RCW 70.38.111 and 2009 c 315 s 2 and 2009 c 89 s 1 are
8 each reenacted and amended to read 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 boarding home care,
14 adult day care, adult day health, respite care, hospice, outpatient
15 therapy services, congregate meals, home health, or senior wellness
16 clinic, or to reduce to one or two the number of beds per room or to
17 otherwise enhance the quality of life for residents in the nursing
18 home, may convert the original facility or portion of the facility
19 back, and thereby increase the number of nursing home beds to no more
20 than the previously licensed number of nursing home beds without
21 obtaining a certificate of need under this chapter, provided the
22 facility has been in continuous operation and has not been purchased or
23 leased. Any conversion to the original licensed bed capacity, or to
24 any portion thereof, shall comply with the same life and safety code
25 requirements as existed at the time the nursing home voluntarily
26 reduced its licensed beds; unless waivers from such requirements were
27 issued, in which case the converted beds shall reflect the conditions
28 or standards that then existed pursuant to the approved waivers.

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

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

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

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

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

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

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

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

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

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

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

33 (A) Operates a facility, or group of facilities, that offers a
34 comprehensive continuum of long-term care services, including, at a
35 minimum, a licensed, medicare-certified nursing home, assisted living,
36 independent living, day health, and various community-based support
37 services, designed to meet the unique social, cultural, and religious
38 needs of a specific cultural and ethnic minority group;

1 (B) Has operated the facility or group of facilities for at least
2 ten continuous years prior to the establishment of the hospice agency;
3 (iii) The hospice agency commits to coordinating with existing
4 hospice programs in its community when appropriate;
5 (iv) The hospice agency has a census of no more than forty
6 patients;
7 (v) The hospice agency commits to obtaining and maintaining
8 medicare certification;
9 (vi) The hospice agency only serves patients located in the same
10 county as the majority of the long-term care services offered by the
11 organization that operates the agency; and
12 (vii) The hospice agency is not sold or transferred to another
13 agency.
14 (b) The department shall include the patient census for an agency
15 exempted under this subsection (9) in its calculations for future
16 certificate of need applications.

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