
SUBSTITUTE SENATE BILL 6055

State of Washington

64th Legislature

2016 Regular Session

By Senate Ways & Means (originally sponsored by Senator Hill)

1 AN ACT Relating to allowing critical access hospitals
2 participating in the Washington rural health access preservation
3 pilot to resume critical access hospital payment and licensure;
4 amending RCW 74.09.5225, 70.41.090, and 70.38.111; and creating a new
5 section.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that small critical
8 access hospitals provide essential services to their communities. The
9 legislature recognizes the need to offer small critical access
10 hospitals the opportunity to pilot different delivery and payment
11 models than may be currently allowed under the critical access
12 hospital program. The legislature also intends to allow these
13 participating hospitals to return to the critical access hospital
14 program if they so choose.

15 **Sec. 2.** RCW 74.09.5225 and 2014 c 57 s 2 are each amended to
16 read as follows:

17 (1) Payments for recipients eligible for medical assistance
18 programs under this chapter for services provided by hospitals,
19 regardless of the beneficiary's managed care enrollment status, shall
20 be made based on allowable costs incurred during the year, when

1 services are provided by a rural hospital certified by the centers
2 for medicare and medicaid services as a critical access hospital. Any
3 additional payments made by the authority for the healthy options
4 program shall be no more than the additional amounts per service paid
5 under this section for other medical assistance programs.

6 (2)(a) Beginning on July 24, 2005, except as provided in (b) of
7 this subsection, a moratorium shall be placed on additional hospital
8 participation in critical access hospital payments under this
9 section. However, rural hospitals that applied for certification to
10 the centers for medicare and medicaid services prior to January 1,
11 2005, but have not yet completed the process or have not yet been
12 approved for certification, remain eligible for medical assistance
13 payments under this section.

14 (b)(i) For the purposes of state law, any rural hospital approved
15 by the department of health for participation in critical access
16 hospital payments under this section that participates in the
17 Washington rural health access preservation pilot identified by the
18 state office of rural health and ceases to participate in critical
19 access hospital payments may renew participation in critical access
20 hospital associated payment methodologies under this section at any
21 time.

22 (ii) The Washington rural health access preservation pilot is
23 subject to the following requirements:

24 (A) In the pilot formation or development, the department of
25 health, health care authority, and Washington state hospital
26 association will identify goals for the pilot project before any
27 hospital joins the pilot project;

28 (B) Participation in the pilot is optional and no hospital may be
29 required to join the pilot;

30 (C) Before a hospital enters the pilot program, the health care
31 authority must provide information to the hospital regarding how the
32 hospital could end its participation in the pilot if the pilot is not
33 working in its community; and

34 (D) The department of health, health care authority, and
35 Washington state hospital association will report interim progress to
36 the legislature no later than December 1, 2018, and will report on
37 the results of the pilot no later than six months following the
38 conclusion of the pilot. The reports will describe any policy changes
39 identified during the course of the pilot that would support small
40 critical access hospitals.

1 (3)(a) Beginning January 1, 2015, payments for recipients
2 eligible for medical assistance programs under this chapter for
3 services provided by a hospital, regardless of the beneficiary's
4 managed care enrollment status, shall be increased to one hundred
5 twenty-five percent of the hospital's fee-for-service rates, when
6 services are provided by a rural hospital that:

7 (i) Was certified by the centers for medicare and medicaid
8 services as a sole community hospital as of January 1, 2013;

9 (ii) Had a level III adult trauma service designation from the
10 department of health as of January 1, 2014;

11 (iii) Had less than one hundred fifty acute care licensed beds in
12 fiscal year 2011; and

13 (iv) Is owned and operated by the state or a political
14 subdivision.

15 (b) The enhanced payment rates under this subsection shall be
16 considered the hospital's medicaid payment rate for purposes of any
17 other state or private programs that pay hospitals according to
18 medicaid payment rates.

19 (c) Hospitals participating in the certified public expenditures
20 program may not receive the increased reimbursement rates provided in
21 this subsection (3) for inpatient services.

22 **Sec. 3.** RCW 70.41.090 and 1992 c 27 s 3 are each amended to read
23 as follows:

24 (1) No person or governmental unit of the state of Washington,
25 acting separately or jointly with any other person or governmental
26 unit, shall establish, maintain, or conduct a hospital in this state,
27 or use the word "hospital" to describe or identify an institution,
28 without a license under this chapter: PROVIDED, That the provisions
29 of this section shall not apply to state mental institutions and
30 psychiatric hospitals which come within the scope of chapter 71.12
31 RCW.

32 (2) After June 30, 1989, no hospital shall initiate a tertiary
33 health service as defined in RCW 70.38.025(14) unless it has received
34 a certificate of need as provided in RCW 70.38.105 and 70.38.115.

35 (3) A rural health care facility licensed under RCW 70.175.100
36 formerly licensed as a hospital under this chapter may, within three
37 years of the effective date of the rural health care facility
38 license, apply to the department for a hospital license and not be
39 required to meet certificate of need requirements under chapter 70.38

1 RCW as a new health care facility and not be required to meet new
2 construction requirements as a new hospital under this chapter. These
3 exceptions are subject to the following: The facility at the time of
4 initial conversion was considered by the department to be in
5 compliance with the hospital licensing rules and the condition of the
6 physical plant and equipment is equal to or exceeds the level of
7 compliance that existed at the time of conversion to a rural health
8 care facility. The department shall inspect and determine compliance
9 with the hospital rules prior to reissuing a hospital license.

10 (4) A rural hospital, as defined by the department, reducing the
11 number of licensed beds to become a rural primary care hospital under
12 the provisions of Part A Title XVIII of the Social Security Act
13 Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the
14 reduction of licensed beds, increase the number of beds licensed
15 under this chapter to no more than the previously licensed number of
16 beds without being subject to the provisions of chapter 70.38 RCW and
17 without being required to meet new construction requirements under
18 this chapter. These exceptions are subject to the following: The
19 facility at the time of the reduction in licensed beds was considered
20 by the department to be in compliance with the hospital licensing
21 rules and the condition of the physical plant and equipment is equal
22 to or exceeds the level of compliance that existed at the time of the
23 reduction in licensed beds. The department may inspect and determine
24 compliance with the hospital rules prior to increasing the hospital
25 license.

26 (5) If a rural hospital is determined to no longer meet critical
27 access hospital status for state law purposes as a result of
28 participation in the Washington rural health access preservation
29 pilot identified by the state office of rural health, the rural
30 hospital may renew its license by applying to the department for a
31 hospital license and the previously licensed number of beds without
32 being subject to the provisions of chapter 70.38 RCW and without
33 being required to meet new construction review requirements under
34 this chapter. These exceptions are subject to the following: The
35 hospital, at the time it began participation in the pilot, was
36 considered by the department to be in compliance with the hospital
37 licensing rules, and the condition of the physical plant and
38 equipment is equal to or exceeds the level of compliance that existed
39 at the time of the reduction in licensed beds. The department may
40 inspect and determine compliance with the hospital licensing rules.

1 If all or part of a formerly licensed rural hospital is sold,
2 purchased, or leased during the period the rural hospital does not
3 meet critical access hospital status as a result of participation in
4 the Washington rural health access preservation pilot and the new
5 owner or lessor applies to renew the rural hospital's license, then
6 the sale, purchase, or lease of part or all of the rural hospital is
7 subject to the provisions of chapter 70.38 RCW.

8 **Sec. 4.** RCW 70.38.111 and 2014 c 225 s 106 are each amended to
9 read as follows:

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

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

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

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

1 thousand individuals and, on the date the application is submitted
2 under subsection (2) of this section, at least fifteen years remain
3 in the term of the lease, (ii) the facility is or will be
4 geographically located so that the service will be reasonably
5 accessible to such enrolled individuals, and (iii) at least seventy-
6 five percent of the patients who can reasonably be expected to
7 receive the tertiary health service will be individuals enrolled with
8 such organization;

9 if, with respect to such offering or obligation by a nursing home,
10 the department has, upon application under subsection (2) of this
11 section, granted an exemption from such requirement to the
12 organization, combination of organizations, or facility.

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

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

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

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

37 (3) A health care facility (or any part thereof) with respect to
38 which an exemption was granted under subsection (1) of this section
39 may not be sold or leased and a controlling interest in such facility
40 or in a lease of such facility may not be acquired and a health care

1 facility described in (1)(c) which was granted an exemption under
2 subsection (1) of this section may not be used by any person other
3 than the lessee described in (1)(c) unless:

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

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

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

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

26 (i) Offers services only to contractual members;

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

30 (iii) Contractually assumes responsibility for the cost of
31 services exceeding the member's financial responsibility under the
32 contract, so that no third party, with the exception of insurance
33 purchased by the retirement community or its members, but including
34 the medicaid program, is liable for costs of care even if the member
35 depletes his or her personal resources;

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

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

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

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

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

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

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

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

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

33 (7) A rural health care facility licensed under RCW 70.175.100
34 formerly licensed as a hospital under chapter 70.41 RCW may, within
35 three years of the effective date of the rural health care facility
36 license, apply to the department for a hospital license and not be
37 subject to the requirements of RCW 70.38.105(4)(a) as the
38 construction, development, or other establishment of a new hospital,
39 provided there is no increase in the number of beds previously
40 licensed under chapter 70.41 RCW and there is no redistribution in

1 the number of beds used for acute care or long-term care, the rural
2 health care facility has been in continuous operation, and the rural
3 health care facility has not been purchased or leased.

4 (8) A rural hospital determined to no longer meet critical access
5 hospital status for state law purposes as a result of participation
6 in the Washington rural health access preservation pilot identified
7 by the state office of rural health and formerly licensed as a
8 hospital under chapter 70.41 RCW may apply to the department to renew
9 its hospital license and not be subject to the requirements of RCW
10 70.38.105(4)(a) as the construction, development, or other
11 establishment of a new hospital, provided there is no increase in the
12 number of beds previously licensed under chapter 70.41 RCW. If all or
13 part of a formerly licensed rural hospital is sold, purchased, or
14 leased during the period the rural hospital does not meet critical
15 access hospital status as a result of participation in the Washington
16 rural health access preservation pilot and the new owner or lessor
17 applies to renew the rural hospital's license, then the sale,
18 purchase, or lease of part or all of the rural hospital is subject to
19 the provisions of chapter 70.38 RCW.

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

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

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

4 (ii) Give notice to the department of health and to the
5 department of social and health services of the intent to convert
6 beds back. If construction is required for the conversion of beds
7 back, the notice of intent to convert beds back must be given, at a
8 minimum, one year prior to the effective date of license modification
9 reflecting the restored beds; otherwise, the notice must be given a
10 minimum of ninety days prior to the effective date of license
11 modification reflecting the restored beds. Prior to any license
12 modification to convert beds back to nursing home beds under this
13 section, the licensee must demonstrate that the nursing home meets
14 the certificate of need exemption requirements of this section.

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

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

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

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

33 ((+9)) (10)(a) The department shall not require a certificate of
34 need for a hospice agency if:

35 (i) The hospice agency is designed to serve the unique religious
36 or cultural needs of a religious group or an ethnic minority and
37 commits to furnishing hospice services in a manner specifically aimed
38 at meeting the unique religious or cultural needs of the religious
39 group or ethnic minority;

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

1 (A) Operates a facility, or group of facilities, that offers a
2 comprehensive continuum of long-term care services, including, at a
3 minimum, a licensed, medicare-certified nursing home, assisted
4 living, independent living, day health, and various community-based
5 support services, designed to meet the unique social, cultural, and
6 religious needs of a specific cultural and ethnic minority group;
7 (B) Has operated the facility or group of facilities for at least
8 ten continuous years prior to the establishment of the hospice
9 agency;
10 (iii) The hospice agency commits to coordinating with existing
11 hospice programs in its community when appropriate;
12 (iv) The hospice agency has a census of no more than forty
13 patients;
14 (v) The hospice agency commits to obtaining and maintaining
15 medicare certification;
16 (vi) The hospice agency only serves patients located in the same
17 county as the majority of the long-term care services offered by the
18 organization that operates the agency; and
19 (vii) The hospice agency is not sold or transferred to another
20 agency.
21 (b) The department shall include the patient census for an agency
22 exempted under this subsection (~~(9)~~) (10) in its calculations for
23 future certificate of need applications.
24 (~~(10)~~) (11) To alleviate the need to board psychiatric patients
25 in emergency departments, for fiscal year 2015 the department shall
26 suspend the certificate of need requirement for a hospital licensed
27 under chapter 70.41 RCW that changes the use of licensed beds to
28 increase the number of beds to provide psychiatric services,
29 including involuntary treatment services. A certificate of need
30 exemption under this section shall be valid for two years.

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