
SENATE BILL 5236

State of Washington

67th Legislature

2021 Regular Session

By Senators Warnick and Dhingra

1 AN ACT Relating to extending the exemption from certificate of
2 need requirements for the expansion of psychiatric bed capacity; and
3 amending RCW 70.38.111 and 70.38.260.

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

5 **Sec. 1.** RCW 70.38.111 and 2020 c 258 s 1 are each amended to
6 read as follows:

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

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

20 (b) A health care facility if (i) the facility primarily provides
21 or will provide inpatient health services, (ii) the facility is or

1 will be controlled, directly or indirectly, by a health maintenance
2 organization or a combination of health maintenance organizations
3 which has, in the service area of the organization or service areas
4 of the organizations in the combination, an enrollment of at least
5 fifty thousand individuals, (iii) the facility is or will be
6 geographically located so that the service will be reasonably
7 accessible to such enrolled individuals, and (iv) at least seventy-
8 five percent of the patients who can reasonably be expected to
9 receive the tertiary health service will be individuals enrolled with
10 such organization or organizations in the combination; or

11 (c) A health care facility (or portion thereof) if (i) the
12 facility is or will be leased by a health maintenance organization or
13 combination of health maintenance organizations which has, in the
14 service area of the organization or the service areas of the
15 organizations in the combination, an enrollment of at least fifty
16 thousand individuals and, on the date the application is submitted
17 under subsection (2) of this section, at least fifteen years remain
18 in the term of the lease, (ii) the facility is or will be
19 geographically located so that the service will be reasonably
20 accessible to such enrolled individuals, and (iii) at least seventy-
21 five percent of the patients who can reasonably be expected to
22 receive the tertiary health service will be individuals enrolled with
23 such organization;

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

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

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

35 (b) The application contains such information respecting the
36 organization, combination, or facility and the proposed offering or
37 obligation by a nursing home as the department may require to
38 determine if the organization or combination meets the requirements
39 of subsection (1) of this section or the facility meets or will meet
40 such requirements; and

1 (c) The department approves such application. The department
2 shall approve or disapprove an application for exemption within
3 thirty days of receipt of a completed application. In the case of a
4 proposed health care facility (or portion thereof) which has not
5 begun to provide tertiary health services on the date an application
6 is submitted under this subsection with respect to such facility (or
7 portion), the facility (or portion) shall meet the applicable
8 requirements of subsection (1) of this section when the facility
9 first provides such services. The department shall approve an
10 application submitted under this subsection if it determines that the
11 applicable requirements of subsection (1) of this section are met.

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

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

21 (b) The department determines, upon application, that (i) the
22 entity to which the facility is proposed to be sold or leased, which
23 intends to acquire the controlling interest, or which intends to use
24 the facility is a health maintenance organization or a combination of
25 health maintenance organizations which meets the requirements of
26 (1)(a)(i), and (ii) with respect to such facility, meets the
27 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)
28 and (ii).

29 (4) In the case of a health maintenance organization, an
30 ambulatory care facility, or a health care facility, which ambulatory
31 or health care facility is controlled, directly or indirectly, by a
32 health maintenance organization or a combination of health
33 maintenance organizations, the department may under the program apply
34 its certificate of need requirements to the offering of inpatient
35 tertiary health services to the extent that such offering is not
36 exempt under the provisions of this section or RCW 70.38.105(7).

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

1 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

32 (c) The sale, lease, acquisition, or use of part or all of a
33 continuing care retirement community nursing home that qualifies for
34 exemption under this subsection shall require prior certificate of
35 need approval to qualify for licensure as a nursing home unless the
36 department determines such sale, lease, acquisition, or use is by a
37 continuing care retirement community that meets the conditions of (a)
38 of this subsection.

39 (6) A rural hospital, as defined by the department, reducing the
40 number of licensed beds to become a rural primary care hospital under

1 the provisions of Part A Title XVIII of the Social Security Act
2 Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the
3 reduction of beds licensed under chapter 70.41 RCW, increase the
4 number of licensed beds to no more than the previously licensed
5 number without being subject to the provisions of this chapter.

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

17 (8) A rural hospital determined to no longer meet critical access
18 hospital status for state law purposes as a result of participation
19 in the Washington rural health access preservation pilot identified
20 by the state office of rural health and formerly licensed as a
21 hospital under chapter 70.41 RCW may apply to the department to renew
22 its hospital license and not be subject to the requirements of RCW
23 70.38.105(4)(a) as the construction, development, or other
24 establishment of a new hospital, provided there is no increase in the
25 number of beds previously licensed under chapter 70.41 RCW. If all or
26 part of a formerly licensed rural hospital is sold, purchased, or
27 leased during the period the rural hospital does not meet critical
28 access hospital status as a result of participation in the Washington
29 rural health access preservation pilot and the new owner or lessor
30 applies to renew the rural hospital's license, then the sale,
31 purchase, or lease of part or all of the rural hospital is subject to
32 the provisions of this chapter.

33 (9)(a) A nursing home that voluntarily reduces the number of its
34 licensed beds to provide assisted living, licensed assisted living
35 facility care, adult day care, adult day health, respite care,
36 hospice, outpatient therapy services, congregate meals, home health,
37 or senior wellness clinic, or to reduce to one or two the number of
38 beds per room or to otherwise enhance the quality of life for
39 residents in the nursing home, may convert the original facility or
40 portion of the facility back, and thereby increase the number of

1 nursing home beds to no more than the previously licensed number of
2 nursing home beds without obtaining a certificate of need under this
3 chapter, provided the facility has been in continuous operation and
4 has not been purchased or leased. Any conversion to the original
5 licensed bed capacity, or to any portion thereof, shall comply with
6 the same life and safety code requirements as existed at the time the
7 nursing home voluntarily reduced its licensed beds; unless waivers
8 from such requirements were issued, in which case the converted beds
9 shall reflect the conditions or standards that then existed pursuant
10 to the approved waivers.

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

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

16 (ii) Give notice to the department of health and to the
17 department of social and health services of the intent to convert
18 beds back. If construction is required for the conversion of beds
19 back, the notice of intent to convert beds back must be given, at a
20 minimum, one year prior to the effective date of license modification
21 reflecting the restored beds; otherwise, the notice must be given a
22 minimum of ninety days prior to the effective date of license
23 modification reflecting the restored beds. Prior to any license
24 modification to convert beds back to nursing home beds under this
25 section, the licensee must demonstrate that the nursing home meets
26 the certificate of need exemption requirements of this section.

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

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

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

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

6 (10)(a) The department shall not require a certificate of need
7 for a hospice agency if:

8 (i) The hospice agency is designed to serve the unique religious
9 or cultural needs of a religious group or an ethnic minority and
10 commits to furnishing hospice services in a manner specifically aimed
11 at meeting the unique religious or cultural needs of the religious
12 group or ethnic minority;

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

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

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

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

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

27 (v) The hospice agency commits to obtaining and maintaining
28 medicare certification;

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

32 (vii) The hospice agency is not sold or transferred to another
33 agency.

34 (b) The department shall include the patient census for an agency
35 exempted under this subsection (10) in its calculations for future
36 certificate of need applications.

37 (11) To alleviate the need to board psychiatric patients in
38 emergency departments and increase capacity of hospitals to serve
39 individuals on ninety-day or one hundred eighty-day commitment

1 orders, for the period of time from May 5, 2017, through June 30,
2 ((2021)) 2023:

3 (a) The department shall suspend the certificate of need
4 requirement for a hospital licensed under chapter 70.41 RCW that
5 changes the use of licensed beds to increase the number of beds to
6 provide psychiatric services, including involuntary treatment
7 services. A certificate of need exemption under this subsection
8 (11) (a) shall be valid for two years.

9 (b) The department may not require a certificate of need for:

10 (i) The addition of beds as described in RCW 70.38.260 (2) and
11 (3); or

12 (ii) The construction, development, or establishment of a
13 psychiatric hospital licensed as an establishment under chapter 71.12
14 RCW that will have no more than sixteen beds and provide treatment to
15 adults on ninety or one hundred eighty-day involuntary commitment
16 orders, as described in RCW 70.38.260(4).

17 (12) (a) An ambulatory surgical facility is exempt from all
18 certificate of need requirements if the facility:

19 (i) Is an individual or group practice and, if the facility is a
20 group practice, the privilege of using the facility is not extended
21 to physicians outside the group practice;

22 (ii) Operated or received approval to operate, prior to January
23 19, 2018; and

24 (iii) Was exempt from certificate of need requirements prior to
25 January 19, 2018, because the facility either:

26 (A) Was determined to be exempt from certificate of need
27 requirements pursuant to a determination of reviewability issued by
28 the department; or

29 (B) Was a single-specialty endoscopy center in existence prior to
30 January 14, 2003, when the department determined that endoscopy
31 procedures were surgeries for purposes of certificate of need.

32 (b) The exemption under this subsection:

33 (i) Applies regardless of future changes of ownership, corporate
34 structure, or affiliations of the individual or group practice as
35 long as the use of the facility remains limited to physicians in the
36 group practice; and

37 (ii) Does not apply to changes in services, specialties, or
38 number of operating rooms.

39 (13) A rural health clinic providing health services in a home
40 health shortage area as declared by the department pursuant to 42

1 C.F.R. Sec. 405.2416 is not subject to certificate of need review
2 under this chapter.

3 **Sec. 2.** RCW 70.38.260 and 2019 c 324 s 9 are each amended to
4 read as follows:

5 (1) For a grant awarded during fiscal years 2018 and 2019 by the
6 department of commerce under this section, hospitals licensed under
7 chapter 70.41 RCW and psychiatric hospitals licensed as
8 establishments under chapter 71.12 RCW are not subject to certificate
9 of need requirements for the addition of the number of new
10 psychiatric beds indicated in the grant. The department of commerce
11 may not make a prior approval of a certificate of need application a
12 condition for a grant application under this section. The period
13 during which an approved hospital or psychiatric hospital project
14 qualifies for a certificate of need exemption under this section is
15 two years from the date of the grant award.

16 (2) (a) Until June 30, (~~2021~~) 2023, a hospital licensed under
17 chapter 70.41 RCW is exempt from certificate of need requirements for
18 the addition of new psychiatric beds.

19 (b) A hospital that adds new psychiatric beds under this
20 subsection (2) must:

21 (i) Notify the department of the addition of new psychiatric
22 beds. The department shall provide the hospital with a notice of
23 exemption within thirty days; and

24 (ii) Commence the project within two years of the date of receipt
25 of the notice of exemption.

26 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must
27 remain psychiatric beds unless a certificate of need is granted to
28 change their use or the hospital voluntarily reduces its licensed
29 capacity.

30 (3) (a) Until June 30, (~~2021~~) 2023, a psychiatric hospital
31 licensed as an establishment under chapter 71.12 RCW is exempt from
32 certificate of need requirements for the one-time addition of up to
33 thirty new psychiatric beds (~~(, and for the one-time addition of up to~~
34 ~~sixty psychiatric beds devoted solely to ninety-day and one hundred~~
35 ~~eighty-day civil commitment patients if the hospital was awarded any~~
36 ~~grant by the department of commerce to increase behavioral health~~
37 ~~capacity in fiscal year 2019 and~~) devoted solely for 90-day and 180-
38 day civil commitment services and for new voluntary psychiatric beds
39 or involuntary for patients on a 72 hour detention or 14-day civil

1 commitment order, if the hospital makes a commitment to maintain a
2 payer mix of at least fifty percent medicare and medicaid based on a
3 calculation using patient days for a period of five consecutive years
4 after the beds are made available for use by patients, if it
5 demonstrates to the satisfaction of the department:

6 (i) That its most recent two years of publicly available fiscal
7 year-end report data as required under RCW 70.170.100 and 43.70.050
8 reported to the department by the psychiatric hospital, show a payer
9 mix of a minimum of fifty percent medicare and medicaid based on a
10 calculation using patient days; and

11 (ii) A commitment to maintaining the payer mix in (a) of this
12 subsection for a period of five consecutive years after the beds are
13 made available for use by patients.

14 (b) A psychiatric hospital that adds new psychiatric beds under
15 this subsection (3) must:

16 (i) Notify the department of the addition of new psychiatric
17 beds. The department shall provide the psychiatric hospital with a
18 notice of exemption within thirty days; and

19 (ii) Commence the project within two years of the date of receipt
20 of the notice of exemption.

21 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must
22 remain the types of psychiatric beds indicated to the department in
23 the original exemption application unless a certificate of need is
24 granted to change their use or the psychiatric hospital voluntarily
25 reduces its licensed capacity.

26 (4)(a) Until June 30, (~~2021~~) 2023, an entity seeking to
27 construct, develop, or establish a psychiatric hospital licensed as
28 an establishment under chapter 71.12 RCW is exempt from certificate
29 of need requirements if the proposed psychiatric hospital will have
30 no more than sixteen beds and dedicate a portion of the beds to
31 providing treatment to adults on ninety or one hundred eighty-day
32 involuntary commitment orders. The psychiatric hospital may also
33 provide treatment to adults on a seventy-two hour detention or
34 fourteen-day involuntary commitment order.

35 (b) An entity that seeks to construct, develop, or establish a
36 psychiatric hospital under this subsection (4) must:

37 (i) Notify the department of the addition of construction,
38 development, or establishment. The department shall provide the
39 entity with a notice of exemption within thirty days; and

1 (ii) Commence the project within two years of the date of receipt
2 of the notice of exemption.

3 (c) Entities granted an exemption under RCW 70.38.111(11)(b)(ii)
4 may not exceed sixteen beds unless a certificate of need is granted
5 to increase the psychiatric hospital's capacity.

6 (5) This section expires June 30, 2025.

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