
SUBSTITUTE SENATE BILL 5236

AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

State of Washington

67th Legislature

2021 Regular Session

By Senate Behavioral Health Subcommittee to Health & Long Term Care
(originally sponsored by Senators Warnick, Dhingra, Nguyen, and
Wagoner)

READ FIRST TIME 02/08/21.

1 AN ACT Relating to extending the exemption from certificate of
2 need requirements for the expansion of psychiatric bed capacity;
3 amending RCW 70.38.111 and 70.38.260; providing an effective date;
4 and declaring an emergency.

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

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

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

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

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

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

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

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

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

37 (b) The application contains such information respecting the
38 organization, combination, or facility and the proposed offering or
39 obligation by a nursing home as the department may require to
40 determine if the organization or combination meets the requirements

1 of subsection (1) of this section or the facility meets or will meet
2 such requirements; and

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

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

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

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

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

39 (5)(a) The department shall not require a certificate of need for
40 the construction, development, or other establishment of a nursing

1 home, or the addition of beds to an existing nursing home, that is
2 owned and operated by a continuing care retirement community that:

3 (i) Offers services only to contractual members;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (d) Nursing home beds that have been voluntarily reduced under
38 this section shall be counted as available nursing home beds for the
39 purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so long

1 as the facility retains the ability to convert them back to nursing
2 home use under the terms of this section.

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

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

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

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

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

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

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

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

29 (v) The hospice agency commits to obtaining and maintaining
30 medicare certification;

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

34 (vii) The hospice agency is not sold or transferred to another
35 agency.

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

39 (11) To alleviate the need to board psychiatric patients in
40 emergency departments and increase capacity of hospitals to serve

1 individuals on ninety-day or one hundred eighty-day commitment
2 orders, for the period of time from May 5, 2017, through June 30,
3 ((2021)) 2023:

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

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

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

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

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

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

23 (ii) Operated or received approval to operate, prior to January
24 19, 2018; and

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

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

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

33 (b) The exemption under this subsection:

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

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

1 (13) A rural health clinic providing health services in a home
2 health shortage area as declared by the department pursuant to 42
3 C.F.R. Sec. 405.2416 is not subject to certificate of need review
4 under this chapter.

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

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

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

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

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

26 (ii) Commence the project within two years of the date of receipt
27 of the notice of exemption.

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

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

1 for 90-day and 180-day civil commitment services and for the one-time
2 addition of up to 30 new voluntary psychiatric beds or involuntary
3 psychiatric beds for patients on a 120 hour detention or 14-day civil
4 commitment order, if the hospital makes a commitment to maintain a
5 payer mix of at least fifty percent medicare and medicaid based on a
6 calculation using patient days for a period of five consecutive years
7 after the beds are made available for use by patients, if it
8 demonstrates to the satisfaction of the department:

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

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

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

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

22 (ii) Commence the project within two years of the date of receipt
23 of the notice of exemption.

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

29 (4)(a) Until June 30, (~~(2021)~~) 2023, an entity seeking to
30 construct, develop, or establish a psychiatric hospital licensed as
31 an establishment under chapter 71.12 RCW is exempt from certificate
32 of need requirements if the proposed psychiatric hospital will have
33 no more than sixteen beds and dedicate a portion of the beds to
34 providing treatment to adults on ninety or one hundred eighty-day
35 involuntary commitment orders. The psychiatric hospital may also
36 provide treatment to adults on a (~~(seventy-two)~~) 120 hour detention
37 or (~~(fourteen-day)~~) 14-day involuntary commitment order.

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

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

4 (ii) Commence the project within two years of the date of receipt
5 of the notice of exemption.

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

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

10 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of
12 the state government and its existing public institutions, and takes
13 effect July 1, 2021.

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