
SENATE BILL 5508

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By Senators West, Vognild, Talmadge, Williams, Stratton, Murray, Craswell, Saling, Cantu, Moore, A. Smith, Amondson, Metcalf, Oke, L. Smith, Roach and Bauer.

Read first time February 4, 1991. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to certificate of need exemptions for certain
2 continuing care retirement communities operating nursing home beds; and
3 amending RCW 70.38.025 and 70.38.111.

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

5 **Sec. 1.** RCW 70.38.025 and 1989 1st ex.s. c 9 s 602 are each
6 amended to read as follows:

7 When used in this chapter, the terms defined in this section shall
8 have the meanings indicated.

9 (1) "Board of health" means the state board of health created
10 pursuant to chapter 43.20 RCW.

11 (2) "Capital expenditure" is an expenditure, including a force
12 account expenditure (i.e., an expenditure for a construction project
13 undertaken by a nursing home facility as its own contractor) which,
14 under generally accepted accounting principles, is not properly
15 chargeable as an expense of operation or maintenance. Where a person

1 makes an acquisition under lease or comparable arrangement, or through
2 donation, which would have required review if the acquisition had been
3 made by purchase, such expenditure shall be deemed a capital
4 expenditure. Capital expenditures include donations of equipment or
5 facilities to a nursing home facility which if acquired directly by
6 such facility would be subject to certificate of need review under the
7 provisions of this chapter and transfer of equipment or facilities for
8 less than fair market value if a transfer of the equipment or
9 facilities at fair market value would be subject to such review. The
10 cost of any studies, surveys, designs, plans, working drawings,
11 specifications, and other activities essential to the acquisition,
12 improvement, expansion, or replacement of any plant or equipment with
13 respect to which such expenditure is made shall be included in
14 determining the amount of the expenditure.

15 (3) "Continuing care retirement community" means an entity which
16 provides shelter and services under continuing care contracts with its
17 members and which sponsors or includes a health care facility or a
18 health service. A "continuing care contract" means a contract to
19 provide a person, for the duration of that person's life or for a term
20 in excess of one year, shelter along with nursing, medical, health-
21 related, or personal care services, which is conditioned upon the
22 transfer of property, the payment of an entrance fee to the provider of
23 such services, or the payment of periodic charges for the care and
24 services involved. A continuing care contract is not excluded from
25 this definition because the contract is mutually terminable or because
26 shelter and services are not provided at the same location.

27 (4) "Department" means the department of health.

28 (5) "Expenditure minimum" means, for the purposes of the
29 certificate of need program, one million dollars adjusted by the
30 department by rule to reflect changes in the United States department

1 of commerce composite construction cost index; or a lesser amount
2 required by federal law and established by the department by rule.

3 (6) "Health care facility" means hospices, hospitals, psychiatric
4 hospitals, nursing homes, kidney disease treatment centers, ambulatory
5 surgical facilities, (~~continuing care retirement communities,~~) and
6 home health agencies, and includes such facilities when owned and
7 operated by a political subdivision or instrumentality of the state and
8 such other facilities as required by federal law and implementing
9 regulations, but does not include Christian Science sanatoriums
10 operated, listed, or certified by the First Church of Christ Scientist,
11 Boston, Massachusetts. In addition, the term does not include any
12 nonprofit hospital: (a) Which is operated exclusively to provide
13 health care services for children; (b) which does not charge fees for
14 such services; and (c) if not contrary to federal law as necessary to
15 the receipt of federal funds by the state. (~~In addition, the term
16 does not include a continuing care retirement community which: (i)
17 Offers services only to contractual members; and (ii) provides its
18 members a contractually guaranteed range of services from independent
19 living through skilled nursing, including some form of assistance with
20 activities of daily living; and (iii) contractually assumes
21 responsibility for costs of services exceeding the member's financial
22 responsibility as stated in contract, so that, with the exception of
23 insurance purchased by the retirement community or its members, no
24 third party, including the medicaid program, is liable for costs of
25 care even if the member depletes his or her personal resources; and
26 (iv) has offered continuing care contracts and operated a nursing home
27 continuously since January 1, 1988, or has obtained a certificate of
28 need to establish a nursing home; and (v) maintains a binding agreement
29 with the department of social and health services assuring that
30 financial liability for services to members, including nursing home~~

1 ~~services, shall not fall upon the department of social and health~~
2 ~~services; and (vi) does not operate, and has not undertaken, a project~~
3 ~~which would result in a number of nursing home beds in excess of one~~
4 ~~for every four living units operated by the continuing care retirement~~
5 ~~community, exclusive of nursing home beds; and (vii) has undertaken no~~
6 ~~increase in the total number of nursing home beds after January 1,~~
7 ~~1988, unless a professional review of pricing and long term solvency~~
8 ~~was obtained by the retirement community within the prior five years~~
9 ~~and fully disclosed to members.))~~

10 (7) "Health maintenance organization" means a public or private
11 organization, organized under the laws of the state, which:

12 (a) Is a qualified health maintenance organization under Title
13 XIII, section 1310(d) of the Public Health Services Act; or

14 (b)(i) Provides or otherwise makes available to enrolled
15 participants health care services, including at least the following
16 basic health care services: Usual physician services, hospitalization,
17 laboratory, x-ray, emergency, and preventive services, and out-of-area
18 coverage; (ii) is compensated (except for copayments) for the
19 provision of the basic health care services listed in (b)(i) to
20 enrolled participants by a payment which is paid on a periodic basis
21 without regard to the date the health care services are provided and
22 which is fixed without regard to the frequency, extent, or kind of
23 health service actually provided; and (iii) provides physicians'
24 services primarily (A) directly through physicians who are either
25 employees or partners of such organization, or (B) through arrangements
26 with individual physicians or one or more groups of physicians
27 (organized on a group practice or individual practice basis).

28 (8) "Health services" means clinically related (i.e., preventive,
29 diagnostic, curative, rehabilitative, or palliative) services and

1 includes alcoholism, drug abuse, and mental health services and as
2 defined in federal law.

3 (9) "Health service area" means a geographic region appropriate for
4 effective health planning which includes a broad range of health
5 services.

6 (10) "Person" means an individual, a trust or estate, a
7 partnership, a corporation (including associations, joint stock
8 companies, and insurance companies), the state, or a political
9 subdivision or instrumentality of the state, including a municipal
10 corporation or a hospital district.

11 (11) "Provider" generally means a health care professional or an
12 organization, institution, or other entity providing health care but
13 the precise definition for this term shall be established by rule of
14 the department, consistent with federal law.

15 (12) "Public health" means the level of well-being of the general
16 population; those actions in a community necessary to preserve,
17 protect, and promote the health of the people for which government is
18 responsible; and the governmental system developed to guarantee the
19 preservation of the health of the people.

20 (13) "Secretary" means the secretary of health or the secretary's
21 designee.

22 (14) "Tertiary health service" means a specialized service that
23 meets complicated medical needs of people and requires sufficient
24 patient volume to optimize provider effectiveness, quality of service,
25 and improved outcomes of care.

26 (15) "Hospital" means any health care institution which is required
27 to qualify for a license under RCW 70.41.020(2); or as a psychiatric
28 hospital under chapter 71.12 RCW.

1 **Sec. 2.** RCW 70.38.111 and 1989 1st ex.s. c 9 s 604 are each
2 amended to read as follows:

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

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

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

28 (c) A health care facility (or portion thereof) if (i) the facility
29 is or will be leased by a health maintenance organization or
30 combination of health maintenance organizations which has, in the

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

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

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

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

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

27 (c) The department approves such application. The department shall
28 approve or disapprove an application for exemption within thirty days
29 of receipt of a completed application. In the case of a proposed
30 health care facility (or portion thereof) which has not begun to

1 provide tertiary health services on the date an application is
2 submitted under this subsection with respect to such facility (or
3 portion), the facility (or portion) shall meet the applicable
4 requirements of subsection (1) of this section when the facility first
5 provides such services. The department shall approve an application
6 submitted under this subsection if it determines that the applicable
7 requirements of subsection (1) of this section are met.

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

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

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

25 (4) In the case of a health maintenance organization, an ambulatory
26 care facility, or a health care facility, which ambulatory or health
27 care facility is controlled, directly or indirectly, by a health
28 maintenance organization or a combination of health maintenance
29 organizations, the department may under the program apply its
30 certificate of need requirements only to the offering of inpatient

1 tertiary health services and then only to the extent that such offering
2 is not exempt under the provisions of this section.

3 (5) The department shall not require a certificate of need for the
4 construction, development, or establishment of a nursing home or the
5 addition of nursing home beds to an existing nursing home on the part
6 of a continuing care retirement community if the continuing care
7 retirement community:

8 (a) Offers services only to contractual members;

9 (b) Provides its members a contractually guaranteed range of
10 services from independent living through skilled nursing, including
11 some form of assistance with activities of daily living;

12 (c) Contractually assumes responsibility for costs of services
13 exceeding the member's financial responsibility as stated in contract,
14 so that, with the exception of insurance purchased by the retirement
15 community or its members, no third party, including the medicaid
16 program, is liable for costs of care even if the member depletes his or
17 her personal resources;

18 (d) Has offered continuing care contracts and operated a nursing
19 home continuously since January 1, 1988, or has obtained a certificate
20 of need to establish a nursing home;

21 (e) Maintains a binding agreement with the department of social and
22 health services assuring that financial liability for services to
23 members, including nursing home services, shall not fall upon the
24 department of social and health services;

25 (f) Does not operate, and has not undertaken, a project which would
26 result in a number of nursing home beds in excess of one for every four
27 living units operated by the continuing care retirement community,
28 exclusive of nursing home beds; and

29 (g) Has undertaken no increase in the total number of nursing home
30 beds after January 1, 1988, unless a professional review of pricing and

- 1 long-term solvency was obtained by the retirement community within the
- 2 prior five years and fully disclosed to members.