

---

SENATE BILL 5586

---

State of Washington

63rd Legislature

2013 Regular Session

By Senators Ranker, Litzow, Keiser, Harper, Tom, Darneille, Chase, Nelson, Hasegawa, McAuliffe, Kohl-Welles, and Shin

Read first time 02/04/13. Referred to Committee on Health Care .

1 AN ACT Relating to requiring the certificate of need review to  
2 include a determination of whether hospitals are able to provide a full  
3 range of legal medical services; and amending RCW 70.38.115.

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

5 **Sec. 1.** RCW 70.38.115 and 1996 c 178 s 22 are each amended to read  
6 as follows:

7 (1) Certificates of need shall be issued, denied, suspended, or  
8 revoked by the designee of the secretary in accord with the provisions  
9 of this chapter and rules of the department which establish review  
10 procedures and criteria for the certificate of need program.

11 (2) Criteria for the review of certificate of need applications,  
12 except as provided in subsection (3) of this section for health  
13 maintenance organizations, shall include but not be limited to  
14 consideration of the following:

15 (a) The need that the population served or to be served by such  
16 services has for such services;

17 (b) The availability of less costly or more effective alternative  
18 methods of providing such services;

1 (c) The financial feasibility and the probable impact of the  
2 proposal on the cost of and charges for providing health services in  
3 the community to be served;

4 (d) In the case of health services to be provided, (i) the  
5 availability of alternative uses of project resources for the provision  
6 of other health services, (ii) the extent to which such proposed  
7 services will be accessible to all residents of the area to be served,  
8 and (iii) the need for and the availability in the community of  
9 services and facilities for osteopathic physicians and surgeons and  
10 allopathic physicians and their patients. The department shall  
11 consider the application in terms of its impact on existing and  
12 proposed institutional training programs for doctors of osteopathic  
13 medicine and surgery and medicine at the student, internship, and  
14 residency training levels;

15 (e) In the case of a construction project, the costs and methods of  
16 the proposed construction, including the cost and methods of energy  
17 provision, and the probable impact of the construction project reviewed  
18 (i) on the cost of providing health services by the person proposing  
19 such construction project and (ii) on the cost and charges to the  
20 public of providing health services by other persons;

21 (f) The special needs and circumstances of osteopathic hospitals,  
22 nonallopathic services and children's hospitals;

23 (g) Improvements or innovations in the financing and delivery of  
24 health services which foster cost containment and serve to promote  
25 quality assurance and cost-effectiveness;

26 (h) In the case of health services proposed to be provided, the  
27 efficiency and appropriateness of the use of existing services and  
28 facilities similar to those proposed;

29 (i) In the case of existing services or facilities, the quality of  
30 care provided by such services or facilities in the past;

31 (j) In the case of hospital certificate of need applications,  
32 whether the hospital meets or exceeds the regional average level of  
33 charity care, as determined by the secretary; (~~and~~)

34 (k) In the case of nursing home applications:

35 (i) The availability of other nursing home beds in the planning  
36 area to be served; and

37 (ii) The availability of other services in the community to be

1 served. Data used to determine the availability of other services will  
2 include but not be limited to data provided by the department of social  
3 and health services; and

4 (1) In the case of hospital certificate of need applications,  
5 whether the hospital will provide services for people who are  
6 exercising their fundamental rights under chapter 9.02 RCW or seeking  
7 services permitted under chapter 70.245 RCW. The certificate of need  
8 must be denied by the department if the services under this subsection  
9 (2)(1) are not provided or if the hospital does not provide written  
10 notice, information, and access to information on those services in a  
11 manner similar to the procedure developed for health carriers under RCW  
12 48.43.065(2)(b) (i) through (iii).

13 (3) A certificate of need application of a health maintenance  
14 organization or a health care facility which is controlled, directly or  
15 indirectly, by a health maintenance organization, shall be approved by  
16 the department if the department finds:

17 (a) Approval of such application is required to meet the needs of  
18 the members of the health maintenance organization and of the new  
19 members which such organization can reasonably be expected to enroll;  
20 and

21 (b) The health maintenance organization is unable to provide,  
22 through services or facilities which can reasonably be expected to be  
23 available to the organization, its health services in a reasonable and  
24 cost-effective manner which is consistent with the basic method of  
25 operation of the organization and which makes such services available  
26 on a long-term basis through physicians and other health professionals  
27 associated with it.

28 A health care facility, or any part thereof, with respect to which  
29 a certificate of need was issued under this subsection may not be sold  
30 or leased and a controlling interest in such facility or in a lease of  
31 such facility may not be acquired unless the department issues a  
32 certificate of need approving the sale, acquisition, or lease.

33 (4) Until the final expiration of the state health plan as provided  
34 under RCW 70.38.919, the decision of the department on a certificate of  
35 need application shall be consistent with the state health plan in  
36 effect, except in emergency circumstances which pose a threat to the  
37 public health. The department in making its final decision may issue  
38 a conditional certificate of need if it finds that the project is

1 justified only under specific circumstances. The conditions shall  
2 directly relate to the project being reviewed. The conditions may be  
3 released if it can be substantiated that the conditions are no longer  
4 valid and the release of such conditions would be consistent with the  
5 purposes of this chapter.

6 (5) Criteria adopted for review in accordance with subsection (2)  
7 of this section may vary according to the purpose for which the  
8 particular review is being conducted or the type of health service  
9 reviewed.

10 (6) The department shall specify information to be required for  
11 certificate of need applications. Within fifteen days of receipt of  
12 the application, the department shall request additional information  
13 considered necessary to the application or start the review process.  
14 Applicants may decline to submit requested information through written  
15 notice to the department, in which case review starts on the date of  
16 receipt of the notice. Applications may be denied or limited because  
17 of failure to submit required and necessary information.

18 (7) Concurrent review is for the purpose of comparative analysis  
19 and evaluation of competing or similar projects in order to determine  
20 which of the projects may best meet identified needs. Categories of  
21 projects subject to concurrent review include at least new health care  
22 facilities, new services, and expansion of existing health care  
23 facilities. The department shall specify time periods for the  
24 submission of applications for certificates of need subject to  
25 concurrent review, which shall not exceed ninety days. Review of  
26 concurrent applications shall start fifteen days after the conclusion  
27 of the time period for submission of applications subject to concurrent  
28 review. Concurrent review periods shall be limited to one hundred  
29 fifty days, except as provided for in rules adopted by the department  
30 authorizing and limiting amendment during the course of the review, or  
31 for an unresolved pivotal issue declared by the department.

32 (8) Review periods for certificate of need applications other than  
33 those subject to concurrent review shall be limited to ninety days.  
34 Review periods may be extended up to thirty days if needed by a review  
35 agency, and for unresolved pivotal issues the department may extend up  
36 to an additional thirty days. A review may be extended in any case if  
37 the applicant agrees to the extension.

1 (9) The department or its designee, shall conduct a public hearing  
2 on a certificate of need application if requested unless the review is  
3 expedited or subject to emergency review. The department by rule shall  
4 specify the period of time within which a public hearing must be  
5 requested and requirements related to public notice of the hearing,  
6 procedures, recordkeeping and related matters.

7 (10)(a) Any applicant denied a certificate of need or whose  
8 certificate of need has been suspended or revoked has the right to an  
9 adjudicative proceeding. The proceeding is governed by chapter 34.05  
10 RCW, the Administrative Procedure Act.

11 (b) Any health care facility or health maintenance organization  
12 that: (i) Provides services similar to the services provided by the  
13 applicant and under review pursuant to this subsection; (ii) is located  
14 within the applicant's health service area; and (iii) testified or  
15 submitted evidence at a public hearing held pursuant to subsection (9)  
16 of this section, shall be provided an opportunity to present oral or  
17 written testimony and argument in a proceeding under this subsection:  
18 PROVIDED, That the health care facility or health maintenance  
19 organization had, in writing, requested to be informed of the  
20 department's decisions.

21 (c) If the department desires to settle with the applicant prior to  
22 the conclusion of the adjudicative proceeding, the department shall so  
23 inform the health care facility or health maintenance organization and  
24 afford them an opportunity to comment, in advance, on the proposed  
25 settlement.

26 (11) An amended certificate of need shall be required for the  
27 following modifications of an approved project:

28 (a) A new service requiring review under this chapter;

29 (b) An expansion of a service subject to review beyond that  
30 originally approved;

31 (c) An increase in bed capacity;

32 (d) A significant reduction in the scope of a nursing home project  
33 without a commensurate reduction in the cost of the nursing home  
34 project, or a cost increase (as represented in bids on a nursing home  
35 construction project or final cost estimates acceptable to the person  
36 to whom the certificate of need was issued) if the total of such  
37 increases exceeds twelve percent or fifty thousand dollars, whichever  
38 is greater, over the maximum capital expenditure approved. The review

1 of reductions or cost increases shall be restricted to the continued  
2 conformance of the nursing home project with the review criteria  
3 pertaining to financial feasibility and cost containment.

4 (12) An application for a certificate of need for a nursing home  
5 capital expenditure which is determined by the department to be  
6 required to eliminate or prevent imminent safety hazards or correct  
7 violations of applicable licensure and accreditation standards shall be  
8 approved.

9 (13)(a) Replacement of existing nursing home beds in the same  
10 planning area by an existing licensee who has operated the beds for at  
11 least one year shall not require a certificate of need under this  
12 chapter. The licensee shall give written notice of its intent to  
13 replace the existing nursing home beds to the department and shall  
14 provide the department with information as may be required pursuant to  
15 rule. Replacement of the beds by a party other than the licensee is  
16 subject to certificate of need review under this chapter, except as  
17 otherwise permitted by subsection (14) of this section.

18 (b) When an entire nursing home ceases operation, the licensee or  
19 any other party who has secured an interest in the beds may reserve his  
20 or her interest in the beds for eight years or until a certificate of  
21 need to replace them is issued, whichever occurs first. However, the  
22 nursing home, licensee, or any other party who has secured an interest  
23 in the beds must give notice of its intent to retain the beds to the  
24 department of health no later than thirty days after the effective date  
25 of the facility's closure. Certificate of need review shall be  
26 required for any party who has reserved the nursing home beds except  
27 that the need criteria shall be deemed met when the applicant is the  
28 licensee who had operated the beds for at least one year, who has  
29 operated the beds for at least one year immediately preceding the  
30 reservation of the beds, and who is replacing the beds in the same  
31 planning area.

32 (14) In the event that a licensee, who has provided the department  
33 with notice of his or her intent to replace nursing home beds under  
34 subsection (13)(a) of this section, engages in unprofessional conduct  
35 or becomes unable to practice with reasonable skill and safety by  
36 reason of mental or physical condition, pursuant to chapter 18.130 RCW,  
37 or dies, the building owner shall be permitted to complete the nursing

1 home bed replacement project, provided the building owner has secured  
2 an interest in the beds.

--- END ---