
SUBSTITUTE SENATE BILL 5149

State of Washington

64th Legislature

2015 Regular Session

By Senate Health Care (originally sponsored by Senators Keiser, Frockt, Conway, Bailey, and Parlette)

READ FIRST TIME 02/20/15.

1 AN ACT Relating to certificate of need appeals process; and
2 amending RCW 70.38.115.

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

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

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

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

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

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

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

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

23 (h) In the case of health services proposed to be provided, the
24 efficiency and appropriateness of the use of existing services and
25 facilities similar to those proposed;

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

28 (j) In the case of hospital certificate of need applications,
29 whether the hospital meets or exceeds the regional average level of
30 charity care, as determined by the secretary; and

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

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

34 (ii) The availability of other services in the community to be
35 served. Data used to determine the availability of other services
36 will include but not be limited to data provided by the department of
37 social and health services.

38 (3) A certificate of need application of a health maintenance
39 organization or a health care facility which is controlled, directly

1 or indirectly, by a health maintenance organization, shall be
2 approved by the department if the department finds:

3 (a) Approval of such application is required to meet the needs of
4 the members of the health maintenance organization and of the new
5 members which such organization can reasonably be expected to enroll;
6 and

7 (b) The health maintenance organization is unable to provide,
8 through services or facilities which can reasonably be expected to be
9 available to the organization, its health services in a reasonable
10 and cost-effective manner which is consistent with the basic method
11 of operation of the organization and which makes such services
12 available on a long-term basis through physicians and other health
13 professionals associated with it.

14 A health care facility, or any part thereof, with respect to
15 which a certificate of need was issued under this subsection may not
16 be sold or leased and a controlling interest in such facility or in a
17 lease of such facility may not be acquired unless the department
18 issues a certificate of need approving the sale, acquisition, or
19 lease.

20 (4) Until the final expiration of the state health plan as
21 provided under RCW 70.38.919, the decision of the department on a
22 certificate of need application shall be consistent with the state
23 health plan in effect, except in emergency circumstances which pose a
24 threat to the public health. The department in making its final
25 decision may issue a conditional certificate of need if it finds that
26 the project is justified only under specific circumstances. The
27 conditions shall directly relate to the project being reviewed. The
28 conditions may be released if it can be substantiated that the
29 conditions are no longer valid and the release of such conditions
30 would be consistent with the purposes of this chapter.

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

35 (6) The department shall specify information to be required for
36 certificate of need applications. Within fifteen days of receipt of
37 the application, the department shall request additional information
38 considered necessary to the application or start the review process.
39 Applicants may decline to submit requested information through
40 written notice to the department, in which case review starts on the

1 date of receipt of the notice. Applications may be denied or limited
2 because of failure to submit required and necessary information.

3 (7) Concurrent review is for the purpose of comparative analysis
4 and evaluation of competing or similar projects in order to determine
5 which of the projects may best meet identified needs. Categories of
6 projects subject to concurrent review include at least new health
7 care facilities, new services, and expansion of existing health care
8 facilities. The department shall specify time periods for the
9 submission of applications for certificates of need subject to
10 concurrent review, which shall not exceed ninety days. Review of
11 concurrent applications shall start fifteen days after the conclusion
12 of the time period for submission of applications subject to
13 concurrent review. Concurrent review periods shall be limited to one
14 hundred fifty days, except as provided for in rules adopted by the
15 department authorizing and limiting amendment during the course of
16 the review, or for an unresolved pivotal issue declared by the
17 department.

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

24 (9) The department or its designee, shall conduct a public
25 hearing on a certificate of need application if requested unless the
26 review is expedited or subject to emergency review. The department by
27 rule shall specify the period of time within which a public hearing
28 must be requested and requirements related to public notice of the
29 hearing, procedures, recordkeeping and related matters.

30 (10) Any person other than the certificate of need applicant or
31 recipient including, but not limited to, a health care facility or
32 health maintenance organization, that has the right to an
33 adjudicative proceeding under chapter 34.05 RCW to contest the
34 department's granting of a certificate of need application or other
35 department authorization under this chapter, is, in the event that a
36 final decision is rendered in favor of the certificate of need
37 applicant or recipient, required to pay reasonable attorneys' fees
38 and documented costs including, but not limited to, any costs borne
39 by the applicant or recipient associated with a delay of services or
40 construction and any department costs and attorneys' fees associated

1 with the appeal. Payment of costs and fees must be made to the
2 department. The department must reimburse the applicant or recipient,
3 less any department costs and attorneys' fees associated with the
4 appeal.

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

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

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

24 (~~((11))~~) (12) An amended certificate of need shall be required
25 for the following modifications of an approved project:

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

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

29 (c) An increase in bed capacity;

30 (d) A significant reduction in the scope of a nursing home
31 project without a commensurate reduction in the cost of the nursing
32 home project, or a cost increase (as represented in bids on a nursing
33 home construction project or final cost estimates acceptable to the
34 person to whom the certificate of need was issued) if the total of
35 such increases exceeds twelve percent or fifty thousand dollars,
36 whichever is greater, over the maximum capital expenditure approved.
37 The review of reductions or cost increases shall be restricted to the
38 continued conformance of the nursing home project with the review
39 criteria pertaining to financial feasibility and cost containment.

1 (~~(12)~~) (13) An application for a certificate of need for a
2 nursing home capital expenditure which is determined by the
3 department to be required to eliminate or prevent imminent safety
4 hazards or correct violations of applicable licensure and
5 accreditation standards shall be approved.

6 (~~(13)~~) (14)(a) Replacement of existing nursing home beds in the
7 same planning area by an existing licensee who has operated the beds
8 for at least one year shall not require a certificate of need under
9 this chapter. The licensee shall give written notice of its intent to
10 replace the existing nursing home beds to the department and shall
11 provide the department with information as may be required pursuant
12 to rule. Replacement of the beds by a party other than the licensee
13 is subject to certificate of need review under this chapter, except
14 as otherwise permitted by subsection (~~(14)~~) (15) of this section.

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

29 (~~(14)~~) (15) In the event that a licensee, who has provided the
30 department with notice of his or her intent to replace nursing home
31 beds under subsection (~~(13)~~) (14)(a) of this section, engages in
32 unprofessional conduct or becomes unable to practice with reasonable
33 skill and safety by reason of mental or physical condition, pursuant
34 to chapter 18.130 RCW, or dies, the building owner shall be permitted
35 to complete the nursing home bed replacement project, provided the
36 building owner has secured an interest in the beds.

--- END ---