

CHAPTER 119

[House Bill No. 757]

HEALTH SERVICE AND FACILITIES—CERTIFICATE OF NEED PROGRAM—
THRESHOLD DOLLAR AMOUNTS INCREASED

AN ACT Relating to the certificate of need program; amending section 2, chapter 161, Laws of 1979 ex. sess. as amended by section 2, chapter 139, Laws of 1980 and RCW 70.38-.025; amending section 10, chapter 161, Laws of 1979 ex. sess. as amended by section 7, chapter 139, Laws of 1980 and RCW 70.38.105; amending section 9, chapter 139, Laws of 1980 and RCW 70.38.111; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 2, chapter 161, Laws of 1979 ex. sess. as amended by section 2, chapter 139, Laws of 1980 and RCW 70.38.025 are each amended to read as follows:

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

(1) "Annual implementation plan" means a description of objectives which will achieve goals of the health systems plan and specific priorities among the objectives. The annual implementation plan is for a one-year period and must be reviewed and amended as necessary on an annual basis.

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

(3) "Capital expenditure" is an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a facility as its own contractor) which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. Where a person makes an acquisition under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been made by purchase, such expenditure shall be deemed a capital expenditure. Capital expenditures include donations of equipment or facilities to a health care facility which if acquired directly by such facility would be subject to certificate of need review under the provisions of this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to such review. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which such expenditure is made shall be included in determining the amount of the expenditure.

(4) "Council" means the state health coordinating council created in RCW 70.38.055 and described in Public Law 93-641.

(5) "Department" means the state department of social and health services.

(6) "Expenditure minimum" means, for the purposes of the certificate of need program, ~~((one))~~ six hundred ~~((fifty))~~ thousand dollars for the twelve-month period beginning with October 1979, and for each twelve-month period thereafter the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index established by rules and regulations by the department of social and health services for the purpose of making such adjustment.

(7) "Health care facility" means hospitals, psychiatric hospitals, tuberculosis hospitals, nursing homes, kidney disease treatment centers, ambulatory surgical facilities, rehabilitation facilities, and home health agencies, and includes such facilities when owned and operated by the state or by a political subdivision or instrumentality of the state and such other facilities as required by Public Law 93-641 and implementing regulations, but does not include Christian Science sanitoriums operated, listed, or certified by the First Church of Christ Scientist, Boston, Massachusetts.

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

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

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

(9) "Health services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services and includes alcoholism, drug abuse, and mental health services and as defined in Public Law 93-641.

(10) "Health systems agency" means a public regional planning body or a private nonprofit corporation which is organized and operated in a manner that is consistent with the laws of the state of Washington and Public Law 93-641 and which is capable of performing each of the functions described in RCW 70.38.085 and is capable as determined by the secretary of the United States department of health and human services, upon recommendation of the governor or of the council, of performing each of the functions described in the federal law.

(11) "Health systems plan" means a detailed statement of goals and resources required to reach those goals as described in Public Law 93-641. Goals describe a healthful environment and health systems in the health service area which, when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care, at reasonable cost, for all residents of the area; are responsive to the unique needs and resources of the health service area; take into account national guidelines for health planning policy and are responsive to state-wide health needs as determined by the department. The health systems plan also describes institutional health services and such other services as described in Public Law 96-79 as needed to provide for the well-being of persons receiving care within the health service area. The health system plan shall describe the number and type of resources including facilities, personnel, medical equipment, and other resources required to meet the goals in the health system plan and shall state the extent to which existing health care facilities are in need of modernization or conversion and the extent to which new facilities need to be constructed or acquired. The health system plan shall be developed in accordance with a format established by the council and shall be reviewed and amended as necessary but at least triennially.

(12) "Institutional health services" means health services provided in or through health care facilities and entailing annual operating costs of at least ~~((seventy-five))~~ two hundred fifty thousand dollars for the twelve-month period beginning with October 1979, and for each twelve-month period thereafter the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index established by rules and regulations by the department of social and health services.

(13) "Long-range health facility plan" means a document prepared by each hospital which contains a description of its plans for substantial changes in its facilities and services for three years.

(14) "Major medical equipment" means medical equipment which is used for the provision of medical and other health services and which costs in excess of ~~((one))~~ four hundred ~~((fifty))~~ thousand dollars, except that such term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of such act;

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

(16) "Provider" generally means a health care professional or an organization, institution, or other entity providing health care but the precise definition for this term shall be in accord with Public Law 93-641.

(17) "Public Law 93-641", for the purposes of this chapter, refers to Titles XV and XVI of the Public Health Service Act as amended by the Health Planning and Resources Development Amendments of 1979 (Public Law 96-79).

(18) "State health plan" means a document, described in Public Law 96-79, developed by the department and the council in accordance with RCW 70.38.065.

Sec. 2. Section 10, chapter 161, Laws of 1979 ex. sess. as amended by section 7, chapter 139, Laws of 1980 and RCW 70.38.105 are each amended to read as follows:

(1) The department is authorized and directed to implement the certificate of need program in this state pursuant to the provisions of this chapter.

(2) There shall be a state certificate of need program which is consistent with the provisions of Public Law 93-641.

(3) No person shall engage in any undertaking which is subject to certificate of need review under subsection (4) of this section without first having received from the department either a certificate of need or an exception granted in accordance with this chapter.

(4) The following shall be subject to certificate of need review under this chapter:

(a) The construction, development, or other establishment of a new health care facility;

(b) Any capital expenditure by or on behalf of a health care facility which ~~((†)) substantially changes the services of the facility after January 1, 1981 ((, or (ii) which exceeds the expenditure minimum as defined by RCW 70.38.025(6). The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which such expenditure is made shall be included in determining the amount of the expenditure))~~;

(c) Any capital expenditure by or on behalf of a health care facility which exceeds the expenditure minimum as defined by RCW 70.38.025(6);

(d) A change in bed capacity of a health care facility which increases the total number of licensed beds or redistributes beds among facility and service categories of acute care, skilled nursing, intermediate care, and boarding home care if the bed redistribution is to be effective for a period in excess of six months;

~~((†)) (e) Acquisition of major medical equipment:~~

(i) If the equipment will be owned by or located in a health care facility;

or

(ii) If, after January 1, 1981, the equipment is not to be owned by or located in a health care facility, the department finds consistent with federal regulations the equipment will be used to provide services for hospital inpatients, or the person acquiring such equipment did not notify the department of the intent to acquire such equipment at least thirty days before entering into contractual arrangements for such acquisition;

((~~(e)~~)) (f) Any new institutional health services which are offered in or through a health care facility, and which were not offered on a regular basis by, in, or through such health care facility within the twelve-month period prior to the time such services would be offered; and

((~~(f)~~)) (g) Any expenditure by or on behalf of a health care facility in excess of the expenditure minimum made in preparation for any undertaking under subsection (4) of this section and any arrangement or commitment made for financing such undertaking. Expenditures of preparation shall include expenditures for architectural designs, plans, working drawings, and specifications. The department may issue certificates of need permitting predevelopment expenditures, only, without authorizing any subsequent undertaking with respect to which such predevelopment expenditures are made.

(5) No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section.

Sec. 3. Section 9, chapter 139, Laws of 1980 and RCW 70.38.111 are each amended to read as follows:

(1) The department shall not require a certificate of need for the offering of an inpatient institutional health service or the acquisition of major medical equipment for the provision of an inpatient institutional health service or the obligation of a capital expenditure for the provision of an inpatient institutional health service by—

(a) a health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination,

(b) a health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (iii) the facility is or will be

geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least seventy-five percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination, or

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

if, with respect to such offering, acquisition, or obligation, the department has, upon application under subsection (2) of this section, granted an exemption from such requirement to the organization, combination of organizations, or facility.

(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under subsection (1) of this section from obtaining a certificate of need before offering an institutional health service, acquiring major medical equipment, or obligating capital expenditures unless—

(a) it has submitted at least thirty days prior to the offering of an institutional health service, acquiring major medical equipment, or obligating capital expenditures in excess of ~~((one hundred fifty thousand dollars))~~ the expenditure minimum an application for such exemption, and

(b) the application contains such information respecting the organization, combination, or facility and the proposed offering, acquisition, or obligation as the department may require to determine if the organization or combination meets the requirements of subsection (1) of this section or the facility meets or will meet such requirements, and

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

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

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

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

(4) In the case of a health maintenance organization, an ambulatory care facility, or a health care facility, which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the department may under the program apply its certificate of need requirements only to the offering of inpatient institutional health services and the acquisition of major medical equipment and the obligation of capital expenditures for the offering of inpatient institutional health services, and then only to the extent that such offering, acquisition, or obligation is not exempt under the provisions of this section.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House January 22, 1982.

Passed the Senate March 8, 1982.

Approved by the Governor March 31, 1982.

Filed in Office of Secretary of State March 31, 1982.

CHAPTER 120

[Substitute House Bill No. 852]

NURSING HOMES—PATIENT RIGHTS, STANDARDS FOR PRIVATE FACILITIES—MEDICATION—INSPECTIONS

AN ACT Relating to nursing homes; amending section 2, chapter 211, Laws of 1979 ex. sess. as amended by section 6, chapter 184, Laws of 1980 and RCW 74.42.020; amending section 23, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.230; amending section 60, chapter 211, Laws of 1979 ex. sess. as amended by section 17, chapter 184, Laws of 1980