

AN ACT Relating to allowing critical access hospitals participating in the Washington rural health access preservation pilot to resume critical access hospital payment and licensure; and amending RCW 74.09.5225, 70.41.090, and 70.38.111; and creating a new section.

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

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4 NEW SECTION. **Sec. 1.** The legislature finds that small critical
5 access hospitals provide essential services to their communities. The
6 legislature recognizes the need to offer small critical access hospitals
7 the opportunity to pilot different delivery and payment models than may
8 be currently allowed under the critical access hospital program. The
9 legislature also intends to allow these participating hospitals to
10 return to the critical access hospital program if they so choose.

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12 **Sec. 2.** RCW 74.09.5225 and 2014 c 57 s 2 are each amended to
13 read as follows:

14 (1) Payments for recipients eligible for medical assistance
15 programs under this chapter for services provided by hospitals,
16 regardless of the beneficiary's managed care enrollment status,
17 shall be made based on allowable costs incurred during the year,
18 when services are provided by a rural hospital certified by the
19 centers for medicare and medicaid services as a critical access

1 hospital. Any additional payments made by the authority for the
2 healthy options program shall be no more than the additional amounts
3 per service paid under this section for other medical assistance
4 programs.

5 (2)(a) Beginning on July 24, 2005, except as provided in (b) of
6 this subsection, a moratorium shall be placed on additional hospital
7 participation in critical access hospital payments under this
8 section. However, rural hospitals that applied for certification to
9 the centers for medicare and medicaid services prior to January 1,
10 2005, but have not yet completed the process or have not yet been
11 approved for certification, remain eligible for medical assistance
12 payments under this section.

13 (b)(i) For the purposes of state law, any rural hospital approved
14 by the department of health for participation in critical access
15 hospital payments under this section that participates in the
16 Washington rural health access preservation pilot identified by the
17 state office of rural health and ceases to participate in critical
18 access hospital payments may renew participation in critical access
19 hospital associated payment methodologies under this section at any
20 time.

21 (ii) The Washington rural health access preservation pilot is
22 subject to the following requirements:

23 (A) In the pilot formation or development, the department of
24 health, health care authority, and Washington state hospital
25 association will identify goals for the pilot project before any
26 hospital joins the pilot project;

27 (B) Participation in the pilot is optional and no hospital may
28 be required to join the pilot;

29 (C) Before a hospital enters the pilot program, the health care
30 authority must provide information to the hospital regarding how the
31 hospital could end its participation in the pilot if the pilot is
32 not working in its community; and

33 (D) The department of health, health care authority, and
34 Washington state hospital association will report interim progress

1 to the legislature no later than December 1, 2018 and will report on
2 the results of the pilot no later than six months following the
3 conclusion of the pilot. The reports will describe any policy
4 changes identified during the course of the pilot that would support
5 small critical access hospitals.

6 (3)(a) Beginning January 1, 2015, payments for recipients
7 eligible for medical assistance programs under this chapter for
8 services provided by a hospital, regardless of the beneficiary's
9 managed care enrollment status, shall be increased to one hundred
10 twenty-five percent of the hospital's fee-for-service rates, when
11 services are provided by a rural hospital that:

12 (i) Was certified by the centers for medicare and medicaid
13 services as a sole community hospital as of January 1, 2013;

14 (ii) Had a level III adult trauma service designation from the
15 department of health as of January 1, 2014;

16 (iii) Had less than one hundred fifty acute care licensed beds
17 in fiscal year 2011; and

18 (iv) Is owned and operated by the state or a political
19 subdivision.

20 (b) The enhanced payment rates under this subsection shall be
21 considered the hospital's medicaid payment rate for purposes of any
22 other state or private programs that pay hospitals according to
23 medicaid payment rates.

24 (c) Hospitals participating in the certified public expenditures
25 program may not receive the increased reimbursement rates provided
26 in this subsection (3) for inpatient services.

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28 **Sec. 3.** RCW 70.41.090 and 1992 c 27 s 3 are each amended to
29 read as follows:

30 (1) No person or governmental unit of the state of Washington,
31 acting separately or jointly with any other person or governmental
32 unit, shall establish, maintain, or conduct a hospital in this
33 state, or use the word "hospital" to describe or identify an
34 institution, without a license under this chapter: PROVIDED, That

1 the provisions of this section shall not apply to state mental
2 institutions and psychiatric hospitals which come within the scope
3 of chapter 71.12 RCW.

4 (2) After June 30, 1989, no hospital shall initiate a tertiary
5 health service as defined in RCW 70.38.025(14) unless it has
6 received a certificate of need as provided in RCW 70.38.105 and
7 70.38.115.

8 (3) A rural health care facility licensed under RCW 70.175.100
9 formerly licensed as a hospital under this chapter may, within three
10 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 required to meet certificate of need requirements under chapter
13 70.38 RCW as a new health care facility and not be required to meet
14 new construction requirements as a new hospital under this chapter.
15 These exceptions are subject to the following: The facility at the
16 time of initial conversion was considered by the department to be in
17 compliance with the hospital licensing rules and the condition of
18 the physical plant and equipment is equal to or exceeds the level of
19 compliance that existed at the time of conversion to a rural health
20 care facility. The department shall inspect and determine compliance
21 with the hospital rules prior to reissuing a hospital license.

22 (4) A rural hospital, as defined by the department, reducing the
23 number of licensed beds to become a rural primary care hospital
24 under the provisions of Part A Title XVIII of the Social Security
25 Act Section 1820, 42 U.S.C., 1395c et seq. may, within three years
26 of the reduction of licensed beds, increase the number of beds
27 licensed under this chapter to no more than the previously licensed
28 number of beds without being subject to the provisions of chapter
29 70.38 RCW and without being required to meet new construction
30 requirements under this chapter. These exceptions are subject to the
31 following: The facility at the time of the reduction in licensed
32 beds was considered by the department to be in compliance with the
33 hospital licensing rules and the condition of the physical plant and
34 equipment is equal to or exceeds the level of compliance that

1 existed at the time of the reduction in licensed beds. The
2 department may inspect and determine compliance with the hospital
3 rules prior to increasing the hospital license.

4 (5) If a rural hospital is determined to no longer meet critical
5 access hospital status for state law purposes as a result of
6 participation in the Washington rural health access preservation
7 pilot identified by the state office of rural health, the rural
8 hospital may renew its license by applying to the department for a
9 hospital license and the previously licensed number of beds without
10 being subject to the provisions of chapter 70.38 RCW and without
11 being required to meet new construction review requirements under
12 this chapter. These exceptions are subject to the following: The
13 hospital, at the time it began participation in the pilot, was
14 considered by the department to be in compliance with the hospital
15 licensing rules, and the condition of the physical plant and
16 equipment is equal to or exceeds the level of compliance that
17 existed at the time of the reduction in licensed beds. The
18 department may inspect and determine compliance with the hospital
19 licensing rules. If all or part of a formerly licensed rural
20 hospital is sold, purchased, or leased during the period the rural
21 hospital does not meet critical access hospital status as a result
22 of participation in the Washington rural health access preservation
23 pilot and the new owner or lessor applies to renew the rural
24 hospital's license, then the sale, purchase, or lease of part or all
25 of the rural hospital is subject to the provisions of chapter 70.38
26 RCW.

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28 **Sec. 4.** RCW 70.38.111 and 2014 c 225 s 106 are each amended to
29 read as follows:

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

32 (a) A health maintenance organization or a combination of health
33 maintenance organizations if (i) the organization or combination of
34 organizations has, in the service area of the organization or the

1 service areas of the organizations in the combination, an enrollment
2 of at least fifty thousand individuals, (ii) the facility in which
3 the service will be provided is or will be geographically located so
4 that the service will be reasonably accessible to such enrolled
5 individuals, and (iii) at least seventy-five percent of the patients
6 who can reasonably be expected to receive the tertiary health
7 service will be individuals enrolled with such organization or
8 organizations in the combination;

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

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

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

5 (2) A health maintenance organization, combination of health
6 maintenance organizations, or health care facility shall not be
7 exempt under subsection (1) of this section from obtaining a
8 certificate of need before offering a tertiary health service
9 unless:

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

13 (b) The application contains such information respecting the
14 organization, combination, or facility and the proposed offering or
15 obligation by a nursing home as the department may require to
16 determine if the organization or combination meets the requirements
17 of subsection (1) of this section or the facility meets or will meet
18 such requirements; and

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

31 (3) A health care facility (or any part thereof) with respect to
32 which an exemption was granted under subsection (1) of this section
33 may not be sold or leased and a controlling interest in such
34 facility or in a lease of such facility may not be acquired and a

1 health care facility described in (1)(c) which was granted an
2 exemption under subsection (1) of this section may not be used by
3 any person other than the lessee described in (1)(c) unless:

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

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

14 (4) In the case of a health maintenance organization, an
15 ambulatory care facility, or a health care facility, which
16 ambulatory or health care facility is controlled, directly or
17 indirectly, by a health maintenance organization or a combination of
18 health maintenance organizations, the department may under the
19 program apply its certificate of need requirements to the offering
20 of inpatient tertiary health services to the extent that such
21 offering is not exempt under the provisions of this section or RCW
22 70.38.105(7).

23 (5)(a) The department shall not require a certificate of need
24 for the construction, development, or other establishment of a
25 nursing home, or the addition of beds to an existing nursing home,
26 that is owned and operated by a continuing care retirement community
27 that:

28 (i) Offers services only to contractual members;

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

32 (iii) Contractually assumes responsibility for the cost of
33 services exceeding the member's financial responsibility under the
34 contract, so that no third party, with the exception of insurance

1 purchased by the retirement community or its members, but including
2 the medicaid program, is liable for costs of care even if the member
3 depletes his or her personal resources;

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

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

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

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

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

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

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

25 (c) The sale, lease, acquisition, or use of part or all of a
26 continuing care retirement community nursing home that qualifies for
27 exemption under this subsection shall require prior certificate of
28 need approval to qualify for licensure as a nursing home unless the
29 department determines such sale, lease, acquisition, or use is by a
30 continuing care retirement community that meets the conditions of
31 (a) of this subsection.

32 (6) A rural hospital, as defined by the department, reducing the
33 number of licensed beds to become a rural primary care hospital
34 under the provisions of Part A Title XVIII of the Social Security

1 Act Section 1820, 42 U.S.C., 1395c et seq. may, within three years
2 of the reduction of beds licensed under chapter 70.41 RCW, increase
3 the number of licensed beds to no more than the previously licensed
4 number without being subject to the provisions of this chapter.

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

16 (8) A rural hospital determined to no longer meet critical
17 access hospital status for state law purposes as a result of
18 participation in the Washington rural health access preservation
19 pilot identified by the state office of rural health and formerly
20 licensed as a hospital under chapter 70.41 RCW may apply to the
21 department to renew its hospital license and not be subject to the
22 requirements of RCW 70.38.105(4)(a) as the construction,
23 development, or other establishment of a new hospital, provided
24 there is no increase in the number of beds previously licensed under
25 chapter 70.41 RCW. If all or part of a formerly licensed rural
26 hospital is sold, purchased, or leased during the period the rural
27 hospital does not meet critical access hospital status as a result
28 of participation in the Washington rural health access preservation
29 pilot and the new owner or lessor applies to renew the rural
30 hospital's license, then the sale, purchase, or lease of part or all
31 of the rural hospital is subject to the provisions of chapter 70.38
32 RCW.

33 (9)(a) A nursing home that voluntarily reduces the number of its
34 licensed beds to provide assisted living, licensed assisted living

1 facility care, adult day care, adult day health, respite care,
2 hospice, outpatient therapy services, congregate meals, home health,
3 or senior wellness clinic, or to reduce to one or two the number of
4 beds per room or to otherwise enhance the quality of life for
5 residents in the nursing home, may convert the original facility or
6 portion of the facility back, and thereby increase the number of
7 nursing home beds to no more than the previously licensed number of
8 nursing home beds without obtaining a certificate of need under this
9 chapter, provided the facility has been in continuous operation and
10 has not been purchased or leased. Any conversion to the original
11 licensed bed capacity, or to any portion thereof, shall comply with
12 the same life and safety code requirements as existed at the time
13 the nursing home voluntarily reduced its licensed beds; unless
14 waivers from such requirements were issued, in which case the
15 converted beds shall reflect the conditions or standards that then
16 existed pursuant to the approved waivers.

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

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

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

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

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

9 (d) Nursing home beds that have been voluntarily reduced under
10 this section shall be counted as available nursing home beds for the
11 purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so
12 long as the facility retains the ability to convert them back to
13 nursing home use under the terms of this section.

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

19 ~~((+9+))~~ (10)(a) The department shall not require a certificate
20 of need for a hospice agency if:

21 (i) The hospice agency is designed to serve the unique religious
22 or cultural needs of a religious group or an ethnic minority and
23 commits to furnishing hospice services in a manner specifically
24 aimed at meeting the unique religious or cultural needs of the
25 religious group or ethnic minority;

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

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

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1 (B) Has operated the facility or group of facilities for at
2 least ten continuous years prior to the establishment of the hospice
3 agency;

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

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

8 (v) The hospice agency commits to obtaining and maintaining
9 medicare certification;

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

13 (vii) The hospice agency is not sold or transferred to another
14 agency.

15 (b) The department shall include the patient census for an
16 agency exempted under this subsection (~~((9))~~) (10) in its
17 calculations for future certificate of need applications.

18 (~~((10))~~) (11) To alleviate the need to board psychiatric
19 patients in emergency departments, for fiscal year 2015 the
20 department shall suspend the certificate of need requirement for a
21 hospital licensed under chapter 70.41 RCW that changes the use of
22 licensed beds to increase the number of beds to provide psychiatric
23 services, including involuntary treatment services. A certificate of
24 need exemption under this section shall be valid for two years.

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