

- (26) Section 39, chapter 226, Laws of 1949 and RCW 18.04.400;
- (27) Section 40, chapter 226, Laws of 1949 and RCW 18.04.900;
- (28) Section 2, chapter 223, Laws of 1982 and RCW 43.131.247; and
- (29) Section 6, chapter 223, Laws of 1982 and RCW 43.131.248.

NEW SECTION. Sec. 33. Sections 2 through 13, 15, 16, and 23 through 29 of this act are each added to chapter 18.04 RCW.

NEW SECTION. Sec. 34. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 35. 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 on July 1, 1983.

Passed the House April 19, 1983.

Passed the Senate April 14, 1983.

Approved by the Governor May 17, 1983, with the exception of section 12(8), new language in section 14(7), and section 14(8), which are vetoed.

Filed in Office of Secretary of State May 17, 1983.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 12(8), new language in section 14(7), and section 14(8), Substitute House Bill No. 646, entitled: "AN ACT Relating to public accounting."

Section 12(8) would allow disciplinary action against Certified Public Accountants for "conduct disparaging to the public accounting profession." This standard is too vague to set in motion disciplinary action.

The new language added to section 14(7) would require a stenographic record of Board hearings and transcripts filed with the Board. This requirement exceeds the normal requirements contained in the Administrative Procedures Act.

Section 14(8) would allow the Board of Accountancy to employ outside counsel to represent it at appeals hearings. This would be contrary to the established policy that the Attorney General represent state agencies.

With the exceptions of these sections, Substitute House Bill No. 646 is approved."

CHAPTER 235

[Senate Bill No. 4204]

HEALTH PLANNING—CERTIFICATE OF NEED PROGRAM—REVISIONS— STATE BOARD OF HEALTH TERMINATION POSTPONED

AN ACT Relating to the state board of health; amending section 1, chapter 161, Laws of 1979 ex. sess. as amended by section 1, chapter 139, Laws of 1980 and RCW 70.38.015; amending section 2, chapter 161, Laws of 1979 ex. sess. as last amended by section 1, chapter 119, Laws of 1982 and RCW 70.38.025; amending section 3, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.035; amending section 4, chapter 161, Laws of 1979 ex.

sess. as amended by section 3, chapter 139, Laws of 1980 and RCW 70.38.045; amending section 6, chapter 161, Laws of 1979 ex. sess. as amended by section 5, chapter 139, Laws of 1980 and RCW 70.38.065; amending section 8, chapter 161, Laws of 1979 ex. sess. as amended by section 6, chapter 139, Laws of 1980 and RCW 70.38.085; amending section 10, chapter 161, Laws of 1979 ex. sess. as last amended by section 2, chapter 119, Laws of 1982 and RCW 70.38.105; amending section 11, chapter 161, Laws of 1979 ex. sess. as amended by section 8, chapter 139, Laws of 1980 and RCW 70.38.115; amending section 12, chapter 161, Laws of 1979 ex. sess. as amended by section 10, chapter 139, Laws of 1980 and RCW 70.38.125; amending section 13, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.135; amending section 16, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.905; amending section 17, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.910; amending section 33, chapter 99, Laws of 1979 and RCW 43.131.213; amending section 75, chapter 99, Laws of 1979 and RCW 43.131.214; adding a new section to chapter 70.38 RCW; creating a new section; and declaring an emergency.

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

Sec. 1. Section 1, chapter 161, Laws of 1979 ex. sess. as amended by section 1, chapter 139, Laws of 1980 and RCW 70.38.015 are each amended to read as follows:

~~((In consideration of the findings made and national health priorities declared by the congress in the National Health Planning and Resources Development Act of 1974, Public Law 93-641;))~~ It is declared to be the public policy of this state:

~~(1) That health planning ((for promoting, maintaining, and assuring a high level of))~~ to promote, maintain, and assure the health ((for)) of all citizens ((of)) in the state, ((and for the provision of)) to provide accessible health services, health manpower, health facilities, and other resources while controlling excessive increases in costs, and to recognize prevention as a high priority in health programs, is essential to the health, safety, and welfare of the people of the state. ((Such planning is necessary)) Health planning should be fostered ~~on both a state-wide and regional basis and must maintain responsiveness to changing health and social needs and conditions. ((The marshaling of all health resources to assure the quality and availability of health services to every person must be the goal of such planning, which must likewise assure optimum efficiency, effectiveness, equity, coordination, and economy in development and implementation to reach that goal.))~~ Involvement in health planning from both consumers and providers throughout the state should be encouraged. Regional health planning under ((the provisions of)) this chapter and in a manner consistent with RCW 36.70.015 is declared to be a proper public purpose for the expenditure of funds of counties or other public entities interested in local and regional health planning;

~~(2) ((That the development and offering of new institutional health services should be accomplished in a manner which is orderly, timely, economical, and consistent with the effective development of necessary and adequate means of providing quality health care for persons to be served by such facilities without unnecessary duplication or fragmentation of such facilities;~~

~~(3))~~) That the development of health services and resources, including the construction, modernization, and conversion of health facilities, should be accomplished in a planned, orderly fashion, consistent with identified priorities and without unnecessary duplication or fragmentation;

~~((4))~~) (3) That the development and maintenance of adequate health care information ~~((and)),~~ statistics and projections of need for health facilities and services is essential to effective health planning and resources development ~~((be accomplished));~~

~~((5))~~) (4) That the ~~((strengthening of competitive forces in the health services industry, wherever competition and consumer choice can constructively serve to advance the purposes of quality assurance, cost-effectiveness, and access, should be implemented;~~

~~This chapter has been updated to reflect amendments to the National Health Planning and Resources Development Act of 1974, Public Law 93=641, by the Health Planning and Resources Development Amendments of 1979, Public Law 96=79))~~ development of nonregulatory approaches to health care cost containment should be considered, including the strengthening of price competition;

(5) That health planning should be concerned with financing, access, and quality, recognizing the close interrelationship of the three and emphasizing cost control of health services, including cost-effectiveness and cost-benefit analysis;

(6) That this chapter should be construed to effectuate this policy and to be consistent with requirements of the federal health planning and resources development laws.

*Sec. 2. Section 2, chapter 161, Laws of 1979 ex. sess. as last amended by section 1, chapter 119, Laws of 1982 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))~~) (2) "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))~~ (3) "Council" means the state health coordinating council created in RCW 70.38.055 and described in Public Law 93-641.

~~((5))~~ (4) "Department" means the state department of social and health services.

~~((6))~~ (5) "Expenditure minimum" means, for the purposes of the certificate of need program, ~~((six hundred thousand))~~ one million 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))~~ adjusted by the department by rule to reflect changes in the United States department of commerce composite construction cost index; or a lesser amount required by federal law and established by the department by rule.

~~((7))~~ (6) "Federal law" means Public Law 93-641, as amended, or its successor.

(7) "Health care facility" means hospices, hospitals, psychiatric hospitals, tuberculosis hospitals, alcoholism 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))~~ federal law and implementing regulations, but does not include Christian Science sanatoriums operated, listed, or certified by the First Church of Christ Scientist, Boston, Massachusetts. In addition, the term does not include any nonprofit hospital: (a) Which is operated exclusively to provide health care services for children; (b) which does not charge fees for such services; (c) whose rate reviews are waived by the state hospital commission; and (d) if not contrary to federal law as necessary to the receipt of federal funds by the state.

(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) federal law.

~~((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))~~ (10) "Health service area" means a geographic region appropriate for effective health planning which includes a broad range of health services and a population of at least four hundred fifty thousand persons.

~~(11) "Institutional health services" means health services provided in or through health care facilities and entailing annual operating costs of at least ((two)) five 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)) adjusted by the department by rule to reflect changes in the United States department of commerce composite construction cost index; or a lesser amount required by federal law and established by the department by rule: **PROVIDED, That no new health care facility may be initiated as an institutional health service.**~~

~~((14))~~ (12) "Major medical equipment" means medical equipment which is used for the provision of medical and other health services and which costs in excess of ((four hundred thousand)) one million dollars, adjusted by the department by rule to reflect changes in the United States department of commerce composite construction cost index; or a lesser amount required by federal law and established by the department by rule; 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))~~ (13) "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))~~ (14) "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 93-64)) established by rule of the department, consistent with federal law.

~~((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))~~ (15) "Public health" means the level of well-being of the general population; those actions in a community necessary to preserve, protect, and

promote the health of the people for which government is responsible; and the governmental system developed to guarantee the preservation of the health of the people.

(16) "Regional health council" 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 and which is capable of performing each of the functions described in RCW 70.38.085. A regional health council shall have a governing body for health planning which is composed of a majority (but not more than sixty percent of the members) of persons who are residents of the health service area served by the entity; who are consumers of health care; who are broadly representative of the social, economic, linguistic, and racial populations, and geographic areas of the health service area, and major purchasers of health care; and who are not, nor within the twelve months preceding appointment have been, providers of health care. The remainder of the members shall be residents of the health service area served by the agency who are providers of health care.

(17) "Regional health plan" means a document which provides at least a statement of health goals and priorities for the health service area. In addition, it sets forth the number, type, and distribution of health facilities, services, and manpower needed within the health service area to meet the goals of the plan.

(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 was partially vetoed, see message at end of chapter.

Sec. 3. Section 3, chapter 161, Laws of 1979 ex. sess. and RCW 70.38-.035 are each amended to read as follows:

The department is designated(~~(;) as the sole and official agency of the state to administer and supervise the administration of the state responsibilities pursuant to The National Health Planning and Resources Development Act of 1974, Public Law 93-641, and rules and regulations promulgated thereunder)~~). The department is designated as the agency of this state to accept, receive, retain, and administer federal funds made (~~(pursuant to the provisions of Public Law 93-641)~~) available for health planning and the certificate of need program. Nothing in this chapter shall be construed to affect the authority of the state hospital commission pursuant to chapter 70.39 RCW.

Sec. 4. Section 4, chapter 161, Laws of 1979 ex. sess. as amended by section 3, chapter 139, Laws of 1980 and RCW 70.38.045 are each amended to read as follows:

The department is authorized and empowered to:

(1) Exercise such duties and powers as are prescribed for state health planning and development agencies in (~~(Public Law 93-641, including but~~

~~not limited to the following: (1) conduct health planning activities;))~~ federal law, consistent with the policy of this chapter;

(2) Assist the state health coordinating council in determining state-wide needs and conducting health planning activities, review the state health plan as developed by the council and submit the plans and recommendations as to approval or modification to the governor, and implement the state health plan ((and the plans of the health systems agencies within the state which relate to the government of the state, and determine state-wide health needs)) as approved by the governor. In implementing the state health plan, the department shall be assisted by such other agencies of state government as the governor may designate;

~~((2) Prepare and review at least triennially and revise as necessary a preliminary state health plan;))~~

(3) ((Assist the council in)) Consider recommendations from the council and assign, subject to the continuing approval of the council, an executive director, who shall be exempt from chapter 41.06 RCW, and provide such additional dedicated staffing assistance as necessary for the performance of its functions ((generally. In implementing the state health plan, the department shall be assisted by such other agencies of state government as the governor may designate)) to work under the direction and supervision of the director;

(4) Serve as the designated planning agency of the state for the purposes of section 1122 of the Social Security Act, if the department maintains an agreement with the secretary, United States department of health and human services pursuant to section 1122 of Public Law 92-603, and administer a state certificate of need program as provided in RCW 70.38.105, 70.38.115, and 70.38.125;

(5) After consideration of recommendations, if any, submitted by the ~~((health systems agencies))~~ designated regional health councils respecting proposed undertakings which are subject to certificate of need review under the provisions of this chapter, making findings as to the need for such undertakings;

(6) ~~((Review on a periodic basis, not less than every five years, at least those institutional and home health services being offered in the state with respect to which priority goals have been established in the state health plan and, after consideration of recommendations submitted by health systems agencies respecting the appropriateness of such services, make public its findings;~~

~~(7))~~ Coordinate and consult in the conduct of its authorized activities with the Washington state hospital commission, the council, ((the designated state mental health authority)) designated regional health councils, and ((such)) other state agencies designated by the governor;

~~((8) Prepare an inventory of the nonfederal health care facilities located in the state and evaluate on an ongoing basis the physical condition of such facilities;~~

~~(9) Determine the state-wide health needs of the state after providing reasonable opportunity for the submission of written recommendations from the health systems agencies and such agencies as shall be designated by the governor and after consulting with the council.))~~

(7) Consider the recommendations of the council, designated regional health councils, and the state health plan in development of its biennial budget; and

(8) Approve and deny applications for certificates of need.

*Sec. 5. Section 6, chapter 161, Laws of 1979 ex. sess. as amended by section 5, chapter 139, Laws of 1980 and RCW 70.38.065 are each amended to read as follows:

The ((council)) board is authorized and empowered to:

(1) Exercise such duties and powers as are required for state-wide health coordinating councils in ((P 93-641, including but not limited to the following: (1))) federal law.

(2) Establish, in consultation with the ((health systems agencies and the department,)) designated regional health councils, requirements for a uniform format ((for health systems plans, review and coordinate)) and content for materials to be submitted by regional health councils to assist in development of the state health plan, and develop at least ((triennially)) biennially the state health ((systems)) plan.((and review at least annually the annual implementation plan of each health systems agency and report to the secretary of health and human services its comments;

~~(2) Prepare, review at least triennially, and revise as necessary a state health plan which shall be made up of the health systems plans of the health systems agencies and which plan may, as found necessary by the state health coordinating council, contain revisions of such health systems plans to achieve their appropriate coordination or to deal more effectively with state-wide health needs as determined by the department. The plan shall also describe the institutional health services needed to provide for the well-being of persons receiving care within the state, the number and type of resources required to meet the goals of the plan, and the extent to which existing health care facilities are in need of modernization, conversion, or closure and the extent to which new facilities need to be constructed or acquired. The state health plan, approved by the council, shall be the state health plan for the state for purposes of Public Law 93-641 after its approval by the governor;~~

~~(3) Review annually the budget of each health systems agency and report to the secretary of the United States department of health and human services its comment. on such budget;~~

~~(4) Review applications submitted by the health systems agencies for planning and development grants, and report to the secretary of the United States department of health and human services its comments;~~

~~(5) Advise the department generally on the performance of its functions;~~

~~**(6))The state health plan shall provide a statement of state health policies, goals, and priorities. In addition, it shall set forth the number, type, and distribution of health care facilities and services needed within the state. In developing the state health plan the board shall consult with the designated regional health councils and shall consider regional health plans.**~~

~~(3) Submit the ((approved state)) council-adopted health plan to the secretary for review and comment and submission to the governor for adoption as the state health plan for the state. The governor may disapprove or modify the ((state health)) plan ((only if the governor determines the plan does not effectively meet the state-wide health needs that have been identified by the department)). The governor, in disapproving or modifying a state health plan, shall ((make public a detailed statement of the basis for the determination that the plan does not meet such needs and shall specify the changes in the plan which the governor determines are needed to meet such needs. The plan shall then be revised after public hearing in accordance with the governor's statement.~~

~~(7) Perform such duties in connection with the state health plan as may be required as a condition to the receipt of federal funds as described in Public Law 93-641.) make public a written explanation of the actions taken. As approved by the governor, the plan shall be the state health plan.~~

*Sec. 5 was partially vetoed, see message at end of chapter.

Sec. 6. Section 8, chapter 161, Laws of 1979 ex. sess. as amended by section 6, chapter 139, Laws of 1980 and RCW 70.38.085 are each amended to read as follows:

~~((There shall be established in accordance with Public Law 93-641, and implementing regulations,)) The council shall establish health service areas within the state and ((health systems agencies)) designate regional health councils organized, composed, and established in accordance with ((such law)) this chapter and criteria established by the council, considering the resources available for such purpose.~~

Each ~~((health systems agency))~~ designated regional health council shall have as its primary responsibility the provision of effective health planning for its health service area and the promotion ~~((of the development within the area))~~ of health services, manpower, and facilities which meet identified needs ~~((;))~~ and reduce documented inefficiencies ~~((, and implement the health plans of the agencies which shall include all classes of health care practitioners)).~~ To meet its primary responsibility, a ~~((health systems agency))~~ designated regional health council shall carry out ~~((such functions as are prescribed for health systems agencies in Public Law 93-641, including but not limited to))~~ the following functions:

~~(1) ((Assemble and analyze data concerning: The status and its determinants of the health of the residents of its health service area; the status of the health care delivery system in the area and the use of that system by the residents of the area; the effect which the area's health care delivery system has on the health of the residents of the area; the number, type, and location of the area's health resources including health services, manpower, and facilities; the patterns of utilization of the area's health resources; and the environmental and occupational exposure factors affecting immediate and long-term health conditions))~~ Exercise such duties, powers, and responsibilities as are prescribed for health systems agencies in federal law, consistent with the policy of this chapter.

(2) Identify local health problems and concerns and assemble and analyze health data and information consistent with the requirements of the board;

~~((2) Establish))~~ (3) Develop, consistent with the ((format)) criteria established by the council, ((a health systems plan)) other materials of assistance to the council in preparation of the state health plan;

~~((3) Establish, annually review, and amend as necessary an annual implementation plan which describes objectives which will achieve the goals of the health systems plan and priorities among the objectives;~~

~~(4) Develop and publish specific plans and projects for achieving the objectives of the annual implementation plan;~~

~~(5))~~ (4) Review and make recommendations to the ((department)) council respecting the need for ((new institutional)) health services ((proposed to be offered or developed)) in the health service area of ((such health systems agency)) the council;

~~((6) Review on a periodic basis, at least every five years, at least those institutional and home health services offered in the health service area of the agency and with respect to which priority goals have been established in the state health plan, and make recommendations to the department respecting the appropriateness of such services in the area; and~~

~~(7))~~ (5) Seek the assistance of individuals and public and private entities in the health service area, to the extent practicable((in implementing the health systems plan and annual implementation plan)); and

(6) Exercise such other duties and functions as may be established by the council or department to fulfill the intent and purposes of this chapter, which may include review, analysis, and recommendations on applications for certificates of need.

In addition, the regional health councils may establish, biennially review, and amend as necessary a regional health plan which provides at least a statement of health goals and priorities for the health service area and sets forth the number, type, and distribution of health facilities, services, and manpower needed within the health service area to meet the goals of the plan.

Sec. 7. Section 10, chapter 161, Laws of 1979 ex. sess. as last amended by section 2, chapter 119, Laws of 1982 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 administered consistent with the ((provisions of Public Law 93-641)) requirements of federal law as necessary to the receipt of federal funds by the state.

(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, provided that the substantial changes in services are specified by the department in rule;

(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)~~). However, a capital expenditure which is not subject to certificate of need review under (a), (b), (d), (e), or (f) of this subsection and which is solely for any one or more of the following is not subject to certificate of need review except to the extent required by the federal government as a condition to receipt of federal assistance and does not substantially affect patient charges:

(i) Communications and parking facilities;

(ii) Mechanical, electrical, ventilation, heating, and air conditioning systems;

(iii) Energy conservation systems;

(iv) Repairs to, or the correction of, deficiencies in existing physical plant facilities which are necessary to maintain state licensure;

(v) Acquisition of equipment, including data processing equipment, which is not or will not be used in the direct provision of health services;

(vi) Construction which involves physical plant facilities, including administrative and support facilities, which are not or will not be used for the provision of health services;

(vii) Acquisition of land; and

(viii) Refinancing of existing debt;

(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;

(c) 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 in-patients, 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;

(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

(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. 8. Section 11, chapter 161, Laws of 1979 ex. sess. as amended by section 8, chapter 139, Laws of 1980 and RCW 70.38.115 are each amended to read as follows:

(1) Certificates of need shall be issued, denied, suspended, or revoked by the designee of the secretary of the department ~~((or his designee,))~~ in accord with the provisions of this chapter and rules ~~((and regulations proposed by))~~ of the department ~~((and adopted by the board of health pursuant to this chapter. Rules and regulations shall))~~ which establish review procedures and criteria for the certificate of need program.

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

(a) The relationship of the health services being reviewed to the applicable health plans;

(b) ~~((The relationship of services reviewed to the long-range development plan, if any, of the persons providing or proposing such services;~~

~~((c)))~~ The need that the population served or to be served by such services has for such services;

~~((d))~~ (c) The availability of less costly or more effective alternative methods of providing such services;

~~((e))~~ (d) The ~~((immediate and the long-range))~~ financial feasibility ~~((of the proposal as well as))~~ and the probable impact of the proposal on the cost of and charges for providing health services ~~((by the persons proposing the new institutional health service))~~, including findings and recommendations of the Washington state hospital commission in the case of applications submitted by hospitals;

~~((f))~~ The relationship of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided;

~~((g))~~ (c) In the case of health services to be provided, (i) ~~((the availability of resources including health manpower, management personnel, and funds for capital and operating needs for the provision of the services, (ii))~~ the availability of alternative uses of ~~((such))~~ project resources for the provision of other health services, ~~((iii) the effect of the means proposed for the delivery of such services on the clinical needs of health professional training programs in the area in which such services are to be provided, (iv) the extent to which health professions schools in the area will have access to the services for training purposes if such services are to be available in a limited number of facilities, and (v))~~ (ii) the extent to which such proposed services will be accessible to all residents of the area to be served ~~((When an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of))~~, and (iii) the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels;

~~((h))~~ Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas;

(i) The special needs and circumstances of health maintenance organizations;

~~((j))~~ (f) In the case of a construction project, the costs and methods of the proposed construction, including the cost and methods of energy provision, and the probable impact of the construction project reviewed (i) on the cost of providing health services by the person proposing such construction project and (ii) on the cost and charges to the public of providing health services by other persons;

~~((k))~~ (g) The special needs and circumstances of osteopathic hospitals and nonallopathic services;

~~((l))~~ The special circumstances of health service institutions and the need for conserving energy;

~~((m))~~ The factors which affect the effect of competition on the supply of the health services being reviewed;

(n)) (h) Improvements or innovations in the financing and delivery of health services which foster ((competition)) cost containment and serve to promote quality assurance and cost-effectiveness;

~~((o))~~ (i) In the case of health services proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed; and

~~((p))~~ (j) In the case of existing services or facilities, the quality of care provided by such services or facilities in the past.

(3) A certificate of need application of a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization, shall be approved by the department if the department finds ~~((in accordance with criteria prescribed by the secretary of the United States department of health and human services by regulation))~~:

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

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

A health care facility (or any part thereof) or medical equipment with respect to which a certificate of need was issued under this subsection 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 unless the department issues a certificate of need approving the sale, acquisition, or lease.

(4) ~~((When a hospital has developed a long-range health facility plan; pursuant to RCW 70.38.145, and the proposed new institutional health service is consistent with such plan, an expedited review process shall be instituted by the department as it has been done since the enactment of chapter 70.38 RCW in 1971:~~

(5)) The decision of the department on a certificate of need application shall be consistent with the state health plan in effect, except in emergency circumstances which pose a threat to the public health. The department in making its final decision may issue a conditional certificate of need if it

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

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

~~((7))~~ (6) The department shall specify information to be required for certificate of need applications. Within fifteen days of receipt of the application, the department shall request additional information considered necessary to the application or start the review process. Applicants may decline to submit requested information through written notice to the department, in which case review starts on the date of receipt of the notice. Applications may be denied or limited because of failure to submit required and necessary information.

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

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

(9) The department or a designated regional health council shall conduct a public hearing on a certificate of need application if requested unless the review is expedited or subject to emergency review. The department by rule shall specify the period of time within which a public hearing must be requested and requirements related to public notice of the hearing, procedures, recordkeeping and related matters.

(10) Any applicant denied a certificate of need or whose certificate of need has been suspended or revoked shall be afforded an opportunity for administrative review in accordance with chapter 34.04 RCW and a hearing

shall be held within one hundred twenty days of a request therefor. An administrative law judge shall review the decision of the secretary's designee and render a proposed decision for consideration by the secretary in accordance with chapter 34.12 RCW or remand the matter to the secretary's designee for further consideration. The secretary's final decision is subject to review by the superior court as provided in chapter 34.04 RCW.

(11) The department may establish procedures and criteria for reconsideration of decisions.

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

(a) A new service;

(b) An expansion of a service beyond that originally approved;

(c) An increase in bed capacity;

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

~~((8))~~ (13) An application for a certificate of need for a capital expenditure which is determined by the department to be required to eliminate or prevent imminent safety hazards or correct violations of applicable licensure and accreditation standards shall be approved ((as specified in PL 93-641; section 1527(c)).

Sec. 9. Section 12, chapter 161, Laws of 1979 ex. sess. as amended by section 10, chapter 139, Laws of 1980 and RCW 70.38.125 are each amended to read as follows:

(1) A certificate of need shall be valid for two years: PROVIDED, That one six-month extension may be made if it can be substantiated that substantial and continuing progress toward commencement of the project has been made as defined by regulations to be adopted pursuant to this chapter.

(2) A project for which a certificate of need has been issued shall be commenced during the validity period for the certificate of need.

(3) The department, in cooperation with the ~~((health systems agencies established in the state under the provision of Public Law 93-641))~~ regional health councils, and the hospital commission(;) in the case of hospital projects, shall monitor the costs and components of approved projects to assure conformance with certificates of need that have been issued. Rules and regulations adopted shall specify when changes in the cost or components of a project require reevaluation of the project. The department may require

applicants to submit periodic progress reports on approved projects or other information as may be necessary to effectuate its monitoring responsibilities.

(4) The secretary of the department, in the case of a new health facility, shall not issue any license unless and until a prior certificate of need shall have been issued by the department for the offering or development of such new health facility.

(5) Any person who engages in any undertaking which requires certificate of need review (~~((under RCW 70.38.085(4)))~~) without first having received from the department either a certificate of need or an exception granted in accordance with this chapter shall be liable to the state in an amount not to exceed one hundred dollars a day for each day of such unauthorized offering or development. Such amounts of money shall be recoverable in an action brought by the attorney general on behalf of the state in the superior court of any county in which the unauthorized undertaking occurred. Any amounts of money so recovered by the attorney general shall be deposited in the state general fund.

(6) The department may bring any action to enjoin a violation or the threatened violation of the provisions of this chapter or any rules and regulations adopted pursuant to this chapter, or may bring any legal proceeding authorized by law, including but not limited to the special proceedings authorized in Title 7 RCW, in the superior court in the county in which such violation occurs or is about to occur, or in the superior court of Thurston county.

Sec. 10. Section 13, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.135 are each amended to read as follows:

~~((+))~~ The secretary of the department shall have authority to:

~~((a))~~ (1) Provide when needed temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee-for-service basis; ~~((and~~

~~(b))~~ (2) Make or cause to be made such on-site surveys of health care or medical facilities as may be necessary to the development of the state health plan ~~((and state medical facilities plan))~~ and the administration of the certificate of need program~~((:))~~;

~~((c))~~ (3) Upon review of recommendations ~~((of the department))~~, if any, from the board of health ~~((shall have authority to))~~;

(a) Promulgate ~~((and enforce))~~ rules ~~((and regulations))~~ under which health care facilities providers doing business ~~((with))~~ within the state shall submit to the department such data related to health and health care as the department finds necessary to the performance of its functions under this chapter;

(b) Promulgate rules ~~((and regulations))~~ pertaining to the maintenance and operation of medical facilities which receive federal assistance under the provisions of Title XVI;

(c) Promulgate rules (~~and regulations~~) in implementation of the provisions of this chapter, including the establishment of procedures for public hearings for predecisions and post-decisions on applications for certificate of need;

(d) Promulgate rules providing circumstances and procedures of expedited certificate of need review if:

(i) An application is found consistent with the state health plan; and

(ii) There has not been a significant change in existing health facilities of the same type or in the need for such health facilities and services;

(4) Grant allocated state funds to regional health councils to fund not more than seventy-five percent of the costs of regional planning activities, excluding costs related to review of applications for certificates of need, provided for in this chapter or approved by the council; and

(5) Contract with and provide reasonable reimbursement for designated regional health councils to assist in determinations of certificates of need.

NEW SECTION. Sec. 11. The enactment of amendments to chapter 70.38 RCW by this 1983 act shall not have the effect of terminating or in any way modifying the validity of a certificate of need which was issued prior to the effective date of this 1983 act.

Sec. 12. Section 16, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.905 are each amended to read as follows:

In any case where the provisions of this chapter may directly conflict with (~~provisions of Public Law 93-641 or any amendments thereto~~) federal law, or regulations promulgated thereunder, the (~~provisions of Public Law 93-641~~) federal law shall supersede and be paramount as necessary to the receipt of federal funds by the state.

Sec. 13. Section 17, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.910 are each amended to read as follows:

If any provision of this (~~act~~) chapter or its application to any person or circumstance is held invalid, the remainder of the (~~act~~) chapter or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 14. There is added to chapter 70.38 RCW a new section to read as follows:

A certificate of need application which was submitted and declared complete, but upon which final action had not been taken prior to the effective date of this act, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to the effective date of this act, and the rules adopted thereunder.

NEW SECTION. Sec. 15. The state government committees of the senate and house of representatives shall conduct program and fiscal reviews of the board of health to be completed no later than January 1, 1984, and

transmitted to the appropriate standing committees of the senate and house of representatives.

Sec. 16. Section 33, chapter 99, Laws of 1979 and RCW 43.131.213 are each amended to read as follows:

The powers and duties of the state board of health shall be terminated on June 30, (~~(1983)~~) 1985, as provided in RCW 43.131.214.

Sec. 17. Section 75, chapter 99, Laws of 1979 and RCW 43.131.214 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, (~~(1984)~~) 1986:

- (1) Section 36.62.020, chapter 4, Laws of 1963 and RCW 36.62.020;
- (2) Section 43.20.030, chapter 8, Laws of 1965, section 11, chapter 18, Laws of 1970 ex. sess. and RCW 43.20.030;
- (3) Section 43.20.050, chapter 8, Laws of 1965, section 9, chapter 102, Laws of 1967 ex. sess., section 49, chapter 141, Laws of 1979 and RCW 43.20.050;
- (4) Section 43.20.100, chapter 8, Laws of 1965, section 44, chapter 75, Laws of 1977 and RCW 43.20.100;
- (5) Section 43.20.140, chapter 8, Laws of 1965, section 58, chapter 141, Laws of 1979 and RCW 43.20.140;
- (6) Section 11, chapter 102, Laws of 1967 ex. sess. and RCW 43.20.200;
- (7) Section 1, chapter 197, Laws of 1957 and RCW 69.06.010;
- (8) Section 2, chapter 197, Laws of 1957 and RCW 69.06.020;
- (9) Section 5, chapter 197, Laws of 1957 and RCW 69.06.050;
- (10) Section 16, chapter 190, Laws of 1939, section 1, chapter 30, Laws of 1961 and RCW 69.16.115;
- (11) Section 17, chapter 190, Laws of 1939, section 2, chapter 30, Laws of 1961 and RCW 69.16.120;
- (12) Section 16, chapter 112, Laws of 1939 and RCW 69.20.095;
- (13) Section 17, chapter 112, Laws of 1939 and RCW 69.20.100;
- (14) Section 3, chapter 144, Laws of 1955 and RCW 69.30.030;
- (15) Section 5, chapter 144, Laws of 1955 and RCW 69.30.050;
- (16) Section 6, chapter 144, Laws of 1955 and RCW 69.30.060;
- (17) Section 12, chapter 102, Laws of 1967 ex. sess., section 1, chapter 25, Laws of 1969 ex. sess. and RCW 70.01.010;
- (18) Section 16, chapter 51, Laws of 1967 ex. sess. and RCW 70.05.110;
- (19) Section 4, chapter 114, Laws of 1919 and RCW 70.24.040;
- (20) Section 8, chapter 114, Laws of 1919 and RCW 70.24.070;
- (21) Section 6, chapter 54, Laws of 1967 and RCW 70.28.035;
- (22) Section 3, chapter 267, Laws of 1955, section 9, chapter 189, Laws of 1971 ex. sess. and RCW 70.41.030;

(23) Section 1, chapter 231, Laws of 1969 ex. sess. and RCW 70.54.110;

(24) Section 6, chapter 177, Laws of 1959 and RCW 70.58.350;

(25) Section 5, chapter 82, Laws of 1967 and RCW 70.83.050; and

(26) Section 1, chapter 176, Laws of 1913, section 12, chapter 130, Laws of 1917, section 1, chapter 160, Laws of 1921, section 1, chapter 46, Laws of 1923, section 1, chapter 79, Laws of 1925 ex. sess., section 1, chapter 240, Laws of 1927 and RCW 85.08.020.

NEW SECTION. Sec. 18. Sections 16 and 17 of this act are 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 Senate April 23, 1983.

Passed the House April 21, 1983.

Approved by the Governor May 17, 1983, with the exceptions of portions of sections 2 and 5, which are vetoed.

Filed in Office of Secretary of State May 17, 1983.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to portions of sections 2 and 5, Senate Bill No. 4204, entitled:

"AN ACT Relating to the state board of health."

The proviso in Section 2 (11) could be interpreted as a prohibition against the creation of new health care facilities with annual operating budgets over \$500,000, regardless of the need for such facilities as determined by the certificates-of-need program. Such a prohibition would ignore the purpose of the certificate-of-need program.

Section 5 would require the Board of Health to perform the current functions of the State Health Coordinating Council. If the State Health Coordinating Council's functions are assumed by the Board of Health, Federal regulations will be violated, and Federal funds may be jeopardized. The Federal government requires that Council functions be performed by a body having majority representation of consumers, which the Board would not have.

With the exceptions noted above, which I have vetoed, Senate Bill No. 4204 is approved."

CHAPTER 236

[Engrossed Substitute Senate Bill No. 3757]

NURSING HOMES—COMMUNITY-BASED CARE

AN ACT Relating to nursing homes; amending section 2, chapter 117, Laws of 1951 as last amended by section 15, chapter 2, Laws of 1981 1st ex. sess. and RCW 18.51.010; amending section 63, chapter 211, Laws of 1979 ex. sess. as amended by section 3, chapter 11, Laws of 1981 2nd ex. sess. and RCW 18.51.091; and creating a new section.

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