

NEW SECTION. Sec. 7. Section 6 of this 1980 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 March 3, 1980.

Passed the Senate February 29, 1980.

Approved by the Governor March 13, 1980.

Filed in Office of Secretary of State March 13, 1980.

CHAPTER 139

[Substitute House Bill No. 1515]

HEALTH PLANNING IMPLEMENTATION

AN ACT Relating to health; implementing amendments to the National Health Planning and Resources Development Act of 1974; amending section 1, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.015; amending section 2, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.025; amending section 4, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.045; amending section 5, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.055; amending section 6, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.065; amending section 8, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.085; amending section 10, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.105; amending section 11, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.115; amending section 12, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.125; adding new sections to chapter 70.38 RCW; repealing section 7, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.075; and providing an effective date.

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

Section 1. Section 1, chapter 161, Laws of 1979 ex. sess. 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 planning for promoting, maintaining, and assuring a high level of health for all citizens of the state, and for the provision of health services, health manpower, health facilities, and other resources is essential to the health, safety, and welfare of the people of the state. Such planning is necessary 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. 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 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 resources, including the construction, modernization, and conversion of health facilities, should be accomplished in a planned, orderly fashion, consistent with identified priorities; ((and))

(4) That the development and maintenance of adequate health care information and statistics essential to effective health planning and resources development be accomplished;

(5) 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.

Sec. 2. Section 2, chapter 161, Laws of 1979 ex. sess. 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.

(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 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.

~~((7))~~ (8) "Health maintenance organization" means ((an entity as defined in Public Law 93-641 and, in addition, any organization defined under RCW 48.46.020(1))) 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).

~~((8))~~ (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.

~~((9))~~ (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 ~~(, education and welfare)~~ and human services, upon recommendation of the governor or of the council, of performing each of the functions described in the federal law.

~~((+0))~~ (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; ~~(and)~~ take into account national guidelines for health planning policy and ~~((state-wide health needs and priorities))~~ are responsive to state-wide health needs as determined by the department. The health systems plan ~~((is for a period longer than one year and must be reviewed and amended as necessary on an annual basis))~~ 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.

~~((+1))~~ (12) "Institutional health services" means health services provided in or through health care facilities ~~(and health maintenance organizations and includes the entities in or through which such services are provided as defined in Public Law 93-641)~~ and entailing annual operating costs of at least seventy-five 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.

~~((+2))~~ (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.

~~((+3))~~ (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 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.

~~((+4))~~ (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).

~~((+5))~~ (18) "State health plan" means a document, described in Public Law ~~((93-641))~~ 96-79, developed by the department ~~((; and approved by the state health coordinating council which recommends priorities for changes in the health system of the state to achieve the desired health status of the citizens of the state and describes the relationship of these priorities to national health priorities and to the priorities of the health systems agencies of the state as set forth in their health systems plans))~~ and the council in accordance with RCW 70.38.065.

~~((+6))~~ "State medical facilities plan" means a public document, described in Public Law 93-641, which sets forth: The number and type of medical facility beds and medical facilities needed to provide adequate in-patient care to people residing in the state and a plan for the distribution of such beds and facilities throughout the state; the number and type of out-patient and other medical facilities needed to provide adequate public health services and outpatient care to people residing in the state; and a plan for the distribution of such facilities throughout the state and the extent to which existing medical facilities in the state are in need of modernization or conversion, or construction of new facilities is indicated, and the priorities for such modernization, conversion, or construction projects.)

Sec. 3. Section 4, chapter 161, Laws of 1979 ex. sess. and RCW 70.38-.045 are each amended to read as follows:

The department is authorized and empowered to 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, ~~((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;

(2) Prepare and review at least triennially and revise as necessary a preliminary state health plan ~~((to be submitted to the council for approval or disapproval and for use in developing the state plan))~~;

(3) Assist the council in the ~~((review of the state medical facilities plan and in 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;

(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 ~~((, education and welfare))~~ 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 submitted by the health systems agencies respecting ~~((new institutional health services))~~ proposed ~~((to be offered within the state, make))~~ undertakings which are subject to certificate of need review under the provisions of this chapter, making findings as to the need for such ((services)) undertakings;

(6) Review on a periodic basis, not less than every five years, ~~((at))~~ 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, and such other 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.

Sec. 4. Section 5, chapter 161, Laws of 1979 ex. sess. and RCW 70.38-.055 are each amended to read as follows:

(1) There is established a state health coordinating council.

(2) The council shall be composed of members who shall be appointed by the governor in accordance with the provisions of Public Law 93-641 and shall be considered appointed officials for whom compliance with section 1, chapter 104, Laws of 1975-'76 2nd ex. sess., (Ref. Bill No. 36), RCW 42.17.240, is required.

(3) The council shall, in addition to the appointed members, include as nonvoting, ex officio members the chairpersons of the house and senate committees on social and health services, the secretary of the department, the chairman of the hospital commission, or their designees, and an individual whom the chief medical director of the veterans administration shall have designated as a representative of the veterans administration (~~who shall be a voting member~~).

(4) The council shall have a chairperson designated (~~in a manner consistent with Public Law 93-641~~) by the governor by and with the consent of the senate from among the members of the council who shall serve a one-year term.

(5) The council shall conduct all of its business meetings in public pursuant to the "Open Public Meetings Act of 1971", chapter 42.30 RCW, and shall meet at least once in each calendar quarter of a year. Books and records of the council shall be subject to public disclosure in accordance with RCW 42.17.250 through 42.17.340.

(6) Members of the council shall serve without pay, but shall be entitled to reimbursement for travel expenses incurred as provided in RCW 43.03.050 and 43.03.060.

(7) The governor shall have the power to stagger the terms of the members so that one-third thereof may be appointed for an original term of one year, one-third for an original term of two years, and one-third for an original term of three years, with all subsequent appointments to be for terms of three years.

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

The council is authorized and empowered to exercise such duties and powers as are required for state-wide health coordinating councils in P.L. 93-641, including but not limited to the following:

(1) (~~Review annually and coordinate the health systems plan and annual implementation plan~~) Establish, in consultation with the health systems agencies and the department, a uniform format for health systems plans, review and coordinate at least triennially the health systems plan, and review at least annually the annual implementation plan of each health systems agency and report to the secretary of health(~~, education and welfare~~) and human services its comments;

(2) Prepare (~~and~~)₂ review at least triennially, and revise as necessary(~~, at least annually,~~) 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(~~(, education and welfare)~~) and human services its comments 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(~~(, education and welfare)~~) and human services its comments;

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

(6) Submit the approved state health plan to the governor for adoption as the state health plan for the state. The governor may disapprove 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 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.

Sec. 6. Section 8, chapter 161, Laws of 1979 ex. sess. 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, health service areas within the state and health systems agencies organized and established in accordance with such law.

Each health systems agency 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, 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 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;

(2) Establish ~~((, annually review, and amend as necessary)),~~ consistent with the format established by the council, a health systems 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) Review and make recommendations to the department respecting the need for new institutional health services proposed to be offered or developed in the health service area of such health systems agency;

(6) Review on a periodic basis, at least every five years, ~~((and))~~ 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

~~((Recommend annually to the department projects for the modernization, construction, and conversion of medical facilities in the agency's health service area— which projects will achieve the health systems plan and annual implementation plan of the health systems agency and the priorities among such projects, and~~

~~((8)))~~ 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.

Sec. 7. Section 10, chapter 161, Laws of 1979 ex. sess. 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 ((offer or develop a new institutional health service, or undertake expenditures in preparation for such offering or development, unless a certificate of need authorizing such new institutional health services has been issued))~~ 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) ((New institutional health services))~~ The following shall be subject to certificate of need review under this chapter ((shall include)):

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

(b) Any capital expenditure by or on behalf of a health care facility (~~(or health maintenance organization in excess of one hundred and fifty thousand dollars which under generally accepted accounting principles consistently applied is a capital expenditure, excluding expenditures for site acquisition, acquisition of existing acute care health facilities, health maintenance organizations, or expenditures solely for the termination or reduction of beds or of a health service)~~) which (i) 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) A change in bed capacity of a health care facility (~~(or health maintenance organization)~~) 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;

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

~~((e))~~ (f) Any expenditure by or on behalf of a health care facility (~~(or health maintenance organization)~~) in excess of (~~one hundred and fifty thousand dollars~~) the expenditure minimum made in preparation for (~~the offering or development of a new institutional service~~) any undertaking under subsection (4) of this section and any arrangement or commitment made for financing (~~the offering or development of the new institutional health service~~) such undertaking. Expenditures of preparation (~~for the offering of a new institutional health service~~) shall include expenditures for

architectural designs, plans, working drawings, and specifications. The department may issue certificates of need permitting predevelopment expenditures, only, without authorizing ~~((the development or offering of new institutional health services))~~ 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.

~~((6) Notwithstanding any other provision of this section, prior to October 1, 1980, new institutional health services of health maintenance organizations shall include only those services which are provided in or through a health care facility owned, operated, or otherwise utilized by the health maintenance organization.))~~

Sec. 8. Section 11, chapter 161, Laws of 1979 ex. sess. 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 secretary of the department, or his designee, in accord with the provisions of this chapter and rules and regulations proposed by the department and adopted by the board of health pursuant to this chapter. Rules and regulations shall 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) The availability of less costly or more effective alternative methods of providing such services;

(e) The immediate and the long-range financial feasibility of the proposal as well as 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) 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 ((and)), (ii) the availability of alternative uses of such 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) 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 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) ~~((The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary and support services;~~

~~(i)) 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;~~

~~((j)) (i) The special needs and circumstances of health maintenance organizations' ((and the enrolled participants for whom the health maintenance organization has a contractual obligation to serve or may reasonably be expected to serve in the future. In order to permit health maintenance organizations to plan on the basis of enrolled participants rather than a geographical service area, health maintenance organization projects shall be evaluated on the basis of cost-effectiveness to the enrolled participants of the health maintenance organization: PROVIDED HOWEVER, That consideration of a new institutional health service proposed by a health maintenance organization shall also address the availability and cost of obtaining the proposed new institutional health services from the existing providers in the area));~~

~~((k) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;~~

~~(l)) (i) 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; ((and~~

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

(o) 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) 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.

~~((4))~~ (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.

~~((5))~~ (6) 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.

~~((6))~~ (7) 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.

(8) An application for a certificate of need for a capital expenditure which is 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).

NEW SECTION. Sec. 9. There is added to chapter 70.38 RCW a new section 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 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.

Sec. 10. Section 12, chapter 161, Laws of 1979 ex. sess. 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, 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(~~(, and the insurance commissioner, in the case of a new health maintenance organization, shall not issue any certificate of registration,))~~) 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 (~~(or new health maintenance organization respectively)~~).

(5) Any person who ~~((offers or develops a new institutional health service without first being granted a certificate of need by the secretary of the department))~~ 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 ~~((offering or development))~~ 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.

NEW SECTION. Sec. 11. There is added to chapter 70.38 RCW a new section to read as follows:

The enactment of this chapter as amended shall not have the effect of terminating, or in any way modifying the validity of any certificate of need which shall already have been issued prior to the effective date of this 1980 act.

NEW SECTION. Sec. 12. If any provision of this 1980 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. 13. Section 7, chapter 161, Laws of 1979 ex. sess. and RCW 70.38.075 are each repealed.

NEW SECTION. Sec. 14. Sections 7, 8, and 10 of this 1980 act shall take effect January 1, 1981.

Passed the House March 3, 1980.

Passed the Senate February 29, 1980.

Approved by the Governor March 13, 1980.

Filed in Office of Secretary of State March 13, 1980.

CHAPTER 140

[Substitute House Bill No. 1630]

LIQUOR CONTROL LAWS—EXCLUSION OF ALCOHOL USED FOR MOTOR
VEHICLE FUEL