



May 8, 2023

Washington State Department of Commerce
ATTN: Amanda Hathaway, Rules Coordinator
1011 Plum Street SE
P.O. Box 42525
Olympia, WA 98504-2525

Delivered via email

RE: WSR 23-05-101; Clean Buildings Performance Standard Exemption Rulemaking

To Whom It May Concern:

On behalf of the Washington State Hospital Association (WSHA), we appreciate the opportunity to provide comments to the Department of Commerce (DOC) on the Clean Buildings Performance Standard exemption extension rule. WSHA represents all of the hospitals across Washington State, totaling more than 100 hospitals and health systems. Our hospital members range from large, statewide health care delivery systems to small, rural hospitals that are the only health care safety net serving remote communities.

We are uniquely interested in this rule given the significant undertaking our members are faced with as they work toward complying with the Clean Buildings law. We understand the importance of ensuring buildings across our state are as energy efficient as possible, but we would be remiss to not acknowledge the profound impact the COVID-19 pandemic had on hospitals, both operationally and financially. We appreciate the department's effort to address stakeholder concerns related to the exemption application process and look forward to ongoing engagement.

WSHA is supportive of the expanded submission window for exemption applications; however, we do have outstanding concerns and recommendations. These issues and subsequent recommendations primarily focus on the financial hardship exemption.

WSHA's recommendations, with full details to follow, to the DOC are summarized below:

- I. Consideration of a hospital building owner's ability to pay for needed improvements given the pandemic's aftermath and the need to continue to serve its community when making an exemption application determination.**
- II. Provide further guidance by June 1, 2023, to stakeholders outlining the criteria that will be used to meet the "immediate and heavy financial need which cannot be satisfied from other reasonable available resources, and which are caused by events that are beyond their control."¹**
- III. Building owners who apply for an exemption should receive a decision from the Department of Commerce within 60 days of application.**
- IV. Provide clarification about approved exemption requests that do not meet the criteria during the six month attestation period.**

¹ WAC 194-50-150 Z4.1(2)(i)(vi)

Department of Commerce should consider a hospital building owner’s ability to pay for needed improvements given the pandemic’s aftermath and the need to continue to serve its community when making an exemption application determination.

WSHA requests the DOC to consider a hospital’s ability or inability to pay for improvements required by the law. Hospitals and health systems (hospitals) are financed using a unique business model. A majority of Washington hospitals receive more than half of their revenue through government payment, such as through the Medicare and Medicaid programs, with below cost, fixed reimbursement rates. This means that hospitals have a limited ability to increase revenue. In addition, Washington hospitals had a \$2.1 billion loss from operations in 2022. Coupled together, some hospitals across the state will be faced with an inability to pay for needed changes to comply with the law. Therefore, it is critical that the Department consider a hospital’s operating losses and cash position when deciding financial hardship requests.

WSHA requests DOC issue guidance about the criteria to qualify for exemptions by June 1, 2023.

As currently written, Normative Annex Z4.1(2)(i)(vi)² is a vague and subjective standard. We understand that it is intended to serve as a broad catch-all for financial hardship scenarios beyond what is specified in regulation (i.e. foreclosure). However, it is necessary that the DOC provide guidance to stakeholders surrounding what criteria would qualify as an “immediate and heavy financial need” operating margin. The COVID-19 pandemic placed an extreme financial burden on hospitals, from which they have not yet fully recovered. Building owners operating with negative margins should also qualify for an exemption. These, and any other criteria the Department will be using, such as a hospital’s days of cash on hand position, should be made available to stakeholders in writing no later than June 1, 2023. In addition, the Department should provide at least one webinar on issued guidance.

Exemption applicants should receive a decision from the DOC within 60 days of application.

While WSHA is appreciative of the application period extension, it is essential that applicants receive notification of the DOC’s decision in a timely manner. Hospitals generally undergo years-long capital improvement approval processes. Unnecessary delays to notifying hospitals of a denied application would present further challenges in working toward compliance. In the event of an application denial, building owners must have as much time as possible to pursue compliance by investment criteria or meeting their energy use intensity target. The Department should provide notification to the building owner of the decision within 60 days of application.

Provide clarification about approved exemption requests that do not meet the criteria during the six-month attestation period.

It is unclear to stakeholders what the compliance timeline would look like for those granted an exemption initially, but that do not still meet the criteria for the exemption when they complete the attestation 6 months prior to the compliance date. A primary question we have is if building owners would be required to bring a facility into compliance within that 6 month period, or if there would be an alternative timeline? WSHA requests that DOC provide written guidance to stakeholders by June 1, 2023 outlining what building owners should anticipate, should their exemption qualification status change after an exemption is approved.

² “The building owner has an immediate and heavy financial need which cannot be satisfied from other reasonable available resources and which are caused by events that are beyond their control.”

Thank you for the opportunity to engage with the Department on this important exemption. Should you have additional questions on WSHA's recommendations, please contact Remy Kerr, WSHA Policy Director (RemyK@WSHA.org / 206.216.2514).

Sincerely,

A handwritten signature in black ink, appearing to read "Remy Kerr".

Remy Kerr, MPH
Policy Director, Government Affairs
Washington State Hospital Association

CC: Emily Salzburg