**For Immediate Release**

Contact

Mary Kay Clunies-Ross

VP Communications & Public Affairs

Washington State Hospital Association

206/216-2894

marykaycr@wsha.org

**WSHA asks Superior Court to invalidate new Certificate of Need rules**

*New rules go beyond authority of the law*

(**February 13, 2014**) On behalf of its 98 member hospitals, the Washington State Hospital Association filed a petition in Thurston County Superior Court to ask the court to invalidate recently adopted Certificate of Need rules. The hospital association’s lawsuit asserts that the new rules do not have a basis in the Certificate of Need law, as all agency rules are required to have.

The petition can be seen here: <http://www.wsha.org/files/65/Updated%20_Worst_Case_Impact_on_CAHs.pdf>

“State agencies can’t redefine what the law means after 20 years of interpreting the law the same way,” said WSHA President and CEO, Scott Bond. “We know the new rules go too far because the Department of Health has consistently said the law doesn’t apply to mergers or affiliations. Reversing that position now is arbitrary and is beyond the authority granted to the Department by the Certificate of Need law.”

For the last 20 years, the Department of Health has reviewed the sale, purchase, or lease of a hospital according to the plain language of the term, “sale, purchase or lease.” Once the review is completed, the state awards a Certificate of Need—essentially, a permit to add new services. Throughout that time, the department has said that it doesn’t have the authority to review other management changes, such as mergers and affiliations.

The department changed its rules as of January 23, and will now review any kind of “change of control” in “any part” of a hospital.

The rule change means that even relatively small business decisions would have to go through an extensive and expensive review—even if they don’t affect patient care or the amount of health services in an area. For example, a hospital’s decision to outsource billing services or share a Human Resources department with another hospital may be subject to Certificate of Need review. Other types of transactions that may be caught in the expanded CON net include bringing in a specialty oncology provider to manage cancer care, or pediatric specialists to manage a Neonatal Intensive Care Unit.

The Certificate of Need program is essentially a permitting process. Add the fact that each application requires a $40,000 filing fee and typically takes months or years to complete, and the process becomes unmanageable for hospitals.

“Hospitals are working to improve services and be more efficient, and some hospitals are forming partnerships to improve the care they provide. For some hospitals, if they can’t meet those challenges with partnerships, cutting services is often the next alternative. Expanding review for Certificate of Need does nothing to increase or preserve health services, and the far more likely result will be a hospital closing or reducing services.”

The hospital association’s lawsuit argues that it was beyond the Department’s authority to rewrite Certificate of Need law, and was arbitrary and capricious of the state to change the long-standing interpretation and application of that law—in other words, the department is not following the law. Only the legislature can change the law.

“This is an important question that needs a court’s determination, but we’ll continue our work with our members, the Governor’s office, and state agencies on our shared goals of access to high-quality health care for all residents,” Bond said.

The lawsuit does not challenge the licensing requirement changes related to the posting of hospital policies, and WSHA is working with members to meet this requirement.

A FAQ page, including all the relevant documents, is here: [www.wsha.org/certificateofneed.cfm](http://www.wsha.org/certificateofneed.cfm).

**A telephone conference call to answer any follow up questions will be held at 2 p.m.**

**Conference call: 1-800-747-5150**

**Access code = 2162539**