

**A-Engrossed**  
**House Bill 3269**

Ordered by the House May 4  
Including House Amendments dated May 4

Sponsored by Representative GREENLICK (at the request of Oregon Association of Hospitals and Health Systems)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires inspection by Department of Human Services of ambulatory surgical centers. **Provides that department, in lieu of its own inspection, may accept results of inspection conducted by accreditation organization approved by department.** Specifies procedures that may **not** be performed [*and imposes licensing requirements on*] by centers.

**Requires ambulatory surgical center to evaluate patient's risk factors before permitting surgical procedure.**

Requires physician **or dentist** referring patient for procedure at ambulatory surgical center to disclose financial interest and **requires physician to** obtain informed consent.

Increases annual license fee for ambulatory surgical centers.

**A BILL FOR AN ACT**

1  
2 Relating to outpatient health care facilities; creating new provisions; and amending ORS 441.020,  
3 442.015 and 677.097.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 to 7 of this 2007 Act are added to and made a part of ORS chapter**  
6 **441.**

7 **SECTION 2. The Department of Human Services shall conduct an inspection of an**  
8 **ambulatory surgical center prior to licensure and at least every three years thereafter. In**  
9 **lieu of its own inspection, the department may accept the results of an inspection conducted**  
10 **by the Joint Commission on Accreditation of Healthcare Organizations, the Accreditation**  
11 **Association for Ambulatory Health Care or similar accreditation organization approved by**  
12 **the department.**

13 **SECTION 3. In addition to any other facility construction and design requirements or**  
14 **licensing requirements provided by law, an ambulatory surgical center must have redundant**  
15 **systems as required by the Joint Commission on Accreditation of Healthcare Organizations,**  
16 **the Accreditation Association for Ambulatory Health Care or a similar accreditation organ-**  
17 **ization approved by the Department of Human Services.**

18 **SECTION 4. (1) An ambulatory surgical center may not perform surgical procedures for**  
19 **which the patient typically would be expected to remain at the facility after midnight on the**  
20 **date of the procedure and may not perform procedures that:**

21 (a) Generally result in extensive blood loss;

22 (b) Require major or prolonged invasion of body cavities;

23 (c) Directly involve major blood vessels; or

24 (d) Are emergent or life threatening in nature, unless no hospital is available for the

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 procedure and the need for surgery could not have been anticipated.

2 (2) This section does not prevent any health care facility from providing medical services  
3 to patients at any time of the day or night while conducting sleep apnea and other sleep  
4 disorder studies.

5 **SECTION 5.** An ambulatory surgical center must evaluate all of a patient's risk factors  
6 before permitting a surgical procedure to be performed on the patient in the facility. During  
7 the evaluation of risk factors, an ambulatory surgical center may not consider whether the  
8 patient has coverage by a third party, health insurance, Medicaid or Medicare.

9 **SECTION 6.** (1) If a physician, podiatric physician and surgeon or dentist refers a patient  
10 for treatment at an ambulatory surgical center in which the physician, podiatric physician  
11 and surgeon or dentist, or an immediate family member of the physician, podiatric physician  
12 and surgeon or dentist, has a financial interest, the physician, podiatric physician and sur-  
13 geon or dentist shall notify the patient orally and in writing of that financial interest at the  
14 time of the referral.

15 (2) For purposes of this section, "financial interest" means a direct ownership or in-  
16 vestment interest.

17 **SECTION 7.** An ambulatory surgical center shall post a notice in the facility, in a prom-  
18 inent place and in prominent font size, advising patients of how patients may express con-  
19 cerns regarding the ambulatory surgical center and services provided at the ambulatory  
20 surgical center. The posting shall include but need not be limited to the address and tele-  
21 phone number for contacting the Department of Human Services to express the concerns.

22 **SECTION 8.** ORS 677.097 is amended to read:

23 677.097. (1) In order to obtain the informed consent of a patient, a physician or podiatric phy-  
24 sician and surgeon shall explain the following:

- 25 (a) In general terms the procedure or treatment to be undertaken;
- 26 (b) That there may be alternative procedures or methods of treatment, if any; and
- 27 (c) That there are risks, if any, to the procedure or treatment.

28 (2) After giving the explanation specified in subsection (1) of this section, the physician or  
29 podiatric physician and surgeon shall ask the patient if the patient wants a more detailed explana-  
30 tion. If the patient requests further explanation, the physician or podiatric physician and surgeon  
31 shall disclose in substantial detail the procedure, the viable alternatives and the material risks un-  
32 less to do so would be materially detrimental to the patient. In determining that further explanation  
33 would be materially detrimental the physician or podiatric physician and surgeon shall give due  
34 consideration to the standards of practice of reasonable medical or podiatric practitioners in the  
35 same or a similar community under the same or similar circumstances.

36 (3) In addition to the other requirements of this section, if the physician or podiatric  
37 physician and surgeon must obtain informed consent for treatment that will take place in  
38 an ambulatory surgical center, the admitting licensed independent practitioner performing  
39 the procedure also shall disclose:

- 40 (a) The medical risks, benefits and alternatives associated with performing the procedure  
41 in the ambulatory surgical center or in a hospital; and
- 42 (b) How care will be provided in the event that complications occur that require health  
43 care services beyond what the ambulatory surgical center can provide.

44 **SECTION 9.** ORS 442.015 is amended to read:

45 442.015. As used in ORS chapter 441 and this chapter, unless the context requires otherwise:

1 (1) "Acquire" or "acquisition" means obtaining equipment, supplies, components or facilities by  
2 any means, including purchase, capital or operating lease, rental or donation, with intention of using  
3 such equipment, supplies, components or facilities to provide health services in Oregon. When  
4 equipment or other materials are obtained outside of this state, acquisition is considered to occur  
5 when the equipment or other materials begin to be used in Oregon for the provision of health ser-  
6 vices or when such services are offered for use in Oregon.

7 (2) "Adjusted admission" means the sum of all inpatient admissions divided by the ratio of in-  
8 patient revenues to total patient revenues.

9 (3) "Affected persons" has the same meaning as given to "party" in ORS 183.310.

10 (4) "Ambulatory surgical center" means a [*facility that performs outpatient surgery not routinely*  
11 *or customarily performed in a physician's or dentist's office, and is able to meet health facility licensure*  
12 *requirements*] **facility or portion of a facility that provides specialty or multispecialty outpa-**  
13 **tient surgical treatment, maxillofacial trauma services and orthognathic**  
14 **surgery. "Ambulatory surgical center" does not include individual or group practice offices**  
15 **of private physicians or dentists, unless the offices contain a distinct area used for outpa-**  
16 **tient surgical treatment on a regular and organized basis. For the purposes of this sub-**  
17 **section, "outpatient surgical treatment" means treatment of patients who typically do not**  
18 **require hospitalization, but who require continuous medical supervision following the surgi-**  
19 **cal procedure performed and prior to discharge from the facility.**

20 (5) "Audited actual experience" means data contained within financial statements examined by  
21 an independent, certified public accountant in accordance with generally accepted auditing stan-  
22 dards.

23 (6) "Budget" means the projections by the hospital for a specified future time period of expen-  
24 ditures and revenues with supporting statistical indicators.

25 (7) "Case mix" means a calculated index for each hospital, based on financial accounting and  
26 case mix data collection as set forth in ORS 442.425, reflecting the relative costliness of that hos-  
27 pital's mix of cases compared to a state or national mix of cases.

28 (8) "Commission" means the Oregon Health Policy Commission.

29 (9) "Department" means the Department of Human Services of the State of Oregon.

30 (10) "Develop" means to undertake those activities that on their completion will result in the  
31 offer of a new institutional health service or the incurring of a financial obligation, as defined under  
32 applicable state law, in relation to the offering of such a health service.

33 (11) "Director" means the Director of Human Services.

34 (12) "Expenditure" or "capital expenditure" means the actual expenditure, an obligation to an  
35 expenditure, lease or similar arrangement in lieu of an expenditure, and the reasonable value of a  
36 donation or grant in lieu of an expenditure but not including any interest thereon.

37 (13) "Freestanding birthing center" means a facility licensed for the primary purpose of per-  
38 forming low risk deliveries.

39 (14) "Governmental unit" means the state, or any county, municipality or other political subdi-  
40 vision, or any related department, division, board or other agency.

41 (15) "Gross revenue" means the sum of daily hospital service charges, ambulatory service  
42 charges, ancillary service charges and other operating revenue. "Gross revenue" does not include  
43 contributions, donations, legacies or bequests made to a hospital without restriction by the donors.

44 (16)(a) "Health care facility" means a hospital, a long term care facility, an ambulatory surgical  
45 center, a freestanding birthing center or an outpatient renal dialysis facility.

1 (b) "Health care facility" does not mean:

2 (A) An establishment furnishing residential care or treatment not meeting federal intermediate  
3 care standards, not following a primarily medical model of treatment, prohibited from admitting  
4 persons requiring 24-hour nursing care and licensed or approved under the rules of the Department  
5 of Human Services or the Department of Corrections; or

6 (B) An establishment furnishing primarily domiciliary care.

7 (17) "Health maintenance organization" or "HMO" means a public organization or a private  
8 organization organized under the laws of any state that:

9 (a) Is a qualified HMO under section 1310 (d) of the U.S. Public Health Services Act; or

10 (b)(A) Provides or otherwise makes available to enrolled participants health care services, in-  
11 cluding at least the following basic health care services:

12 (i) Usual physician services;

13 (ii) Hospitalization;

14 (iii) Laboratory;

15 (iv) X-ray;

16 (v) Emergency and preventive services; and

17 (vi) Out-of-area coverage;

18 (B) Is compensated, except for copayments, for the provision of the basic health care services  
19 listed in subparagraph (A) of this paragraph to enrolled participants on a predetermined periodic  
20 rate basis; and

21 (C) Provides physicians' services primarily directly through physicians who are either employees  
22 or partners of such organization, or through arrangements with individual physicians or one or more  
23 groups of physicians organized on a group practice or individual practice basis.

24 (18) "Health services" means clinically related diagnostic, treatment or rehabilitative services,  
25 and includes alcohol, drug or controlled substance abuse and mental health services that may be  
26 provided either directly or indirectly on an inpatient or ambulatory patient basis.

27 (19) "Hospital" means a facility with an organized medical staff, with permanent facilities that  
28 include inpatient beds and with medical services, including physician services and continuous nurs-  
29 ing services under the supervision of registered nurses, to provide diagnosis and medical or surgical  
30 treatment primarily for but not limited to acutely ill patients and accident victims, to provide  
31 treatment for the mentally ill or to provide treatment in special inpatient care facilities.

32 (20) "Institutional health services" means health services provided in or through health care  
33 facilities and includes the entities in or through which such services are provided.

34 (21) "Intermediate care facility" means a facility that provides, on a regular basis, health-related  
35 care and services to individuals who do not require the degree of care and treatment that a hospital  
36 or skilled nursing facility is designed to provide, but who because of their mental or physical con-  
37 dition require care and services above the level of room and board that can be made available to  
38 them only through institutional facilities.

39 (22) "Long term care facility" means a facility with permanent facilities that include inpatient  
40 beds, providing medical services, including nursing services but excluding surgical procedures ex-  
41 cept as may be permitted by the rules of the director, to provide treatment for two or more unre-  
42 lated patients. "Long term care facility" includes skilled nursing facilities and intermediate care  
43 facilities but may not be construed to include facilities licensed and operated pursuant to ORS  
44 443.400 to 443.455.

45 (23) "Major medical equipment" means medical equipment that is used to provide medical and

1 other health services and that costs more than \$1 million. "Major medical equipment" does not in-  
2 clude medical equipment acquired by or on behalf of a clinical laboratory to provide clinical labo-  
3 ratory services, if the clinical laboratory is independent of a physician's office and a hospital and  
4 has been determined under Title XVIII of the Social Security Act to meet the requirements of par-  
5 agraphs (10) and (11) of section 1861(s) of that Act.

6 (24) "Net revenue" means gross revenue minus deductions from revenue.

7 (25) "New hospital" means a facility that did not offer hospital services on a regular basis within  
8 its service area within the prior 12-month period and is initiating or proposing to initiate such ser-  
9 vices. "New hospital" also includes any replacement of an existing hospital that involves a sub-  
10 stantial increase or change in the services offered.

11 (26) "New skilled nursing or intermediate care service or facility" means a service or facility  
12 that did not offer long term care services on a regular basis by or through the facility within the  
13 prior 12-month period and is initiating or proposing to initiate such services. "New skilled nursing  
14 or intermediate care service or facility" also includes the rebuilding of a long term care facility, the  
15 relocation of buildings that are a part of a long term care facility, the relocation of long term care  
16 beds from one facility to another or an increase in the number of beds of more than 10 or 10 percent  
17 of the bed capacity, whichever is the lesser, within a two-year period.

18 (27) "Offer" means that the health care facility holds itself out as capable of providing, or as  
19 having the means for the provision of, specified health services.

20 (28) "Operating expenses" means the sum of daily hospital service expenses, ambulatory service  
21 expenses, ancillary expenses and other operating expenses, excluding income taxes.

22 (29) "Outpatient renal dialysis facility" means a facility that provides renal dialysis services  
23 directly to outpatients.

24 (30) "Person" means an individual, a trust or estate, a partnership, a corporation (including as-  
25 sociations, joint stock companies and insurance companies), a state, or a political subdivision or  
26 instrumentality, including a municipal corporation, of a state.

27 (31) "Skilled nursing facility" means a facility or a distinct part of a facility, that is primarily  
28 engaged in providing to inpatients skilled nursing care and related services for patients who require  
29 medical or nursing care, or an institution that provides rehabilitation services for the rehabilitation  
30 of injured, disabled or sick persons.

31 (32) "Special inpatient care facility" means a facility with permanent inpatient beds and other  
32 facilities designed and utilized for special health care purposes, including but not limited to a re-  
33 habilitation center, a college infirmary, a chiropractic facility, a facility for the treatment of  
34 alcoholism or drug abuse, an inpatient care facility meeting the requirements of ORS 441.065, and  
35 any other establishment falling within a classification established by the Department of Human  
36 Services, after determination of the need for such classification and the level and kind of health care  
37 appropriate for such classification.

38 (33) "Total deductions from gross revenue" or "deductions from revenue" means reductions from  
39 gross revenue resulting from inability to collect payment of charges. Such reductions include bad  
40 debts, contractual adjustments, uncompensated care, administrative, courtesy and policy discounts  
41 and adjustments and other such revenue deductions. The deduction shall be net of the offset of re-  
42 stricted donations and grants for indigent care.

43 **SECTION 10.** ORS 441.020 is amended to read:

44 441.020. (1) Licenses for health care facilities including long term care facilities, as defined in  
45 ORS 442.015, shall be obtained from the Department of Human Services.

1 (2) Applications shall be upon such forms and shall contain such information as the department  
2 may reasonably require, which may include affirmative evidence of ability to comply with such  
3 reasonable standards and rules as may lawfully be prescribed under ORS 441.055.

4 (3) Each application shall be accompanied by the license fee. If the license is denied, the fee  
5 shall be refunded to the applicant. If the license is issued, the fee shall be paid into the State  
6 Treasury to the credit of the Department of Human Services Account for carrying out the functions  
7 under ORS 441.015 to 441.063 and 431.607 to 431.619.

8 (4) Except as otherwise provided in subsection (5) of this section, for hospitals with:

9 (a) Fewer than 26 beds, the annual license fee shall be \$750.

10 (b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,000.

11 (c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be \$1,900.

12 (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.

13 (e) Two hundred or more beds, the annual license fee shall be \$3,400.

14 (5) For long term care facilities with:

15 (a) Fewer than 16 beds, the annual license fee shall be up to \$120.

16 (b) Sixteen beds or more but fewer than 50 beds, the annual license fee shall be up to \$175.

17 (c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be up to \$350.

18 (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be up to  
19 \$450.

20 (e) Two hundred beds or more, the annual license fee shall be up to \$580.

21 (6) For special inpatient care facilities with:

22 (a) Fewer than 26 beds, the annual license fee shall be \$750.

23 (b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,000.

24 (c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be \$1,900.

25 (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.

26 (e) Two hundred beds or more, the annual license fee shall be \$3,400.

27 (7) For ambulatory surgical centers, the annual license fee shall be [~~\$1,000~~] **\$1,400**.

28 (8) For birthing centers, the annual license fee shall be \$250.

29 (9) For outpatient renal dialysis facilities, the annual license fee shall be \$1,500.

30 (10) During the time the licenses remain in force holders thereof are not required to pay in-  
31 spection fees to any county, city or other municipality.

32 (11) Any health care facility license may be indorsed to permit operation at more than one lo-  
33 cation. In such case the applicable license fee shall be the sum of the license fees which would be  
34 applicable if each location were separately licensed.

35 (12) Licenses for health maintenance organizations shall be obtained from the Director of the  
36 Department of Consumer and Business Services pursuant to ORS 731.072.

37