

House Bill 3269

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 **as introduced**.

Requires inspection by Department of Human Services of ambulatory surgical centers. Specifies procedures that may be performed and imposes licensing requirements on centers.

Requires physician referring patient for procedure at ambulatory surgical center to disclose financial interest and 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 1 to 5 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.**

9 **SECTION 3. In addition to any other facility construction and design requirements or**
10 **licensing requirements provided by law, an ambulatory surgical center must have redundant**
11 **systems to maintain ventilation, heating, water and sanitation at all times.**

12 **SECTION 4. (1) Ambulatory surgical centers may perform procedures that do not exceed:**

13 **(a) A total of 90 minutes of operating time.**

14 **(b) A total of four hours of recovery time.**

15 **(2) The time limits in subsection (1)(a) of this section may be exceeded only if the pa-**
16 **tient's condition demands care or recovery beyond the four-hour limit and the need for the**
17 **additional time could not have been anticipated prior to surgery.**

18 **(3) If the surgical procedures require anesthesia, the anesthesia shall be one of the fol-**
19 **lowing:**

20 **(a) Local or regional anesthesia.**

21 **(b) General anesthesia of 90 minutes' duration or less.**

22 **(4) Surgical procedures performed at an ambulatory surgical center may not be of a type**
23 **that:**

24 **(a) Is associated with the risk of extensive blood loss.**

25 **(b) Requires major or prolonged invasion of body cavities.**

26 **(c) Directly involves major blood vessels.**

27 **(d) Is emergency or life-threatening in nature, unless no hospital is available for the**
28 **procedure and the need for the surgery could not have been anticipated.**

29 **SECTION 5. In order to qualify for a new or renewal license under this chapter, an**
30 **ambulatory surgical center must:**

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 (1) **Have at least one participating provider agreement with a fully capitated health plan**
2 **providing services to individuals enrolled in the Oregon Health Plan;**

3 (2) **Accept as patients individuals covered by Medicaid on a fee-for-service basis; and**

4 (3) **Be accredited by the Joint Commission on Accreditation of Healthcare Organizations**
5 **or a similar national accrediting agency for ambulatory surgical centers approved by the**
6 **department.**

7 **SECTION 6.** Section 7 of this 2007 Act is added to and made a part of ORS chapter 677.

8 **SECTION 7.** (1) **If a physician or podiatric physician and surgeon refers a patient for**
9 **treatment at an ambulatory surgical center in which the physician or podiatric physician and**
10 **surgeon or an immediate family member of the physician or podiatric physician and surgeon**
11 **has a financial interest, the physician or podiatric physician and surgeon shall notify the**
12 **patient orally and in writing of the nature and extent of that interest at least 24 hours prior**
13 **to the treatment.**

14 (2) **For purposes of this section, “financial interest” means a direct ownership or in-**
15 **vestment interest.**

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

17 677.097. (1) **In order to obtain the informed consent of a patient, a physician or podiatric phy-**
18 **sician and surgeon shall explain the following:**

19 (a) **In general terms the procedure or treatment to be undertaken;**

20 (b) **That there may be alternative procedures or methods of treatment, if any; and**

21 (c) **That there are risks, if any, to the procedure or treatment.**

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

30 (3) **In addition to the other requirements of this section, if the physician or podiatric**
31 **physician and surgeon is obtaining informed consent for treatment that will take place in**
32 **an ambulatory surgical center, the practitioner shall also disclose:**

33 (a) **The comparative medical risks, benefits and alternatives associated with performing**
34 **the procedure in the ambulatory surgical center instead of in a hospital; and**

35 (b) **How care will be provided in the event that complications occur that require health**
36 **care services beyond what the ambulatory surgical center can provide.**

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

38 442.015. **As used in ORS chapter 441 and this chapter, unless the context requires otherwise:**

39 (1) **“Acquire” or “acquisition” means obtaining equipment, supplies, components or facilities by**
40 **any means, including purchase, capital or operating lease, rental or donation, with intention of using**
41 **such equipment, supplies, components or facilities to provide health services in Oregon. When**
42 **equipment or other materials are obtained outside of this state, acquisition is considered to occur**
43 **when the equipment or other materials begin to be used in Oregon for the provision of health ser-**
44 **vices or when such services are offered for use in Oregon.**

45 (2) **“Adjusted admission” means the sum of all inpatient admissions divided by the ratio of in-**

1 patient revenues to total patient revenues.

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

3 (4) "Ambulatory surgical center" means a [*facility that performs outpatient surgery not routinely*
 4 *or customarily performed in a physician's or dentist's office, and is able to meet health facility licensure*
 5 *requirements*] **facility or portion of a facility that provides specialty or multispecialty outpa-**
 6 **tient surgical treatment. "Ambulatory surgical center" does not include individual or group**
 7 **practice offices of private physicians or dentists, unless the offices contain a distinct area**
 8 **used solely for outpatient surgical treatment on a regular and organized basis. For the pur-**
 9 **poses of this subsection, "outpatient surgical treatment" means treatment of patients who**
 10 **do not require hospitalization, but who require medical supervision following the surgical**
 11 **procedure performed.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (B) An establishment furnishing primarily domiciliary care.

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

- 1 (a) Is a qualified HMO under section 1310 (d) of the U.S. Public Health Services Act; or
2 (b)(A) Provides or otherwise makes available to enrolled participants health care services, in-
3 cluding at least the following basic health care services:
4 (i) Usual physician services;
5 (ii) Hospitalization;
6 (iii) Laboratory;
7 (iv) X-ray;
8 (v) Emergency and preventive services; and
9 (vi) Out-of-area coverage;
10 (B) Is compensated, except for copayments, for the provision of the basic health care services
11 listed in subparagraph (A) of this paragraph to enrolled participants on a predetermined periodic
12 rate basis; and
13 (C) Provides physicians' services primarily directly through physicians who are either employees
14 or partners of such organization, or through arrangements with individual physicians or one or more
15 groups of physicians organized on a group practice or individual practice basis.
16 (18) "Health services" means clinically related diagnostic, treatment or rehabilitative services,
17 and includes alcohol, drug or controlled substance abuse and mental health services that may be
18 provided either directly or indirectly on an inpatient or ambulatory patient basis.
19 (19) "Hospital" means a facility with an organized medical staff, with permanent facilities that
20 include inpatient beds and with medical services, including physician services and continuous nurs-
21 ing services under the supervision of registered nurses, to provide diagnosis and medical or surgical
22 treatment primarily for but not limited to acutely ill patients and accident victims, to provide
23 treatment for the mentally ill or to provide treatment in special inpatient care facilities.
24 (20) "Institutional health services" means health services provided in or through health care
25 facilities and includes the entities in or through which such services are provided.
26 (21) "Intermediate care facility" means a facility that provides, on a regular basis, health-related
27 care and services to individuals who do not require the degree of care and treatment that a hospital
28 or skilled nursing facility is designed to provide, but who because of their mental or physical con-
29 dition require care and services above the level of room and board that can be made available to
30 them only through institutional facilities.
31 (22) "Long term care facility" means a facility with permanent facilities that include inpatient
32 beds, providing medical services, including nursing services but excluding surgical procedures ex-
33 cept as may be permitted by the rules of the director, to provide treatment for two or more unre-
34 lated patients. "Long term care facility" includes skilled nursing facilities and intermediate care
35 facilities but may not be construed to include facilities licensed and operated pursuant to ORS
36 443.400 to 443.455.
37 (23) "Major medical equipment" means medical equipment that is used to provide medical and
38 other health services and that costs more than \$1 million. "Major medical equipment" does not in-
39 clude medical equipment acquired by or on behalf of a clinical laboratory to provide clinical labo-
40 ratory services, if the clinical laboratory is independent of a physician's office and a hospital and
41 has been determined under Title XVIII of the Social Security Act to meet the requirements of par-
42 agraphs (10) and (11) of section 1861(s) of that Act.
43 (24) "Net revenue" means gross revenue minus deductions from revenue.
44 (25) "New hospital" means a facility that did not offer hospital services on a regular basis within
45 its service area within the prior 12-month period and is initiating or proposing to initiate such ser-

1 vices. “New hospital” also includes any replacement of an existing hospital that involves a sub-
 2 stantial increase or change in the services offered.

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

10 (27) “Offer” means that the health care facility holds itself out as capable of providing, or as
 11 having the means for the provision of, specified health services.

12 (28) “Operating expenses” means the sum of daily hospital service expenses, ambulatory service
 13 expenses, ancillary expenses and other operating expenses, excluding income taxes.

14 (29) “Outpatient renal dialysis facility” means a facility that provides renal dialysis services
 15 directly to outpatients.

16 (30) “Person” means an individual, a trust or estate, a partnership, a corporation (including as-
 17 sociations, joint stock companies and insurance companies), a state, or a political subdivision or
 18 instrumentality, including a municipal corporation, of a state.

19 (31) “Skilled nursing facility” means a facility or a distinct part of a facility, that is primarily
 20 engaged in providing to inpatients skilled nursing care and related services for patients who require
 21 medical or nursing care, or an institution that provides rehabilitation services for the rehabilitation
 22 of injured, disabled or sick persons.

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

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

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

36 441.020. (1) Licenses for health care facilities including long term care facilities, as defined in
 37 ORS 442.015, shall be obtained from the Department of Human Services.

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

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

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

- 1 (a) Fewer than 26 beds, the annual license fee shall be \$750.
2 (b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,000.
3 (c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be \$1,900.
4 (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.
5 (e) Two hundred or more beds, the annual license fee shall be \$3,400.
6 (5) For long term care facilities with:
7 (a) Fewer than 16 beds, the annual license fee shall be up to \$120.
8 (b) Sixteen beds or more but fewer than 50 beds, the annual license fee shall be up to \$175.
9 (c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be up to \$350.
10 (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be up to
11 \$450.
12 (e) Two hundred beds or more, the annual license fee shall be up to \$580.
13 (6) For special inpatient care facilities with:
14 (a) Fewer than 26 beds, the annual license fee shall be \$750.
15 (b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,000.
16 (c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be \$1,900.
17 (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.
18 (e) Two hundred beds or more, the annual license fee shall be \$3,400.
19 (7) For ambulatory surgical centers, the annual license fee shall be [~~\$1,000~~] **\$2,000**.
20 (8) For birthing centers, the annual license fee shall be \$250.
21 (9) For outpatient renal dialysis facilities, the annual license fee shall be \$1,500.
22 (10) During the time the licenses remain in force holders thereof are not required to pay in-
23 spection fees to any county, city or other municipality.
24 (11) Any health care facility license may be indorsed to permit operation at more than one lo-
25 cation. In such case the applicable license fee shall be the sum of the license fees which would be
26 applicable if each location were separately licensed.
27 (12) Licenses for health maintenance organizations shall be obtained from the Director of the
28 Department of Consumer and Business Services pursuant to ORS 731.072.
29