

# Senate Bill 948

Sponsored by Senator MONNES ANDERSON; Senators MORRISETTE, WESTLUND, Representatives BARKER, BARNHART, CLEM, COWAN, D EDWARDS, GALIZIO, HOLVEY, KOTEK, READ, RILEY, ROSENBAUM, TOMEI, WITT

## 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**.

Revises certificate of need process.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to certificates of need; creating new provisions; amending ORS 442.315, 442.325 and 442.347;  
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 442.315 is amended to read:

6 442.315. *[(1) Any new hospital or new skilled nursing or intermediate care service or facility not*  
7 *excluded pursuant to ORS 441.065 shall obtain a certificate of need from the Department of Human*  
8 *Services prior to an offering or development.]*

9 *[(2) The department shall adopt rules specifying criteria and procedures for making decisions as*  
10 *to the need for the new services or facilities.]*

11 *[(3)(a) An applicant for a certificate of need shall apply to the department on forms provided for*  
12 *this purpose by department rule.]*

13 *[(b) An applicant shall pay a fee prescribed as provided in this section. Subject to the approval of*  
14 *the Oregon Department of Administrative Services, the Department of Human Services shall prescribe*  
15 *application fees, based on the complexity and scope of the proposed project.]*

16 *[(4) The Department of Human Services shall be the decision-making authority for the purpose of*  
17 *certificates of need.]*

18 *[(5)(a) An applicant or any affected person who is dissatisfied with the proposed decision of the*  
19 *department is entitled to an informal hearing in the course of review and before a final decision is*  
20 *rendered.]*

21 *[(b) Following a final decision being rendered by the department, an applicant or any affected*  
22 *person may request a reconsideration hearing pursuant to ORS chapter 183.]*

23 *[(c) In any proceeding brought by an affected person or an applicant challenging a department*  
24 *decision under this subsection, the department shall follow procedures consistent with the provisions*  
25 *of ORS chapter 183 relating to a contested case.]*

26 *[(6) Once a certificate of need has been issued, it may not be revoked or rescinded unless it was*  
27 *acquired by fraud or deceit. However, if the department finds that a person is offering or developing*  
28 *a project that is not within the scope of the certificate of need, the department may limit the project as*  
29 *specified in the issued certificate of need or reconsider the application. A certificate of need is not*  
30 *transferable.]*

**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) A person may not offer, develop or participate in any of the following projects without**  
2 **first obtaining a certificate of need from the Director of Human Services:**

3       **(a) Construction, development, acquisition or establishment of a new hospital;**

4       **(b) Construction, development, acquisition or establishment of a medical office building**  
5 **or other facility providing health services as a phase in the development of a medical facility**  
6 **that is projected to include a hospital;**

7       **(c) Relocation of a hospital to a nonadjacent site;**

8       **(d) Increasing or decreasing hospital bed capacity;**

9       **(e) Changing the type or scope of health services provided at a hospital; or**

10       **(f) Making a capital expenditure in excess of \$1 million for the purpose of any of the ac-**  
11 **tivities described in paragraphs (a) to (e) of this subsection.**

12       **(2) The Department of Human Services shall adopt rules implementing this section, ORS**  
13 **442.325 and 442.342 and sections 2 and 5 of this 2007 Act.**

14       **(3)(a) The director shall:**

15       **(A) Designate health care planning areas that approximate health care service delivery**  
16 **areas;**

17       **(B) Conduct health care needs assessments in each area;**

18       **(C) Establish guidelines for local planning processes; and**

19       **(D) Collaborate with local health care planning commissions and advisory committees to**  
20 **develop plans for ensuring access to health services while avoiding unnecessary and costly**  
21 **duplication of services in each health care planning area.**

22       **(b) Municipalities shall be responsible for appointing representatives of employers and**  
23 **workers that pay for health care coverage, and other consumers, to the health care planning**  
24 **commissions described in this subsection.**

25       **(c) The department shall appoint representatives of health care providers, insurers, ad-**  
26 **vocates for health care consumers and others with expertise on the delivery of health ser-**  
27 **vices to the advisory committees described in this subsection.**

28       **(4)(a) An applicant for a certificate of need shall apply to the department on forms pro-**  
29 **vided for this purpose by department rule.**

30       **(b) An applicant shall pay a fee prescribed as provided in this section. Subject to the ap-**  
31 **proval of the Oregon Department of Administrative Services, the Department of Human**  
32 **Services shall prescribe application fees based on the complexity and scope of the proposed**  
33 **project and the anticipated length of the public hearing described in subsection (5) of this**  
34 **section. The fee assessed may not exceed the costs incurred by the Department of Human**  
35 **Services to support the staffing level and expenses required to administer the certificate of**  
36 **need program.**

37       **(c) The department shall make available for public inspection an application made under**  
38 **this subsection.**

39       **(5)(a) The director shall be the decision-making authority on applications for certificates**  
40 **of need.**

41       **(b) To inform the fact-finding process, the director shall actively solicit input from pur-**  
42 **chasers and consumers of health care, conduct interviews with representatives of key**  
43 **constituencies and use a community meeting process.**

44       **(c) The director shall conduct a public hearing after the director has given adequate**  
45 **written notice of the hearing to the applicant and to persons requesting notice under sub-**

1 section (11) of this section, and after the director has given public notice in accordance with  
2 ORS 192.640 to interested persons.

3 (6)(a) Within 90 days of the department's receipt of a completed application for a certif-  
4 icate of need, the director shall conduct the public hearing described in subsection (5) of this  
5 section and shall issue an order granting or denying the application for a certificate of need.  
6 The order shall contain specific findings of fact and conclusions of law regarding the need  
7 for the proposed project based upon the criteria in subsection (7) of this section. The director  
8 shall consider information provided by the health care planning commissions and advisory  
9 committees described in subsection (3) of this section, and information obtained from pur-  
10 chasers and consumers and in the public hearing described in subsection (5) of this section.

11 (b) The director shall serve the order on the applicant and mail copies of the order to  
12 any person who has requested a copy of the order.

13 (c) Within 60 days of service of the director's final order, an applicant or any interested  
14 person may request a contested case hearing, which shall be conducted in accordance with  
15 ORS chapter 183.

16 (7) The order of the director under subsection (6) of this section shall be based on the  
17 following criteria:

18 (a) A documented analysis of need for the health services or facility proposed in the ap-  
19 plication using population-based, quantifiable need methodologies and the extent to which the  
20 proposed project will be accessible to the population, including the medically underserved;

21 (b) Financial feasibility, including an evaluation of the reasonableness of proposed  
22 changes regarding patient care and a determination as to whether the expense and revenue  
23 projections demonstrate fiscal viability for the proposed project;

24 (c) The relationship of the proposed project to the applicant's long-range development  
25 plans;

26 (d) The impact on the applicant's rates;

27 (e) The impact on the interests of patients, including:

28 (A) Access to services;

29 (B) Quality of services;

30 (C) Effect of travel on a patient's health condition or outcome if the proposed health  
31 services, beds or equipment are not available in the area served or to be served;

32 (D) Cost of health services to the patient, including consideration of travel costs; and

33 (E) Efficacy of performing a greater number of procedures;

34 (f) The impact on public and private payers for the services;

35 (g) The contribution of the proposed health services or facility to the quality, accessibility  
36 and cost-effectiveness of health care in the area served;

37 (h) The sufficiency of rates to be charged;

38 (i) Changes in the applicant's current utilization rates;

39 (j) Teaching and research responsibilities of the applicant;

40 (k) The efforts of the applicant in improving productivity and containing costs;

41 (L) Policies for patient admission or acceptance and the provision of charity care by the  
42 applicant;

43 (m) The inclusion or provision of health services for which there is a shortage in the area  
44 served, including, but not limited to, inpatient psychiatric services;

45 (n) The documentation of existing or proposed mechanisms for soliciting consumer input

1 **in the applicant's decision-making process;**

2 **(o) For a construction project, a documented analysis of the cost and methods of the**  
 3 **proposed project, including provisions for energy conservation and the probable impact of the**  
 4 **proposed project on the applicant's cost of providing health services;**

5 **(p) The availability of adequate, less costly alternatives to or more effective methods of**  
 6 **meeting the identified health service needs in the area served;**

7 **(q) The availability of qualified personnel to support the proposed project;**

8 **(r) The information specified in ORS 442.584; and**

9 **(s) Other factors deemed relevant by the director.**

10 [(7)] **(8)** Nothing in this section applies to any hospital[, *skilled nursing or intermediate care*  
 11 *service or facility*] that seeks to replace equipment with equipment of similar basic technological  
 12 function or an upgrade that improves the quality or cost-effectiveness of the service provided. Any  
 13 person acquiring [*such*] a replacement or upgrade shall file a letter of intent for the project in ac-  
 14 cordance with the rules of the department if the price of the replacement equipment or upgrade  
 15 exceeds \$1 million.

16 [(8)] **(9)** Except [*as required in subsection (1) of this section for a new hospital or new skilled*  
 17 *nursing or intermediate care service or facility not operating as a Medicare swing bed program*] **with**  
 18 **respect to a new hospital described in subsection (1)(a) of this section**, nothing in this section  
 19 requires a rural hospital as defined in ORS 442.470 (5)(a)(A) [*and (B)*] to obtain a certificate of need.

20 [(9)] *Nothing in this section applies to basic health services, but basic health services do not*  
 21 *include:]*

22 [(a)] *Magnetic resonance imaging scanners;*

23 [(b)] *Positron emission tomography scanners;*

24 [(c)] *Cardiac catheterization equipment;*

25 [(d)] *Megavoltage radiation therapy equipment;*

26 [(e)] *Extracorporeal shock wave lithotriptors;*

27 [(f)] *Neonatal intensive care;*

28 [(g)] *Burn care;*

29 [(h)] *Trauma care;*

30 [(i)] *Inpatient psychiatric services;*

31 [(j)] *Inpatient chemical dependency services;*

32 [(k)] *Inpatient rehabilitation services;*

33 [(L)] *Open heart surgery; or*

34 [(m)] *Organ transplant services.*

35 [(10)] *In addition to any other remedy provided by law, whenever it appears that any person is*  
 36 *engaged in, or is about to engage in, any acts that constitute a violation of this section, or any rule or*  
 37 *order issued by the department under this section, the department may institute proceedings in the*  
 38 *circuit courts to enforce obedience to such statute, rule or order by injunction or by other processes,*  
 39 *mandatory or otherwise.]*

40 [(11)] *As used in this section, "basic health services" means health services offered in or through*  
 41 *a hospital licensed under ORS chapter 441, except skilled nursing or intermediate care nursing facili-*  
 42 *ties or services and those services specified in subsection (9) of this section.]*

43 **(10) This section does not apply to:**

44 **(a) A facility described in ORS 441.065;**

45 **(b) A facility primarily providing hospice services as defined in ORS 443.850; or**

1 (c) A health facility as defined in ORS 430.010 that provides treatment for alcoholism,  
2 drug addition or mental or emotional disturbances.

3 (11) Upon written request, the director must include a person on the mailing list for no-  
4 tices of public hearings sent pursuant to subsection (5) of this section.

5 (12) A certificate of need is not transferable.

6 (13) As used in this section, "interested person" means:

7 (a) An applicant for a certificate of need;

8 (b) A person residing within the service area or geographic area served or to be served  
9 by the applicant in the proposed project;

10 (c) A person who regularly uses facilities providing health services within the service  
11 area or geographic area served or to be served by the applicant in the proposed project;

12 (d) A person who provides health services similar to the services in the proposed project  
13 to individuals residing within the service area or geographic area served or to be served by  
14 the applicant in the proposed project;

15 (e) A person who, prior to receipt by the department of the application under review, has  
16 provided written notice to the department of an intention to provide similar services in the  
17 future to persons residing within the service area or geographic area served or to be served  
18 by the proposed project;

19 (f) Third-party payers who reimburse facilities providing health services in the service  
20 area or geographic area in which the proposed project is to be located; and

21 (g) Any agency that establishes rates for facilities providing health services located in  
22 the service area or geographic area in which the proposed project is to be located.

23 **SECTION 2.** In addition to any other remedy provided by law, whenever it appears to the  
24 Director of Human Services that any person is engaged in, or is about to engage in, any acts  
25 that constitute a violation of any rule adopted or order issued by the Department of Human  
26 Services under ORS 442.315 or 442.325 or section 5 of this 2007 Act, or are substantially in-  
27 consistent with any representations made in an application for a certificate of need, the de-  
28 partment shall maintain a civil action in the name of the state in the Circuit Court for  
29 Marion County or the circuit court for the county in which the violation occurred to enforce  
30 obedience to the statute, rule, order or representation by injunction or by other processes,  
31 mandatory or otherwise.

32 **SECTION 3.** ORS 442.325 is amended to read:

33 442.325. (1) A certificate of need shall be required for the development or establishment of a  
34 health care facility of any new health maintenance organization.

35 (2) Any activity of a health maintenance organization which does not involve the direct delivery  
36 of health services, as distinguished from arrangements for indirect delivery of health services  
37 through contracts with providers, shall be exempt from certificate of need review.

38 (3) Nothing in ORS 244.050, 431.250, 441.015 to 441.087, 442.015 to 442.420 and 442.450 applies  
39 to any decision of a health maintenance organization involving its organizational structure, its ar-  
40 rangements for financing health services, the terms of its contracts with enrolled beneficiaries or  
41 its scope of benefits.

42 (4) With the exception of certificate of need requirements, when applicable, the licensing and  
43 regulation of health maintenance organizations shall be controlled by ORS 750.005 to 750.095 and  
44 statutes incorporated by reference therein.

45 (5) It is the policy of ORS 244.050, 431.250, 441.015 to 441.087, 442.015 to 442.420 and 442.450 to

1 encourage the growth of health maintenance organizations as an alternative delivery system and to  
2 provide the facilities for the provision of quality health care to the present and future members who  
3 may enroll within their defined service area.

4 (6)(a) It is also the policy of ORS 244.050, 431.250, 441.015 to 441.087, 442.015 to 442.420 and  
5 442.450 to consider the special needs and circumstances of health maintenance organizations. Such  
6 needs and circumstances include the needs of and costs to members and projected members of the  
7 health maintenance organization in obtaining health services and the potential for a reduction in the  
8 use of inpatient care in the community through an extension of preventive health services and the  
9 provision of more systematic and comprehensive health services. The consideration of a new health  
10 service proposed by a health maintenance organization shall also address the availability and cost  
11 of obtaining the proposed new health service from the existing providers in the area that are not  
12 health maintenance organizations.

13 (b) The **Director** [*Department*] of Human Services shall issue a certificate of need for beds,  
14 services or equipment to meet the needs or reasonably anticipated needs of members of health  
15 maintenance organizations when beds, services or equipment are not available from nonplan pro-  
16 viders.

17 **(7) Once a certificate of need has been issued, if the director finds that a health main-  
18 tenance organization is developing or establishing a health care facility or offering a new  
19 health service that is not within the scope of the certificate of need, is inconsistent with the  
20 representations made in the application for the certificate or is in violation of any condition  
21 the director placed on the certificate, the director may revoke the certificate or maintain a  
22 civil action to enforce compliance.**

23 **SECTION 4. Sections 2 and 5 of this 2007 Act are added to and made a part of ORS  
24 chapter 442.**

25 **SECTION 5. (1) A new skilled nursing or intermediate care service or facility not ex-  
26 cluded pursuant to ORS 441.065 shall obtain a certificate of need from the Department of  
27 Human Services prior to an offering or development.**

28 **(2) The department shall adopt rules specifying criteria and procedures for making deci-  
29 sions as to the need for the new services or facilities.**

30 **(3) (a) An applicant for a certificate of need shall apply to the department on forms  
31 provided for this purpose by the department.**

32 **(b) An applicant shall pay a fee prescribed as provided in this section. Subject to the ap-  
33 proval of the Oregon Department of Administrative Services, the Department of Human  
34 Services shall prescribe application fees based on the complexity and scope of the proposed  
35 project. The fee assessed may not exceed the costs incurred by the Department of Human  
36 Services to support the staffing level and expenses required to administer the certificate of  
37 need program.**

38 **(4) An applicant or any person adversely affected or aggrieved by the final order of the  
39 department on the application for a certificate of need may request a contested case hearing  
40 to be conducted in accordance with ORS chapter 183.**

41 **(5) This section does not apply to any skilled nursing or intermediate care service or fa-  
42 cility that seeks to replace equipment with equipment of similar basic technological function  
43 or an upgrade that improves the quality or cost-effectiveness of the service provided. Any  
44 person acquiring such replacement or upgrade shall file a letter of intent for the project in  
45 accordance with the rules of the department if the price of the replacement equipment or**

1 **upgrade exceeds \$1 million.**

2 **(6) The department shall adopt rules to carry out the purposes of this section.**

3 **SECTION 6.** ORS 442.347 is amended to read:

4 442.347. A rural hospital exempted from the certificate of need requirement by ORS 442.315  
5 [(8)] **(9)** shall report any action taken by the hospital that would have required a certificate of need  
6 if the exemption did not exist.

7 **SECTION 7.** (1) **Except as provided in subsection (2) of this section, section 5 of this 2007**  
8 **Act and the amendments to ORS 442.315 by section 1 of this 2007 Act apply to an application**  
9 **for a certificate of need filed with the Department of Human Services on or after the effec-**  
10 **tive date of this 2007 Act.**

11 **(2) Section 2 of this 2007 Act and the amendments to ORS 442.325 by section 3 of this 2007**  
12 **Act apply to all projects for which a certificate of need has been granted by the department.**

13 **SECTION 8.** **This 2007 Act being necessary for the immediate preservation of the public**  
14 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
15 **on its passage.**

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