

Senate Bill 798

Sponsored by Senator BATES

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 441.065, 441.085, 441.550,
3 441.705, 441.710, 442.315, 442.347, 442.584, 479.210, 479.217, 677.450 and 742.400; repealing ORS
4 442.342; and declaring an emergency.

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

6 **SECTION 1. (1) The Director of Human Services shall:**

7 (a) **Designate health care service delivery areas; and**

8 (b) **Establish guidelines for local planning processes to guide local health care planning**
9 **commissions in assessing health care needs and in generating plans for ensuring access to**
10 **health services while avoiding unnecessary and costly duplication of services in the health**
11 **care service delivery areas.**

12 (2) **The director may provide advice and assistance to local health care planning com-**
13 **missions and advisory committees created in accordance with this section.**

14 (3) **Municipalities may appoint health care planning commissions and advisory commit-**
15 **tees to assess health care needs and to generate plans for ensuring access to health services**
16 **while avoiding unnecessary and costly duplication of services in the health care service de-**
17 **livery areas. If more than one municipality falls within the health care service delivery area,**
18 **appointments shall be made jointly by all participating municipalities in accordance with the**
19 **guidelines established by the director.**

20 (4) **Municipalities shall appoint to local health care planning commissions created in ac-**
21 **cordance with this section:**

22 (a) **Representatives of employers and workers that pay for health care coverage; and**

23 (b) **Other consumers.**

24 (5) **Municipalities shall appoint to local advisory committees created in accordance with**
25 **this section:**

26 (a) **Representatives of health care providers;**

27 (b) **Insurers;**

28 (c) **Advocates for health care consumers; and**

29 (d) **Others with expertise in the delivery of health services.**

30 **SECTION 2. As used in ORS 442.315, "interested person" means:**

31 (1) **An applicant for a certificate of need;**

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 **(2) A person located or residing within the health care service delivery area or geographic**
 2 **area served or to be served by the applicant in the proposed project;**

3 **(3) An individual who regularly uses facilities providing health services within the health**
 4 **care service delivery area or geographic area served or to be served by the applicant in the**
 5 **proposed project;**

6 **(4) A person who provides health services similar to the services in the proposed project**
 7 **to individuals residing within the health care service delivery area or geographic area served**
 8 **or to be served by the applicant in the proposed project;**

9 **(5) A person who, prior to receipt by the Department of Human Services of the applica-**
 10 **tion under review, has provided written notice to the department of an intention to provide**
 11 **similar health services in the future to persons residing within the health care service de-**
 12 **livery area or geographic area served or to be served by the proposed project;**

13 **(6) A third-party payer who reimburses facilities providing health services within the**
 14 **health care service delivery area or geographic area in which the proposed project is to be**
 15 **located; and**

16 **(7) Any agency that establishes rates for facilities providing health services within the**
 17 **health care service delivery area or geographic area in which the proposed project is to be**
 18 **located.**

19 **SECTION 3. The Department of Human Services shall adopt rules to carry out ORS**
 20 **442.315 and 442.325 and sections 1, 2 and 7 of this 2009 Act.**

21 **SECTION 4.** ORS 442.315 is amended to read:

22 442.315. *[(1) Any new hospital or new skilled nursing or intermediate care service or facility not*
 23 *excluded pursuant to ORS 441.065 shall obtain a certificate of need from the Department of Human*
 24 *Services prior to an offering or development.]*

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

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

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

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

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

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

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

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

1 *transferable.]*

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

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

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

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

9 **(d) An increase or decrease in hospital bed capacity;**

10 **(e) A change in the type or scope of health services provided at a hospital; or**

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

13 [(7)] **(2)** Nothing in this section applies to any hospital[, *skilled nursing or intermediate care*
 14 *service or facility*] that seeks to replace equipment with equipment of similar basic technological
 15 function or an upgrade that improves the quality or cost-effectiveness of the service provided. Any
 16 person acquiring [*such*] a replacement or upgrade shall file a letter of intent [*for the project*] in ac-
 17 cordance with the rules of the Department of **Human Services** if the price of the replacement
 18 equipment or upgrade exceeds \$1 million.

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

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

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

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

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

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

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

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

31 [(g)] *Burn care;]*

32 [(h)] *Trauma care;]*

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

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

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

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

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

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

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

1 **(3) Except with respect to a new hospital described in subsection (1)(a) of this section,**
2 **this section does not apply to:**

3 **(a) A rural hospital as defined in ORS 442.470 (5)(a)(A) and (B);**

4 **(b) A home or institution described in ORS 441.065;**

5 **(c) A facility primarily providing hospice services as defined in ORS 443.850;**

6 **(d) A health facility as defined in ORS 430.010 that provides treatment for alcoholism,**
7 **drug addiction or mental or emotional disturbances; or**

8 **(e) A new skilled nursing facility or intermediate care facility subject to section 6 of this**
9 **2009 Act.**

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

12 **(b) An applicant shall pay a fee as provided in this subsection. Subject to the approval**
13 **of the Oregon Department of Administrative Services, the Department of Human Services**
14 **shall prescribe application fees based on the complexity and scope of the proposed project**
15 **and the anticipated length of the public hearing described in subsection (5) of this section.**
16 **The fee assessed may not exceed the costs incurred by the Department of Human Services**
17 **to administer the certificate of need program.**

18 **(c) The Department of Human Services shall make available for public inspection an ap-**
19 **plication made under this subsection.**

20 **(5)(a) The department shall be the decision-making authority on applications for certif-**
21 **icates of need.**

22 **(b) The department shall conduct a public hearing as soon as practicable upon receipt**
23 **of a complete application. The department shall provide written notice of the date, time and**
24 **place of the hearing at least 14 days prior to the hearing:**

25 **(A) To the applicant;**

26 **(B) To persons on the distribution list described in paragraph (d) of this subsection;**

27 **(C) To the extent practicable, to interested persons;**

28 **(D) To the governing body of the county in which the facility that is the subject of the**
29 **application is located; and**

30 **(E) In one or more newspapers of general circulation in the health care service delivery**
31 **area.**

32 **(c) To inform the fact-finding process, the department shall actively solicit input from**
33 **purchasers and consumers of health services, from representatives of key constituencies and**
34 **from the health planning commission for the health care service delivery area served or to**
35 **be served by the applicant in the proposed project.**

36 **(d) The department shall maintain a list of persons who have requested to receive notice**
37 **of public hearings conducted under this subsection.**

38 **(6)(a) Within 60 days after the close of the public hearing described in subsection (5) of**
39 **this section, the department shall issue a proposed order granting or denying the application**
40 **for a certificate of need. The order shall contain specific findings of fact and conclusions of**
41 **law regarding the need for the proposed project based upon the criteria in subsection (7) of**
42 **this section.**

43 **(b) The department shall serve the proposed order on the applicant by mail and shall**
44 **serve a hard copy of the proposed order by mail, or an electronic copy, on any interested**
45 **person who has made a written request for a copy of the order. If not contested, the pro-**

1 posed order becomes final 31 days after service.

2 (c) Not later than 30 days after the department serves the proposed order, the applicant
3 or any interested person may request a contested case hearing that shall be conducted in
4 accordance with ORS chapter 183. If the applicant and any interested person request a
5 hearing, the requests shall be consolidated into one proceeding. The department may make
6 an informal disposition of a request for a contested case hearing under ORS 183.417 if the
7 applicant but no interested person has requested a hearing. Following a contested case
8 hearing, the Director of Human Services or the director's designee shall issue a final order.

9 (7) The final order of the director or the director's designee under subsection (6) of this
10 section shall be based on the following criteria:

11 (a) A documented analysis of need for the health services or facility proposed in the ap-
12 plication using population-based, quantifiable need methodologies and the extent to which the
13 proposed project will be accessible to the residents of the health care service delivery area,
14 including medically underserved populations;

15 (b) The financial feasibility of the proposed project, including an evaluation of the rea-
16 sonableness of proposed changes regarding patient care and a determination as to whether
17 the expense and revenue projections demonstrate fiscal viability for the project;

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

20 (d) The impact on rates charged by the applicant for health services;

21 (e) The impact on the interests of individuals residing within the health care service de-
22 livery area, including:

23 (A) Access to health services;

24 (B) Quality of health services;

25 (C) Effect of travel on a patient's health condition or outcome if the proposed health
26 services, beds or equipment are not available in the health care service delivery area;

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

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

29 (f) The impact on public and private payers for the proposed health services to be pro-
30 vided by the applicant;

31 (g) The contribution of the proposed health services or facility to the quality, accessibility
32 and cost-effectiveness of health care in the health care service delivery area;

33 (h) The sufficiency of rates to be charged for the proposed health services;

34 (i) The anticipated changes in the utilization rates of the proposed health services or fa-
35 cility;

36 (j) The teaching and research responsibilities of the applicant;

37 (k) The applicant's efforts to improve productivity and contain costs;

38 (L) The applicant's policies for patient admission or acceptance and the provision of
39 charity care by the applicant;

40 (m) The inclusion or provision of health services of which there is a shortage in the
41 health care service delivery area, including, but not limited to, inpatient psychiatric services;

42 (n) The documentation of existing or proposed mechanisms for soliciting consumer input
43 in the applicant's decision-making process;

44 (o) For a construction project, a documented analysis of the cost of and plans for the
45 proposed project, including provisions for energy conservation and the probable impact of the

1 proposed project on the applicant's cost of providing health services;

2 (p) The availability of adequate, less costly alternatives to or more effective methods of
3 meeting the identified health service needs in the health care service delivery area;

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

5 (r) The information specified in ORS 442.584; and

6 (s) Other factors deemed relevant by the director.

7 (8) A certificate of need is not transferable.

8 (9) Once a certificate of need has been issued, it may not be revoked or rescinded unless
9 it was acquired by fraud or deceit. If the department finds that a person is offering, devel-
10 oping or participating in a project that is not within the scope of the certificate of need, the
11 department may limit the project as specified in the certificate of need or may reconsider
12 the application for the certificate of need.

13 (10) The department shall adopt rules for the conduct of the public hearing under sub-
14 section (5) of this section.

15 **SECTION 5.** Sections 1, 2, 6 and 7 of this 2009 Act are added to and made a part of ORS
16 chapter 442.

17 **SECTION 6.** (1) A new skilled nursing facility or intermediate care facility not excluded
18 pursuant to ORS 441.065 shall obtain a certificate of need from the Department of Human
19 Services prior to offering or developing a project.

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

22 (3)(a) An applicant for a certificate of need under this section shall apply to the depart-
23 ment on forms provided for this purpose by the department.

24 (b) An applicant shall pay a fee as provided in this subsection. Subject to the approval
25 of the Oregon Department of Administrative Services, the Department of Human Services
26 shall prescribe application fees based on the complexity and scope of the proposed project.
27 The fee assessed may not exceed the costs incurred by the Department of Human Services
28 to administer the certificate of need program.

29 (4) The Department of Human Services shall issue a proposed order granting or denying
30 the application for a certificate of need.

31 (5)(a) An applicant or any affected person who is dissatisfied with the proposed order of
32 the department is entitled to an informal hearing in the course of review and before a final
33 order is issued.

34 (b) A proposed order becomes final within 60 days of service unless an applicant or any
35 affected person requests a contested case hearing to be conducted in accordance with ORS
36 chapter 183.

37 (6) Once a certificate of need has been issued, it may not be revoked or rescinded unless
38 it was acquired by fraud or deceit. If the department finds that a person is offering or de-
39 veloping a project that is not within the scope of the certificate of need, the department may
40 limit the project as specified in the issued certificate of need or reconsider the application
41 for the certificate of need. A certificate of need is not transferable.

42 (7) The department shall adopt rules to carry out this section.

43 **SECTION 7.** In addition to any other remedy provided by law, whenever it appears to the
44 Director of Human Services that any person is engaged in, or is about to engage in, any act
45 that constitutes a violation of ORS 442.315 or 442.325 or any rule adopted or order issued by

1 **the Department of Human Services under ORS 442.315 or 442.325 or section 3 of this 2009**
 2 **Act, including an order imposing conditions on the certificate of need, the department may**
 3 **maintain a civil action in the name of the state in the Circuit Court for Marion County, or**
 4 **the circuit court for the county in which the violation occurred, to enforce obedience to the**
 5 **statute, rule or order by injunction or by other processes, mandatory or otherwise.**

6 **SECTION 8.** ORS 441.065 is amended to read:

7 441.065. (1) ORS 441.015 to 441.063, 441.085, 441.087 or the rules adopted pursuant thereto do
 8 not authorize the supervision, regulation or control of the remedial care or treatment of residents
 9 or patients in any home or institution that is described under subsection (2) of this section and is
 10 conducted for those who rely upon treatment solely by prayer or spiritual means, except as to the
 11 sanitary and safe conditions of the premises, cleanliness of operation and its physical equipment.
 12 This section does not exempt such a home or institution from the licensing requirements of ORS
 13 441.015 to 441.087, [441.525 to 441.595] **441.162, 441.166, 441.367**, 441.815[,] **and** 441.820[, 441.990,
 14 *442.342, 442.344 and 442.400 to 442.463*].

15 (2) To qualify under subsection (1) of this section, a home or institution must:

16 (a) Be owned by an entity that is registered with the Secretary of State as a nonprofit corpo-
 17 ration and that does not own, hold a financial interest in, control or operate any facility, wherever
 18 located, of a type providing medical health care and services; and

19 (b) Provide 24 hour a day availability of nonmedical care and services.

20 (3) As used in this section:

21 (a) "Medical health care and services" means medical screening, examination, diagnosis,
 22 prognosis, treatment and drug administration. "Medical health care and services" does not include
 23 counseling or the provision of social services or dietary services.

24 (b) "Nonmedical care and services" means assistance or services, other than medical health care
 25 and services, provided by attendants for the physical, mental, emotional or spiritual comfort and
 26 well being of residents or patients.

27 **SECTION 9.** ORS 441.085 is amended to read:

28 441.085. (1) The Department of Human Services may by rule establish classifications and de-
 29 scriptions for the various types of health care facilities that are licensed under ORS 441.015 to
 30 441.087[, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and] **or subject to ORS**
 31 **442.400 to 442.463.**

32 (2) A health care facility licensed by the department shall neither assume a descriptive title nor
 33 be represented under any descriptive title other than the classification title established by the de-
 34 partment and under which it is licensed.

35 **SECTION 10.** ORS 441.550 is amended to read:

36 441.550. Except as otherwise provided in ORS 441.545, an authority shall have all powers nec-
 37 cessary to accomplish the purpose of providing hospital facilities for the people of Oregon, including
 38 without limitation the power:

39 (1) To sue and be sued in its own name.

40 (2) To acquire by purchase, construction, exchange, gift, lease, or otherwise, and to improve,
 41 extend, maintain, equip and furnish hospital facilities, which hospital facilities may be either within
 42 or without the corporate limits of the municipality by which the authority is created.

43 (3) To lease such hospital facilities to any one or more political subdivisions of this state or any
 44 private nonprofit corporations which are operating or propose to operate an inpatient care facility
 45 subject to the licensing and supervision requirements of ORS 441.015 to 441.087, [441.525 to

1 441.595,] **441.162, 441.166, 441.367**, 441.815, 441.820[, *441.990, 442.342, 442.344*] and 442.400 to 442.463
 2 upon such terms and conditions as the board deems appropriate, to charge and collect rents and to
 3 terminate any such lease upon default of the lessee.

4 (4) To enter into options and agreements for the renewal or extension of such leases of hospital
 5 facilities or for the conveyance of such hospital facilities.

6 (5) To sell, exchange, donate and convey any or all of its hospital facilities or other assets.

7 (6) To borrow money and to issue notes and revenue bonds for the purpose of carrying out its
 8 powers.

9 (7) To mortgage and pledge its assets, or any portion thereof, whether then owned or thereafter
 10 acquired, to pledge the revenues and receipts from such assets, to acquire, hold, and dispose of
 11 mortgages and other similar documents relating to hospital facilities, and to arrange and provide for
 12 guarantee and other security agreements therefor.

13 (8) To loan money for the construction of and improvements to hospital facilities.

14 (9) To enter into contracts, leases and other undertakings in its own name.

15 (10) To adopt and amend ordinances and resolutions.

16 **SECTION 11.** ORS 441.705 is amended to read:

17 441.705. As used in ORS 441.705 to 441.745:

18 (1) "Direct patient care or feeding" means any care provided directly to or for any patient re-
 19 lated to that patient's physical, medical and dietary well-being as defined by rules of the Department
 20 of Human Services.

21 (2) "Person" means a licensee under ORS 441.015 to 441.087[, *441.525 to 441.595, 441.815, 441.820,*
 22 *441.990, 442.342, 442.344 and 442.400 to 442.463,*] or a person whom the Director of Human Services
 23 finds should be so licensed but is not, but does not include any employee of such licensee or person.

24 (3) "Staff to patient ratio" means the number and training of persons providing direct patient
 25 care as defined in rules of the department.

26 **SECTION 12.** ORS 441.710 is amended to read:

27 441.710. (1) In addition to any other liability or penalty provided by law, the Director of Human
 28 Services may impose a civil penalty on a person for any of the following:

29 (a) Violation of any of the terms or conditions of a license issued under ORS 441.015 to
 30 441.087[, *441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463*] for a
 31 long term care facility, as defined in ORS 442.015.

32 (b) Violation of any rule or general order of the Department of Human Services that pertains
 33 to a long term care facility.

34 (c) Violation of any final order of the director that pertains specifically to the long term care
 35 facility owned or operated by the person incurring the penalty.

36 (d) Violation of ORS 441.605 or of rules required to be adopted under ORS 441.610.

37 (e) Violation of ORS 443.880 or 443.881.

38 (2) A civil penalty may not be imposed under this section for violations other than those in-
 39 volving direct patient care or feeding, an adequate staff to patient ratio, sanitation involving direct
 40 patient care or a violation of ORS 441.605 or 443.880 or 443.881 or of the rules required to be
 41 adopted by ORS 441.610 unless a violation is found on two consecutive surveys of the long term care
 42 facility. The director in every case shall prescribe a reasonable time for elimination of a violation:

43 (a) Not to exceed 30 days after first notice of a violation; or

44 (b) In cases where the violation requires more than 30 days to correct, such time as is specified
 45 in a plan of correction found acceptable by the director.

1 **SECTION 13.** ORS 442.347 is amended to read:

2 442.347. A rural hospital exempted from the certificate of need requirement by ORS 442.315
3 [(8)] **(3)** shall report any action taken by the hospital that would have required a certificate of need
4 if the exemption did not exist.

5 **SECTION 14.** ORS 442.584 is amended to read:

6 442.584. (1) All applicants for a certificate of need for any of the technologies or services under
7 study by the Health Resources Commission shall provide the information specified in paragraphs (a)
8 to (f) of this subsection. This information may be utilized by the commission in performing its func-
9 tions under ORS 442.583. The information shall include:

10 (a) The estimated number of patients needing the service or procedure who are not currently
11 being served and who cannot be served by existing programs in the **health care service delivery**
12 area.

13 (b) The anticipated number of procedures to be performed per year for a five-year period com-
14 mencing on the date the service is started or the technology is acquired.

15 (c) The anticipated number of patients to be served by the applicant, based on the incidence in
16 the population to be served or the conditions for which the technology or service will be used.

17 (d) Clinical indications for ordering use of the technology or service, with appropriate references
18 to relevant literature.

19 (e) An estimate of the treatment decisions likely to result from use of the technology or service.

20 (f) A proposed method for collecting data on the patients served, costs engendered directly or
21 indirectly and the health outcomes resulting from use of the technology or service.

22 (2) An application shall be decided in accordance with the statutes [*and rules*] in effect at the
23 time of filing of a completed letter of intent for that application.

24 **SECTION 15.** ORS 479.210 is amended to read:

25 479.210. As used in ORS 479.215 to 479.220, unless the context requires otherwise, "institution"
26 means:

27 (1) A child-caring facility that provides residential care and that receives state aid under ORS
28 412.001 to 412.161, 418.005 to 418.025, 418.205 to 418.315, 418.625 to 418.685 and 418.647;

29 (2) An inpatient care facility required to be licensed under ORS 441.015 to 441.087[, 441.525 to
30 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and] **or subject to ORS** 442.400 to 442.463; or

31 (3) A residential facility subject to licensure under ORS 443.400 to 443.455.

32 **SECTION 16.** ORS 479.217 is amended to read:

33 479.217. (1) In lieu of an inspection approval by the State Fire Marshal or the approved au-
34 thority of a governmental subdivision having jurisdiction in an area exempted by the State Fire
35 Marshal, under ORS 479.215 for institutions licensed under ORS 412.001 to 412.161, 418.005 to
36 418.025, 418.205 to 418.315, 418.625 to 418.685, 418.647[,] **and** 441.015 to 441.087[, 441.525 to 441.595,
37 441.815, 441.820, 441.990 and], **subject to ORS** 442.400 to 442.463 or licensed by the Department of
38 Human Services in accordance with ORS 443.400 to 443.455, the State Fire Marshal or the approved
39 authority may issue a temporary permit which meets the requirements of ORS 479.215 for licensing
40 of such institutions. The temporary permit may be issued only when it appears that:

41 (a) The facilities for protection from fire in an institution are adequate so that the institution
42 can operate without jeopardizing the health or safety of its residents or patients; and

43 (b) The institution can comply with all applicable laws and rules relating to safety from fire
44 within a period of two years from the date of issuance of the temporary permit.

45 (2) In issuing the temporary permit, the State Fire Marshal or approved authority of the gov-

1 ernmental subdivision having jurisdiction in an exempt area may require that during the two-year
2 period in which the temporary permit is in effect:

3 (a) Plans for compliance with all applicable laws and rules relating to safety from fire be sub-
4 mitted with the application for a temporary permit;

5 (b) Periodic reports be submitted on the progress of the plans for compliance; and

6 (c) Special temporary provisions specified by the State Fire Marshal or the approved authority
7 be maintained for the protection from fire of the residents or patients of the institution.

8 (3) If at any time, the State Fire Marshal or the approved authority determines that the facilities
9 for protection from fire at the institution are no longer adequate to protect the residents or patients
10 or that the requirements imposed under subsection (2) of this section are not being maintained, the
11 State Fire Marshal or the approved authority shall cancel the temporary permit and shall notify the
12 Department of Human Services of such cancellation.

13 (4) Extensions and renewals may be granted on the temporary permit.

14 **SECTION 17.** ORS 677.450 is amended to read:

15 677.450. The Oregon Medical Board may release information received under ORS 441.820 con-
16 cerning the revocation or restriction of a physician's or podiatric physician and surgeon's activities
17 at a health care facility to any other health care facility licensed under ORS 441.015 to 441.087[,
18 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and] **or subject to ORS** 442.400 to
19 442.463 at which that physician or podiatric physician and surgeon holds or has applied for staff
20 privileges or other right to practice medicine or podiatry at the facility.

21 **SECTION 18.** ORS 742.400 is amended to read:

22 742.400. (1) As used in this section:

23 (a) "Claim" means a written demand for payment from or on behalf of a covered practitioner for
24 an injury alleged to have been caused by professional negligence that is made in a complaint filed
25 with a court of appropriate jurisdiction.

26 (b) "Covered practitioner" means a physician, podiatric physician and surgeon, physician as-
27 sistant, nurse practitioner, optometrist, dentist, dental hygienist or naturopath.

28 (c) "Disposition of a claim" means:

29 (A) A judgment or award against the covered practitioner by a court, a jury or an arbitrator;

30 (B) A withdrawal or dismissal of the claim; or

31 (C) A settlement of the claim.

32 (d) "Reporter" means:

33 (A) A primary insurer;

34 (B) A public body required to defend, save harmless and indemnify an officer, employee or agent
35 of the public body under ORS 30.260 to 30.300;

36 (C) An entity that self-insures or indemnifies for claims alleging professional negligence on the
37 part of a covered practitioner; or

38 (D) A health maintenance organization as defined in ORS 750.005.

39 (2) Within 30 days after receiving notice of a claim, a reporter shall report the claim to the
40 appropriate board, as follows:

41 (a) The Oregon Medical Board if the covered practitioner is a physician, podiatric physician and
42 surgeon or physician assistant;

43 (b) The Oregon State Board of Nursing if the covered practitioner is a nurse practitioner;

44 (c) The Oregon Board of Optometry if the covered practitioner is an optometrist;

45 (d) The Oregon Board of Dentistry if the covered practitioner is a dentist or dental hygienist;

1 or

2 (e) The Board of Naturopathic Examiners if the covered practitioner is a naturopath.

3 (3) The report required under subsection (2) of this section shall include:

4 (a) The name of the covered practitioner;

5 (b) The name of the person that filed the claim;

6 (c) The date on which the claim was filed; and

7 (d) The reason or reasons for the claim, except that the report may not disclose any data that
8 is privileged under ORS 41.675.

9 (4) Within 30 days after the date of an action taken in disposition of a claim, a reporter shall
10 notify the appropriate board identified in subsection (2) of this section of the disposition.

11 (5)(a) A board that receives a report of a claim under this section shall publicly post the report
12 on the board’s website if the claim results in a judicial finding or admission of liability or a money
13 judgment, award or settlement that involves a payment to the claimant. The board may not publicly
14 post information about claims that did not result in a judicial finding or admission of liability or a
15 money judgment, award or settlement that involves a payment to the claimant but shall make the
16 information available to the public upon request. The board shall remove from the board’s website
17 any record based on a reported claim against a covered practitioner if the board does not receive
18 another report of a claim against the practitioner within four years after the date reported under
19 subsection (3)(c) of this section.

20 (b) If a board discloses information about a claim that is the subject of a report received under
21 this section, the board shall indicate in the disclosure whether the claim resulted in a judicial
22 finding or an admission of liability or a money judgment, an award or a settlement that involves a
23 payment to the claimant. A board may not publicly disclose or publish any allegations or factual
24 assertions included in the claim unless the complaint resulted in a judicial finding or an admission
25 of liability or a money judgment, an award or a settlement that involves a payment to the claimant.

26 (c) For purposes of this subsection, “judicial finding” means a finding of liability by a court, a
27 jury or an arbitrator.

28 (6) A board that receives a report under this section shall provide copies of the report to each
29 health care facility licensed under ORS 441.015 to 441.087[, 441.525 to 441.595, 441.815, 441.820,
30 441.990, 442.342, 442.344 and] or subject to ORS 442.400 to 442.463 that employs or grants staff
31 privileges to the covered practitioner.

32 (7) A person that reports in good faith concerning any matter required to be reported under this
33 section is immune from civil liability by reason of making the report.

34 **SECTION 19. The amendments to ORS 442.315 by section 4 of this 2009 Act do not apply**
35 **to any construction project for which all necessary permits are obtained before the effective**
36 **date of this 2009 Act.**

37 **SECTION 20. ORS 442.342 is repealed.**

38 **SECTION 21. This 2009 Act being necessary for the immediate preservation of the public**
39 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
40 **on its passage.**

41