

Senate Bill 202

Sponsored by Senator BATES (Pre-session filed.)

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 hospital to obtain certificate of need for capital project. Applies to capital projects beginning on or after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to health care facilities; creating new provisions; amending ORS 442.015, 442.315 and
3 442.361; and declaring an emergency.

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

5 **SECTION 1.** ORS 442.015 is amended to read:

6 442.015. As used in ORS chapter 441 and this chapter, unless the context requires otherwise:

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

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

14 (3)(a) "Ambulatory surgical center" means a facility or portion of a facility that operates ex-
15 clusively for the purpose of providing surgical services to patients who do not require
16 hospitalization and for whom the expected duration of services does not exceed 24 hours following
17 admission.

18 (b) "Ambulatory surgical center" does not mean:

19 (A) Individual or group practice offices of private physicians or dentists that do not contain a
20 distinct area used for outpatient surgical treatment on a regular and organized basis, or that only
21 provide surgery routinely provided in a physician's or dentist's office using local anesthesia or
22 conscious sedation; or

23 (B) A portion of a licensed hospital designated for outpatient surgical treatment.

24 [(4) "*Budget*" means the projections by the hospital for a specified future time period of *expen-*
25 *ditures and revenues with supporting statistical indicators.*]

26 [(5)] (4) [*"Develop" means to undertake those activities that on their completion*] "**Development**"
27 **means the undertaking of activities that, when completed,** will result in the offer of a new in-
28 stitutional health service or the incurring of a financial obligation, as defined under applicable state
29 law, in relation to the offering of such a health service.

30 [(6)] (5) "Expenditure" or "capital expenditure" means the actual expenditure, an obligation to
31 an expenditure, lease or similar arrangement in lieu of an expenditure, and the reasonable value of

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 a donation or grant in lieu of an expenditure but not including any interest thereon.

2 [(7)] (6) “Freestanding birthing center” means a facility licensed for the primary purpose of
3 performing low risk deliveries.

4 [(8)] (7) “Governmental unit” means the state, or any county, municipality or other political
5 subdivision, or any related department, division, board or other agency.

6 [(9)] (8) “Gross revenue” means the sum of daily hospital service charges, ambulatory service
7 charges, ancillary service charges and other operating revenue. “Gross revenue” does not include
8 contributions, donations, legacies or bequests made to a hospital without restriction by the donors.

9 [(10)(a)] (9)(a) “Health care facility” means:

10 (A) A hospital;

11 (B) A long term care facility;

12 (C) An ambulatory surgical center;

13 (D) A freestanding birthing center; or

14 (E) An outpatient renal dialysis center.

15 (b) “Health care facility” does not mean:

16 (A) A residential facility licensed by the Department of Human Services or the Oregon Health
17 Authority under ORS 443.415;

18 (B) An establishment furnishing primarily domiciliary care as described in ORS 443.205;

19 (C) A residential facility licensed or approved under the rules of the Department of Corrections;

20 (D) Facilities established by ORS 430.335 for treatment of substance abuse disorders; or

21 (E) Community mental health programs or community developmental disabilities programs es-
22 tablished under ORS 430.620.

23 [(11)] (10) “Health maintenance organization” or “HMO” means a public organization or a pri-
24 vate organization organized under the laws of any state that:

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

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

28 (i) Usual physician services;

29 (ii) Hospitalization;

30 (iii) Laboratory;

31 (iv) X-ray;

32 (v) Emergency and preventive services; and

33 (vi) Out-of-area coverage;

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

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

40 [(12)] (11) “Health services” means clinically related diagnostic, treatment or rehabilitative
41 services, and includes alcohol, drug or controlled substance abuse and mental health services that
42 may be provided either directly or indirectly on an inpatient or ambulatory patient basis.

43 [(13)] (12) “Hospital” means:

44 (a) A facility with an organized medical staff and a permanent building that is capable of pro-
45 viding 24-hour inpatient care to two or more individuals who have an illness or injury and that

1 provides at least the following health services:

2 (A) Medical;

3 (B) Nursing;

4 (C) Laboratory;

5 (D) Pharmacy; and

6 (E) Dietary; or

7 (b) A special inpatient care facility as that term is defined by the Oregon Health Authority by
8 rule.

9 [(14)] (13) "Institutional health services" means health services provided in or through health
10 care facilities and includes the entities in or through which such services are provided.

11 [(15)] (14) "Intermediate care facility" means a facility that provides, on a regular basis,
12 health-related care and services to individuals who do not require the degree of care and treatment
13 that a hospital or skilled nursing facility is designed to provide, but who because of their mental
14 or physical condition require care and services above the level of room and board that can be made
15 available to them only through institutional facilities.

16 [(16)] (15) "Long term care facility" means a facility with permanent facilities that include in-
17 patient beds, providing medical services, including nursing services but excluding surgical proce-
18 dures except as may be permitted by the rules of the Director of Human Services, to provide
19 treatment for two or more unrelated patients. "Long term care facility" includes skilled nursing fa-
20 cilities and intermediate care facilities but may not be construed to include facilities licensed and
21 operated pursuant to ORS 443.400 to 443.455.

22 [(17)] (16) "New hospital" means a facility that did not offer hospital services on a regular basis
23 within its service area within the prior 12-month period and is initiating or proposing to initiate
24 such services. "New hospital" also includes any replacement of an existing hospital that involves a
25 substantial increase or change in the services offered.

26 [(18)] (17) "New skilled nursing or intermediate care service or facility" means a service or fa-
27 cility that did not offer long term care services on a regular basis by or through the facility within
28 the prior 12-month period and is initiating or proposing to initiate such services. "New skilled
29 nursing or intermediate care service or facility" also includes the rebuilding of a long term care
30 facility, the relocation of buildings that are a part of a long term care facility, the relocation of long
31 term care beds from one facility to another or an increase in the number of beds of more than 10
32 or 10 percent of the bed capacity, whichever is the lesser, within a two-year period.

33 [(19)] (18) [*"Offer" means that the health care facility holds itself out as capable of providing, or*
34 *as having the means for the provision of,*] **"Offering" means specified health services that a health**
35 **care facility holds itself out as capable of providing.**

36 [(20)] (19) "Outpatient renal dialysis facility" means a facility that provides renal dialysis ser-
37 vices directly to outpatients.

38 [(21)] (20) "Person" means an individual, a trust or estate, a partnership, a corporation (includ-
39 ing associations, joint stock companies and insurance companies), a state, or a political subdivision
40 or instrumentality, including a municipal corporation, of a state.

41 [(22)] (21) "Skilled nursing facility" means a facility or a distinct part of a facility, that is pri-
42 marily engaged in providing to inpatients skilled nursing care and related services for patients who
43 require medical or nursing care, or an institution that provides rehabilitation services for the re-
44 habilitation of individuals who are injured or sick or who have disabilities.

45 **SECTION 2.** ORS 442.315 is amended to read:

1 442.315. (1)(a) [Any] A new hospital or new skilled nursing or intermediate care service or fa-
2 cility not excluded pursuant to ORS 441.065 shall obtain a certificate of need from the Oregon
3 Health Authority prior to an offering or development.

4 **(b) A hospital shall obtain a certificate of need from the Oregon Health Authority prior**
5 **to beginning a capital project.**

6 (2) The authority shall adopt rules specifying criteria and procedures for making decisions as
7 to the need for the new services or facilities.

8 (3)(a) An applicant for a certificate of need shall apply to the authority on forms provided for
9 this purpose by authority rule.

10 (b) An applicant shall pay a fee prescribed as provided in this section. Subject to the approval
11 of the Oregon Department of Administrative Services, the authority shall prescribe application fees,
12 based on the complexity and scope of the proposed project.

13 (4) The authority shall be the decision-making authority for the purpose of certificates of need.

14 (5)(a) An applicant or any affected person who is dissatisfied with the proposed decision of the
15 authority is entitled to an informal hearing in the course of review and before a final decision is
16 rendered.

17 (b) Following a final decision being rendered by the authority, an applicant or any affected
18 person may request a reconsideration hearing pursuant to ORS chapter 183.

19 (c) In any proceeding brought by an affected person or an applicant challenging an authority
20 decision under this subsection, the authority shall follow procedures consistent with the provisions
21 of ORS chapter 183 relating to a contested case.

22 (6) Once a certificate of need has been issued, it may not be revoked or rescinded unless it was
23 acquired by fraud or deceit. However, if the authority finds that [*a person is offering or developing*
24 *a project that*] **an offering, development or capital project** is not within the scope of the certif-
25 icate of need, the authority may limit the [*project*] **offering, development or capital project** as
26 specified in the issued certificate of need or reconsider the application. A certificate of need is not
27 transferable.

28 (7) Nothing in this section applies to any hospital, skilled nursing or intermediate care service
29 or facility that seeks to replace equipment with equipment of similar basic technological function
30 or an upgrade that improves the quality or cost-effectiveness of the service provided. Any person
31 acquiring such replacement or upgrade shall file a letter of intent for the project in accordance with
32 the rules of the authority if the price of the replacement equipment or upgrade exceeds \$1 million.

33 (8) Except as required in subsection (1) of this section for a new hospital or new skilled nursing
34 or intermediate care service or facility not operating as a Medicare swing bed program, nothing in
35 this section requires a rural hospital as defined in ORS 442.470 (5)(a)(A) and (B) to obtain a certif-
36 icate of need.

37 (9) Nothing in this section applies to basic health services, but basic health services do not in-
38 clude:

- 39 (a) Magnetic resonance imaging scanners;
- 40 (b) Positron emission tomography scanners;
- 41 (c) Cardiac catheterization equipment;
- 42 (d) Megavoltage radiation therapy equipment;
- 43 (e) Extracorporeal shock wave lithotriptors;
- 44 (f) Neonatal intensive care;
- 45 (g) Burn care;

- 1 (h) Trauma care;
- 2 (i) Inpatient psychiatric services;
- 3 (j) Inpatient chemical dependency services;
- 4 (k) Inpatient rehabilitation services;
- 5 (L) Open heart surgery; [or]
- 6 (m) Organ transplant services; **or**
- 7 **(n) Skilled nursing or intermediate care nursing facilities or services.**

8 (10) In addition to any other remedy provided by law, whenever it appears that any person is
 9 engaged in, or is about to engage in, any acts that constitute a violation of this section, or any rule
 10 or order issued by the authority under this section, the authority may institute proceedings in the
 11 circuit courts to enforce obedience to such statute, rule or order by injunction or by other pro-
 12 cesses, mandatory or otherwise.

13 (11) As used in this section, “basic health services” means health services offered in or through
 14 a hospital licensed under ORS chapter 441[, *except skilled nursing or intermediate care nursing fa-*
 15 *cilities or services and those services specified in subsection (9) of this section*].

16 **SECTION 3.** ORS 442.361 is amended to read:

17 442.361. As used in this section and ORS **442.315**, 442.362 and 442.991:

18 (1)(a) “Capital project” means:

19 (A) The construction, development, purchase, renovation or any construction expenditure by or
 20 on behalf of a reporting entity, for which the cost:

- 21 (i) For type A hospitals, exceeds five percent of gross revenue.
- 22 (ii) For type B hospitals, exceeds five percent of gross revenue.
- 23 (iii) For DRG hospitals, exceeds 1.75 percent of gross revenue.
- 24 (iv) For ambulatory surgery centers, exceeds \$2 million.

25 (B) The purchase or lease of, or other comparable arrangement for, a single piece of diagnostic
 26 or therapeutic equipment for which the cost or, in the case of a donation, the value exceeds \$1
 27 million. The acquisition of two or more pieces of diagnostic or therapeutic equipment that are nec-
 28 essarily interdependent in the performance of ordinary functions shall be combined in calculating
 29 the cost or value of the transaction.

30 (b) “Capital project” does not include a project financed entirely through charitable fundraising.

31 (2) “DRG hospital” means a hospital that is not a type A or type B hospital and that receives
 32 Medicare reimbursement based upon diagnostic related groups.

33 (3) “Gross revenue” has the meaning given that term in ORS 442.015.

34 (4) “Reporting entity” includes the following if licensed pursuant to ORS 441.015:

- 35 (a) A type A hospital as described in ORS 442.470.
- 36 (b) A type B hospital as described in ORS 442.470.
- 37 (c) A DRG hospital.
- 38 (d) An ambulatory surgical center as defined in ORS 442.015.

39 **SECTION 4. The amendments to ORS 442.315 by section 2 of this 2011 Act apply to capital**
 40 **projects for which the construction, development, purchase or construction expenditure be-**
 41 **gins or occurs on or after the effective date of this 2011 Act.**

42 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
 43 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
 44 **on its passage.**