

A-Engrossed
House Bill 2056

Ordered by the House April 2
Including House Amendments dated April 2

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Human Services)

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.

Extends long term care facility assessment to July 1, 2020. Authorizes Department of Human Services to convene meetings and conduct surveys for purpose of reducing long term care facility bed capacity statewide. Establishes procedures for licensee of long term care facility to purchase bed capacity of another long term care facility. Authorizes department to pay additional reimbursements to purchaser of bed capacity under specified conditions. Provides antitrust immunity under state action doctrine.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to long term care facilities; creating new provisions; amending ORS 442.015 and 442.315 and
3 sections 18, 23, 24 and 31, chapter 736, Oregon Laws 2003; declaring an emergency; and pro-
4 viding for revenue raising that requires approval by a three-fifths majority.

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

6 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS chapter 442.**

7 **SECTION 2. (1) The Legislative Assembly finds that:**

8 **(a) A significant amount of public and private funds are expended each year for long term**
9 **care services provided to Oregonians;**

10 **(b) Oregon has established itself as the national leader in providing a choice of noninsti-**
11 **tutional care to low income Oregonians in need of long term care services by developing an**
12 **extensive system of home health care and community-based care; and**

13 **(c) Long term care facilities continue to provide critical services to some of Oregon's**
14 **most frail and vulnerable residents with complex needs. Increasingly, long term care facili-**
15 **ties are filling a need for transitional care between hospitals and home settings in a cost-**
16 **effective manner, reducing the overall costs of long term care.**

17 **(2) The Legislative Assembly declares its support for collaboration among state agencies**
18 **that purchase health services and private health care providers in order to align financial**
19 **incentives with the goals of achieving better patient care and improved health status while**
20 **restraining growth in the per capita cost of health care.**

21 **(3) It is the goal of the Legislative Assembly that the long term care facility bed capacity**
22 **in Oregon be reduced by 1,500 beds by December 31, 2015, except for bed capacity in nursing**
23 **facilities operated by the Department of Veterans' Affairs and facilities that either applied**
24 **to the Oregon Health Authority for a certificate of need between August 1, 2011, and De-**
25 **cember 1, 2012, or submitted a letter of intent under ORS 442.315 (7) between January 15,**

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 2013, and January 31, 2013.

2 (4) In order to reduce the long term care facility bed capacity statewide, the Department
3 of Human Services may permit an operator of a long term care facility to purchase another
4 long term care facility's entire bed capacity if:

5 (a) The long term care facility bed capacity being purchased is not in an essential long
6 term care facility; and

7 (b) The long term care facility's entire bed capacity is purchased and the seller agrees
8 to surrender the long term care facility's license on the earlier of the date that:

9 (A) The last resident is transferred from the facility; or

10 (B) Is 180 days after the date of purchase.

11 (5) If a long term care facility's entire bed capacity is purchased, the facility may not
12 admit new residents to the facility except in accordance with criteria adopted by the De-
13 partment of Human Services by rule.

14 (6) Long term care bed capacity purchased under this section may not be transferred to
15 another long term care facility.

16 (7) The Department of Human Services may convene meetings with representatives of
17 entities that include, but are not limited to, long term care providers, nonprofit trade asso-
18 ciations and state and local governments to collaborate in strategies to reduce long term
19 care facility bed capacity statewide. Participation shall be on a voluntary basis. Meetings
20 shall be held at a time and place that is convenient for the participants.

21 (8) The Department of Human Services may conduct surveys of entities and individuals
22 specified in subsection (7) of this section concerning current long term care facility bed ca-
23 pacity and strategies for increasing future capacity.

24 (9) Based on the findings in subsection (1) of this section and the declaration expressed
25 in subsection (2) of this section, the Legislative Assembly declares its intent to exempt from
26 state antitrust laws and provide immunity from federal antitrust laws through the state
27 action doctrine individuals and entities that engage in transactions, meetings or surveys de-
28 scribed in subsections (4), (7) and (8) of this section that might otherwise be constrained by
29 such laws.

30 (10) The Director of Human Services or the director's designee shall engage in appropri-
31 ate state supervision necessary to promote state action immunity under state and federal
32 antitrust laws, and may inspect or request additional documentation to verify that the indi-
33 viduals and entities acting pursuant to subsection (4), (7) or (8) of this section are acting in
34 accordance with the legislative intent expressed in this section.

35 (11) The Director of Human Services or the director's designee, in consultation with the
36 Long Term Care Ombudsman, shall engage in regional planning necessary to promote the
37 safety and dignity of residents living in a long term care facility that surrenders its license
38 under this section.

39 **SECTION 3.** ORS 442.015 is amended to read:

40 442.015. As used in ORS chapter 441 and this chapter, unless the context requires otherwise:

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

1 vices or when such services are offered for use in Oregon.

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

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

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

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

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

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

15 [(5)] (4) "Develop" means to undertake those activities that on their completion will result in
16 the offer of a new institutional health service or the incurring of a financial obligation, as defined
17 under applicable state law, in relation to the offering of such a health service.

18 (5) "**Essential long term care facility**" means an individual long term care facility that
19 serves predominantly rural and frontier communities, as designated by the Office of Rural
20 Health, and meets other criteria established by the Department of Human Services by rule.

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

24 (7) "Freestanding birthing center" means a facility licensed for the primary purpose of per-
25 forming low risk deliveries.

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

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

31 (10)(a) "Health care facility" means:

32 (A) A hospital;

33 (B) A long term care facility;

34 (C) An ambulatory surgical center;

35 (D) A freestanding birthing center; or

36 (E) An outpatient renal dialysis center.

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

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

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

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

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

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

45 (11) "Health maintenance organization" or "HMO" means a public organization or a private

1 organization organized under the laws of any state that:

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

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

5 (i) Usual physician services;

6 (ii) Hospitalization;

7 (iii) Laboratory;

8 (iv) X-ray;

9 (v) Emergency and preventive services; and

10 (vi) Out-of-area coverage;

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

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

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

20 (13) "Hospital" means:

21 (a) A facility with an organized medical staff and a permanent building that is capable of pro-
22 viding 24-hour inpatient care to two or more individuals who have an illness or injury and that
23 provides at least the following health services:

24 (A) Medical;

25 (B) Nursing;

26 (C) Laboratory;

27 (D) Pharmacy; and

28 (E) Dietary; or

29 (b) A special inpatient care facility as that term is defined by the [*Oregon Health*] authority by
30 rule.

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

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

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

44 (17) "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 (18) “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 **in a facility that applied for**
10 **a certificate of need between August 1, 2011, and December 1, 2012, or submitted a letter of**
11 **intent under ORS 442.315 (7) between January 15, 2013, and January 31, 2013.**

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

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

16 (21) “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 (22) “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 individuals who are injured or sick or who have disabilities.

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

24 442.315. (1) Any new hospital or new skilled nursing or intermediate care service or facility not
25 excluded pursuant to ORS 441.065, **and any long term care facility for which a license was**
26 **surrendered under section 2 of this 2013 Act**, shall obtain a certificate of need from the Oregon
27 Health Authority prior to an offering or development.

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

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

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

35 (4) The authority shall be the decision-making authority for the purpose of certificates of need.
36 **The authority may establish an expedited review process for an application for a certificate**
37 **of need to rebuild a long term care facility, relocate buildings that are part of a long term**
38 **care facility or relocate long term care facility bed capacity from one long term care facility**
39 **to another. The authority shall issue a proposed order not later than 120 days after the date**
40 **a complete application for expedited review is received by the authority.**

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

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

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

4 (6) Once a certificate of need has been issued, it may not be revoked or rescinded unless it was
5 acquired by fraud or deceit. However, if the authority finds that a person is offering or developing
6 a project that is not within the scope of the certificate of need, the authority may limit the project
7 as specified in the issued certificate of need or reconsider the application. A certificate of need is
8 not transferable.

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

14 (8) Except as required in subsection (1) of this section for a new hospital or new skilled nursing
15 or intermediate care service or facility not operating as a Medicare swing bed program, nothing in
16 this section requires a rural hospital as defined in ORS 442.470 (5)(a)(A) and (B) to obtain a certifi-
17 cate of need.

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

- 20 (a) Magnetic resonance imaging scanners;
- 21 (b) Positron emission tomography scanners;
- 22 (c) Cardiac catheterization equipment;
- 23 (d) Megavoltage radiation therapy equipment;
- 24 (e) Extracorporeal shock wave lithotrippers;
- 25 (f) Neonatal intensive care;
- 26 (g) Burn care;
- 27 (h) Trauma care;
- 28 (i) Inpatient psychiatric services;
- 29 (j) Inpatient chemical dependency services;
- 30 (k) Inpatient rehabilitation services;
- 31 (L) Open heart surgery; or
- 32 (m) Organ transplant services.

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

38 (11) As used in this section, "basic health services" means health services offered in or through
39 a hospital licensed under ORS chapter 441, except skilled nursing or intermediate care nursing fa-
40 cilities or services and those services specified in subsection (9) of this section.

41 **SECTION 5.** Section 18, chapter 736, Oregon Laws 2003, as amended by section 34, chapter 736,
42 Oregon Laws 2003, section 7, chapter 757, Oregon Laws 2005, and section 10, chapter 780, Oregon
43 Laws 2007, is amended to read:

44 **Sec. 18.** [(1)] The Oregon Veterans' Home is exempt from the assessment imposed under section
45 16, chapter 736, Oregon Laws 2003.

1 [(2) A waived long term care facility is exempt from the long term care facility assessment im-
2 posed under section 16, chapter 736, Oregon Laws 2003.]

3 [(3) As used in this section, “waived long term care facility” means:]

4 [(a) A long term care facility operated by a continuing care retirement community that is registered
5 under ORS 101.030 and that admits:]

6 [(A) Residents of the continuing care retirement community; or]

7 [(B) Residents of the continuing care retirement community and nonresidents; or]

8 [(b) A long term care facility that is annually identified by the Department of Human Services as
9 having a Medicaid recipient census that exceeds the census level established by the department for the
10 year for which the facility is identified.]

11 **SECTION 6.** Section 23, chapter 736, Oregon Laws 2003, as amended by section 8, chapter 757,
12 Oregon Laws 2005, and section 11, chapter 780, Oregon Laws 2007, is amended to read:

13 **Sec. 23.** Sections 15 to 22, chapter 736, Oregon Laws 2003, apply to long term care facility as-
14 sessments imposed in calendar quarters beginning on or after November 26, 2003, and before July
15 1, [2014] **2020**.

16 **SECTION 7.** Section 24, chapter 736, Oregon Laws 2003, as amended by section 11, chapter 757,
17 Oregon Laws 2005, and section 12, chapter 780, Oregon Laws 2007, is amended to read:

18 **Sec. 24.** (1) The Long Term Care Facility Quality Assurance Fund is established in the State
19 Treasury, separate and distinct from the General Fund. Interest earned by the Long Term Care
20 Facility Quality Assurance Fund shall be credited to the fund.

21 (2) Amounts in the Long Term Care Facility Quality Assurance Fund are continuously appro-
22 priated to the Department of Human Services for the purposes of paying refunds due under section
23 20, chapter 736, Oregon Laws 2003, and funding long term care facilities, as defined in section 15,
24 chapter 736, Oregon Laws 2003, that are a part of the Oregon Medicaid reimbursement system.

25 (3) Funds in the Long Term Care Facility Quality Assurance Fund and the matching federal fi-
26 nancial participation under Title XIX of the Social Security Act may be used to fund Medicaid-
27 certified long term care facilities using only the reimbursement methodology described in [subsection
28 (4)] **subsections (4) and (5)** of this section to achieve a rate of reimbursement greater than the rate
29 in effect on June 30, 2003.

30 (4) The reimbursement methodology used to make additional payments to Medicaid-certified long
31 term care facilities includes but is not limited to:

32 (a) Rebasing [biennially, beginning on July 1 of each odd-numbered year] **on July 1 of each**
33 **year;**

34 [(b) Adjusting for inflation in the nonrebasing year;]

35 [(c)] **(b)** Continuing the use of the pediatric rate;

36 [(d)] **(c)** Continuing the use of the complex medical needs additional payment; **and**

37 [(e)] **(d)** Discontinuing the use of the relationship percentage, except when calculating the
38 pediatric rate in paragraph [(c)] **(b)** of this subsection[; and].

39 **(5) In addition to the reimbursement methodology described in subsection (4) of this**
40 **section, the department may make additional payments of \$9.75 per resident who receives**
41 **medical assistance to a long term care facility that purchased long term care bed capacity**
42 **under section 2 of this 2013 Act on or after October 1, 2013, and on or before December 31,**
43 **2015. The payments may be made for a period of four years from the date of purchase. The**
44 **department may not make additional payments under this section until the Medicaid-certified**
45 **long term care facility is found by the department to meet quality standards adopted by the**

1 **department by rule.**

2 [(f)] **(6)(a)** [Requiring] The department [of Human Services to] **shall** reimburse costs **using the**
3 **methodology described in subsections (4) and (5) of this section** at a rate not lower than [the
4 *63rd percentile ceiling*] **a percentile** of allowable costs for the [biennium] **period** for which the re-
5 imbursement is made.

6 **(b) For the period beginning July 1, 2013, and ending June 30, 2016, the department shall**
7 **reimburse costs at a rate not lower than the 63rd percentile of rebased allowable costs for**
8 **that period.**

9 **(c) For each three-month period beginning on or after July 1, 2016, in which the reduction**
10 **in bed capacity in Medicaid-certified long term care facilities is less than the goal established**
11 **in section 2 of this 2013 Act, the department shall reimburse costs at a rate not lower than**
12 **the percentile of allowable costs according to the following schedule:**

13 **(A) 62nd percentile for a reduction of 1,350 or more beds.**

14 **(B) 61st percentile for a reduction of 1,200 or more beds but less than 1,350 beds.**

15 **(C) 60th percentile for a reduction of 1,050 or more beds but less than 1,200 beds.**

16 **(D) 59th percentile for a reduction of 900 or more beds but less than 1,050 beds.**

17 **(E) 58th percentile for a reduction of 750 or more beds but less than 900 beds.**

18 **(F) 57th percentile for a reduction of 600 or more beds but less than 750 beds.**

19 **(G) 56th percentile for a reduction of 450 or more beds but less than 600 beds.**

20 **(H) 55th percentile for a reduction of 300 or more beds but less than 450 beds.**

21 **(I) 54th percentile for a reduction of 150 or more beds but less than 300 beds.**

22 **(J) 53rd percentile for a reduction of 1 to 49 beds.**

23 **(7) A reduction in the percentile of allowable costs reimbursed under subsection (6) of**
24 **this section is not subject to ORS 410.555.**

25 **SECTION 8.** Section 31, chapter 736, Oregon Laws 2003, as amended by section 9, chapter 757,
26 Oregon Laws 2005, section 14, chapter 780, Oregon Laws 2007, and section 49, chapter 11, Oregon
27 Laws 2009, is amended to read:

28 **Sec. 31.** Sections 15 to 22, 24 and 29, chapter 736, Oregon Laws 2003, are repealed on [January
29 2, 2015] **January 2, 2021.**

30 **SECTION 9.** ORS 442.015, as amended by section 3 of this 2013 Act, is amended to read:

31 442.015. As used in ORS chapter 441 and this chapter, unless the context requires otherwise:

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

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

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

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

44 (A) Individual or group practice offices of private physicians or dentists that do not contain a
45 distinct area used for outpatient surgical treatment on a regular and organized basis, or that only

1 provide surgery routinely provided in a physician's or dentist's office using local anesthesia or
2 conscious sedation; or

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

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

7 [(5) "*Essential long term care facility*" means an individual long term care facility that serves
8 predominantly rural and frontier communities, as designated by the Office of Rural Health, and meets
9 other criteria established by the Department of Human Services by rule.]

10 [(6)] (5) "Expenditure" or "capital expenditure" means the actual expenditure, an obligation to
11 an expenditure, lease or similar arrangement in lieu of an expenditure, and the reasonable value of
12 a donation or grant in lieu of an expenditure but not including any interest thereon.

13 [(7)] (6) "Freestanding birthing center" means a facility licensed for the primary purpose of
14 performing low risk deliveries.

15 [(8)] (7) "Governmental unit" means the state, or any county, municipality or other political
16 subdivision, or any related department, division, board or other agency.

17 [(9)] (8) "Gross revenue" means the sum of daily hospital service charges, ambulatory service
18 charges, ancillary service charges and other operating revenue. "Gross revenue" does not include
19 contributions, donations, legacies or bequests made to a hospital without restriction by the donors.

20 [(10)(a)] (9)(a) "Health care facility" means:

21 (A) A hospital;

22 (B) A long term care facility;

23 (C) An ambulatory surgical center;

24 (D) A freestanding birthing center; or

25 (E) An outpatient renal dialysis center.

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

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

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

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

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

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

34 [(11)] (10) "Health maintenance organization" or "HMO" means a public organization or a pri-
35 vate organization organized under the laws of any state that:

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

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

39 (i) Usual physician services;

40 (ii) Hospitalization;

41 (iii) Laboratory;

42 (iv) X-ray;

43 (v) Emergency and preventive services; and

44 (vi) Out-of-area coverage;

45 (B) Is compensated, except for copayments, for the provision of the basic health care services

1 listed in subparagraph (A) of this paragraph to enrolled participants on a predetermined periodic
2 rate basis; and

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

6 [(12)] (11) "Health services" means clinically related diagnostic, treatment or rehabilitative
7 services, and includes alcohol, drug or controlled substance abuse and mental health services that
8 may be provided either directly or indirectly on an inpatient or ambulatory patient basis.

9 [(13)] (12) "Hospital" means:

10 (a) A facility with an organized medical staff and a permanent building that is capable of pro-
11 viding 24-hour inpatient care to two or more individuals who have an illness or injury and that
12 provides at least the following health services:

13 (A) Medical;

14 (B) Nursing;

15 (C) Laboratory;

16 (D) Pharmacy; and

17 (E) Dietary; or

18 (b) A special inpatient care facility as that term is defined by the authority by rule.

19 [(14)] (13) "Institutional health services" means health services provided in or through health
20 care facilities and includes the entities in or through which such services are provided.

21 [(15)] (14) "Intermediate care facility" means a facility that provides, on a regular basis,
22 health-related care and services to individuals who do not require the degree of care and treatment
23 that a hospital or skilled nursing facility is designed to provide, but who because of their mental
24 or physical condition require care and services above the level of room and board that can be made
25 available to them only through institutional facilities.

26 [(16)] (15) "Long term care facility" means a facility with permanent facilities that include in-
27 patient beds, providing medical services, including nursing services but excluding surgical proce-
28 dures except as may be permitted by the rules of the Director of Human Services, to provide
29 treatment for two or more unrelated patients. "Long term care facility" includes skilled nursing fa-
30 cilities and intermediate care facilities but may not be construed to include facilities licensed and
31 operated pursuant to ORS 443.400 to 443.455.

32 [(17)] (16) "New hospital" means a facility that did not offer hospital services on a regular basis
33 within its service area within the prior 12-month period and is initiating or proposing to initiate
34 such services. "New hospital" also includes any replacement of an existing hospital that involves a
35 substantial increase or change in the services offered.

36 [(18)] (17) "New skilled nursing or intermediate care service or facility" means a service or fa-
37 cility that did not offer long term care services on a regular basis by or through the facility within
38 the prior 12-month period and is initiating or proposing to initiate such services. "New skilled
39 nursing or intermediate care service or facility" also includes the rebuilding of a long term care
40 facility, the relocation of buildings that are a part of a long term care facility, the relocation of long
41 term care beds from one facility to another or an increase in the number of beds of more than 10
42 or 10 percent of the bed capacity, whichever is the lesser, within a two-year period [*in a facility that*
43 *applied for a certificate of need between August 1, 2011, and December 1, 2012, or submitted a letter*
44 *of intent under ORS 442.315 (7) between January 15, 2013, and January 31, 2013*].

45 [(19)] (18) "Offer" means that the health care facility holds itself out as capable of providing,

1 or as having the means for the provision of, specified health services.

2 [(20)] (19) "Outpatient renal dialysis facility" means a facility that provides renal dialysis ser-
3 vices directly to outpatients.

4 [(21)] (20) "Person" means an individual, a trust or estate, a partnership, a corporation (includ-
5 ing associations, joint stock companies and insurance companies), a state, or a political subdivision
6 or instrumentality, including a municipal corporation, of a state.

7 [(22)] (21) "Skilled nursing facility" means a facility or a distinct part of a facility, that is pri-
8 marily engaged in providing to inpatients skilled nursing care and related services for patients who
9 require medical or nursing care, or an institution that provides rehabilitation services for the re-
10 habilitation of individuals who are injured or sick or who have disabilities.

11 **SECTION 10.** ORS 442.315, as amended by section 4 of this 2013 Act, is amended to read:

12 442.315. (1) Any new hospital or new skilled nursing or intermediate care service or facility not
13 excluded pursuant to ORS 441.065[, *and any long term care facility for which a license was surren-*
14 *dered under section 2 of this 2013 Act,*] shall obtain a certificate of need from the Oregon Health
15 Authority prior to an offering or development.

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

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

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

23 (4) The authority shall be the decision-making authority for the purpose of certificates of need.
24 The authority may establish an expedited review process for an application for a certificate of need
25 to rebuild a long term care facility, relocate buildings that are part of a long term care facility or
26 relocate long term care facility bed capacity from one long term care facility to another. The au-
27 thority shall issue a proposed order not later than 120 days after the date a complete application
28 for expedited review is received by the authority.

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

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

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

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

42 (7) Nothing in this section applies to any hospital, skilled nursing or intermediate care service
43 or facility that seeks to replace equipment with equipment of similar basic technological function
44 or an upgrade that improves the quality or cost-effectiveness of the service provided. Any person
45 acquiring such replacement or upgrade shall file a letter of intent for the project in accordance with

1 the rules of the authority if the price of the replacement equipment or upgrade exceeds \$1 million.

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

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

- 8 (a) Magnetic resonance imaging scanners;
- 9 (b) Positron emission tomography scanners;
- 10 (c) Cardiac catheterization equipment;
- 11 (d) Megavoltage radiation therapy equipment;
- 12 (e) Extracorporeal shock wave lithotriptors;
- 13 (f) Neonatal intensive care;
- 14 (g) Burn care;
- 15 (h) Trauma care;
- 16 (i) Inpatient psychiatric services;
- 17 (j) Inpatient chemical dependency services;
- 18 (k) Inpatient rehabilitation services;
- 19 (L) Open heart surgery; or
- 20 (m) Organ transplant services.

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

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

29 **SECTION 11.** Section 24, chapter 736, Oregon Laws 2003, as amended by section 11, chapter
30 757, Oregon Laws 2005, section 12, chapter 780, Oregon Laws 2007, and section 7 of this 2013 Act,
31 is amended to read:

32 **Sec. 24.** (1) The Long Term Care Facility Quality Assurance Fund is established in the State
33 Treasury, separate and distinct from the General Fund. Interest earned by the Long Term Care
34 Facility Quality Assurance Fund shall be credited to the fund.

35 (2) Amounts in the Long Term Care Facility Quality Assurance Fund are continuously appro-
36 priated to the Department of Human Services for the purposes of paying refunds due under section
37 20, chapter 736, Oregon Laws 2003, and funding long term care facilities, as defined in section 15,
38 chapter 736, Oregon Laws 2003, that are a part of the Oregon Medicaid reimbursement system.

39 (3) Funds in the Long Term Care Facility Quality Assurance Fund and the matching federal fi-
40 nancial participation under Title XIX of the Social Security Act may be used to fund Medicaid-
41 certified long term care facilities using only the reimbursement methodology described in
42 [subsections (4) and (5)] **subsection (4)** of this section to achieve a rate of reimbursement greater
43 than the rate in effect on June 30, 2003.

44 (4) The reimbursement methodology used to make additional payments to Medicaid-certified long
45 term care facilities includes but is not limited to:

- 1 (a) Rebasing on July 1 of each year;
- 2 (b) Continuing the use of the pediatric rate;
- 3 (c) Continuing the use of the complex medical needs additional payment; and
- 4 (d) Discontinuing the use of the relationship percentage, except when calculating the pediatric
- 5 rate in paragraph (b) of this subsection.

6 [(5) *In addition to the reimbursement methodology described in subsection (4) of this section, the*
7 *department may make additional payments of \$9.75 per resident who receives medical assistance to a*
8 *long term care facility that purchased long term care bed capacity under section 2 of this 2013 Act on*
9 *or after October 1, 2013, and on or before December 31, 2015. The payments may be made for a period*
10 *of four years from the date of purchase. The department may not make additional payments under this*
11 *section until the Medicaid-certified long term care facility is found by the department to meet quality*
12 *standards adopted by the department by rule.*]

13 [(6)(a)] **(5)(a)** The department shall reimburse costs using the methodology described in [*sub-*
14 *sections (4) and (5)*] **subsection (4)** of this section at a rate not lower than a percentile of allowable
15 costs for the period for which the reimbursement is made.

16 (b) For the period beginning July 1, 2013, and ending June 30, 2016, the department shall reim-
17 burse costs at a rate not lower than the 63rd percentile of rebased allowable costs for that period.

18 (c) For each three-month period beginning on or after July 1, 2016, in which the reduction in
19 bed capacity in Medicaid-certified long term care facilities is less than [*the goal established in section*
20 *2 of this 2013 Act*] **1,500 in bed capacity statewide that existed on the effective date of this 2013**
21 **Act**, the department shall reimburse costs at a rate not lower than the percentile of allowable costs
22 according to the following schedule:

- 23 (A) 62nd percentile for a reduction of 1,350 or more beds.
- 24 (B) 61st percentile for a reduction of 1,200 or more beds but less than 1,350 beds.
- 25 (C) 60th percentile for a reduction of 1,050 or more beds but less than 1,200 beds.
- 26 (D) 59th percentile for a reduction of 900 or more beds but less than 1,050 beds.
- 27 (E) 58th percentile for a reduction of 750 or more beds but less than 900 beds.
- 28 (F) 57th percentile for a reduction of 600 or more beds but less than 750 beds.
- 29 (G) 56th percentile for a reduction of 450 or more beds but less than 600 beds.
- 30 (H) 55th percentile for a reduction of 300 or more beds but less than 450 beds.
- 31 (I) 54th percentile for a reduction of 150 or more beds but less than 300 beds.
- 32 (J) 53rd percentile for a reduction of 1 to 149 beds.

33 [(7)] **(6)** A reduction in the percentile **ceiling** of allowable costs reimbursed under subsection
34 [(6)] **(5)** of this section is not subject to ORS 410.555.

35 **SECTION 12.** (1) **The amendments to section 18, chapter 736, Oregon Laws 2003, by sec-**
36 **tion 5 of this 2013 Act become operative January 1, 2014.**

37 (2) **The amendments to ORS 442.015 and 442.315 and section 24, chapter 736, Oregon Laws**
38 **2003, by sections 9, 10 and 11 of this 2013 Act become operative June 30, 2020.**

39 **SECTION 13.** **Section 2 of this 2013 Act is repealed June 30, 2020.**

40 **SECTION 14.** **This 2013 Act being necessary for the immediate preservation of the public**
41 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
42 **on its passage.**