HOUSE AMENDMENTS TO HOUSE BILL 2056

By COMMITTEE ON HEALTH CARE

April 2

On page 1 of the printed bill, line 3, delete the second "and" and before the period insert "; and providing for revenue raising that requires approval by a three-fifths majority".

Delete lines 20 through 24 and insert:

"(3) It is the goal of the Legislative Assembly that the long term care facility bed capacity in Oregon be reduced by 1,500 beds by December 31, 2015, except for bed capacity in nursing facilities operated by the Department of Veterans' Affairs and facilities that either applied to the Oregon Health Authority for a certificate of need between August 1, 2011, and December 1, 2012, or submitted a letter of intent under ORS 442.315 (7) between January 15, 2013, and January 31, 2013.".

In line 27, after "facility's" insert "entire".

On page 2, line 6, after "facility's" insert "entire".

After line 29, insert:

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

On page 5, line 1, before the period insert ", or submitted a letter of intent under ORS 442.315 (7) between January 15, 2013, and January 31, 2013".

On page 7, line 31, delete "person" and insert "long term care facility".

In line 39, delete "percentage" and insert "percentile".

Delete lines 41 through 45.

On page 8, delete lines 1 through 13 and insert:

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

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

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

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

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

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

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

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

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

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

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

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

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

Delete lines 19 through 45 and delete pages 9 through 12.

On page 13, delete lines 1 through 22 and insert:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(A) A hospital;

"(B) A long term care facility;

"(C) An ambulatory surgical center;

"(D) A freestanding birthing center; or

"(E) An outpatient renal dialysis center.

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

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

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

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

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

"(E) Community mental health programs or community developmental disabilities programs established under ORS 430.620.

"[*(11)*] **(10)** 'Health maintenance organization' or 'HMO' means a public organization or a private organization organized under the laws of any state that:

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

"(b)(A) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services:

"(i) Usual physician services;

"(ii) Hospitalization;

"(iii) Laboratory;

"(iv) X-ray;

"(v) Emergency and preventive services; and

"(vi) Out-of-area coverage;

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

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

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

"[*(13)*] **(12)** 'Hospital' means:

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

"(A) Medical;

"(B) Nursing;

"(C) Laboratory;

"(D) Pharmacy; and

"(E) Dietary; or

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

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

"[*(15)*] **(14)** 'Intermediate care facility' means a facility that provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment that a hospital or skilled nursing facility is designed to provide, but who because of their mental

or physical condition require care and services above the level of room and board that can be made available to them only through institutional facilities.

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

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

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

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

"[*(20)*] **(19)** 'Outpatient renal dialysis facility' means a facility that provides renal dialysis services directly to outpatients.

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

"[*(22)*] **(21)** 'Skilled nursing facility' means a facility or a distinct part of a facility, that is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or an institution that provides rehabilitation services for the rehabilitation of individuals who are injured or sick or who have disabilities.

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

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

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

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

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

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

The authority may establish an expedited review process for an application for a certificate of need to rebuild a long term care facility, relocate buildings that are part of a long term care facility or relocate long term care facility bed capacity from one long term care facility to another. The authority shall issue a proposed order not later than 120 days after the date a complete application for expedited review is received by the authority.

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

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

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

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

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

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

"(9) Nothing in this section applies to basic health services, but basic health services do not include:

"(a) Magnetic resonance imaging scanners;

"(b) Positron emission tomography scanners;

"(c) Cardiac catheterization equipment;

"(d) Megavoltage radiation therapy equipment;

"(e) Extracorporeal shock wave lithotriptors;

"(f) Neonatal intensive care;

"(g) Burn care;

"(h) Trauma care;

"(i) Inpatient psychiatric services;

"(j) Inpatient chemical dependency services;

"(k) Inpatient rehabilitation services;

"(L) Open heart surgery; or

"(m) Organ transplant services.

"(10) In addition to any other remedy provided by law, whenever it appears that any person is engaged in, or is about to engage in, any acts that constitute a violation of this section, or any rule or order issued by the authority under this section, the authority may institute proceedings in the

circuit courts to enforce obedience to such statute, rule or order by injunction or by other processes, mandatory or otherwise.

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

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

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

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

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

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

"(a) Rebasing on July 1 of each year;

"(b) Continuing the use of the pediatric rate;

"(c) Continuing the use of the complex medical needs additional payment; and

"(d) Discontinuing the use of the relationship percentage, except when calculating the pediatric rate in paragraph (b) of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

"(J) 53rd percentile for a reduction of 1 to 149 beds.

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