

Senate Bill 569

Sponsored by Senators STEINER HAYWARD, KRUSE, Representative HARKER; Senators BAERTSCHIGER JR, BATES, BEYER, BOQUIST, BURDICK, CLOSE, COURTNEY, DEVLIN, EDWARDS, FERRIOLI, GEORGE, GIROD, HANSELL, HASS, JOHNSON, KNOPP, MONNES ANDERSON, MONROE, OLSEN, PROZANSKI, ROBLAN, ROSENBAUM, SHIELDS, STARR, THOMSEN, WHITSETT, WINTERS, Representatives BAILEY, BARKER, BARNHART, BENTZ, BERGER, BOONE, CONGER, DAVIS, DEMBROW, DOHERTY, ESQUIVEL, FREDERICK, FREEMAN, GARRETT, GILLIAM, GORSEK, GREENLICK, HICKS, HOLVEY, HUFFMAN, JOHNSON, KENNEMER, KOMP, KRIEGER, LIVELY, MATTHEWS, OLSON, PARRISH, READ, SMITH, SPRENGER, THATCHER, THOMPSON, VEGA PEDERSON, WEIDNER, WHITSETT, WITT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Oregon Health Authority to adopt uniform credentialing and privileging standards for providers of telemedicine services. Authorizes hospital to accept credentials of telemedicine providers either by agreement with distant-site hospital or by providers meeting credentialing and privileging standards established by authority.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to telemedicine; creating new provisions; amending ORS 441.055, 442.015 and 442.807; and
3 declaring an emergency.

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

5 **SECTION 1.** ORS 441.055 is amended to read:

6 441.055. (1) The governing body of each health care facility shall be responsible for the operation
7 of the facility, the selection of the medical staff and the quality of care rendered in the facility. The
8 governing body shall:

9 (a) Ensure that all health care personnel for whom state licenses, registrations or certificates
10 are required are currently licensed, registered or certified;

11 (b) Ensure that physicians admitted to practice in the facility are granted privileges consistent
12 with their individual training, experience and other qualifications;

13 (c) Ensure that procedures for granting, restricting and terminating privileges exist and that
14 such procedures are regularly reviewed to ensure their conformity to applicable law;

15 (d) Ensure that physicians admitted to practice in the facility are organized into a medical staff
16 in such a manner as to effectively review the professional practices of the facility for the purposes
17 of reducing morbidity and mortality and for the improvement of patient care; *[and]*

18 (e) Ensure that a physician is not denied medical staff membership or privileges at the facility
19 solely on the basis that the physician holds medical staff membership or privileges at another health
20 care facility[.]; **and**

21 **(f) Ensure that, if telemedicine services are furnished to patients in a hospital:**

22 **(A) The hospital has a delegated credentialing agreement with the distant-site hospital;**

23 **or**

24 **(B) The telemedicine provider has the credentials to be granted privileges under the
25 standards adopted by the Oregon Health Authority pursuant to subsection (11) of this sec-**

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 **tion.**

2 (2) The physicians organized into a medical staff pursuant to subsection (1) of this section shall
3 propose medical staff bylaws to govern the medical staff. The bylaws shall include, but not be limited
4 to the following:

5 (a) Procedures for physicians admitted to practice in the facility to organize into a medical staff
6 pursuant to subsection (1) of this section;

7 (b) Procedures for ensuring that physicians admitted to practice in the facility are granted
8 privileges consistent with their individual training, experience and other qualifications **and that**
9 **telemedicine providers at distant-site hospitals meet the requirements of subsection (1)(f) of**
10 **this section;**

11 (c) Provisions establishing a framework for the medical staff to nominate, elect, appoint or re-
12 move officers and other persons to carry out medical staff activities with accountability to the
13 governing body;

14 (d) Procedures for ensuring that physicians admitted to practice in the facility are currently li-
15 censed by the Oregon Medical Board;

16 (e) Procedures for ensuring that the facility's procedures for granting, restricting and terminat-
17 ing privileges are followed and that such procedures are regularly reviewed to assure their con-
18 formity to applicable law; and

19 (f) Procedures for ensuring that physicians provide services within the scope of the privileges
20 granted by the governing body.

21 (3) Amendments to medical staff bylaws shall be accomplished through a cooperative process
22 involving both the medical staff and the governing body. Medical staff bylaws shall be adopted, re-
23 pealed or amended when approved by the medical staff and the governing body. Approval shall not
24 be unreasonably withheld by either. Neither the medical staff nor the governing body shall withhold
25 approval if such repeal, amendment or adoption is mandated by law, statute or regulation or is
26 necessary to obtain or maintain accreditation or to comply with fiduciary responsibilities or if the
27 failure to approve would subvert the stated moral or ethical purposes of the institution.

28 (4) The Oregon Medical Board may appoint one or more physicians to conduct peer review for
29 a health care facility upon request of such review by all of the following:

30 (a) The physician whose practice is being reviewed.

31 (b) The executive committee of the health care facility's medical staff.

32 (c) The governing body of the health care facility.

33 (5) The physicians appointed pursuant to subsection (4) of this section shall be deemed agents
34 of the Oregon Medical Board, subject to the provisions of ORS 30.310 to 30.400 and shall conduct
35 peer review. Peer review shall be conducted pursuant to the bylaws of the requesting health care
36 facility.

37 (6) Any person serving on or communicating information to a peer review committee shall not
38 be subject to an action for damages for action or communications or statements made in good faith.

39 (7) All findings and conclusions, interviews, reports, studies, communications and statements
40 procured by or furnished to the peer review committee in connection with a peer review are confi-
41 dential pursuant to ORS 192.501 to 192.505 and 192.690 and all data is privileged pursuant to ORS
42 41.675.

43 (8) Notwithstanding subsection (7) of this section, a written report of the findings and conclu-
44 sions of the peer review shall be provided to the governing body of the health care facility who shall
45 abide by the privileged and confidential provisions set forth in subsection (7) of this section.

1 (9) Procedures for peer review established by subsections (4) to (8) of this section are exempt
2 from ORS chapter 183.

3 (10) The Oregon Health Authority shall adopt by rule standards for rural hospitals, as defined
4 in ORS 442.470, that specifically address the provision of care to postpartum and newborn patients
5 so long as patient care is not adversely affected.

6 **(11) The Oregon Health Authority shall adopt by rule uniform credentialing and privileg-**
7 **ing standards for telemedicine providers.**

8 [(11)] (12) For purposes of this section, “physician” has the meaning given the term in ORS
9 677.010.

10 **SECTION 2.** ORS 442.015 is amended to read:

11 442.015. As used in ORS chapter 441 and this chapter, unless the context requires otherwise:

12 (1) “Acquire” or “acquisition” means obtaining equipment, supplies, components or facilities by
13 any means, including purchase, capital or operating lease, rental or donation, [*with intention*] **for**
14 **the purpose** of using such equipment, supplies, components or facilities to provide health services
15 in Oregon. When equipment or other materials are obtained outside of this state, acquisition is
16 considered to occur when the equipment or other materials begin to be used in Oregon for the
17 provision of health services or when such services are offered for use in Oregon.

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

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

23 (b) “Ambulatory surgical center” does not mean:

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

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

29 [(4) “Budget” means the projections by the hospital for a specified future time period of expen-
30 ditures and revenues with supporting statistical indicators.]

31 **(4) “Delegated credentialing agreement” means a written agreement between a hospital**
32 **and a distant-site hospital that states the hospital will rely upon the credentialing and priv-**
33 **ileging decisions of the distant-site hospital to grant privileges at the hospital to a telemed-**
34 **icine provider practicing at the distant-site hospital either as an employee or under contract.**

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

38 **(6) “Distant-site hospital” means the hospital where a telemedicine provider, at the time**
39 **the telemedicine provider is providing telemedicine services, is practicing as an employee or**
40 **under contract.**

41 [(6)] (7) “Expenditure” or “capital expenditure” means the actual expenditure, an obligation to
42 an expenditure, lease or similar arrangement in lieu of an expenditure, and the reasonable value of
43 a donation or grant in lieu of an expenditure but not including any interest thereon.

44 [(7)] (8) “Freestanding birthing center” means a facility licensed for the primary purpose of
45 performing low risk deliveries.

1 [(8)] (9) “Governmental unit” means the state, or any county, municipality or other political
2 subdivision, or any related department, division, board or other agency.

3 [(9)] (10) “Gross revenue” means the sum of daily hospital service charges, ambulatory service
4 charges, ancillary service charges and other operating revenue. “Gross revenue” does not include
5 contributions, donations, legacies or bequests made to a hospital without restriction by the donors.

6 [(10)(a)] (11)(a) “Health care facility” means:

7 (A) A hospital;

8 (B) A long term care facility;

9 (C) An ambulatory surgical center;

10 (D) A freestanding birthing center; or

11 (E) An outpatient renal dialysis center.

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

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

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

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

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

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

20 [(11)] (12) “Health maintenance organization” or “HMO” means a public organization or a pri-
21 vate organization organized under the laws of any state that:

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

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

25 (i) Usual physician services;

26 (ii) Hospitalization;

27 (iii) Laboratory;

28 (iv) X-ray;

29 (v) Emergency and preventive services; and

30 (vi) Out-of-area coverage;

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

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

37 [(12)] (13) “Health services” means clinically related diagnostic, treatment or rehabilitative
38 services, and includes alcohol, drug or controlled substance abuse and mental health services that
39 may be provided either directly or indirectly on an inpatient or ambulatory patient basis.

40 [(13)] (14) “Hospital” means:

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

44 (A) Medical;

45 (B) Nursing;

- 1 (C) Laboratory;
- 2 (D) Pharmacy; and
- 3 (E) Dietary; or

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

6 [(14)] (15) “Institutional health services” means health services provided in or through health
7 care facilities and includes the entities in or through which such services are provided.

8 [(15)] (16) “Intermediate care facility” means a facility that provides, on a regular basis,
9 health-related care and services to individuals who do not require the degree of care and treatment
10 that a hospital or skilled nursing facility is designed to provide, but who because of their mental
11 or physical condition require care and services above the level of room and board that can be made
12 available to them only through institutional facilities.

13 [(16)] (17)(a) “Long term care facility” means a **permanent** facility with [*permanent facilities*
14 *that include*] inpatient beds, providing:

15 (A) Medical services, including nursing services but excluding surgical procedures except as
16 may be permitted by the rules of the Director of Human Services[, *to provide*]; **and**

17 (B) Treatment for two or more unrelated patients.

18 (b) “Long term care facility” includes skilled nursing facilities and intermediate care facilities
19 but [*may not be construed to*] **does not** include facilities licensed and operated pursuant to ORS
20 443.400 to 443.455.

21 [(17)] (18) “New hospital” means:

22 (a) A facility that did not offer hospital services on a regular basis within its service area
23 within the prior 12-month period and is initiating or proposing to initiate such services[. “*New*
24 *hospital*” *also includes*]; **or**

25 (b) Any replacement of an existing hospital that involves a substantial increase or change in the
26 services offered.

27 [(18)] (19) “New skilled nursing or intermediate care service or facility” means a service or fa-
28 cility that did not offer long term care services on a regular basis by or through the facility within
29 the prior 12-month period and is initiating or proposing to initiate such services. “New skilled
30 nursing or intermediate care service or facility” also includes the rebuilding of a long term care
31 facility, the relocation of buildings that are a part of a long term care facility, the relocation of long
32 term care beds from one facility to another or an increase in the number of beds of more than 10
33 or 10 percent of the bed capacity, whichever is the lesser, within a two-year period.

34 [(19)] (20) “Offer” means that the health care facility holds itself out as capable of providing,
35 or as having the means for the provision of, specified health services.

36 [(20)] (21) “Outpatient renal dialysis facility” means a facility that provides renal dialysis ser-
37 vices directly to outpatients.

38 [(21)] (22) “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)] (23) “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 (24) “Telemedicine” means the delivery of health care in the form of assessment, diag-

1 **nosis, treatment, consultation, transfer and interpretation of medical data, and patient edu-**
 2 **cation by a telemedicine provider directly to a patient through audio, video, data transfer or**
 3 **other electronic means.**

4 **SECTION 3.** ORS 442.807 is amended to read:

5 442.807. (1) Within 30 days of receiving the recommendations of the Advisory Committee on
 6 Physician Credentialing Information, the Administrator of the Office for Oregon Health Policy and
 7 Research shall forward the recommendations to the Director of the Oregon Health Authority. The
 8 administrator shall request that the Oregon Health Authority adopt rules to carry out the efficient
 9 implementation and enforcement of the recommendations of the committee.

10 (2) The Oregon Health Authority shall:

11 (a) Adopt administrative rules in a timely manner, as required by the Administrative Procedures
 12 Act, for the purpose of effectuating the provisions of ORS 442.800 to 442.807; and

13 (b) Consult with each other and with the administrator to ensure that the rules adopted by the
 14 Oregon Health Authority are identical and are consistent with the recommendations developed
 15 pursuant to ORS 442.805 for affected hospitals and health care service contractors.

16 (3) The uniform credentialing information required pursuant to the administrative rules of the
 17 Oregon Health Authority represent the minimum uniform credentialing information required by the
 18 affected hospitals and health care service contractors. *[Nothing in]* ORS 442.800 to 442.807 *[shall*
 19 *be interpreted to]* **do not** prevent an affected hospital or health care service contractor from re-
 20 questing additional credentialing information from a licensed physician, **other than a telemedicine**
 21 **provider**, for the purpose of completing physician credentialing procedures used by the affected
 22 hospital or health care service contractor. **Credentialing requirements for telemedicine provid-**
 23 **ers must be in accordance with ORS 441.055.**

24 **SECTION 4.** (1) **The amendments to ORS 441.055, 442.015 and 442.807 by sections 1 to 3**
 25 **of this 2013 Act become operative October 1, 2013.**

26 (2) **The Director of the Oregon Health Authority shall take any actions necessary before**
 27 **October 1, 2013, in order to implement the amendments to ORS 441.055, 442.015 and 442.807**
 28 **by sections 1 to 3 of this 2013 Act on and after October 1, 2013.**

29 **SECTION 5.** **This 2013 Act being necessary for the immediate preservation of the public**
 30 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
 31 **on its passage.**

32