

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2056**

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

4 Delete lines 20 through 24 and insert:

5 “(3) It is the goal of the Legislative Assembly that the long term care  
6 facility bed capacity in Oregon be reduced by 1,500 beds by December 31,  
7 2015, except for bed capacity in nursing facilities operated by the Department  
8 of Veterans’ Affairs and facilities that either applied to the Oregon Health  
9 Authority for a certificate of need between August 1, 2011, and December 1,  
10 2012, or submitted a letter of intent under ORS 442.315 (7) between January  
11 15, 2013, and January 31, 2013.”.

12 In line 27, after “facility’s” insert “entire”.

13 On page 2, line 6, after “facility’s” insert “entire”.

14 After line 29, insert:

15 “(11) The Director of Human Services or the director’s designee, in con-  
16 sultation with the Long Term Care Ombudsman, shall engage in regional  
17 planning necessary to promote the safety and dignity of residents living in  
18 a long term care facility that surrenders its license under this section.”.

19 On page 5, line 1, before the period insert “, or submitted a letter of in-  
20 tent under ORS 442.315 (7) between January 15, 2013, and January 31,  
21 2013”.

22 On page 7, line 31, delete “person” and insert “long term care facility”.

1 In line 39, delete “percentage” and insert “percentile”.

2 Delete lines 41 through 45.

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

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

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

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

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

15 “(C) 60th percentile for a reduction of 1,050 or more beds but less than  
16 1,200 beds.

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

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

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

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

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

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

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

30 “(7) A reduction in the percentile of allowable costs reimbursed under

1 subsection (6) of this section is not subject to ORS 410.555.”.

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

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

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

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

8 “(1) ‘Acquire’ or ‘acquisition’ means obtaining equipment, supplies, com-  
9 ponents or facilities by any means, including purchase, capital or operating  
10 lease, rental or donation, with intention of using such equipment, supplies,  
11 components or facilities to provide health services in Oregon. When equip-  
12 ment or other materials are obtained outside of this state, acquisition is  
13 considered to occur when the equipment or other materials begin to be used  
14 in Oregon for the provision of health services or when such services are of-  
15 fered for use in Oregon.

16 “(2) ‘Affected persons’ has the same meaning as given to ‘party’ in ORS  
17 183.310.

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

22 “(b) ‘Ambulatory surgical center’ does not mean:

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

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

30 “(4) ‘Develop’ means to undertake those activities that on their com-

1 pletion will result in the offer of a new institutional health service or the  
2 incurring of a financial obligation, as defined under applicable state law, in  
3 relation to the offering of such a health service.

4 “[5] *‘Essential long term care facility’ means an individual long term care*  
5 *facility that serves predominantly rural and frontier communities, as desig-*  
6 *nated by the Office of Rural Health, and meets other criteria established by*  
7 *the Department of Human Services by rule.]*

8 “[6] **(5)** ‘Expenditure’ or ‘capital expenditure’ means the actual expendi-  
9 ture, an obligation to an expenditure, lease or similar arrangement in lieu  
10 of an expenditure, and the reasonable value of a donation or grant in lieu  
11 of an expenditure but not including any interest thereon.

12 “[7] **(6)** ‘Freestanding birthing center’ means a facility licensed for the  
13 primary purpose of performing low risk deliveries.

14 “[8] **(7)** ‘Governmental unit’ means the state, or any county, municipality  
15 or other political subdivision, or any related department, division, board or  
16 other agency.

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

21 “[10)(a)] **(9)(a)** ‘Health care facility’ means:

22 “(A) A hospital;

23 “(B) A long term care facility;

24 “(C) An ambulatory surgical center;

25 “(D) A freestanding birthing center; or

26 “(E) An outpatient renal dialysis center.

27 “(b) ‘Health care facility’ does not mean:

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

30 “(B) An establishment furnishing primarily domiciliary care as described

1 in ORS 443.205;

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

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

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

8 “[~~11~~] **(10)** ‘Health maintenance organization’ or ‘HMO’ means a public  
9 organization or a private organization organized under the laws of any state  
10 that:

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

13 “(b)(A) Provides or otherwise makes available to enrolled participants  
14 health care services, including at least the following basic health care ser-  
15 vices:

16 “(i) Usual physician services;

17 “(ii) Hospitalization;

18 “(iii) Laboratory;

19 “(iv) X-ray;

20 “(v) Emergency and preventive services; and

21 “(vi) Out-of-area coverage;

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

25 “(C) Provides physicians’ services primarily directly through physicians  
26 who are either employees or partners of such organization, or through ar-  
27 rangements with individual physicians or one or more groups of physicians  
28 organized on a group practice or individual practice basis.

29 “[~~12~~] **(11)** ‘Health services’ means clinically related diagnostic, treatment  
30 or rehabilitative services, and includes alcohol, drug or controlled substance

1 abuse and mental health services that may be provided either directly or  
2 indirectly on an inpatient or ambulatory patient basis.

3 “[13] (12) ‘Hospital’ means:

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

8 “(A) Medical;

9 “(B) Nursing;

10 “(C) Laboratory;

11 “(D) Pharmacy; and

12 “(E) Dietary; or

13 “(b) A special inpatient care facility as that term is defined by the au-  
14 thority by rule.

15 “[14] (13) ‘Institutional health services’ means health services provided  
16 in or through health care facilities and includes the entities in or through  
17 which such services are provided.

18 “[15] (14) ‘Intermediate care facility’ means a facility that provides, on  
19 a regular basis, health-related care and services to individuals who do not  
20 require the degree of care and treatment that a hospital or skilled nursing  
21 facility is designed to provide, but who because of their mental or physical  
22 condition require care and services above the level of room and board that  
23 can be made available to them only through institutional facilities.

24 “[16] (15) ‘Long term care facility’ means a facility with permanent fa-  
25 cilities that include inpatient beds, providing medical services, including  
26 nursing services but excluding surgical procedures except as may be permit-  
27 ted by the rules of the Director of Human Services, to provide treatment for  
28 two or more unrelated patients. ‘Long term care facility’ includes skilled  
29 nursing facilities and intermediate care facilities but may not be construed  
30 to include facilities licensed and operated pursuant to ORS 443.400 to 443.455.

1 “[(17)] **(16)** ‘New hospital’ means a facility that did not offer hospital  
2 services on a regular basis within its service area within the prior 12-month  
3 period and is initiating or proposing to initiate such services. ‘New  
4 hospital’ also includes any replacement of an existing hospital that involves  
5 a substantial increase or change in the services offered.

6 “[(18)] **(17)** ‘New skilled nursing or intermediate care service or facility’  
7 means a service or facility that did not offer long term care services on a  
8 regular basis by or through the facility within the prior 12-month period and  
9 is initiating or proposing to initiate such services. ‘New skilled nursing or  
10 intermediate care service or facility’ also includes the rebuilding of a long  
11 term care facility, the relocation of buildings that are a part of a long term  
12 care facility, the relocation of long term care beds from one facility to an-  
13 other or an increase in the number of beds of more than 10 or 10 percent of  
14 the bed capacity, whichever is the lesser, within a two-year period [*in a fa-*  
15 *cility that applied for a certificate of need between August 1, 2011, and De-*  
16 *cember 1, 2012, or submitted a letter of intent under ORS 442.315 (7) between*  
17 *January 15, 2013, and January 31, 2013*].

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

21 “[(20)] **(19)** ‘Outpatient renal dialysis facility’ means a facility that pro-  
22 vides renal dialysis services directly to outpatients.

23 “[(21)] **(20)** ‘Person’ means an individual, a trust or estate, a partnership,  
24 a corporation (including associations, joint stock companies and insurance  
25 companies), a state, or a political subdivision or instrumentality, including  
26 a municipal corporation, of a state.

27 “[(22)] **(21)** ‘Skilled nursing facility’ means a facility or a distinct part of  
28 a facility, that is primarily engaged in providing to inpatients skilled nursing  
29 care and related services for patients who require medical or nursing care,  
30 or an institution that provides rehabilitation services for the rehabilitation

1 of individuals who are injured or sick or who have disabilities.

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

4 “442.315. (1) Any new hospital or new skilled nursing or intermediate care  
5 service or facility not excluded pursuant to ORS 441.065[, *and any long term*  
6 *care facility for which a license was surrendered under section 2 of this 2013*  
7 *Act,*] shall obtain a certificate of need from the Oregon Health Authority  
8 prior to an offering or development.

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

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

13 “(b) An applicant shall pay a fee prescribed as provided in this section.  
14 Subject to the approval of the Oregon Department of Administrative Ser-  
15 vices, the authority shall prescribe application fees, based on the complexity  
16 and scope of the proposed project.

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

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

28 “(b) Following a final decision being rendered by the authority, an ap-  
29 plicant or any affected person may request a reconsideration hearing pursu-  
30 ant to ORS chapter 183.



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

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

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

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

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

25 “(a) Magnetic resonance imaging scanners;

26 “(b) Positron emission tomography scanners;

27 “(c) Cardiac catheterization equipment;

28 “(d) Megavoltage radiation therapy equipment;

29 “(e) Extracorporeal shock wave lithotriptors;

30 “(f) Neonatal intensive care;

- 1 “(g) Burn care;
- 2 “(h) Trauma care;
- 3 “(i) Inpatient psychiatric services;
- 4 “(j) Inpatient chemical dependency services;
- 5 “(k) Inpatient rehabilitation services;
- 6 “(L) Open heart surgery; or
- 7 “(m) Organ transplant services.

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

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

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

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

25 “(2) Amounts in the Long Term Care Facility Quality Assurance Fund are  
26 continuously appropriated to the Department of Human Services for the  
27 purposes of paying refunds due under section 20, chapter 736, Oregon Laws  
28 2003, and funding long term care facilities, as defined in section 15, chapter  
29 736, Oregon Laws 2003, that are a part of the Oregon Medicaid reimburse-  
30 ment system.

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

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

9 “(a) Rebasing on July 1 of each year;

10 “(b) Continuing the use of the pediatric rate;

11 “(c) Continuing the use of the complex medical needs additional payment;  
12 and

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

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

24 “[*(6)(a)*] **(5)(a)** The department shall reimburse costs using the methodol-  
25 ogy described in [*subsections (4) and (5)*] **subsection (4)** of this section at a  
26 rate not lower than a percentile of allowable costs for the period for which  
27 the reimbursement is made.

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

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

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

8 “(B) 61st percentile for a reduction of 1,200 or more beds but less than  
9 1,350 beds.

10 “(C) 60th percentile for a reduction of 1,050 or more beds but less than  
11 1,200 beds.

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

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

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

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

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

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

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

25 “[~~(7)~~] **(6)** A reduction in the percentile **ceiling** of allowable costs reim-  
26 bursed under subsection [~~(6)~~] **(5)** of this section is not subject to ORS  
27 410.555.”.

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