

# D R A F T

## SUMMARY

Digest: The Act applies to the certificate of need program in the OHA. The Act excludes new nursing homes and new hospitals providing certain types of mental health care or substance use treatment. (Flesch Readability Score: 63.6).

Excludes new hospitals providing inpatient psychiatric services or inpatient or outpatient substance use treatment and new long term care facilities from requirement to obtain a certificate of need from the Oregon Health Authority.

## A BILL FOR AN ACT

1  
2 Relating to certificates of need; amending ORS 101.090, 408.380, 430.021,  
3 430.315, 442.015 and 442.315.

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

5 **SECTION 1.** ORS 442.315 is amended to read:

6 442.315. (1) Any new hospital [*or new skilled nursing or intermediate care*  
7 *service or facility not excluded pursuant to ORS 441.065*] shall obtain a cer-  
8 tificate of need from the Oregon Health Authority prior to an offering or  
9 development **unless the hospital:**

10 **(a) Is excluded pursuant to ORS 441.065;**

11 **(b) Provides inpatient psychiatric services as its primary focus; or**

12 **(c) Provides inpatient or outpatient mental health services or sub-**  
13 **stance use treatment as its primary focus.**

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

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

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

5 (4)[(a)] The authority shall issue a draft recommendation in response to  
6 an application for a certificate of need.

7 [(b) *The authority may establish an expedited review process for an appli-*  
8 *cation for a certificate of need to rebuild a long term care facility, relocate*  
9 *buildings that are part of a long term care facility or relocate long term care*  
10 *facility bed capacity from one long term care facility to another. The authority*  
11 *shall issue a draft recommendation not later than 120 days after the date a*  
12 *complete application subject to expedited review is received by the authority.*]

13 (5)(a) An applicant or any affected person who is dissatisfied with the  
14 draft recommendation of the authority is entitled to an informal hearing  
15 before the authority in the course of review and before a proposed decision  
16 is rendered. Following an informal hearing, or if no applicant or affected  
17 person requests an informal hearing within a period of time prescribed by  
18 the authority by rule, the authority shall issue a proposed decision.

19 (b) An applicant or affected person is entitled to a contested case hearing  
20 in accordance with ORS chapter 183 to challenge the proposed decision of  
21 the authority. Following a contested case hearing, or if no applicant or af-  
22 fected person requests a contested case hearing within a period of time pre-  
23 scribed by the authority by rule, the authority shall issue a final order  
24 granting, with or without limitations, or denying the certificate of need.

25 (6) Once a certificate of need has been granted, it may not be revoked or  
26 rescinded unless it was acquired by fraud or deceit. However, if the au-  
27 thority finds that a person is offering or developing a project that is not  
28 within the scope of the certificate of need, the authority may limit the  
29 project as specified in the granted certificate of need or reconsider the ap-  
30 plication. A certificate of need is not transferable.

31 (7) Nothing in this section applies to any hospital[, *skilled nursing or*

1 *intermediate care service or facility*] that seeks to replace equipment with  
2 equipment of similar basic technological function or an upgrade that im-  
3 proves the quality or cost-effectiveness of the service provided. Any person  
4 acquiring such replacement or upgrade shall file a letter of intent for the  
5 project in accordance with the rules of the authority if the price of the re-  
6 placement equipment or upgrade exceeds \$1 million.

7 (8) Except as required in subsection (1) of this section for a new hospital  
8 [*or new skilled nursing or intermediate care service or facility not operating*  
9 *as a Medicare swing bed program*], nothing in this section requires a rural  
10 hospital as defined in ORS 442.470 (6)(a)(A) and (B) to obtain a certificate  
11 of need.

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

- 14 (a) Magnetic resonance imaging scanners;
- 15 (b) Positron emission tomography scanners;
- 16 (c) Cardiac catheterization equipment;
- 17 (d) Megavoltage radiation therapy equipment;
- 18 (e) Extracorporeal shock wave lithotriptors;
- 19 (f) Neonatal intensive care;
- 20 (g) Burn care;
- 21 (h) Trauma care;
- 22 [(i) *Inpatient psychiatric services*;]
- 23 [(j) *Inpatient chemical dependency services*;]
- 24 [(k) *Inpatient rehabilitation services*;]
- 25 [(L)] (i) Open heart surgery; or
- 26 [(m)] (j) Organ transplant services.

27 (10) In addition to any other remedy provided by law, whenever it appears  
28 that any person is engaged in, or is about to engage in, any acts that con-  
29 stitute a violation of this section, or any rule or order issued by the au-  
30 thority under this section, the authority may institute proceedings in the  
31 circuit courts to enforce obedience to such statute, rule or order by injunc-

1 tion or by other processes, mandatory or otherwise.

2 (11) As used in this section, “basic health services” means health services  
3 offered in or through a hospital licensed under ORS chapter 441, except  
4 [*skilled nursing or intermediate care nursing facilities or services and*] those  
5 services specified in subsection (9) of this section.

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

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

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

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

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

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

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

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

31 (4) “Delegated credentialing agreement” means a written agreement be-

1 tween an originating-site hospital and a distant-site hospital that provides  
2 that the medical staff of the originating-site hospital will rely upon the cre-  
3 dentialing and privileging decisions of the distant-site hospital in making  
4 recommendations to the governing body of the originating-site hospital as to  
5 whether to credential a telemedicine provider, practicing at the distant-site  
6 hospital either as an employee or under contract, to provide telemedicine  
7 services to patients in the originating-site hospital.

8 (5) “Develop” means to undertake those activities that on their com-  
9 pletion will result in the offer of a new institutional health service or the  
10 incurring of a financial obligation, as defined under applicable state law, in  
11 relation to the offering of such a health service.

12 (6) “Distant-site hospital” means the hospital where a telemedicine pro-  
13 vider, at the time the telemedicine provider is providing telemedicine ser-  
14 vices, is practicing as an employee or under contract.

15 (7) “Expenditure” or “capital expenditure” means the actual expenditure,  
16 an obligation to an expenditure, lease or similar arrangement in lieu of an  
17 expenditure, and the reasonable value of a donation or grant in lieu of an  
18 expenditure but not including any interest thereon.

19 (8) “Extended stay center” means a facility licensed in accordance with  
20 ORS 441.026.

21 (9) “Freestanding birthing center” means a facility licensed for the pri-  
22 mary purpose of performing low risk deliveries.

23 (10) “Governmental unit” means the state, or any county, municipality  
24 or other political subdivision, or any related department, division, board or  
25 other agency.

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

30 (12)(a) “Health care facility” means:

31 (A) A hospital;

- 1 (B) A long term care facility;
- 2 (C) An ambulatory surgical center;
- 3 (D) A freestanding birthing center;
- 4 (E) An outpatient renal dialysis facility; or
- 5 (F) An extended stay center.

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

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

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

11 (C) A residential facility licensed or approved under the rules of the De-  
12 partment of Corrections;

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

15 (E) Community mental health programs or community developmental dis-  
16 abilities programs established under ORS 430.620.

17 (13) "Health maintenance organization" or "HMO" means a public or-  
18 ganization or a private organization organized under the laws of any state  
19 that:

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

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

- 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

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

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

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

11 (15) "Hospital" means:

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

16 (A) Medical;

17 (B) Nursing;

18 (C) Laboratory;

19 (D) Pharmacy; and

20 (E) Dietary; or

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

23 (16) "Institutional health services" means health services provided in or  
24 through health care facilities and the entities in or through which such  
25 services are provided.

26 (17) "Intermediate care facility" means a facility that provides, on a reg-  
27 ular basis, health-related care and services to individuals who do not require  
28 the degree of care and treatment that a hospital or skilled nursing facility  
29 is designed to provide, but who because of their mental or physical condition  
30 require care and services above the level of room and board that can be made  
31 available to them only through institutional facilities.

1 (18)(a) “Long term care facility” means a permanent facility with inpa-  
2 tient beds, providing:

3 (A) Medical services, including nursing services but excluding surgical  
4 procedures except as may be permitted by the rules of the Director of Human  
5 Services; and

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

7 (b) “Long term care facility” includes skilled nursing facilities and  
8 intermediate care facilities but does not include facilities licensed and oper-  
9 ated pursuant to ORS 443.400 to 443.455.

10 (19) “New hospital” means:

11 (a) A facility that did not offer hospital services on a regular basis within  
12 its service area within the prior 12-month period and is initiating or pro-  
13 posing to initiate such services; or

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

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

25 [(21)] (20) “Offer” means that the health care facility holds itself out as  
26 capable of providing, or as having the means for the provision of, specified  
27 health services.

28 [(22)] (21) “Originating-site hospital” means a hospital in which a patient  
29 is located while receiving telemedicine services.

30 [(23)] (22) “Outpatient renal dialysis facility” means a facility that pro-  
31 vides renal dialysis services directly to outpatients.



1 [(24)] (23) “Person” means an individual, a trust or estate, a partnership,  
2 a corporation (including associations, joint stock companies and insurance  
3 companies), a state, or a political subdivision or instrumentality, including  
4 a municipal corporation, of a state.

5 [(25)] (24) “Skilled nursing facility” means a facility or a distinct part of  
6 a facility, that is primarily engaged in providing to inpatients skilled nursing  
7 care and related services for patients who require medical or nursing care,  
8 or an institution that provides rehabilitation services for the rehabilitation  
9 of individuals who are injured or sick or who have disabilities.

10 [(26)] (25) “Telemedicine” means the provision of health services to pa-  
11 tients by physicians and health care practitioners from a distance using  
12 electronic communications, including synchronous technologies to facilitate  
13 an exchange of information between a patient and physician or health care  
14 practitioner in real time or asynchronous technologies to facilitate an ex-  
15 change of information between a patient and a physician or health care  
16 practitioner in other than real time.

17 **SECTION 3.** ORS 101.090 is amended to read:

18 101.090. A closed bed long term care facility shall be subject to the same  
19 requirements as all other long term care facilities, as defined by ORS  
20 442.015[, *except that it shall be exempt from the certificate of need process*  
21 *provided by ORS 442.315. However, any closed bed long term care facility*  
22 *which initiates under this exemption any new institutional health services, as*  
23 *defined in ORS 442.015, and which subsequently accepts patients who are not*  
24 *residents of the continuing care retirement community, shall become subject to*  
25 *certificate of need review for such new institutional health services at the time*  
26 *that nonresident patients begin to be admitted].*

27 **SECTION 4.** ORS 408.380 is amended to read:

28 408.380. (1) As used in this section, “long term care facility” has the  
29 meaning given that term in ORS 442.015.

30 (2) [*Except as provided in subsection (3) of this section,*] An Oregon  
31 Veterans’ Home is subject to all state laws and administrative rules and all

1 federal laws and administrative regulations to which a long term care facil-  
2 ity operated by a nongovernmental entity is subject.

3 [(3) *Notwithstanding ORS 442.315 and 442.325, an Oregon Veterans' Home*  
4 *is not subject to any certificate of need requirement.*]

5 [(4)] (3) In addition to the other uses for the Oregon Housing Fund set  
6 forth in ORS 458.600 to 458.665, financial support for an Oregon Veterans'  
7 Home is a permitted use of moneys from the Oregon Housing Fund.

8 **SECTION 5.** ORS 430.021 is amended to read:

9 430.021. Subject to ORS 417.300 and 417.305:

10 (1) The Department of Human Services shall directly or through contracts  
11 with private entities, counties under ORS 430.620 or other public entities:

12 (a) Direct, promote, correlate and coordinate all the activities, duties and  
13 direct services for persons with developmental disabilities.

14 (b) Promote, correlate and coordinate the developmental disabilities ac-  
15 tivities of all governmental organizations throughout the state in which  
16 there is any direct contact with developmental disabilities programs.

17 (c) Establish, coordinate, assist and direct a community developmental  
18 disabilities program in cooperation with local government units and inte-  
19 grate such a program with the state developmental disabilities program.

20 (d) Promote public education in this state concerning developmental dis-  
21 abilities and act as the liaison center for work with all interested public and  
22 private groups and agencies in the field of developmental disabilities ser-  
23 vices.

24 (2) The Oregon Health Authority shall directly or by contract with pri-  
25 vate or public entities:

26 (a) Direct, promote, correlate and coordinate all the activities, duties and  
27 direct services for persons with mental or emotional disturbances, alcoholism  
28 or drug dependence.

29 (b) Promote, correlate and coordinate the mental health activities of all  
30 governmental organizations throughout the state in which there is any direct  
31 contact with mental health programs.

1 (c) Establish, coordinate, assist and direct a community mental health  
2 program in cooperation with local government units and integrate such a  
3 program with the state mental health program.

4 (d) Promote public education in this state concerning mental health and  
5 act as the liaison center for work with all interested public and private  
6 groups and agencies in the field of mental health services.

7 (3) The department and the authority shall develop cooperative programs  
8 with interested private groups throughout the state to effect better commu-  
9 nity awareness and action in the fields of mental health and developmental  
10 disabilities, and encourage and assist in all necessary ways community gen-  
11 eral hospitals to establish psychiatric services.

12 (4) To the greatest extent possible, the least costly settings for treatment,  
13 outpatient services and residential facilities shall be widely available and  
14 utilized except when contraindicated because of individual health care needs.  
15 State agencies that purchase treatment for mental or emotional disturbances  
16 shall develop criteria consistent with this policy. *[In reviewing applications*  
17 *for certificates of need, the Director of the Oregon Health Authority shall take*  
18 *this policy into account.]*

19 (5) The department and the authority shall accept the custody of persons  
20 committed to its care by the courts of this state.

21 (6) The authority shall adopt rules to require a facility and a nonhospital  
22 facility as those terms are defined in ORS 426.005, and a provider that em-  
23 ploys a person described in ORS 426.415, if subject to authority rules re-  
24 garding the use of restraint or seclusion during the course of mental health  
25 treatment of a child or adult, to report to the authority each calendar  
26 quarter the number of incidents involving the use of restraint or seclusion.  
27 The aggregate data shall be made available to the public.

28 **SECTION 6.** ORS 430.315 is amended to read:

29 430.315. The Legislative Assembly finds alcoholism or drug dependence is  
30 an illness. The alcoholic or drug-dependent person is ill and should be af-  
31 farded treatment for that illness. To the greatest extent possible, the least

1 costly settings for treatment, outpatient services and residential facilities  
2 shall be widely available and utilized except when contraindicated because  
3 of individual health care needs. State agencies that purchase treatment for  
4 alcoholism or drug dependence shall develop criteria consistent with this  
5 policy in consultation with the Oregon Health Authority. [*In reviewing ap-*  
6 *plications for certificate of need, the Director of the Oregon Health Authority*  
7 *shall take this policy into account.*]

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