

House Bill 4139

Sponsored by Representatives ELMER, JAVADI; Representatives BOICE, CONRAD, DIEHL, GOODWIN, OSBORNE, WRIGHT, Senators KNOPP, LINTHICUM, SMITH DB (Presession filed.)

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**. The statement includes a measure digest written in compliance with applicable readability standards.

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 care. (Flesch Readability Score: 66.7).

Excludes new hospitals providing inpatient psychiatric services, inpatient rehabilitation 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, 430.315, 442.015 and 442.315.

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

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

5 442.315. (1) Any new hospital [*or new skilled nursing or intermediate care service or facility not*
6 *excluded pursuant to ORS 441.065*] shall obtain a certificate of need from the Oregon Health Au-
7 thority prior to an offering or development **unless the hospital:**

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

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

10 **(c) Provides inpatient or outpatient mental health services or substance use treatment**
11 **as its primary focus; or**

12 **(d) Provides rehabilitation services for the rehabilitation of individuals who are injured**
13 **or sick or who have disabilities, as described in ORS 442.015 (24).**

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

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

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

21 (4)(a) The authority shall issue a draft recommendation in response to an application for a
22 certificate of need.

23 [*(b) The authority may establish an expedited review process for an application for a certificate of*
24 *need to rebuild a long term care facility, relocate buildings that are part of a long term care facility*
25 *or relocate long term care facility bed capacity from one long term care facility to another. The au-*
26 *thority shall issue a draft recommendation not later than 120 days after the date a complete application*
27 *subject to expedited review is received by the authority.*]

28 (5)(a) An applicant or any affected person who is dissatisfied with the draft recommendation of

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 the authority is entitled to an informal hearing before the authority in the course of review and
 2 before a proposed decision is rendered. Following an informal hearing, or if no applicant or affected
 3 person requests an informal hearing within a period of time prescribed by the authority by rule, the
 4 authority shall issue a proposed decision.

5 (b) An applicant or affected person is entitled to a contested case hearing in accordance with
 6 ORS chapter 183 to challenge the proposed decision of the authority. Following a contested case
 7 hearing, or if no applicant or affected person requests a contested case hearing within a period of
 8 time prescribed by the authority by rule, the authority shall issue a final order granting, with or
 9 without limitations, or denying the certificate of need.

10 (6) Once a certificate of need has been granted, it may not be revoked or rescinded unless it
 11 was acquired by fraud or deceit. However, if the authority finds that a person is offering or devel-
 12 oping a project that is not within the scope of the certificate of need, the authority may limit the
 13 project as specified in the granted certificate of need or reconsider the application. A certificate of
 14 need is not transferable.

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

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

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

- 26 (a) Magnetic resonance imaging scanners;
- 27 (b) Positron emission tomography scanners;
- 28 (c) Cardiac catheterization equipment;
- 29 (d) Megavoltage radiation therapy equipment;
- 30 (e) Extracorporeal shock wave lithotrippers;
- 31 (f) Neonatal intensive care;
- 32 (g) Burn care;
- 33 (h) Trauma care;
- 34 [(i) *Inpatient psychiatric services;*]
- 35 [(j) *Inpatient chemical dependency services;*]
- 36 [(k) *Inpatient rehabilitation services;*]
- 37 [(L)] (i) Open heart surgery; or
- 38 [(m)] (j) Organ transplant services.

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

44 (11) As used in this section, “basic health services” means health services offered in or through
 45 a hospital licensed under ORS chapter 441, except [*skilled nursing or intermediate care nursing fa-*

1 *ilities or services and] those services specified in subsection (9) of this section.*

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

3 442.015. As used in ORS chapter 441 and this chapter, unless the context requires otherwise:

4 (1) “Acquire” or “acquisition” means obtaining equipment, supplies, components or facilities by
5 any means, including purchase, capital or operating lease, rental or donation, for the purpose of
6 using such equipment, supplies, components or facilities to provide health services in Oregon. When
7 equipment or other materials are obtained outside of this state, acquisition is considered to occur
8 when the equipment or other materials begin to be used in Oregon for the provision of health ser-
9 vices or when such services are offered for use in Oregon.

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

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

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

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

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

21 (4) “Delegated credentialing agreement” means a written agreement between an originating-site
22 hospital and a distant-site hospital that provides that the medical staff of the originating-site hospi-
23 tal will rely upon the credentialing and privileging decisions of the distant-site hospital in making
24 recommendations to the governing body of the originating-site hospital as to whether to credential
25 a telemedicine provider, practicing at the distant-site hospital either as an employee or under con-
26 tract, to provide telemedicine services to patients in the originating-site hospital.

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

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

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

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

37 (9) “Freestanding birthing center” means a facility licensed for the primary purpose of per-
38 forming low risk deliveries.

39 (10) “Governmental unit” means the state, or any county, municipality or other political subdi-
40 vision, or any related department, division, board or other agency.

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

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

45 (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 or the Oregon Health
- 8 Authority under ORS 443.415;
- 9 (B) An establishment furnishing primarily domiciliary care as described in ORS 443.205;
- 10 (C) A residential facility licensed or approved under the rules of the Department of Corrections;
- 11 (D) Facilities established by ORS 430.335 for treatment of substance abuse disorders; or
- 12 (E) Community mental health programs or community developmental disabilities programs es-
- 13 tablished under ORS 430.620.

14 (13) "Health maintenance organization" or "HMO" means a public organization or a private

15 organization organized under the laws of any state that:

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

17 (b)(A) Provides or otherwise makes available to enrolled participants health care services, in-

18 cluding at least the following basic health care services:

- 19 (i) Usual physician services;
- 20 (ii) Hospitalization;
- 21 (iii) Laboratory;
- 22 (iv) X-ray;
- 23 (v) Emergency and preventive services; and
- 24 (vi) Out-of-area coverage;

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

26 listed in subparagraph (A) of this paragraph to enrolled participants on a predetermined periodic

27 rate basis; and

28 (C) Provides physicians' services primarily directly through physicians who are either employees

29 or partners of such organization, or through arrangements with individual physicians or one or more

30 groups of physicians organized on a group practice or individual practice basis.

31 (14) "Health services" means clinically related diagnostic, treatment or rehabilitative services,

32 and includes alcohol, drug or controlled substance abuse and mental health services that may be

33 provided either directly or indirectly on an inpatient or ambulatory patient basis.

34 (15) "Hospital" means:

35 (a) A facility with an organized medical staff and a permanent building that is capable of pro-

36 viding 24-hour inpatient care to two or more individuals who have an illness or injury and that

37 provides at least the following health services:

- 38 (A) Medical;
- 39 (B) Nursing;
- 40 (C) Laboratory;
- 41 (D) Pharmacy; and
- 42 (E) Dietary; or

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

44 (16) "Institutional health services" means health services provided in or through health care

45 facilities and the entities in or through which such services are provided.

1 (17) “Intermediate care facility” means a facility that provides, on a regular basis, health-related
 2 care and services to individuals who do not require the degree of care and treatment that a hospital
 3 or skilled nursing facility is designed to provide, but who because of their mental or physical con-
 4 dition require care and services above the level of room and board that can be made available to
 5 them only through institutional facilities.

6 (18)(a) “Long term care facility” means a permanent facility with inpatient beds, providing:

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

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

10 (b) “Long term care facility” includes skilled nursing facilities and intermediate care facilities
 11 but does not include facilities licensed and operated pursuant to ORS 443.400 to 443.455.

12 (19) “New hospital” means:

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

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

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

24 [(21)] (20) “Offer” means that the health care facility holds itself out as capable of providing,
 25 or as having the means for the provision of, specified health services.

26 [(22)] (21) “Originating-site hospital” means a hospital in which a patient is located while re-
 27 ceiving telemedicine services.

28 [(23)] (22) “Outpatient renal dialysis facility” means a facility that provides renal dialysis ser-
 29 vices directly to outpatients.

30 [(24)] (23) “Person” means an individual, a trust or estate, a partnership, a corporation (includ-
 31 ing associations, joint stock companies and insurance companies), a state, or a political subdivision
 32 or instrumentality, including a municipal corporation, of a state.

33 [(25)] (24) “Skilled nursing facility” means a facility or a distinct part of a facility, that is pri-
 34 marily engaged in providing to inpatients skilled nursing care and related services for patients who
 35 require medical or nursing care, or an institution that provides rehabilitation services for the re-
 36 habilitation of individuals who are injured or sick or who have disabilities.

37 [(26)] (25) “Telemedicine” means the provision of health services to patients by physicians and
 38 health care practitioners from a distance using electronic communications, including synchronous
 39 technologies to facilitate an exchange of information between a patient and physician or health care
 40 practitioner in real time or asynchronous technologies to facilitate an exchange of information be-
 41 tween a patient and a physician or health care practitioner in other than real time.

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

43 101.090. A closed bed long term care facility shall be subject to the same requirements as all
 44 other long term care facilities, as defined by ORS 442.015[, *except that it shall be exempt from the*
 45 *certificate of need process provided by ORS 442.315. However, any closed bed long term care facility*

1 *which initiates under this exemption any new institutional health services, as defined in ORS 442.015,*
 2 *and which subsequently accepts patients who are not residents of the continuing care retirement com-*
 3 *munity, shall become subject to certificate of need review for such new institutional health services at*
 4 *the time that nonresident patients begin to be admitted].*

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

6 408.380. (1) As used in this section, “long term care facility” has the meaning given that term
 7 in ORS 442.015.

8 (2) *[Except as provided in subsection (3) of this section,]* An Oregon Veterans’ Home is subject to
 9 all state laws and administrative rules and all federal laws and administrative regulations to which
 10 a long term care facility operated by a nongovernmental entity is subject.

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

13 *[(4)]* (3) In addition to the other uses for the Oregon Housing Fund set forth in ORS 458.600 to
 14 458.665, financial support for an Oregon Veterans’ Home is a permitted use of moneys from the
 15 Oregon Housing Fund.

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

17 430.021. Subject to ORS 417.300 and 417.305:

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

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

22 (b) Promote, correlate and coordinate the developmental disabilities activities of all govern-
 23 mental organizations throughout the state in which there is any direct contact with developmental
 24 disabilities programs.

25 (c) Establish, coordinate, assist and direct a community developmental disabilities program in
 26 cooperation with local government units and integrate such a program with the state developmental
 27 disabilities program.

28 (d) Promote public education in this state concerning developmental disabilities and act as the
 29 liaison center for work with all interested public and private groups and agencies in the field of
 30 developmental disabilities services.

31 (2) The Oregon Health Authority shall directly or by contract with private or public entities:

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

34 (b) Promote, correlate and coordinate the mental health activities of all governmental organ-
 35 izations throughout the state in which there is any direct contact with mental health programs.

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

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

41 (3) The department and the authority shall develop cooperative programs with interested private
 42 groups throughout the state to effect better community awareness and action in the fields of mental
 43 health and developmental disabilities, and encourage and assist in all necessary ways community
 44 general hospitals to establish psychiatric services.

45 (4) To the greatest extent possible, the least costly settings for treatment, outpatient services

1 and residential facilities shall be widely available and utilized except when contraindicated because
 2 of individual health care needs. State agencies that purchase treatment for mental or emotional
 3 disturbances shall develop criteria consistent with this policy. *[In reviewing applications for certif-*
 4 *icates of need, the Director of the Oregon Health Authority shall take this policy into account.]*

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

7 (6) The authority shall adopt rules to require a facility and a nonhospital facility as those terms
 8 are defined in ORS 426.005, and a provider that employs a person described in ORS 426.415, if sub-
 9 ject to authority rules regarding the use of restraint or seclusion during the course of mental health
 10 treatment of a child or adult, to report to the authority each calendar quarter the number of inci-
 11 dents involving the use of restraint or seclusion. The aggregate data shall be made available to the
 12 public.

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

14 430.315. The Legislative Assembly finds alcoholism or drug dependence is an illness. The alco-
 15 holic or drug-dependent person is ill and should be afforded treatment for that illness. To the
 16 greatest extent possible, the least costly settings for treatment, outpatient services and residential
 17 facilities shall be widely available and utilized except when contraindicated because of individual
 18 health care needs. State agencies that purchase treatment for alcoholism or drug dependence shall
 19 develop criteria consistent with this policy in consultation with the Oregon Health Authority. *[In*
 20 *reviewing applications for certificate of need, the Director of the Oregon Health Authority shall take*
 21 *this policy into account.]*

22 _____