

Requested by Representative ELMER

**PROPOSED AMENDMENTS TO
HOUSE BILL 4139**

1 On page 1 of the printed bill, line 2, delete “101.090, 408.380, 430.021,
2 430.315.”.

3 Delete lines 4 through 28 and delete pages 2 through 7 and insert:

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

5 “442.315. (1) Any new hospital or new skilled nursing or intermediate care
6 service or facility not excluded pursuant to ORS 441.065 shall obtain a cer-
7 tificate of need from the Oregon Health Authority prior to an offering or
8 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)(a) The authority shall issue a draft recommendation in response to
18 an application for a certificate of need.

19 “(b) The authority may establish an expedited review process for an ap-
20 plication for a certificate of need to rebuild a long term care facility, relo-
21 cate buildings that are part of a long term care facility or relocate long term

1 care facility bed capacity from one long term care facility to another. The
2 authority shall issue a draft recommendation not later than 120 days after
3 the date a complete application subject to expedited review is received by the
4 authority.

5 “(5)(a) An applicant [*or any affected person*] who is dissatisfied with the
6 draft recommendation of the authority is entitled to an informal hearing
7 before the authority in the course of review and before a proposed decision
8 is rendered. Following an informal hearing, or if [*no applicant or affected*
9 *person requests*] **the applicant does not request** an informal hearing within
10 a period of time prescribed by the authority by rule, the authority shall issue
11 a proposed decision.

12 “(b) An applicant [*or affected person*] is entitled to a contested case
13 hearing in accordance with ORS chapter 183 to challenge the proposed de-
14 cision of the authority. Following a contested case hearing, or if [*no appli-*
15 *cant or affected person requests*] **the applicant does not request** a contested
16 case hearing within a period of time prescribed by the authority by rule, the
17 authority shall issue a final order granting, with or without limitations, or
18 denying the certificate of need.

19 “(6) Once a certificate of need has been granted, it may not be revoked
20 or rescinded unless it was acquired by fraud or deceit. However, if the au-
21 thority finds that a person is offering or developing a project that is not
22 within the scope of the certificate of need, the authority may limit the
23 project as specified in the granted certificate of need or reconsider the ap-
24 plication. A certificate of need is not transferable.

25 “(7) Nothing in this section applies to any hospital, skilled nursing or
26 intermediate care service or facility that seeks to replace equipment with
27 equipment of similar basic technological function or an upgrade that im-
28 proves the quality or cost-effectiveness of the service provided. Any person
29 acquiring such replacement or upgrade shall file a letter of intent for the
30 project in accordance with the rules of the authority if the price of the re-

1 placement equipment or upgrade exceeds \$1 million.

2 “(8) Except as required in subsection (1) of this section for a new hospital
3 or new skilled nursing or intermediate care service or facility not operating
4 as a Medicare swing bed program, nothing in this section requires a rural
5 hospital as defined in ORS 442.470 (6)(a)(A) and (B) to obtain a certificate
6 of need.

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

9 “(a) Magnetic resonance imaging scanners;

10 “(b) Positron emission tomography scanners;

11 “(c) Cardiac catheterization equipment;

12 “(d) Megavoltage radiation therapy equipment;

13 “(e) Extracorporeal shock wave lithotriptors;

14 “(f) Neonatal intensive care;

15 “(g) Burn care;

16 “(h) Trauma care;

17 “(i) Inpatient psychiatric services;

18 “(j) Inpatient chemical dependency services;

19 “(k) Inpatient rehabilitation services;

20 “(L) Open heart surgery; or

21 “(m) Organ transplant services.

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

28 “(11) As used in this section, ‘basic health services’ means health services
29 offered in or through a hospital licensed under ORS chapter 441, except
30 skilled nursing or intermediate care nursing facilities or services and those

1 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
4 requires otherwise:

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

13 “[2) ‘Affected persons’ has the same meaning as given to ‘party’ in ORS
14 183.310.]

15 “[3)(a)] **(2)(a)** ‘Ambulatory surgical center’ means a facility or portion
16 of a facility that operates exclusively for the purpose of providing surgical
17 services to patients who do not require hospitalization and for whom the
18 expected duration of services does not exceed 24 hours following admission.

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

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

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

27 “[4)] **(3)** ‘Delegated credentialing agreement’ means a written agreement
28 between an originating-site hospital and a distant-site hospital that provides
29 that the medical staff of the originating-site hospital will rely upon the cre-
30 dentialing and privileging decisions of the distant-site hospital in making

1 recommendations to the governing body of the originating-site hospital as to
2 whether to credential a telemedicine provider, practicing at the distant-site
3 hospital either as an employee or under contract, to provide telemedicine
4 services to patients in the originating-site hospital.

5 “[5] (4) ‘Develop’ means to undertake those activities that on their
6 completion will result in the offer of a new institutional health service or
7 the incurring of a financial obligation, as defined under applicable state law,
8 in relation to the offering of such a health service.

9 “[6] (5) ‘Distant-site hospital’ means the hospital where a telemedicine
10 provider, at the time the telemedicine provider is providing telemedicine
11 services, is practicing as an employee or under contract.

12 “[7] (6) ‘Expenditure’ or ‘capital expenditure’ means the actual expendi-
13 ture, an obligation to an expenditure, lease or similar arrangement in lieu
14 of an expenditure, and the reasonable value of a donation or grant in lieu
15 of an expenditure but not including any interest thereon.

16 “[8] (7) ‘Extended stay center’ means a facility licensed in accordance
17 with ORS 441.026.

18 “[9] (8) ‘Freestanding birthing center’ means a facility licensed for the
19 primary purpose of performing low risk deliveries.

20 “[10] (9) ‘Governmental unit’ means the state, or any county, munici-
21 pality or other political subdivision, or any related department, division,
22 board or other agency.

23 “[11] (10) ‘Gross revenue’ means the sum of daily hospital service
24 charges, ambulatory service charges, ancillary service charges and other op-
25 erating revenue. ‘Gross revenue’ does not include contributions, donations,
26 legacies or bequests made to a hospital without restriction by the donors.

27 “[12)(a)] (11)(a) ‘Health care facility’ means:

28 “(A) A hospital;

29 “(B) A long term care facility;

30 “(C) An ambulatory surgical center;

1 “(D) A freestanding birthing center;

2 “(E) An outpatient renal dialysis facility; or

3 “(F) An extended stay center.

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

5 “(A) A residential facility licensed by the Department of Human Services

6 or the Oregon Health Authority under ORS 443.415;

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

8 in ORS 443.205;

9 “(C) A residential facility licensed or approved under the rules of the

10 Department of Corrections;

11 “(D) Facilities established by ORS 430.335 for treatment of substance

12 abuse disorders; or

13 “(E) Community mental health programs or community developmental

14 disabilities programs established under ORS 430.620.

15 “[~~13~~] **(12)** ‘Health maintenance organization’ or ‘HMO’ means a public

16 organization or a private organization organized under the laws of any state

17 that:

18 “(a) Is a qualified HMO under section 1310(d) of the U.S. Public Health

19 Services Act; or

20 “(b)(A) Provides or otherwise makes available to enrolled participants

21 health care services, including at least the following basic health care ser-

22 vices:

23 “(i) Usual physician services;

24 “(ii) Hospitalization;

25 “(iii) Laboratory;

26 “(iv) X-ray;

27 “(v) Emergency and preventive services; and

28 “(vi) Out-of-area coverage;

29 “(B) Is compensated, except for copayments, for the provision of the basic

30 health care services listed in subparagraph (A) of this paragraph to enrolled

1 participants on a predetermined periodic rate basis; and

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

6 “[~~(14)~~] **(13)** ‘Health services’ means clinically related diagnostic, treatment
7 or rehabilitative services, and includes alcohol, drug or controlled substance
8 abuse and mental health services that may be provided either directly or
9 indirectly on an inpatient or ambulatory patient basis.

10 “[~~(15)~~] **(14)** ‘Hospital’ means:

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

15 “(A) Medical;

16 “(B) Nursing;

17 “(C) Laboratory;

18 “(D) Pharmacy; and

19 “(E) Dietary; or

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

22 “[~~(16)~~] **(15)** ‘Institutional health services’ means health services provided
23 in or through health care facilities and the entities in or through which such
24 services are provided.

25 “[~~(17)~~] **(16)** ‘Intermediate care facility’ means a facility that provides, on
26 a regular basis, health-related care and services to individuals who do not
27 require the degree of care and treatment that a hospital or skilled nursing
28 facility is designed to provide, but who because of their mental or physical
29 condition require care and services above the level of room and board that
30 can be made available to them only through institutional facilities.

1 “[(18)(a)] **(17)(a)** ‘Long term care facility’ means a permanent facility with
2 inpatient 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)] **(18)** ‘New hospital’ means:

11 “(a) A facility that did not offer hospital services on a regular basis
12 within its service area within the prior 12-month period and is initiating or
13 proposing 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)] **(19)** ‘New skilled nursing or intermediate care service or facility’
17 means a service or facility that did not offer long term care services on a
18 regular basis by or through the facility within the prior 12-month period and
19 is initiating or proposing to initiate such services. ‘New skilled nursing or
20 intermediate care service or facility’ also includes the rebuilding of a long
21 term care facility, the relocation of buildings that are a part of a long term
22 care facility, the relocation of long term care beds from one facility to an-
23 other or an increase in the number of beds of more than 10 or 10 percent of
24 the bed capacity, 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-

1 vides renal dialysis services directly to outpatients.

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

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

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

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