

# House Bill 2021

Sponsored by Representative ELMER (Pre-session 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 makes changes to the certificate of need process. (Flesch Readability Score: 69.7).

Modifies the certificate of need process to allow only applicants to challenge proposed decisions of the Oregon Health Authority.

## A BILL FOR AN ACT

1  
2 Relating to certificates of need; amending ORS 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.

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

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

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

15 (4)(a) The authority shall issue a draft recommendation in response to an application for a cer-  
16 tificate of need.

17 (b) The authority may establish an expedited review process for an application for a certificate  
18 of need to rebuild a long term care facility, relocate buildings that are part of a long term care fa-  
19 cility or relocate long term care facility bed capacity from one long term care facility to another.  
20 The authority shall issue a draft recommendation not later than 120 days after the date a complete  
21 application subject to expedited review is received by the authority.

22 (5)(a) An applicant [*or any affected person*] who is dissatisfied with the draft recommendation of  
23 the authority is entitled to an informal hearing before the authority in the course of review and  
24 before a proposed decision is rendered. Following an informal hearing, or if [*no applicant or affected*  
25 *person requests*] **the applicant does not request** an informal hearing within a period of time pre-  
26 scribed by the authority by rule, the authority shall issue a proposed decision.

27 (b) An applicant [*or affected person*] is entitled to a contested case hearing in accordance with  
28 ORS chapter 183 to challenge the proposed decision of the authority. Following a contested case  
29 hearing, or if [*no applicant or affected person requests*] **the applicant does not request** a contested  
30 case hearing within a period of time prescribed by the authority by rule, the authority shall issue

**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 a final order granting, with or without limitations, or denying the certificate of need.

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

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

12 (8) Except as required in subsection (1) of this section for a new hospital or new skilled nursing  
 13 or intermediate care service or facility not operating as a Medicare swing bed program, nothing in  
 14 this section requires a rural hospital as defined in ORS 442.470 (6)(a)(A) and (B) to obtain a certif-  
 15 icate of need.

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

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

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

36 (11) As used in this section, “basic health services” means health services offered in or through  
 37 a hospital licensed under ORS chapter 441, except skilled nursing or intermediate care nursing fa-  
 38 cilities or services and those services specified in subsection (9) of this section.

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

40 442.015. As used in ORS chapter 441 and this chapter, unless the context requires otherwise:

41 (1) “Acquire” or “acquisition” means obtaining equipment, supplies, components or facilities by  
 42 any means, including purchase, capital or operating lease, rental or donation, for the purpose of  
 43 using such equipment, supplies, components or facilities to provide health services in Oregon. When  
 44 equipment or other materials are obtained outside of this state, acquisition is considered to occur  
 45 when the equipment or other materials begin to be used in Oregon for the provision of health ser-

1 vices or when such services are offered for use in Oregon.

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

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

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

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

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

13 [(4)] **(3)** “Delegated credentialing agreement” means a written agreement between an  
 14 originating-site hospital and a distant-site hospital that provides that the medical staff of the  
 15 originating-site hospital will rely upon the credentialing and privileging decisions of the distant-site  
 16 hospital in making recommendations to the governing body of the originating-site hospital as to  
 17 whether to credential a telemedicine provider, practicing at the distant-site hospital either as an  
 18 employee or under contract, to provide telemedicine services to patients in the originating-site hos-  
 19 pital.

20 [(5)] **(4)** “Develop” means to undertake those activities that on their completion will result in  
 21 the offer of a new institutional health service or the incurring of a financial obligation, as defined  
 22 under applicable state law, in relation to the offering of such a health service.

23 [(6)] **(5)** “Distant-site hospital” means the hospital where a telemedicine provider, at the time the  
 24 telemedicine provider is providing telemedicine services, is practicing as an employee or under  
 25 contract.

26 [(7)] **(6)** “Expenditure” or “capital expenditure” means the actual expenditure, an obligation to  
 27 an expenditure, lease or similar arrangement in lieu of an expenditure, and the reasonable value of  
 28 a donation or grant in lieu of an expenditure but not including any interest thereon.

29 [(8)] **(7)** “Extended stay center” means a facility licensed in accordance with ORS 441.026.

30 [(9)] **(8)** “Freestanding birthing center” means a facility licensed for the primary purpose of  
 31 performing low risk deliveries.

32 [(10)] **(9)** “Governmental unit” means the state, or any county, municipality or other political  
 33 subdivision, or any related department, division, board or other agency.

34 [(11)] **(10)** “Gross revenue” means the sum of daily hospital service charges, ambulatory service  
 35 charges, ancillary service charges and other operating revenue. “Gross revenue” does not include  
 36 contributions, donations, legacies or bequests made to a hospital without restriction by the donors.

37 [(12)(a)] **(11)(a)** “Health care facility” means:

38 (A) A hospital;

39 (B) A long term care facility;

40 (C) An ambulatory surgical center;

41 (D) A freestanding birthing center;

42 (E) An outpatient renal dialysis facility; or

43 (F) An extended stay center.

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

45 (A) A residential facility licensed by the Department of Human Services or the Oregon Health

1 Authority under ORS 443.415;

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

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

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

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

7 [(13)] (12) “Health maintenance organization” or “HMO” means a public organization or a pri-  
8 vate organization organized under the laws of any state that:

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

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

12 (i) Usual physician services;

13 (ii) Hospitalization;

14 (iii) Laboratory;

15 (iv) X-ray;

16 (v) Emergency and preventive services; and

17 (vi) Out-of-area coverage;

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

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

24 [(14)] (13) “Health services” means clinically related diagnostic, treatment or rehabilitative  
25 services, and includes alcohol, drug or controlled substance abuse and mental health services that  
26 may be provided either directly or indirectly on an inpatient or ambulatory patient basis.

27 [(15)] (14) “Hospital” means:

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

31 (A) Medical;

32 (B) Nursing;

33 (C) Laboratory;

34 (D) Pharmacy; and

35 (E) Dietary; or

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

37 [(16)] (15) “Institutional health services” means health services provided in or through health  
38 care facilities and the entities in or through which such services are provided.

39 [(17)] (16) “Intermediate care facility” means a facility that provides, on a regular basis,  
40 health-related care and services to individuals who do not require the degree of care and treatment  
41 that a hospital or skilled nursing facility is designed to provide, but who because of their mental  
42 or physical condition require care and services above the level of room and board that can be made  
43 available to them only through institutional facilities.

44 [(18)(a)] (17)(a) “Long term care facility” means a permanent facility with inpatient beds, pro-  
45 viding:

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

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

4 (b) "Long term care facility" includes skilled nursing facilities and intermediate care facilities  
5 but does not include facilities licensed and operated pursuant to ORS 443.400 to 443.455.

6 [(19)] (18) "New hospital" means:

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

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

11 [(20)] (19) "New skilled nursing or intermediate care service or facility" means a service or fa-  
12 cility that did not offer long term care services on a regular basis by or through the facility within  
13 the prior 12-month period and is initiating or proposing to initiate such services. "New skilled  
14 nursing or intermediate care service or facility" also includes the rebuilding of a long term care  
15 facility, the relocation of buildings that are a part of a long term care facility, the relocation of long  
16 term care beds from one facility to another or an increase in the number of beds of more than 10  
17 or 10 percent of the bed capacity, whichever is the lesser, within a two-year period.

18 [(21)] (20) "Offer" means that the health care facility holds itself out as capable of providing,  
19 or as having the means for the provision of, specified health services.

20 [(22)] (21) "Originating-site hospital" means a hospital in which a patient is located while re-  
21 ceiving telemedicine services.

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

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

27 [(25)] (24) "Skilled nursing facility" means a facility or a distinct part of a facility, that is pri-  
28 marily engaged in providing to inpatients skilled nursing care and related services for patients who  
29 require medical or nursing care, or an institution that provides rehabilitation services for the re-  
30 habilitation of individuals who are injured or sick or who have disabilities.

31 [(26)] (25) "Telemedicine" means the provision of health services to patients by physicians and  
32 health care practitioners from a distance using electronic communications, including synchronous  
33 technologies to facilitate an exchange of information between a patient and physician or health care  
34 practitioner in real time or asynchronous technologies to facilitate an exchange of information be-  
35 tween a patient and a physician or health care practitioner in other than real time.

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