



Oregon

Tina Kotek, Governor

Department of Human Services

Office of Aging and People with Disabilities

Office of the Director
500 Summer St. NE, E-10
Salem, OR 97301

Date: May 8, 2025



TO: Senator Deb Patterson, Chair
Senate Committee on Health Care

FROM: Justin Withem, ODHS Government Relations
Office of Aging and People with Disabilities
Justin.withem2@odhs.oregon.gov

SUBJECT: House Bill 3942

Dear Chair Patterson, Vice-Chair Hayden, and Members of the Committee,

Thank you for the opportunity to testify on House Bill 3942A, which would expedite licenses for health care facilities. The statutory definition of “health care facility” in ORS 442.015 includes “a long term care facility,” which is colloquially known as a nursing facility. These facilities are overseen by the Office of Aging and People with Disabilities (APD) within the Oregon Department of Human Services (ODHS). APD also oversees community-based care facilities such as residential care facilities and assisted living facilities, but community-based care facilities are not “health care facilities” according to statute, and are therefore not within the scope of this bill.

APD appreciates the intent of HB 3942A, which is to retain capacity for health care services (including long term care services provided in nursing facilities) when a facility closes, especially in rural and remote areas that have limited access to health care providers. However, APD wanted to raise some technical issues in the bill pertaining to nursing facilities for the committee’s awareness.

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Based on APD's conversations with the Oregon Health Authority, a certificate of need would not be required to re-license a closed nursing facility if it remains in the same location, offers the same services, and has had no major alterations. However, if the facility intends to admit Medicare and/or Medicaid residents, the facility *would* need to obtain approval from the Centers for Medicare and Medicaid Services (CMS), specifically CMS's Medicare Administration Contractor (MAC). The nursing facility must obtain approval from the MAC before APD can conduct an initial certification survey. Initial certification surveys take a long time to be approved, and until this approval occurs, the facility would only be able to admit private pay residents. Additionally, because APD's ability to conduct a certification survey is contingent on MAC approval according to federal law, it would likely not be possible for ODHS to meet the 45-day timeline for "full" (i.e., non-provisional) licensure established in Section 2(3)(b).

Additionally, the bill does not explicitly allow the department to deny an application for cause as long as the applicant meets the minimum requirements in the bill. Those minimum requirements do, of course, offer significant safeguards by requiring that the applicant be experienced and in good standing, but they do not provide for APD to deny a license based on its usual assessment of safety and regulatory compliance that would be conducted at the site seeking licensure. Instead, the bill requires the department to issue a provisional license upon receipt of the application, and subsequently to issue a full license within 45 days.

Finally, a single word in the bill language describing those safeguards may lead to an unintended impact. In regulating nursing facilities, APD makes an important distinction between a "licensee" (who is ultimately responsible for all operations) and an "operator" (who runs the day-to-day business). Section (2)(3)(a)(A) states that an applicant is eligible if they "currently operate a health care facility...", which may open the door to a licensee with a poor record of safety or compliance to get a provisional license if they happen to have hired an operator in good standing. Additionally, it may allow for a licensee to voluntarily close a facility that's about to face regulatory sanction, then reopen with a provisional license within the next 24 months. If that language instead read, "the applicant has an active license for a health care facility ...," it would prevent that outcome.

Sincerely,

Justin Withem

Legislative Coordinator, Oregon Department of Human Services
Office of Aging and People with Disabilities