

House Bill 3228

Sponsored by Representative SPRENGER

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**.

Revises definition of "ambulatory surgical center" to include facility operated substantially for purpose of performing abortions. Defines "abortion" to include using or prescribing medicine or drug to terminate pregnancy or using instrument or device to terminate pregnancy.

A BILL FOR AN ACT

1
2 Relating to facilities that perform abortions; amending ORS 442.015.

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

4 **SECTION 1.** ORS 442.015 is amended to read:

5 442.015. As used in ORS chapter 441 and this chapter, unless the context requires otherwise:

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

12 (2) "Affected persons" has the same meaning as given to "party" in ORS 183.310.

13 (3)(a) "Ambulatory surgical center" means:

14 (A) A facility or portion of a facility that operates exclusively for the purpose of providing
15 surgical services to patients who do not require hospitalization and for whom the expected duration
16 of services does not exceed 24 hours following admission.

17 (B) **A facility that operates substantially for the purpose of performing abortions.**

18 (b) **For purposes of this subsection, a facility operates substantially for the purpose of**
19 **performing abortions if:**

20 (A) **Ten or more abortions in any calendar month, or 100 or more abortions per calendar**
21 **year, are performed on the premises of the facility;**

22 (B) **The facility holds itself out to the public as an abortion provider by any public means,**
23 **including but not limited to newspaper, telephone directory, magazine or electronic media;**
24 **and**

25 (C) **The facility has at the facility or on call a physician, licensed under ORS chapter 677,**
26 **to perform abortions.**

27 (c) **As used in this subsection, "abortion" means the use or prescription of any instru-**
28 **ment, medicine, drug or other substance or device approved by the United States Food and**
29 **Drug Administration to terminate the pregnancy of a woman known to be pregnant, with an**
30 **intention other than to:**

31 (A) **Increase the probability of a live birth;**

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 **(B) Preserve the life or health of a child after live birth; or**

2 **(C) Remove a dead fetus.**

3 [(b)] **(d)** “Ambulatory surgical center” does not mean:

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

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

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

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

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

21 (7) “Essential long term care facility” means an individual long term care facility that serves
22 predominantly rural and frontier communities, as designated by the Office of Rural Health, and
23 meets other criteria established by the Department of Human Services by rule.

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

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

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

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

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

35 (A) A hospital;

36 (B) A long term care facility;

37 (C) An ambulatory surgical center;

38 (D) A freestanding birthing center; or

39 (E) An outpatient renal dialysis [*center*] **facility**.

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

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

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

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

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

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

3 (13) "Health maintenance organization" or "HMO" means a public organization or a private
 4 organization organized under the laws of any state that:

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

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

8 (i) Usual physician services;

9 (ii) Hospitalization;

10 (iii) Laboratory;

11 (iv) X-ray;

12 (v) Emergency and preventive services; and

13 (vi) Out-of-area coverage;

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

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

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

23 (15) "Hospital" means:

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

27 (A) Medical;

28 (B) Nursing;

29 (C) Laboratory;

30 (D) Pharmacy; and

31 (E) Dietary; or

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

33 (16) "Institutional health services" means health services provided in or through health care
 34 facilities and includes the entities in or through which such services are provided.

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

40 (18)(a) "Long term care facility" means a permanent facility with inpatient beds, providing:

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

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

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

1 (19) “New hospital” means:

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

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

6 (20) “New skilled nursing or intermediate care service or facility” means a service or facility
7 that did not offer long term care services on a regular basis by or through the facility within the
8 prior 12-month period and is initiating or proposing to initiate such services. “New skilled nursing
9 or intermediate care service or facility” also includes the rebuilding of a long term care facility, the
10 relocation of buildings that are a part of a long term care facility, the relocation of long term care
11 beds from one facility to another or an increase in the number of beds of more than 10 or 10 percent
12 of the bed capacity, whichever is the lesser, within a two-year period in a facility that applied for
13 a certificate of need between August 1, 2011, and December 1, 2012, or submitted a letter of intent
14 under ORS 442.315 (7) between January 15, 2013, and January 31, 2013.

15 (21) “Offer” means that the health care facility holds itself out as capable of providing, or as
16 having the means for the provision of, specified health services.

17 (22) “Originating-site hospital” means a hospital in which a patient is located while receiving
18 telemedicine services.

19 (23) “Outpatient renal dialysis facility” means a facility that provides renal dialysis services
20 directly to outpatients.

21 (24) “Person” means an individual, a trust or estate, a partnership, a corporation (including as-
22 sociations, joint stock companies and insurance companies), a state, or a political subdivision or
23 instrumentality, including a municipal corporation, of a state.

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

28 (26) “Telemedicine” means the provision of health services to patients by physicians and health
29 care practitioners from a distance using electronic communications.

30 **SECTION 2.** ORS 442.015, as amended by section 22, chapter 608, Oregon Laws 2013, is
31 amended to read:

32 442.015. As used in ORS chapter 441 and this chapter, unless the context requires otherwise:

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

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

40 (3)(a) “Ambulatory surgical center” means:

41 **(A)** A facility or portion of a facility that operates exclusively for the purpose of providing
42 surgical services to patients who do not require hospitalization and for whom the expected duration
43 of services does not exceed 24 hours following admission.

44 **(B) A facility that operates substantially for the purpose of performing abortions.**

45 **(b) For purposes of this subsection, a facility operates substantially for the purpose of**

1 **performing abortions if:**

2 (A) **Ten or more abortions in any calendar month, or 100 or more abortions per calendar**
 3 **year, are performed on the premises of the facility;**

4 (B) **The facility holds itself out to the public as an abortion provider by any public means,**
 5 **including but not limited to newspaper, telephone directory, magazine or electronic media;**
 6 **and**

7 (C) **The facility has at the facility or on call a physician, licensed under ORS chapter 677,**
 8 **to perform abortions.**

9 (c) **As used in this subsection, “abortion” means the use or prescription of any instru-**
 10 **ment, medicine, drug or other substance or device approved by the United States Food and**
 11 **Drug Administration to terminate the pregnancy of a woman known to be pregnant, with an**
 12 **intention other than to:**

13 (A) **Increase the probability of a live birth;**

14 (B) **Preserve the life or health of a child after live birth; or**

15 (C) **Remove a dead fetus.**

16 [(b)] (d) **“Ambulatory surgical center” does not mean:**

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

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

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

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

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

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

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

39 (9) **“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 (10) **“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 (11)(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; or
- 4 (E) An outpatient renal dialysis [center] **facility**.

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

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

13 (12) "Health maintenance organization" or "HMO" means a public organization or a private
14 organization organized under the laws of any state that:

- 15 (a) Is a qualified HMO under section 1310 (d) of the U.S. Public Health Services Act; or
- 16 (b)(A) Provides or otherwise makes available to enrolled participants health care services, in-
17 cluding at least the following basic health care services:
 - 18 (i) Usual physician services;
 - 19 (ii) Hospitalization;
 - 20 (iii) Laboratory;
 - 21 (iv) X-ray;
 - 22 (v) Emergency and preventive services; and
 - 23 (vi) Out-of-area coverage;
- 24 (B) Is compensated, except for copayments, for the provision of the basic health care services
25 listed in subparagraph (A) of this paragraph to enrolled participants on a predetermined periodic
26 rate basis; and
- 27 (C) Provides physicians' services primarily directly through physicians who are either employees
28 or partners of such organization, or through arrangements with individual physicians or one or more
29 groups of physicians organized on a group practice or individual practice basis.

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

33 (14) "Hospital" means:

- 34 (a) A facility with an organized medical staff and a permanent building that is capable of pro-
35 viding 24-hour inpatient care to two or more individuals who have an illness or injury and that
36 provides at least the following health services:
 - 37 (A) Medical;
 - 38 (B) Nursing;
 - 39 (C) Laboratory;
 - 40 (D) Pharmacy; and
 - 41 (E) Dietary; or
- 42 (b) A special inpatient care facility as that term is defined by the authority by rule.

43 (15) "Institutional health services" means health services provided in or through health care
44 facilities and includes the entities in or through which such services are provided.

45 (16) "Intermediate care facility" means a facility that provides, on a regular basis, health-related

1 care and services to individuals who do not require the degree of care and treatment that a hospital
2 or skilled nursing facility is designed to provide, but who because of their mental or physical con-
3 dition require care and services above the level of room and board that can be made available to
4 them only through institutional facilities.

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

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

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

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

11 (18) “New hospital” means:

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13 the prior 12-month period and is initiating or proposing to initiate such services; or

14 (b) Any replacement of an existing hospital that involves a substantial increase or change in the
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18 prior 12-month period and is initiating or proposing to initiate such services. “New skilled nursing
19 or intermediate care service or facility” also includes the rebuilding of a long term care facility, the
20 relocation of buildings that are a part of a long term care facility, the relocation of long term care
21 beds from one facility to another or an increase in the number of beds of more than 10 or 10 percent
22 of the bed capacity, whichever is the lesser, within a two-year period.

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

25 (21) “Originating-site hospital” means a hospital in which a patient is located while receiving
26 telemedicine services.

27 (22) “Outpatient renal dialysis facility” means a facility that provides renal dialysis services
28 directly to outpatients.

29 (23) “Person” means an individual, a trust or estate, a partnership, a corporation (including as-
30 sociations, joint stock companies and insurance companies), a state, or a political subdivision or
31 instrumentality, including a municipal corporation, of a state.

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

36 (25) “Telemedicine” means the provision of health services to patients by physicians and health
37 care practitioners from a distance using electronic communications.

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