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Certificate of Need Long-Term Care Capacity Rulemaking Advisory Committee (RAC)

September 24, 2026
9:00 am via Microsoft Teams

RAC MEMBER ATTENDEES

Andrew Rapp	Regency Pacific Management
Danielle Meyer	Hospital Association of Oregon
Emily Sokolski	SEIU 503
Eugenia Liu	Oregon Health Care Association
Jody Corona	Health Facilities Planning & Development
Justin Hurley Braswell	Rubicon Investments
Kristin Milligan	LeadingAge Oregon
Lucas Bradshaw (for Jonathan Edwards)	Good Shepherd Health Care System
Marcus Roshak	Sapphire Health Services
Peter Stoloff	Peter Stoloff, P.C., Attorney
Tasha Goettel	Avamere
Zach Fogg (for Steve Fogg)	Marquis Companies

OTHER INTERESTED PARTY ATTENDEES

Jim Savory	Public
Marissa Fritz	Hospital Association of Oregon
Phil Bentley	Oregon Health Care Association

OHA and ODHS ATTENDEES

Andrea Ogston	DOJ
David Allm	ODHS-SOQ
Dana Selover	PHD-HCRQI
Matt Gilman	PHD-HCRQI
Mellony Bernal	PHD-HCRQI
Jeremiah Adams	ODHS-SOQ
Sadie Morrissey	PHD-HCRQI

WELCOME AND MEETING PROCEDURES

Mellony Bernal welcomed RAC members, reviewed the agenda, and went over meeting procedures and expectations.

- Meeting is being recorded and all information shared is a matter of public record and may be disclosed.
- Per OHA policy, members of the public may observe only. Should public members have information they would like to share, they can send information by email to mellony.c.bernal@oha.oregon.gov, matt.s.gilman@oha.oregon.gov or sadie.morrissey@oha.oregon.gov following the meeting. Any information received will be shared with RAC members and OHA staff.
- Microsoft Teams features such as Chat and Raise Hand features were reviewed and instructions on how to communicate during the RAC were shared.
- Information about the Health Care Regulation and Quality Improvement (HCRQI) Section's rulemaking activity website was shared including where people can find information about new and amended rules, temporary rules, proposed rules, and other relevant information. (http://healthoregon.org/hcrqirules)

RAC members were informed that a third RAC meeting has been scheduled for October 21, 2026 at 9 A.M. A calendar appointment will be forwarded to RAC members after the meeting.

INTRODUCTIONS

In lieu of introductions, RAC members were asked to share name and organization into the Chat.

RAC member asked for the appropriate process in terms of submitting follow-up questions or information based on the 9/15 meeting. RAC member was instructed to email staff.

ADMINISTRATIVE RULE REVIEW

Dana Selover opened meeting and shared that the purpose of the third meeting will be to identify any outstanding items and to share revisions based on the 9/15 and today's RAC discussions.

D. Selover asked if there were any questions about the meeting notes. RAC members had no comments.

OAR 333-610-0030 – Sections (8) through (11) – The RAC continued review of this rule which outlines analysis of whether a community needs more nursing facility beds. During the previous RAC meeting, the RAC discussed overview of service area, collecting utilization data for the most recent five years, calculating service capacity, and determining historical utilization. Based on those discussions, staff have begun discussions with the Oregon Department of Human Services regarding set-up beds and looking at occupancy rates.

Section (8) of this rule describes the process for determining future bed need in the service area using historical use rates and applying those rates for forecasting short-stay and long-stay demand for three years after the application was submitted. It was noted that in developing the rules, staff relied heavily on the 2024 Nursing Facilities – The State of Nursing Facilities in Oregon report and information received from the nursing facility industry that nursing facilities are used differently now and use rates among the older population is much higher.

RAC discussion:

- RAC member commented about running methodology expressing concern about being able to obtain bed count in section (10)(a) to test against. Andrea Ogston summarized intent and applicant expectations in terms of running the analysis.
- RAC member remarked it was uncertain how to adjust for observed admission rates if there is a baseline use rate. It was noted that the Centers for Disease Control has done a lot of work on the bed to population ratios nationwide and occupancy target. Oregon has fairly low occupancy rates. A Task Force developed after COVID in the state of Washington reported that issues around discharge from the hospital focused on patients with complex care needs and reimbursement and payer constraints, staffing constraints, and guardianship issues. RAC member questioned how those constraints might fit into approaching bed need.
    - A. Ogston responded that rules account for looking at diagnosis at discharge for short stays and asked RAC for ideas on how to account for reimbursement and guardianship, including the possible consequences.

    - RAC member expressed Medicaid will not pay what it costs to provide care for patient when there is not a payer or the payer is Medicaid. Nursing facilities cannot 'staff up,' buy supplies and other necessary measures to manage those patients.

- RAC member expressed concern that hospital discharge volumes can be artificially inflated because of payer source, and they further noted that guardianship is a huge issue. Guardianship and payer issues are important, but these factors change often and can make discharge numbers unreliable as a main measure. Instead of focusing only on hospital discharge volumes, it may be better to look at current occupancy levels in skilled nursing facilities to understand if there is enough capacity to serve people who need care. Additionally, RAC member questioned how home and community-based services (HCBS) usage is measured - is it based on the number of beds, the number of workers, or other data and is the evaluation tied to the State Plan on Aging?
    - A. Ogston responded that the State Plan on Aging was used for purposes of these rules. It was noted that the way in which HCBS is used in Oregon has evolved from the time these rules were promulgated 25 years ago with higher acuity patients receiving HCBS. Oregon seeks to keep people in the most integrated setting, and the application should acknowledge how HCBS is being used at the time of application.
    - RAC member remarked that HCBS is subjective because it's patient choice. While there is support for patient to go into a less institutionalized setting, consistency is important. Data points for purposes of HCBS need to be tied back to the State Plan on Aging or other data sources. RAC member will consider other reports generated by the ODHS for possible reference.
- RAC member asked for clarification on how the rules take into consideration licensed bed capacity that are not routinely staffed and noted the methodology would show an artificially low occupancy rate. A. Ogston provided context from previous RAC meeting (see 9/15 meeting notes) and noted that OHA has been in communication with ODHS and considering further how to address this issue given previous concerns about the use of term 'set-up' beds. OHA encouraged feedback on possible approaches that would provide a more reliable number versus one based on a single point-in-time.

- RAC member noted in section (10) that the reference to subsection (6) needs to be revised to subsection (7).
- RAC member stated that under subsection (9)(c), language speaks to beds scheduled for closure or conversion and RAC member suggested that the language also reference beds being transferred from one facility to another. A. Ogston questioned whether those beds would be considered available. Discussion ensued regarding the definition of service area and the removal of "Service Area 3" and RAC member reiterated concerns about the removal of Service Area 3.

RAC members were asked for comments about section (11). Discussion:

- RAC member noted that bed need analysis should not be the only measure being consistent with service area planning, but Oregon's statewide health planning as well which focus on ensuring reasonable access to care at a reasonable cost.
- RAC member asked whether there are specific county level plans. It was noted that the OHA is considering the statewide level plan and questioned whether there are any plans at a local level. David Allm from ODHS indicated that it varies by county. D. Selover responded that OHA will consider further whether the rules need to clarify what is meant by 'service area plan.' RAC member noted it would be helpful to identify which service area plans the applicant should be checking which may include "the AAA, county, community health needs assessment, or all of the above."
- RAC member asked how adjacent county information is considered in situations when patients may come from Multnomah County into Washington County. M. Gilman shared that there should be flexibility in the rules to allow applicants to demonstrate that a service area extends beyond the county line. It would be up to the applicant to demonstrate through data where patients are coming from.
    - RAC member followed with this is often referred to as "in and out migration" and occurs with border areas. It was noted that the rules should clarify that data relied upon by an applicant must be publicly available and transparent. Independent parties should be able to independently validate.

OAR 333-610-0060 –The rule establishes that long-term care beds operated within a hospital must be separately licensed, and any increase above 10 percent or more than 10 beds triggers certificate-of-need review. It was noted that only minor housekeeping changes have occurred to this rule.

RAC members had no comments.

OAR 333-610-0070 –The rule requires hospitals to notify the OHA when using acute beds as swing beds and clarifies that such use may be reviewed as a new long-term care facility. Reviews focus on state health policy, appropriate use of alternative care, quality of care, and financial feasibility, rather than county-specific bed-need criteria. A. Ogston asked for input on whether subsection (2)(e), relating to a proposal addressing Medicare costs was needed, questioning whether there is a meaningful metric related to swing beds in hospitals.

RAC member indicated that they will follow-up on this question.

OAR 333-610-0080 –This rule explains that when a long-term care facility obtains a residential care license for some or all of its beds, future reconversion of those beds back to nursing facility beds may trigger certificate-of-need review and must meet cost, quality, and county-specific bed-need criteria. Only minor housekeeping changes have occurred to this rule. It was also noted that because of HCBS requirements, these beds would be very rare and under heightened scrutiny. RAC discussion:

- RAC member shared that to accurately reflect need, this rule should be retained.
- RAC member shared information about licensed bed types within a facility.

OAR 333-610-0100 – The rule establishes that distinct-part intermediate care beds for individuals who need nursing services at an intermediate level are subject to certificate-of-need review, and that the OHA must evaluate need by examining long-range plans, comparative bed ratios, professional literature, and statewide, regional, and local access, quality, and cost considerations. Only minor housekeeping changes have occurred to this rule.

RAC members had no comments.

OAR 333-610-0110 – This rule establishes that distinct-part intermediate care beds for substance use disorders are subject to certificate-of-need review, and that the OHA must evaluate need by examining long-range plans, comparative bed ratios, professional literature, and statewide, regional, and local access, quality, and cost considerations. Only minor housekeeping changes have occurred to this rule.

RAC members had no comments.

Next steps –

- RAC members were encouraged to submit any follow-up comments or proposed language changes by email to mellony.c.bernal@oha.oregon.gov, matt.s.gilman@oha.oregon.gov, or sadie.morrissey@oha.oregon.gov no later than Friday, October 2.
- The Statement of Need and Fiscal Impact will be discussed at the October 2 meeting. Proposed rule changes will be shared prior to the meeting and RAC members were asked to be prepared to speak about potential fiscal and economic impacts.
- RAC member asked OHA to run the bed need methodology and to share it at the next meeting. Another RAC member shared that it needs to be clear what Service Area the test is run on. RAC discussion ensued about tests on individual counties versus all counties, or picking one urban and one rural county.
- RAC member asked the OHA to review rules looking for words that are hard to quantify or define and reconsider their use – such as "best," "extraordinary," etc.
- A calendar appointment for the October 21 meeting will be forwarded and meeting notes drafted.

Next meeting is scheduled for October 21, 2026, at 9:00 a.m.