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TEMPORARY ADMINISTRATIVE ORDER

INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 27-2026

CHAPTER 333

OREGON HEALTH AUTHORITY PUBLIC HEALTH DIVISION

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ARCHIVES DIVISION SECRETARY OF STATE & LEGISLATIVE COUNSEL

FILING CAPTION: Demonstration of Need for Long-Term Care Services (Certificate of Need)

EFFECTIVE DATE: 06/25/2026 THROUGH 12/21/2026

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Public Health Division

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NEED FOR THE RULE(S):

The Oregon Health Authority (OHA) is temporarily amending rules in OAR chapter 333, division 610 relating to the analysis of information an applicant must provide to OHA to demonstrate the need for long-term care services. These amendments are necessary to be able to adequately evaluate a Certificate of Need application using relevant data, methods, and timelines. There are currently outdated data references in the rules that direct an applicant to review data outside the window of time relevant to current applicants.

The Certificate of Need program anticipates that it will receive a letter of intent to apply for a Certificate of Need, and prior to the submission of the letter of intent, the updated rules need to be in place so current, relevant data, timelines, and methodology can be analyzed and used for purposes of reviewing the application.

JUSTIFICATION OF TEMPORARY FILING:

The Oregon Health Authority (OHA) finds that failure to act promptly will not serve the public interest, OHA, and Certificate of Need (CN) applicants. These rules need to be adopted promptly so that the rules reflect relevant methodology, data, trends, and timeframes, which will allow OHA to adequately review and assess an application

consistent with their rules as written. Without these amendments, the CN program would be required to use existing rules, which cannot be applied as written and any decision will not accurately reflect the extent to which the proposal is needed and will be legally vulnerable to challenge. This creates the potential for delayed and inefficient consideration of whether the specific proposal is needed in Oregon.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS chapter 431: https://www.oregonlegislature.gov/bills_laws/ors/ors431.html

ORS chapter 442: https://www.oregonlegislature.gov/bills_laws/ors/ors442.html

RULES:

333-610-0000, 333-610-0010, 333-610-0020, 333-610-0030, 333-610-0060, 333-610-0070, 333-610-0080, 333-610-0090, 333-610-0100, 333-610-0110

AMEND: 333-610-0000

RULE TITLE: General

RULE SUMMARY: Amend OAR 333-610-0000 – Makes minor change of the term "nursing home beds" to "nursing facility beds" and updates rule references.

RULE TEXT:

To demonstrate need for nursing facility beds, an applicant must satisfy the criteria specified in the Certificate of Need Application Instructions (OAR chapter 333, division 580). Where appropriate, responses to these instructions shall be based on the methodology of this division (OAR chapter 333, division 610).

STATUTORY/OTHER AUTHORITY: ORS 431.120, 442.315

STATUTES/OTHER IMPLEMENTED: ORS 431.120, 442.315

AMEND: 333-610-0010

RULE TITLE: Definitions

RULE SUMMARY: Amend OAR 333-610-0010 – Updates definitions to cross reference relevant Oregon Department of Human Services (ODHS) statutory definitions and removes definitions which are no longer applicable or relevant.

RULE TEXT:

As used in OAR chapter 333, division 610:

- (1) "Alternative services" means long-term care and support services provided in a setting other than a nursing facility, including home and community-based services as defined by OAR chapter 411, division 020.
- (2) "Alternate service area" means an approved deviation from the county as the service area meeting exception criteria.
- (3) "Adult foster home" has the meaning given in ORS 443.705.
- (4) "Closed bed long term care facility" has the meaning given in ORS 101.020.
- (5) "Continuing care contract" means a legally binding agreement between an individual and a closed system provider consistent with the requirements found in OAR chapter 411, division 67.
- (6) "Institutional level of care" has the meaning given in OAR 411-317-0000(106).
- (7) "Intermediate care facility (ICF)" means a facility that provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment that a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require care and services above the level of room and board that can be made available to them only through institutional facilities.
- (8) "Long-term care facility (LTCF)":
 - (a) Means a permanent facility with inpatient beds, providing:
 - (A) Medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the Director of Human Services; and
 - (B) Treatment for two or more unrelated patients.
 - (b) Includes skilled nursing facilities and intermediate care facilities but does not include facilities licensed and operated pursuant to ORS 443.400 to 443.455.
- (9) "Readmission" means a patient discharge and readmission to the hospital within 30 days for the same or related diagnosis. Readmission does not include a readmission for an unrelated diagnosis, readmission occurring more than 30 days after the date of discharge, or readmission for episodic (a series) acute care hospitalizations to stabilize the medical condition such as, but not limited to: diabetes, asthma, or chronic obstructive pulmonary disease.
- (10) "Residential care facility" has the meaning given that term in ORS 443.400.
- (11) "Service area" means the county where the facility is located.
- (12) "Set-up bed" means a bed that is licensed by Oregon Department of Human Services and is ready for immediate use.
- (13) "Skilled nursing facility (SNF)" means a facility or a distinct part of a facility, that is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or an institution that provides rehabilitation services for the rehabilitation of individuals who are injured or sick or who have disabilities.

STATUTORY/OTHER AUTHORITY: ORS 431.120, 442.315

STATUTES/OTHER IMPLEMENTED: ORS 431.120, 442.315

AMEND: 333-610-0020

RULE TITLE: Principles

RULE SUMMARY: Amend OAR 333-610-0020 – Removes dates that are not relevant to current applications and adds more relevant data sources that applicants are required to analyze in their applications.

RULE TEXT:

(1) In evaluating need in the service area, the Oregon Health Authority shall consider indicators such as:

- (a) Documented hospital discharge delays due to insufficient nursing facility placement;
- (b) Travel distance and travel time burdens to the nearest appropriate facility;
- (c) Limited or unavailable specialized services (such as ventilator care, bariatric care, complex behavioral health);
- (d) Local workforce constraints that limit the number of set-up beds relative to licensed capacity; or
- (e) Hospital readmissions.

(2) Population forecasting must be evidence-based and must distinguish short-stay and long-stay utilization.

(3) Forecasts must incorporate:

- (a) Anticipated hospital discharge volumes;
- (b) Statewide clinical and demographic trends;
- (c) Patterns of Home and Community Based Service (HCBS) utilization; and
- (d) Projected growth in the population age 65 and over, while recognizing that age is no longer a primary predictor of nursing facility use.

(4) Need determinations must reflect Oregon's statutory preference for supporting individuals in the least restrictive setting.

(5) Increased utilization of Home and Community Based Services does not, by itself, demonstrate reduced need for nursing facility beds if post-acute or specialized nursing facility capacity remains insufficient.

(6) Rural areas with limited facilities, or counties with no facilities, are permitted to propose an alternate service area.

The Oregon Health Authority shall consider the following exception criteria. Factors include:

- (a) Hospital referral patterns;
- (b) Travel time access;
- (c) Clinical service availability; and
- (d) Other factors consistent with statewide health planning.

(7) All analyses must rely on the best available data. Applicants and the Oregon Health Authority may use hospital discharge data, Medicaid claims, cost reports, Minimum Data Set data, set-up bed inventories, Home and Community Based Services utilization data, and population forecasts from Portland State University or other approved sources.

STATUTORY/OTHER AUTHORITY: ORS 431.120, 442.315

STATUTES/OTHER IMPLEMENTED: ORS 431.120, 442.315

AMEND: 333-610-0030

RULE TITLE: Need

RULE SUMMARY: Amend OAR 333-610-0030 – Updates the definition of a service area for a proposal for a long-term-care facility and updates requirements for applicants to submit utilization data. Removes significantly out-of-date date references.

RULE TEXT:

The following method is an extension of the general requirements for analysis of need set forth in OAR 333-580-0040(1):

(1) Determine service area:

(a) The default service area is the county in which the nursing facility is located.

(b) If the county has no licensed nursing facility, or if hospital referral patterns or geographic access indicate that a county-based service area would not reflect actual utilization, the Oregon Health Authority may use a multi-county service area based on:

(A) Hospital referral patterns;

(B) Resident origin and discharge data;

(C) Travel-time and travel-distance accessibility;

(D) Rural health service availability; or

(E) Patterns of post-acute care.

(c) An applicant may propose an alternative service area supported by evidence demonstrating that the proposed boundaries reflect actual utilization and access patterns for post-acute and long-stay residents.

(2) Collect utilization data. The applicant shall submit, and the Oregon Health Authority shall use, the most recent five years of available data, including:

(a) Hospital discharge data showing the number of discharges to nursing facilities, categorized by major clinical condition or Medicare Severity-Diagnosis Related Grouping;

(b) Minimum Data Set (MDS) data identifying short-stay (less than or equal to 90 days) and long-stay (greater than 90 days) utilization patterns;

(c) Annual nursing facility cost reports or other publicly available utilization reports showing resident days, admissions, discharges, and set-up bed availability;

(d) Set-up bed inventories for all facilities in the service area; and

(e) Home and Community Based Services utilization data where relevant to understanding long-stay trends.

(3) Calculate service area capacity.

(a) The number of set-up beds constitutes the operational supply of nursing facility beds for all calculations in this rule. Licensed beds that are not set-up as of the date of the letter of intent shall not be counted as available capacity.

(b) The applicant shall determine the total number of set-up beds in the service area for each of the past five years.

(4) Determine historical utilization for each of the past five years. The applicant shall determine:

(a) Total resident days;

(b) Short-stay resident days (less than or equal to 90 days);

(c) Long-stay resident days (greater than 90 days);

(d) Number of hospital discharges to nursing facilities; and

(e) Population age 65 and older and population age 75 and older within the service area.

(A) Short-stay utilization rates must be calculated per 1,000 hospital discharges, stratified where possible by major clinical category.

(B) Long-stay utilization rates must be calculated per 1,000 persons age 75 and older, unless the applicant demonstrates that another age cohort better represents long-stay demand within the service area.

(5) The Oregon Health Authority shall apply smoothing or statistical adjustment methods to avoid distortion from the

COVID-19 pandemic, temporary closures, or anomalous events.

(6) Evaluate occupancy and utilization patterns:

(a) Occupancy shall be calculated using: $\text{Occupancy} = \frac{\text{total resident days}}{(\text{set-up beds} \times 365)}$.

(b) Occupancy levels, trends, and variability shall be analyzed over the five-year period, including:

(A) Whether occupancy is increasing, decreasing, or stable;

(B) Differences between short-stay and long-stay utilization;

(C) The age distribution of long-stay residents, including changes in the population age 75 and older in the service area;

(D) Geographic disparities within the service area; and

(E) Facility-level variation in occupancy or case mix.

(c) The Oregon Health Authority shall consider occupancy in conjunction with demand, access, staffing capacity, age-related demographic trends affecting long-stay utilization, and changes in the post-acute care environment.

(7) Assess localized access constraints. Nursing facility need may be demonstrated by evidence of at least one of the following:

(a) Documented hospital discharge delays caused by insufficient nursing facility availability or specialty beds;

(b) Extraordinary travel time to the nearest appropriate nursing facility;

(c) Insufficient availability of specialized services (such as ventilator care, behavioral health, bariatric care, or complex medical care);

(d) Chronic understaffing preventing conversion of licensed beds to set-up beds;

(e) Lack of facilities in the county or region such that residents must routinely cross county or regional boundaries to obtain care; or

(f) Hospital readmissions.

(8) Determine future bed need. Forecast short-stay and long-stay demand:

(a) Short-stay demand shall be forecast using projected hospital discharge volumes, adjusted for observed admission rates into nursing facilities.

(b) Long-stay demand shall be forecast using:

(A) Historical long-stay rates;

(B) Expected Home and Community Based Service (HCBS) utilization; and

(C) Expected changes in the population age 75 and older.

(c) Demand shall be forecast for the year three years after the calendar year of application.

(9) Determine future bed inventory. Projected future supply shall include or account for:

(a) Current set-up beds at the time of applicant's letter of intent;

(b) Beds associated with approved but not yet operational Certificate of Need projects; and

(c) Beds scheduled for closure or conversion at the time of applicant's letter of intent.

(10) Identify any shortfall. A bed shortfall exists if:

(a) Required beds exceed projected future set-up beds; or

(b) Localized access constraints under section (6) would remain unresolved without additional beds.

(11) Consistency with service area planning. If a service area plan exists, the applicant must demonstrate consistency or justify deviation due to updated data, access considerations, or changes in Home and Community Based Service availability.

STATUTORY/OTHER AUTHORITY: ORS 431.120, 442.315

STATUTES/OTHER IMPLEMENTED: ORS 431.120, 442.315

AMEND: 333-610-0060

RULE TITLE: Hospital Long-Term Care Beds

RULE SUMMARY: Amend OAR 333-610-0060 – Removes outdated reference to Seniors and People with Disabilities and replaces with Oregon Department of Human Services. Removes cross-reference to OAR 333-550-0010(1).

RULE TEXT:

(1) Long-term care facility services, and beds offered in or through a hospital, must be separately licensed by the Oregon Department of Human Services. Additions to the bed capacity of such facilities will be subject to review if such additions are greater than 10 percent of the existing capacity of the long-term care facility, or greater than 10 beds, whichever is less, as provided in OAR 333-550-0010(3).

(2) When a hospital proposes to create a new long-term care facility which will either be associated with, or located in, the hospital; or increase the number of long-term care beds (as defined in OAR 333-610-0010(8)) in such a facility by more than 10 beds or 10 percent of the facility's bed capacity, whichever is less, or when a hospital proposes to relocate long-term care beds to such a facility, the project will be subject to certificate of need on the same basis as any freestanding nursing facility project would be under OAR 333-610-0000 to 333-610-0030.

STATUTORY/OTHER AUTHORITY: ORS 431.120, 442.315

STATUTES/OTHER IMPLEMENTED: ORS 431.120, 442.315

AMEND: 333-610-0070

RULE TITLE: Swing Long-Term Care Beds in Hospitals

RULE SUMMARY: Amend OAR 333-610-0070 – Updates terminology and statutory references. Removes outdated reference to Seniors and People with Disabilities and replaces with Oregon Department of Human Services.

RULE TEXT:

When a hospital proposes to utilize a given number of its licensed hospital acute beds intermittently as skilled nursing facility swing beds under applicable federal regulations, the hospital is expected to submit a letter of intent to the Oregon Health Authority. The organized and regular provision of skilled nursing facility services within the licensed physical plant of the hospital may be subject to review as a new long-term care facility under OAR 333-550-0010(3)(a). In addition:

(1) The proposal will not be subject to county-specific nursing facility bed need criteria under OAR 333-610-0000 to 333-610-0030 because it will not create permanent new nursing facility beds. The Oregon Health Authority, in reviewing the proposal for need under OAR 333-580-0040 and for alternative uses of resources under OAR 333-580-0050, will take into consideration such factors as:

- (a) Health policy of the state, as reflected in ORS 410.010, 410.020, 410.030, 410.050 and 410.065; and ORS 442.310
- (b) Interpretation of that policy, as reflected in the plans and administrative rules of the Oregon Health Authority and the Oregon Department of Human Services. In considering strategies for increasing the accessibility of nursing facility beds, priority will be given to increasing the utilization of appropriate alternative care (thereby freeing up existing nursing facility beds), rather than increasing the number of nursing facility beds;
- (c) Comparative experience with, and quality of, long-term care provided by staff in licensed acute care hospitals and in licensed long-term care facilities.

(2) The Oregon Health Authority, in reviewing the proposal for financial feasibility under OAR 333-580-0060, will take into consideration such factors as:

- (a) Estimated projection of Medicare utilization
- (b) Estimated potential for diversion of public and private funds now available for alternative care into facility-based long-term care when the patient needs involved could be met, at equal or lesser cost, through provision of alternative care;
- (c) Balanced against section (3) of this rule, estimated potential for diversion of public and private funds now available for acute care into facility-based and alternative long-term care;
- (d) Comparative costs of long-term care provided in licensed hospitals and in licensed long-term care facilities, and the feasibility of the hospitals contracting for skilled care in an existing long-term care facility at equal or lesser cost; and
- (e) Potential that the proposal will or will not increase Medicare costs.

STATUTORY/OTHER AUTHORITY: ORS 431.120, 442.315

STATUTES/OTHER IMPLEMENTED: ORS 431.120, 442.315

AMEND: 333-610-0080

RULE TITLE: Residential Care Beds in Long-Term Care Facilities

RULE SUMMARY: Amend OAR 333-610-0080 – Removes outdated reference to Seniors and People with Disabilities and replaces with Oregon Department of Human Services and makes other minor terminology updates.

RULE TEXT:

When a long-term care facility chooses to obtain a license from the Oregon Department of Human Services as a residential care facility as defined in OAR 333-610-0010(10) for all, or for a separate and distinct part of its currently licensed long-term care facility bed capacity, it is not required, under statute, to accept a correspondingly reduced Oregon Department of Human Services "long-term care facility" license as described in OAR 333-610-0010(8). Federal regulations, however, may require this under some circumstances. The following certificate of need rules will apply at such time that appropriate, coordinated licensing rules are adopted by the Oregon Department of Human Services:

(1) Future reconversion of such beds from residential care to long-term care (nursing facility) beds will be considered an expansion of the then existing Oregon Department of Human Services licensed long-term care facility service, and may be subject to the certificate of need law under applicable thresholds regarding expansions in long-term care bed capacity; and

(2) In evaluating a reconversion project, the Oregon Health Authority shall consider the costs, compared to new construction, and to the comparative quality and cost of care currently provided at the facility; and

(3) Reconversion projects as described in this rule will be subject to county-specific bed need criteria under OAR 333-610-0020 to 333-610-0030.

STATUTORY/OTHER AUTHORITY: ORS 431.120, 442.315

STATUTES/OTHER IMPLEMENTED: ORS 431.120, 442.315

SUSPEND: 333-610-0090

RULE TITLE: Intermediate Care Facilities for the Mentally Retarded

RULE SUMMARY: Suspend OAR 333-610-0090 – Suspends rule which is significantly out-of-date.

RULE TEXT:

Distinct part intermediate care beds for mentally retarded or developmentally disabled individuals, when the facility houses any individuals who require nursing care services of a level, frequency and duration equivalent to intermediate facility care nursing as defined by the Seniors and People with Disabilities Division, must be licensed by the Seniors and People with Disabilities Division, rather than by the Addictions and Mental Health Division, and are subject to certificate of need according to ORS Chapter 442. In determining need, the division shall take into account long-range plans of the Addictions and Mental Health Division; shall consider comparative bed ratios in other states; and shall search, review and analyze existing professional literature and reports. The division shall evaluate local, substate, regional and statewide need, considering access, quality and costs. Public and private facility beds shall be considered as equivalent for purposes of meeting the limited need for this category of care.

STATUTORY/OTHER AUTHORITY: ORS 431.120(6), 442.315

STATUTES/OTHER IMPLEMENTED: ORS 431.120(6), 442.315

AMEND: 333-610-0100

RULE TITLE: Intermediate Care Facilities

RULE SUMMARY: Amend OAR 333-610-0100 – Makes minor updates to terminology.

RULE TEXT:

Distinct part intermediate care beds for when the facility houses any such individuals who require nursing care services of a level, frequency and duration equivalent to intermediate care facility nursing as defined by the Oregon Department of Human Services are subject to certificate of need according to ORS chapter 442. In determining need, the Oregon Health Authority shall consider long-range plans; comparative bed ratios in other states; and shall search, review and analyze existing professional literature and reports. The Oregon Health Authority shall evaluate local, regional and statewide need, considering access, quality and costs. Public and private facility beds shall be considered as equivalent for purposes of meeting the limited need for this category of care.

STATUTORY/OTHER AUTHORITY: ORS 431.120, 442.315

STATUTES/OTHER IMPLEMENTED: ORS 431.120, 442.315

AMEND: 333-610-0110

RULE TITLE: Intermediate Care Facilities for Substance Use Disorders

RULE SUMMARY: Amend OAR 333-610-0110 – Makes minor update to terminology.

RULE TEXT:

Distinct part intermediate care beds for treatment of substance use disorders, when the facility houses any such individuals who require nursing care services of a level, frequency and duration equivalent to intermediate care facility nursing as defined by the Oregon Department of Human Services, must be licensed by the Oregon Department Human Services rather than by the Oregon Health Authority, and are subject to certificate of need according to ORS chapter 442. In determining need, the Oregon Health Authority shall take into account long-range plans of the Behavioral Health Division; shall consider comparative bed ratios in other states; and shall search, review and analyze existing professional literature and reports. The Oregon Health Authority shall evaluate local, substate, regional and statewide need, considering access, quality and costs. Public and private facility beds shall be considered as equivalent for purposes of meeting the limited need for this category of care.

STATUTORY/OTHER AUTHORITY: ORS 431.120, 442.315

STATUTES/OTHER IMPLEMENTED: ORS 431.120, 442.315