



Health Care Regulation and Quality Improvement
800 NE Oregon Street, Suite 465
Portland, Oregon 97232
971-673-0540
971-673-0556 (Fax)

March 29, 2023

Bahaa Wanly, Other
Legacy Mount Hood Medical Center
24800 SE Stark Street
Gresham, OR 97030

Dear Bahaa Wanly:

This is to notify you that the request for a waiver from Oregon Administrative Rule 333-500-0032 (2)(a)(A) has been denied. Enclosed is a copy of the signed waiver request, including a justification for the denial. Please call this office at (971) 673-0540 if you have further questions. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Humphries".

Lisa Humphries
Plans Review Specialist, Health Facilities Licensing and Certification Program
Facilities Planning and Safety
Oregon Health Authority
Public Health Division
Health Care Regulation and Quality Improvement

*If you need this information in an alternate format, please call our office at
(971) 673-0540 or TTY 711*



Survey & Certification Unit
 800 NE Oregon Street, Suite 465
 Portland, OR 97232
 Voice: (971) 673-0540
 Fax: (971) 673-0556
 TTY: 711
<http://www.healthoregon.org/hcrqi>
mailbox.hclc@odhsosha.oregon.gov

WAIVER DECISION

OAR Rules Chapter 333, Divisions 27, 35, 56, 71, 76, 80, 81,
 275 500 through 540, 675 and 700
 (This form is for State use only.)

PR # (if any): N/A
 Facility/Agency: Legacy Mt. Hood Medical Center
 Project Name: Family Birth Center Closure
 Project Address: 24800 SE Stark Street, Gresham OR 97030
 Waiver #:
 OAR#(s): 333-500-0032(2)(a)(A)

New Waiver **Existing Waiver**

1. Decision by Center Administrator

Approve Deny

Comments:
 Review of waiver request and additional documentation supports the
 recommendation that the waiver be denied as the hospital does not meet the
 criteria specified in rule.

Signature  Date Mar 28, 2023
Andre Ourso (Mar 28, 2023 16:49 PDT)
 André Ourso JD, MPH

2. Recommendation of the Health Care Regulation & Quality Improvement Section Manager:

Approve Deny

Comments:
 The recommendation is based on review of the waiver request and additional
 documentation. It correctly reflects that the hospital does not meet the criteria for
 waiver.

Signature  Date Mar 28, 2023
 Dana Selover MD, MPH

3. Review by HFLC Facilities Licensing and Certification Unit Yes No
Survey & Certification Manager Recommendation:

Approve Deny

OHA received a waiver request from Legacy Mount Hood Medical Center (LMHMC) on March 6, 2023. The hospital requested waiver of the requirement to provide maternity services. The waiver request, as written, did not provide sufficient information to support a determination, so OHA asked for additional information on March 13, 2023. LMHMC provided additional information on March 17, 2023. In addition, OHA received correspondence from Legacy staff and the public regarding the waiver request. Based on the information reviewed by staff, the information submitted by the hospital, the public, and independent data gathered by OHA, the program recommends OHA deny the waiver request.

Legacy Mount Hood Medical Center (LMHMC) is classified as a general hospital under Oregon Administrative Rule (OAR) 333-500-0032(1)(a) and as such must provide maternity services. OAR 333-500-0032(2)(a)(A). A hospital may request a waiver of a rule, such as the rule requiring the provision of maternity services. A hospital requesting a waiver from a rule must “Demonstrate that the proposed waiver is desirable to maintain or improve the health and safety of the patients, to meet the individual and aggregate needs of patients, and shall not jeopardize patient health and safety ...” OAR 333-500-0065(1)(e). In response to all three criteria, LMHMC states that it does not currently have sufficient staff to provide safe patient care in the Family Birth Center (FBC). The current lack of staff does not support waiver of the requirement to provide maternity services. The staffing shortfall is a result of LMHMC decisions to eliminate positions, place staff on administrative leave, and otherwise reduce staffing to further its stated intent to close the unit. Further, LMHMC has not demonstrated sufficient efforts to staff the unit with other providers that would have facilitated continued operation of the service.

1. Is the waiver desirable to maintain or improve the health and safety of patients?

LMHMC stated that the hospital could not continue to safely staff the Family Birth Center (FBC) following the loss of providers and staff. The LMHMC staffing situation is a result of both LMHMC negotiations with its providers, as described by LMHMC in its waiver request, and its decision to place nursing staff members on paid administrative leave as part of its plan to close the FBC. LMHMC describes efforts to change its staffing model in late 2022; when existing staff did not support that change LMHMC did not seek options to secure staff who would implement a different model and instead closed the FBC . LMHMC’s FBC closure does not maintain or improve the health and safety of its patients. LMHMC asserts that the health and safety of patients will be maintained or improved by “designating [Legacy Emanuel Medical Center] as the preferred site for labor and delivery” thereby minimizing “emergent obstetrical presentations to [the LMHMC] ED where

OB services are on divert.” The designation of an alternate option may reduce the number of emergent obstetrical presentations, but the number of patients seeking care at LMHMC will still be significant. Staff from LMHMC report that the FBC had more pregnant patients presenting at LMHMC for triage prior to closure than the other Legacy system hospitals. These urgent triage patients would otherwise seek care in the ED. Being seen in the FBC allows patients the opportunity to receive specialized obstetrical evaluation and care which can reduce complications and premature births. LMHMC’s FBC triage volume reflects significant patient needs for pre-delivery emergent care that are not adequately addressed by the proposed alternative solution. The provision of pre-delivery emergent care is neither maintained nor improved by a waiver in this situation.

2. Does the waiver meet the individual and aggregate needs of patients?

This criteria looks at both the needs of individual patients and the needs of the community served by the hospital requesting waiver. LMHMC states that the waiver is necessary to meet the individual and aggregate needs of patients because “Current staffing levels ... are not safe.” As previously stated, the current staffing model and staffing level is a function of LMHMC’s management decisions. The response provided by LMHMC focuses on the impact of staffing decisions made about the unit, and does not reflect the individual or community needs. In comparison to statewide averages, LMHMC FBC serves

- More individuals who identify as having limited English proficiency,
- A higher percentage of birthing parents with limited education,
- A higher percentage of families who have received inadequate or no prenatal care, and
- 15% more families whose births are covered by the Oregon Health Plan.


The community need in aggregate reflects significant existing challenges. The LMHMC waiver request does not address these challenges nor would the proposed alternative solution, sending patients to a hospital that is significantly further for patients and their families to travel, ameliorate the challenges.

3. Would the waiver jeopardize the health and safety of patients?

LMHMC points out that other facilities will be able to provide care to patients previously served by LMHMC. LMHMC also cites transport times for patients who present at LMHMC and services available at LMHMC should transport be impossible at the time the patient presents at the ED. LMHMC’s stated transport times do not reflect the actual time needed to get patients from one location to another and merely reflect in-air flight time. Further, the transport plans do not adequately address existing limitations on transport resources. At the time the waiver was requested, LMHMC referenced additional training it was going to provide to ED staff to provide care for non-transportable patients, but that had not been completed. The training was going to focus on “hands-on emergency skills to stabilize patients in acute situations * * * [enabling] staff and providers to safely care

for obstetric patients while preparing for timely transfer.” Patients who present to LMHMC ED will be cared for by ED staff, and some patients will arrive at a stage when they can not be safely transferred. In these situations ED providers will have to deliver the babies relying on LMHMC’s training focused on “timely transfer.” Based on information received by OHA, ED staff do not believe they have the skills necessary to safely care for such patients.

LMHMC has not met any of the criteria that must be demonstrated in order for a waiver to be approved; therefore, the Health Facility Licensing & Certification program recommends denial of the waiver.

Signature_ 

Date 03/28/2023

Anna L Davis, JD



REQUEST FOR WAIVER FROM STAKEHOLDER

OAR Rules 333, Divisions 27, 71, 76, 500 through 536, and 700
 (This form is for Stakeholder use.)

PR # (if known): _____
Facility/Agency: Legacy Mount Hood Medical Center
Project Name: Legacy Mount Hood Medical Center Family Birth Center Closure
Project Address: 24800 SE Stark Street, Gresham, Oregon 97030

1. Individual Requesting Waiver:

Name: Bahaa Wanly
 Title: President
 Address: 24800 SE Stark Street, Gresham, Oregon 97030
 Phone: 503-674-1191 Cell: _____
 Email: bwanly@lhs.org

2. Oregon Administrative Rule(s) to be Waived:

Rule Number(s): 333-500-0032(2)(a)(A)
 Rule text: A hospital classified as a general hospital shall:
(A) Provide at least general medical, maternity and surgical services;

3. Alternative solution proposed: (Please see instructions below, attach additional pages as necessary.)

Please see Exhibit 1 attached hereto

MAR 07 2023



Request for Waiver Instructions

All requests for an exception to an Oregon Administrative Rule must be submitted in writing.

Please submit all completed *Requests for Waiver* to our main office at:

mailbox.hclc@odhsoha.oregon.gov

If you have any questions, you may contact us by phone, at (971) 673-0540.

When completing the *Request for Waiver* form, please be sure to:

1. Identify the specific Oregon Administrative Rule(s) for which a waiver is requested.
2. Identify the special circumstances relied upon to justify the waiver.
3. Describe how the proposed waiver will maintain or enhance patient health and safety. Solutions should consider both individual and aggregate patient needs.
4. Identify the proposed duration of the waiver.

This office will respond in writing to all written *Requests for Waiver*.

Please Note: All applicable Oregon Administrative Rules are binding in full until and unless a written waiver has been granted.

EXHIBIT 1

Alternative solution proposed

After a review of all available options, Legacy Mount Hood Medical Center proposes to close its Family Birth Center (FBC), based upon lower-than-anticipated birth rates combined with a costly in-house OB (obstetric) hospitalist care model that is unusual for a low-volume FBC. Several of the OB hospitalists have recently announced their resignations, which will require Mount Hood to go on divert status. Based on these resignations, other staffing shortages precipitated by these resignations, and our need to plan for the safe care of patients, we have developed contingency plans in the event we have to go on divert status as soon as March 17. This change is projected to affect birthing patients specifically. We plan to continue outpatient women's services, including prenatal care, GYN (gynecologic) and lactation services. We also intend to expand inpatient GYN services with the development of our minimally invasive robotic GYN service line.

The specifics of the plan include:

- **Prenatal Care:** Legacy Health maintains family birth centers at five other locations in the Portland region, including NICU-level care at Randall Children's Hospital. Care is provided through a comprehensive program of board-certified OB providers and certified nurse midwives. Prenatal and postnatal care will continue at the Legacy Mount Hood Women's clinic. The Mount Hood Certified Nurse Midwife practice will care for pregnant patients and will plan deliveries to occur at Randall Children's Hospital, while on divert status and following receipt of any waiver from OHA. Specialty OB care will be expanded with the addition of a Maternal Fetal Medicine clinic to the Mount Hood campus. Clinic patients have been informed of these changes and ongoing communication will be provided.
- Pregnant patients who present to the Mount Hood Emergency Department in need of inpatient admission will be transferred to another local hospital providing obstetric services. Our transfer partners (Life Flight Air Services, AMR, etc.) will make these transitions as smooth as possible. Transport will be appropriate, via ground or air, based on urgency of presentation. In addition, we will install a "Life Flight button" that summons helicopter transport when needed emergently. Transit time by helicopter to Randall Children's Hospital is seven minutes. Other nearby hospitals are also an option for transfer (OHSU Adventist at 8.4 miles, Providence Portland at 10.7 miles). We will establish transfer agreements with these hospitals to facilitate the process. Adventist's Family Birth Center volume is currently low and is expected to be able to accommodate extra volume from Mount Hood.
- **Emergent presentation to Mount Hood ED:** If pregnant patients present with imminent delivery or obstetrical emergencies, the ED providers and staff will meet EMTALA obligations by providing stabilizing care or delivery if needed. We are developing education programs for ED providers and nurses/technicians to enhance OB-related skills, including OB medication protocols, ultrasound, fetal heart tones, and management of OB emergencies, such as precipitous delivery, hypertension, hemorrhage, etc. Such education will include case

simulations as well as a mock OB transfer scenario involving helicopter transfer by Life Flight. In addition, we are developing a "Tele-OB" consult program (via robot) to support ED providers, similar to the "Tele-Baby" program that is already in use. An OB physician will be available quickly via Tele-OB to instruct an ED provider in real-time through an OB emergency situation, up to or including delivery if needed.

EXHIBIT 2

Narrative Justification

- Legacy Health finds itself in a severe financial crisis after three years of pandemic-related healthcare costs and challenges. The OB hospitalist model at Mount Hood was put in place just before the pandemic (2019) with the expectation that birth volumes would rise. Instead, births at Mount Hood fell from a peak of 980 in Fiscal Year 2017 to 786 in FY 2022. This mirrors the overall trend in East County, where births have steadily declined from about 5,000 in 2017 to about 3,000 in 2022. Projections show continued long-term declines in low-risk births in this area, further jeopardizing the supply of maternity patients to the Mount Hood Family Birth Center. The percentage of births from East County zip codes that occur at Mount Hood is 16%, indicating that the majority of East County women are already delivering at other hospitals in the area.
- Furthermore, a comparison with Portland-area family birth centers revealed that only one, OHSU Hillsboro, had a continuous OB hospitalist model with fewer deliveries per year than Mount Hood (616). All other local family birth centers with an OB hospitalist model had at least 1,600-deliveries per year, a significant difference. A site visit from American College of Obstetrics and Gynecology (ACOG) in December 2022 confirmed that it would be unusual to support an OB hospitalist model of care with fewer than 1,500 deliveries per year as Mount Hood has been doing since 2019.
- Given these facts, Legacy leadership proposed a model change to the Family Birth Center leadership in December 2022. The proposal was to convert the OB hospitalist model to a more traditional model of OBs taking call from home, with a 24-7 in-house midwifery coverage model. Legacy's intention was never to close the Family Birth Center, but to move to a financially sustainable obstetrical coverage model. However, due to substantial resignations from physicians who did not want to change the model, it became impossible to staff the Family Birth Center and ongoing OB-GYN call.
- For this reason, we seek a three-year waiver to allow for the temporary closure of the Mount Hood Family Birth Center while we evaluate other opportunities to reopen in a clinically and financially sustainable way. We believe that this decision will enable us to continue to provide high-quality maternity care at Randall Children's Hospital, as well as the other Legacy hospitals, while maintaining our long-term financial health to support the ongoing mission of patient care.