

# House Bill 2563

Sponsored by Representatives BERGER, GREENLICK, Senators BATES, WESTLUND; Representatives BARNHART, SCOTT, Senator STARR

## 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**.

Extends period for which long term care facility assessment is imposed.

Restates entities exempt from assessment. Eliminates Oregon Tax Court jurisdiction over disputes arising under assessment. Directs Department of Human Services to adopt rules implementing long term care facility assessment.

Applies to assessment years beginning on or after July 1, 2007.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to long term care facility assessments; creating new provisions; amending ORS 305.410 and  
3 sections 15, 16, 17, 18, 23, 24 and 29, chapter 736, Oregon Laws 2003; repealing sections 27 and  
4 31, chapter 736, Oregon Laws 2003; prescribing an effective date; and providing for revenue  
5 raising that requires approval by a three-fifths majority.

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

7 **SECTION 1.** Section 15, chapter 736, Oregon Laws 2003, as amended by section 3, chapter 757,  
8 Oregon Laws 2005, is amended to read:

9 **Sec. 15.** As used in sections 15 to 22, chapter 736, Oregon Laws 2003:

10 (1) "Assessment rate" means the rate established by the Director of Human Services under  
11 section 17, chapter 736, Oregon Laws 2003.

12 (2) "Assessment year" means the fiscal year for which the assessment rate being deter-  
13 mined is to apply.

14 (3) "Fiscal year" means a 12-month period beginning July 1 and ending the following June  
15 30.

16 [(2)] (4) "Gross revenue":

17 (a) Means the revenue paid to a long term care facility for patient care, room, board and ser-  
18 vices, less contractual adjustments; and

19 (b) Does not include:

20 (A) Revenue derived from sources other than **long term care facility** operations, including but  
21 not limited to interest and guest meals;

22 (B) **Hospital revenue or revenue derived from hospital operations; or**

23 (C) **Donations or any other revenues that are not attributable to patient care.**

24 [(3)] (5) "Long term care facility" has the meaning given that term in ORS 442.015, but does not  
25 include an intermediate care facility for the mentally retarded.

26 (6) "Medicaid patient days" means **patient days attributable to patients who receive**  
27 **medical assistance under a plan described in 42 U.S.C. 1396a.**

28 [(4)] (7) "Patient days" means the total number of patients occupying beds in a long term care

**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 facility, determined as of 11:59 p.m. of each day, for all days in the calendar period for which an  
 2 assessment is being reported and paid. For purposes of this subsection, if a long term care facility  
 3 patient is admitted and discharged on the same day, the patient shall be deemed present on 11:59  
 4 p.m. of that day.

5 [(5) "Waivered long term care facility" means:]

6 [(a) A long term care facility operated by a continuing care retirement community that is registered  
 7 under ORS 101.030 and that admits:]

8 [(A) Residents of the continuing care retirement community; or]

9 [(B) Residents of the continuing care retirement community and nonresidents; or]

10 [(b) A long term care facility that is annually identified by the Department of Human Services as  
 11 having a Medicaid recipient census that exceeds the census level established by the department.]

12 **SECTION 2.** Section 16, chapter 736, Oregon Laws 2003, as amended by section 4, chapter 757,  
 13 Oregon Laws 2005, is amended to read:

14 **Sec. 16.** (1) A long term care facility assessment is imposed on each long term care facility in  
 15 this state.

16 (2) The amount of the assessment equals the assessment rate times the number of patient days,  
 17 **including Medicaid patient days**, at the long term care facility for a calendar quarter.

18 (3) The assessment shall be reported on a form prescribed by the Department of Human Services  
 19 and shall contain the information required to be reported by the department. The assessment form  
 20 shall be filed with the department on or before the 30th day of the month following the end of the  
 21 calendar quarter for which the assessment is being reported. The long term care facility shall pay  
 22 the assessment at the time the facility files the assessment report. The payment shall accompany the  
 23 report unless the payment is transmitted electronically.

24 (4) A long term care facility is not guaranteed that any additional moneys paid to the facility  
 25 in the form of reimbursements calculated according to the methodology described in section 24 (4),  
 26 chapter 736, Oregon Laws 2003, shall equal or exceed the amount of the long term care facility as-  
 27 sessment paid by the facility.

28 **SECTION 3.** Section 17, chapter 736, Oregon Laws 2003, as amended by section 5, chapter 757,  
 29 Oregon Laws 2005, is amended to read:

30 **Sec. 17.** (1) On or before June 15 of each year, the Director of Human Services shall establish  
 31 an assessment rate for long term care facilities *[that applies]* **that are not exempt for the as-**  
 32 **essment year from the tax imposed under sections 15 to 22, chapter 736, Oregon Laws 2003.**  
 33 **The assessment rate shall apply** prospectively to the *[12-month period beginning July 1 of that]*  
 34 **assessment** year. The assessment rate shall be a rate estimated to collect an amount that does not  
 35 exceed six percent of the annual gross revenue of all long term care facilities in this state, as de-  
 36 termined from the *[previous year's cost reports or other required revenue reports]* **most recently filed**  
 37 **nursing facility financial statements**, excluding the annual gross revenue of long term care fa-  
 38 cilities that are exempt from the assessment imposed under section 16, chapter 736, Oregon Laws  
 39 2003.

40 (2) On or before June 15 of each year, the Department of Human Services shall refund any  
 41 overage in tax dollars collected under section 16, chapter 736, Oregon Laws 2003, that exceeds the  
 42 maximum percentage of the projected annual gross revenue of all long term care facilities in this  
 43 state as described in subsection (1) of this section. The department shall refund any overage de-  
 44 scribed in this subsection by crediting the percentage of the overage attributable to each long term  
 45 care facility subject to the assessment described in section 16, chapter 736, Oregon Laws 2003,

1 against taxes owed by that facility in succeeding assessment periods. The department may collect  
 2 any delinquent assessments, but may not collect any underages in actual collections through an  
 3 adjustment in assessment rates.

4 **SECTION 4.** Section 18, chapter 736, Oregon Laws 2003, as amended by section 34, chapter 736,  
 5 Oregon Laws 2003, and section 7, chapter 757, Oregon Laws 2005, is amended to read:

6 **Sec. 18.** (1) The Oregon Veterans' Home is exempt from the assessment imposed under section  
 7 16, chapter 736, Oregon Laws 2003.

8 *[(2) A waived long term care facility is exempt from the long term care facility assessment im-*  
 9 *posed under section 16, chapter 736, Oregon Laws 2003.]*

10 **(2) A long term care facility operated by a continuing care retirement community that**  
 11 **is registered under ORS 101.030 is exempt from the assessment imposed under section 16,**  
 12 **chapter 736, Oregon Laws 2003, if it admits:**

13 **(a) Residents of the continuing care retirement community; or**

14 **(b) Residents of the continuing care retirement community and nonresidents.**

15 **(3) A long term care facility that is annually identified for exemption by the Department**  
 16 **of Human Services is exempt from the assessment imposed under section 16, chapter 736,**  
 17 **Oregon Laws 2003, for the year for which the facility is identified.**

18 **SECTION 5.** Section 23, chapter 736, Oregon Laws 2003, as amended by section 8, chapter 757,  
 19 Oregon Laws 2005, is amended to read:

20 **Sec. 23.** Sections 15 to 22, chapter 736, Oregon Laws 2003, apply to long term care facility as-  
 21 sessments imposed in calendar quarters beginning on or after November 26, 2003, and before July  
 22 1, [2008] **2014.**

23 **SECTION 6.** Section 24, chapter 736, Oregon Laws 2003, as amended by section 11, chapter 757,  
 24 Oregon Laws 2005, is amended to read:

25 **Sec. 24.** (1) The Long Term Care Facility Quality Assurance Fund is established in the State  
 26 Treasury, separate and distinct from the General Fund. Interest earned by the Long Term Care  
 27 Facility Quality Assurance Fund shall be credited to the fund.

28 (2) Amounts in the Long Term Care Facility Quality Assurance Fund are continuously appro-  
 29 priated to the Department of Human Services for the purposes of paying refunds due under section  
 30 20, chapter 736, Oregon Laws 2003, and funding long term care facilities, as defined in section 15,  
 31 chapter 736, Oregon Laws 2003, that are a part of the Oregon Medicaid reimbursement system.

32 (3) Funds in the Long Term Care Facility Quality Assurance Fund and the matching federal fi-  
 33 nancial participation under Title XIX of the Social Security Act may be used to fund Medicaid-  
 34 certified long term care facilities using only the reimbursement methodology described in subsection  
 35 (4) of this section to achieve a rate of reimbursement greater than the rate in effect on June 30,  
 36 2003.

37 (4) The reimbursement methodology used to make additional payments to Medicaid-certified long  
 38 term care facilities includes but is not limited to:

39 (a) Rebasing biennially, beginning on July 1 of each odd-numbered year;

40 (b) Adjusting for inflation in the nonrebasing year;

41 (c) Continuing the use of the pediatric rate;

42 (d) Continuing the use of the complex medical needs additional payment;

43 (e) Discontinuing the use of the relationship percentage, except when calculating the pediatric  
 44 rate in paragraph (c) of this subsection; and

45 (f) Requiring the Department of Human Services to reimburse costs at a rate not lower than the

1 70th percentile ceiling of allowable costs for the [2005-2007] biennium **for which the reimburse-**  
 2 **ment is made.**

3 **SECTION 7.** Section 29, chapter 736, Oregon Laws 2003, is amended to read:

4 **Sec. 29.** Notwithstanding [sections 15 to 22 of this 2003 Act] **any other provision of law**, an  
 5 assessment under sections 15 to 22, **chapter 736, Oregon Laws 2003**, [of this 2003 Act] may be im-  
 6 posed only in a calendar quarter for which the long term care facility reimbursement rate that is  
 7 part of the Oregon Medicaid reimbursement system was calculated according to the methodology  
 8 described in section 24 (4), **chapter 736, Oregon Laws 2003** [of this 2003 Act]. The Department of  
 9 **Human Services** may make retroactive increases in payments for the first six months the assess-  
 10 ment is imposed.

11 **SECTION 8.** Section 9 of this 2007 Act and sections 24 and 29, chapter 736, Oregon Laws  
 12 2003, are added to and made a part of sections 15 to 22, chapter 736, Oregon Laws 2003.

13 **SECTION 9.** The Department of Human Services shall adopt rules implementing sections  
 14 15 to 22, chapter 736, Oregon Laws 2003, as amended by this 2007 Act, on or before January  
 15 1, 2008.

16 **SECTION 10.** Section 9 of this 2007 Act and the amendments to sections 15, 16, 17, 18, 23,  
 17 24 and 29, chapter 736, Oregon Laws 2003, by sections 1 to 7 of this 2007 Act apply to long  
 18 term care facility assessments in assessment years beginning on or after July 1, 2007.

19 **SECTION 11.** (1) Section 27, chapter 736, Oregon Laws 2003, is repealed.

20 (2) Section 31, chapter 736, Oregon Laws 2003, as amended by section 9, chapter 757,  
 21 Oregon Laws 2005, is repealed.

22 **SECTION 12.** The repeal of sections 27 and 31, chapter 736, Oregon Laws 2003, by section  
 23 11 of this 2007 Act does not affect any long term care facility assessment imposed before July  
 24 1, 2007.

25 **SECTION 13.** ORS 305.410 is amended to read:

26 305.410. (1) Subject only to the provisions of ORS 305.445 relating to judicial review by the Su-  
 27 preme Court and to subsection (2) of this section, the tax court shall be the sole, exclusive and final  
 28 judicial authority for the hearing and determination of all questions of law and fact arising under  
 29 the tax laws of this state. For the purposes of this section, and except to the extent that they pre-  
 30 clude the imposition of other taxes, the following are not tax laws of this state:

- 31 (a) ORS chapter 577 relating to Oregon Beef Council contributions.
- 32 (b) ORS 576.051 to 576.455 relating to commodity commission assessments.
- 33 (c) ORS chapter 477 relating to fire protection assessments.
- 34 (d) ORS chapters 731, 732, 733, 734, 737, 742, 743, 744, 746, 748 and 750 relating to insurance  
 35 company fees and taxes.
- 36 (e) ORS chapter 473 relating to liquor taxes.
- 37 (f) ORS chapter 583 relating to milk marketing, production or distribution fees.
- 38 (g) ORS chapter 825 relating to motor carrier taxes.
- 39 (h) ORS chapter 319 relating to motor vehicle and aircraft fuel taxes.
- 40 (i) ORS title 59 relating to motor vehicle and motor vehicle operators' license fees and ORS title  
 41 39 relating to boat licenses.
- 42 (j) ORS chapter 578 relating to Oregon Wheat Commission assessments.
- 43 (k) ORS chapter 462 relating to racing taxes.
- 44 (L) ORS chapter 657 relating to unemployment insurance taxes.
- 45 (m) ORS chapter 656 relating to workers' compensation contributions, assessments or fees.

1 (n) ORS 311.420, 311.425, 311.455, 311.650, 311.655 and ORS chapter 312 relating to foreclosure  
2 of real and personal property tax liens.

3 (o) **Sections 15 to 22, chapter 736, Oregon Laws 2003, relating to long term care facility**  
4 **assessments.**

5 (2) The tax court and the circuit courts shall have concurrent jurisdiction to try actions or suits  
6 to determine:

7 (a) The priority of property tax liens in relation to other liens.

8 (b) The validity of any deed, conveyance, transfer or assignment of real or personal property  
9 under ORS 95.060 and 95.070 (1983 Replacement Part) or 95.200 to 95.310 where the Department of  
10 Revenue has or claims a lien or other interest in the property.

11 (3) Subject only to the provisions of ORS 305.445 relating to judicial review by the Supreme  
12 Court, the tax court shall be the sole, exclusive and final judicial authority for the hearing and de-  
13 termination of all questions of law and fact concerning the authorized uses of the proceeds of bonded  
14 indebtedness described in section 11 (11)(d), Article XI of the Oregon Constitution.

15 (4) Except as permitted under section 2, amended Article VII, Oregon Constitution, this section  
16 and ORS 305.445, no person shall contest, in any action, suit or proceeding in the circuit court or  
17 any other court, any matter within the jurisdiction of the tax court.

18 **SECTION 14. This 2007 Act takes effect on the 91st day after the date on which the**  
19 **regular session of the Seventy-fourth Legislative Assembly adjourns sine die.**

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