

Enrolled House Bill 3057

Sponsored by Representative KOTEK

CHAPTER

AN ACT

Relating to provider assessment; creating new provisions; amending ORS 305.410 and sections 2, 9, 10, 12, 13, 14, 15, 16, 17, 18, 23, 24, 29, 31, 38, 44, 45, 49, 50 and 51, chapter 736, Oregon Laws 2003; repealing sections 27, 28, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62a and 63, chapter 736, Oregon Laws 2003; prescribing an effective date; and providing for revenue raising that requires approval by a three-fifths majority.

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

SECTION 1. Section 2, chapter 736, Oregon Laws 2003, is amended to read:

Sec. 2. (1) An assessment is imposed on each hospital in this state that is not a waived hospital. The assessment shall be imposed at a rate determined by the Director of Human Services by rule that is the director's best estimate of the rate needed to fund the services and costs identified in section 9 [of this 2003 Act], **chapter 736, Oregon Laws 2003**. The rate of assessment shall be imposed on the net revenue of each hospital subject to assessment. The director shall consult with representatives of hospitals before setting the assessment.

(2) Notwithstanding subsection (1) of this section, the rate of assessment may not exceed [three] **1.5** percent.

(3) The assessment shall be reported on a form prescribed by the Department of Human Services and shall contain the information required to be reported by the department. The assessment form shall be filed with the department on or before the 75th day following the end of the calendar quarter for which the assessment is being reported. **Except as provided in subsection (7) of this section**, the hospital shall pay the assessment at the time the hospital files the assessment report. The payment shall accompany the report.

(4) To the extent permitted by federal law, aggregate taxes levied under this section may not exceed payments under section 9 (2), chapter 736, Oregon Laws 2003.

[4] **(5) Notwithstanding subsection (4) of this section**, a hospital is not guaranteed that any additional moneys paid to the hospital in the form of payments for services shall equal or exceed the amount of the assessment paid by the hospital.

[5] **(6)** Hospitals operated by the United States Department of Veterans Affairs and pediatric specialty hospitals providing care to children at no charge are exempt from the assessment imposed under this section.

(7)(a) The Department of Human Services shall develop a schedule for collection of the assessment for the calendar quarter ending September 30, 2009, that will result in the collection occurring between December 15, 2009, and the time all Medicaid cost settlements are finalized for that calendar quarter.

(b) The Department of Human Services shall prescribe by rule criteria for late payment of assessments.

SECTION 2. Section 9, chapter 736, Oregon Laws 2003, as amended by section 2, chapter 757, Oregon Laws 2005, is amended to read:

Sec. 9. (1) The Hospital Quality Assurance Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Hospital Quality Assurance Fund shall be credited to the Hospital Quality Assurance Fund.

(2) Amounts in the Hospital Quality Assurance Fund are continuously appropriated to the Department of Human Services for the purpose of paying refunds due under section 6, chapter 736, Oregon Laws 2003, and funding [*health*] **hospital** services under ORS 414.705 to 414.750, including but not limited to:

(a) Increasing reimbursement rates for inpatient and outpatient hospital services under ORS 414.705 to 414.750 **above the rates that were in effect for those services on February 29, 2004;**

(b) Expanding, continuing or modifying hospital services for persons [*19 years of age or older with incomes below 100 percent of the federal poverty guidelines who do not have federal Medicare coverage under ORS 414.705 to 414.750*] **described in ORS 414.706 (5);** and

(c) Paying administrative costs incurred by the department to administer the assessments imposed under section 2, chapter 736, Oregon Laws 2003.

(3) The department may not use moneys from the Hospital Quality Assurance Fund to supplant, directly or indirectly, other moneys made available to fund services described in subsection (2) of this section.

SECTION 3. Section 10, chapter 736, Oregon Laws 2003, is amended to read:

Sec. 10. Sections 1 to 9, **chapter 736, Oregon Laws 2003**, [*of this 2003 Act*] apply to net revenues earned by hospitals on or after January 1, 2004, and before [*January 1, 2008*] **the earlier of October 1, 2009, or when the assessment described in sections 37 to 44, chapter 736, Oregon Laws 2003, no longer qualifies for federal matching funds under Title XIX of the Social Security Act.**

SECTION 4. Section 12, chapter 736, Oregon Laws 2003, is amended to read:

Sec. 12. Sections 1 to 9, **chapter 736, Oregon Laws 2003**, [*of this 2003 Act*] are repealed on January 2, [*2010*] **2012.**

SECTION 5. Section 13, chapter 736, Oregon Laws 2003, is amended to read:

Sec. 13. Nothing in the repeal of sections 1 to 9, **chapter 736, Oregon Laws 2003**, [*of this 2003 Act*] by section 12, **chapter 736, Oregon Laws 2003**, [*of this 2003 Act*] affects the imposition and collection of a hospital assessment under sections 1 to 9, **chapter 736, Oregon Laws 2003**, [*of this 2003 Act*] for a calendar quarter beginning before [*January 1, 2008*] **September 30, 2009.**

SECTION 6. Section 14, chapter 736, Oregon Laws 2003, is amended to read:

Sec. 14. Any moneys remaining in the Hospital Quality Assurance Fund on December 31, [*2009*] **2013**, are transferred to the General Fund.

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

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

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

(2) "Assessment year" means a 12-month period, beginning July 1 and ending the following June 30, for which the assessment rate being determined is to apply.

[*2*] (3) "Gross revenue":

(a) Means the revenue paid to a long term care facility for patient care, room, board and services, less contractual adjustments; and

(b) Does not include:

(A) Revenue derived from sources other than **long term care facility** operations, including but not limited to **donations**, interest and guest meals, **or any other revenue not attributable to patient care; and**

(B) **Hospital revenue or revenue derived from hospital operations.**

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

(5) **“Medicaid patient days” means patient days attributable to patients who receive medical assistance under a plan described in 42 U.S.C. 1396a et seq.**

[(4)] (6) “Patient days” means the total number of patients occupying beds in a long term care facility[, *determined as of 11:59 p.m. of each day,*] for all days in the calendar period for which an assessment is being reported and paid. For purposes of this subsection, if a long term care facility patient is admitted and discharged on the same day, the patient shall be deemed [*present on 11:59 p.m. of that*] **to occupy a bed for one day.**

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

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

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

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

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

SECTION 8. Section 16, chapter 736, Oregon Laws 2003, as amended by section 4, chapter 757, Oregon Laws 2005, is amended to read:

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

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

(3) The assessment shall be reported on a form prescribed by the Department of Human Services and shall contain the information required to be reported by the department. The assessment form shall be filed with the department on or before the [30th] **last** day of the month following the end of the calendar quarter for which the assessment is being reported. The long term care facility shall pay the assessment at the time the facility files the assessment report. The payment shall accompany the report unless the payment is transmitted electronically **or unless the department permits a later payment under criteria prescribed by the department by rule.**

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

SECTION 9. Section 17, chapter 736, Oregon Laws 2003, as amended by section 5, chapter 757, Oregon Laws 2005, is amended to read:

Sec. 17. (1) On or before June 15 of each year, the Director of Human Services shall establish an assessment rate for long term care facilities [*that applies*] **that are not exempt for the assessment year from the assessment imposed under section 16, chapter 736, Oregon Laws 2003. The assessment rate shall apply** prospectively to the [12-month period beginning July 1 of *that*] **assessment** year. The assessment rate shall be a rate estimated to collect an amount that does not exceed six percent of the annual gross revenue of all long term care facilities in this state, as determined from the [*previous year's cost reports or other required revenue reports, excluding*] **financial statements or revenue reports, prescribed by the director by rule, filed by long term care facilities for the period ending June 30 of the previous year. For purposes of establishing an assessment rate pursuant to this subsection, the director shall exclude** the annual gross revenue of long term care facilities that are exempt from the assessment imposed under section 16, chapter 736, Oregon Laws 2003.

(2) On or before [June] **October** 15 of each year, the Department of Human Services shall refund any overage in tax dollars collected under section 16, chapter 736, Oregon Laws 2003, that exceeds the maximum percentage of the projected annual gross revenue of all long term care facilities in this state as described in subsection (1) of this section. The department shall refund any overage described in this subsection by crediting the percentage of the overage attributable to each long term care facility subject to the assessment described in section 16, chapter 736, Oregon Laws 2003, against taxes owed by that facility in succeeding assessment periods. The department may collect any delinquent assessments, but may not collect any underages in actual collections through an adjustment in assessment rates.

SECTION 10. Section 18, chapter 736, Oregon Laws 2003, as amended by section 34, chapter 736, Oregon Laws 2003, and section 7, chapter 757, Oregon Laws 2005, is amended to read:

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

(2) A waived long term care facility is exempt from the long term care facility assessment imposed under section 16, chapter 736, Oregon Laws 2003.

(3) **As used in this section, "waived long term care facility" means:**

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

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

(B) **Residents of the continuing care retirement community and nonresidents; or**

(b) **A long term care facility that is annually identified by the Department of Human Services as having a Medicaid recipient census that exceeds the census level established by the department for the year for which the facility is identified.**

SECTION 11. Section 23, chapter 736, Oregon Laws 2003, as amended by section 8, chapter 757, Oregon Laws 2005, is amended to read:

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

SECTION 12. Section 24, chapter 736, Oregon Laws 2003, as amended by section 11, chapter 757, Oregon Laws 2005, is amended to read:

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

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

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

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

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

(b) Adjusting for inflation in the nonrebasing year;

(c) Continuing the use of the pediatric rate;

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

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

(f) Requiring the Department of Human Services to reimburse costs at a rate not lower than the [70th] **63rd** percentile ceiling of allowable costs for the [2005-2007] biennium **for which the reimbursement is made.**

SECTION 13. Section 29, chapter 736, Oregon Laws 2003, is amended to read:

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

SECTION 14. Section 31, chapter 736, Oregon Laws 2003, as amended by section 9, chapter 757, Oregon Laws 2005, is amended to read:

Sec. 31. Sections 15 to 22 and 24, section 736, Oregon Laws 2003, are repealed on January 2, [2009] **2015.**

SECTION 15. Section 38, chapter 736, Oregon Laws 2003, is amended to read:

Sec. 38. (1) An assessment is imposed on each prepaid managed care health services organization in this state. The assessment shall be imposed at a rate set by the Director of Human Services. The rate may not exceed six percent of managed care premiums paid to an organization.

(2) The assessment shall be reported on a form prescribed by the Department of Human Services and shall contain the information required to be reported by the department. The assessment form shall be filed with the department on or before the 75th day following the end of the calendar quarter for which the assessment is being reported. The organization shall pay the assessment at the time the organization files the assessment report. The payment shall accompany the report **unless the department permits a later payment under criteria prescribed by the department by rule.**

(3) A prepaid managed care health services organization is not guaranteed that any additional moneys paid to the organization shall equal or exceed the amount of the assessment paid by the organization.

SECTION 16. Section 44, chapter 736, Oregon Laws 2003, as amended by section 13, chapter 757, Oregon Laws 2005, is amended to read:

Sec. 44. (1) The Medical Care Quality Assurance Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Medical Care Quality Assurance Fund shall be credited to the Medical Care Quality Assurance Fund.

(2) Amounts in the Medical Care Quality Assurance Fund are continuously appropriated to the Department of Human Services for the purpose of paying refunds due under section 41, chapter 736, Oregon Laws 2003, and funding the state medical assistance program, including but not limited to health services provided by prepaid managed care health services organizations.

(3) **The department may not use moneys from the Medical Care Quality Assurance Fund to supplant, directly or indirectly, other moneys made available to fund the program and services described in subsection (2) of this section.**

SECTION 17. Section 45, chapter 736, Oregon Laws 2003, is amended to read:

Sec. 45. Sections 37 to 44, **chapter 736, Oregon Laws 2003**, [of this 2003 Act] apply to managed care premiums received by prepaid managed care health services organizations on or after January 1, 2004, and before [January 1, 2008] **October 1, 2009.**

SECTION 18. Section 49, chapter 736, Oregon Laws 2003, is amended to read:

Sec. 49. Sections 37 to 44, **chapter 736, Oregon Laws 2003**, [of this 2003 Act] are repealed on January 2, [2010] **2012.**

SECTION 19. Section 50, chapter 736, Oregon Laws 2003, is amended to read:

Sec. 50. Nothing in the repeal of sections 37 to 44, **chapter 736, Oregon Laws 2003**, [of this 2003 Act] by section 49, **chapter 736, Oregon Laws 2003**, [of this 2003 Act] affects the imposition and collection of a prepaid managed care health services organization assessment under sections 37

to 44, **chapter 736, Oregon Laws 2003**, [of this 2003 Act] for a calendar quarter beginning before [January 1, 2008] **September 30, 2009**.

SECTION 20. Section 51, chapter 736, Oregon Laws 2003, is amended to read:

Sec. 51. Any moneys remaining in the Medical Care Quality Assurance Fund on December 31, [2009] **2011**, are transferred to the General Fund.

SECTION 21. Sections 22 and 23 of this 2007 Act and sections 24 and 29, chapter 736, Oregon Laws 2003, are added to and made a part of sections 15 to 22, chapter 736, Oregon Laws 2003.

SECTION 22. The Department of Human Services shall adopt rules implementing sections 15, 16, 17, 18, 24 and 29, chapter 736, Oregon Laws 2003, as amended by sections 7, 8, 9, 10, 12 and 13 of this 2007 Act, no later than 120 days after the effective date of this 2007 Act.

SECTION 23. Notwithstanding section 17 (1), chapter 736, Oregon Laws 2003, for the period from January 1, 2008, to June 30, 2008, the Director of Human Services, on or before November 15, 2007, shall establish the assessment rate under section 17, chapter 736, Oregon Laws 2003, at a rate estimated to collect an amount for that period not to exceed 5.5 percent of the gross revenue of all long term care facilities in this state during that period, excluding the gross revenue of long term care facilities that are exempt from the assessment imposed under section 16, chapter 736, Oregon Laws 2003.

SECTION 24. Section 23 of this 2007 Act is repealed on July 1, 2008.

SECTION 25. The repeal of section 23 of this 2007 Act by section 24 of this 2007 Act does not affect any long term care facility assessment imposed at the rate and for the period established pursuant to section 23 of this 2007 Act.

SECTION 26. Section 23 of this 2007 Act and the amendments to sections 15, 16, 17, 18, 23, 24 and 29, chapter 736, Oregon Laws 2003, by sections 7 to 13 of this 2007 Act apply to long term care facility assessment in assessment years beginning on or after July 1, 2007.

SECTION 27. Sections 27 and 28, chapter 736, Oregon Laws 2003, are repealed.

SECTION 28. The repeal of sections 27 and 28, chapter 736, Oregon Laws 2003, by section 27 of this 2007 Act does not affect any long term care facility assessment imposed before July 1, 2007.

SECTION 29. ORS 305.410 is amended to read:

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

- (a) ORS chapter 577 relating to Oregon Beef Council contributions.
- (b) ORS 576.051 to 576.455 relating to commodity commission assessments.
- (c) ORS chapter 477 relating to fire protection assessments.
- (d) ORS chapters 731, 732, 733, 734, 737, 742, 743, 744, 746, 748 and 750 relating to insurance company fees and taxes.
- (e) ORS chapter 473 relating to liquor taxes.
- (f) ORS chapter 583 relating to milk marketing, production or distribution fees.
- (g) ORS chapter 825 relating to motor carrier taxes.
- (h) ORS chapter 319 relating to motor vehicle and aircraft fuel taxes.
- (i) ORS title 59 relating to motor vehicle and motor vehicle operators' license fees and ORS title 39 relating to boat licenses.
- (j) ORS chapter 578 relating to Oregon Wheat Commission assessments.
- (k) ORS chapter 462 relating to racing taxes.
- (L) ORS chapter 657 relating to unemployment insurance taxes.
- (m) ORS chapter 656 relating to workers' compensation contributions, assessments or fees.
- (n) ORS 311.420, 311.425, 311.455, 311.650, 311.655 and ORS chapter 312 relating to foreclosure of real and personal property tax liens.

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

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

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

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

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

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

SECTION 30. (1) Sections 52, 53, 54, 55, 56, 57, 59, 60, 61, 62a and 63, chapter 736, Oregon Laws 2003, are repealed.

(2) Section 58, chapter 736, Oregon Laws 2003, as amended by section 14, chapter 757, Oregon Laws 2005, is repealed.

SECTION 31. This 2007 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fourth Legislative Assembly adjourns sine die.

Passed by House June 14, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 19, 2007

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President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State