

House Bill 2116

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski)

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**.

Creates Health System Fund to fund medical assistance and pay refunds of hospital assessment. Modifies hospital assessment. Repeals sunset on hospital assessment. Directs hospital assessment to be paid into Health System Fund after October 1, 2009.

Creates assessment on insurance premiums to be administered by Department of Consumer and Business Services. Directs assessments minus specified amounts to be paid into Health System Fund.

Creates assessment on capitation payments to Medicaid managed care plans to be administered by Department of Human Services. Directs assessments to be deposited in Health System Fund.

Imposes penalties for failure to timely pay assessments.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to health care assessment; creating new provisions; amending ORS 731.292 and 731.840 and
3 sections 1, 2, 5, 8, 10, 14 and 51, chapter 736, Oregon Laws 2003; repealing sections 4, 9, 12 and
4 13, chapter 736, Oregon Laws 2003; appropriating money; prescribing an effective date; and
5 providing for revenue raising that requires approval by a three-fifths majority.

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

7 **SECTION 1. (1) The Health System Fund is established in the State Treasury, separate**
8 **and distinct from the General Fund. Interest earned by the Health System Fund shall be**
9 **credited to the fund.**

10 **(2) Amounts in the Health System Fund are continuously appropriated to the Department**
11 **of Human Services for the purpose of paying refunds due under sections 6 and 41, chapter**
12 **736, Oregon Laws 2003, and funding medical assistance as defined in ORS 414.025, which may**
13 **include but is not limited to:**

14 **(a) Increasing reimbursement rates for providers of health services under ORS 414.705**
15 **to 414.750 above the rates that were in effect for those services on February 29, 2004;**

16 **(b) Expanding, continuing or modifying health services for persons described in ORS**
17 **414.706 (5); and**

18 **(c) Paying administrative costs incurred by the department to administer the assess-**
19 **ments imposed under section 2, chapter 736, Oregon Laws 2003.**

20 **SECTION 2. Sections 3 to 5 of this 2009 Act are added to and made a part of the Insur-**
21 **ance Code.**

22 **SECTION 3. As used in this section and sections 4 and 5 of this 2009 Act:**

23 **(1) "Gross amount of premiums" has the meaning given that term in ORS 731.808.**

24 **(2) "Health benefit plan" has the meaning given that term in ORS 743.730.**

25 **(3) "Insurer" means an authorized insurer that issues or renews a health benefit plan in**
26 **this state.**

27 **SECTION 4. (1) No later than 45 days following the end of a calendar quarter, an insurer**

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 shall pay an assessment at the rate of _____ percent of the gross amount of premiums that
 2 were derived from health benefit plans covering direct domestic risks during that calendar
 3 quarter.

4 (2) The assessment shall be paid to the Department of Consumer and Business Services
 5 and shall be accompanied by a verified report, on a form prescribed by the department, of:

6 (a) All health benefit plans issued or renewed by the insurer during the calendar quarter
 7 for which the assessment is paid; and

8 (b) The gross amount of premiums by line of insurance, derived by the insurer from all
 9 health benefit plans issued or renewed by the insurer during the calendar quarter for which
 10 the assessment is paid.

11 (3) The assessment imposed under this section is in addition to and not in lieu of any tax,
 12 surcharge or other assessment imposed on an insurer.

13 (4) An insurer may not offset the assessment under this section against corporate excise
 14 taxes imposed under ORS chapter 317.

15 (5) Assessments under this section may not be considered in the gross amount of pre-
 16 miums for any purpose.

17 (6) If the department determines that the assessment paid by the insurer under this
 18 section is incorrect, the department shall charge or credit to the insurer the difference be-
 19 tween the correct amount of the assessment and the amount paid by the insurer.

20 **SECTION 5.** (1) An insurer that fails to timely file a verified report or to pay an assess-
 21 ment under section 4 of this 2009 Act shall be subject to a penalty of up to \$500 per day of
 22 delinquency. The total amount of penalties imposed under this section for a calendar quarter
 23 may not exceed five percent of the assessment due for that calendar quarter.

24 (2) Any penalty imposed under this section is in addition to and not in lieu of the as-
 25 sessment imposed under section 4 of this 2009 Act.

26 **SECTION 6.** Sections 4 and 5 of this 2009 Act apply to premiums received by an insurer
 27 on or after the calendar quarter ending December 31, 2009.

28 **SECTION 7.** (1) As used in this section, “Medicaid managed care plan” includes a prepaid
 29 capitated health service contractor described in ORS 414.630 and a prepaid managed care
 30 health services organization described in ORS 414.725.

31 (2) No later than 45 days following the end of a calendar quarter, a Medicaid managed
 32 care plan shall pay an assessment at a rate of _____ percent of the gross amount of
 33 capitation payments received by the Medicaid managed care plan during that calendar quar-
 34 ter for providing coverage of health services under ORS 414.705 to 414.750.

35 (3) The assessment shall be paid to the Department of Human Services in a manner and
 36 form prescribed by the department.

37 (4) Assessments received by the department under this section shall be deposited in the
 38 Health System Fund established in section 1 of this 2009 Act.

39 **SECTION 8.** (1) A Medicaid managed care plan that fails to timely pay an assessment
 40 under section 7 of this 2009 Act shall be subject to a penalty of up to \$500 per day of delin-
 41 quency. The total amount of penalties imposed under this section for a calendar quarter may
 42 not exceed five percent of the assessment due for that calendar quarter.

43 (2) Any penalty imposed under this section is in addition to and not in lieu of the as-
 44 sessment imposed under section 7 of this 2009 Act.

45 **SECTION 9.** Section 7 of this 2009 Act applies to capitation payments received by a

1 **Medicaid managed care plan on or after October 1, 2009.**

2 **SECTION 10.** ORS 731.292 is amended to read:

3 731.292. (1) Except as provided in subsections (2), [and] (3) **and (4)** of this section, all fees,
4 charges and other moneys received by the Department of Consumer and Business Services or the
5 Director of the Department of Consumer and Business Services under the Insurance Code shall be
6 deposited in the fund created by ORS 705.145 and are continuously appropriated to the department
7 for the payment of the expenses of the department in carrying out the Insurance Code.

8 (2) All taxes, fines and penalties paid pursuant to the Insurance Code shall be paid to the di-
9 rector and after deductions of refunds shall be paid by the director to the State Treasurer, at the
10 end of every calendar month or more often in the director's discretion, for deposit in the General
11 Fund to become available for general governmental expenses.

12 (3) All premium taxes received by the director pursuant to ORS 731.820 shall be paid by the
13 director to the State Treasurer for deposit in the State Fire Marshal Fund.

14 **(4) Assessments received by the department under section 4 of this 2009 Act shall be paid**
15 **into the State Treasury and credited to the Health System Fund established in section 1 of**
16 **this 2009 Act, after deducting the following amounts:**

17 **(a) Amounts needed to reimburse the department for expenses in administering sections**
18 **4 and 5 of this 2009 Act; and**

19 **(b) Amounts needed to reimburse the General Fund for reductions in revenue caused by**
20 **the effect of section 4 of this 2009 Act on the retaliatory tax imposed under ORS 731.854 and**
21 **731.859.**

22 **SECTION 11.** Section 1, chapter 736, Oregon Laws 2003, is amended to read:

23 **Sec. 1.** As used in sections 1 to 9, **chapter 736, Oregon Laws 2003** [of this 2003 Act]:

24 (1) "Charity care" [means costs for providing inpatient or outpatient care services free of charge
25 or at a reduced charge because of the indigence or lack of health insurance of the patient receiving the
26 care services.] **has the meaning given that term in ORS 442.200.**

27 (2) "Contractual adjustments" means the difference between the amounts charged based on the
28 hospital's full established charges and the amount received or due from the payor.

29 (3) "Hospital" [has the meaning given that term in ORS 442.015 but does not include special in-
30 patient care facilities.] **means:**

31 **(a) A hospital as defined in ORS 442.015; or**

32 **(b) An ambulatory surgical center as defined in ORS 442.015.**

33 (4) "Net revenue":

34 (a) Means the total amount of charges for inpatient or outpatient care provided by the hospital
35 to patients, less **the cost to the hospital of** charity care[, bad debts] and contractual adjustments;

36 (b) Does not include revenue derived from sources other than inpatient or outpatient operations,
37 including but not limited to interest and guest meals; and

38 (c) Does not include any revenue that is taken into account in computing a long term care fa-
39 cility assessment under sections 15 to 22, **chapter 736, Oregon Laws 2003** [of this 2003 Act].

40 (5) "Waivered hospital" means a type A or type B hospital, as described in ORS 442.470, a hos-
41 pital that provides only psychiatric care or a hospital [identified by the Department of Human Ser-
42 vices as appropriate for inclusion in the application described in section 4 of this 2003 Act] **that meets**
43 **criteria prescribed by the Department of Human Services by rule.**

44 **SECTION 12.** Section 2, chapter 736, Oregon Laws 2003, as amended by section 1, chapter 780,
45 Oregon Laws 2007, is amended to read:

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

7 *[(2) Notwithstanding subsection (1) of this section, the rate of assessment may not exceed 1.5 per-*
 8 *cent.]*

9 *[(3)]* (2) The assessment shall be reported on a form prescribed by the Department of Human
 10 Services and shall contain the information required to be reported by the department. The assess-
 11 ment form shall be filed with the department on or before the 75th day following the end of the
 12 calendar quarter for which the assessment is being reported. Except as provided in subsection *[(7)]*
 13 (5) of this section, the hospital shall pay the assessment at the time the hospital files the assessment
 14 report. The payment shall accompany the report.

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

17 *[(5)]* (3) *[Notwithstanding subsection (4) of this section,]* A hospital is not guaranteed that any
 18 additional moneys paid to the hospital in the form of payments for services shall equal or exceed
 19 the amount of the assessment paid by the hospital.

20 *[(6)]* (4) Hospitals operated by the United States Department of Veterans Affairs and pediatric
 21 specialty hospitals providing care to children at no charge are exempt from the assessment imposed
 22 under this section.

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

26 *[(b)]* (5) The Department of Human Services shall prescribe by rule criteria for late payment of
 27 assessments.

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

29 **Sec. 5.** (1) A hospital that fails to file a report or pay an assessment under section 2, **chapter**
 30 **736, Oregon Laws 2003,** *[of this 2003 Act]* by the date the report or payment is due shall be subject
 31 to a penalty of **up to \$500** per day of delinquency. The total amount of penalties imposed under this
 32 section for each reporting period may not exceed five percent of the assessment for the reporting
 33 period for which penalties are being imposed.

34 (2) Penalties imposed under this section shall be collected by the Department of Human Services
 35 and deposited in the Department of Human Services Account established under ORS 409.060.

36 (3) Penalties paid under this section are in addition to and not in lieu of the assessment imposed
 37 under section 2, **chapter 736, Oregon Laws 2003** *[of this 2003 Act]*.

38 **SECTION 14.** Section 8, chapter 736, Oregon Laws 2003, as amended by section 1, chapter 757,
 39 Oregon Laws 2005, is amended to read:

40 **Sec. 8.** Amounts collected by the Department of Human Services from the assessments imposed
 41 under section 2, chapter 736, Oregon Laws 2003, shall be deposited in the *[Hospital Quality Assur-*
 42 *ance Fund established under section 9, chapter 736, Oregon Laws 2003.]* **Health System Fund es-**
 43 **tablished in section 1 of this 2009 Act.**

44 **SECTION 15.** Section 10, chapter 736, Oregon Laws 2003, as amended by section 3, chapter 780,
 45 Oregon Laws 2007, is amended to read:

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

5 **SECTION 16.** Section 14, chapter 736, Oregon Laws 2003, as amended by section 6, chapter 780,
 6 Oregon Laws 2007, is amended to read:

7 **Sec. 14.** Any moneys remaining in the Hospital Quality Assurance Fund on [*December 31,*
 8 *2013*] **October 1, 2009**, are transferred to the [*General Fund.*] **Health System Fund established in**
 9 **section 1 of this 2009 Act.**

10 **SECTION 17.** Section 51, chapter 736, Oregon Laws 2003, as amended by section 20, chapter
 11 780, Oregon Laws 2007, is amended to read:

12 **Sec. 51.** Any moneys [*remaining*] **deposited** in the Medical Care Quality Assurance Fund [*on*
 13 *December 31, 2011, are*] **shall be** transferred to the [*General Fund*] **Health System Fund estab-**
 14 **lished in section 1 of this 2009 Act.**

15 **SECTION 18.** ORS 731.840 is amended to read:

16 731.840. (1) The retaliatory tax imposed upon a foreign or alien insurer under ORS 731.854 and
 17 731.859, or the corporate excise tax imposed upon a foreign or alien insurer under ORS chapter 317,
 18 is in lieu of all other state taxes upon premiums, taxes upon income, franchise or other taxes
 19 measured by income that might otherwise be imposed upon the foreign or alien insurer except the
 20 fire insurance premiums tax imposed under ORS 731.820, [*and*] the tax imposed upon wet marine and
 21 transportation insurers under ORS 731.824 and 731.828, **and the assessment imposed under sec-**
 22 **tion 4 of this 2009 Act.** However, all real and personal property, if any, of the insurer shall be
 23 listed, assessed and taxed the same as real and personal property of like character of noninsurers.
 24 Nothing in this subsection shall be construed to preclude the imposition of the assessments imposed
 25 under ORS 656.612 upon a foreign or alien insurer.

26 (2) Subsection (1) of this section applies to a reciprocal insurer and its attorney in its capacity
 27 as such.

28 (3) Subsection (1) of this section applies to foreign or alien title insurers and to foreign or alien
 29 wet marine and transportation insurers issuing policies and subject to taxes referred to in ORS
 30 731.824 and 731.828.

31 (4) The State of Oregon hereby preempts the field of regulating or of imposing excise, privilege,
 32 franchise, income, license, permit, registration, and similar taxes, licenses and fees upon insurers
 33 and their insurance producers and other representatives as such, and:

34 (a) No county, city, district, or other political subdivision or agency in this state shall so regu-
 35 late, or shall levy upon insurers, or upon their insurance producers and representatives as such, any
 36 such tax, license or fee; except that whenever a county, city, district or other political subdivision
 37 levies or imposes generally on a nondiscriminatory basis throughout the jurisdiction of the taxing
 38 authority a payroll, excise or income tax, as otherwise provided by law, such tax may be levied or
 39 imposed upon domestic insurers; and

40 (b) No county, city, district, political subdivision or agency in this state shall require of any
 41 insurer, insurance producer or representative, duly authorized or licensed as such under the Insur-
 42 ance Code, any additional authorization, license, or permit of any kind for conducting therein
 43 transactions otherwise lawful under the authority or license granted under this code.

44 **SECTION 19.** (1) **Section 4, chapter 736, Oregon Laws 2003, is repealed.**

45 (2) **Section 9, chapter 736, Oregon Laws 2003, as amended by section 2, chapter 757,**

1 **Oregon Laws 2005, and section 2, chapter 780, Oregon Laws 2007, is repealed.**

2 (3) **Section 12, chapter 736, Oregon Laws 2003, as amended by section 4, chapter 780,**
3 **Oregon Laws 2007, is repealed.**

4 (4) **Section 13, chapter 736, Oregon Laws 2003, as amended by section 5, chapter 780,**
5 **Oregon Laws 2007, is repealed.**

6 **SECTION 20. Sections 1 to 9 of this 2009 Act, the amendments to ORS 731.292 and 731.840**
7 **and sections 1, 2, 5, 8, 10, 14 and 51, chapter 736, Oregon Laws 2003, by sections 10 to 18 of**
8 **this 2009 Act and the repeal of sections 4, 9, 12 and 13, chapter 736, Oregon Laws 2003, by**
9 **section 19 of this 2009 Act become operative on October 1, 2009.**

10 **SECTION 21. Section 1 of this 2009 Act is amended to read:**

11 **Sec. 1.** (1) The Health System Fund is established in the State Treasury, separate and distinct
12 from the General Fund. Interest earned by the Health System Fund shall be credited to the fund.

13 (2) Amounts in the Health System Fund are continuously appropriated to the Department of
14 Human Services for the purpose of paying refunds due under [*sections 6 and 41*] **section 6**, chapter
15 736, Oregon Laws 2003, and funding medical assistance as defined in ORS 414.025, which may in-
16 clude but is not limited to:

17 (a) Increasing reimbursement rates for providers of health services under ORS 414.705 to 414.750
18 above the rates that were in effect for those services on February 29, 2004;

19 (b) Expanding, continuing or modifying health services for persons described in ORS 414.706 (5);
20 and

21 (c) Paying administrative costs incurred by the department to administer the assessments im-
22 posed under section 2, chapter 736, Oregon Laws 2003.

23 **SECTION 22. The amendments to section 1 of this 2009 Act by section 21 of this 2009 Act**
24 **become operative on January 1, 2012.**

25 **SECTION 23. This 2009 Act takes effect on the 91st day after the date on which the**
26 **regular session of the Seventy-fifth Legislative Assembly adjourns sine die.**

27