

**SENATE MINORITY REPORT
AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2194**

June 5

President Courtney:

A minority of your Committee on Health Care and Veterans' Affairs, to whom was referred A-engrossed House Bill 2194, having had the same under consideration, respectfully reports it back with the recommendation that it do pass with the following amendments:

1 On page 1 of the printed A-engrossed bill, line 2, after the semicolon insert "creating new pro-
2 visions; and" and delete "and" and insert a comma.

3 In line 3, before the period insert ", 735.650, 735.756, 744.704 and 744.714".

4 After line 4, insert:

5 "**SECTION 1. Section 2 of this 2009 Act is added to and made a part of the Insurance**
6 **Code.**

7 "**SECTION 2. 'Covered life' means a subscriber, policyholder, certificate holder, spouse,**
8 **dependent child or any other individual insured under an insurance policy or whose benefits**
9 **are administered by a third party administrator.**"

10 In line 5, delete "1" and insert "3".

11 On page 2, line 19, after the period insert "'Reinsurer' includes an insurer providing insurance
12 against the risk of economic loss."

13 After line 24, insert:

14 "(11) 'Third party administrator' means any person required to obtain a license pursuant to ORS
15 744.702."

16 In line 25, delete "2" and insert "4".

17 On page 3, line 3, after "assessments" delete the rest of the line and insert "from insurers and
18 reinsurers;"

19 In line 14, delete "from among insurers".

20 Delete lines 26 through 45 and delete page 4.

21 On page 5, delete lines 1 through 3 and insert:

22 "**SECTION 5. ORS 735.610, as amended by section 4 of this 2009 Act, is amended to read:**

23 "735.610. (1) There is created in the Department of Consumer and Business Services the Oregon
24 Medical Insurance Pool Board. The board shall establish the Oregon Medical Insurance Pool and
25 otherwise carry out the responsibilities of the board under ORS 735.600 to 735.650.

26 "(2) The board shall consist of nine individuals, eight of whom shall be appointed by the Director
27 of the Department of Consumer and Business Services. The director or the director's designee shall
28 be the ninth member of the board. The chair of the board shall be elected from among the members
29 of the board. The board shall at all times, to the extent possible, include at least one representative
30 of a domestic insurance company licensed to transact health insurance, one representative of a do-
31 mestic not-for-profit health care service contractor, one representative of a health maintenance or-
32 ganization, one representative of reinsurers and two members of the general public who are not

1 associated with the medical profession, a hospital or an insurer. A majority of the voting members
2 of the board constitutes a quorum for the transaction of business. An act by a majority of a quorum
3 is an official act of the board.

4 “(3) The director may fill any vacancy on the board by appointment.

5 “(4) The board shall have the general powers and authority granted under the laws of this state
6 to insurance companies with a certificate of authority to transact health insurance and the specific
7 authority to:

8 “(a) Enter into such contracts as are necessary or proper to carry out the provisions and pur-
9 poses of ORS 735.600 to 735.650 including the authority to enter into contracts with similar pools
10 of other states for the joint performance of common administrative functions, or with persons or
11 other organizations for the performance of administrative functions;

12 “(b) Recover any assessments from insurers, [and] reinsurers **and third party administrators;**

13 “(c) Take such legal action as is necessary to avoid the payment of improper claims against the
14 pool or the coverage provided by or through the pool;

15 “(d) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, insurance
16 producers’ referral fees, claim reserves or formulas and perform any other actuarial function ap-
17 propriate to the operation of the pool. Rates may not be unreasonable in relation to the coverage
18 provided, the risk experience and expenses of providing the coverage. Rates and rate schedules may
19 be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take
20 into consideration appropriate risk factors in accordance with established actuarial and underwrit-
21 ing practices;

22 “(e) Issue policies of insurance in accordance with the requirements of ORS 735.600 to 735.650;

23 “(f) Appoint appropriate actuarial and other committees as necessary to provide technical as-
24 sistance in the operation of the pool, policy and other contract design, and any other function within
25 the authority of the board;

26 “(g) Seek advances to effect the purposes of the pool; and

27 “(h) Establish rules, conditions and procedures for reinsuring risks under ORS 735.600 to
28 735.650.

29 “(5) Each member of the board is entitled to compensation and expenses as provided in ORS
30 292.495.

31 “(6) The director shall adopt rules, as provided under ORS chapter 183, implementing policies
32 recommended by the board for the purpose of carrying out ORS 735.600 to 735.650.

33 “(7) In consultation with the board, the director shall employ such staff and consultants as may
34 be necessary for the purpose of carrying out responsibilities under ORS 735.600 to 735.650.

35 “**SECTION 6.** ORS 735.614 is amended to read:

36 “735.614. (1) If the Oregon Medical Insurance Pool Board determines at any time that funds in
37 the Oregon Medical Insurance Pool Account are or will become insufficient for **timely** payment of
38 expenses of the pool [*in a timely manner*], the board shall determine the amount of funds needed and
39 shall impose [*and collect assessments against insurers, as provided in this section, in the amount of the*
40 *funds determined to be needed.*] **upon and collect from insurers and reinsurers assessments**
41 **calculated in accordance with subsection (2) of this section.**

42 “(2) [*Each insurer’s assessment shall be determined by multiplying the total amount to be assessed*
43 *by a fraction, the numerator of which equals the number of Oregon insureds and certificate holders*
44 *insured or reinsured by each insurer, and the denominator of which equals the total of all Oregon in-*
45 *sureds and certificate holders insured or reinsured by all insurers, all determined as of March 31 each*

1 year.] **The board shall calculate the assessment of each insurer and reinsurer based on the**
2 **total amount needed to ensure timely payment of pool expenses. The board will assess each**
3 **insurer and reinsurer based on its fractional share of all covered lives in Oregon as of March**
4 **31 each year.**

5 “(3) *[The board shall ensure that each insured and certificate holder is counted only once with*
6 *respect to any assessment. For that purpose, the board shall require each insurer that obtains rein-*
7 *surance for its insureds and certificate holders to include in its count of insureds and certificate holders*
8 *all insureds and certificate holders whose coverage is reinsured in whole or part. The board shall al-*
9 *low an insurer who is a reinsurer to exclude from its number of insureds those that have been counted*
10 *by the primary insurer or the primary reinsurer for the purpose of determining its assessment under*
11 *this subsection.]* **With respect to an assessment, the board shall count each covered life only**
12 **once. For that purpose, the board shall obtain counts from:**

13 “(a) **An insurer of each covered life under all fully or less than fully insured employee**
14 **health benefit plans of the insurer;**

15 “(b) **A third party administrator of each covered life under a self-insurance plan using**
16 **the third party administrator; and**

17 “(c) **A reinsurer of each covered life reinsured under self-insurance plans that do not use**
18 **a third party administrator.**

19 “(4) **If an individual is covered under a self-insurance plan that does not use a third party**
20 **administrator or the board cannot identify a third party administrator for the plan, and the**
21 **individual is reinsured by a reinsurer, the board shall assess the reinsurer for that individual.**

22 “[*(4)*] **(5) Each insurer or reinsurer shall pay its assessment [as required by the board.] under**
23 **this section. Insureds under the following types of coverage, as defined by rule by the board,**
24 **are excluded in the calculation of the assessment:**

25 “(a) **Medicaid;**

26 “(b) **State Children’s Health Insurance Program;**

27 “(c) **Medicare;**

28 “(d) **Disability income insurance;**

29 “(e) **Hospital only insurance;**

30 “(f) **Dental insurance;**

31 “(g) **Vision only insurance;**

32 “(h) **Accident only insurance;**

33 “(i) **Automobile insurance;**

34 “(j) **Specific disease insurance;**

35 “(k) **Medical supplemental plans;**

36 “(L) **TRICARE;**

37 “(m) **CHAMPUS;**

38 “(n) **Prescription drug only plans;**

39 “(o) **Long term care insurance; and**

40 “(p) **Federal Employees Health Benefits Program.**

41 “[*(5)*] **(6) If assessments exceed the amounts actually needed, the excess shall be held and in-**
42 **vested and, with the earnings and interest, used by the board to offset future net losses or to reduce**
43 **pool premiums. For purposes of this subsection, ‘future net losses’ includes reserves for claims in-**
44 **curring but not reported.**

45 “[*(6)*] **(7) [Each insurer’s proportion of participation in the pool shall be determined by the board]**

1 **The board shall determine the fractional share for each insurer and reinsurer of all covered**
2 **lives in Oregon** based on annual statements and other reports deemed necessary by the board and
3 filed by the insurer **or reinsurer** with the board **or with the Department of Consumer and**
4 **Business Services.** The board may use any reasonable method of estimating the number of *[insureds*
5 *and certificate holders of an insurer]* **covered lives** if the specific number is unknown. *[With respect*
6 *to insurers that are reinsurers, the board may use any reasonable method of estimating the number of*
7 *persons insured by each reinsurer.]*

8 “[*(7)*] **(8)** The board may abate or defer, in whole or in part, the assessment *[of an insurer if, in*
9 *the opinion of the board,]* **calculated under subsection (2) of this section if the board determines**
10 **that** payment of the assessment would endanger the ability of the insurer **or reinsurer** to fulfill
11 *[the insurer’s] its* contractual obligations. In the event an assessment *[against an insurer]* is abated
12 or deferred in whole or in part **under this subsection**, the amount by which the assessment is
13 abated or deferred may be assessed against the other *[insurers in a manner consistent with the basis*
14 *for assessments set forth in this section.]* **insurers and reinsurers subject to the assessment in a**
15 **manner consistent with subsection (2) of this section.** The insurer **or reinsurer** receiving the
16 abatement or deferment shall remain liable to the board for the deficiency for four years.

17 “[*(8)*] **(9)** The board shall abate or defer assessments authorized by this section if a court orders
18 that assessments cannot be made applicable to reinsurers. However, if a court orders that assess-
19 ments cannot be made applicable to reinsurers, the board may continue to assess insurers to the end
20 of the biennium in which the determination is made.

21 “[*(9)*] **(10)** Subject to the approval of the Director of the Department of Consumer and Business
22 Services, the board may develop a program for adjusting the assessment of an insurer *[in the indi-*
23 *vidual health benefits market based on that insurer’s contribution to reducing the]* **or reinsurer based**
24 **on the contribution of that insurer or reinsurer to reducing the demand for** enrollment in the
25 Oregon Medical Insurance Pool. When developing the program, the board may consider, but is not
26 limited to, the following factors:

27 “(a) The *[insurer’s]* level of participation **of the insurer or reinsurer;**

28 “(b) Level of health benefit plan coverage offered; and

29 “(c) Assumption of risk in the individual health benefits market.

30 “**SECTION 7.** ORS 735.614, as amended by section 6 of this 2009 Act, is amended to read:

31 “735.614. (1) If the Oregon Medical Insurance Pool Board determines at any time that funds in
32 the Oregon Medical Insurance Pool Account are or will become insufficient for timely payment of
33 expenses of the pool, the board shall determine the amount of funds needed and shall impose upon
34 and collect from insurers, *[and]* reinsurers **and third party administrators** assessments calculated
35 in accordance with subsection (2) of this section.

36 “(2) The board shall calculate the assessment of each insurer, *[and]* reinsurer **and third party**
37 **administrator** based on the total amount needed to ensure timely payment of pool expenses. The
38 board will assess each insurer, *[and]* reinsurer **and third party administrator** based on its frac-
39 tional share of all covered lives in Oregon as of March 31 each year.

40 “(3) With respect to an assessment, the board shall count each covered life only once. For that
41 purpose, the board shall obtain counts from:

42 “(a) An insurer of each covered life under all fully or less than fully insured employee health
43 benefit plans of the insurer;

44 “(b) A third party administrator of each covered life under a self-insurance plan using the third
45 party administrator; and

1 “(c) A reinsurer of each covered life reinsured under self-insurance plans that do not use a third
2 party administrator.

3 “(4) If an individual is covered under a self-insurance plan that does not use a third party ad-
4 ministrator or the board cannot identify a third party administrator for the plan, and the individual
5 is reinsured by a reinsurer, the board shall assess the reinsurer for that individual.

6 “(5) Each insurer, [or] reinsurer **and third party administrator** shall pay its assessment under
7 this section. Insureds under the following types of coverage, as defined by rule by the board, are
8 excluded in the calculation of the assessment:

9 “(a) Medicaid;

10 “(b) State Children’s Health Insurance Program;

11 “(c) Medicare;

12 “(d) Disability income insurance;

13 “(e) Hospital only insurance;

14 “(f) Dental insurance;

15 “(g) Vision only insurance;

16 “(h) Accident only insurance;

17 “(i) Automobile insurance;

18 “(j) Specific disease insurance;

19 “(k) Medical supplemental plans;

20 “(L) TRICARE;

21 “(m) CHAMPUS;

22 “(n) Prescription drug only plans;

23 “(o) Long term care insurance; and

24 “(p) Federal Employees Health Benefits Program.

25 “(6) If assessments exceed the amounts actually needed, the excess shall be held and invested
26 and, with the earnings and interest, used by the board to offset future net losses or to reduce pool
27 premiums. For purposes of this subsection, ‘future net losses’ includes reserves for claims incurred
28 but not reported.

29 “(7) The board shall determine the fractional share for each insurer, [and] reinsurer **and third**
30 **party administrator** of all covered lives in Oregon based on annual statements and other reports
31 deemed necessary by the board and filed by the insurer, [or] reinsurer **or third party administra-**
32 **tor** with the board or with the Department of Consumer and Business Services. The board may use
33 any reasonable method of estimating the number of covered lives if the specific number is unknown.

34 “(8) The board may abate or defer, in whole or in part, the assessment calculated under sub-
35 section (2) of this section if the board determines that payment of the assessment would endanger
36 the ability of the insurer, [or] reinsurer **or third party administrator** to fulfill its contractual ob-
37 ligations. In the event an assessment is abated or deferred in whole or in part under this subsection,
38 the amount by which the assessment is abated or deferred may be assessed against the other
39 insurers, [and] reinsurers **and third party administrators** subject to the assessment in a manner
40 consistent with subsection (2) of this section. The insurer, [or] reinsurer **or third party adminis-**
41 **trator** receiving the abatement or deferment shall remain liable to the board for the deficiency for
42 four years.

43 “(9) *[The board shall abate or defer assessments authorized by this section if a court orders that*
44 *assessments cannot be made applicable to reinsurers. However, if a court orders that assessments can-*
45 *not be made applicable to reinsurers, the board may continue to assess insurers to the end of the*

1 *biennium in which the determination is made.] If a court finds that an assessment imposed on a*
2 **third party administrator is in violation of federal or state law, the board shall abate or defer**
3 **the assessment imposed upon the third party administrator but may continue to impose and**
4 **collect assessments on insurers, reinsurers and other third party administrators.**

5 “(10) Subject to the approval of the Director of the Department of Consumer and Business Ser-
6 vices, the board may develop a program for adjusting the assessment of an insurer, [or] reinsurer
7 **or third party administrator** based on the contribution of that insurer, [or] reinsurer **or third**
8 **party administrator** to reducing the demand for enrollment in the Oregon Medical Insurance Pool.
9 When developing the program, the board may consider, but is not limited to, the following factors:

10 “(a) The level of participation of the insurer, [or] reinsurer **or third party administrator**;

11 “(b) Level of health benefit plan coverage offered; and

12 “(c) Assumption of risk in the individual health benefits market.”.

13 In line 4, delete “4” and insert “8”.

14 In line 45, delete “5” and insert “9”.

15 On page 7, after line 17, insert:

16 “**SECTION 10.** ORS 735.650 is amended to read:

17 “735.650. (1) The following provisions of the Insurance Code shall apply to the pool to the extent
18 applicable and not inconsistent with the express provisions of ORS 735.600 to 735.650: ORS 731.004
19 to 731.022, 731.052 to 731.146, 731.162, 731.216 to 731.328, 742.023, 742.028, 742.046, 742.051, 742.056,
20 743.024, 743.027, 743.028, 743.041, 743.050, 743.100 to 743.106, 743.402, 743.801, 743.803, 743.804,
21 743.806, 743.807, 743.808, 743.811, 743.814, 743.817, 743.819, 743.821, 743.823, 743.827, 743.829, 743.834,
22 743.837, 743.839, 743.845, 743A.084, 743A.090, **744.702, 744.704, 744.724, 744.738**, 746.005 to 746.370,
23 746.600, 746.605, 746.607, 746.608, 746.610, 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668,
24 746.670, 746.675, 746.680 and 746.690.

25 “(2) For the purposes of this section only, the pool shall be deemed an insurer, pool coverage
26 shall be deemed individual health insurance and pool coverage contracts shall be deemed policies.

27 “**SECTION 11.** ORS 744.704 is amended to read:

28 “744.704. (1) The following persons are exempt from the licensing requirement for third party
29 administrators in ORS 744.702 and from all other provisions of ORS 744.700 to 744.740 applicable to
30 third party administrators:

31 “(a) A person licensed under ORS 744.002 as an adjuster, whose activities are limited to ad-
32 justment of claims and whose activities do not include the activities of a third party administrator.

33 “(b) A person licensed as an insurance producer as required by ORS 744.053 and authorized to
34 transact life or health insurance in this state, whose activities are limited exclusively to the sale
35 of insurance and whose activities do not include the activities of a third party administrator.

36 “(c) An employer acting as a third party administrator on behalf of:

37 “(A) Its employees;

38 “(B) The employees of one or more subsidiary or affiliated corporations of the employer; or

39 “(C) The employees of one or more persons with a dealership, franchise, distributorship or other
40 similar arrangement with the employers.

41 “(d) A union, or an affiliate thereof, acting as a third party administrator on behalf of its mem-
42 bers.

43 “(e) An insurer that is authorized to transact insurance in this state with respect to a policy
44 issued and delivered in and pursuant to the laws of this state or another state.

45 “(f) A creditor acting on behalf of its debtors with respect to insurance covering a debt between

1 the creditor and its debtors.

2 “(g) A trust and the trustees, agents and employees of the trust, when acting pursuant to the
3 trust, if the trust is established in conformity with 29 U.S.C. 186.

4 “(h) A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees
5 and employees acting pursuant to the trust, or a voluntary employees beneficiary association de-
6 scribed in section 501(c) of the Internal Revenue Code, its agents and employees and a custodian
7 and the custodian’s agents and employees acting pursuant to a custodian account meeting the re-
8 quirements of section 401(f) of the Internal Revenue Code.

9 “(i) A financial institution that is subject to supervision or examination by federal or state fi-
10 nancial institution regulatory authorities, or a mortgage lender, to the extent the financial institu-
11 tion or mortgage lender collects and remits premiums to licensed insurance producers or authorized
12 insurers in connection with loan payments.

13 “(j) A company that issues credit cards and advances for and collects premiums or charges from
14 its credit card holders who have authorized collection. The exemption under this paragraph applies
15 only if the company does not adjust or settle claims.

16 “(k) A person who adjusts or settles claims in the normal course of practice or employment as
17 an attorney at law. The exemption under this subsection applies only if the person does not collect
18 charges or premiums in connection with life insurance or health insurance coverage.

19 “[*L*] *A person who acts solely as an administrator of one or more bona fide employee benefit plans*
20 *established by an employer or an employee organization, or both, for which the Insurance Code is*
21 *preempted pursuant to the Employee Retirement Income Security Act of 1974. A person to whom this*
22 *paragraph applies must comply with the requirements of ORS 744.714.]*

23 “[*m*] **(L)** The Oregon Medical Insurance Pool Board, established under ORS 735.600 to 735.650,
24 and the administering insurer or insurers for the board, for services provided pursuant to ORS
25 735.600 to 735.650.

26 “[*n*] **(m)** An entity or association owned by or composed of like employers who administer
27 partially or fully self-insured plans for employees of the employers or association members.

28 “[*o*] **(n)** A trust established by a cooperative body formed between cities, counties, districts or
29 other political subdivisions of this state, or between any combination of such entities, and the trust-
30 tees, agents and employees acting pursuant to the trust.

31 “[*p*] **(o)** Any person designated by the Director of the Department of Consumer and Business
32 Services by rule.

33 “(2) A third party administrator is not required to be licensed as a third party administrator in
34 this state if the following conditions are met:

35 “(a) The third party administrator has its principal place of business in another state;

36 “(b) The third party administrator is not soliciting business as a third party administrator in this
37 state; and

38 “(c) In the case of any group policy or plan of insurance serviced by the third party adminis-
39 trator, the lesser of five percent or 100 certificate holders reside in this state.

40 “**SECTION 12.** ORS 735.756 is amended to read:

41 “735.756. (1) Of payments made to the Family Health Insurance Assistance Program by the De-
42 partment of Human Services under ORS 735.754 (4), the department shall determine:

43 “(a) The portion of a subsidy of a subsidized member that is from the General Fund; and

44 “(b) The portion of other costs that is from the General Fund.

45 “(2) The department shall bill the program for the amounts determined under subsection (1) of

1 this section. The program shall forward the bill for the amount determined under subsection (1)(b)
2 of this section to the Oregon Medical Insurance Pool Board.

3 “(3) The board shall:

4 “(a) Determine the amount of funds needed for the payment of other costs under subsection (1)(b)
5 of this section; and

6 “(b) Impose and collect assessments in that amount against insurers, using the methodology de-
7 scribed in ORS 735.614 (2), [~~(6) and (9)~~] **(7) and (10)**.

8 “(4) The board shall pay the program for the amounts determined under subsection (1)(b) of this
9 section.

10 “(5) The program shall forward to the department the amounts determined under subsection (1)
11 of this section.

12 “(6) ORS 735.614 (3), [~~(4), (5), (7) and (8)~~] **(5), (6), (8) and (9)** applies to assessments collected
13 under this section.

14 “**SECTION 13.** ORS 744.714 is amended to read:

15 “744.714. A person who is exempt from the requirement of a license as a third party adminis-
16 trator under [~~ORS 744.704 because the person acts solely as an administrator of one or more bona fide~~
17 *employee benefit plans established by an employer or an employee organization, or both, for which the*
18 *Insurance Code is preempted pursuant to the Employee Retirement Income Security Act of 1974,] **ORS**
19 **744.702** shall register with the Director of the Department of Consumer and Business Services an-
20 nually, verifying the status of the person as qualifying for the exemption.*

21 “**SECTION 14.** **(1) Jurisdiction is conferred on the Supreme Court to determine in the**
22 **manner provided by this section whether the provisions of this 2009 Act are preempted by**
23 **federal law or violate any constitutional provision, including but not limited to impairment**
24 **of the obligation of contracts under section 21, Article I of the Oregon Constitution, or**
25 **clause 1, section 10, Article I of the United States Constitution.**

26 “**(2) A person who is adversely affected by this 2009 Act or who will be adversely affected**
27 **by this 2009 Act may institute a proceeding for review by filing with the Supreme Court a**
28 **petition that meets the following requirements:**

29 “**(a) The petition must be filed within 60 days after the effective date of this 2009 Act or,**
30 **with respect to the amendments to ORS 735.610 and 735.614 by sections 5 and 7 of this 2009**
31 **Act, on or before March 1, 2010.**

32 “**(b) The petition must include the following:**

33 “**(A) A statement of the basis of the challenge; and**

34 “**(B) A statement and supporting affidavit showing how the petitioner is adversely af-**
35 **fected.**

36 “**(3) The petitioner shall serve a copy of the petition by registered or certified mail upon**
37 **the Department of Consumer and Business Services, the Attorney General and the Governor.**

38 “**(4) Proceedings for review under this section shall be expedited and given priority over**
39 **all other matters before the Supreme Court.**

40 “**(5) In the event the Supreme Court determines that there are factual issues in the pe-**
41 **tition, the Supreme Court may appoint a special master to hear evidence and to prepare re-**
42 **commended findings of fact.**

43 “**SECTION 15.** **The amendments to ORS 735.610 and 735.614 by sections 5 and 7 of this 2009**
44 **Act become operative on January 1, 2011.”.**

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/s/ Jeff Kruse
Senator

/s/ Frank Morse
Senator
