

(To Resolve Conflicts)

## C-Engrossed Senate Bill 101

Ordered by the House June 27  
Including Senate Amendments dated April 12 and June 21 and House  
Amendments dated June 27 to resolve conflicts

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### 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.

Authorizes payment for dental services under Family Health Insurance Assistance Program and under private health option of Health Care for All Oregon Children program. Specifies requirements for dental plan to qualify for premium assistance under Family Health Insurance Assistance Program.

Requires Oregon Health Authority to obtain authority to implement, on September 1, 2011, new Medicaid fee schedule. Requires negotiating of new contract between hospitals and fully capitated health plans in anticipation of new schedule. Sets rates of reimbursement for hospitals and fully capitated health plans that do not have contract. *[Eliminates sunset on provision regulating setting of such rates.]*

Declares emergency, effective on passage.

### A BILL FOR AN ACT

1  
2 Relating to health care; creating new provisions; amending ORS 414.025, 414.743, 414.826, 414.841,  
3 414.842 and 414.851; repealing section 151, chapter \_\_\_, Oregon Laws 2011 (Enrolled House Bill  
4 2100); and declaring an emergency.

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

6 **SECTION 1.** ORS 414.826 is amended to read:

7 414.826. (1) As used in this section:

8 (a) "Child" means a person under 19 years of age who is lawfully present in this state.

9 **(b) "Dental plan" has the meaning given that term in ORS 414.841.**

10 *[(b)] (c)* "Health benefit plan" has the meaning given that term in ORS 414.841.

11 (2) The Office of Private Health Partnerships shall administer a private health option to expand  
12 access to private health insurance for Oregon's children.

13 (3) The office shall adopt by rule criteria for health benefit plans to qualify for premium assist-  
14 ance under the private health option. The criteria may include, but are not limited to, the following:

15 (a) The health benefit plan meets or exceeds the requirements for a basic benchmark health  
16 benefit plan under ORS 414.856.

17 (b) The health benefit plan offers a benefit package comparable to the health services provided  
18 to children receiving medical assistance, including mental health, vision and dental services, and  
19 without any exclusion of or delay of coverage for preexisting conditions.

20 (c) The health benefit plan imposes copayments or other cost sharing that is based upon a

**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 family's ability to pay.

2 (d) Expenditures for the health benefit plan qualify for federal financial participation.

3 **(4) To qualify for premium assistance under the private health option:**

4 **(a) A dental plan must provide coverage of dental services necessary to prevent disease**  
5 **and promote oral health, restore oral structures to health and function and treat emergency**  
6 **conditions.**

7 **(b) Expenditures for the dental plan must qualify for federal financial participation.**

8 [(4)] (5) The amount of premium assistance provided under this section shall be:

9 (a) Equal to the full cost of the [premium] **premiums for a health benefit plan and a dental**  
10 **plan** for children whose family income is at or below 200 percent of the federal poverty guidelines  
11 and who have access to employer sponsored health insurance; and

12 (b) Based on a sliding scale under criteria established by the office by rule for children whose  
13 family income is above 200 percent but at or below 300 percent of the federal poverty guidelines,  
14 regardless of whether the child has access to coverage under an employer sponsored health benefit  
15 **plan or dental plan.**

16 [(5)] (6) A child whose family income is more than 300 percent of the federal poverty guidelines  
17 shall be offered the opportunity to purchase a health benefit plan **or dental plan** through the pri-  
18 vate health option but may not receive premium assistance.

19 **SECTION 2.** ORS 414.841 is amended to read:

20 414.841. For purposes of ORS 414.841 to 414.864:

21 (1) "Carrier" has the meaning given that term in ORS 735.700.

22 **(2) "Dental plan" means a policy or certificate of group or individual health insurance,**  
23 **as defined in ORS 731.162, providing payment or reimbursement only for the expenses of**  
24 **dental care.**

25 [(2)] (3) "Eligible individual" means an individual who:

26 (a) Is a resident of the State of Oregon;

27 (b) Is not eligible for Medicare;

28 (c) **Is** either:

29 **(A) For health benefit plan coverage other than dental plans, a person who** has been  
30 without health benefit plan coverage for a period of time established by the Office of Private Health  
31 Partnerships[,] or meets exception criteria established by the office; **or**

32 **(B) For dental plan coverage, an individual under 19 years of age who is uninsured or**  
33 **underinsured with respect to dental plan coverage;**

34 (d) Except as otherwise provided by the office, has family income [less than] **at or below** 200  
35 percent of the federal poverty level; **and**

36 [(e) *Has investments and savings less than the limit established by the office; and*]

37 [(f)] (e) Meets other eligibility criteria established by the office.

38 [(3)(a)] (4)(a) "Family" means:

39 (A) A single individual;

40 (B) An adult and the adult's spouse;

41 (C) An adult and the adult's spouse, all unmarried, dependent children under 23 years of age,  
42 including adopted children, children placed for adoption and children under the legal guardianship  
43 of the adult or the adult's spouse, and all dependent children of a dependent child; or

44 (D) An adult and the adult's unmarried, dependent children under 23 years of age, including  
45 adopted children, children placed for adoption and children under the legal guardianship of the

1 adult, and all dependent children of a dependent child.

2 (b) A family includes a dependent elderly relative or a dependent adult child with a disability  
3 who meets the criteria established by the office and who lives in the home of the adult described  
4 in paragraph (a) of this subsection.

5 [(4)(a)] **(5)(a)** “Health benefit plan” means a policy or certificate of group or individual health  
6 insurance, as defined in ORS 731.162, providing payment or reimbursement for hospital, medical and  
7 surgical expenses. “Health benefit plan” includes a health care service contractor or health main-  
8 tenance organization subscriber contract, the Oregon Medical Insurance Pool and any plan provided  
9 by a less than fully insured multiple employer welfare arrangement or by another benefit arrange-  
10 ment defined in the federal Employee Retirement Income Security Act of 1974, as amended.

11 (b) “Health benefit plan” does not include coverage for accident only, specific disease or condi-  
12 tion only, credit, disability income, coverage of Medicare services pursuant to contracts with the  
13 federal government, Medicare supplement insurance, student accident and health insurance, long  
14 term care insurance, hospital indemnity only, [*dental only*,] vision only, coverage issued as a sup-  
15 plement to liability insurance, insurance arising out of a workers’ compensation or similar law, au-  
16 tomobile medical payment insurance, insurance under which the benefits are payable with or  
17 without regard to fault and that is legally required to be contained in any liability insurance policy  
18 or equivalent self-insurance or coverage obtained or provided in another state but not available in  
19 Oregon.

20 [(5)] **(6)** “Income” means gross income in cash or kind available to the applicant or the  
21 applicant’s family. Income does not include earned income of the applicant’s children or income  
22 earned by a spouse if there is a legal separation.

23 [(6)] *“Investment and savings” means cash, securities as defined in ORS 59.015, negotiable instru-*  
24 *ments as defined in ORS 73.0104 and such similar investments or savings as the office may establish*  
25 *that are available to the applicant or the applicant’s family to contribute toward meeting the needs of*  
26 *an applicant or eligible individual.]*

27 (7) “Medicaid” means medical assistance provided under 42 U.S.C. section 1396a (section 1902  
28 of the Social Security Act).

29 (8) “Resident” means an individual who meets the residency requirements established by rule  
30 by the office.

31 (9) “Subsidy” means payment or reimbursement to an eligible individual toward the purchase  
32 of a health benefit plan, and may include a net billing arrangement with carriers or a prospective  
33 or retrospective payment for health benefit plan premiums and eligible copayments or deductible  
34 expenses directly related to the eligible individual.

35 (10) “Third-party administrator” means any insurance company or other entity licensed under  
36 the Insurance Code to administer health [*insurance*] benefit [*programs*] **plans**.

37 **NOTE:** Section 3 was deleted by amendment. Subsequent sections were not renumbered.

38 **SECTION 4.** ORS 414.851 is amended to read:

39 414.851. (1) The Office of Private Health Partnerships may, based on the recommendation of the  
40 Administrator of the Office for Oregon Health Policy and Research, establish minimum benefit re-  
41 quirements for individual health benefit plans subject to subsidy pursuant to the Family Health In-  
42 surance Assistance Program, including but not limited to the type of services covered and the  
43 amount of cost sharing to be allowed.

44 **(2) To qualify for premium assistance under the Family Health Insurance Assistance**  
45 **Program:**

1       **(a) A dental plan must provide coverage of dental services necessary to prevent disease**  
2 **and promote oral health, restore oral structures to health and function and treat emergency**  
3 **conditions.**

4       **(b) Expenditures for the dental plan must qualify for federal financial participation.**

5       **SECTION 5.** ORS 414.025, as amended by section 1, chapter 73, Oregon Laws 2010, is amended  
6 to read:

7       414.025. As used in this chapter, unless the context or a specially applicable statutory definition  
8 requires otherwise:

9       (1) "Category of aid" means assistance provided by the Oregon Supplemental Income Program,  
10 aid granted under ORS 412.001 to 412.069 and 418.647 or federal Supplemental Security Income  
11 payments.

12       (2) "Categorically needy" means, insofar as funds are available for the category, a person who  
13 is a resident of this state and who:

14       (a) Is receiving a category of aid.

15       (b) Would be eligible for a category of aid but is not receiving a category of aid.

16       (c) Is in a medical facility and, if the person left such facility, would be eligible for a category  
17 of aid.

18       (d) Is under the age of 21 years and would be a dependent child as defined in ORS 412.001 except  
19 for age and regular attendance in school or in a course of professional or technical training.

20       (e)(A) Is a caretaker relative, as defined in ORS 412.001, who cares for a child who would be a  
21 dependent child except for age and regular attendance in school or in a course of professional or  
22 technical training; or

23       (B) Is the spouse of the caretaker relative.

24       (f) Is under the age of 21 years and:

25       (A) Is in a foster family home or licensed child-caring agency or institution and is one for whom  
26 a public agency of this state is assuming financial responsibility, in whole or in part; or

27       (B) Is 18 years of age or older, is one for whom federal financial participation is available under  
28 Title XIX or XXI of the federal Social Security Act and who met the criteria in subparagraph (A)  
29 of this paragraph immediately prior to the person's 18th birthday.

30       (g) Is a spouse of an individual receiving a category of aid and who is living with the recipient  
31 of a category of aid, whose needs and income are taken into account in determining the cash needs  
32 of the recipient of a category of aid, and who is determined by the Department of Human Services  
33 to be essential to the well-being of the recipient of a category of aid.

34       (h) Is a caretaker relative as defined in ORS 412.001 who cares for a dependent child receiving  
35 aid granted under ORS 412.001 to 412.069 and 418.647 or is the spouse of the caretaker relative.

36       (i) Is under the age of 21 years, is in a youth care center and is one for whom a public agency  
37 of this state is assuming financial responsibility, in whole or in part.

38       (j) Is under the age of 21 years and is in an intermediate care facility which includes institutions  
39 for persons with mental retardation.

40       (k) Is under the age of 22 years and is in a psychiatric hospital.

41       (L) Is under the age of 21 years and is in an independent living situation with all or part of the  
42 maintenance cost paid by the Department of Human Services.

43       (m) Is a member of a family that received aid in the preceding month under ORS 412.006 or  
44 412.014 and became ineligible for aid due to increased hours of or increased income from employ-  
45 ment. As long as the member of the family is employed, such families will continue to be eligible for

1 medical assistance for a period of at least six calendar months beginning with the month in which  
2 such family became ineligible for assistance due to increased hours of employment or increased  
3 earnings.

4 (n) Is an adopted person under 21 years of age for whom a public agency is assuming financial  
5 responsibility in whole or in part.

6 (o) Is an individual or is a member of a group who is required by federal law to be included in  
7 the state's medical assistance program in order for that program to qualify for federal funds.

8 (p) Is an individual or member of a group who, subject to the rules of the department, may op-  
9 tionally be included in the state's medical assistance program under federal law and regulations  
10 concerning the availability of federal funds for the expenses of that individual or group.

11 (q) Is a pregnant woman who would be eligible for aid granted under ORS 412.001 to 412.069 and  
12 418.647, whether or not the woman is eligible for cash assistance.

13 (r) Except as otherwise provided in this section, is a pregnant woman or child for whom federal  
14 financial participation is available under Title XIX or XXI of the federal Social Security Act.

15 (s) Is not otherwise categorically needy and is not eligible for care under Title XVIII of the  
16 federal Social Security Act or is not a full-time student in a post-secondary education program as  
17 defined by the Department of Human Services by rule, but whose family income is *[less than]* **at or**  
18 **below** the federal poverty level and whose family investments and savings equal less than the in-  
19 vestments and savings limit established by the department by rule.

20 (t) Would be eligible for a category of aid but for the receipt of qualified long term care insur-  
21 ance benefits under a policy or certificate issued on or after January 1, 2008. As used in this para-  
22 graph, "qualified long term care insurance" means a policy or certificate of insurance as defined in  
23 ORS 743.652 (6).

24 (u) Is eligible for the Health Care for All Oregon Children program established in ORS 414.231.

25 (3) "Income" has the meaning given that term in ORS 411.704.

26 (4) "Investments and savings" means cash, securities as defined in ORS 59.015, negotiable in-  
27 struments as defined in ORS 73.0104 and such similar investments or savings as the Department of  
28 Human Services may establish by rule that are available to the applicant or recipient to contribute  
29 toward meeting the needs of the applicant or recipient.

30 (5) "Medical assistance" means so much of the following medical and remedial care and services  
31 as may be prescribed by the Oregon Health Authority according to the standards established pur-  
32 suant to ORS *[413.032]* **414.065**, including **premium assistance and** payments made for services  
33 provided under an insurance or other contractual arrangement and money paid directly to the re-  
34 cipient for the purchase of medical care:

35 (a) Inpatient hospital services, other than services in an institution for mental diseases;

36 (b) Outpatient hospital services;

37 (c) Other laboratory and X-ray services;

38 (d) Skilled nursing facility services, other than services in an institution for mental diseases;

39 (e) Physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled  
40 nursing facility or elsewhere;

41 (f) Medical care, or any other type of remedial care recognized under state law, furnished by  
42 licensed practitioners within the scope of their practice as defined by state law;

43 (g) Home health care services;

44 (h) Private duty nursing services;

45 (i) Clinic services;

- 1 (j) Dental services;
- 2 (k) Physical therapy and related services;
- 3 (L) Prescribed drugs, including those dispensed and administered as provided under ORS chapter
- 4 689;
- 5 (m) Dentures and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases
- 6 of the eye or by an optometrist, whichever the individual may select;
- 7 (n) Other diagnostic, screening, preventive and rehabilitative services;
- 8 (o) Inpatient hospital services, skilled nursing facility services and intermediate care facility
- 9 services for individuals 65 years of age or over in an institution for mental diseases;
- 10 (p) Any other medical care, and any other type of remedial care recognized under state law;
- 11 (q) Periodic screening and diagnosis of individuals under the age of 21 years to ascertain their
- 12 physical or mental impairments, and such health care, treatment and other measures to correct or
- 13 ameliorate impairments and chronic conditions discovered thereby;
- 14 (r) Inpatient hospital services for individuals under 22 years of age in an institution for mental
- 15 diseases; and
- 16 (s) Hospice services.

17 (6) "Medical assistance" includes any care or services for any individual who is a patient in a  
18 medical institution or any care or services for any individual who has attained 65 years of age or  
19 is under 22 years of age, and who is a patient in a private or public institution for mental diseases.  
20 "Medical assistance" includes "health services" as defined in ORS 414.705. "Medical assistance"  
21 does not include care or services for an inmate in a nonmedical public institution.

22 (7) "Medically needy" means a person who is a resident of this state and who is considered el-  
23 igible under federal law for medically needy assistance.

24 (8) "Resources" has the meaning given that term in ORS 411.704. For eligibility purposes, "re-  
25 sources" does not include charitable contributions raised by a community to assist with medical  
26 expenses.

27 **SECTION 6.** ORS 414.842 is amended to read:

28 414.842. (1) There is established the Family Health Insurance Assistance Program in the Office  
29 of Private Health Partnerships. The purpose of the program is to remove economic barriers to  
30 health insurance coverage for residents of the State of Oregon with family income [*less than*] **at or**  
31 **below** 200 percent of the federal poverty level[, *and investment and savings less than the limit es-*  
32 *tablished by the office,*] while encouraging individual responsibility, promoting health benefit plan  
33 coverage of children, building on the private sector health benefit plan system and encouraging  
34 employer and employee participation in employer-sponsored health benefit plan coverage.

35 (2) The Office of Private Health Partnerships shall be responsible for the implementation and  
36 operation of the Family Health Insurance Assistance Program. The Administrator of the Office for  
37 Oregon Health Policy and Research, in consultation with the Oregon Health Policy Board, shall  
38 make recommendations to the Office of Private Health Partnerships regarding program policy, in-  
39 cluding but not limited to eligibility requirements, assistance levels, benefit criteria and carrier  
40 participation.

41 (3) The Office of Private Health Partnerships may contract with one or more third-party ad-  
42 ministrators to administer one or more components of the Family Health Insurance Assistance Pro-  
43 gram. Duties of a third-party administrator may include but are not limited to:

- 44 (a) Eligibility determination;
- 45 (b) Data collection;

- 1 (c) Assistance payments;
- 2 (d) Financial tracking and reporting; and
- 3 (e) Such other services as the office may deem necessary for the administration of the program.

4 (4) If the office decides to enter into a contract with a third-party administrator pursuant to  
5 subsection (3) of this section, the office shall engage in competitive bidding. The office shall evaluate  
6 bids according to criteria established by the office, including but not limited to:

- 7 (a) The bidder's proven ability to administer a program of the size of the Family Health Insur-  
8 ance Assistance Program;
- 9 (b) The efficiency of the bidder's payment procedures;
- 10 (c) The estimate provided of the total charges necessary to administer the program; and
- 11 (d) The bidder's ability to operate the program in a cost-effective manner.

12 **SECTION 7. (1) As used in this section, "fully capitated health plan" has the meaning**  
13 **given that term in ORS 414.736.**

14 **(2) The Oregon Health Authority shall proceed with all due diligence and speed to obtain**  
15 **the appropriate authorization to implement on September 1, 2011, a new Medicaid fee sched-**  
16 **ule that is based upon the legislatively approved budget.**

17 **(3) Before September 1, 2011, a hospital and a fully capitated health plan shall maintain**  
18 **their existing contract for the provision of inpatient or outpatient hospital services under**  
19 **ORS 414.705 to 414.750, unless the hospital and the plan mutually agree upon a change to the**  
20 **contract. During this time, the hospital and the plan shall work in good faith to negotiate a**  
21 **new contract in anticipation of the implementation of a new Medicaid fee schedule on Sep-**  
22 **tember 1, 2011.**

23 **(4) On or after September 1, 2011, a fully capitated health plan that does not have a**  
24 **contract with a hospital that provides 10 percent or more of hospital admissions and outpa-**  
25 **tient hospital services to enrollees of the plan may, when mutually agreed to by the plan and**  
26 **the hospital, engage in binding arbitration. The binding arbitration must be completed no**  
27 **later than December 1, 2011. The hospital and the plan shall agree upon the arbitrator.**

28 **(5) The authority shall report to the Legislative Assembly no later than February 1, 2012,**  
29 **the results of the contracting carried out under this section.**

30 **SECTION 8.** ORS 414.743 is amended to read:

31 414.743. (1) **Except as provided in subsection (2) of this section,** a fully capitated health plan  
32 that does not have a contract with a hospital to provide inpatient or outpatient hospital services  
33 under ORS 414.705 to 414.750 must, using [a] Medicare payment methodology, reimburse the non-  
34 contracting hospital for services provided to an enrollee of the plan at a rate no less than a per-  
35 centage of the Medicare reimbursement rate for those services. The percentage of the Medicare  
36 reimbursement rate that is used to determine the reimbursement rate under this subsection is equal  
37 to [two] **four** percentage points less than the percentage of Medicare cost used by the authority in  
38 calculating the base hospital capitation payment to the plan, excluding any supplemental payments.

39 **(2)(a) If a fully capitated health plan does not have a contract with a hospital, and the**  
40 **hospital provides less than 10 percent of the hospital admissions and outpatient hospital**  
41 **services to enrollees of the plan, the percentage of the Medicare reimbursement rate that is**  
42 **used to determine the reimbursement rate under subsection (1) of this section is equal to**  
43 **two percentage points less than the percentage of Medicare cost used by the Oregon Health**  
44 **Authority in calculating the base hospital capitation payment to the plan, excluding any**  
45 **supplemental payments.**

1       **(b) This subsection is not intended to discourage a fully capitated health plan and a hos-**  
2 **pital from entering into a contract and is intended to apply to hospitals that provide prima-**  
3 **rily, but not exclusively, specialty and emergency care to enrollees of the plan.**

4       [(2)] (3) A hospital that does not have a contract with a fully capitated health plan to provide  
5 inpatient or outpatient hospital services under ORS 414.705 to 414.750 must accept as payment in  
6 full for hospital services the rates described in [subsection (1)] **subsections (1) and (2)** of this sec-  
7 tion.

8       [(3)] (4) This section does not apply to type A and type B hospitals, as described in ORS 442.470,  
9 and rural critical access hospitals, as defined in ORS 315.613.

10       [(4)] (5) The Oregon Health Authority shall adopt rules to implement and administer this section.

11       **SECTION 9. If House Bill 2100 becomes law, section 151, chapter \_\_, Oregon Laws 2011**  
12 **(Enrolled House Bill 2100) (amending ORS 414.736), is repealed.**

13       **SECTION 10. (1) The amendments to ORS 414.826, 414.841 and 414.851 by sections 1 to 4**  
14 **of this 2011 Act become operative January 1, 2012.**

15       **(2) The amendments to ORS 414.743 by section 8 of this 2011 Act become operative Sep-**  
16 **tember 1, 2011.**

17       **SECTION 11. This 2011 Act being necessary for the immediate preservation of the public**  
18 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
19 **on its passage.**

20