

STATE HEALTH CARE REFORM

# Unlink insurance from job status

**G**iven the uncertainty of any major overhaul of our nation's health care system, Oregonians should consider how we can reform health care on a state level. Absent action, adequate health care will become less available to citizens as employers can no longer afford soaring insurance



JOHN DILORENZO

IN MY OPINION

premiums. As Oregon's economy continues to stagnate, the newly unemployed will have nowhere to turn when their benefits expire. The failings of our health care system are due to many design flaws, most notably the linkage of benefits to employment status. The system failures will persist unless and until we exercise the necessary leadership to divorce health care from employment status and finally acknowledge that it is a proper role for government to protect citizens from disease every bit as much as it is appropriate for government to protect us from crime or provide a basic level of education.

I propose a quality health care system covering all of Oregon's citizens. My plan would provide coverage for preventative care and hospitalization services and would allow an opportunity for accessing the insurance market to buy additional coverage not included in the basic plan. It would also increase the number of private-sector jobs in Oregon.

Although many employers would choose to provide extra benefits to their employees or through collective bargaining agreements, Oregon employers would no longer generally

This would place Oregon at a competitive advantage to attract more employers who could significantly reduce expenses upon moving their facilities to our state.

be expected to pay health insurance premiums for preventative and catastrophic (hospitalization) coverage. That basic plan would be personal to each Oregonian, regardless of employment status.

The per capita cost of the basic plan would be much less than current plans because the group being insured would be much broader. Instead of a

group consisting of a tenured and aging work force, more reliant on health services as time goes on, the Oregon basic plan group would consist of every resident of the state, including every child and every healthy person who is currently uninsured.

Every Oregonian would pay his or her fair share for this coverage based on his or her consumption habits. Unlike various federal plans under discussion, there would be no fines or punitive measures taken to force anyone to pay their premium; rather, the premium would be automatic in the form of a constitutionally dedicated sales tax for health care, which could not be diverted or increased without a vote of the public.

Because the sales tax would be a health care premium, each of us who purchases goods or services (other than food consumed in the home, home utilities and shelter) would pay a fair premium for the basic health coverage we would all enjoy.

Our neighboring states already have sales taxes and could not easily replicate our new system for financing basic health care. This would place Oregon at a competitive advantage to attract more employers who could significantly reduce expenses upon moving their facilities to our state, vastly increasing the number of private sector jobs available for our unemployed citizens to fill.

I offer this broad outline in the hope that our business and political leaders, who find themselves polarized following Tuesday's election, might join together to make basic health care available to every Oregonian and move our state toward full employment.

*John DiLorenzo has practiced government law for 30 years and has advocated many issues before the Oregon Legislature during that time. He is a partner and the co-chair of the government relations department at the law firm Davis Wright Tremaine LLP.*



# Oregon

Theodore R. Kulongoski, Governor

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July 8, 2010

Re: Health Care Sales Tax Proposal

Dear Mr. DiLorenzo:

The Office for Oregon Health Policy and Research (OHPR) was asked to examine your health care sales tax proposal and provide a high-level estimate of the feasibility associated with the plan within the defined framework. The framework provided to OHPR for the proposal has four major components.

1. A sales tax on goods and services and other associated outlays could raise approximately \$10 billion annually to finance the cost of coverage.
2. The benefits package provided is be a "basic" high deductible plan.
3. All Oregonians excluding those in Medicare or Medicaid are included in the proposal. However, portions of the sales tax should be used to replace state general fund appropriations for the state's contribution to the Medicaid program.
4. The state would apply and be approved for a "waiver" of health insurance exchange provisions within the Patient Protection and Affordable Care Act of 2009; this alternative scenario is assumed as budget neutral to federal assumptions about federal funding provided in the health insurance exchange for individuals between 133-400% of federal poverty.

This analysis reflects one possible scenario for populations covered and the benefit packages provided to fit within the revenue projection provided to OHPR for that coverage. In order for a high level estimate to be provided within the defined framework, some additional assumptions were made during the modeling in discussions between OHPR, an OHPR actuarial consultant and Mr. DiLorenzo:

#### **Population assumptions**

1. The Medicare eligible population was excluded.
2. The benefit package design used for this analysis was not applied to the Medicaid population, under the assumption that the federal government would not waive its benefit requirements for categorical Medicaid populations. However, the analysis accounts for the state share required for Medicaid programs.
3. All populations currently privately insured or uninsured above 133% FPL are included.

#### **Benefits**

1. The benefits modeled were a high-deductible benefit plan with a \$5,000 deductible. The plan then pays 100% of the remainder of covered charges for the rest of the calendar year. Some preventive services are covered on a first-dollar basis
2. Medicaid benefits remain unchanged to current OHP.

## Affordability

1. To ensure affordability equity for the proposed benefit package, the affordability provisions of the Patient Protection and Affordable Care Act were applied as outlined between 133-400% of federal poverty level. No analysis was performed or assumed about how to "buy down" the benefit package, rather this is a high level assessment of what funding might be required to protect individuals at various income ranges.<sup>1</sup>

All estimates are preliminary and provided as a range. Data were used from the most recently available year.

### Projected Estimates of DiLorenzo Proposal

Proposal Estimate Assumption	Estimates Cost Range (billions)
Coverage for Non-Medicare & Medicaid Oregonians <sup>2</sup>	\$8-10
Affordability equity funding based on PPACA	\$0.5-0.7
State match portion of Medicaid program <sup>3</sup>	\$0.7-1.0
<b>Total proposal estimates</b>	<b>\$10.2-11.7</b>

From this high-level, preliminary estimate of the DiLorenzo proposal and its associated framework, the proposal would require annual funding of \$10.2-11.7 billion in total funding to support the current Oregon population. This analysis does not attempt to address the various programmatic and policy considerations that must be addressed in order to implement such a program and would require both additional actuarial and economic analysis to understand the interplay between benefit design, individual and employer behaviors and tax revenue projections. The analysis attempts to provide a high-level cost estimate within the framework provided to OHPR. Any changes in the framework or estimate assumptions would result in additional analysis which will result in results different from those provided here.

Please contact me with any questions you may have and I look forward to any additional assistance we may be able to offer.

Sincerely,



Sean Kolmer, Deputy Administrator  
Office for Oregon Health Policy and Research

cc: Dr. Bruce Goldberg  
Tina Edlund  
Dr. Jeanene Smith

<sup>1</sup> Affordability assumptions based on OHPR staff understanding of the Patient Protection and Affordable Care Act of 2009, HB 3590, sec. 1402 and Recon bill, sec. 1001. Cost assumptions compiled from many differing publicly available sources and actuarial assumptions where no publicly available data exists.

<sup>2</sup> Combined estimate using [http://www.oregon.gov/OHPPR/docs/Oregon\\_Uninsured%20Report\\_052510.pdf](http://www.oregon.gov/OHPPR/docs/Oregon_Uninsured%20Report_052510.pdf) and [http://insurance.oregon.gov/health\\_report/3458-health\\_report-2010-online.pdf](http://insurance.oregon.gov/health_report/3458-health_report-2010-online.pdf).

<sup>3</sup> Additional Medicaid eligibles estimated by OHPR using the 2008 American Community Survey. Cost estimates used 09-11 state general fund appropriations for OHP and estimated additional costs per additional enrollee.

## Senate Bill 972

Sponsored by Senators MORSE, MONNES ANDERSON, KRUSE, BATES; Senator SHIELDS (at the request of John DiLorenzo, Jr.)

### 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.

Directs Oregon Health Authority to develop plan for providing health care coverage for all Oregonians, including recommendations for constitutionally-dedicated sales tax, assumptions regarding private sector health care delivery options and elimination of need of employers to provide health insurance coverage to employees, and options to eliminate plan deductibles for persons below certain levels of federal poverty guidelines.

Directs authority to submit plan to interim health care committees of Legislative Assembly no later than 60 days preceding date of convening of 2012 regular session of Legislative Assembly.

Declares emergency, effective on passage.

### A BILL FOR AN ACT

1

2 Relating to the study of alternative funding for health care; and declaring an emergency.

3       Whereas the current health care system is unaffordable and unsustainable; and

4       Whereas employers are eliminating or limiting coverage; and

5       Whereas an increasing number of individuals can no longer afford health insurance; and

6       Whereas under section 1332 of the federal Patient Protection and Affordable Care Act (the State  
7 Ingenuity Amendment) states may design their own health care plans provided they meet minimum  
8 federal standards; and

9       Whereas, if the federal government approves a state's waiver, tax credits and subsidies that  
10 otherwise would be provided for those who are required to purchase insurance under the federal  
11 Act will be monetized and distributed to the state plan to lower the expenses of the operations of  
12 the state plan; and

13       Whereas Oregon should take advantage of the State Ingenuity Amendment to continue the  
14 state's tradition of leadership through innovation; and

15       Whereas an Oregon Health Care Ingenuity Plan can remedy major failings of the current health  
16 care system, including the lack of coverage for children and the linkage of health care benefits to  
17 employment status; and

18       Whereas an Oregon Health Care Ingenuity Plan should provide essential benefits, including  
19 preventive care and hospitalization services, and should allow an opportunity to buy additional  
20 coverage not included in the basic plan; and

21       Whereas an Oregon Health Care Ingenuity Plan should eliminate or limit the present cost  
22 shifting between the uninsured, underinsured and fully insured; and

23       Whereas instead of a group consisting of a tenured and aging workforce more reliant on health  
24 services as time goes on, the Oregon essential benefits group should consist of every legal resident  
25 of the state, including every child and every healthy person who is currently uninsured; and

26       Whereas under an Oregon Health Care Ingenuity Plan every Oregonian should pay his or her  
27 fair share for coverage; and

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       Whereas, unlike the federal plan, under an Oregon Health Care Ingenuity Plan there should be  
2 no fines or punitive measures taken to force anyone to buy insurance; and

3       Whereas an Oregon Health Care Ingenuity Plan could provide substantial savings because the  
4 plan would cover the medical side of workers' compensation expenditures, resulting in the state no  
5 longer having redundant Oregon Health Plan expenditures; and

6       Whereas an Oregon Health Care Ingenuity Plan should place Oregon at a competitive advantage  
7 with respect to other states because labor intensive employers could look to Oregon as a place  
8 where employers could locate headquarters or facilities and save significant portions of payroll costs  
9 by virtue of no longer having to pay for essential health care benefits; now, therefore,

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

11       **SECTION 1.** (1) The Oregon Health Authority shall provide to the interim committees  
12 of the Legislative Assembly having jurisdiction over health care policy, not later than 60 days  
13 preceding the date of convening of the 2012 regular session of the Legislative Assembly, a  
14 plan for providing health care coverage to all Oregonians that meets the public health goals,  
15 strategies, programs and performance standards adopted by the Oregon Health Policy Board  
16 to improve the health of all Oregonians.

17       (2) The plan must:

18       (a) Recommend a broad-based and constitutionally-dedicated funding source consisting  
19 of a sales tax, and avoid any tax based on income or payroll.

20       (b) Permit this state to obtain a waiver of the requirements of the federal Patient Pro-  
21 tection and Affordable Care Act (P.L. 111-148) under section 1332 of the federal Act.

22       (c) Identify all sources of federal funds that can be monetized and returned to this state  
23 for use in providing health care coverage to all Oregonians.

24       (d) Identify program savings that could be achieved through providing health care cov-  
25 erage to all Oregonians, including but not limited to replacement of the Oregon Health Plan  
26 and the medical care portion of workers' compensation, and assume that the program  
27 savings could be used to finance the state health care system.

28       (e) Assume that the role of the plan will be to collect and distribute revenues while pre-  
29 serving private sector delivery options and optimizing consumer choice in health care.

30       (f) Assume that Oregon employers will no longer need to provide health insurance to  
31 employees unless they wish to purchase coverage for employees that exceeds essential health  
32 benefits.

33       (g) Provide essential health benefits, including preventive care and hospitalization ser-  
34 vices, and allow an opportunity for accessing markets to buy additional coverage not included  
35 in the basic plan.

36       (h) Provide for reasonable residency or other qualifications for participation.

37       (i) Provide a mechanism for cost containment and risk management.

38       (j) Provide for Oregonians who earn above 400 percent of the federal poverty guidelines  
39 a deductible plan to match health savings accounts, which could be contributed to by em-  
40 ployees and employers.

41       (k) Provide that for Oregonians who earn no more than 400 percent of the federal poverty  
42 guidelines there shall be no deductible, and that the plan complies with federal coverage re-  
43 quirements.

44       (3) The authority shall:

45       (a) Submit the plan in the manner provided in ORS 192.245.

1 (b) Prepare and submit the plan using funds existing in the authority's legislatively-  
2 adopted budget for the biennium beginning July 1, 2011, without reallocation of resources.

3 SECTION 2. Section 1 of this 2011 Act is repealed on June 30, 2012.

4 SECTION 3. This 2011 Act being necessary for the immediate preservation of the public  
5 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect  
6 on its passage.

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**Remarks of John DiLorenzo before the  
Oregon Association of Hospitals and Health Systems  
July 15, 2011**

**State Options Under Obama-Care: Should Oregon  
Chart its Own Course?**

Over a year ago, after much wrangling, Congress presented to the President a series of bills which together became what is officially known as the Patient Protection and Affordable Healthcare Act as modified by the Healthcare and Education Reconciliation Act.

The legislation, over 2,000 pages in length, became effective last year. Some provisions, like immediate access to insurance for uninsured individuals with preexisting conditions, elimination of lifetime limits, and extending coverage for young adults under 26 years of age, kicked in during 2010. Other provisions, like those which require individuals to purchase policies, and provisions relating to tax credits, subsidies,

penalties, and a variety of taxes, phase in between this year and 2017. A tax on tanning beds phased in last year.

Many state attorneys general banded together seeking to overturn the new law in the courts, focusing on whether the provisions that compel individuals to buy private insurance products exceed Congress's Commerce power and whether the penalties exceed Congress' power to tax. The attorneys general have prevailed in some federal district courts and they have lost in one circuit court of appeals and in other federal district courts, potentially setting the stage for a showdown ultimately in the United States Supreme Court.

But, even if the plan survives constitutional challenges, other troubles are on the horizon.

One of the most significant problems with the federal scheme has been forecasted by New York state's experience.



New York became one of the few states that require insurers to charge the same rates for the same benefits, regardless of whether people were old or young, male or female, smokers or nonsmokers, high risk or low risk.

Not surprisingly, healthy people began to subsidize people who needed more health care. The healthier customers soon discovered that the high premiums were not worth it and dropped out of the plans. The pool of insured people shrank to the point where many of those who were left had high health care needs. Without healthier people to spread the risk, their premiums skyrocketed.

The federal plan seeks to prevent that phenomenon, known as the “death spiral,” by imposing fines on people who do not purchase private health insurance at subsidized rates. But analysts say that provision could prove meaningless if the

government does not vigorously enforce the penalties or if too many decide it is cheaper to pay the penalties and opt out.

Under the federal law, those who refuse coverage will have to pay only an annual penalty of \$695 per person up to \$2,085 per family, or 2.5% of their household income, whichever is greater. But the federal act expressly bars the IRS from using its normal tax enforcement powers of property liens and criminal penalties to collect the fines from individuals who do not comply. So, most commentators feel that healthy people will regard paying or evading the penalty as the better option than buying private insurance at inflated prices.

If the federal plan does not survive judicial scrutiny, Oregon should certainly go its own way. On the other hand, if the Obama Plan is here to stay, Oregon should heed the suggestion of our Senator Ron Wyden, who encouraged those

states who have issues with the federal plan to chart their own course and seek waivers under the plan. In November, 2009, Senator Wyden was successful in inserting Section 1332 into the Act which accommodates state ingenuity. Under the State Ingenuity Amendment, states may design their own healthcare plans provided they meet the minimum federal standards and seek waivers for those plans. If federal waivers are approved, all of the tax credits and subsidies which otherwise would be provided for those who are required to purchase insurance will be monetized and then sent instead directly to the state plan to lower the expenses of the state plan's operations. That is a lot of money. President Obama embraced that approach earlier this year and has thrown his support behind Senator Wyden's bill to accelerate the timelines for states to qualify for these waivers.

I believe we should take advantage of the state ingenuity provisions of the federal bill to remedy a major failing of our current healthcare system: the linkage of healthcare benefits to employment status.

During hearings before the Senate Healthcare Committee in February, 2010 and April of this year and before the House Healthcare Committee in June, I proposed an alternative healthcare funding system expanding beyond the numbers of persons covered by the federal plan to cover all Oregon's citizens, including all our children. The plan would provide essential benefits including preventative care and hospitalization services and would allow an opportunity for accessing the private insurance market to buy additional coverages not included in the basic plan. Most significantly, it would also

substantially increase the number of private sector jobs in Oregon.

Although many employers would choose to provide extra benefits to their employees or do so in response to collective bargaining agreements, Oregon employers would no longer generally be expected to pay health insurance premiums for essential benefits. That basic plan would be personal to each Oregonian, regardless of employment status.

I don't have to tell you that today's employer plans are often quite expensive. My experience might be similar to yours: My law firm has hundreds of employees and owners eligible to be covered by our plan. Our blessing is that many of our employees have been with us for years. Our curse is that our employees who age need to access our plan more and more

frequently. This may well mimic the federal plan's ultimate experience if healthy people opt out and pay low fines instead.

The per capita cost associated with my proposal would be much less expensive than current plans because the group insured would be much broader. Instead of a group consisting of a tenured and aging workforce, more reliant on health services as time goes on, the Oregon essential benefits group would consist of every citizen of the state, including every child and every healthy person who is currently uninsured.

So how would we pay for it? Every Oregonian would pay his or her fair share for this coverage based on his or her consumption habits. Unlike the federal plan, there would be no fines or punitive measures taken to force anyone to buy insurance; rather, the premium would be automatic in the form of a constitutionally dedicated sales tax for healthcare, which

could not be diverted or increased without a vote of the public. Because the sales tax would, in essence, be a healthcare premium, each of us who purchases goods or services (other than food consumed in the home, home utilities and shelter) would pay a fair premium for the basic health coverages we would all enjoy. The premium, if you will, would be based on ability to pay because it would be based on consumption. And everyone would participate. Even visitors and the underground economy would participate.

The plan assumes—and Oregon's Office of Health Policy and Research has recently confirmed—that approximately 10-12 billion dollars per year would provide an essential benefit package to every citizen of the State, including all of our children. For those who earn above 400% of the Federal Poverty Level (\$80,000 for a family of 4), there would be a

\$5,000 deductible to match health savings accounts, which could still be split between employees and employers. For those earning below those amounts, there would be no deductible or compliance with the new federal coverage requirements. Private insurers would either respond to vouchers or would bid for regional contracts. Depending upon the level of federal reimbursement from the State Ingenuity amendment, we would likely require a 5 to 7% sales tax on goods and services. The plan would also allow 910 million dollars to be redirected from the general fund because employers would no longer be taking deductions for basic healthcare insurance. In addition, approximately 280 million dollars would be redirected from state income tax collections because employers would no longer be taking deductions for many cafeteria plan benefits.



Added to that would be the savings the state would incur because we would no longer have required Oregon Health Plan expenditures and the plan would cover the medical side of workers compensation expenditures (about \$320 million in 2007). They would all be included in the essential benefits package. Added to that would be the maximum possible federal matching, because this plan would by definition cover every single matchable person, every senior and every child.

We would derive other savings, many of which would be difficult to initially assess, but which would be real nonetheless. For instance, there would be fewer expensive emergency room visits by the formerly uninsured because any Oregon citizen (and especially our children) could now visit a doctor before maladies became so severe as to require emergency medical treatment. The state and providers would have significant

administrative savings since prequalifications would no longer require mounds of forms but only a driver's license or other proof of citizenship and residency.

However, one of the most significant silver linings of the plan would be its potential for economic development and specifically, job formation. In March of this year, 17% of all Oregonians (685,000 persons) were using federal food stamps. More than 35% earned under 200% of the federal poverty level (\$40,000 for a family of four). We are one of the very few states in the nation that could dedicate a sales tax to a uniform system of healthcare because we are one of the very few states that has no sales tax. Because we are the only state on the West Coast that could, practically speaking, dedicate our sales tax to this purpose, we are also the only state that could eliminate (or significantly limit) an employer's burden for financing the

essential benefits package. No nearby state could replicate that advantage to employers. Labor intensive enterprises would look to Oregon as a place where they could locate headquarters or facilities and instantly save 15% to 20% or more of their payroll costs by virtue of no longer having to pay for essential healthcare benefits. This would place Oregon at an incredible competitive advantage with respect to other states. Who knows, we might even be able to make shoes. As hundreds of new employers began to locate in Oregon, our state would, in turn, derive even more income tax receipts from their profits and more income tax from newly employed Oregonians as we moved towards a full employment local economy. And by the way, the Plan would benefit all employers, not just businesses. School districts in particular would have 15% to 20% more money to devote to education.

Now, many question whether Oregonians would ever approve a sales tax for anything.

I attribute past sales tax failures to one overriding concern: the proposals lumped the new revenues into the general fund or backfilled the general fund. Each time the voters viewed a sales tax as just another tax on top of the taxes we currently pay. As far as I know, no one has ever proposed that a sales tax be dedicated to providing healthcare benefits for all. If the recession has taught us anything, it has made us well aware of the consequences of lack of healthcare. We appreciate how dependent we are on our employers for healthcare and how precarious our job status really is.

As time goes on, I predict that Oregonians will begin to resent the provisions of the federal bill which are beginning to phase in this year. The freezing of Medicare advantage

reimbursements, mandates requiring all legal residents to purchase healthcare coverage, fines that will be imposed on citizens who choose not to purchase coverage and the penalties that will be imposed upon businesses whose employees purchase subsidized insurance will hardly be popular.

A sales tax instead of a healthcare premium would be a great deal for most Oregonians. All one needs is a calculator to come to that conclusion. It is not unreasonable for an individual to pay \$600-\$700 per month for a healthcare policy which today provides similar coverages to what the Oregon essential benefits package would be. A person who is spending \$600 per month is spending \$7,200 per year on healthcare, not counting deductibles and co-pays. If Oregon adopted this Healthcare Ingenuity Plan, that person would no longer have to write checks for \$7,200.00 per year; rather, that individual would pay

a sales tax. Even if the sales tax were as high as 7%, that person would have to purchase \$102,000.00 of goods and services each year before they paid as much in sales tax as their health insurance could policy is currently costing them. In other words, this plan would amount to a good financial deal for Oregonians and would be possible due to the federal leverage built into the plan.

I also believe that Oregonians could have new freedoms under this proposal; no longer reliant on employers for basic healthcare. Free to pursue their dreams, like the arts, or their own small businesses.

I am committed to bringing together members of our business community, organized labor, and political leaders to move proactively and in a bipartisan way to solve this vexing social and economic problem. I can use your advice and your

help in furthering that effort and would be honored if you might take this up as a study project.

We should take advantage of the State Ingenuity Amendment and chart our own course.

And what a marvelous thing it would be if we could make healthcare available to every one of our citizens, especially every child, and generate thousands of private sector jobs besides. That would rank right up there with the beach bill and the bottle bill and would be in the finest of Oregon's traditions.