

House Bill 2216

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D.)

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**.

Repeals sunset on collection of hospital assessment. Repeals premium, Medicaid managed care organization and Public Employees' Benefit Board assessments. Makes conforming changes. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to state medical assistance program funding; creating new provisions; amending ORS
3 291.055, 414.736, 731.292 and 731.840 and sections 1, 2, 3, 4, 6, 7, 8, 9 and 10, chapter 736, Oregon
4 Laws 2003, section 8, chapter 867, Oregon Laws 2009, and section 14, chapter 602, Oregon Laws
5 2011; repealing ORS 414.721, 414.746, 743.951, 743.960, 743.961, 743.965 and 743.990 and sections
6 12, 13 and 14, chapter 736, Oregon Laws 2003, and sections 1, 9, 10, 11 and 16, chapter 867,
7 Oregon Laws 2009; prescribing an effective date; and providing for revenue raising that requires
8 approval by a three-fifths majority.

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

HOSPITAL, MANAGED CARE AND INSURANCE ASSESSMENTS

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11
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13 **SECTION 1.** Section 2, chapter 736, Oregon Laws 2003, as amended by section 1, chapter 780,
14 Oregon Laws 2007, section 51, chapter 828, Oregon Laws 2009, and section 17, chapter 867, Oregon
15 Laws 2009, is amended to read:

16 **Sec. 2.** (1) An assessment is imposed on the net revenue of each hospital in this state that is
17 not a waived hospital. The assessment shall be imposed at a rate determined by the Director of
18 the Oregon Health Authority by rule that is the director's best estimate of the rate needed to fund
19 the services and costs identified in section 9, chapter 736, Oregon Laws 2003. The rate of assessment
20 shall be imposed on the net revenue of each hospital subject to assessment. The director shall con-
21 sult with representatives of hospitals before setting the assessment.

22 (2) The assessment shall be reported on a form prescribed by the Oregon Health Authority and
23 shall contain the information required to be reported by the authority. The assessment form shall
24 be filed with the authority on or before the 75th day following the end of the calendar quarter for
25 which the assessment is being reported. Except as provided in subsection (6) of this section, the
26 hospital shall pay the assessment at the time the hospital files the assessment report. The payment
27 shall accompany the report.

28 (3)(a) To the extent permitted by federal law, aggregate assessments imposed under this section
29 may not exceed the total of the following amounts received by the hospitals that are reimbursed by
30 Medicare based on diagnostic related groups:

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 [(A) *The adjustment to the capitation rate paid to Medicaid managed care organizations under*
2 *section 15, chapter 867, Oregon Laws 2009;*]

3 [(B)] (a) 30 percent of payments made to hospitals on a fee-for-service basis by the authority for
4 inpatient hospital services; and

5 [(C)] (b) 41 percent of payments made to hospitals on a fee-for-service basis by the authority for
6 outpatient hospital services.

7 [(b) *Notwithstanding paragraph (a) of this subsection, aggregate assessments imposed for the*
8 *biennium beginning July 1, 2009, may exceed the total of the amounts described in paragraph (a) of this*
9 *subsection to the extent necessary to compensate for any reduction of funding in the legislatively*
10 *adopted budget for that biennium for hospital services under ORS 414.705 to 414.750.*]

11 (4) Notwithstanding subsection (3) of this section, a hospital is not guaranteed that any addi-
12 tional moneys paid to the hospital in the form of payments for services shall equal or exceed the
13 amount of the assessment paid by the hospital.

14 (5) Hospitals operated by the United States Department of Veterans Affairs and pediatric spe-
15 cialty hospitals providing care to children at no charge are exempt from the assessment imposed
16 under this section.

17 (6)(a) The authority shall develop a schedule for collection of the assessment for [*the*] **each**
18 calendar quarter ending September 30[, 2013,] that will result in the collection occurring between
19 December 15[, 2013,] **of that year** and the time all Medicaid cost settlements are finalized for that
20 calendar quarter.

21 (b) The authority shall prescribe by rule criteria for late payment of assessments.

22 **SECTION 2.** Section 9, chapter 736, Oregon Laws 2003, as amended by section 2, chapter 757,
23 Oregon Laws 2005, section 2, chapter 780, Oregon Laws 2007, section 53, chapter 828, Oregon Laws
24 2009, section 19, chapter 867, Oregon Laws 2009, and section 59, chapter 602, Oregon Laws 2011, is
25 amended to read:

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

29 (2) Amounts in the Hospital Quality Assurance Fund are continuously appropriated to the
30 Oregon Health Authority for the purpose of paying refunds due under section 6, chapter 736, Oregon
31 Laws 2003, and funding services under ORS [*414.705 to 414.750*] **414.631, 414.651 and 414.688 to**
32 **414.750**, including but not limited to:

33 (a) Increasing reimbursement rates for inpatient and outpatient hospital services under ORS
34 [*414.705 to 414.750*] **414.631, 414.651 and 414.688 to 414.750**;

35 (b) Maintaining, expanding or modifying services for persons described in ORS 414.025 (3)(s);

36 (c) Maintaining or increasing the number of persons described in ORS 414.025 (3)(s) who are
37 enrolled in the medical assistance program; and

38 (d) Paying administrative costs incurred by the authority to administer the assessments imposed
39 under section 2, chapter 736, Oregon Laws 2003.

40 (3) [*Except for assessments imposed pursuant to section 2 (3)(b), chapter 736, Oregon Laws 2003,*]
41 The authority may not use moneys from the Hospital Quality Assurance Fund to supplant, directly
42 or indirectly, other moneys made available to fund services described in subsection (2) of this sec-
43 tion.

44 **SECTION 3.** Section 10, chapter 736, Oregon Laws 2003, as amended by section 3, chapter 780,
45 Oregon Laws 2007, and section 20, chapter 867, Oregon Laws 2009, is amended to read:

1 quired by ORS chapter 657 or premium assessments required by ORS 656.612 and 656.614 or contri-
 2 butions and assessments calculated by cents per hour for workers' compensation coverage required
 3 by ORS 656.506.

4 (c) Fees or payments required for:

5 (A) Health care services provided by the Oregon Health and Science University, by the Oregon
 6 Veterans' Homes and by other state agencies and institutions pursuant to ORS 179.610 to 179.770.

7 (B) Assessments and premiums paid to the Oregon Medical Insurance Pool established by ORS
 8 735.614 and 735.625.

9 (C) Copayments and premiums paid to the Oregon medical assistance program.

10 *[(D) Assessments paid to the Department of Consumer and Business Services under ORS 743.951*
 11 *and 743.961.]*

12 (d) Fees created or authorized by statute that have no established rate or amount but are cal-
 13 culated for each separate instance for each fee payer and are based on actual cost of services pro-
 14 vided.

15 (e) State agency charges on employees for benefits and services.

16 (f) Any intergovernmental charges.

17 (g) Forest protection district assessment rates established by ORS 477.210 to 477.265 and the
 18 Oregon Forest Land Protection Fund fees established by ORS 477.760.

19 (h) State Department of Energy assessments required by ORS 469.421 (8) and 469.681.

20 (i) Any charges established by the State Parks and Recreation Director in accordance with ORS
 21 565.080 (3).

22 (j) Assessments on premiums charged by the Department of Consumer and Business Services
 23 pursuant to ORS 731.804 or fees charged by the Division of Finance and Corporate Securities of the
 24 Department of Consumer and Business Services to banks, trusts and credit unions pursuant to ORS
 25 706.530 and 723.114.

26 (k) Public Utility Commission operating assessments required by ORS 756.310 or charges paid
 27 to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987.

28 (L) Fees charged by the Housing and Community Services Department for intellectual property
 29 pursuant to ORS 456.562.

30 (m) New or increased fees that are anticipated in the legislative budgeting process for an
 31 agency, revenues from which are included, explicitly or implicitly, in the legislatively adopted
 32 budget or the legislatively approved budget for the agency.

33 (n) Tolls approved by the Oregon Transportation Commission pursuant to ORS 383.004.

34 (o) Convenience fees as defined in ORS 182.126 and established by the Oregon Department of
 35 Administrative Services under ORS 182.132 (3) and recommended by the Electronic Government
 36 Portal Advisory Board.

37 (3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unex-
 38 pected and temporary revenue surpluses may be increased to not more than their prior level without
 39 compliance with subsection (1) of this section if, at the time the fee is decreased, the state agency
 40 specifies the following:

41 (A) The reason for the fee decrease; and

42 (B) The conditions under which the fee will be increased to not more than its prior level.

43 (b) Fees that are decreased for reasons other than those described in paragraph (a) of this sub-
 44 section may not be subsequently increased except as allowed by ORS 291.050 to 291.060 and 294.160.

45 **SECTION 8.** ORS 414.736 is amended to read:

1 414.736. As used in ORS 192.493, this chapter[,] **and** ORS chapter 416 [*and section 9, chapter 867,*
2 *Oregon Laws 2009*]:

3 (1) “Designated area” means a geographic area of the state defined by the Oregon Health Au-
4 thority by rule that is served by a prepaid managed care health services organization.

5 (2) “Fully capitated health plan” means an organization that contracts with the authority on a
6 prepaid capitated basis under ORS 414.618.

7 (3) “Physician care organization” means an organization that contracts with the authority on a
8 prepaid capitated basis under ORS 414.618 to provide the health services described in ORS 414.025
9 (8)(b), (c), (d), (e), (f), (g) and (j). A physician care organization may also contract with the authority
10 on a prepaid capitated basis to provide the health services described in ORS 414.025 (8)(k) and (L).

11 (4) “Prepaid managed care health services organization” means a managed physical health,
12 dental, mental health or chemical dependency organization that contracts with the authority on a
13 prepaid capitated basis under ORS 414.618. A prepaid managed care health services organization
14 may be a dental care organization, fully capitated health plan, physician care organization, mental
15 health organization or chemical dependency organization.

16 **SECTION 9.** ORS 731.292 is amended to read:

17 731.292. (1) Except as provided in subsections (2)[, (3) and (4)] **and (3)** of this section, all fees,
18 charges and other moneys received by the Department of Consumer and Business Services or the
19 Director of the Department of Consumer and Business Services under the Insurance Code shall be
20 deposited in the fund created by ORS 705.145 and are continuously appropriated to the department
21 for the payment of the expenses of the department in carrying out the Insurance Code.

22 (2) All taxes and penalties paid pursuant to the Insurance Code shall be paid to the director and
23 after deductions of refunds shall be paid by the director to the State Treasurer, at the end of every
24 calendar month or more often in the director’s discretion, for deposit in the General Fund to become
25 available for general governmental expenses.

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

28 [(4) *Assessments received by the department under ORS 743.951 and 743.961 and penalties received*
29 *by the department under ORS 743.990 and section 10, chapter 867, Oregon Laws 2009, shall be paid*
30 *into the State Treasury and credited to the Health System Fund established in section 1, chapter 867,*
31 *Oregon Laws 2009, after deducting the following amounts:]*

32 [(a) *Amounts needed to reimburse the department for expenses in administering ORS 743.951 to*
33 *743.965 and 743.990; and]*

34 [(b) *Amounts needed to reimburse the General Fund for reductions in revenue caused by the effect*
35 *of ORS 743.961 on the retaliatory tax imposed under ORS 731.854 and 731.859.]*

36 **SECTION 10.** ORS 731.840 is amended to read:

37 731.840. (1) The retaliatory tax imposed upon a foreign or alien insurer under ORS 731.854 and
38 731.859, or the corporate excise tax imposed upon a foreign or alien insurer under ORS chapter 317,
39 is in lieu of all other state taxes upon premiums, taxes upon income, franchise or other taxes
40 measured by income that might otherwise be imposed upon the foreign or alien insurer except the
41 fire insurance premiums tax imposed under ORS 731.820[,] **and** the tax imposed upon wet marine and
42 transportation insurers under ORS 731.824 and 731.828[, *and the assessment imposed under ORS*
43 *743.961*]. However, all real and personal property, if any, of the insurer shall be listed, assessed and
44 taxed the same as real and personal property of like character of noninsurers. Nothing in this sub-
45 section shall be construed to preclude the imposition of the assessments imposed under ORS 656.612

1 upon a foreign or alien insurer.

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

4 (3) Subsection (1) of this section applies to foreign or alien title insurers and to foreign or alien
5 wet marine and transportation insurers issuing policies and subject to taxes referred to in ORS
6 731.824 and 731.828.

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

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

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

20 **SECTION 11.** Section 8, chapter 867, Oregon Laws 2009, is amended to read:

21 **Sec. 8.** *[(1) Sections 5 and 6 of this 2009 Act]* **ORS 743.961 and 743.990** apply to premiums earned
22 by an insurer during the period from October 1, 2009, through September 30, 2013.

23 *[(2) Notwithstanding any provision of contract or statute, including ORS 743.737 and 743.767, be-*
24 *ginning October 1, 2009, insurers may include in their rates an additional one percent of the existing*
25 *rate. To the extent the existing rate was approved by the Department of Consumer and Business Ser-*
26 *vices, the resulting rate, including the additional one percent, shall be considered an approved rate. If*
27 *an insurer increases its rates under this subsection, the insurer shall include in all consumer billings*
28 *a notice explaining the increase in a form prescribed by the department. This subsection applies to any*
29 *rate approved by or filed for the department's approval prior to the effective date of this 2009 Act and*
30 *to any contract of insurance not subject to the department's rate approval authority.]*

31 **SECTION 12.** Section 14, chapter 602, Oregon Laws 2011, as amended by section 2, chapter 8,
32 Oregon Laws 2012, is amended to read:

33 **Sec. 14.** (1) Notwithstanding ORS 414.631 and 414.651, in any area of the state where a coordi-
34 nated care organization has not been certified, the Oregon Health Authority shall continue to con-
35 tract with one or more prepaid managed care health services organizations, as defined in ORS
36 414.736, that serve the area and that are in compliance with contractual obligations owed to the
37 state or local government.

38 (2) Prepaid managed care health services organizations contracting with the authority under
39 this section are subject to the applicable requirements for, and are permitted to exercise the rights
40 of, coordinated care organizations under ORS 414.153, 414.625, 414.635, 414.638, 414.651, 414.655,
41 414.679, 414.712, 414.728, 414.743, ~~414.746,~~ 414.760, 416.510 to 416.610, 441.094, 442.464, 655.515,
42 659.830 and 743.847.

43 (3) The authority may amend contracts that are in place on July 1, 2011, to allow prepaid
44 managed care health services organizations that meet the criteria adopted by the authority under
45 ORS 414.625 to become coordinated care organizations.

1 (4) The authority shall continue to renew the contracts of prepaid managed care health services
 2 organizations that have a contract with the authority on July 1, 2011, until the earlier of the date
 3 the prepaid managed care health services organization becomes a coordinated care organization or
 4 July 1, 2014. Contracts with prepaid managed care health services organizations must terminate no
 5 later than July 1, 2017.

6 (5) The authority shall continue to renew contracts or ensure that counties renew contracts
 7 with providers of residential chemical dependency treatment until the provider enters into a con-
 8 tract with a coordinated care organization but no later than July 1, 2013.

9 (6) Notwithstanding ORS 414.625 (2)(g) and 414.655 (2), the authority shall allow for a period of
 10 transition to the full adoption of health information technology by coordinated care organizations
 11 and patient centered primary care homes. The authority shall explore options for assisting providers
 12 and coordinated care organizations in funding their use of health information technology.

13 **SECTION 13.** Section 1, chapter 736, Oregon Laws 2003, as amended by section 34, chapter 792,
 14 Oregon Laws 2009, is amended to read:

15 **Sec. 1.** As used in sections 1 to 9, chapter 736, Oregon Laws 2003:

16 (1) "Charity care" means costs for providing inpatient or outpatient care services free of charge
 17 or at a reduced charge because of the indigence or lack of health insurance of the patient receiving
 18 the care services.

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

21 (3)(a) "Hospital" has the meaning given that term in ORS 442.015.

22 (b) "Hospital" does not include special inpatient care facilities.

23 (4) "Net revenue":

24 (a) Means the total amount of charges for inpatient or outpatient care provided by the hospital
 25 to patients, less charity care, bad debts and contractual adjustments;

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

28 (c) Does not include any revenue that is taken into account in computing a long term care fa-
 29 cility assessment under sections 15 to 22, **24 and 29**, chapter 736, Oregon Laws 2003.

30 (5) "Waivered hospital" means a type A or type B hospital, as described in ORS 442.470, a hos-
 31 pital that provides only psychiatric care or a hospital identified by the [*Department of Human Ser-*
 32 *VICES*] **Oregon Health Authority** as appropriate for inclusion in the application described in section
 33 4, chapter 736, Oregon Laws 2003.

34 **SECTION 14.** Section 3, chapter 736, Oregon Laws 2003, is amended to read:

35 **Sec. 3.** Notwithstanding section 2, **chapter 736, Oregon Laws 2003**, [*of this 2003 Act*,] the Di-
 36 rector of [*Human Services*] **the Oregon Health Authority** shall reduce the rate of assessment im-
 37 posed under section 2, **chapter 736, Oregon Laws 2003**, [*of this 2003 Act*] to the maximum rate
 38 allowed under federal law if the reduction is required to comply with federal law.

39 **SECTION 15.** Section 4, chapter 736, Oregon Laws 2003, is amended to read:

40 **Sec. 4.** (1) [*On or before January 1, 2004, the Department of Human Services*] **The Oregon**
 41 **Health Authority** shall submit an application to the Centers for Medicare and Medicaid Services
 42 to request a waiver of the broad-based tax requirement pursuant to 42 C.F.R. 433.68(e) to exempt
 43 waived facilities from the assessment imposed under section 2, **chapter 736, Oregon Laws 2003**
 44 [*of this 2003 Act*]. The [*department*] **authority** shall ensure that the application requesting a waiver
 45 meets the requirements of 42 C.F.R. 433.68(e)(1).

1 (2) The Director of [*Human Services*] **the Oregon Health Authority** may include in the appli-
 2 cation requesting a waiver any hospital operated exclusively for a prepaid group practice health
 3 plan that serves at least 200,000 members in this state and that has been issued a certificate of au-
 4 thority by the Department of Consumer and Business Services as a health care service contractor
 5 if the application requesting a waiver meets the requirements of 42 C.F.R. 433.68(e)(1).

6 (3) The [*department*] **Oregon Health Authority** shall notify waived facilities that the [*depart-*
 7 *ment*] **authority** has submitted the application to the Centers for Medicare and Medicaid Services
 8 to request a waiver of the broad-based tax requirement pursuant to 42 C.F.R. 433.68(e) to exempt
 9 waived facilities from the assessment imposed under section 2, **chapter 736, Oregon Laws 2003**
 10 [*of this 2003 Act*].

11 (4) If an application to the Centers for Medicare and Medicaid Services for a waiver of the
 12 broad-based tax requirement pursuant to 42 C.F.R. 433.68(e) is denied, the Director of [*Human Ser-*
 13 *vices*] **the Oregon Health Authority** may resubmit the application with appropriate changes to re-
 14 ceive a waiver of the broad-based tax requirement.

15 **SECTION 16.** Section 6, chapter 736, Oregon Laws 2003, is amended to read:

16 **Sec. 6.** (1) Any hospital that has paid an amount that is not required under sections 1 to 9,
 17 **chapter 736, Oregon Laws 2003**, [*of this 2003 Act*] may file a claim for refund with the [*Department*
 18 *of Human Services*] **Oregon Health Authority**.

19 (2) Any hospital that is aggrieved by an action of the [*Department of Human Services*] **Oregon**
 20 **Health Authority** or by an action of the Director of [*Human Services*] **the Oregon Health Au-**
 21 **thority** taken pursuant to subsection (1) of this section [*shall be*] **is** entitled to notice and an op-
 22 portunity for a contested case hearing under ORS chapter 183.

23 **SECTION 17.** Section 7, chapter 736, Oregon Laws 2003, is amended to read:

24 **Sec. 7.** The [*Department of Human Services*] **Oregon Health Authority** may audit the records
 25 of any hospital in this state to determine compliance with sections 1 to 9, **chapter 736, Oregon**
 26 **Laws 2003** [*of this 2003 Act*]. The [*department*] **authority** may audit records at any time for a period
 27 of five years following the date an assessment is due to be reported and paid under section 2,
 28 **chapter 736, Oregon Laws 2003** [*of this 2003 Act*].

29 **SECTION 18.** Section 8, chapter 736, Oregon Laws 2003, as amended by section 1, chapter 757,
 30 Oregon Laws 2005, is amended to read:

31 **Sec. 8.** Amounts collected by the [*Department of Human Services*] **Oregon Health Authority**
 32 from the assessments imposed under section 2, chapter 736, Oregon Laws 2003, shall be deposited
 33 in the Hospital Quality Assurance Fund established under section 9, chapter 736, Oregon Laws 2003.
 34

35 **CAPTIONS**

36
 37 **SECTION 19.** **The unit captions used in this 2013 Act are provided only for the conven-**
 38 **ience of the reader and do not become part of the statutory law of this state or express any**
 39 **legislative intent in the enactment of this 2013 Act.**
 40

41 **OPERATIVE AND EFFECTIVE DATES**

42
 43 **SECTION 20.** (1) **The amendments to section 2, chapter 736, Oregon Laws 2003, section**
 44 **8, chapter 867, Oregon Laws 2009, and section 14, chapter 602, Oregon Laws 2011, by sections**
 45 **1, 11 and 12 of this 2013 Act become operative October 1, 2013.**

1 **(2) The repeal of ORS 414.746 by section 5 of this 2013 Act becomes operative October 1,**
2 **2013.**

3 **(3) The repeal of ORS 414.721, 743.951, 743.960, 743.961, 743.965 and 743.990 and sections 1,**
4 **9, 10, 11 and 16, chapter 867, Oregon Laws 2009, by section 6 of this 2013 Act becomes oper-**
5 **ative January 2, 2015.**

6 **(4) The amendments to ORS 291.055, 414.736, 731.292 and 731.840 by sections 7 to 10 of this**
7 **2013 Act become operative January 2, 2015.**

8 **SECTION 21. This 2013 Act takes effect on the 91st day after the date on which the 2013**
9 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

10