

# Senate Bill 665

Sponsored by Senator BEYER, Representative NOSSE

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates Hospital Rate Commission in Oregon Health Authority to review hospital charges billed by certain hospitals and recommend to Oregon Health Authority whether to approve charges as reasonable based on prescribed criteria. Specifies membership and duties of commission. Imposes civil penalty on hospital that bills unreasonable charges. Allows persons filing complaint with commission to recover reasonable attorney fees and costs if authority determines that charge to person for hospital services was unreasonable.

Requires hospitals to pay fee to commission. Creates Hospital Rate Commission Fund consisting of fees and fines collected by commission. Continuously appropriates moneys in fund to commission for carrying out provisions of Act.

## A BILL FOR AN ACT

1 Relating to hospital charges; creating new provisions; and amending ORS 413.011.

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

3 **SECTION 1. As used in sections 1 to 9 of this 2015 Act:**

4 (1) **"Charge" means the amount billed to a patient or to a third party payer that is re-**  
5 **sponsible for the hospital expense of the patient for a hospital service or supply provided to**  
6 **the patient.**

7 (2) **"Hospital" has the meaning given that term in ORS 442.015, excluding a:**

8 (a) **Hospital operated by the United States Department of Veterans Affairs;**

9 (b) **Special inpatient care facility, as defined by the Oregon Health Authority by rule;**

10 (c) **Pediatric specialty hospital that provides care to children at no charge;**

11 (d) **State hospital; and**

12 (e) **Hospital that receives more than 50 percent of its gross revenue from associated**  
13 **comprehensive group-practice prepayment health care service plans.**

14 **SECTION 2. (1) The Hospital Rate Commission is established in the Oregon Health Au-**  
15 **thority for the purpose of:**

16 (a) **Constraining the growth of the cost of hospitalization;**

17 (b) **Ensuring that hospitals have the financial ability to provide efficient, high quality**  
18 **services for residents in this state; and**

19 (c) **Increasing the equity and fairness of hospital financing across all hospitals in this**  
20 **state.**

21 (2) **The commission consists of seven members appointed by the Governor who have di-**  
22 **verse health care experience including, but not limited to, hospital administrators and health**  
23 **care consumers, payers and providers.**

24 (3) **The term of office of each member is four years, but a member serves at the pleasure**  
25 **of the Governor. Before the expiration of the term of a member, the Governor shall appoint**  
26 **a successor whose term begins on January 1 next following the expiration of the term of the**  
27

**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 member. A member is eligible for reappointment. If there is a vacancy for any cause, the  
2 Governor shall make an appointment to become immediately effective for the unexpired  
3 term.

4 (4) The Governor shall designate the chairperson, who shall serve at the pleasure of the  
5 Governor.

6 (5) The Governor may at any time remove a member for any cause deemed sufficient by  
7 the Governor. Before the removal the Governor shall give the member notice of the  
8 allegations, and an opportunity for a hearing within 10 days thereafter. The hearing shall be  
9 open to the public. If the member is removed, the Governor shall file in the office of the  
10 Secretary of State a complete statement of all allegations made against the member and the  
11 findings with a record of the proceedings. Such power of removal is absolute, and there is  
12 no right of review of the same in any court.

13 (6) A member of the commission is entitled to compensation and expenses as provided in  
14 ORS 292.495.

15 (7) A majority of the members of the commission constitutes a quorum for the trans-  
16 action of business, for the performance of any duty or for the exercise of any power of the  
17 commission.

18 (8) The commission shall meet at least once every six months at a place, day and time  
19 determined by the commission. The commission may also meet at other times and places  
20 specified by the call of the chairperson or of a majority of the members of the commission.

21 **SECTION 3.** (1) The Hospital Rate Commission shall be responsible for reviewing hospital  
22 charges and recommending to the Oregon Health Authority whether to approve each charge.  
23 The authority shall consider the commission's recommendations and shall approve or disap-  
24 prove all charges. A hospital may not bill a charge for a service if the charge has not been  
25 approved by the authority, unless the charge is equal to or less than the Medicare payment  
26 rate.

27 (2) The authority shall prescribe by rule the form, content, manner and frequency of the  
28 reporting of charges by hospitals.

29 (3) The authority may not approve a hospital charge that is unreasonable as prescribed  
30 by the authority. A charge is unreasonable if it is based on inefficient or inappropriate use  
31 of existing capacity, duplicated services and failure to use less costly alternatives in meeting  
32 the needs of patients. Any charge that is equal to or less than the Medicare payment rate  
33 shall be considered reasonable.

34 (4) If the commission recommends disapproval of a hospital charge, the hospital may  
35 request a hearing. Except as provided in subsection (5) of this section, the hearing shall be  
36 conducted in accordance with ORS 183.413 to 183.470.

37 (5) A hearing conducted under subsection (4) of this section shall be open to the public.  
38 At least 30 days before the date of the hearing, the authority shall provide notice of the  
39 hearing to all interested parties and to individuals who have requested to receive notice of  
40 the hearing and shall post the notice to the authority's website.

41 (6) Upon the request of the commission, the authority shall compel the attendance of  
42 witnesses before the commission or compel the production of records or other documents  
43 necessary for the commission to perform its duties under subsection (1) of this section.

44 (7) The authority shall implement a process to ensure equitable costs for all patients.

45 **SECTION 4.** (1) Any hospital that fails to comply with an order or subpoena issued by the

1 Oregon Health Authority under section 3 of this 2015 Act or that bills a charge, other than  
 2 a charge that is equal to or less than the Medicare payment rate, that has not been approved  
 3 by the authority under section 3 of this 2015 Act is subject to a civil penalty imposed as  
 4 provided in ORS 183.745.

5 (2) In any proceeding commenced by a complaint of a person under section 5 of this 2015  
 6 Act, if the Hospital Rate Commission recommends and the authority finds that the charge  
 7 is unreasonable, the hospital that billed the charge is liable for the reasonable attorney fees  
 8 and costs of the complainant.

9 **SECTION 5.** (1) Any person may file a complaint with the Hospital Rate Commission to  
 10 assert that a charge billed to the person is unreasonable under section 3 of this 2015 Act.  
 11 The commission shall investigate any complaint and, if the commission finds that there is a  
 12 reasonable basis for the complaint, may institute a review of the charge under section 3 of  
 13 this 2015 Act. Any review proceedings under this section are subject to all laws governing  
 14 the disclosure of protected health information.

15 (2) The commission shall report the results of its review to the Oregon Health Authority,  
 16 including a recommendation as to whether the commission finds the charge to be unrea-  
 17 sonable. The authority shall act on the recommendation no later than 45 days after the date  
 18 of the recommendation.

19 (3) If the authority finds that the charge is unreasonable, the hospital shall reduce the  
 20 charge to an amount that the authority finds to be reasonable.

21 **SECTION 6.** (1) A member of the Hospital Rate Commission may not:

22 (a) Hold any pecuniary interest in any business entity conducting operations with a hos-  
 23 pital if the hospital's charges are subject to review by the commission; or

24 (b) Hold any pecuniary interest in, have any contract of employment with or have any  
 25 substantial voluntary transactions with any hospital if the hospital's charges are subject to  
 26 the commission's review.

27 (2) The prohibitions of subsection (1) of this section apply to the immediate family  
 28 members of each commissioner.

29 (3) If the Governor determines that any commissioner or immediate family member of  
 30 a commissioner holds or has acquired a pecuniary interest described in subsection (1) or (2)  
 31 of this section, the Governor shall remove the commissioner in the manner provided in sec-  
 32 tion 2 of this 2015 Act.

33 (4) Subsection (3) of this section does not apply to a commissioner if the commissioner,  
 34 or the commissioner's immediate family member, holds or acquires any pecuniary interest  
 35 described in subsection (1) or (2) of this section, advises the Governor of the interest and  
 36 causes divestiture of the interest within a time specified by the Governor.

37 (5) Each commissioner shall file with the Governor a statement regarding holdings of the  
 38 commissioner, and the holdings of the commissioner's immediate family members, of any  
 39 pecuniary interest described in subsection (1) or (2) of this section. A commissioner shall file  
 40 a supplementary statement as such a pecuniary interest is acquired or divested. The state-  
 41 ment must be in a form prescribed by the Oregon Health Authority.

42 (6) The Governor shall dismiss a commissioner:

43 (a) Who fails to file the statement required by subsection (5) of this section before the  
 44 11th day after the date of employment.

45 (b) Who fails to file the supplementary statement required by subsection (5) of this sec-

1 tion before the 11th day after the acquisition of a pecuniary interest.

2 (c) Who fails to cause divestiture of a pecuniary interest within the time specified by the  
3 Governor pursuant to subsection (4) of this section.

4 (7) A commissioner may appeal a dismissal under subsection (6) of this section in ac-  
5 cordance with contested case procedures in ORS chapter 183.

6 **SECTION 7.** Notwithstanding the term of office specified by section 2 of this 2015 Act,  
7 of the members first appointed to the Hospital Rate Commission:

8 (1) Two shall serve for a term ending December 31, 2017.

9 (2) Two shall serve for a term ending December 31, 2018.

10 (3) Three shall serve for a term ending on the earlier of the date four years after the  
11 appointment or December 31, 2019.

12 **SECTION 8.** (1) The Hospital Rate Commission Fund is established in the State Treasury,  
13 separate and distinct from the General Fund, consisting of all fees and fines collected by the  
14 Hospital Rate Commission under sections 4 and 9 of this 2015 Act. Moneys in the fund are  
15 continuously appropriated to the Hospital Rate Commission for carrying out the provisions  
16 of sections 1 to 9 of this 2015 Act.

17 (2) The Hospital Rate Commission shall keep a record of all moneys deposited in the  
18 Hospital Rate Commission Fund. The record must indicate by separate cumulative accounts  
19 the source from which the moneys are derived and the individual activity or program against  
20 which each withdrawal is charged.

21 **SECTION 9.** (1) Subject to the provisions of subsections (2) and (3) of this section, each  
22 hospital shall pay a fee to the Hospital Rate Commission in each calendar year. The amount  
23 of the fee shall equal the amount that the commission finds and determines to be necessary,  
24 together with the amount of all other fees paid or payable to the commission by hospitals in  
25 the current calendar year, to defray the costs of performing the duties imposed by law upon  
26 the commission under sections 1 to 9 of this 2015 Act.

27 (2) On or after March 1 of each year, the commission shall determine the percentage rate  
28 of the fee required to be paid to the commission by hospitals and shall notify each hospital.  
29 A hospital shall pay to the commission the fee or portion of the fee so computed upon the  
30 date specified in the notice. The date of payment must be at least 15 days after the date of  
31 mailing of the notice.

32 (3) The fee payable under subsection (1) of this section by each hospital may not be less  
33 than \$10 or more than 0.25 percent of the hospital's gross revenue, as defined in ORS 442.015,  
34 derived within this state in the preceding calendar year.

35 (4) The commission may use any of its investigatory and enforcement powers provided  
36 under section 3 of this 2015 Act for the purpose of administering and enforcing the provisions  
37 of this section.

38 **SECTION 10.** ORS 413.011 is amended to read:

39 413.011. (1) The duties of the Oregon Health Policy Board are to:

40 (a) Be the policy-making and oversight body for the Oregon Health Authority established in ORS  
41 413.032 and all of the authority's departmental divisions.

42 (b) Develop and submit a plan to the Legislative Assembly by December 31, 2010, to provide and  
43 fund access to affordable, quality health care for all Oregonians by 2015.

44 (c) Develop a program to provide health insurance premium assistance to all low and moderate  
45 income individuals who are legal residents of Oregon.

1 (d) Establish and continuously refine uniform, statewide health care quality standards for use  
2 by all purchasers of health care, third-party payers and health care providers as quality performance  
3 benchmarks.

4 (e) Establish evidence-based clinical standards and practice guidelines that may be used by  
5 providers.

6 (f) Approve and monitor community-centered health initiatives described in ORS 413.032 (1)(h)  
7 that are consistent with public health goals, strategies, programs and performance standards  
8 adopted by the Oregon Health Policy Board to improve the health of all Oregonians, and shall reg-  
9 ularly report to the Legislative Assembly on the accomplishments and needed changes to the initi-  
10 atives.

11 (g) Establish cost containment mechanisms to reduce health care costs.

12 (h) Ensure that Oregon's health care workforce is sufficient in numbers and training to meet the  
13 demand that will be created by the expansion in health coverage, health care system transforma-  
14 tions, an increasingly diverse population and an aging workforce.

15 (i) Work with the Oregon congressional delegation to advance the adoption of changes in federal  
16 law or policy to promote Oregon's comprehensive health reform plan.

17 (j) Establish a health benefit package in accordance with ORS 741.340 to be used as the baseline  
18 for all health benefit plans offered through the Oregon health insurance exchange.

19 (k) Investigate and report annually to the Legislative Assembly on the feasibility and advis-  
20 ability of future changes to the health insurance market in Oregon, including but not limited to the  
21 following:

22 (A) A requirement for every resident to have health insurance coverage.

23 (B) A payroll tax as a means to encourage employers to continue providing health insurance to  
24 their employees.

25 (C) The implementation of a system of interoperable electronic health records utilized by all  
26 health care providers in this state.

27 (L) Meet cost-containment goals by structuring reimbursement rates to reward comprehensive  
28 management of diseases, quality outcomes and the efficient use of resources by promoting cost-  
29 effective procedures, services and programs including, without limitation, preventive health, dental  
30 and primary care services, web-based office visits, telephone consultations and telemedicine consul-  
31 tations.

32 (m) Oversee the expenditure of moneys from the Health Care Workforce Strategic Fund to sup-  
33 port grants to primary care providers and rural health practitioners, to increase the number of pri-  
34 mary care educators and to support efforts to create and develop career ladder opportunities.

35 (n) Work with the Public Health Benefit Purchasers Committee, administrators of the medical  
36 assistance program and the Department of Corrections to identify uniform contracting standards for  
37 health benefit plans that achieve maximum quality and cost outcomes and align the contracting  
38 standards for all state programs to the greatest extent practicable.

39 **(o) Oversee the review of hospital charges by the Hospital Rate Commission under**  
40 **sections 1 to 9 of this 2015 Act.**

41 (2) The Oregon Health Policy Board is authorized to:

42 (a) Subject to the approval of the Governor, organize and reorganize the authority as the board  
43 considers necessary to properly conduct the work of the authority.

44 (b) Submit directly to the Legislative Counsel, no later than October 1 of each even-numbered  
45 year, requests for measures necessary to provide statutory authorization to carry out any of the

1 board's duties or to implement any of the board's recommendations. The measures may be filed prior  
2 to the beginning of the legislative session in accordance with the rules of the House of Represen-  
3 tatives and the Senate.

4 (3) If the board or the authority is unable to perform, in whole or in part, any of the duties  
5 described in ORS 413.006 to 413.042 and 741.340 without federal approval, the authority is authorized  
6 to request, in accordance with ORS 413.072, waivers or other approval necessary to perform those  
7 duties. The authority shall implement any portions of those duties not requiring legislative authority  
8 or federal approval, to the extent practicable.

9 (4) The enumeration of duties, functions and powers in this section is not intended to be exclu-  
10 sive nor to limit the duties, functions and powers imposed on the board by ORS 413.006 to 413.042  
11 and 741.340 and by other statutes.

12 (5) The board shall consult with the Department of Consumer and Business Services in com-  
13 pleting the tasks set forth in subsection (1)(j) and (k)(A) of this section.

14 **SECTION 11. Sections 3 to 5 of this 2015 Act become operative on July 1, 2017.**

15 **SECTION 12. For hospital charges and fees that are based upon a contract in effect on**  
16 **the operative date of section 3 of this 2015 Act, sections 3 to 5 of this 2015 Act apply to the**  
17 **renewal or extension of such contracts that occurs on or after the operative date of section**  
18 **3 of this 2015 Act.**

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