

Chapter 781 Oregon Laws 2003

AN ACT

HB 3630

Relating to physicians; creating new provisions; amending ORS 656.632; and declaring an emergency.

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

SECTION 1. (1) The State Accident Insurance Fund Corporation shall establish a reinsurance program for medical professional liability insurance policies issued by authorized insurers in the calendar years 2004, 2005, 2006 and 2007 to doctors of medicine and doctors of osteopathy licensed under ORS chapter 677 who:

(a) Have a rural practice according to the criteria established by the Office of Rural Health for purposes of ORS 316.143;

(b) Hold an active, unrestricted license to practice medicine; and

(c) Have an in-force policy of medical professional liability insurance with an authorized insurer with minimum limits of coverage of \$1 million per occurrence and \$1 million aggregate.

(2) The reinsurance program established in accordance with this section must be carried out in accordance with the plan approved under section 2 of this 2003 Act.

(3) The coverage provided under the reinsurance program shall be priced by the State Accident Insurance Fund Corporation, in accordance with rate standards or percentage reductions determined by the Director of the Department of Consumer and Business Services after consultation with the Office of Rural Health, at rates that will significantly reduce premiums for doctors to whom this section applies so as to make the medical professional liability insurance reasonably affordable.

(4)(a) The State Accident Insurance Fund Corporation may provide coverage as authorized in this section on such terms and conditions as the State Accident Insurance Fund Corporation determines to be reasonable, subject to the requirements and other terms of the plan approved under section 2 of this 2003 Act.

(b) Notwithstanding paragraph (a) of this subsection, the State Accident Insurance Fund Corporation must make all reasonable efforts consistent with the goals of sections 1 to 7, 10 to 12 and 14 of this 2003 Act to transfer any assumed reinsurance liability.

(5) The State Accident Insurance Fund Corporation is not required to provide coverage for risks under this section that exceed the amount the director is authorized to credit against assessments in section 7 of this 2003 Act, but the State Accident Insurance Fund Corporation is liable for all risks that it covers under this section.

SECTION 2. (1) The State Accident Insurance Fund Corporation shall submit to the Director of the Department of Consumer and Business Services and to the Office of Rural Health a plan for carrying out the provisions of section 1 of this 2003 Act. The director and the office shall approve the plan following a determination that the plan:

(a) Satisfies the purposes of sections 1 to 7 of this 2003 Act.

(b) Obligates the State Accident Insurance Fund Corporation to carry out the reinsurance program established under section 1 of this 2003 Act by any appropriate coverage, which may consist of financial reinsurance, on an insurer-to-insurer basis.

(c) Provides administrative management for the reinsurance program.

(d) Is financially sound.

(e) Facilitates payments from the Rural Medical Liability Reinsurance Fund established by section 5 of this 2003 Act and is otherwise fair and reasonable to the participating primary insurers and their insureds.

(f) Establishes appropriate underwriting and rating standards.

(g) Minimizes transactional and claim costs for the State Accident Insurance Fund Corporation and for primary users.

(h) Is appropriate in relation to the insurance market in this state.

(i) Effectively reduces premiums for medical professional liability insurance for doctors eligible for coverage under the plan.

(2)(a) The plan approved under this section must provide, to the extent funds are available from the credit provided in section 7 of this 2003 Act for the annual assessment owed by the State Accident Insurance Fund Corporation under ORS 656.612, for a reduction in premiums as provided in this subsection for medical professional liability insurance for eligible doctors of medicine and doctors of osteopathy. The reduction of premium shall be:

(A) Up to 80 percent for doctors specializing in obstetrics;

(B) Up to 60 percent for doctors specializing in family or general practice who provide obstetrical services; and

(C) Up to 40 percent for all other eligible doctors.

(b) If the funds available to provide premium reductions are insufficient to provide the maximum reduction, the plan shall provide for proportional reductions to all eligible doctors.

(c) Premium reductions shall be a percentage of the actual premium charged for medical professional liability insurance in the market of authorized insurers for limits purchased of up to \$1 million per occurrence and \$3 million annual aggregate.

(d) Premium reductions shall be effective beginning with the first premium payment in each calendar year under the reinsurance program.

(3) The plan adopted under this section may not obligate the State Accident Insurance Fund Corporation to provide coverage under section 1 of this 2003 Act at a cost to the State Accident Insurance Fund Corporation that exceeds an average of \$10 million for each policy year for the four years for which the coverage is provided. The cost to the State Accident Insurance Fund Corporation shall be the actuarially determined costs of the reinsurance program.

(4)(a) The State Accident Insurance Fund Corporation shall submit the plan required under this section to the director and the office not later than September 30, 2003.

(b) The director and the office shall approve, disapprove or require changes to the plan as promptly as reasonably possible in order to enable the State Accident Insurance Fund Corporation to have the plan operational by January 1, 2004. The plan may be implemented only after joint approval by the director and the office.

SECTION 3. (1) For the purposes of the reinsurance program for medical professional liability insurance established under section 1 of this 2003 Act, the State Accident Insurance Fund Corporation is subject as a domestic insurer to ORS 731.248, 731.252, 731.256, 731.258, 731.260, 731.296 to 731.316, 731.488, 731.574, 731.592, 731.594, 731.730, 731.731, 731.735, 731.737, 731.988, 731.992, 733.010 to 733.060, 733.140 to 733.170 and 733.210. The requirements of the Director of the Department of Consumer and Business Services under ORS 733.010 to 733.060, 733.140 to 733.170 and 733.210 govern in the case of a conflict between those requirements and the requirements of any accounting system prescribed by the Oregon Department of Administrative Services.

(2) The State Accident Insurance Fund Corporation is an authorized assuming insurer with respect to reinsurance for medical professional liability insurance for the purposes of ORS 731.509.

SECTION 4. In addition to the purposes and functions for which the State Accident Insurance Fund Corporation is created under ORS 656.752, the State Accident Insurance Fund Corporation is also created for the purpose of carrying out the reinsurance program for medical professional liability insurance established under section 1 of this 2003 Act.

SECTION 5. (1) The Rural Medical Liability Reinsurance Fund is established separate and distinct from the General Fund and shall be held by the State Treasurer. The Rural Medical Liability Reinsurance Fund is established for the purpose of providing coverage under the reinsurance program established under section 1 of this 2003 Act. Interest earned by the Rural Medical Liability Reinsurance Fund shall be credited to the fund.

(2) The State Accident Insurance Fund Corporation shall provide the resources necessary to support and fund coverage provided by the corporation as authorized under section 1 of this 2003 Act.

(3) All moneys received by the State Accident Insurance Fund Corporation for payment to the Rural Medical Liability Reinsurance Fund shall be deposited to and shall become part of the Rural Medical Liability Reinsurance Fund.

(4) All payments authorized to be made by the State Accident Insurance Fund Corporation for coverage under the reinsurance program established under section 1 of this 2003 Act shall be made from the Rural Medical Liability Reinsurance Fund.

(5) Any excess or residual moneys remaining in the Rural Medical Liability Reinsurance Fund after the State Accident Insurance Fund Corporation has made all payments for which the corporation is obligated under section 1 of this 2003 Act, other than moneys that are owed to the State Accident Insurance Fund Corporation, shall be transferred to the Consumer and Business Services Fund.

SECTION 6. (1) If an insurer obtains coverage with the State Accident Insurance Fund Corporation for medical professional liability insurance issued by the insurer to a doctor to whom section 1 of this 2003 Act applies, the insurer shall reduce the premium charged to the doctor in a manner that fully recognizes savings made available by coverage offered under section 1 of this 2003 Act.

(2) An insurer to which subsection (1) of this section applies shall demonstrate the difference in its rates for medical professional liability insurance for purposes of subsection (1) of this section in its filing of rates with the Director of the Department of Consumer and Business Services.

SECTION 7. (1) When the State Accident Insurance Fund Corporation provides coverage through the reinsurance program established under section 1 of this 2003 Act, the Director of the Department of Consumer and Business Services shall credit the purchase price or the amount of the payment, net of any income, to the annual assessment owing by the State Accident Insurance Fund Corporation to the Department of Consumer and Business Services under ORS 656.612. The amount the director credits under this subsection may not exceed an average of \$10 million for each policy year for the four years that coverage is provided under section 1 of this 2003 Act.

(2) The director shall establish by rule the accounting procedures and requirements by which the credit is determined for the assessment under ORS 656.612.

SECTION 8. Notwithstanding ORS 656.632 and 656.634, the State Accident Insurance Fund Corporation may transfer funds from the Industrial Accident Fund to the Rural Medical Liability Reinsurance Fund for the purposes of sections 1 to 7 and 10 to 12 of this 2003 Act and the amendments to ORS 656.632 by section 9 of this 2003 Act.

SECTION 9. ORS 656.632 is amended to read:

656.632. (1) The Industrial Accident Fund is continued. This fund shall be held by the State Treasurer and by the State Treasurer deposited in such banks as are authorized to receive deposits of general funds of the state.

(2) All moneys received by the State Accident Insurance Fund Corporation **for workers' compensation purposes** under this chapter, shall be paid forthwith to the State Treasurer and shall become a part of the Industrial Accident Fund. However, any assessments collected for the Director of the Department of Consumer and Business Services under this chapter and deposited in the Industrial Accident Fund may thereafter be transferred to the director and deposited in the Consumer and Business Services Fund.

(3) All payments authorized to be made by the State Accident Insurance Fund Corporation **for workers' compensation purposes** by this chapter, including all salaries, clerk hire and all other expenses, shall be made from the Industrial Accident Fund.

SECTION 10. (1) There is created the Professional Panel for Analysis of Medical Professional Liability Insurance consisting of six members appointed as follows:

(a) The President of the Senate shall appoint two members, one of whom must have professional expertise in gathering, evaluating or applying research data.

(b) The Speaker of the House of Representatives shall appoint two members, one of whom must have professional expertise in gathering, evaluating or applying research data.

(c) The Governor shall appoint two members, one of whom must have professional expertise in gathering, evaluating or applying research data.

(2) Members of the panel may not have a financial or professional affiliation with:

(a) Medical care providers;

(b) Insurers providing professional liability insurance; or

(c) Personal injury litigation.

(3) The panel shall:

(a) Advise the State Accident Insurance Fund Corporation in its selection of the consulting firm required under section 11 of this 2003 Act;

(b) Establish a work plan to be carried out by the consulting firm;

(c) Review and approve the work product of the consulting firm; and

(d) Evaluate the data reported by the consulting firm and make findings incorporating the data. The findings shall be included in the report required under subsection (10) of this section.

(4) The panel is subject to the provisions of ORS 171.605 to 171.635.

(5) The panel shall use the services of permanent legislative staff to the greatest extent practicable.

(6) All agencies of state government, as defined in ORS 174.111, are directed to assist the panel in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the panel consider necessary to perform their duties.

(7) A majority of the members of the panel constitutes a quorum for the transaction of business.

(8) Official action by the panel requires the approval of a majority of the members of the panel.

(9) The panel shall elect one of its members to serve as chairperson.

(10) The panel shall submit a report to the Governor and to the Legislative Assembly in the manner provided by ORS 192.245, no later than December 15, 2004.

(11) Members of the panel who are not members of the Legislative Assembly are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties, in the manner and amounts provided for in ORS 292.495. Claims for expenses shall be paid out of funds in the Rural Medical Liability Reinsurance Fund established under section 5 of this 2003 Act.

(12) The panel may seek public and private funds to assist in the work of the panel.

SECTION 11. (1) The State Accident Insurance Fund Corporation shall select a consulting firm to perform services required under this section. The firm selected must be a regional or national consulting firm with at least 10 accredited casualty actuaries on staff and must possess demonstrated accounting, financial and research capabilities. The firm must also have experience in the casualty insurance industry and particularly in the field of medical professional liability insurance.

(2) Under the direction of the Professional Panel for Analysis of Medical Professional Liability Insurance created under section 10 of this 2003 Act, the consulting firm shall gather, analyze and evaluate data on the availability, costs and transaction of medical professional liability insurance that consider Oregon market trends on premiums and losses, other factors affecting the competitiveness of the Oregon market and regulatory options for minimizing cyclical trends.

(3) The costs of the services of the consulting firm selected under subsection (1) of this section shall be paid by the State Accident Insurance Fund Corporation from the amount available for credit to the annual assessment owing by the State Accident Insurance Fund Corporation under section 7 of this 2003 Act. The cost of services may not exceed two percent of the maximum average amount that may be credited to the State Accident Insurance Fund Corporation for one year under section 7 of this 2003 Act.

SECTION 12. The Office for Oregon Health Policy and Research and the Office of Rural Health shall make recommendations to the Governor and to the Seventy-third Legislative Assembly concerning methods to attract and retain doctors in rural areas of the state.

SECTION 13. ORS 656.632, as amended by section 9 of this 2003 Act, is amended to read:

656.632. (1) The Industrial Accident Fund is continued. This fund shall be held by the State Treasurer and by the State Treasurer deposited in such banks as are authorized to receive deposits of general funds of the state.

(2) All moneys received by the State Accident Insurance Fund Corporation [*for workers' compensation purposes*] under this chapter, shall be paid forthwith to the State Treasurer and shall become a part of the Industrial Accident Fund. However, any assessments collected for the Director of the Department of Consumer and Business Services under this chapter and deposited in the Industrial Accident Fund may thereafter be transferred to the director and deposited in the Consumer and Business Services Fund.

(3) All payments authorized to be made by the State Accident Insurance Fund Corporation [*for workers' compensation purposes*] by this chapter, including all salaries, clerk hire and all other expenses, shall be made from the Industrial Accident Fund.

SECTION 14. (1) The State Accident Insurance Fund Corporation shall continue paying reinsurance claims incurred or made prior to January 1, 2008, from the Rural Medical Liability Reinsurance Fund until the State Accident Insurance Fund Corporation has extinguished its liabilities for reinsurance issued under section 1 of this 2003 Act by payment of claims or by purchase of reinsurance. Purchase of reinsurance under this subsection shall be subject to approval by the Director of the Department of Consumer and Business Services.

(2) Sections 1 to 8 and 10 to 12 of this 2003 Act are repealed January 2, 2014.

(3) The amendments to ORS 656.632 by section 13 of this 2003 Act become operative January 2, 2014.

SECTION 15. (1) The Director of the Department of Consumer and Business Services shall report in the manner provided by ORS 192.245 to the Seventy-third and Seventy-fourth Legislative Assemblies on the performance of the program established under section 1 of this 2003 Act.

(2) The State Accident Insurance Fund Corporation shall provide all data and other information required by the director to prepare the reports required under this section.

SECTION 16. This 2003 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect on its passage.

Approved by the Governor September 17, 2003

Filed in the office of Secretary of State September 18, 2003

Effective date September 17, 2003
