

# Enrolled Senate Bill 183

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CHAPTER .....

AN ACT

Relating to reinsurance program for medical professional liability insurance policies provided by State Accident Insurance Fund Corporation; creating new provisions; amending sections 1, 2, 6, 7, 14 and 15, chapter 781, Oregon Laws 2003; and declaring an emergency.

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

**SECTION 1.** Section 1, chapter 781, Oregon Laws 2003, is amended to read:

**Sec. 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, **2008, 2009, 2010 and 2011** to doctors of medicine and doctors of osteopathy licensed under ORS chapter 677 **and nurse practitioners certified by the Oregon State Board of Nursing** who:

(a) Have a rural practice [according to] **that meets** the criteria established by the Office of [Rural Health for purposes of ORS 315.613;] **Rural Health that applied as of January 1, 2004, for purposes of ORS 315.613, excluding urbanized areas, as defined by the United States Census Bureau according to the most recent federal decennial census, pursuant to the authority of the United States Department of Commerce under 13 U.S.C. 141;**

(b) Hold an active, unrestricted license to practice medicine **or are currently certified as a nurse practitioner;** [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[.]; **and**

**(d) Are willing to serve patients with Medicare coverage and patients receiving medical assistance provided under Medicaid in at least the same proportion to their total number of patients as the Medicare and Medicaid populations represent to the total number of patients in need of care in the rural areas of the counties in which the doctors or nurse practitioners practice, as determined by the Office of Rural Health. The Office of Rural Health shall establish by rule criteria for and procedures for the annual attestation of compliance by participating doctors and nurse practitioners with the requirements of this paragraph. The requirements of this paragraph do not apply to nurse practitioners participating in the program who are employed by licensed physicians.**

(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], **chapter 781, Oregon Laws 2003.**

(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 **and nurse practitioners** 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], **chapter 781, Oregon Laws 2003**.

(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], **chapter 781, Oregon Laws 2003**, 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] **exceeds** the amount the director is authorized to credit against assessments in section 7 [of this 2003 Act], **chapter 781, Oregon Laws 2003**, but the State Accident Insurance Fund Corporation is liable for all risks that it covers under this section.

**(6) As used in this section:**

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

(b) **“Medicare” means the “Health Insurance for the Aged Act,” Title XVIII of the Social Security Amendments of 1965.**

**SECTION 2.** Section 2, chapter 781, Oregon Laws 2003, is amended to read:

**Sec. 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], **chapter 781, Oregon Laws 2003**. 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], **chapter 781, Oregon Laws 2003**.

(b) Obligates the State Accident Insurance Fund Corporation to carry out the reinsurance program established under section 1 [of this 2003 Act], **chapter 781, Oregon Laws 2003**, 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], **chapter 781, Oregon Laws 2003**, 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 **and nurse practitioners** 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], **chapter 781, Oregon Laws 2003**, 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] **and nurse practitioners**. The reduction of premium shall be:

(A) [Up to] 80 percent for doctors specializing in obstetrics **and nurse practitioners certified for obstetric care**;

(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.*]

(C) **Up to 40 percent for doctors and nurse practitioners engaging in one or more of the following practices:**

(i) **Family practice without obstetrics.**

(ii) **General practice.**

(iii) **Internal medicine.**

(iv) **Geriatrics.**

(v) **Pulmonary medicine.**

(vi) **Pediatrics.**

(vii) **General surgery.**

(viii) **Anesthesiology; and**

(D) **Up to the following percentages for doctors and nurse practitioners other than those included in subparagraph (A), (B) or (C) of this paragraph:**

(i) **35 percent, for calendar year 2008.**

(ii) **25 percent, for calendar year 2009.**

(iii) **15 percent, for calendar year 2010.**

(iv) **15 percent, for calendar year 2011.**

(b) **Notwithstanding section 1 (1)(a), chapter 781, Oregon Laws 2003, a doctor who meets all the criteria for eligibility for a reduction in premiums established in section 1 (1)(b), (c) and (d), chapter 781, Oregon Laws 2003, who has a rural practice that meets the criteria established by the Office of Rural Health that applied as of January 1, 2004, for the purposes of ORS 315.613, and is located in an urbanized area of Jackson County, as defined by the United States Census Bureau according to the most recent federal decennial census taken pursuant to the authority of the United States Department of Commerce under 13 U.S.C. 141(a), and who specializes in obstetrics is eligible for a reduction in premiums as provided in paragraph (a)(A) of this subsection, and a doctor who specializes in family practice and provides obstetrical services, or in general practice and provides obstetrical services, or a nurse practitioner who is certified in obstetrical care, is eligible for a reduction in premiums as provided in paragraph (a)(B) of this subsection.**

[*(b)*] (c) **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.*] lowering or eliminating the amount provided for premium reductions for the doctors and nurse practitioners eligible for a reduction in premiums under paragraph (a)(D) of this subsection. If, after eliminating all premium reductions for the doctors and nurse practitioners eligible for a reduction in premiums under paragraph (a)(D) of this subsection, the remaining funds are insufficient to provide the maximum reductions provided under the plan, the amounts provided for a reduction in premiums for doctors and nurse practitioners eligible under paragraph (a)(C) of this subsection shall be lowered or eliminated.**

[*(c)*] (d) **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. However, the premium reduction for a doctor or nurse practitioner referred to in paragraph (a)(C) or (D) of this subsection shall be the lesser of the percentage of the actual premium or the premium paid by the doctor or nurse practitioner for calendar year 2007. For a doctor or nurse practitioner who first becomes eligible for the program on or after January 1, 2008, the premium reduction shall be the lesser of the percentage of either the actual premium or the premium for the first eligibility year determined according to 2007-based rates. When determining the lesser amount under this paragraph, any step increases in the premium owing to the claims-made nature of the policy may not be considered.**

[(d)] (e) 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], **chapter 781, Oregon Laws 2003**, at a cost to the State Accident Insurance Fund Corporation that exceeds an average of [\$10] \$5 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 2a.** Section 6, chapter 781, Oregon Laws 2003, is amended to read:

**Sec. 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 **or nurse practitioner** to whom section 1, **chapter 781, Oregon Laws 2003**, [of this 2003 Act] applies, the insurer shall reduce the premium charged to the doctor **or nurse practitioner** in a manner that fully recognizes savings made available by coverage offered under section 1, **chapter 781, Oregon Laws 2003** [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 3.** Section 7, chapter 781, Oregon Laws 2003, is amended to read:

**Sec. 7.** (1) When the State Accident Insurance Fund Corporation provides coverage through the reinsurance program established under section 1 [of this 2003 Act], **chapter 781, Oregon Laws 2003**, 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] \$5 million for each policy year for [the four years that] **which** coverage is provided under section 1 [of this 2003 Act], **chapter 781, Oregon Laws 2003**.

(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 4.** Section 14, chapter 781, Oregon Laws 2003, is amended to read:

**Sec. 14.** (1) The State Accident Insurance Fund Corporation shall continue paying reinsurance claims incurred or made prior to January 1, [2008,] **2012**, 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], **chapter 781, Oregon Laws 2003**, 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], **chapter 781, Oregon Laws 2003**, are repealed January 2, 2014.

(3) The amendments to ORS 656.632 by section 13 [of this 2003 Act], **chapter 781, Oregon Laws 2003**, become operative January 2, 2014.

**SECTION 5.** Section 15, chapter 781, Oregon Laws 2003, is amended to read:

**Sec. 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 **and Seventy-fifth** Legislative Assemblies on the performance of the program established under section 1 [of this 2003 Act], **chapter 781, Oregon Laws 2003**.

(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 6.** (1)(a) The State Accident Insurance Fund Corporation shall submit any proposed modifications to the plan required under section 2, chapter 781, Oregon Laws 2003, to the Director of the Department of Consumer and Business Services and to the Office of Rural Health not later than September 30, 2007.

(b) The director and the office shall approve, disapprove or require changes to the plan or to the proposed modifications to the plan as promptly as reasonably possible in order to enable the State Accident Insurance Fund Corporation to have the modified plan operational by January 1, 2008. The modified plan may be implemented only after the joint approval by the director and the office.

(2) The plan modified under subsection (1) of this section must provide that a doctor or nurse practitioner whose coverage is provided through a health care facility as defined in ORS 442.400, and who otherwise meets the requirements of section 1 (1), chapter 781, Oregon Laws 2003, is eligible to participate in the program beginning January 1, 2008, if the office determines that the doctor or nurse practitioner, as of the later of January 1, 2007, or the date on which the doctor or nurse practitioner first commences a rural practice:

(a) Is not an employee of the health care facility;

(b) Is covered by a medical professional liability insurance policy that names the doctor or nurse practitioner and separately calculates the premium for the doctor or nurse practitioner; and

(c) Fully reimburses the health care facility for the premium calculated for the doctor or nurse practitioner.

**SECTION 7.** Notwithstanding section 1 (1)(a), chapter 781, Oregon Laws 2003, for the purpose of establishing eligibility of doctors of medicine and doctors of osteopathy for participation in the reinsurance program for medical professional liability insurance policies established by section 1, chapter 781, Oregon Laws 2003, for calendar year 2007, a rural practice is defined as a practice that meets the criteria established by the Office of Rural Health that applied as of January 1, 2004.

**SECTION 8.** The amendments to sections 1, 2, 6, 7, 14 and 15, chapter 781, Oregon Laws 2003, by sections 1 to 5 of this 2007 Act become operative on January 1, 2008.

**SECTION 9.** This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

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**Passed by Senate May 9, 2007**

**Repassed by Senate June 13, 2007**

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Secretary of Senate

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President of Senate

**Passed by House June 8, 2007**

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Speaker of House

**Received by Governor:**

.....M,....., 2007

**Approved:**

.....M,....., 2007

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2007

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Secretary of State