

To: Joint Ways & Means Committee, Human Services Sub-Committee

February 15, 2012

RE: House Bill 4164 – Oregon Health Insurance Exchange Corp.

Members of Joint Ways & Means Committee:

We the volunteers for Oregon Citizen Lobby continue to express reservations in regard to HB 4164 and its potential for ORHIX's unlimited ability to raise fees (see attachment). We question the constitutionality of this issue, as revenue raising normally requires a majority vote of the Legislature.

We have requested a legal opinion from Legislative Counsel , and recommend holding the bill until an opinion is issued and amendments can be drafted to address the concerns.

The following analysis has been compiled by Dr. Mary Ayala, PhD. Economist

Section 1 (3) (e)

The Oregon Insurance Exchange Corporation shall "**Borrow money and give guarantees to finance its facilities and operations**". [page 1, line 10]

Section 1 (5) **The corporation may not borrow money or give guarantees under subsection (3)(e) of this section unless the obligations of the corporation are payable solely out of the corporation's own resources and do not constitute a pledge of the full faith and credit of the State of Oregon or any of the revenues of this state. The State Treasurer and the State of Oregon may not pay bond-related costs for an obligation incurred by the corporation. A holder of an obligation incurred by the corporation does not have the right to compel the exercise of the taxing power of the state to pay bond-related costs.** [page 1 lines 13-19]

Comment- Section 5 creates a moral hazard issue because one has to ask whether the state would risk allowing the Corporation to fail if it could not repay its debt obligations or cover various operational costs that did not yield anticipated or projected cost savings.

Section (2) The Oregon Health Insurance Exchange Corporation shall establish **one or more accounts** in one or more depositories insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. In a manner consistent with the requirements of ORS 295.001 to 295.108, the corporation shall ensure that sufficient collateral secures any amount of funds on deposit that exceeds the limits of the coverage of the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. **All moneys collected or received by the corporation or placed to the credit of the corporation that are not invested under ORS 741.105 must be deposited to the accounts established under this section, including, but not limited to, moneys received by the corporation through premiums or the imposition of fees under ORS 741.105 and moneys received as grants under ORS 741.310.** [page 30, lines 30-31]

Section 3. **All moneys remaining unexpended in the Oregon Health Insurance Exchange Fund** on the effective date of this 2012 Act shall be deposited to an account established by the Oregon Health Insurance Exchange Corporation under ORS 741.101.[page 42, 44]

Comment: The Corporation will be allowed to collect premiums or fees from insurers in order to cover the Corporation's administrative and operational costs. It can also borrow funds. It must deposit these funds in one or more accounts, but if there are any unexpended funds in any accounts that the Corporation creates, these funds must be deposited into the ORHIX Corporate Fund, which I assume is the fund that has very general restrictions for the use of deposits.

Illustrating, suppose that the Corporation decides to administer a pilot study and it collects fees from CCOs or insurers to do so. After the study is completed a balance remains in the account that was created for that study. The Corporation does not return the surplus to insurers. Instead it deposits the unexpended funds into the Corporation Fund and uses it for another permitted purpose. This requirement provides an incentive to overestimate the costs of particular studies or operational activities in order to always have surplus balances that can be used for other programs, activities, perks, etc. that are off the radar screen.

Section 4 ORS 741.105 is amended to read:

(1) 741.105. The Oregon Health Insurance Exchange Corporation board of directors shall establish, and the corporation shall impose and collect, an administrative charge from all insurers and state programs participating in the health insurance exchange in an amount sufficient to cover the costs of grants to navigators certified under ORS 741.002 and to pay the administrative and operational expenses of the corporation in carrying out ORS 741.001 to 741.540. The charge shall be paid in a manner and at intervals prescribed by the board and shall be deposited in *[the Oregon Health Insurance Exchange Fund]* an account established in ORS 741.101. *[page 4, lines 1-7]*

Section (4) (3)(a) If charges collected under subsection (1) of this section exceed the amounts needed for the administrative and operational expenses of the corporation, the excess moneys collected [shall] may be held and invested and, with the earnings and interest, used by the corporation to offset future net losses or reduce the administrative costs of the corporation. *[page 4, lines 18-21]*

Section 4 (3) (c) The maximum amount of excess moneys that may be held under this subsection is the total administrative and operational expenses anticipated by the corporation for a six-month period. Any moneys received that exceed the maximum shall be applied by the corporation to reduce the charges imposed by this section...refers to administrative charges imposed on insurers that are used to cover administrative and operational expenses. *[page 4, lines 26-29]*

Comment – Section 4 (1) refers to a specific type of administrative charge that all insurers will pay the Corporation. Section 4 (3) (a) does not actually restrict what the Corporation does with these administrative charges because the word ‘shall’ has been changed to ‘may’. So, the Corporation may decide not to retain excess funds in order to offset future administrative costs of the corporation. It may decide to spend the funds. Section 4 (3) (c) says that whatever excess funds [if any] remain in the account described in Section 4 (3) (a) shall be used to reduce future charges described in Section 4(1).

Section 4 (5) In addition to charges imposed Section 4 (1) to the extent permitted by federal law the corporation may impose a fee on insurers and state programs participating in the exchange to cover the cost of commissions of insurance producers that are certified by the corporation to facilitate the participation of individuals and employers in the exchange. *[page 30-31]* Section 4 (6) The board shall establish the charges and fees under this section in accordance with ORS 183.310 to 183.410 and in such a manner that will reasonably and substantially accomplish the objective of subsections (1) and (5) of this section. *[page 32-38].*

Comment - Any unexpended funds in reference to other fees and charges are not subject to the conditions imposed by the requirements of Section 4 (3), they may be subject to federal requirements.