

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division) 410  
Agency and Division Administrative Rules Chapter Number

Sandy Cafourek 500 Summer St. NE, Salem, OR 97301 503-945-6430  
Rules Coordinator Address Telephone

**RULE CAPTION**  
Hospital Assessment Sunset Date Change; Update Language in Rules to Match Oregon Law  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

**ADOPT:**

**AMEND:** OAR 410-050-0700, 410-050-0710, 410-050-0720, 410-050-0730, 410-050-0740, 410-050-0750, 410-050-0760, 410-050-0770, 410-050-0780, 410-050-0790, 410-050-0800, 410-050-0810, 410-050-0820, 410-050-0830, 410-050-0840, 410-050-0850, 410-050-0860, 410-050-0861, 410-050-0870

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 413.042

Other Auth.:

Stats. Implemented: Sections 1 through 14, Chapter 736, Oregon Laws 2003, as amended by sections 1 through 14, Chapter 736, Oregon Laws 2003, sections 1 through 2, Chapter 757, Oregon Laws 2005, sections 1 through 6, Chapter 780, Oregon Laws 2007, section 49 through 54, Chapter 828, Oregon Laws 2009, sections 17 through 23, Chapter 867, Oregon Laws 2009, and sections 2 through 10, Chapter 608, Oregon Laws 2013, and section 2, House Bill 2395, 2015 Regular Session.

**RULE SUMMARY**

The Authority is amending OAR 410-050-0870 to extend the sunset date of the hospital assessment four more years, as required by the passage of House Bill 2395 (2015 Regular Session). The Authority is amending OARs 410-050-0700 through 410-050-0870 to change agency references from the Department of Human Services to the Oregon Health Authority and to change the word "tax" to "assessment" to be consistent with Oregon law. The Authority is amending OAR 410-050-0820 to conform to the agency's current practice for identifying a hospital's address and contact person for any notice required under the hospital assessment rules.

The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

September 17, 2015, by 5 p.m.

Send comments to: [dmap.rules@state.or.us](mailto:dmap.rules@state.or.us)

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

  
Signature

DAVID SUMMIT  
Printed name

8/12/2015  
Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division)	410
Agency and Division	Administrative Rules Chapter Number
Hospital Assessment Sunset Date Change; Update Language in Rules to Match Oregon Law	
Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)	

In the Matter of: The amendment of OAR 410-050-0700, 410-050-0710, 410-050-0720, 410-050-0730, 410-050-0740, 410-050-0750, 410-050-0760, 410-050-0770, 410-050-0780, 410-050-0790, 410-050-0800, 410-050-0810, 410-050-0820, 410-050-0830, 410-050-0840, 410-050-0850, 410-050-0860, 410-050-0861, 410-050-0870

Statutory Authority: ORS 413.042

Other Authority:

Stats. Implemented: Sections 1 through 14, Chapter 736, Oregon Laws 2003, as amended by sections 1 through 14, Chapter 736, Oregon Laws 2003, sections 1 through 2, Chapter 757, Oregon Laws 2005, sections 1 through 6, Chapter 780, Oregon Laws 2007, section 49 through 54, Chapter 828, Oregon Laws 2009, sections 17 through 23, Chapter 867, Oregon Laws 2009, and sections 2 through 10, Chapter 608, Oregon Laws 2013, and section 2, House Bill 2395, 2015 Regular Session.

Need for the Rule(s): The Authority needs to amend OAR 410-050-0870 to extend the sunset date of the hospital assessment four more years, as required by the passage of House Bill 2395 (2015 Regular Session). The Authority needs to amend the OARs 410-050-0700 to 410-050-0870 to change agency references from the Department of Human Services to the Oregon Health Authority and to change the word "tax" to "assessment" to be consistent with Oregon law. The Authority needs to amend OAR 410-050-0820 to conform to the agency's current practice for identifying a hospital's address and contact person for any notice required under the hospital assessment rules.

Documents Relied Upon, and where they are available: The Oregon Health Authority relied on the Oregon laws cited above and located at the Oregon State Legislature website at <https://www.oregonlegislature.gov/>.

Fiscal and Economic Impact: The Authority estimates the extension of the hospital assessment from September 30, 2015, to September 30, 2019, will generate \$1,940 million in revenue to the state from hospitals required to pay the assessment. The Authority will use the revenue to generate \$5,318 million in federal funding to support the Oregon Health Plan and make incentive payments to assessment-paying hospitals that meet performance standards.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): Amending OAR 410-050-0870 will have no fiscal impact on other state agencies or local governments. House Bill 2395 (2015 Regular Session) extends the hospital assessment program four more years and requires hospitals currently required to pay the assessment to continue to pay it through September 30, 2019. Hospitals pay the Authority the assessment based on a percentage of their net revenue, as specified in OAR 410-050-0861. The revenue will continue to be used to fund the Oregon Health Plan, incentive payments to assessment-paying hospitals that meet performance standards, and other payments the agency makes to hospitals.

Amending 410-050-0700 through 410-050-0870 to change agency references from the Department of Human Services to the Oregon Health Authority and to change the word "tax" to "assessment" to be consistent with Oregon law will have no fiscal impact on the Authority, other state agencies, units of local government, the public, or businesses, including small businesses.

Amending OAR 410-050-0820 to conform to the agency's current practice for identifying a hospital's address and contact person for any notice required under the hospital assessment rules will have no fiscal impact on the Authority, other state agencies, units of local government, the public, or businesses, including small businesses.

2. Cost of compliance effect on small business (ORS 183.336):

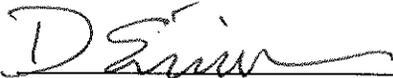
a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: There is no fiscal impact on small businesses. Small businesses, including rural hospitals, are not subject to the assessment.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: There is no fiscal impact on small businesses. Small businesses, including rural hospitals, are not subject to the assessment.

c. Equipment, supplies, labor and increased administration required for compliance: There is no fiscal impact on small businesses. Small businesses, including rural hospitals, are not subject to the assessment.

How were small businesses involved in the development of this rule? The Oregon Association of Hospitals and Health Systems (OAHHS) work directly with the Authority on the hospital assessment program and its rules.

Administrative Rule Advisory Committee consulted?: No If not, why?: Assessment-paying hospitals rely on OAHHS to work directly with the Authority on the hospital assessment program and its rules.

  
Signature

DAVID SUMMITT  
Printed Name

8/12/2015  
Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

## Hospital Tax Assessment

410-050-0700

### Definitions

The following definitions apply to OAR 410-050-0700 to 410-050-0870:

(1) "Authority" means the Oregon Health Authority.

(12) "Bad Debt" means the current period charge for actual or expected uncollectible accounts resulting from the extension of credit on inpatient and outpatient hospital services. Bad debt charges ~~would~~shall be offset by any recoveries received on accounts receivable during that current period, subject to final tax assessment reporting and reconciliation processes required in these rules.

(23) "Charges for Inpatient Care" means gross inpatient charges generated from room, board, general nursing, and ancillary services provided to patients, who are expected to remain in the hospital at least overnight, and occupy a bed (as distinguished from categories of health care items or services identified in 42 CFR 433.56(a)(2)-(19) that are not charges for inpatient hospital services). Charges for inpatient care include all payors, and are not limited to Medicaid patients.

(34) "Charges for Outpatient Care" means gross outpatient charges, generated from services provided by the hospital to a patient who is not confined overnight. These services include all ancillary and clinic facility charges (as distinguished from categories of health care items or services identified in 42 CFR 433.56(a)(1) and (3)-(19) that are not charges for outpatient hospital services). Charges of outpatient care include all payors and are not limited to Medicaid charges.

(45) "Charity Care" means costs for providing inpatient or outpatient care services free of charge or at a reduced charge because of the indigence or lack of health insurance of the patient receiving the care services. Charity care results from a hospital's policy as reflected in its official financial statements to provide inpatient or outpatient hospital care services free of charge or at a reduced charge to individuals who meet financial criteria. Charity care does not include any amounts above the payments by the ~~Department~~Authority that constitute payment in full under ORS 414.065(3), or above the payment rate established by contract with a prepaid managed care health services organization or health insurance entity for inpatient or outpatient care provided pursuant to such contract, or above the payment rate established under ORS 414.743 for inpatient or outpatient care reimbursed under that statute.

(56) "Contractual Adjustments" means the difference between the amounts charged based on the hospital's full, established charges and the amount received or due from the payor.

(67) "Declared Fiscal Year" means the fiscal year declared to the Internal Revenue Service (IRS).

(78) "Deficiency" means the amount by which the taxassessment, as correctly computed, exceeds the taxassessment, if any, reported and paid by the hospital. If, after the original deficiency has been assessed, subsequent information shows the correct amount of taxassessment to be greater than previously determined, an additional deficiency arises.

(89) "Delinquency" means the hospital failed to file a report when due as required under these rules or failed to pay the taxassessment as correctly computed when the taxassessment was due.

~~(9) "Department" means the Department of Human Services.~~

(10) "Director" means the Director of the ~~Department~~Authority of Human Services.

(11) "Hospital" means a hospital with an organized medical staff, with permanent facilities that include inpatient beds, and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for, but not limited to, acutely ill patients and accident victims, or to provide treatment for the mentally ill. Hospital, as used in this section, does not include special inpatient care facilities as that term is defined in ORS 442.015(32). For purposes of these rules, the hospital ~~will~~shall be identified by using the federal taxassessment payer identification number for the hospital.

(12) "Net Revenue" means the total amount of charges for inpatient or outpatient care provided by the hospital to patients, less charity care, bad debts, and contractual adjustments. Net revenue does not include revenue derived from sources other than inpatient or outpatient operations, including but not limited to, interest and guest meals and any revenue that is taken into account in computing a long term care assessment under the long term facility taxassessment.

(13) "Waivered Hospital" means a Type A or Type B hospital as described in ORS 442.470, or a hospital that provides only psychiatric care.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 413.042, 410.070 & 411.060

Stats. Implemented: ~~ORS 409.750, OL 2003 & Ch. 736 Sec. 1~~ 2015 HB 2395

**410-050-0710**

**General Administration**

(1) The purpose of these rules is to implement the taxassessment imposed on hospitals in Oregon.

(2) The DepartmentAuthority ~~will~~shall administer, enforce, and collect the hospital taxassessment. The DepartmentAuthority may assign employees, auditors, and other agents as designated by the Director to assist in the administration, enforcement, and collection of the taxesassessments.

(3) The DepartmentAuthority may adopt forms and reporting requirements, and change the forms and reporting requirements, as necessary, to administer, enforce, and collect the taxesassessments.

(4) The DepartmentAuthority may not use moneys from the Hospital Quality Assurance Fund to supplant, directly or indirectly, other moneys made available to fund services described in Section 9, Chapter 736, Oregon Laws 2003 as amended by Section 2, Chapter 757, Oregon Laws 2005.

Stat. Auth.: ORS 413.042, 410.070, ~~411.060~~

Stats. Implemented: ORS ~~400.750~~, 2015 HB 2395~~OL 2003, Ch. 736 § 9~~

**410-050-0720**

### **Disclosure of Information**

(1) Except as otherwise provided by law, the DepartmentAuthority ~~must~~may not publicly divulge or disclose the amount of income, expense, or other particulars set forth or disclosed in any report or return required in the administration of the taxesassessments. Particulars include but are not limited to social security numbers, employer numbers, or other hospital identification numbers, and any business records required to be submitted to or inspected by the DepartmentAuthority or its designee to allow it to determine the amounts of any assessments, delinquencies, deficiencies, penalties, or interest payable or paid, or otherwise administer, enforce, or collect a health care assessment to the extent that such information would~~would~~shall be exempt from disclosure under ORS 192.501(5) or other basis for exemption under Oregon's public records law.

(2) The DepartmentAuthority may:

(a) Furnish any hospital, or its authorized representative, upon request of the hospital or representative, with a copy of the hospital's report filed with the DepartmentAuthority for any quarter, or with a copy of any report filed by the hospital in connection with the report, or with a copy of any other information the DepartmentAuthority considers necessary;

(b) Publish information or statistics so classified as to prevent the identification of income or any particulars contained in any report or return;

(c) Disclose and give access to an officer or employee of the Department Authority or its designee, or to the authorized representatives of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, the Controller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice, the Oregon Department of Justice Medicaid Fraud Control Unit, and other employees of the state or federal government to the extent the Department Authority deems disclosure or access necessary or appropriate for the performance of official duties in the Department Authority's administration, enforcement, or collection of the tax assessments.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ~~ORS 409.750, 2015 HB 2395~~ OL 2003, Ch. 736 § 1

#### **410-050-0730**

#### **Entities Subject to the Hospital Tax Assessment**

Each hospital in Oregon is subject to the hospital tax assessment except:

- (1) Hospitals operated by the United States Department of Veterans Affairs;
- (2) Pediatric specialty hospitals providing care to children at no charge; and
- (3) Waivered hospitals, as that term is defined in OAR 410-050-0700.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ~~ORS 409.750, 2015 HB 2395~~ OL 2003, Ch. 736 § 1 & 2 § 2

#### **410-050-0740**

#### **The Hospital Tax Assessment: Calculation, Report, Due Date**

(1) The amount of the tax assessment equals the tax assessment rate multiplied by the hospital's net revenue of the hospital, consistent with OAR 410-050-0750, 410-050-0860, and 410-050-0861. The tax assessment will shall be imposed on net revenues earned by the hospital on or after January 1, 2004, based on calendar quarters. The first calendar quarter begins on January 1; the second calendar quarter begins on April 1; the third calendar quarter begins on July 1; and the fourth calendar quarter begins on October 1.

(2) The assessment rate of the assessment will shall be determined in accordance with OAR 410-050-0860 and 410-050-0861.

(3) The hospital must shall file the quarterly report on a form approved by the Department Authority on or before the 75th day following the end of the calendar quarter

for which an taxassessment is due. The quarterly payment is due and mustshall be paid at the same time required for filing the quarterly report. The hospital mustshall provide all information required on the quarterly report when due. Failure to file or pay when due willshall be a delinquency.

(4) The taxassessment becomes operative on July 1, 2004. The first due date for a quarterly taxassessment and report willshall be 75 days from September 30, which is December 13, 2004.

(5) The fiscal year reconciliation report, including the financial statement and reconciliation statement, is due and mustshall be submitted to the DepartmentAuthority no later than the final day of the sixth calendar month after the hospital's declared fiscal year end. The fiscal year reconciliation taxassessment payment is due and mustshall be paid at the same time required for filing the fiscal year reconciliation report. The hospital mustshall provide all information required on the fiscal year reconciliation report when due. Failure to file or pay when due willshall be a delinquency.

(6) Any report, statement, or other document required to be filed under any provision of these rules mustshall ~~must~~ be certified by the hospital's chief financial officer of the hospital or designee. ~~an individual with delegated authority to sign for the hospital's chief financial officer.~~ The certification mustshall attest, based on best knowledge, information, and belief, to the accuracy, completeness, and truthfulness of the document.

(7) Payments may be made electronically or by paper check. If the hospital pays electronically, the accompanying report may either be faxed to the DepartmentAuthority at the fax number provided on the report form or mailed to the DepartmentAuthority at the address provided on the report form. If the hospital pays by paper check, the accompanying report mustshall be mailed with the check to the address provided on the report form.

(8) The DepartmentAuthority may charge the hospital a fee of \$100 if, for any reason, the check, draft, order, or electronic funds transfer request is dishonored. This charge is in addition to any penalty for nonpayment of the taxassessment that may also be due.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ~~ORS 409.750, 2015 HB 2395~~ OL 2003, Ch. 736 § 2

**410-050-0750**

### **Reporting Total Net Revenue, Use of Estimated Revenue for Quarterly Reports**

(1) A hospital mustshall submit quarterly reports and quarterly payments for the calendar quarters for which an taxassessment is due consistent with sections (2) and (5) of this rule, and mustshall submit a fiscal year reconciliation report that includes a reconciliation statement, audited financial statement, and any fiscal year reconciliation

taxassessment payment based on the hospital's declared fiscal year end consistent with sections (3) and (5) of this rule.

(2) The quarterly reports and quarterly taxassessment payments mustshall be based on estimated net revenue, which willshall be referred to as estimated taxassessment. Estimated taxassessment is the amount of taxassessment the hospital expects to owe for the current taxassessmentable-calendar quarter. The hospital mustshall calculate the estimated taxassessment based on net revenues using the hospital's interim financial results for the quarter for which the taxassessment is due. An estimated quarterly report is due for each calendar quarter for which an taxassessment is due, based on the rate of taxassessment applicable to that quarter. The quarterly payment is due and mustshall be paid at the same time required for filing the quarterly report.

(3) The fiscal year reconciliation report and fiscal year reconciliation taxassessment payment mustshall be based on the amount of taxassessment the hospital actually owes based on annual net revenue for all calendar quarters for which an estimated taxassessment payment is due during the hospital's declared fiscal year. The hospital mustshall calculate the annual net revenue for the hospital's declared fiscal year. The fiscal year reconciliation taxassessment payment due to the ~~Department~~ Authority willshall be the calculated taxassessment (using the taxassessment rate applicable to the appropriate quarter, described in subsection (c) below for fiscal year reconciliation taxassessment calculation purposes) on the annual net revenue reduced by the estimated taxassessment payments made for each taxableassessment quarter of the hospital's declared fiscal year. The hospital mustshall provide all information required in the fiscal year reconciliation report when due, even if no fiscal year reconciliation taxassessment payment is owed<sub>:-</sub>

(a) When the fiscal year reconciliation report is submitted, it mustshall be accompanied by the hospital's declared fiscal year end audited financial statement for the declared fiscal year on which the fiscal year reconciliation report and fiscal year reconciliation taxassessment payments are based<sub>:-</sub>

(b) The fiscal year reconciliation report mustshall include a reconciliation statement describing the relationship between the audited financial statement and annual net revenues subject to the taxassessment. The reconciliation statement may be descriptive in form and shouldshall be consistent with the accounting principles used in the audited financial statement<sub>:-</sub>

(c) The tax-assessment rate applicable to the final taxassessment shall be calculated as follows:

(A) If all taxableassessment quarters were subject to the same taxassessment rate established in OAR 410-050-0160 and 410-050-0861, then the taxassessment rate applicable to the final reconciliation is the taxassessment rate applicable to all such quarters. For example, if the hospital's declared fiscal year is July 1, 2004 to June 30, 2005, then the taxassessment rate is .93 percent of annual net revenue<sub>:-</sub>

(B) If different taxassessment rates apply to calendar quarters in the hospital's declared fiscal year, the hospital shall apply a blended rate to the total annual net revenue to determine the fiscal year reconciliation taxassessment due. A blended rate is the average of the rates applicable to all taxableassessment quarters. The Department Authority willshall notify the hospital of the amount of the applicable blended rate. For example, if the hospital's declared fiscal year overlaps two quarters taxassessed at a rate of .93 percent and two quarters taxassessed at .50 percent, then the blended rate for purposes of the annual reconciliation is .715 percent. For purposes of calculating the fiscal year reconciliation taxassessment due, the hospital willshall multiply the annual net revenue by the blended rate.

(d) If the total estimated taxassessment payments already paid by the hospital for the declared fiscal year exceed the amount of the fiscal year reconciliation taxassessment actually due, the fiscal year reconciliation report shouldshall identify the such difference and the hospital shouldshall adjust the fiscal year reconciliation taxassessment due amount accordingly in the fiscal year reconciliation report for that taxassessment year;:-

(e) The fiscal year reconciliation report, audited financial statement, and reconciliation statement willshall be due and willshall be submitted to the Department Authority no later than the final day of the sixth calendar month after the hospital's declared fiscal year end. The fiscal year reconciliation taxassessment payment (if owed) is due and mustshall be paid at the same time required for filing the fiscal year reconciliation report. Failure to file or pay when due willshall be a delinquency;:-

(f) If the declared fiscal year end audited financial statement for the hospital is not available within the time required in subsection (e), a fiscal year reconciliation taxassessment payment (if owed) and fiscal year reconciliation report must are still required to be submitted within the time period specified under subsection (e). The hospital may use interim financial statements to determine the amount of the fiscal year reconciliation taxassessment due and may submit a justification statement with the fiscal year reconciliation report due no later than the date specified in subsection (e) signed by ~~the~~ the hospital's chief financial officer of the hospital informing the Department Authority when the audited financial statement is due and certifying that an amended fiscal year reconciliation report, including the reconciliation statement, mustshall be provided to the Department Authority within 30 days of the hospital's receipt of the audited financial statement. Reports and payments made after the time period required in subsection (e) mustshall be submitted in compliance with OAR 401-050-0760;:-

(g) ~~If n the event~~ the hospital does not receive audited financial statements, then internal financial statements signed by the hospital's chief financial officer mustshall be submitted where these rules otherwise require audited financial statements;:-

(h) If the effective date of the taxassessment is not at the start of the hospital's declared fiscal year, then the annual net revenue for the first fiscal year reconciliation report willshall be calculated based on the number of quarters subject to the taxassessment

versus the total number of quarters in the hospital's declared fiscal year. For example, if the taxassessment is effective on July 1, 2004 for a hospital with a declared fiscal year ending December 31, 2004, the annual net revenues wouldshall be calculated as follows: total net revenues for the declared fiscal year divided by two (two of four quarters subject to the taxassessment).

(4) The DepartmentAuthority ~~will not~~may not find a payment deficiency for estimated quarterly taxesassessments as long as the hospital paid the estimated taxesassessments and submitted the quarterly report no later than the quarterly due date and the such estimated taxassessment amount was not less than the equivalent of the taxassessment payment that would have been determined based on the hospital's annual net revenue for its most recent prior declared fiscal year divided by four and multiplied times the taxassessment rate for the quarter in which the actual estimated taxassessment is due. Annual net revenue for purposes of section (4) of this rule means the twelve month period in which the hospital's most recent prior declared fiscal year occurred, regardless of whether the prior quarters were subject to an taxassessment. For example, if the annual net revenue for the most recent prior declared fiscal year was \$4 million; divide that total by 4 (\$1 million) and multiply the product times the current taxassessment rate for the taxableassessment quarter (.93 percent). In this example, the estimated quarterly taxassessment payment may not be less than \$9,300 in order to receive the benefit of section (4) of this rule.:-

(a) If the hospital seeks to use the process in section (4) of this rule, no later than the date on which the first quarterly estimated taxassessment and report is due (for example, December 13, 2004, for the first taxableassessment quarter), the hospital mustshall provide the DepartmentAuthority with a copy of the hospital's audited financial statement for the hospital's most recent prior declared fiscal year and identify the hospital's annual net revenue amount for that declared fiscal year, regardless of whether any taxesassessments were due for that year.:-

(b) ~~If~~ in the event the hospital does not receive audited financial statements, then internal financial statements from the hospital's most recent prior declared fiscal year signed by the chief financial officer may be used for this purpose.

(5) All of the due dates for filing reports or paying taxesassessments are established in OAR 410-050-0740, unless the DepartmentAuthority permits a later payment date. If a hospital requests an extension, the DepartmentAuthority, in its sole discretion, willshall determine whether to grant an extension. There willshall be a delinquency for each quarter the hospital fails to pay the estimated taxassessment or file the quarterly report when due. There willshall be a delinquency if the hospital fails to pay the fiscal year reconciliation taxassessment or file the fiscal year reconciliation report, including financial statements and reconciliation statement, when due.

(6) A hospital mustshall declare the date of the hospital's declared fiscal year end for purposes of establishing final taxassessment reporting requirements under this rule. The declaration mustshall be filed with the DepartmentAuthority no later than December

13, 2004, or the first date that an estimated quarterly report and taxassessment is due. The hospital ~~must~~shall notify the ~~Department~~Authority within 30 days of a change to the hospital's declared fiscal year end. ~~Such a change in declared fiscal year end will~~shall be applied to the hospital's next future declared fiscal year for purposes of calculating the final taxassessment and filing the final report.

Stat. Auth.: ORS 413.042, 410.070 & 411.060

Stats. Implemented: ORS 409.750 & 2015 HB 2395~~OL 2003 Ch. 736 Sec. 2~~

**410-050-0760**

### **Filing an Amended Report**

(1) A hospital that submits a fiscal year reconciliation report without an audited financial statement ~~in accordance with OAR 410-050-0750(3)(f) must~~shall submit, an amended fiscal year reconciliation report, an audited financial statement, and such additional fiscal year reconciliation payment (if owed) for assessments and deficiencies. The information shall be submitted within 180 days after the fiscal year reconciliation report due date. ~~within 180 days after the due date of the fiscal year reconciliation report in accordance with OAR 410-050-0750(e), an amended fiscal year reconciliation report, an audited financial statement, and such additional fiscal year reconciliation payment (if owed) for taxassessments and deficiencies.~~

(2) Claim for Refund:-

(a) If the amount of the taxassessment imposed by these rules in the amended fiscal year reconciliation report is less than the amount paid by the hospital, the Authority may refund the overpayment. ~~such overpayment may be refunded by the Department~~Authority to the hospital. In no event will~~shall~~ a refund may not exceed the taxassessment amount actually paid by the hospital;

(b) The hospital ~~must~~shall provide all information required on the report. No refunds ~~will~~shall be made prior to the ~~Department~~Authority receiving the hospital's audited financial statement for the declared fiscal year. The ~~Department~~Authority may audit the hospital, request additional information, or request an informal conference prior to granting a refund or as part of its review;-

(c) If there is an amount due from the hospital to the ~~Department~~Authority for any past due taxassessments or penalties, any refund otherwise allowable ~~will~~shall first be applied to the unpaid taxassessments and penalties, and the hospital so notified;-

(d) A hospital may not deduct from current, prospective, or future taxassessment payments an amount to which it claims to be entitled as a refund for a prior period. The claim for refund ~~must~~shall be made to the ~~Department~~Authority. ~~consistent with this rule.~~

(3) Payment of Delinquency;

(a) If the amount of the annual taxassessment imposed by these rules is more than the amount paid by the hospital, the hospital mustshall file an amended fiscal year reconciliation report and pay the additional fiscal year reconciliation taxassessment and deficiency. The penalty under OAR 410-050-0800 willshall stop accruing after the DepartmentAuthority receives the amended fiscal year reconciliation report, the annual audited financial statement, and payment of the total fiscal year reconciliation taxassessment and deficiency for year; except to the extent provided in OAR 410-050-0750(4)(a).;

(b) No refunds willshall be made prior to the DepartmentAuthority receiving the hospital audited financial statement for the declared fiscal year. The DepartmentAuthority may audit the hospital, request additional information, or request an informal conference prior to granting a refund or as part of its review;

(c) If there is an error in the determination of the taxassessment due, the hospital may describe the circumstances of the late additional payment with the filing of the amended report. The DepartmentAuthority, in its sole discretion, may determine that such a the late additional payment does not constitute a failure to file a report or pay an assessment giving rise to the imposition of a penalty. In making this determination, the DepartmentAuthority willshall consider the circumstances, including but not limited to: nature and extent of the error; hospital explanation of the circumstances related to the error; evidence of prior errors; and evidence of prior penalties (including evidence of informal dispositions or settlement agreements). This provision only applies if the hospital has filed a timely original report and paid the assessment identified in the report.

(4) If the DepartmentAuthority discovers or identifies information in the administration of these taxassessment rules that it determines could give rise to the issuance of a notice of proposed action, the DepartmentAuthority willshall issue notification pursuant to OAR 410-050-0810.

Stat. Auth.: ORS 413.042, 410.070 & 411.060

Stats. Implemented: ~~ORS 409.750 &~~ 2015 HB 2395 OL 2003, Ch. 736 § 2

**410-050-0770**

**Determining the Date Filed**

(1) For the purposes of these rules, any reports, requests, appeals, payments, or other response by the hospital mustshall be received by the DepartmentAuthority either:

(a) Before the close of business on the date due; or

(b) If mailed, postmarked before midnight of the due date.

(2) When the due date falls on a Saturday, Sunday, or a legal holiday, the date filed return is due is on the next business day following the Saturday, Sunday, or legal holiday.

Stat. Auth.: ORS 4143.042, 410.070, 411.060

Stats. Implemented: ~~ORS 409.750, OL 2003, Ch. 736 § 2~~ 2015 HB 2395

#### **410-050-0780**

##### **Departmental Authority to Audit Records Audit by the Authority**

(1) The hospital ~~must~~shall maintain financial records necessary and adequate to determine the net revenue for any calendar period for which an tax assessment may be due.

(2) The Department Authority or its designee may audit the hospital's records at any time for a period of five years following the date the tax assessment is due to verify or determine the hospital's net revenue.

(3) The Department Authority may issue a notice of deficiency or issue a refund based upon its audit findings ~~during the audit~~.

(4) Any audit, finding, or position may be reopened if there is evidence of fraud, malfeasance, concealment, misrepresentation of material fact, omission of income, or collusion either by the hospital or by the hospital and a representative of the Department Authority.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ~~ORS 409.750, 2015 HB 2395~~ OL 2003, Ch. 736 § 2

#### **410-050-0790**

##### **Assessing Tax on Failure to File Determining Assessment for without Hospital Failure to Filing**

(1) The law places an affirmative duty on the hospital to file a timely and correct report.

(2) In the case of a failure by the hospital to file a report or to maintain necessary and adequate records, the Department Authority will shall determine the hospital's tax assessment liability ~~of the hospital~~ according to the best of its information and belief. Best of its information and belief means the Department Authority will shall use evidence available to the Department Authority at the time of the determination on which a reasonable person would rely on in determining the tax assessment. The

Department Authority's determination of tax assessment liability will ~~shall~~ be the basis for the assessment due in any notice of proposed action.

Stat. Auth.: ORS 413.042, ~~410.070, 411.060~~

Stats. Implemented: ~~ORS 409.750, 2015 HB 2395~~ ~~OL 2003, Ch. 736 § 2~~

**410-050-0800**

**Financial Penalty for Failure to File a Report or Failure to Pay Tax Assessment When Due**

(1) A hospital that fails to file a quarterly report or pay a quarterly tax assessment when due shall be subject to a penalty of up to \$500 per day of delinquency. The Department Authority, in its sole discretion, shall determine the penalty for failure to pay the tax assessment or file a report. In making this determination, the Department Authority shall consider evidence such as prior late payments, prior penalties, and circumstances related to delinquency. The penalty accrues from the date of delinquency, notwithstanding the date of any notice under these rules.

(2) A hospital that fails to file a fiscal year reconciliation report when due under ~~OAR 410-050-0740 or 410-050-0750~~ is subject to a penalty of up to \$500 per day of delinquency. The Department Authority, in its sole discretion, shall determine the penalty for failure to pay the tax assessment or file a report. In making this determination, the Department Authority shall consider evidence such as prior late payments, prior penalties, and circumstances related to delinquency. The penalty accrues from the date of delinquency, notwithstanding the date of any notice under these rules.

(3) A hospital that files a fiscal year reconciliation report, but fails to pay a fiscal year reconciliation tax assessment payment when due under ~~OAR 410-050-0740~~ is subject to a penalty of up to \$500 per day of delinquency up to a maximum of five percent of the amount due. The Department Authority, in its sole discretion, shall determine the penalty for failure to pay the reconciliation tax assessment payment or file a fiscal year reconciliation report. In making this determination, the Department Authority shall consider evidence such as prior late payments, prior penalties, and circumstances related to delinquency. The penalty accrues from the date of delinquency, notwithstanding the date of any notice under these rules.

(4) The total amount of penalty imposed under this section for each reporting period may not exceed five percent of the assessment for the reporting period for which penalty is being imposed.

(5) The Department Authority shall collect any penalties imposed under this section and deposit the funds in the Department Authority's account established under ORS 409.060.413.101.

(6) Penalties paid under this section are in addition to the hospital's taxassessment liability.

(7) If the DepartmentAuthority determines that a hospital is subject to a penalty under this section, the DepartmentAuthority shall issue a notice of proposed action as described in OAR 410-050-0810.

(8) If a hospital requests a contested case hearing pursuant to OAR 410-050-0830, the Director, at the Director's sole discretion, may waive or reduce the amount of penalty assessed.

Stat. Auth.: ORS 413.042, 410.070 & 411.060

Stats. Implemented: ~~ORS 409.750 & OL 2003, Ch. 736 Sec. 5, 2009 HB 2116~~2015 HB 2395

#### **410-050-0810**

#### **Notice of Proposed Action**

(1) Prior to issuing a notice of proposed action, the DepartmentAuthority ~~will~~shall notify the hospital of the potential deficiency or failure to report that could give rise to the imposition of a penalty. The DepartmentAuthority shall issue a ~~30-day~~a notification letter within 30 calendar days of the report or payment due date. The hospital shall have 30 calendar days from the date of the notice to respond ~~to the notification~~. The DepartmentAuthority may consider the response, if any, and any amended final report under OAR 410-050-0760 in its notice of proposed action. In all cases that the DepartmentAuthority has determined that a hospital has an taxassessment deficiency or failure to report, the DepartmentAuthority shall issue a notice of proposed action. The DepartmentAuthority ~~will not~~may not issue a notice of proposed action if the issue is resolved satisfactorily within 59 days from the date of mailing the ~~30-day~~ notification letter.

(2) The DepartmentAuthority shall issue a notice of proposed action within 60 calendar days from the date of mailing the ~~30-day~~ notification letter.

(3) Contents of the notice of proposed action ~~must~~shall include:

(a) The applicable reporting period;

(b) The basis for determining the corrected amount of taxassessment;

(c) The corrected taxassessment due as determined by the DepartmentAuthority;

(d) The amount of taxassessment paid by the hospital;

(e) The resulting deficiency, which is the difference between the amount received by the Department Authority and the corrected amount due as determined by the Department Authority;

(f) Statutory basis for the penalty;

(g) Amount of penalty per day of delinquency;

(h) Date upon which the penalty began to accrue;

(i) Date the penalty stopped accruing or circumstances under which the penalty will~~will~~ stop accruing;

(j) The total penalty accrued up to the date of the notice;

(k) Instructions for responding to the notice; and

(l) A statement of the hospital's right to a hearing.

Stat. Auth.: ORS 413.042, 410.070 & 411.060

Stats. Implemented: ~~ORS 409.750 & 2015 HB 2395~~ OL 2003 Ch. 736 Sec. 2

**410-050-0820**

### **Required Notice**

(1) ~~The Authority shall send Any required notice required to be sent under these rules to the address and contact person identified by the hospital on its most recently filed report. will be sent to the hospital's main address, to the attention of the hospital administrator, as listed by the Department's Health Care Licensure and Certification Unit's "Acute Care Provider List."~~

(2) Any notice required to be sent to the Department Authority under these rules will~~will~~ be sent to the point of contact identified on the communication from the Department Authority to the hospital.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ~~ORS 409.750, 2015 HB 2395~~ OL 2003, Ch. 736 § 6

**410-050-0830**

### **Hearing Process**

(1) Any hospital that receives a notice of proposed action may request a contested case hearing under ORS 183.

(2) The hospital may request a hearing by submitting a written request within 20 days of the date of the notice of proposed action.

(3) Prior to the hearing, the hospital shall meet with the Department Authority for an informal conference:

(a) The informal conference may be used to negotiate a written settlement agreement.

(b) If the settlement agreement includes a reduction or waiver of penalties, the agreement must ~~shall~~ be approved and signed by the De~~D~~Director.

(4) Except as provided in section (5) of this rule, if the case proceeds to a hearing, the administrative law judge will ~~shall~~ issue a proposed order, ~~with respect to the notice of proposed action.~~ The Department Authority will ~~shall~~ issue a final order.

(5) Nothing in this section will ~~shall~~ preclude the Department Authority and the hospital from agreeing to informal disposition of the contested case at any time, consistent with ORS 183.415(5).

Stat. Auth.: ORS 413.042, ~~410.070, 411.060~~

Stats. Implemented: ORS 409.750, 2015 HB 2395~~OL 2003, Ch. 736 § 6~~

**410-050-0840**

### **Final Order of Payment**

A final order of payment is a final Department Authority action, expressed in writing, based on a notice of proposed action where a payment amount is due to the Department Authority. The Department Authority will ~~shall~~ issue a final order of payment for deficiencies or penalties when:

(1) The hospital did not make a timely request for a hearing;

(2) Any part of the deficiency and penalty was upheld after a hearing; or

(3) Upon the agreement of the hospital and the Department Authority.

Stat. Auth.: ORS 413.042, ~~410.070, 411.060~~

Stats. Implemented: ORS 409.750, 2015 HB 2395~~OL 2003, Ch. 736 § 6~~

**410-050-0850**

### **Remedies Available after Final Order of Payment**

Any amounts due and owing under the final order of payment and any interest thereon may be recovered by Oregon as a debt to the state, using any available legal and equitable remedies. These remedies include, but are not limited to:

(1) Collection activities including, but not limited to, deducting the amount of the final deficiency or penalty from any sum then or later owed to the hospital by the Department Authority; and

(2) Every payment obligation owed by the hospital to the Department Authority under a final order of payment will ~~will~~ shall bear interest at the statutory rate of interest in ORS 82.010 accruing from the date of the final order of payment and continuing until the payment obligation, including interest, has been discharged.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, 2015 HB 2395 ~~OL 2003, Ch. 736 § 6~~

#### 410-050-0860

##### Director Determines Assessment Rate of Tax Assessment

(1) The Director shall determine the tax assessment rate, ~~is determined by the d~~ Director.

(2) The tax assessment rate for the period beginning January 1, 2004 through June 30, 2004 is 0 percent. The tax assessment rate for the period beginning July 1, 2004 through December 31, 2004 is .95 percent.

(3) The Director may reduce the rate of assessment to the maximum rate allowed under federal law if the reduction is required to comply with federal law. If the rate is reduced pursuant to this section, the Director will ~~will~~ shall notify the hospitals as to the effective date of the rate reduction.

(4) A hospital is not guaranteed that any additional moneys paid to the hospital in the form of payments for services will equal or exceed the amount of the assessment paid by the hospital.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, ~~OL 2003, Ch. 736 § 6~~ 2015 HB 2395

#### 410-050-0861

##### Tax Assessment Rate

(1) The tax assessment rate for the period beginning January 1, 2005, and ending June 30, 2006, is .68 percent.

(2) The tax assessment rate for the period beginning July 1, 2006, and ending December 31, 2007, is .82 percent.

(3) The taxassessment rate for the period beginning January 1, 2008, and ending June 30, 2009, is .63 percent.

(4) The taxassessment rate for the period of January 1, 2008 through June 30, 2009 does not apply to the period beginning July 1, 2009.

(5) The taxassessment rate for the period beginning July 1, 2009, and ending September 30, 2009, is .15 percent.

(6) The taxassessment rate for the period beginning October 1, 2009, and ending June 30, 2010, is 2.8 percent.

(7) The taxassessment rate for the period beginning July 1, 2010, and ending June 30, 2011, is 2.32 percent.

(8) The taxassessment rate for the period beginning July 1, 2011, and ending September 30, 2011, is 5.25 percent.

(9) The taxassessment rate for the period beginning October 1, 2011, and ending December 31, 2011, is 5.08 percent.

(10) The taxassessment rate for the period beginning January 1, 2012, and ending March 31, 2013, is 4.32 percent.

(11) The taxassessment rate for the period beginning April 1, 2013 and ending September 30, 2014, is 5.30 percent.

(12) The taxassessment rate for the period beginning October 1, 2014, is 5.80 percent.

Stat. Auth.: ORS 413.042

Stats. Implemented: ~~2009 OL Ch. 867 § 17, 2007 OL Ch. 780 § 1 & 2003 OL Ch. 736 § 2 & 3~~ 2015 HB 2395

**410-050-0870**

### **Sunset Provisions**

The hospital taxassessment applies to net revenue received by hospitals on or after January 1, 2004 and before October 1, ~~2015~~2019.

Stat. Auth.: ORS 413.042, 410.070 & 411.060

Stats. Implemented: ~~ORS 409.750; OL 2003, Ch. 736, Sec. 2 as amended by OL 2007, Ch. 780, Sec. 1; OL 2009, Ch. 828, Sec. 51; OL 2009, Ch. 867, Sec. 17 & 2013 HB 2216~~ 2015 HB 2395