

Testimony of John DiLorenzo, Jr.  
Before the Senate Healthcare Committee  
February 2, 2010

Good morning Madam Chair and members of the Committee. For the record my name is John DiLorenzo. I am a partner in the law firm of Davis Wright Tremaine. I am grateful for your kind invitation to appear today to discuss a financing proposal for expanding healthcare to all Oregonians, vastly increasing job opportunities so sorely needed in our state.

I am not appearing here this morning on behalf of any particular client. Rather, I am here to discuss an idea, one which has never, up until now, been fashioned to address Oregon's peculiar circumstances and opportunities.

I have attached my opinion piece which was published in last Sunday's Oregonian. In it, I suggested that the failings of our healthcare system are due to many design flaws, most notably the linkage of healthcare benefits to employment status. I truly believe that the system's failures will persist unless and until we exercise the necessary leadership to separate healthcare from employment status and acknowledge that it is a proper role for our government to protect our citizens from disease every bit as much as it is appropriate for our government to protect its citizens from crime and provide a basic level of education services. Unfortunately, most of the plans which have been considered in Congress, the Massachusetts

healthcare plan, healthcare plans adopted by other states, and even the plan envisioned by Oregon's Health Fund Board, are all dependent upon employer contributions and provider taxes for attaining their goals. Senator Wyden's Healthy Americans Act did provide some mechanism for eventually weaning employer contributions from healthcare costs, but even that proposal required employers to pay a tax between 3 and 26 percent of the national average premium for a minimum benefits package.

Now that Congress is likely to postpone or abandon portions of the major overhaul plans, emphasis should once again be focused on how Oregonians can provide basic healthcare for our own citizens.

There are some who feel that healthcare should be a personal responsibility. Those who feel that way presume they have a choice between the various healthcare reforms which have been proposed and the status quo which they prefer to preserve. Their mistake is in assuming that the status quo is sustainable. Healthcare costs to employers have risen dramatically over the past ten years. Healthcare costs have risen substantially this year and will continue to rise until employers will simply no longer be able to afford them. As time goes on, healthcare will become less affordable to our citizens through their employers or the private markets, and as Oregon's economy continues to stagnate, the newly

unemployed will have nowhere to turn when their benefits expire. Even the Oregon Health Plan has been temporarily (and unsustainably) propped up by \$883 million of federal stimulus money. What will happen when the stimulus funds run out in 2011? Will those who make up the 15% increased case load will be out of luck then?

I have proposed a quality healthcare system covering every one of Oregon's citizens. I envision a plan that would provide coverage for preventative care (like yearly medical, dental and eye exams) and would also provide for catastrophic coverage including hospitalization, when surgery or other significant care might be required. The plan would also provide for other basic services, as foreseen by the Oregon Health Fund Board report.

The guaranteed policy would provide minimum coverages as an essential benefits package and would also allow individuals or employers opportunities to access the market to purchase enhancement benefits.

The essential benefits package could be serviced by existing providers and new out-of-state providers who would ultimately enter the market if anti-trust rules are modified by Congress. Oregon could either issue vouchers in the form of health savings cards, or it could issue Requests For Proposals for private

administrators to bid for state contracts at the least cost for the entire population base.

Of course, many Oregon businesses still offer healthcare benefits to their employees today. Although they strive to maximize benefits, their plans are expensive on a per person basis. Their blessings become their curse. They are blessed with many long tenured employees, some of whom have been with them for years. Their curse is that the long-tenured, loyal employees are aging and now are required to access healthcare services more often than they did in years past. However, their employees could be provided the same level of service for a much lower cost per person if they happened to be part of a group that was as large as the entire State of Oregon. That is because the entire state's population includes the state's healthiest people. It is true that many Oregon families are uninsured because they simply can no longer afford the cost of health insurance. However, many persons in this state are uninsured because they are young and feel they do not need to be insured. Many do not even consider purchasing health insurance until they become much older and begin to recognize the need to draw upon the system. The plan I envision would therefore take full advantage of capitation including, by definition, every citizen in the State of Oregon who met certain residency requirements (to manage in-state migration).

Although many employers would choose to provide extra benefits to their employees or through collective bargaining agreements, Oregon employers generally would no longer be expected to pay health insurance premiums for the essential benefit package. The package would be personal to each Oregonian and portable regardless of employment status. Oregonians would have new freedoms, no longer reliant on their employers for healthcare.

Every Oregonian would pay his or her fair share for this coverage based on his or her consumption. Unlike various federal plans under discussion, there would be no fines or punitive measures taken to force anyone to pay their premium; rather, the premium would be automatic in the form of a constitutionally dedicated sales tax for healthcare, which could not be diverted or increased without a vote of the public. Because the sales tax would really be a healthcare premium, everyone who purchased covered goods or services (other than exempt items) would pay a fair premium for the basic healthcare coverages we would all enjoy.

Over the last several months, the Legislative Revenue office has fielded questions concerning revenues which could be raised by various standard base or broad base sales taxes. I believe Mr. Warner is here this morning and is prepared to share some of that updated information with you. The precise plan I am proposing assumes that approximately 10 billion dollars per year would provide an

essential benefit package to every citizen of the State. The cost could, of course, be more or less depending upon the nature of the benefits and the deductibles involved. In order to raise this amount, we would likely require an approximate 7% sales tax on goods and services (compared to Seattle, Washington's 9% on retail goods). This could raise approximately 6 billion dollars. Added to that would be an extra 910 million dollars which could be redirected from the general fund because employers would no longer take deductions for healthcare insurance. In addition, approximately 280 million dollars could be redirected from the general fund because employers would no longer take deductions for many cafeteria plan benefits. Additional revenue savings would also occur from the loss of other federal exclusions and deductions.

Added to that would be the savings the state would incur because we would no longer have required Oregon Health Plan expenditures. They would be subsumed into the essential benefits package. Added to that would be the maximum possible federal matching. Because this plan would by definition cover every single matchable person, every senior and every child would be covered.

Savings would likely come from other quarters.

For instance, in 2007, our total workers compensation cost was 570.4 million dollars. The medical portion was 320 million dollars, and the disability

portion was 256 million dollars. This plan could cover many of the medical costs now currently expended by the workers compensation system.

We would derive other savings, many of which would be difficult to initially assess, but which would be real nonetheless. For instance, there would be fewer expensive emergency room visits by the formerly uninsured because any Oregon citizen (and especially our children) could now visit a doctor before maladies became so severe as to require emergency medical treatment. The state and providers would have significant administrative savings since prequalifications would no longer require mounds of forms but only a driver's license or other proof of citizenship and residency.

There would be other advantages associated with constitutionally dedicating a sales tax to healthcare. First, everyone would pay. There would be no free riders. Even visitors and those engaged in the illegal and underground economy would pay for Oregon's healthcare because they all buy good and services. Second, the dedicated sales tax would really be a "health insurance premium." Because each person's "health insurance premium" would be based upon their consumption, their contribution would be a fair estimate of what they could afford to pay because it was based upon what they could afford to buy.

However, one of the most significant silver linings of the plan would be its potential for economic development and specifically, job formation. We are one of the very few states in the nation that could dedicate a sales tax to a uniform system of healthcare because we are one of the very few states that has no sales tax. Other states would have to raise their sales taxes to the point where severe economic dislocations might result. Because we are the only state on the West Coast that could, practically speaking, dedicate our sales tax to this purpose, we are also the only state that could eliminate an employer's burden for financing the essential benefits package. No nearby state could replicate that advantage to employers. Labor intensive businesses would look to Oregon as a place where they could locate headquarters or facilities and instantly save 15% or more of their payroll costs by virtue of no longer having to pay for essential healthcare benefits. This would place Oregon at an incredible competitive advantage with respect to our other states. As hundreds of new employers began to locate in Oregon, the state would in turn derive even more income tax receipts from their profits and more income tax from newly employed Oregonians as we would move towards a full-employment economy.

I have attached some materials to my testimony including my opinion piece, Senator Morse's chart which I have borrowed and revised to reflect my proposal, a page describing what a gross receipts tax might raise and its disadvantages, and a

table recently updated by the Legislative Revenue office sharing what revenues various types of sales taxes might raise.

One final word on the politics of all of this—I attribute the failure of every sales tax proposal since the mid-1980s to one overriding concern: the proposals lumped the new revenues into the general fund. Each time the voters viewed a sales tax as just another tax on top of the taxes we currently pay. As far as I know, no one has ever proposed that a sales tax be dedicated to provide healthcare benefits for all. Sales taxes may initially be a “tough sell,” but the previous failed attempts and the public opinion polling which from time to time emerges on this subject, should not be the end all of the analysis. Those prior indicators only reflect either that that tax was improperly structured or show an initial disfavor by the voters in a vacuum absent leadership. The current electorate, given real leadership, might view a constitutionally dedicated sales tax to finance basic healthcare as preferable to the prospect of the loss of their healthcare given how precarious each person’s job happens to be today, and how unsustainable the current system really is. The electorate would likely also realize that Oregonians would have new freedoms under this proposal, no longer reliant on their employers for basic healthcare.

Madam Chair, I ask that your committee take steps to embark upon a hard look at this option, making available the resources of the Legislative Revenue office and others to help determine how a system like this might work in practice. Assuming there is sufficient interest on your part, I am committed to bringing together members of our business community and political leaders who currently find themselves in polarized camps following Tuesday's election. It is my hope that business expertise can be combined with public desires to move forward proactively and in a bi-partisan way. What a great thing it would be if we could make basic healthcare available to every one of our citizens, especially every child, and generate thousands of private sector jobs besides. That would be in the best of the Oregon tradition.

I thank you and your committee for your time.

I am available for questions.

STATE HEALTH CARE REFORM

# Unlink insurance from job status

**G**iven the uncertainty of any major overhaul of our nation's health care system, Oregonians should consider how we can reform health care on a state level. Absent action, adequate health care will become less available to citizens as employers can no longer afford soaring insurance

premiums. As Oregon's economy continues to stagnate, the newly unemployed will have nowhere to turn when their benefits expire.



JOHN DILORENZO

IN MY OPINION

The failings of our health care system are due to many design flaws, most notably the linkage of benefits to employment status. The system failures will persist unless and until we exercise the necessary leadership to divorce health care from employment status and finally acknowledge that it is a proper role for government to protect citizens from disease every bit as much as it is appropriate for government to protect us from crime or provide a basic level of education.

I propose a quality health care system covering all of Oregon's citizens. My plan would provide coverage for preventative care and hospitalization services and would allow an opportunity for accessing the insurance market to buy additional coverage not included in the basic plan. It would also increase the number of private-sector jobs in Oregon.

Although many employers would choose to provide extra benefits to their employees or through collective bargaining agreements, Oregon employers would no longer generally

be expected to pay health insurance premiums for preventative and catastrophic (hospitalization) coverage. That basic plan would be personal to each Oregonian, regardless of employment status.

The per capita cost of the basic plan would be much less than current plans because the group being insured would be much broader. Instead of a

This would place Oregon at a competitive advantage to attract more employers who could significantly reduce expenses upon moving their facilities to our state.

group consisting of a tenured and aging work force, more reliant on health services as time goes on, the Oregon basic plan group would consist of every resident of the state, including every child and every healthy person who is currently uninsured.

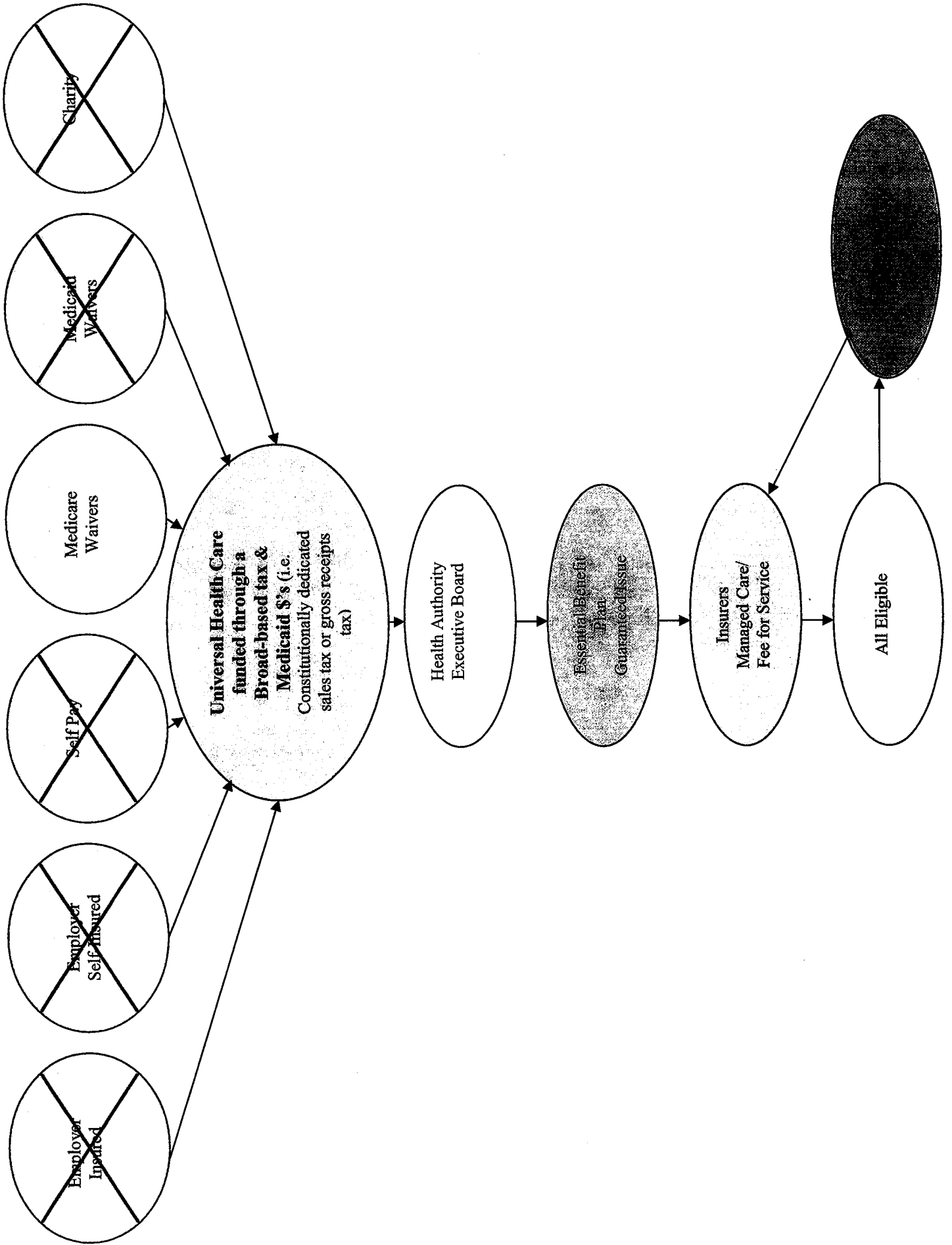
Every Oregonian would pay his or her fair share for this coverage based on his or her consumption habits. Unlike various federal plans under discussion, there would be no fines or punitive measures taken to force anyone to pay their premium; rather, the premium would be automatic in the form of a constitutionally dedicated sales tax for health care, which could not be diverted or increased without a vote of the public.

Because the sales tax would be a health care premium, each of us who purchases goods or services (other than food consumed in the home, home utilities and shelter) would pay a fair premium for the basic health coverage we would all enjoy.

Our neighboring states already have sales taxes and could not easily replicate our new system for financing basic health care. This would place Oregon at a competitive advantage to attract more employers who could significantly reduce expenses upon moving their facilities to our state, vastly increasing the number of private sector jobs available for our unemployed citizens to fill.

I offer this broad outline in the hope that our business and political leaders, who find themselves polarized following Tuesday's election, might join together to make basic health care available to every Oregonian and move our state toward full employment.

*John DiLorenzo has practiced government law for 30 years and has advocated many issues before the Oregon Legislature during that time. He is a partner and the co-chair of the government relations department at the law firm Davis Wright Tremaine LLP.*



## **Health Care Funding**

### **Gross Receipts Tax**

#### **Advantages:**

- 1) 4.5% gross receipt tax = \$10.9 billion in 2010-11 year (LRO)
- 2) “Tax is very broad, matching the breath of beneficiaries of health care.” (LRO)
- 3) “There would be competitiveness concerns for export based industries, but these would be largely offset by the savings to business from lower Health care costs.” (LRO)

#### **Disadvantages:**

- 1) “A gross receipts tax affects different firms and industries differently with low value added, low margin firms most adversely affected.” (LRO)  
(Would need different tax rates for various industry sectors or per Washington’s B&O tax)
- 2) “Causes distortions when the tax is built into input prices at various stages of production causing a cascading effect on final consumer prices.” (LRO)

A detailed analysis of costs and distortions of the tax and the advantages of a broad based health care finance system is warranted.

#### **Sales Tax**

(See LFO calculations on following page)

## HEALTH CARE REVENUE

### Tax Expenditures through the Income Tax

Tax Expenditure	Type	2009-11 Revenue Impact Estimate (in millions)
Employer Paid Medical Benefits	Fed Exclusion	\$1191
Medical & Dental Expenses	Fed Deduction	\$229
Medicare Part A	Fed Exclusion	\$234
Medicare Part B	Fed Exclusion	\$162
Elderly Medical Oregon Subtractions	Oregon Subtraction	\$127
Estimated Other Health Related	Various	\$324
<b>Total</b>		<b>\$2267</b>

### Potential Revenue from Sales Tax Base

(In billions for 2010-11 fiscal year)

Base/Rate	5%	6%	7%	8%	9%
Standard Base	\$3.475	\$4.17	\$4.865	\$5.56	\$6.255
Broad Base	\$4.355	\$5.226	\$6.097	\$6.968	\$7.839

#### Base Definitions

##### *Standard Base*

Percent of Personal Income: 49.8%

Exemptions:

Shelter

Public Transportation

Health Care

Education

Personal Insurance & Pensions

In-Home Food

Utilities

Gasoline

Tobacco

##### *Broad Base*

Percent of Personal Income: 62.4%

Exemptions:

Shelter

In-Home Food

Utilities

LRO: 2-2-10