



2018 Legislative Session Final Report Seventy-Ninth Oregon Legislative Assembly

The 2018 Legislative Session

The Legislative Assembly convened on February 5 and adjourned on March 3. The passage of Ballot Measure 101 on January 23, which continued a fee on hospitals and insurance companies to fund Medicaid, averted the loss of \$350 million and potentially up to a billion dollars in federal match. Democratic leadership — in control of the House, the Senate and the Governor's Office — instead focused on aligning Oregon's tax code with the new federal tax code and passed a gun control bill, making it the first in the nation to do so in the wake of the school massacre in Parkland, Florida.

Some of the big health care issues: Coordinated Care Organization reform, opioids, maternal mortality review, balance billing, gun control, prescription drug prices, mental health and immunizations. A referral to the Constitution to make health care a fundamental right failed in the Senate.

Legislature rocked by scandal.

In the biggest political upheaval since Governor John Kitzhaber resigned in 2016, long-time Senator Jeff Kruse, R-Roseburg, resigned from the Legislature the second week of session. Sen. Kruse, accused of unwanted touching and sexual harassment by Senate colleagues, staff and a lobbyist, resigned his Senate seat after calls to step down from the Governor, Speaker of the House and Republican legislators on both the House and Senate Health Care committees. These were in response to the release of a 51-page report detailing the allegations of inappropriate behavior, which were to be presented at a Special Committee on Conduct. While the Special Committee was canceled, leadership requested that the Oregon Law Commission review harassment policies for the Capitol.

Budget

Revenues are up \$100 million this biennium but federal tax reform creates uncertainty

The revenue forecast was released on February 16. While there was \$100 million more than expected in the state's coffers, Mark McMullen, the state economist, cautioned that much is un-

known about the impact of the federal overhaul on Oregon's future revenue. The Oregon Legislature took steps to disconnect provisions in Oregon's tax code from the federal tax code to reduce revenue losses.

Why is the budget environment so important? It determines whether or not state services are enhanced, maintained or cut. Fees (called other funds) may be increased to cover general fund shortfalls. The budget also is a determining factor in whether a policy bill with a price tag (called a fiscal impact) will be approved.

Health Care Legislation Spotlight

Balance Billing SB 1549

Compromise solution on balance billing achieved in advance of March 1, 2018 ban.

Last session, Oregon passed HB 2339, which bans balance billing (known as "surprise billing" or "surprise gap in coverage") for consumers. A workgroup was established by the Department of Business and Consumer Standards to develop reimbursement recommendations for unexpected Out-of-Network (OON) emergency care in advance of the 2018 short session and the March 1, 2018 ban on balance billing. Consensus was not reached and without legislative action, it looked like providers would have to negotiate OON claims on a case-by-case basis, work it out or go to court. This would give insurers enormous leverage at the contracting table with some insurers using HB 2339 as a mechanism to set or reduce in-network as well as OON rates, forcing providers to accept below-market rates for services and jeopardizing the patient safety net.

Oregon providers were able to reach a deal with insurers on an interim fair payment standard, using SB 1549 as the vehicle for the amendments. Here are the core components:

- Insurers will reimburse providers at 100 percent of the median, commercial, in-network, allowed amount, benchmarked to the 2015 All Payers All Claims database and indexed for inflation using CPI-Urban.
- The Department of Consumer and Business Services will report to the Legislature in 2020 on the impact of the ban on patient premium rates, contracted rates for providers and network adequacy.
- The rate will sunset in 2022.

The Department of Consumer and Business Services (DCBS) will issue guidance going forward to educate the public, providers and payers on the new law and expectations for reimbursement upon passage of the bill. (They'll also clarify this applies to encounters/service 3/1/18 and going forward.) An advisory committee will be convened to develop administrative rules, which will go into effect in January 2019.

Oregon Psychiatric Access Line Expansion SB 1539 and HB 5201

SB 1539 passes Senate Health Care, funding will be included in the OHA budget in HB 5201, the omnibus agency appropriations bill.

Funding was included in SB 5701, the budget reconciliation bill, to expand OHSU's Oregon Psychiatric Access Line for Kids to include the adult population. The program would be built on the existing infrastructure for the OPAL-K program at Oregon Health & Sciences University.

The 2013 Legislature authorized new investments in children's mental health, including pilot funding for the Oregon Psychiatric Access Hotline for Kids, (OPAL-K). This program expands access to mental health care for pediatric populations and reduces adverse outcomes from delays in care. OPAL-K, which went live in June of 2014, provides free, same-day, Monday through Friday, child psychiatric phone consultation to primary care providers in Oregon.

In a typical year, OPAL-K receives over 500 calls from medical providers in various regions of the state. To date, over 1,200 providers are enrolled to use the service. OPAL-K child psychiatrists offer practitioners practical advice and consultation for caring for their patients' mental health needs in the primary care medical home.

Expanding this successful program to the adult and geriatric populations will improve mental health care, especially in rural areas, and will cut down on long wait times to see a psychiatrist or a mental health provider.

Maternal Mortality and Morbidity Review Committee HB 4133

Evidence-based committee will study maternal fatalities with an eye towards preventing future deaths

The United States has the highest rate of maternal mortality in the developed world. In Oregon, the rate is between four and 12 per year, many of which could have been prevented. HB 4133 would do the following:

- Establish a multi-disciplinary committee staffed by the Oregon Health Authority, including physicians specializing in maternal-fetal medicine, obstetrics and gynecology and family practice, a certified nurse midwife, direct entry midwife, nurse specializing in labor and delivery, traditional health workers, individuals who represent communities of color, public health experts and others.
- Tasks the committee with studying incidents of maternal mortality and severe maternal morbidity, and trying to determine what factors played a part in the outcome.
- Asks the committee to examine the role of social determinates of health in maternal health and outcomes including factors like race, ethnicity, socio-economic status, housing, access to care, and others.
- Seeks for the committee to make recommendations in policy and budgeting that can reduce maternal mortality and severe morbidity.

Coordinated Care Organization Reform HB 4018

Lawmakers approve changes to CCO requirements in wake of the FamilyCare closure

HB 4018 legislates new requirements for CCOs in advance of the next phase of the model, referred to as CCO 2.0. That includes public meeting provisions for Governing Board agendas in which substantive decisions are on the agenda. CCOs will be required to address health disparities and social determinants of health. The bill also codifies contract provisions for non-renewal and requires a CCO to notify OHA of its refusal to renew a contract within two weeks after the receipt of a proposed contract.

Governor's Opioid Epidemic Task Force HB 4143

Task Force recommendations are part of effort to combat opioid abuse and dependency

HB 4143 is part of a multi-pronged approach to address the opioid epidemic. The bill will do the following:

- Requires the Department of Consumer and Business Services (DCBS) in consultation with the Oregon Health Authority (OHA) and Department of Corrections (DOC) to study the barriers to medication-assisted treatment for substance use disorder, including access in rural areas.
- DCBS will report findings to the Legislature no later than June 30, 2018.
- Appropriates \$2 million to the Oregon Health Authority to fund a pilot project in four counties.
- Requires health professions licensed to prescribe opioids to register with the Prescription Drug Monitoring Program.

Looking ahead to the 2018 election season

State Legislative Races

March 6 is the deadline for candidates to file for election or re-election to the Oregon Legislature. At that time, half of the 30 Senate seats and all 60 House seats will be in play. The State Senate will welcome two new members at least — Sen. Jeff Kruse, R-Roseburg, has resigned and Sen. Alan DeBoer, R-Jackson, has announced he intends to retire at the end of his term.

House seats are for two-year terms. Senate seats are four-year terms. Democrats hold majorities in the Senate, 17-12 (Sen. Kruse's seat is Republican held) and in the House 35-25. A single vote is needed by Democrats in both chambers in order to achieve a supermajority and the ability to pass tax measures without minority party votes.

The primary election will take place May 15 and the general election day is November 6.

Ballot measures

Over 40 initiative petitions have been submitted as of February 27, 2018. Most won't move forward because they lack the necessary signatures or political support. There are six "medical freedom" immunizations measures introduced by the same three petitioners to redefine Oregon's vaccine policy and to increase the administrative burden to immunize children. Only one, IP 7, the Medical Freedom Act, has been approved to circulate for signatures.

The Oregon Healthy Families Act, sponsored by Multnomah County Chair Deborah Kafoury, a public health champion, will increase cigarette taxes by \$2 per pack to fund health programs. It's status is still pending.

An active interim and a preview for bills in 2019

The interim is the period in which legislators, state agencies and stakeholders work on upcoming legislation. During a short session, approximately 300 bills are introduced. During a long session, there may be up to 3,000.

State agencies submit their legislative concepts to the Governor's Office for consideration in April of even-numbered years and also prepare for the biennial state agency budgets. The deadline for members and committees to submit requests for drafts of measures to be filed pre-session is September. Look for informational hearings during May 2018 Legislative Days and previews for committee bills during the September 2018 Legislative Days. The deadline to request pre-session bills is September 28.

Summary of Major Health Care Legislation

Information about these bills was compiled from a variety of sources including legislative staff measure summaries, public testimony, news media and legislative updates from legislators, stakeholders and community partners.

PASSED

HB 4005 Prescription Drug Pricing Transparency

Establishes statewide prescription drug cost and price transparency program in the Department of Business and Consumer Services. Requires manufacturers to report information, including price increases of 10 percent or more (for drugs over \$100) to the department. DCBS will provide annual reports on prescription drug prices to the Legislature. According to research published in the Journal of the American Medical Association, from 2013 to 2015, national spending on prescription drugs increased by approximately 20 percent and accounted for an estimated 17 percent of health care spending.

HB 4018 Coordinated Care Organization (CCO) Reform

This measure requires CCO governing bodies to adhere to public meeting requirements, much like a public agency, for governing board meetings with decisions on the agenda. Also includes notification requirements for non-renewal of CCO contracts. (See above.)

HB 4020 Extended Stay Centers

HB 4020 requires the Oregon Health Authority (OHA) to implement a new program to license extended stay centers in ambulatory surgical centers. The bill directs the Health Evidence Review Committee to develop evidence-based guidelines regarding the patient characteristics and surgical procedures that may be appropriate for ambulatory surgical centers and extended stay centers. The commission must provide a report of the timeline and plan for implementing the guidelines to the legislature during the 2019 regular session. In addition, the bill requires the

Oregon Patient Safety Commission to include ESC in its voluntary adverse- event reporting program.

HB 4104 Insurance Coverage for Child Hearing Aids

Requires health insurers to reimburse for ear molds, replacement ear molds, and hearing assistive technology system for an enrollee who is younger than 19, or 19 to 25 years of age and enrolled in a secondary school or accredited educational institution. Also requires health insurers to ensure members have access to pediatric audiologists, to provide notice of coverage limits, and to offer education materials describing appropriate technologies.

HB 4133 Maternal Mortality and Morbidity Review Committee

Establishes Maternal Mortality and Morbidity Review Committee to conduct studies and reviews of incidence of maternal mortality and severe maternal morbidity. (See above.)

HB 4135 Advance Directives

Oregon's 1993 advance directive law is updated to require the OHA to develop a streamlined form no later than 2019. The bill drops the requirement for notarization of the document but requires the designated health care representative to accept the appointment.

HB 4143 Governor's Opioid Task Force Bill

A \$2 million investment will fund prevention projects, including peer support recovery services, in four counties. (See above.)

HB 4145 Closes Gun Safety "Boyfriend" Loophole

The Governor was the chief sponsor of this bill to expand the federal law that bars people convicted of domestic violence against family or live-in partners from owning a gun. The law now applies to people in relationships and as well as those convicted of stalking. This made national news given that Oregon is the first state in the nation to pass a gun control bill since the Feb. 14 shooting in Parkland, Florida.

SB 1528 Alignment of the Tax Code (and a tobacco tax increase)

The purpose of the bill was to update Oregon's tax code after the passage of the federal tax overhaul in December. The most controversial provision was the detachment of the federal tax code provision which provides a 20-percent pass-through for entities such as S corporations, business partnerships, and limited liability companies. Senate Democrats say President Trump's tax cut and Jobs Act will allow business owners to pay taxes on 80 percent of their net earnings as opposed to 100 percent. However, they won't get the same break on their state taxes. Senate Republicans counter that this is effectively a tax increase on small businesses of nearly \$200 million in 2018.

The bill also increases cigarette taxes by \$.030 per pack of twenty cigarettes, effective January 1, 2019. The new tax, projected to raise \$60-\$70 million a biennium, will be used to fund a child protective services rapid response team.

SB 1540 Definition of Sexual Abuse

This bill clarifies the process of investigating reports of child abuse on school premises. Providers will be expected to continue to adhere to OHA guidelines for reporting sexual abuse.

In addition, the bill expands the scope of investigations for persons with mental illness or substance use disorders that may be conducted by Department of Human Services (DHS) and the Oregon Health Authority (OHA) by modifying, for the purpose of investigation of abuse, the definition of:

1. "Adult" to include a person who is receiving services for a substance use disorder or a mental illness in a facility or a state hospital.
2. "Community program" to include a provider that is paid directly or indirectly by OHA to provide mental health treatment in the community.
3. "Sexual abuse" to include any sexual contact between an individual receiving mental health or substance abuse treatment and the individual providing the treatment.

SB 1547 Concussions

Expands list of qualified health professionals who can provide medical release of a student athlete suspected of having a concussion to include licensed chiropractic physicians, naturopathic physicians, psychologists, physical therapists, occupational therapists, physician assistants and nurse practitioners. (Athletic trainers are not included.) Specifies requirements for qualified health professionals to obtain a certificate after completion of an online program and other requirements. (Physicians are exempt from the training provision.) Allows a psychologist, physician assistant, or nurse practitioner to provide a medical release for a person to participate in an athletic event without a certificate issued by the certificate program until July 1, 2021. Requires the OHA to submit a progress report on establishing the online program no later than October 1, 2018.

SB 1548 PTSD Awareness

Designates June 27 as Oregon Post-Traumatic Stress Injury Awareness Day.

SB 1549 Medicaid extension at Oregon State Hospital/Balance Billing

Allows OHA and DHS to continue Medicaid coverage for a person admitted to a state hospital. It also allows individuals with Medicaid coverage that is terminated while admitted to a state hospital to apply for Medicaid 120 days prior to their expected release date. In a separate provision, requires health insurers to reimburse out-of-network providers for emergency services or other covered inpatient or outpatient services provided at an in-network health care facility in an amount established in rule by DCBS. (See above)

FAILED

HJR 203 Ensures right to access health care

Proposes amendment to Oregon Constitution to ensure access to affordable health care be submitted to the people for their approval or rejection at the next regular general election held

throughout the state. Questions around funding universal should it be approved by voters proved to be a major barrier. An interim task force on Universal Health Care, chaired by Rep. Andrea Salinas, will address those questions.

HB 4110: Marijuana Samples at Temporary Special Events

HB 4110 allows for free marijuana samples at special events exempting these samples from child-resistant packaging and consumer protection rules and making it more likely these samples may be ingested by children. A coalition of health organizations blocked this bill from an initial hearing.

SB 1531 Mental Health Evaluations for Law Enforcement Officers

This bill would require law enforcement officers to meet with a mental health profession. While the bill did not move out of committee, Sen. Lew Frederick, the chief sponsor, will convene an interim work group to develop recommendations for the 2019 session.

Turbo History of the 35-day session in Oregon

During the first short session in 2010, the Legislature passed major overhauls to health care championed by Governor John Kitzhaber. In 2012 they tackled education reform, expanding early childhood programs, and creating the health insurance exchange. In 2014, lawmakers took on Cover Oregon problems, marijuana legalization and gun control. In 2016, they passed landmark minimum wage legislation, affordable housing reform and a clean energy bill. This year, they aligned Oregon's tax code with the federal tax overhaul and passed a gun control bill to close the "boyfriend loophole".

For more information about these bills or any other legislative issues, please contact Katy King Government Relations and Public Affairs at KatyKing01@gmail.com.