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GOVERNMENT RELATIONS & PUBLIC AFFAIRS

December Special Session and Legislative Update

"The vaccine is the light at the end of the tunnel, but we will be in this tunnel for several months. We need to keep doing what we've been doing to help our friends, neighbors and ourselves stay safe."
OHA Director Pat Allen talks about the distribution of the COVID-19 vaccine.

December brought significant development on the policy front as state and federal lawmakers worked to bolster the nation's ability to respond to the COVID-19 pandemic before the end of 2020.

- **State Telehealth pay parity:** Andrew Stolfi, the Insurance Commissioner, announced an extension of the telehealth pay parity policy on par with in-person visits through June of 2021.
- **Special Session:** The governor calls legislators into a third special session this year. A medical liability protection bill dies in committee.
- **A federal COVID-19 relief package is passed.** Provisions include an unexpected deal on **"surprise" medical billing**, which includes an independent dispute resolution process sought by physicians and hospitals rather than benchmarking to a reimbursement rate in federal law.

Special Session Update
Protesters storm Capitol building, a last-minute medical liability protection bill fails.
Gov. Kate Brown called legislators into an in-person one-day **special session on December 21** for emergency COVID relief. The day started on a note of drama as approximately 300 far-right protesters stormed two separate entrances into the Capitol to protest the pandemic restrictions on business and calling for the arrest of Kate Brown. Some of the protesters carried firearms and bear spray and many did not wear masks. Members of the public were not allowed in the Capitol. Legislators and staff were asked to follow safety protocols, including donning masks. Sen. Dallas Heard, R-Roseburg, refused to do so.

The negotiated agenda was narrow, with five bills allowing cocktails-to-go to support restaurants; extension of the eviction moratorium and funding for landlords; liability

protections for schools; and emergency appropriations. Public hearings were held in advance of the special session. A last minute bill on medical liability protections that was introduced on Saturday failed in committee due to a lack of votes from House Democratic members. This means no Oregon liability shield for hospitals and other health care providers in today's special session.

Summary of legislation

HB 4401 Housing Relief

- Provides grants directly to landlords on behalf of financially distressed tenants for up to 80 percent of unpaid rent between April 1, 2020, and June 30, 2021. Requires landlords to forgive the remaining unpaid rent for qualified tenants.
- Distributes rent assistance to recipients of the CARES Act Emergency Solution Grants, which will make payments directly to landlords.
- Prohibits eviction without cause until June 30, 2021.

HB 4402 Liability Protections for Schools

- Prohibits claims against schools from damages due to COVID-19 infections if the school is in compliance with the Governor's Executive Orders during the COVID-19 emergency.

HB 1801 Cocktails-to-Go

- Allows restaurants during the pandemic emergency to sell and deliver mixed drinks in sealed containers to-go, similar to beer, wine and cider. Rules will limit the sale to two drinks per substantial food item ordered.
- Limits the fees that a third-party food platform (DoorDash, Grub Hub, etc.) may charge a restaurant to facilitate orders.

HB 1803 Medical Liability Protections (FAILED)

- Limits liability of hospitals, health maintenance organizations, health care providers and locations where health care services are provided for certain claims arising during COVID-19 emergency period. Long-term and residential care facilities as well as correction facilities are not included.
- Liability protection is not given to acts taken with gross negligence; reckless, wanton, or intentional misconduct, false claims, fraud, or deceptive acts or practices.
- Liability protection also is not given to delays or cancellations of elective or non-urgent procedures that create an irreversible risk of harm to the patient.

SB 5731 Emergency Appropriations

This is the $800 million budget bill for the special session.

- $100 million to the Emergency Board for appropriations
- $400 million for the state's response to the COVID-19 emergency
- $100 million for wildfire recovery and prevention activities.
- $150 million for housing relief fund created under HB 4401 (landlord compensation)
- $50 million for Housing and Community Services (rental assistance program)

Federal Update $900 million COVID stimulus deal

A ban on surprise medical billing is included in the package

Agreement has been reached on a COVID-19 relief package that includes a ban on surprise (out-of-network) emergency medical bills. While everyone agrees that patients should be taken out of the middle of billing disputes, the proposed solutions — such as benchmarking reimbursement rates in law — cut payments for providers, especially emergency physicians subject to EMTALA. This tilts negotiating leverage to insurance companies to lower payments to providers. The deal would allow for payers and providers to negotiate payment for federal ERISA (self-funded insurers) claims through an independent dispute resolution process sought by associations for hospitals and physicians. It would bar arbiters from basing their decisions on Medicare and Medicaid rates, which tend to be much lower than commercial rates. Patients would be charged the same for co-pays and deductibles as in-network services.

The ban takes effect in 2022. Oregon's ban on balance billing took effect in March of 2018. Negotiations are underway on the interim out-of-network reimbursement rate, which expires 2022.

Provisions of the federal stimulus package include the following:

- $600 direct payments for those earning under $75,000 and $1,200 for couples earning under $150,000
- Extended unemployment benefits
- Rental assistance fund of $25 billion. Extends the eviction moratorium until Jan. 31
- Additional $13 billion for the Supplemental Nutrition Assistance Program
- Small business Paycheck Protection Program loan fund of $284 billion.
- $10 billion for child care centers
- $68 billion to buy and distribute COVID-19 vaccines.
- Broadband access, $7 million.
- Transportation funding for airlines, mass transit, highways and Amtrak.
- $82 billion for schools and universities to assist with re-opening.
- $13 billion for farmers
- Tax-deductible meals — a provision sought by President Trump as well as a last $1.4 billion installment for a wall on the U.S.-Mexico border.

Interim Legislative Days

Legislators convened for extended interim legislative days December 3-18, with House committees meeting the first week and Senate committees meeting the second week. All of the meetings were virtual. It's expected that the Oregon Legislature will meet virtually (closed to the public) appearing in person only for votes for the first three months of session, which starts Jan. 19.

The Spotlight Issue: COVID-19 Vaccine Distribution

Frontline health care workers were the first in line to receive COVID-19 vaccines, which arrived in Oregon on December 18. Oregon Health Authority (OHA) Director Pat Allen said Oregon will initially receive 147,000 doses. OHA has developed a plan for distribution which will factor in health equity. See the plan here. Phase one will be health care workers who have the potential for direct or indirect exposure to patients or infectious materials and people in long-term care facilities. This population is about

350,000 and each will need 2 doses. The next phase will be other essential workers and people at higher risk of severe COVID-19 illness, including people 65 years of age and older. Pat Allen cautioned that we'll be well into Phase III until we will be back to normal and people can stop wearing masks. His closing remarks: "Vaccines don't save people — vaccinations save people."

New Crisis Care Guidelines
To be used when health care providers are not able to provide the standard of care to every individual. Concerns about discrimination prompted new equity-driven principles to incorporate into health care planning. Underlying conditions, disability, life expectancy, resource utilization, quality of life and personal ventilators should not be included as considerations since these are often drivers of inequities.
Principles in promoting health equity during resource-constrained events
https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le3513.pdf

The state is edging towards a coronavirus relief funding cliff — CARES funding expires on 12/30 but unfortunately the pandemic is not expiring at the same time. Work needs to go on. A balance of $252 million remains between January-June 2021 to maintain the response and distribute the COVID-19 vaccine.

House and Senate Committee hearings
State Agency Updates

Telehealth for Commercial Insurance
Agreement reached to extend pay parity for commercial insurance until June 2021
In June, Gov. Brown announced a voluntary agreement with health insurers to continue expanded coverage and pay parity reimbursement at least through the end of 2020. Insurance Commissioner Andrew Stolfi announced at the House Health Care Committee that this agreement will be extended through June 30, 2021. He shared feedback from listening sessions with patients, providers and insurers. **Note:** a provider coalition convened by OMA is working to make telehealth pay parity permanent.
Listening session and feedback
- Providers were uniformly supportive of making expanded telehealth coverage and payment parity permanent. There was some disagreement regarding best practices for telehealth provided via phone.
- Insurers support continued telehealth expansion through the pandemic but had concerns about permanent policy changes, especially payment parity.
- Consumers had strong support for making telehealth available as an option on a permanent basis. There were some concerns about access to in-network telehealth services.

Next steps
- The National Association of Insurance Commissioners is pushing the federal government to make telehealth flexibilities permanent.

- Medicare has made some of its telehealth expansion permanent but larger changes may require action.

Public Health Modernization Update
OHA advocates for public health funding to help local health departments respond to disease outbreaks
OHA Public Health Director Rachael Banks made her debut testimony in her new role, to advocate for public health modernizations efforts. OHA has a 10 year goal: eliminate health inequities by 2030. Investments will help state and local health departments to do this work and respond to emerging disease threats. In 2017-19, the legislature appropriated $5 million for public health modernization and in 2019-21 they allocated $10 million. The Governor's Recommended Budget includes $30 million, which must be approved by the legislature.

Zoonotic Diseases
Emilio DeBess, the State Public Health Veterinarian (OHA) and other experts talked about the emergence of Zoonotic threats and the impact on human health. Six out of every 10 infectious diseases in people are zoonotic.

Brief (and deadly) history:
- Black Death/bubonic plague (1347-52) 200 million deaths
- Spanish Flu/H1N1 virus (1918) 40-50 million deaths
- Asian Flu/H2N2 virus (1957-58) 1.1 million deaths
- SARS/Coronavirus from bats and civet cats (2002-04) 774 deaths but a case-fatality rate of 15 percent. Affected 8,000 people in 29 counties (a similar strain is responsible for the current COVID-19 pandemic.)
- Swine Flu/H1N1 virus (2009) 200,000 deaths (infected more than 1 billion people globally)
- Ebola/bats and bushmeat consumption (2013-16) 11,000 deaths

Diseases of most concern: zoonotic influenza, salmonellosis, West Nile virus, plague, emerging coronaviruses, Lyme disease, hantavirus. Rabies is the most concerning of them all. Work closely with Oregon Department of Fish and Wildlife to identify outbreaks. Work with Department of Agriculture to make sure human infection doesn't occur.

<u>Health Care Costs and Containment</u>

Health Care Cost Growth Program Update (SB 889)
OHA develops goals to reduce rising health care costs and to shift payment from a volume based system to a value-based care approach
Core problem: health care costs are growing — the average paid amounts per person increased 6.5 percent from 2013-2017. **The solution** will require a common goal with payers and providers publicly responsible for reducing costs, a sustainable target, transparency and a total cost-of-care approach that allows payers and provides to shift

from volume to a value-based care approach. The SB 889 implementation committee will continue through 2021. The Oregon Health Policy Board will convene public hearings.
Next steps: OHA will finalize a report which will be submitted to the legislature in 2021 with accountability recommendations for legislation. In the first quarter of 2021, OHA will begin publishing data reports on health care cost trends and commercial and Medicare prices. The implementation report can be found here. Educational presentations for the Oregon Health Policy Board are here.

Hospital Consolidation (Mergers and Acquisitions)
Jeremy Vandehey OHA
John McConnell, Director Center for Health System Effectiveness, OHSU
The concern: hospital consolidation results in higher prices for insurers, and lower or unchanged quality of care. OHA is looking at balance of insurer vs provider market power. Insurer consolidation allows insurers to negotiate lower provider prices. Savings from lower provider prices are not passed not to the consumer as lower premiums. Insurer consolidation leads to premium increases. OHA considered the tradeoffs: consolidation may keep some providers afloat. Their evidence shows that higher prices don't increase quality. There are concerns about direct and indirect impacts on consumers.

OHA Legislative Concept LC 1833)
In 2016, Oregon health care insurance premiums equated almost a third of a family's total income. Health care costs are an equity issue — a rising number of Oregonians reported they delayed care in the past year because of cost. LC 1833 requires health care entities to obtain approval from OHA before any mergers, acquisitions or affiliations of entities that had $25 million or more in net patient revenue. Requires OHPB to establish criteria for approval. Oregonians' deductibles are the 3rd highest in the nation at $3,988. The U.S. average is $3,069. The COVID-19 pandemic drove down patients visits and cost of care. Jeremy Vandehey noted that primary care providers have said they don't have enough cash on hand given the pandemic to continue operations unless utilization increases.

OSPIRG/A Public Option in Oregon
Charlie Fisher from OSPIRG testified that consumers are facing higher premiums with fewer options. Insurance costs more in rural counties. Many in the marketplace are underinsured. Annual deductibles are greater than 5 percent of annual household income and out-of-pocket medical expenses are greater than 5 percent of annual household income for a family under 200 percent FPL. He said that a public option would allow more choice, direct plan comparison and encourage private plans to lower premiums/increase quality or value of plans. OSPIRG's proposal would benchmark reimbursement to Medicare rates. CCOs play a role in administration to encourage value-based payments. Legislators questioned the benchmark to Medicare given that it's generally below the cost of providing care. A solution needs to attract providers to be in-network.

Universal Access to Primary Care
Rep. Rachel Prusak, D-Tualatin/West Linn, and Rep. Raquel Moore Green, R-Salem, co-chaired the 22-member committee to look at enhancing access to primary care to improve health outcomes and to reduce costs. The workgroup introduced policy proposals, which included the expansion and investment in telehealth and alternative payment models, investments in team-based care and clinical infrastructure and payment reform to reduce the administrative burden on providers. On the consumer side, reducing same-day co-pays for primary care and behavioral health services will help to provide integrated care and improve access. Link to the full recommendations here.

Behavioral Health Updates

Decriminalizing Mental Illness Workgroup Report
Legislative concepts will help direct people in mental health crisis to appropriate care and keep them out of the criminal justice system
Judge Pat Wolke, Josephine County Circuit Court Judge and Wil Berry, OPPA, provided an overview of workgroup efforts to decriminalize mental illness.The intent is to prevent people from being criminalized after a psychotic episode and to focus on treatment in the health care system the same way you would treat a physical health emergency. This idea is even more important during a pandemic. If you criminalize people after their first psychotic episode they could lose their jobs and health insurance as a result. And a criminal record creates additional barriers to recovery. The intent is a more humane approach. One approach includes refining the legal definition of "danger to self or others" to slightly lower the threshold for civil commitment. Oregon is the only state that doesn't define this term. The problem now is that some people are considered dangerous enough for jail but not for treatment. Sen. Sara Gelser, D-Corvallis, raised the tension between requiring treatment and taking away rights from people in mental health crisis. Dr. Berry said there are due-process protections in the forensic system and people with lived experience are diverse and many regret they didn't get treatment before ending up in the criminal justice system. There was agreement that you shouldn't have to commit a crime to get mental health treatment and that community resources were scarce.

Oregon Alliance to Prevent Suicide
Alliance seeks bill to require continuing education for behavioral health providers
Annette Marcus from OAPS shared Oregon's 2018 suicide statistics:
- 844 people committed suicide (up from 825)
- 129 people age 24 and younger
- Oregon has the 11th highest rate in the nation.
- Suicide is the leading cause of dealth for 24 and younger and 8th leading cause of death across the lifespan.
- Increase in youth who were hospitalized for self-inflicted injury or suicide attempt.

- Suicide related training and the percentage of licensees reporting completion of continuing education in suicide assessment, treatment or management. Focus is on the behavioral health workforce. Colleagues in BH workforce are not properly trained. When they are trained and have the tools to support people, they literally save lives. Training is inadequate for social workers and other behavioral health providers.

OAPS will be working on a bill (LC 1468) to require specific professional regulatory boards (including physicians) to require licensees to complete six hours of continuing education related to suicide risk assessment every six years.

System of Care Advisory Council

SB 1 (2019) develops a System of Care Advisory Council and plan to help high needs children

This council was formed at the beginning of the COVID-19 pandemic. The council is charged with implementing SB 1, a regional system of care plan for children experiencing high needs, including intellectual and developmental disabilities and behavioral health needs in Oregon. The group is advocating for an additional $4.8 million for system of care grants to provide grant funding for 15 CCOs and the 9 federal Tribes to address gaps and needs in their regional systems. More work needs to be done to address equity issues and this will be addressed. A data dashboard has been created to look across the system. The next step is to measure outcomes. Some barriers: competing state agency systems to serve children that hinder access to services. More data is needed to develop a plan. The goal is for families and youths to have the right service at the right time at the right place.

Behavioral Health Response to COVID-19 and wildfires

Resources are available to help Oregonians with behavioral health needs

OHA Behavioral Health Director Steve Allen outlined steps the agency is taking to address the behavioral health needs of Oregonians in response to the pandemic and the wildfires. Activities include:

- Ongoing meetings and workgroups with consumers and focused meetings and workgroups for African American community members and Spanish-speaking parents.
- CARES funding: the Legislature allocated $25 million in funds to support culturally responsive and barrier-reducing activities to mitigate the impact of the pandemic.
- A Safe and Strong website, which has generated 55,000 unique users.
- Oregon's Behavioral Health Access System and a provider directory.
- Expanded access to Lines for Life, which include new services to address new and existing health disparities.

Measure 110 Implementation

A $229 million shift from marijuana allocations to state agencies/distributions to cities and counties to the M110 Drug Treatment and Recovery Services Fund

Behavioral Health Director Steve Allen discussed M 110 requirements. Measure 110 decriminalizes small amounts of drugs with a fine rather than a criminal sentence. This affects about 4,000 people per year who are likely to have an addiction. The current system requires access to treatment services. The challenge of the new system is to get them to engage in treatment services. This measure doesn't include the full array of addiction treatment services nor does it address integration of services into the current health care system. There are also workforce capacity issues to be addressed.

Here are key components of the measure:
- OHA administer all aspects of implementation
- Temporary 24/7 crisis hotline by 2/1/21
- Form Oversight and Accountability Council
- 24/7 addiction recovery center by October 2021
- Transfer marijuana funds (currently used to pay for non-medicaid BH services) to implement this program

Finances are a key piece. Legislative Fiscal Officer John Borden walked legislators through the changes. Forecasted marijuana revenues for the next biennium are $321 million. Prior to the ballot measure, funds were distributed by percentage to cities, counties in 10 percent increments ($29.2 million each) and allocated to the State School Fund, ($103 million), OHA (mental health, alcoholism, drug services), ($51 million), the Oregon State Police ($38.9 million) and the OHA alcohol and drug prevention efforts ($13 million). Measure 110 requires transfers of marijuana funds to the Drug Treatment and Recovery Services Fund of $68 million which will result in funding cuts to cities and counties (reduced $6.7 million). Other program funding will remain the same for this biennium. **For the 2021-23 biennium, $229 million will be shifted to this new program. This would reduce funds to state agencies and cities and counties in the 2021-23 biennium. This means a reduction of 72 percent for cities and counties and a reduction of 77 percent for state agency programs.**

Measure 109 Oregon Psilocybin Act Implementation

A two-year rule-making process will set the framework to administer psilocybin (magic mushrooms) in Oregon.

The OHA presented on the basics of Measure 109. Ballot Measure 109 requires the Oregon Health Authority to establish a regulatory framework concerning psilocybin products and services to be used to treat mental health. The Act also establishes the 16-member Oregon Psilocybin Advisory Board to assist with the examination and distribution of available medical, psychological and scientific studies related to the safety and efficacy of psilocybin in treating mental health conditions and to adopt rules and regulation for the implementation of a regulatory framework to allow people 21 and older to be provided psilocybin services. The board will convene in March 2021, and OHA will adopt rules and regulations by Dec. 31, 2022. OHA will start receiving applications for licensure January 2, 2023. The licenses will allow the manufacture of psilocybin products, operation of psilocybin service centers and facilitation of psilocybin therapy services.

Oregon is the first state to create a psilocybin program. The FDA has not approved psilocybin at this time.

Racial Justice Council Health Equity Committee
The governor's office testified they are changing how they listen, engage and respond to and support Black, Indigenous, people of color and tribal members in Oregon. The Committee was established to recommend changes to state and agency health policies, practices, and structures to align them within a racial justice and health equity framework. The purpose is to make necessary institutional and statutory changes necessary to promote health equity, improve disaggregated data collection, and recommend interventions for racial health disparities in social determinants of health. The committee has made recommendations to cover gaps and increase access to health care including:

- Funds Cover All People, a pilot program to provide state-based coverage to undocumented adults, DACA recipients, legal residents, and young adults who age out of Cover All Kids, $10M.
- Funds Compact of Free Association (COFA) premium assistance program and dental coverage for COFA residents, $2.6M.
- Funds high-quality reproductive health services for the Oregon Health Plan (OHP), $2M.
- Improves access to the Oregon Health Plan (OHP) by funding the Community Partners & Outreach Program to provide health services navigation, and to improve language access and quality, $7.8M.
- Funding to support traditional health worker licensing program, $600,000.
- Continue to build on Oregon Regional Health Equity Coalitions, $5.8M.
- Behavioral Health and Health Care Workforce Diversification, $27.5M.

Health Legislative Concepts (LCs)
Senate Health
LC 1998 Requires OLCC to study issues related to alcohol sales revenue.
LC 2266 Licensure of behavior analysis interventionists
LC 2204 Delays sunset of health insurance reimbursement for behavior analysis for autism spectrum disorder.

House Health
LC 1833 Mergers and Acquisitions (Rep. Andrea Salinas, D-Lake Oswego)
LC 903 Integrated Health Plans PEBB/OEBB (Rep. Maxine Dexter, D-Portland)
Global budgets paid to insurers and third party administrators for plans described in this section shall be no less than the payments in the previous plan year. The board may not restrict or prescribe the reimbursement of providers participating in plans in this section.
LC 2638 Healthy Homes Program (Rep. Pam Marsh, D-Southern Jackson County)
Creates a health homes program at OHA to distribute grants to local governments to assist low-income households or environmental justice communities.

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