LOBBY OREGON

# LEGISLATIVE UPDATE

Prepared for OAFP

## Revenue Forecast

Despite 160,000 Oregonians being out of work, the state revenue outlook continues to look up.  year ago, state economists had projected a $2 billion cut to revenue for the 2021-23 biennium. Now state economists are expecting revenue to be a little bit better than they expected before the pandemic.

The Department of Revenue attributes this to the massive level of federal help, and the surprising performance of investment and business income. Interestingly, unprecedented federal aid has boosted incomes higher today than before the pandemic, and income excluding direct federal aid has returned to pre-pandemic levels. And the underlying economic outlook continues to become more positive. "We really have a very solid foundation for the next couple years. The stage is set for not just growth but rapid rates of growth" says state economist Mark McMullen.

The bottom line is that budget writers are expected to have nearly $800 million in additional revenue to work with this session. That would erase part of the $1.6 billion budget gap legislative leaders predicted earlier this month, which they thought would occur due to slower than predicted state revenue growth and hundreds of millions of dollars in COVID and wildfire recovery-related spending by the Legislature last year. Oregon's two-year budget is approximately $26 billion.

With President Biden's $1.9 trillion federal relief package making its way through congress, it appears Oregon's budget outlook could be rosier than initially thought.

## HB 3039 – State Health Information Exchange

"I have a hope for our future as Oregonians -- My hope is in a not-too-distant future we are each able to access high-quality, affordable, coordinated and compassionate care. A future where continuity of care is the norm and not what happens to those who get lucky. A future where a clinician is able to write a referral to a specialist, a housing navigator and give vouchers for healthy food from the local farmer's market, all using an electronic information sharing system in the exam room" says pulmonologist Rep. Maxine Dexter (D-Portland).

Dexter hopes to accomplish this with HB 3039. The bill directs the Oregon Health Authority to convene stakeholders to explore options for how the state can seamlessly integrate the delivery of social services as well as health care. The group would be tasked with developing a statewide strategic plan to achieve two objectives:

1. Ensure our HER systems can "talk" to one another
2. Link health record systems with community-based organizations and the services they provide in the region, allowing for care to the whole patient

"One of the important things this bill would do is inventory the data the state *already has* that all sit in their own siloes but don't talk to each other. We have an all payers all claims database, public health reportable diseases database, narcotics prescribing database, COVID vaccine database, I could go on and on. Most of these do not communicate with one another" says Tom Holt on behalf of the Oregon Health Leadership Council, a collaborative of payers, providers, and others involved in the health care system, with a mission of improving the accountability of data across payers, systems and clinics to improve care for Oregonians.

There was no opposition.

# HB 2673 – Naturopath Pay Parity

HB 2673 would require insurers to reimburse naturopathic physicians when they provide the same service as an allopathic physician or osteopathic physician. The bill retains the choice of an insurer whether to offer naturopath services as part of their health plans, and to decide which providers they wish to contract with. Rep. Rob Nosse (D-Portland), the bill's sponsor, says, "I believe this bill is a simple fix to a fairness problem."

"Insurers have dictatorial powers over the contracts they provide naturopaths. They are adverse, adhesive and take it or leave it" says Jeff Clark, ND, a naturopath and member of the Oregon Association of Naturopathic Physicians.

Commercial carriers are opposed to the bill. Vince Porter, on behalf of Cambia, told the committee, "We've heard loud and clear from many of you that we *must contain* the cost of health care. As insurers we are often blamed in committee hearings for high insurance premiums and expensive deductibles. We have also heard loud and clear the need for us to quickly transform health care and move to value based payment arrangements. This bill will lock us in on fee for service payment arrangements that will increase the cost of health care… If the state requires increased payments for *any* provider type no matter the training level it will increase costs to the system… I hope this bill goes no further than this hearing, and with all due respect, if it does pass, it will send a message to insurers that the legislature is not that serious about containing health care cost."

Rep. Rachel Prusak (D-Tualatin) If we have more mandates around FFS, because we are a non-integrated payer, it is going to be that much harder to enter into value-based arrangements if there are still incentives that the state is imposing on us that promote parity on FFS. There is no guarantee that providers are going to sign… and I think this creates an added incentive to not enter into those agreements.

Rep. Andrea Salinas (D-Lake Oswego) says she is torn. "I am sympathetic to this idea, but I also want to see us get to an alternative payment methodology. I don't see how we can get there with the concept we're considering here today."

# HB 2638 – COVID Liability Protections

"The goal of HB 2638 is simple –if you are a business owner trying to operate in good faith, in reasonable compliance with government guidelines, you should have some protection against a lawsuit if COVID-19 exposure is somehow tied to your place of business. Unlike the legislation passed in December to provide liability protection to schools, this legislation does not include absolute immunity. It focuses on obligations to pay damages, not on immunity from a suit. It provides protection for "reasonable compliance" but does not apply to situations where gross negligence, reckless, wanton, or intentional misconduct has occurred. It also does not apply to claims subject to ORS chapter 656 which includes workers comp, labor, employment, and unlawful discrimination, meaning claims brought by employees. This was done based on the direction of Chair Power during the workgroup process" Fawn Barrie, on behalf of the Oregon Liability Reform Coalition, told the House Judiciary Subcommittee on Civil Law.

The Trial Lawyers' Arthur Towers says this bill is very different from other liability legislation they have seen like liability immunity for health care workers or the bill they passed for schools in the third special session. "To be eligible for liability immunity a business doesn't have to comply with COVID-19 regulations, they just have to be reasonably compliant with any COVID regulation."

# HB 2328 – Provider Discrimination by Insurers

Dr. Vern Saboe, a chiropractor and President of the Oregon Chiropractic Association says the goal of this legislation is to validate existing Oregon statute, as well as the Affordable Care Act, which both state that an insurer may not discriminate with respect to participation under a health benefit plan against any health care provider who is acting within the scope of the provider's license or certification. "The issue here is enforcement."

"If we pass another law to make another law work why would the second law be enforced? Why wouldn't this be a legal issue instead of stacking legislative concepts?" asked Rep. Cedric Hayden (R-Cottage Grove).

"We have received two public facing memos from the Department of Justice that outline what they believe our enforcement authority is here interpreting the former bill. They indicate that the bill is to be construed consistent with federal law, which limits our enforcement ability. We did give Dr. Saboe the guidance that if he were to come back and put on the record the clear intent of this bill, that we would be able to take another look at it" says TK Keen, Division of Financial Regulation.

America's Health Insurance Plans (AHIP) and PacificSource testified in opposition to the bill. Elise Brown, on behalf of AHIP, says that provider discrimination is being addressed now at the federal level, and Oregon law closely mirrors federal law. The law would require us to contract with providers who are willing to meet our terms, even if we would not normally credential them, and that would be for cost or safety reasons. The law would also require insurers to cover every provider type licensed or certified by the state. "The problem is that just because a provider is licensed by the state, doesn't mean that they meet health plan safety standards." She asked the Committee to let the federal considerations play out.

# SB 428 – Universal Health Care Task Force Extension

The Task Force on Universal Health Care lost six months to COVID-19, Sen. James Manning (D-Eugene) told the Senate Health Committee. SB 428 extends the Task Force's deadline to deliver a report to the Legislature by one year, to the 2022 session.

Dr. Bruce Goldberg, Professor at OHSU-PSU School of Health and former OHA Director, said the Task Force will recommend a universal health care system in Oregon, which no state has done yet.

Several Task Force members, Committee Chair Patterson, Rep. Khanh Pham (D-Portland), the Oregon Nurses Association and Mid-Valley Health Care Advocates spoke in support of the bill.

# SJR 12 – HOPE Amendment

Senate Joint Resolution 12 would propose an amendment to the Oregon Constitution establishing the state's obligation to ensure every resident has access to cost-effective, clinically appropriate, and affordable health care.

Sen. Elizabeth Steiner Hayward (D-NW Portland) told the Senate Health Committee that the Legislature had the votes to pass the bill in 2020 and refer it to voters "if we had been able to do anything that session."

"If this pandemic has taught us one thing, it is that without access to high-quality, affordable health care we cannot thrive," Sen. Steiner Hayward testified.

Many legislators and local officials, the Oregon Medical Association, the Oregon Association of Hospitals and Health Systems, Providence, Kaiser Permanente Center for Health Research, Health Care for All Oregon and the SEIU testified in support of the bill. As late Sen. Mitch Greenlick introduced this bill nearly every session he served in the Legislature, many said passing it would also be a tribute to his life's work.

# SCR 3 – Honoring Sen. Greenlick

Many who supported SJR 12 also testified about Senate Concurrent Resolution 3, which would honor the life and work of late Rep. Mitch Greenlick (D-Portland), the longtime chair of the House Health Committee. With tears in her eyes, Sen. Steiner Hayward told the Senate Health Committee about Sen. Greenlick's mentorship, leadership, grit, and drive. Near the end of the public hearing, musician and Health Care for All activist Normal Sylvester played "The Health Care Blues" in Mitch's honor.

# HB 2388 – Expanded Coverage for Midwifery

"Maternity care is in crisis in our country. We do not have enough maternity care providers and we have the highest maternal mortality rate of any high-income, developed nation in spite of spending more on care than any other country. Midwives are part of the solution to this crisis" Silke Akerson, on behalf of the Oregon Midwifery Council, told the House Health Committee.

HB 2388 seeks to remedy these issues by:

1. Requiring Oregon insurers and CCOs to cover midwifery care in the hospital, birth center, and home setting with all three licensed midwife types.
2. Requiring Oregon insurers to pay birth centers a fair facility fee based on their actual costs and good faith negotiation standard; and,
3. Directing the Department of Business and Consumer Services to report to the legislature on the impact of the law

Half of insurers provide limited or no coverage for midwifery care outside of the hospital setting, and many pay birth centers far below cost for their facility fee, say proponents.

Insurers are strongly opposed however for a variety of reasons. Kaiser testified that this bill would require them to contract for care outside of their system.

Cambia currently contracts with 8 of 10 eligible birth centers who meets the standards for insurers' accreditation, saying the support some of the language in the bill, but oppose mandated reimbursement. They also would like to see language requiring liability coverage and birth centers to have arrangements with local hospitals in case things go wrong.

# HB 2417 – Mobile Crisis Intervention

Cahoots has responded to non-violent mental health 911 calls in Eugene-Springfield for almost 32 years. HB 2417 would require the Department of Human Services to administer a program to provide matching grants to cities or counties to run similar mobile crisis intervention teams around the state.

The House Behavioral Health Committee ran out of time to hear everyone who wanted to testify in support of HB 2417. Committee Chair Tawna Sanchez (D-North Portland), Rep. Janeen Sollman (D-Hillsboro), Rep. Pam Marsh (D-Ashland), community advocates, homeless coalitions, community health workers, the National Association of Social Workers, the HIV Alliance, a nursing student, and former Cahoots response workers testified in support of the bill.

# HB 3111 – Recovery Community Centers

This bill would require the Oregon Health Authority to contract with at least four recovery community organizations, based on criteria adopted by the Alcohol and Drug Policy Commission, to operate four recovery community centers in four different counties by January 1, 2022. House Behavioral Health Committee Chair Tawna Sanchez (D-Portland) clarified that this bill deals with recovery community centers, which provide non-clinical long-term recovery support, not the Addiction Recovery Centers called for in Measure 110, which assess people and refer them to treatment.

The Mental Health and Addiction Certification Board of Oregon, Oregon Recovers, recovery community center employees and volunteers, Oregonians in recovery from substance abuse disorders, Chair Sanchez, Rep. Sollman, Rep. Lily Morgan (R-Grants Pass) and Rep. Boomer Wright (R-Coos Bay) all spoke in favor of the bill.

# HB 2585 – Mental Health Services for Individuals who are Deaf, Deaf-Blind and Hard of Hearing

"People who are deaf, deaf-blind or hard of hearing are sometimes, tragically, marginalized in our society," Rep. Noble told the House Behavioral Health Committee.
This bill attempts to address that in mental health services in various ways, including:

- Establishing a Mental Health Bill of Rights for Deaf, Deaf-Blind and Hard of Hearing Individuals
- Directing OHA to appoint an advisory committee to make recommendations for these individuals to access these services statewide. Members would be appointed by January 1, 2022
- Requiring that if these individuals are admitted to the hospital or residential treatment facilities, a qualified staff member have primary responsibility for coordinating and implementing their treatment plan
- Directing OHA to adopt minimum standards for certification of health care sign language interpreters in these settings

Steven Brown, Oregon Association of the Deaf, testified in support of the bill. He said that many people who are deaf, deaf-blind, or hard of hearing seek mental health care but cannot find adequate services.

# SB 70 – Regional Health Equity Coalitions

SB 70 expands Regional Health Equity Coalitions (RHEC) from six to ten around the state. These groups work with local communities to identify sustainable policy, system, and environmental solutions to increase health equity for communities of color and other marginalized identities.

The Senate Health Committee adopted the -1 amendments, which require OHA to define "communities of color" by rule and clarifies that OHA must work with RHECs. The bill now goes to Ways and Means.

# SB 558 – Mail Order Pharmacies

Sen. Sara Gelser (D-Corvallis) told the Senate Health Care Committee that sometimes it is convenient for patients to order prescriptions by mail, other times it is not. "This choice should be up to the consumer," she said. A constituent of Sen. Gelser told the Committee about her family's challenges using a mail order pharmacy, which would not bill her son's secondary insurance. This ended up costing him hundreds of dollars.

SB 558 would prohibit insurance companies or pharmacy benefit managers (PBMs) from requiring prescriptions to be filled at mail order pharmacies, or prohibit they be filled at a local pharmacy. Moda Health, the PBM Prime Therapeutics, and the national PBM association opposed the bill.

LuGina Mendez-Harper, Prime Therapeutics, said that SB 558 addresses the same issue as HB 2185 (2019). Since that bill's passage, industry has worked with Department of Consumer and Business Services on rule-making, and new rules went into effect on January 1, 2021, making this bill unnecessary, she said.

Sen. Gelser said this was the first she had heard of any opposition and was happy to work on addressing their concerns.

# SB 65 – Transfers Insurance Exchange and COFA to OHA

The Senate Health Committee passed SB 65, which now goes to Ways and Means. The bill would move the individual insurance marketplace from the DCBS' Insurance Division to the Oregon Health Authority.

The entire Committee voted to pass the bill except Sen. Dallas Heard (R-Roseburg), who voted "no" on all amendments and bills before Senate Health "simply because the people are still not allowed in the building."

# SB 439 – Require Patients Receive Rebates

This bill requires insurers to reduce enrollee cost sharing for prescription drugs by 85 percent of rebates received by the insurer. It also allows DCBS to issue penalties up to $1 million for violations.

The bill's sponsor, Sen. Tim Knopp (R-Bend), told the Senate Health Committee that rebate savings are intended for patients; instead, insurance companies and PBMs pocket them.

Several patients, the International Cancer Advocacy Network, the Diabetes Leadership Council, and the Pharma Industry Labor Management Association spoke in favor of the bill.

Kaiser Permanente, PacificSource, Regence and Prime Therapeutics opposed SB 439. Amy Dauver, Kaiser Permanente, said that the bill risks raising premiums and diverts attention from the true driver of the high costs of pharmaceuticals – companies setting arbitrarily high prices.

# SB 560 – Third-Party Assistance towards Copays

Sen. Sara Gelser and Sen. Tim Knopp (R-Bend) sponsored this bill, which requires insurers and health care service contractors to count third-party assistance towards an individual's out-of-pocket maximum or cost-sharing.

Many patients and patient groups testified before the Senate Health Committee about the devastating financial and health costs of medication, especially for rare and chronic diseases. Supporters include the Oregon All Copays Count Coalition, which represents 47 organizations including the Oregon Medical Association, the American Cancer Society, the Cystic Fibrosis Foundation, the National Organization for Rare Diseases, the National MS Society, and the National Hemophilia Society.

Health insurers opposed the bill. Elise Brown, America's Health Insurance Plans, said Copay Accumulator Adjustment Programs are "a scheme from manufacturers that allow them to keep prices artificially high." She testified that the federal government banned these programs for Medicaid and Medicare because "they are considered illegal kickbacks that raise prices for hard-working taxpayers."

# SB 711 – Pharma Gender Disparities Study

SB 711 requires OHA to study the cost differences in pharmaceuticals used primarily by men versus women, and report to the Legislature by September 15, 2022.

Committee Chair Deb Patterson (D-Salem) told the Senate Health Committee that this is the first step in figuring out if there is a discriminatory "pink tax" on pharmaceuticals marked to women, and outline solutions for it.

Dr. Karen Adams, Professor of Obstetrics and Gynecology at OHSU, testified that she deals with this issue often with her patients. She compared medications typically prescribed for sexual disfunction. The retail price of Viagra is $1200 dollars for a 30-day supply, with an out-of-pocket price of just $10. For a ring to treat vaginal dryness that is good for three months, the manufacturer's cost is $600, and the out-of-pocket price is $489. Dr. Adams could not explain this cost difference.

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