LOBBY OREGON

LEGISLATIVE UPDATE

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Has Oregon Dodged a Recession? Kind of…

Despite job loss not seen since the Great Recession in 2010, state economists say state revenue collections are up roughly $2 billion from the previous forecast, effectively erasing what we had projected as a recession.

That is not to say that "If we lose 160,000 jobs, 1 out of 12 jobs in Oregon, how can it be that it's not a state revenue event?" asked Mark McMullen, Oregon Office of Economic Analysis. "Obviously, it will be. We will see it feed through to revenues eventually, but it sure looks like it's not going to happen in the current biennium, at least not to a significant extent." Timing issues, unprecedented federal aid, and income inequality all play a role in explaining the delayed impact.

Bottom line is, in the coming biennium, the state is looking at a roughly 8% increase in state revenue over 2019-21. For context, over the last few biennia, the state has seen 13-15% revenue growth. The long-term impact of the pandemic on the state budget remains to be seen however, and legislators and economists were quick remind to remind us that despite this positive forecast, we are not out of the woods yet.

Medical Liability Workgroup Update

The Oregon Medical Association, the hospital association, and the Oregon Trial Lawyers Association has been working on a framework to provide not blanket immunity, but "is intended to provide a narrow but needed assurance to health care providers that they will not be subject to liability when following state and federal COVID rules that impact the delivery of service," says Mark Bonnano, OMA Counsel. "The rule would provide immunity for claims brought against providers who were in the position of providing cares, were following COVID related rules, and were following rules that were in place at the time service was provided, or could not be provided."

The rule would not provide protection in the case of gross negligence, false claims, fraud, and notably does not provide any protections in the case of whistleblower claims or discrimination.

Hospital association lawyer Meghan Slotemaker says that the proposal would also include a process for a hospital or provider to resolve a claim early in the process if they believe the immunity rule should apply.

Art Towers, Trial Lawyers' Association, told the Judiciary Comittees, "a lot of credit to the medical association and the hospital association. But we still have a little ways to go."

Health Care Cost Growth Benchmark Update

Health care spending in Oregon has been growing on average 6.5% since 2013. Rising costs for healthcare premiums have prevented wage growth, and increasingly shifted costs to patients through increased out of pocket costs. Health care benefits are now estimated to cost a third of employee wages.

In 2019, the Legislature passed SB 889 which stood up a committee aimed at solving this issue. The idea is to set a cost growth target at both the payer and provider level to put downward pressure on the market. If we can get costs under control, the hope is that we can get premiums under control as well, said Jeremy Vandehey, Health Policy Director for the Oregon Health Authority.

So far, the committee has completed a number areas of work:

- What the cost growth target will be—3.4% for first 5 years, 3% thereafter
- 2018-2020 data will be collected but the target will not be in effect until 2021
- Mechanisms to ensure transparency

The Committee has agreed that alternative payment methodologies are key to bending the cost curve. In order to achieve this across the healthcare system, they are currently looking at broadening the value-based payment targets laid out in CCO 2.0 to commercial markets via a voluntary compact. The group is targeting primary care and hospital payments in particular.

Next, they will consider how to ensure controlling costs isn't adversely impacting care, how to better address health inequities, and what accountability and enforcement will look like.

Prescription Drug Price Transparency

In 2018, Oregon was one of the first states to create a prescription drug transparency program. The program requires pharmaceutical manufacturers to report on the costs of new drugs, drugs that have increased significantly in price, and 60-day notices when drug prices are scheduled to increase.

Insurance Commissioner Andrew Stolfi reports that Pharma filed a case in federal court challenging two laws that stood up the program. That litigation is ongoing.

Numi Lee Griffith, DCBS, says of the 62 drugs reported on in this year's price increase filings, half reported profit margins of 37% or higher, while six reported a profit margin above 80%.

The law also requires health insurers top report the top 25 most prescribed drugs, as well as the most expensive drugs on an individual and total claims basis. For the second year in a row, Humira, accounted for the largest portion of spending on any single drug, with 17,435 prescriptions totaling roughly $81 million in claims. The most expensive prescriptions on a per patient basis are mostly cancer drugs. Yervoy, a brand name used to treat melanoma was the most expensive with an approximate cost of $43,525.

DCBS is working on a legislative concept for 2021 that would do three things:

- allow them to better share de-identified consumer information
- provide them access to the all-payer, all-claims database
- expand the reporting requirements for insurers

Pharmacy Benefit Manager Reverse Auction

A technology and data analytics company called Truveris presented to the House Health Committee a novel idea for how the state might control pharmaceutical costs.

Many health plans, including those for public employees, use pharmacy benefit managers (PBMs) to manage the pharmaceutical benefit of their health plan(s). Truveris says they can help the state reduce the cost of PBM contracts by using data analytics and a bidding process to create true competition. First, PBMs are invited to bid

on the contract. PBMs must agree to terms, show how they classify drugs, and what they will cost. Technology can then calculate what the spending on drugs, fees, and rebates would look like under each contract.

The purchaser, in this case the state, would get this information of course, but the bidders also get to see how their proposal stacked up price wise against the lowest bid. The PBMs then get to revise their proposal for a second round.

Truveris representatives told the committee that New Jersey was able to save $1.6 billion over 6-year contracting process.

Legislators seemed genuinely interested in the proposal.

Coronavirus Update

Oregon's coronavirus response seems to be working. The state has the 4th lowest case rate per 100,000 people (724), and 6th lowest deaths per 100,000 people (37).

610,000 Oregonians have been tested to date, and we continue to test about 7000 people per day, with an eventual goal of 17,000 tests per day.

A case investigator interviews each person who tests positive for COVID-19. The Oregon Health Authority reports that within 24 hours, over 90% are contacted and 70% are interviewed.

Have seen about 100,000 new Oregon Health Plan enrollees since the pandemic began. The main driver for this is that the CARES act prohibited the state from disenrolling members. Still, this is less than was expected. OHA Director Pat Allen says this may be because the many hourly wage workers who have been significantly impacted by the pandemic were already enrolled to begin with.

CDC Vaccine Distribution Plans

The CDC has told the state that the first wave of COVID-19 vaccines will initially be made available to frontline health care workers, followed by other health care workers, other so-called "essential workers" such as food packaging and distribution personnel, and those over the age of 65 with the highest risk of severe outcomes. In mid-2021 they hope to implement phase 2 and expand the availability to a broader swath of high-risk individuals. Lastly in phase 3, the vaccine will be made widely available.

"I just laid that out in a stately fashion for you all, but I want to be clear that it will be much more chaotic than that, and I want to prepare people for that," OHA Director Pat Allen told the House Health Committee.

OHA Appeals for Increased Behavioral Health Funding While Facing Budget Cuts

"We need behavioral health care in Oregon more than ever," Steve Allen, Director of Behavioral Health at the Oregon Health Authority (OHA), told the interim Senate Committee on Mental Health. He hopes the legislature will be able to find funds to ensure the services Oregonians rely on continue to be funded.

Allen reported that OHA has been able to "mitigate and moderate" the impact of the 2019-2020 budget cuts it has already had to make. To do this, it:

- Changed the timing of some rate provider increases,
- Eliminated 21 Oregon State Hospital non-direct care positions,
- Postponed housing unit construction,
- Decreased rental assistance and wraparound services,
- Paused contracts that had not yet been announced,
- Kept open positions vacant, and

- Reduced spending on services and supplies.

It is no surprise the pandemic has negatively affected behavioral health service providers, Allen told the committee. In late June, the Oregon Council on Behavioral Health reported that 70% of behavioral health programs faced full or program-specific closures without an increase in billable service levels or relief payments. Thirty five percent had laid off staff in the first two months of the pandemic; 40% expected to do so within the next 60 days.

Speaking about OHA's budget, Allen continued, "We're faced with scenarios of 10, 15, 20, 25% cuts in behavioral health, and frankly, we just can't do the work people need [if that happens]. We need to transform the system and make it better. We can't do that facing these budget cuts. This scenario won't result in good outcomes for people." He still hopes Oregon can invest in behavioral health workforce and improve the system.

The Governor's Behavioral Health Advisory Council Recommends Changes

Governor Brown created the Behavioral Health Advisory Council by executive order in October 2019. It met monthly through September 2020, although COVID interrupted meetings from April to June. The council was made up of 35 members and 12 agency representatives. Starting in January 2020, it engaged people with lived experience. Its task was to make recommendations to ensure Oregon's behavioral health services are responsive, simple and meaningful.

The council came up with recommendations, which it will now send to the Governor's Racial Justice Committee for review and refinement, and the governor's office for consideration in her budget. It recommends:

Recommendation	**Budget Impact?**
Programs and services	
1. Create a statewide crisis and support tool called the Oregon Behavioral Health Access System, including a website to search for services, no-barrier brief emotional support (regardless of language spoken or insurance status), and expanded crisis lines	No (would be funded by the CARES Act coronavirus relief fund)
2. Create programs that are directly responsive to, and driven by people of color, tribes and people with lived experience	Yes
3. Fund existing Certified Community Behavioral Health Clinics	Yes
4. Improve support for "aid and assist" defendants, including funding a 16-bed secure residential treatment facility	Yes
Housing	
1. Transfer housing for Mental Health Fund to OHA	No
2. Direct OHA to include CCO requirement for housing navigation and social determinants of health through care coordination	No
3. Address housing and community-based living needs	Yes
4. Develop additional secure and non-secure residential treatment facilities	Yes
5. Support Peer Respite Pilot	Yes

Workforce	
1. Revise behavioral health rules to reduce administrative burden and consider when rules should apply to behavioral health staff in primary and other care settings	No
2. Create a behavioral health incentive fund to recruit and retain workforce from communities of color, tribal and rural areas	Yes
3. Implement and sustain cultural-based practices	Yes
4. Training	Yes

Steve Allen told the Senate Mental Health Committee that this process was initiated when Oregon had the largest surplus in its history, and said he understood that it may not be possible to fully fund the recommendations at this time. “Still,” he said, “these are investments that are needed to improve behavioral health care here in Oregon.”

State Audits OHA Mental Health Treatment System

Every year, the Oregon Secretary of State audits a state agency. This year, it audited the Oregon Health Authority, focusing on its mental health treatment system over the past 20 years. The audit and OHA’s response was published on September 9.

OHA’s Steve Allen told the Senate Mental Health Committee, “This is no surprise. These are themes that have been talked about for years.”

The main findings included: data shortfalls, workforce issues, a fragmented delivery system, inadequate spending on monitoring, and a lack of consistent leadership, vision and governance. OHA is already working on many of these issues, and has ideas of how to address each deficiency.

Allen called behavioral health in Oregon “chronically underfunded” and asked the legislature to consider alternative means of paying for behavioral health that do not rely on “available funding”. He said, “As we see now, the need for behavioral health services is more than ever, in a period in which our economy is really struggling.” OHA is developing specific legislative asks for the 2021 session to address some of the issues raised in the audit.

DCBS Finds Commercial Insurers Noncompliant with Pay Parity Laws

TK Keen, Acting Administrator of DCBS’ Division of Financial Regulation reported results of DCBS’ exam of insurers’ practices of pay parity between physical and behavioral health in commercial insurance, as mandated in SB 860 (2017). The department found that multiple carriers are not complying with Oregon’s pay parity statues, for example by:

- Using prior authorizations and other roadblocks,
- Applying inequivalent or more restrictive reimbursement methodologies, and
- Differing the frequency of contract negotiations.

DCBS will now work with individual insurers to ensure they comply with Oregon law, and is planning to gather a stakeholder group to discuss legislative concepts for the 2021 session to address ambiguous laws or propose other legislation.

Lori Coyner, OHA’s Medical Director, added that OHA included mental health parity in CCO 2.0 contracts, and is continuing to ensure that parity is achieved in the Oregon Health Plan fee-for-service schedule and with CCOs.

Alternative Behavioral Health Provider Workgroup

Stephen Shostek, an alternative behavioral health provider in Portland, shared the Alternate Provider Workgroup's recommendations with the House Behavioral Health Committee. These include a voluntary registry and office that will set professional standards, and oversee the complaint, investigation, review and discipline processes. The registry would cover a wide range of alternative practitioners, including life coaches and non-licensed alternative therapists.

Rep. Andrea Salinas (D-Lake Oswego) said she is submitting a legislative council draft with these proposals, adding, "We know the majority [of alternative practitioners] are doing great work. This is for those who maybe get caught up in not adhering to standards of practice, and trying to figure out how consumers can have some recourse."

Trillium CCO Approved to serve Tri-County Area

Trillium CCO applied to provide services to Portland area as part of its original CCO 2.0 contract. That application was put on hold due to a lack of network adequacy. This summer however, Trillium demonstrated that it met conditions and was approved to begin providing CCO services on September 1. Trillium will be subject to additional monitoring and compliance requirements to make sure they continue to have a strong enough provider network.

OSHA Infectious Disease Rule Implementation

Workplace complaints have skyrocketed since the beginning of the pandemic. Since March, Oregon OSHA received over 11,000 complaints specific to COVID. In a typical year, they receive roughly 2000 complaints total. Grocery stores, food service and retail top the list for the largest share of complaints representing ~45%. Health care represents 6% of the complaints.

The agency is currently undertaking temporary *and* permanent rulemaking to address COVID-19 in the workplace, as well as permanent rulemaking to address infectious disease risk on an ongoing basis.

Significant revisions are being made such as removal of the additional 80 hours of paid leave requirement, though medical removal will remain in the rule. The temporary rule is expected to go into effect October 12, though enforcement will continue to be on a complaint driven basis only.

Crisis Care Guidelines

OHA withdrew its recommendation that hospitals follow the 2018 Crisis Care Guidelines because "they have the potential to perpetuate discrimination on the basis of race, age and disability," said Dr. Dana Haragunani, OHA's Chief Medical Officer. OHA will contact stakeholders, including providers, in early October to map a process to create new guidelines.

Sen. Sara Gelser (D-Corvallis) asked if medical providers could be held liable for making decisions based on the 2018 guidelines. Dr. Haragunani responded that OHA's withdrawl of its recommendation also removes providers' corresponding liability protection.

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