

A-Engrossed
House Bill 2269

Ordered by the House April 11
Including House Amendments dated April 11

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Health Authority)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Requires Oregon Health Authority, in consultation with stakeholders, to propose to interim committees of Legislative Assembly related to health, by January 1, 2020, long term solutions to financing health care in Oregon.]

[Declares emergency, effective on passage.]

Requires employers with 50 or more employees to expend amount established by Oregon Health Policy Board toward providing health care to employees. Describes types of expenditures that may be applied toward required health care expenditures. Requires employer to pay health care access contribution, in amount equal to difference between employer's required and actual health care expenditures, to Department of Consumer and Business Services if employer's health care expenditures are less than employer's required health care expenditures. Establishes Employer Participation Program in department to use health care access contributions to provide financial assistance to covered employees of employers that pay health care access contributions for costs of health insurance premiums and to improve access to state medical assistance program.

Requires Department of Revenue, in collaboration with Department of Consumer and Business Services, to establish requirements for employers to report certain information about health care expenditures to Department of Revenue. Requires Department of Revenue to report information to Department of Consumer and Business Services.

Authorizes Department of Revenue to impose civil penalty on employer that fails to report required information or fails to pay health care access contribution if employer's health care expenditures are less than employer's required health care expenditures.

A BILL FOR AN ACT

Relating to health care financing; creating new provisions; and amending ORS 741.004.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in this section and section 2 of this 2019 Act:

(1) "Covered employee" means an employee who:

(a) Has worked for a covered employer for a total of 90 days or more;

(b) Averaged at least eight hours of work per week in a calendar quarter;

(c) Is not enrolled in TRICARE or Medicare; and

(d) Is not an exempt employee as provided by the Department of Consumer and Business Services by rule under section 2 (3) of this 2019 Act.

(2) "Covered employer" means an employer who has at least 50 covered employees, as defined by the department by rule under section 2 (2)(b) of this 2019 Act.

(3) "Health care" means any of the essential health benefits as defined in ORS 731.097.

(4) "Health care access contribution" means a payment by a covered employer to the department that is used for the Employer Participation Program created in section 2 of this 2019 Act.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (5)(a) "Health care expenditure" means an expenditure by a covered employer:

2 (A) To a covered employee or to a third party on behalf of a covered employee for the
3 purpose of providing health care or reimbursing the cost of health care for the employee or
4 the employee's spouse, children or other dependents; and

5 (B) That is made by the covered employer:

6 (i) To pay all or part of the cost of a premium to enroll a covered employee, or a covered
7 employee and the employee's spouse, children or other dependents, in employer-sponsored
8 health insurance offered by the covered employer;

9 (ii) To pay all or part of the cost of a premium to enroll a covered employee, or a covered
10 employee and the employee's spouse, children or other dependents, in health insurance of-
11 fered on the commercial market or through the health insurance exchange;

12 (iii) To pay a health care provider for health care provided to a covered employee or a
13 covered employee's spouse, child or other dependent;

14 (iv) To contribute to a health savings account or other arrangement for reimbursing the
15 health care costs of a covered employee, or a covered employee and the employee's spouse,
16 children or other dependents, subject to limitations prescribed by the department in accord-
17 ance with federal law; or

18 (v) For a health care access contribution paid to the department in accordance with
19 section 2 (5) of this 2019 Act.

20 (b) "Health care expenditure" does not include any portion of the cost of expenditures
21 described in paragraph (a)(B) of this subsection that are paid by a covered employee.

22 (6) "Health care expenditure rate" means the health care expenditure amount, as speci-
23 fied in rules adopted by the department under section 2 (2)(a) of this 2019 Act, that a covered
24 employer is required to pay per payable hour for each of the employer's covered employees.

25 (7) "Payable hour" means an hour of work for which a covered employee is paid wages
26 or is entitled to be paid wages, including paid leave, beginning on the employee's 91st day of
27 employment by a covered employer.

28 (8) "Qualified health plan" has the meaning given that term in ORS 741.300.

29 (9) "Required health care expenditure" means the health care expenditure rate multiplied
30 by the number of payable hours, up to 172 payable hours in a calendar month, for each of a
31 covered employer's covered employees.

32 **SECTION 2.** (1) The Employer Participation Program is established in the Department
33 of Consumer and Business Services. The purpose of the program is to ensure access to
34 health care by low-income workers by collecting contributions from employers that do not
35 otherwise meet a minimum threshold of spending on health care for their employees and use
36 the contributions to:

37 (a) Provide financial assistance for the costs of premiums or other out-of-pocket costs
38 for a covered employee, who resides in this state and whose employer makes a contribution
39 to the program on behalf of the employee, to enroll in a qualified health plan; and

40 (b) Improve the access of low-income employees to the state medical assistance program.

41 (2) The department shall, in consultation with the Health Insurance Exchange Advisory
42 Committee created in ORS 741.004 and consistent with the purposes of the program described
43 in subsection (1)(a) of this section and the provisions of this section, prescribe by rule the
44 criteria for the program, including but not limited to:

45 (a) Adopting and updating annually the health care expenditure rate prescribed by the

1 Oregon Health Policy Board under subsection (4) of this section.

2 (b) Defining covered employees and prescribing the method for determining the number
3 of a covered employer's covered employees.

4 (c) Prescribing the manner, forms and procedures for covered employers to pay health
5 care access contributions if a covered employer chooses to make the employer's required
6 health care expenditures in that manner.

7 (d) Prescribing the application procedures and the financial assistance provided to cov-
8 ered employees.

9 (3) The department may, in consultation with the Health Insurance Exchange Advisory
10 Committee, prescribe by rule:

11 (a) An assessment and the methodology for calculating any assessment to be imposed on
12 a covered employer that fails to make payments that satisfy its required health care ex-
13 penditure and the manner for collecting the assessment;

14 (b) Limits, if any, on surcharges that may be collected by covered employers from their
15 customers to reimburse the cost of health care expenditures and how the surcharges col-
16 lected must be spent;

17 (c) Those employees whose hours shall be exempt from the calculation of the required
18 health care expenditure, such as management or supervisory employees, or employees who
19 earn a salary or wages that exceed a specified threshold; or

20 (d) Other modifications that are necessary to adjust the program in accordance with the
21 expected revenue from health care access contributions or to improve the effectiveness of
22 the program in improving access to health care for low-income workers.

23 (4) The Oregon Health Policy Board shall develop the methodology for establishing the
24 health care expenditure rate and establish the health care expenditure rate annually.

25 (5) In each calendar quarter, a covered employer must spend no less than the employer's
26 required health care expenditure. If a covered employer spends less than the employer's re-
27 quired health care expenditure, the employer shall pay a health care access contribution to
28 the department that is equal to the difference between the employer's required health care
29 expenditure and the employer's health care expenditures in the calendar quarter. The cov-
30 ered employer may elect to make the health care access contribution on an annual basis.
31 The department shall deposit the health care access contributions in the Health Care Access
32 Fund established in section 5 of this 2019 Act.

33 (6) A covered employer shall post at each workplace where a covered employee works a
34 notice developed by the department that explains the requirements imposed on employers
35 by the Employer Participation Program and the employees' rights under the program.

36 (7) This section does not require a covered employer to provide specific employee benefits
37 or a specific design of employee benefits in employer-sponsored health insurance offered by
38 the employer or self-insured health benefit plan.

39 **SECTION 3.** (1) As used in this section and section 4 of this 2019 Act, "covered
40 employer," "health care expenditure" and "required health care expenditure" have the
41 meanings given those terms in section 1 of this 2019 Act.

42 (2) The Department of Revenue, in collaboration with the Department of Consumer and
43 Business Services, shall prescribe by rule requirements for covered employers to report to
44 the Department of Revenue the employer's health care expenditures and the employer's re-
45 quired health care expenditure.

1 (3) The Department of Revenue shall adopt rules requiring covered employers to maintain
2 records documenting health care expenditures but may not prescribe the method by which
3 the records must be kept.

4 (4) A covered employer shall allow the Department of Revenue reasonable access to the
5 records documenting health care expenditures and required health care expenditures.

6 (5) The Department of Revenue shall report to the Department of Consumer and Busi-
7 ness Services the health care expenditures and required health care expenditures reported
8 by employers under this section as necessary for the Department of Consumer and Business
9 Services to carry out section 2 of this 2019 Act. The Department of Revenue shall report the
10 information to the Department of Consumer and Business Services in a manner that does
11 not disclose information protected from disclosure by state or federal laws.

12 (6) The Department of Consumer and Business Services and the Department of Revenue
13 shall enter into an interagency agreement to carry out the provisions of this section.

14 **SECTION 4.** (1) In addition to any other penalty provided by law, the Department of Re-
15 venue may impose a civil penalty in an amount prescribed by the department by rule, on any
16 covered employer that fails to report to the department the employer's health care expen-
17 ditures or the employer's required health care expenditure, as required by section 3 of this
18 2019 Act, or fails to pay a health care access contribution as required by section 2 of this 2019
19 Act.

20 (2) Civil penalties shall be imposed as provided in ORS 183.745.

21 (3) Civil penalties recovered by the department under this section shall be paid to the
22 State Treasurer for deposit to the Health Care Access Fund established in section 5 of this
23 2019 Act.

24 **SECTION 5.** (1) The Health Care Access Fund is established in the State Treasury, sep-
25 arate and distinct from the General Fund, consisting of health care access contributions paid
26 to the Department of Consumer and Business Services under section 2 of this 2019 Act and
27 civil penalties imposed by the Department of Revenue under section 4 of this 2019 Act.
28 Moneys in the Health Care Access Fund are continuously appropriated to the Department
29 of Consumer and Business Services.

30 (2) A portion of the moneys in the Health Care Access Fund shall be used by the de-
31 partment to provide financial assistance, as prescribed by the department under section 2
32 of this 2019 Act, to any individual whose employer paid a health care access contribution on
33 behalf of the individual, to pay the cost of premiums or other out-of-pocket costs for a
34 qualified health plan purchased through the health insurance exchange.

35 (3) Any moneys that exceed the amount needed to provide financial assistance as de-
36 scribed in subsection (2) of this section shall be transferred to the Oregon Health Authority
37 Fund established in ORS 413.101 and shall be expended by the Oregon Health Authority to
38 provide medical assistance under ORS chapter 414.

39 **SECTION 6.** ORS 741.004 is amended to read:

40 741.004. (1) The Health Insurance Exchange Advisory Committee is created to advise the Di-
41 rector of the Department of Consumer and Business Services **on the Employer Participation**
42 **Program established in section 2 of this 2019 Act** and in the development and implementation
43 of the policies and operational procedures governing the administration of a health insurance ex-
44 change in this state *[including, but]*. **The committee shall advise the director on the develop-**
45 **ment and implementation of policies regarding the health insurance exchange that include,**

1 **but are** not limited to, all of the following:

2 (a) The amount of the assessment imposed on insurers under ORS 741.105.

3 (b) The implementation of a Small Business Health Options Program in accordance with 42
4 U.S.C. 18031.

5 (c) The processes and procedures to enable each insurance producer to be authorized to act for
6 all of the insurers offering health benefit plans through the health insurance exchange.

7 (d) The affordability of health benefit plans offered by employers under section 5000A(e)(1) of the
8 Internal Revenue Code.

9 (e) Outreach strategies for reaching minority and low-income communities.

10 (f) Solicitation of customer feedback.

11 (g) The affordability of health benefit plans offered through the exchange.

12 (2) The committee consists of 15 members. Thirteen members shall be appointed by the Governor
13 and are subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.
14 The appointed members serve at the pleasure of the Governor. The Director of the Department of
15 Consumer and Business Services and the Director of the Oregon Health Authority shall serve as ex
16 officio members of the committee.

17 (3) The 13 members appointed by the Governor must represent the interests of:

18 (a) Insurers;

19 (b) Insurance producers;

20 (c) Navigators, in-person assisters, application counselors and other individuals with experience
21 in facilitating enrollment in qualified health plans;

22 (d) Health care providers;

23 (e) The business community, including small businesses and self-employed individuals;

24 (f) Consumer advocacy groups, including advocates for enrolling hard-to-reach populations;

25 (g) Enrollees in health benefit plans; and

26 (h) State agencies that administer the medical assistance program under ORS chapter 414.

27 (4) The Director of the Department of Consumer and Business Services may solicit recommen-
28 dations from the committee and the committee may initiate recommendations on its own.

29 (5) The committee shall provide annual reports to the Legislative Assembly, in the manner pro-
30 vided in ORS 192.245, of the findings and recommendations the committee considers appropriate,
31 including a report on the:

32 (a) Adequacy of assessments for reserve programs and administrative costs;

33 (b) Implementation of the Small Business Health Options Program;

34 (c) Number of qualified health plans offered through the exchange;

35 (d) Number and demographics of individuals enrolled in qualified health plans;

36 (e) Advance premium tax credits provided to enrollees in qualified health plans; and

37 (f) Feedback from the community about satisfaction with the operation of the exchange and
38 qualified health plans offered through the exchange.

39 (6) The members of the committee shall be appointed for a term of two years and shall serve
40 without compensation, but shall be entitled to travel expenses in accordance with ORS 292.495. The
41 committee may hire, subject to the approval of the Director of the Department of Consumer and
42 Business Services, such experts as the committee may require to discharge its duties. All expenses
43 of the committee shall be paid out of the Health Insurance Exchange Fund established in ORS
44 741.102.

45 (7) The employees of the Department of Consumer and Business Services are directed to assist

1 the committee in the performance of its duties under subsection (1) of this section and, to the extent
2 permitted by laws relating to confidentiality, to furnish such information and advice as the members
3 of the committee consider necessary to perform their duties under subsection (1) of this section.

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