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 as introduced.

Modifies funding mechanism for public employees' health care benefit to avoid excise tax under Patient Protection and Affordable Care Act. Requires local governments and school districts to participate in modified health care benefit plan. Permits public employees to redirect funds from health care premiums to other benefits. Dedicates portion of health care benefit costs to future health care costs and to critical services. Requires Public Employees' Benefit Board and Oregon Educators Benefit Board to assist employees in selecting benefit options. Excludes collective bargaining for specified health insurance benefits. Prohibits Public Employees' Benefit Board and Oregon Educators Benefit Board from self-insuring.

Establishes Task Force on Flexible Benefits for Public Employees to monitor implementation of new benefit plans. Sunsets task force December 31, 2022.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Whereas the Patient Protection and Affordable Care Act (ACA) became law on March 23, 2010; and

Whereas the provisions and requirements of the ACA have been phased in over time and will continue to be phased in until 2020; and

Whereas one of the provisions of the ACA imposes an excise tax or “Cadillac Tax” on high-cost health insurance plans beginning in 2020; and

Whereas the excise tax on high-cost health insurance plans will be borne by the insurance companies that will in turn bill the increased costs to the policyholders; and

Whereas nearly every public employer health insurance plan in the State of Oregon may be subject to the excise tax in 2020; and

Whereas the increased costs borne by public employers on these insurance premiums incorporating the excise tax would be unfairly weighted based on the marital status of the employee, causing a benefit inequity among public employees; and

Whereas without legislative intervention, the excise tax on high-cost health insurance plans will likely be subject to collective bargaining negotiations by public employee unions before the implementation of the excise tax, potentially resulting in a cost increase to taxpayers or a decrease in services to taxpayers; and

Whereas the State of Oregon cannot absorb the cost of the excise tax, which will increase health care premiums, without a likely reduction to the General Fund and a reduction of services

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.

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across all state agencies, commissions and quasi-governmental agencies; and
Whereas local school districts and education service districts cannot absorb the cost of the ex-
cise tax, reflected in increased health insurance premiums, without a loss of school days, increased
class sizes, decreased academic offerings for students or teacher layoffs; and
Whereas public universities and community colleges cannot absorb the cost of the excise tax,
reflected in increased health insurance premiums, without an offset to their budgets that would most
likely include tuition increases for students; and
Whereas special districts cannot absorb the cost of the excise tax, reflected in increased health
insurance premiums, without a likely increase in rates paid for services; and
Whereas public transit districts, already strapped by burgeoning health care costs, cannot ab-
sorb the cost of the excise tax, reflected in increased health insurance premiums, without an in-
crease in rider fares or a decrease in transportation services to commuters, which would create a
financial hardship to low-income and senior transit users; and
Whereas police, fire or other public safety service districts cannot absorb the cost of the excise
tax, reflected in increased health insurance premiums, without a potential decrease in response
times and a reduction in public safety services and the presence of first responders in the commu-
nity; and
Whereas city, county and Metro governments cannot absorb the cost of the excise tax, reflected
in increased health insurance premiums, without likely suspending key critical human services, local
infrastructure investments and other necessary community functions; and
Whereas all public employers have the obligation of serving the needs of the citizens of Oregon
first and foremost; and
Whereas the Legislative Assembly believes that we must balance the need to provide critical
services to our constituents with a commitment to respecting those who serve the public; and
Whereas the excise tax to be levied in 2020 by the federal government is one of the single most
expensive components of the ACA to public employers, with a direct cost that will be borne by all
Oregon taxpayers at every level that the government taxes the people of Oregon; and
Whereas the transfer of taxpayer resources from the state government to the federal government
would create a fiscal budget crisis for the State of Oregon, a potential reduction in force of public
employees in order to compensate for looming budget cuts and a financial hardship and loss of ser-
vices for all the citizens of Oregon; and
Whereas in order to ensure that all levels of state and local government can be provided relief
from the coming federal excise tax, a solution must be passed into law no later than the end of the
2018 regular session of the Legislative Assembly; and
Whereas if no relief is provided to state, school district and local governments, the excise tax
could drive up the cost of public employee health insurance plans by hundreds of millions of dollars
in new costs each biennium; now, therefore,
Be It Enacted by the People of the State of Oregon:

LEGISLATIVE INTENT

SECTION 1. The intent of the Legislative Assembly in sections 5, 6 and 28 of this 2018
Act is to implement a plan to:
(1) Ensure that public employees have access to quality health care and increased em-
ployee benefit choices;
(2) Reduce the overall costs of health care so that any savings can be redirected to fund future public employee health care costs, the Public Employees Retirement System’s actuarial liability, additional public employee benefit options or critical services across state and local governments; and

(3) Promise all Oregonians, both private and public employees alike, that they will not be burdened by the additional costs that a federally imposed excise tax would create for public employers and taxpayers.

FLEXIBLE BENEFITS TASK FORCE

SECTION 2. (1) The Task Force on Flexible Benefits for Public Employees is established, consisting of 13 members appointed as follows:

(a) The President of the Senate shall appoint one nonvoting member from among members of the Senate.

(b) The Speaker of the House of Representatives shall appoint one nonvoting member from among members of the House of Representatives.

(c) The Governor shall appoint 11 members consisting of:

(A) Three members representing public employers in this state;

(B) Three members representing public employees in this state;

(C) Three members with expertise in federal requirements concerning employer-sponsored health plans, flexible benefit plans and related tax advantages and penalties;

(D) One member representing the Department of Consumer and Business Services; and

(E) One member representing an organization with a certificate of authority to transact health insurance in this state.

(2) The task force shall collect and synthesize information about the federal excise tax on employer-sponsored health plans and flexible benefit plans. The task force shall also monitor implementation of sections 5, 6 and 28 of this 2018 Act, audit any General Fund savings generated by sections 5 and 28 of this 2018 Act and make recommendations for legislative changes to public employee benefit plans.

(3) A majority of the members of the task force constitutes a quorum for the transaction of business.

(4) Official action by the task force requires the approval of a majority of the voting members of the task force.

(5) The task force shall elect one of its members to serve as chairperson.

(6) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(7) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the members of the task force.

(8) The task force may adopt rules necessary for the operation of the task force.

(9) The task force shall submit to an interim committee of the Legislative Assembly related to health care in the manner provided by ORS 192.245:

(a) An initial report and the recommendations described in subsection (2) of this section no later than September 15, 2020.

(b) A second report and the recommendations described in subsection (2) of this section no later than September 15, 2021.
(c) A final report and the recommendations described in subsection (2) of this section no later than September 15, 2022.

(10) The Oregon Health Authority shall provide staff support to the task force.

(11) Members of the task force who are not members of the Legislative Assembly are not entitled to compensation or reimbursed for expenses and serve as volunteers on the task force.

(12) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties.

SECTION 3. Section 2 of this 2018 Act is repealed on December 31, 2022.

PUBLIC EMPLOYEES' BENEFIT BOARD

SECTION 4. Section 5 of this 2018 Act is added to and made a part of ORS 243.105 to 243.285.

SECTION 5. (1) A public employer shall annually allot to each eligible employee an amount equal to the benefit cap for the year. The employee may use the allotment to pay the premiums for any of the health benefit plans offered under ORS 243.135. The employee shall pay any premium costs that exceed the allotment. If the employee declines the health benefit plans offered by the Public Employees' Benefit Board, the allotment shall be available as described in subsection (2) of this section.

(2) An employee who declines health benefit plan coverage described in ORS 243.135 or whose premiums cost less than the amount of the employee's allotment may elect to have the remainder of the allotment distributed by the public employer by:

(a) Payment to a retirement account;

(b) Deposit in a qualified tuition program described in 26 U.S.C. 529;

(c) Deposit in a cafeteria plan or qualified transportation fringe benefit plan that is not includable in the taxable income of the employee by reason of 26 U.S.C. 125 or 132(f)(4);

(d) Contribution to a deferred compensation arrangement that is not included in the taxable income of the employee by reason of 26 U.S.C. 402(e)(3);

(e) Payment to the employee; or

(f) Payment to a third party selected by the employee.

(3) The board shall provide assistance to eligible employees and their family members in selecting health benefit plans described in ORS 243.135 and in making the elections described in subsection (2) of this section.

(4) As used in this section:

(a) “Benefit cap” has the meaning given that term in section 6 of this 2018 Act.

(b) “Public employer” has the meaning given that term in ORS 238.005.

SECTION 6. (1) As used in this section:

(a) “Benefit cap” means the applicable dollar amount for self-only coverage specified in 26 U.S.C. 4980I(b)(3)(C)(i), as modified by the health cost adjustment percentage and, for employers the majority of whose employees covered by a health benefit plan are engaged in a high-risk profession or employed to repair or install electrical or telecommunications lines, any adjustment under 26 U.S.C. 4980I(b)(3)(C)(iv).
(b) “Composite rate” means the average annualized cost, in dollars per year per employee, of the health benefit plan premiums paid by a public employer, calculated for all of the employees of the public employer in 2019.

(c) “Investment amount” means the difference between the composite rate of a public employer and the benefit cap for 2020 multiplied by the total number of employees of the public employer.

(d) “Paying the costs of critical services” means:

(A) Maintaining the medical assistance program;

(B) Maintaining the number of days in the school calendar;

(C) Maintaining public safety; and

(D) Preventing layoffs of public employees.

(e) “Public employer” has the meaning given that term in ORS 238.005.

(2) Each public employer shall establish two investment accounts to be held in trust for the following purposes:

(a) One account must be dedicated to:

(A) Paying the costs of critical services;

(B) Paying the costs of actuarial liabilities owed by the public employer to the Public Employees Retirement System; or

(C) Paying the costs of benefits for employees of the public employer arising from a collective bargaining agreement; and

(b) One account must be dedicated to paying the increased cost, if any, of the benefit cap over the prior year resulting from the application of the health cost adjustment percentage.

(3) Interest and earnings from each account described in subsection (2) of this section shall be deposited to the account.

(4) Each calendar year, a public employer shall deposit to the account described in:

(a) Subsection (2)(a) of this section, an amount equal to 50 percent of the investment amount; and

(b) Subsection (2)(b) of this section, an amount equal to 50 percent of the investment amount, minus the amount paid by the public employer for the increase in the cost of the benefit cap over the prior year resulting from the health cost adjustment percentage.

(5) A public employer may withdraw and expend moneys in each account described in subsection (2) of this section only for the purposes specified for that account.

SECTION 7. ORS 243.061 is amended to read:

243.061. (1) There is created in the Oregon Health Authority the Public Employees’ Benefit Board consisting of at least eight voting members and two members of the Legislative Assembly as nonvoting advisory members. Two of the voting members are ex officio members and eight are appointed by the Governor. The following members shall be voting members:

(a) Four members representing the state as an employer and management employees, who shall be as follows:

(A) The Director of the Oregon Health Authority or a designee of the director;

(B) The Director of the Health Policy and Analytics Division of the Oregon Health Authority or the director’s designee; and

(C) Two management employees appointed by the Governor from areas of state government other than the Oregon Health Authority; and

(b) Four members appointed by the Governor and representing nonmanagement representable
employees, who shall be as follows:

(A) Two persons from the largest employee representative unit;

(B) One person from the second largest employee representative unit; and

(C) One person from representable employees not represented by employee representative units described in subparagraphs (A) and (B) of this paragraph; and

(c) Two members appointed by the Governor, one representing local government management employees and one representing local government nonmanagement employees.

(2) One member of the Senate shall be appointed by the President of the Senate and one member of the House of Representatives shall be appointed by the Speaker of the House to serve as non-voting advisory members.

[(3)(a) If the governing body of a local government elects to participate in a benefit plan offered by the board, in addition to the members appointed under subsections (1) and (2) of this section, the Governor shall appoint two voting members, one of whom represents local government management and one of whom represents local government nonmanagement employees.]

[(b) (3)(a) After the appointment of members under [paragraph (a) of this subsection] subsection (1)(c) of this section, if the number of eligible employees of a local government or local governments enrolled in a benefit plan or plans offered by the board exceeds 25,000, the Governor shall appoint two additional voting members, one [of whom represents] representing local government management employees and one [of whom represents] representing local government nonmanagement employees.

[(c) (b) After the appointment of members under [paragraphs (a) and (b)] paragraph (a) of this subsection, for every additional 25,000 eligible employees of a local government or local governments enrolled in a benefit plan or plans offered by the board, the Governor shall appoint one additional voting member representing local government management employees and one additional voting member representing local government nonmanagement employees.

(4) A maximum of three members may be appointed by the Governor under subsections (1) and (3) of this section to represent local government management employees and a maximum of three members may be appointed by the Governor to represent local government nonmanagement employees.

(5) The term of office of each appointed voting member is four years, but an appointed voting member serves at the pleasure of the Governor. Before the expiration of the term of a voting member appointed by the Governor, the Governor shall appoint a successor to take office upon the date of that expiration. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(6) The appointments by the Governor of voting members of the board are subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(7) Members of the board who are not members of the Legislative Assembly shall receive no compensation for their services, but shall be paid for their necessary and actual expenses while on official business in accordance with ORS 292.495. Members of the board who are members of the Legislative Assembly shall be paid compensation and expense reimbursement as provided in ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(8) As used in this section, “benefit plan” and “local government” have the meanings given those terms in ORS 243.105.

SECTION 8. ORS 243.105 is amended to read:

243.105. As used in ORS 243.105 to 243.285, unless the context requires otherwise:
(1) “Benefit plan” includes, but is not limited to:
   (a) Contracts for insurance or other benefits, including medical, dental, vision, life, disability and other health long term care [recognized by state law], and related services and supplies; and
   (b) Comparable benefits for employees who rely on spiritual means of healing; and.
   (c) Self-insurance programs managed by the Public Employees’ Benefit Board.
(2) “Board” means the Public Employees’ Benefit Board.
(3) “Carrier” means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services, or two or more companies or contractors acting together pursuant to a joint venture, partnership or other joint means of operation, or a board-approved guarantor of benefit plan coverage and compensation.
(4)(a) “Eligible employee” means an officer or employee of a state agency or local government who elects to participate in one of the [group] benefit plans [described in ORS 243.135] offered by the board. The term includes, but is not limited to, state officers and employees in the exempt, unclassified and classified service, and state officers and employees, whether or not retired, who:
   (A) Are receiving a service retirement allowance, a disability retirement allowance or a pension under the Public Employees Retirement System or are receiving a service retirement allowance, a disability retirement allowance or a pension under any other retirement or disability benefit plan or system offered by the State of Oregon for its officers and employees;
   (B) Are eligible to receive a service retirement allowance under the Public Employees Retirement System and have reached earliest retirement age under ORS chapter 238;
   (C) Are eligible to receive a pension under ORS 238A.100 to 238A.250, and have reached earliest retirement age as described in ORS 238A.165; or
   (D) Are eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by the State of Oregon and have attained earliest retirement age under the plan or system.
   (b) “Eligible employee” does not include individuals:
   (A) Engaged as independent contractors;
   (B) Whose periods of employment in emergency work are on an intermittent or irregular basis;
   (C) Who are employed on less than half-time basis unless the individuals are employed in positions classified as job-sharing positions, unless the individuals are defined as eligible under rules of the board;
   (D) Appointed under ORS 240.309;
   (E) Provided sheltered employment or make-work by the state in an employment or industries program maintained for the benefit of such individuals;
   (F) Provided student health care services in conjunction with their enrollment as students at a public university listed in ORS 352.002; or
   (G) Who are members of a collective bargaining unit that represents police officers or firefighters.
(5) “Family member” means an eligible employee’s spouse and any unmarried child or stepchild within age limits and other conditions imposed by the board with regard to unmarried children or stepchildren.
(6) “Health benefit plan” has the meaning given that term in ORS 743B.005.
(6)(7) “Local government” means any city, county or special district in this state or any intergovernmental entity created under ORS chapter 190.
“Payroll disbursing officer” means the officer or official authorized to disburse moneys in payment of salaries and wages of employees of a state agency or local government.

“Premium” means the monthly or other periodic charge for a benefit plan.

“Primary care” means family medicine, general internal medicine, naturopathic medicine, obstetrics and gynecology, pediatrics or general psychiatry.

(10) “State agency” means every state officer, board, commission, department or other activity of state government.

“Total medical expenditures” means payments to reimburse the cost of physical and mental health care provided to eligible employees or their family members, excluding prescription drugs, vision care and dental care, whether paid on a fee-for-service basis or as part of a capitated rate or other type of payment mechanism.

SECTION 9. ORS 243.107 is amended to read:

243.107. A person employed by a public university listed in ORS 352.002 or the Oregon Health and Science University may be considered an eligible employee for participation in one of the group health benefit plans described in ORS 243.135 if the governing board of the public university, or the Oregon Health and Science University Board of Directors for Oregon Health and Science University employees, determines that funds are available therefor and if:

(1) Notwithstanding ORS 243.105 (4)(b)(F), the person is a student enrolled in an institution of higher education and is employed as a graduate teaching assistant, graduate research assistant or a fellow at the institution and elects to participate; or

(2) Notwithstanding ORS 243.105 (4)(b)(B) or (C), the person is employed on a less than half-time basis in an unclassified instructional or research support capacity and elects to participate.

SECTION 10. ORS 243.125 is amended to read:

243.125. (1) The Public Employees’ Benefit Board shall prescribe rules for the conduct of its business and for carrying out ORS 243.256. The board shall study all matters connected with the providing of adequate benefit plan coverage for eligible employees on the best basis possible with relation both to the welfare of the employees and to the state and local governments. The board shall design benefits, devise specifications, analyze carrier responses to advertisements for bids and decide on the award of contracts. Contracts shall be signed by the chairperson on behalf of the board.

(2) In carrying out its duties under subsection (1) of this section, the goal of the board shall be to provide a high quality plan of health and other benefits for employees at a cost affordable to both the employer and the employees.

(3) Subject to ORS chapter 183, the board may make rules not inconsistent with ORS 243.105 to 243.285 and 292.051 to determine the terms and conditions of eligible employee participation and coverage.

(4)(a) The board shall prepare specifications, invite bids and do acts necessary to award contracts [for health benefit plan and dental benefit plan coverage of] to carriers to provide health benefit plans and benefit plans for long term care, vision and dental coverage to eligible employees. Health benefit plan coverage must be in accordance with the criteria set forth in ORS 243.135 (1).

(b) Premium rates [established by the board for a self-insured health benefit plan and premium rates] negotiated by the board with a carrier that offers a health benefit plan to eligible employees must take into account any reduction in the cost of hospital services and supplies anticipated to
result from the application of ORS 243.256.

(5) The executive director of the board shall report to the Director of the Oregon Health Authority.

(6) The board may retain consultants, brokers or other advisory personnel when necessary and, subject to the State Personnel Relations Law, shall employ such personnel as are required to perform the functions of the board. If the board contracts for actuarial or technical support to manage the functions of the board, the board shall, no less than every three years, solicit invitations to bid and the proposals must include all of the following:

(a) An explanation of how the bidder has assisted other clients in creating incentives to improve the quality of care provided to enrollees;
(b) An explanation of how the bidder will support the board’s efforts to maximize provider efficiencies and achieve more organized systems of care; and
(c) A description of the bidder’s experience in assisting other clients in structuring contracts that use risk-based networks of providers and alternative provider reimbursement methodologies.

SECTION 11. ORS 243.129 is amended to read:

243.129. (1) The governing body of a local government [may elect to] shall participate in a health benefit plan [offered by the Public Employees’ Benefit Board] described in ORS 243.135 that is paid for in the manner prescribed in section 5 of this 2018 Act.

(2) The decision of the governing body of a local government to participate in [a] benefit [plan] plans, other than health benefit plans, offered by the board is in the discretion of the governing body of the local government and is a permissive subject of collective bargaining.

(3) If the governing body of a local government elects to offer a benefit plan through the board, the governing body may elect one time only to provide alternative group health and welfare insurance benefit plans to eligible employees if:

(a) The alternative benefit plan is offered through the health insurance exchange under ORS 741.310 (1)(b); and
(b) The participation of the local government is not precluded under federal law on or after January 1, 2017.

SECTION 12. ORS 243.135 is amended to read:

243.135. (1) Notwithstanding any other benefit plan contracted for and offered by the Public Employees’ Benefit Board, the board shall contract for a health benefit plan or plans best designed to meet the needs and provide for the welfare of eligible employees, the state and the local governments. In considering whether to enter into a contract for a plan, the board shall place emphasis on:

(a) Employee choice among high quality plans;
(b) A competitive marketplace;
(c) Plan performance and information;
(d) Employer flexibility in plan design and contracting;
(e) Quality customer service;
(f) Creativity and innovation;
(g) Plan benefits as part of total employee compensation;
(h) The improvement of employee health; and

[9]
(i) (f) Health outcome and quality measures, described in ORS 413.017 (4), that are reported by the plan.

(2) The board may approve more than one carrier for [each type of plan] health benefit plans contracted for and offered but the number of carriers shall be held to a number consistent with adequate service to eligible employees and their family members.

(3) Where appropriate for a contracted and offered health benefit plan, the board shall provide options under which an eligible employee may arrange coverage for family members.

(4) Payroll deductions for costs that are not payable by the state or a local government may be made upon receipt of a signed authorization from the employee indicating an election to participate in the plan or plans selected and the deduction of a certain sum from the employee's pay.

(5) In developing any health benefit plan, the board may provide an option of additional coverage for eligible employees and their family members at an additional cost or premium.

(6) [Transfer of enrollment from one plan to another shall be open to all eligible employees and their family members under rules adopted by the board. Because of the special problems that may arise in individual instances under comprehensive group practice plan coverage involving acceptable provider-patient relations between a particular panel of providers and particular eligible employees and their family members.] The board shall provide a procedure under which [any eligible employee] eligible employees and their family members may apply at any time to substitute [a health service benefit plan for participation in a comprehensive group practice benefit plan] one health benefit plan for another.

(7) The board shall evaluate a health benefit plan that serves a limited geographic region of this state according to the criteria described in subsection (1) of this section.

(8) By January 1, 2023, the board shall spend at least 12 percent of its total medical expenditures in self-insured health benefit plans on payments for primary care.

(9) No later than February 1 of each year, the board shall report to the Legislative Assembly on the board's progress toward achieving the target of spending at least 12 percent of total medical expenditures in self-insured health benefit plans on payments for primary care.

(8) Eligible employees must have the opportunity to select health benefit plans using an Internet portal.

SECTION 13. ORS 243.135, as amended by section 27, chapter 746, Oregon Laws 2017, is amended to read:

243.135. (1) Notwithstanding any other benefit plan contracted for and offered by the Public Employees’ Benefit Board, the board shall contract [for a health benefit plan or plans best designed to meet the needs and provide for the welfare of eligible employees, the state and the local governments. In considering whether to enter into a contract for a plan, the board shall place emphasis on:] with a carrier to provide a group of health benefit plans selected by the board from the plans that are offered by the carrier. In selecting the plans to be offered to eligible employees by the carrier, the board shall select health benefit plans that provide minimum essential coverage, as defined in 26 U.S.C. 5000A, and shall place emphasis on:

(a) Employee choice among high quality plans;

(b) A competitive marketplace;

(c) Plan performance and information;

(d) Employer flexibility in plan design and contracting;

(e) Quality customer service;

(f) Creativity and innovation;
(g) Plan benefits as part of total employee compensation;

(h) The improvement of employee health; and

(i) Health outcome and quality measures, described in ORS 413.017 (4), that are reported by the plan.

(2) The board may approve more than one carrier for [each type of plan] health benefit plans contracted for and offered but the number of carriers shall be held to a number consistent with adequate service to eligible employees and their family members.

(3) Where appropriate for a contracted and offered health benefit plan, the board shall provide options under which an eligible employee may arrange coverage for family members who are not enrolled in another health benefit plan offered by the board or the Oregon Educators Benefit Board. An eligible employee who declines coverage in a health benefit plan offered by the Public Employees' Benefit Board or the Oregon Educators Benefit Board and who is enrolled as a spouse or family member in another health benefit plan offered by the Public Employees' Benefit Board or the Oregon Educators Benefit Board may not be paid the employer contribution for the plan that was declined.

(4) Payroll deductions for costs that are not payable by the state or a local government may be made upon receipt of a signed authorization from the employee indicating an election to participate in the plan or plans selected and the deduction of a certain sum from the employee's pay.

(5) In developing any health benefit plan, the board may provide an option of additional coverage for eligible employees and their family members at an additional cost or premium.

(6) Transfer of enrollment from one plan to another shall be open to all eligible employees and their family members under rules adopted by the board. Because of the special problems that may arise in individual instances under comprehensive group practice plan coverage involving acceptable provider-patient relations between a particular panel of providers and particular eligible employees and their family members, the board shall provide a procedure under which [any eligible employee] eligible employees and their family members may apply at any time to substitute one health benefit plan for participation in a comprehensive group practice benefit plan for another.

(7) The board shall evaluate a health benefit plan that serves a limited geographic region of this state according to the criteria described in subsection (1) of this section.

(8)(a) The board shall use payment methodologies in self-insured health benefit plans offered by the board that are designed to limit the growth in per-member expenditures for health services to no more than 3.4 percent per year.

(b) The board shall adopt policies and practices designed to limit the annual increase in premium amounts paid for contracted health benefit plans to 3.4 percent.

(9) A carrier [or third party administrator] that contracts with the board to provide [or administer] a health benefit plan shall, at least once each plan year, conduct an audit of the health benefit plan enrollees' continued eligibility for coverage as spouses or dependents or any other basis that would affect the cost of the premium for the plan.

(10) By January 1, 2023, the board shall spend at least 12 percent of its total medical expenditures in self-insured health benefit plans on payments for primary care.

(11) No later than February 1 of each year, the board shall report to the Legislative Assembly on the board's progress toward achieving the target of spending at least 12 percent of total medical expenditures in self-insured health benefit plans on payments for primary care.

(10) Eligible employees must have the opportunity to select health benefit plans using an
SECTION 14. ORS 243.135, as amended by section 16, chapter 489, Oregon Laws 2017, and section 27, chapter 746, Oregon Laws 2017, is amended to read:

243.135. (1) Notwithstanding any other benefit plan contracted for and offered by the Public Employees’ Benefit Board, the board shall contract [for a health benefit plan or plans best designed to meet the needs and provide for the welfare of eligible employees, the state and the local governments. In considering whether to enter into a contract for a plan, the board shall place emphasis on:] with a carrier to provide a group of health benefit plans selected by the board from the plans that are offered by the carrier. In selecting the plans to be offered to eligible employees by the carrier, the board shall select health benefit plans that provide minimum essential coverage, as defined in 26 U.S.C. 5000A, and shall place emphasis on:

(a) Employee choice among high quality plans;

(b) [A competitive marketplace];

(c) [Plan performance and information];

(d) Employer flexibility in plan design and contracting;

(e) [Quality customer service];

(f) [Creativity and innovation];

(g) Plan benefits as part of total employee compensation;

(h) The improvement of employee health; and

(i) Health outcome and quality measures, described in ORS 413.017 (4), that are reported by the plan.

(2) The board may approve more than one carrier for [each type of plan] health benefit plans contracted for and offered but the number of carriers shall be held to a number consistent with adequate service to eligible employees and their family members.

(3) Where appropriate for a contracted and offered health benefit plan, the board shall provide options under which an eligible employee may arrange coverage for family members who are not enrolled in another health benefit plan offered by the board or the Oregon Educators Benefit Board. An eligible employee who declines coverage in a health benefit plan offered by the Public Employees’ Benefit Board or the Oregon Educators Benefit Board and who is enrolled as a spouse or family member in another health benefit plan offered by the Public Employees’ Benefit Board or the Oregon Educators Benefit Board may not be paid the employer contribution for the plan that was declined.

(4) Payroll deductions for costs that are not payable by the state or a local government may be made upon receipt of a signed authorization from the employee indicating an election to participate in the plan or plans selected and the deduction of a certain sum from the employee’s pay.

(5) In developing any health benefit plan, the board may provide an option of additional coverage for eligible employees and their family members at an additional cost or premium.

(6) [Transfer of enrollment from one plan to another shall be open to all eligible employees and their family members under rules adopted by the board. Because of the special problems that may arise in individual instances under comprehensive group practice plan coverage involving acceptable provider-patient relations between a particular panel of providers and particular eligible employees and their family members,] The board shall provide a procedure under which [any eligible employee] eligible employees and their family members may apply at any time to substitute [a health service benefit plan for participation in a comprehensive group practice benefit plan] one health benefit plan for another.
(7) The board shall evaluate a benefit plan that serves a limited geographic region of this state according to the criteria described in subsection (1) of this section.

[(8)(a) The board shall use payment methodologies in self-insured health benefit plans offered by the board that are designed to limit the growth in per-member expenditures for health services to no more than 3.4 percent per year.]

[(b)(8) The board shall adopt policies and practices designed to limit the annual increase in premium amounts paid for contracted health benefit plans to 3.4 percent.

(9) A carrier [or third party administrator] that contracts with the board to provide [or administer] a health benefit plan shall, at least once each plan year, conduct an audit of the health benefit plan enrollees’ continued eligibility for coverage as spouses or dependents or any other basis that would affect the cost of the premium for the plan.

[(10) If the board spends less than 12 percent of its total medical expenditures in self-insured health benefit plans on payments for primary care, the board shall implement a plan for increasing the percentage of total medical expenditures spent on payments for primary care by at least one percent each year.]

[(11) No later than February 1 of each year, the board shall report to the Legislative Assembly on any plan implemented under subsection (10) of this section and on the board’s progress toward achieving the target of spending at least 12 percent of total medical expenditures in self-insured health benefit plans on payments for primary care.]}

(10) Eligible employees must have the opportunity to select health benefit plans using an Internet portal.

SECTION 15. ORS 243.145 is amended to read:

243.145. (1) The Public Employees’ Benefit Board shall have authority to employ whatever means are reasonably necessary to carry out the purposes of ORS 243.105 to 243.285 and 292.051. The board’s authority includes, but is not limited to, the authority to [self-insure and to] seek clarification, amendment, modification, suspension or termination of any agreement or contract that in the board’s judgment requires such action.

(2) Upon providing specific notice in writing to the carrier, the affected employee organization or organizations, the Oregon Health Authority and affected eligible employees, and after affording opportunity for a public hearing upon the issues that may be involved, the board may enter an order withdrawing approval of any benefit plan. Thirty days after entry of the order, the board shall terminate all withholding authorizations of eligible employees and terminate all board-approved participation in the plan.

(3) The board by order may terminate the participation of any state agency or local government if within three months the state agency or local government fails to perform any action required by ORS 243.105 to 243.285 and 292.051 or by board rule.

SECTION 16. ORS 243.160 is amended to read:

243.160. A retired state or local government officer or employee is not required to participate in one of the [group] health benefit plans described in ORS 243.135 in order to obtain dental benefit plan coverage. The Public Employees’ Benefit Board shall establish by rule standards of eligibility for retired officers or employees to participate in a dental benefit plan.

SECTION 17. ORS 243.163 is amended to read:

243.163. A member of the Legislative Assembly who is receiving a pension or annuity under ORS 238.092 (1)(a) or 238A.250 (1) shall be eligible to participate as a retired state officer in one of the [group] health benefit plans described in ORS 243.135 after the member ceases to be a member of
the Legislative Assembly if the member applies to the Public Employees' Benefit Board within 60

days after the member ceases to be a member of the Legislative Assembly.

SECTION 18. ORS 243.167 is amended to read:

243.167. (1) There is created the Public Employees' Revolving Fund, separate and distinct from
the General Fund. The balances of the Public Employees' Revolving Fund are continuously appro-
priated to the Public Employees' Benefit Board to cover expenses incurred in connection with
the administration of ORS 243.105 to 243.285 and 292.051. Assets of the Public Employees' Revolving
Fund may be retained for limited periods of time as established by the [Public Employees' Benefit]
board by rule. Among other purposes, the board may retain the funds to control expenditures[,] and
stabilize benefit premium rates [and self-insure]. The board may establish subaccounts within the
Public Employees' Revolving Fund.

(2) There is appropriated to the Public Employees' Revolving Fund all unused employer contri-
butions for employee benefits and all refunds, dividends, unused premiums and other payments at-
tributable to any employee contribution or employer contribution, other than moneys allotted to
employees under section 5 of this 2018 Act, made from any carrier or contractor that has pro-
vided employee benefits administered by the board, and all interest earned on such moneys.

SECTION 19. ORS 243.252 is amended to read:

243.252. (1) The state may pay none of the cost of making health benefit plan coverage available
to a retired state employee who is an eligible employee and to family members or may agree, by
collective bargaining agreement or otherwise, to pay part or all of that cost.

(2) Nothing in subsection (1) of this section or other law[, except ORS 243.886,] prohibits a col-
lective bargaining unit from agreeing with an employer that is a public body, as defined in ORS
174.109, to establish a retiree medical trust, voluntary employees' beneficiary association, health
reimbursement arrangement or other agreement for health care expenses of employees or retirees
if the provisions of the trust, association, arrangement or other agreement comply with the re-
quirements of the Insurance Code.

SECTION 20. ORS 243.256 is amended to read:

243.256. (1) A hospital that provides services or supplies under a health benefit plan offered by
the Public Employees' Benefit Board shall be reimbursed using the methodology prescribed by the
Oregon Health Authority under ORS 442.392 and may not be reimbursed for each service or supply
provided.

(2) This section applies to hospital payments made by a carrier under a contract with the board
[and to hospital payments made under a self-insurance program administered by a third party admin-
istrator on behalf of the board] described in ORS 243.135.

(3) This section does not apply to reimbursements paid by a carrier [or third party admin-
istrator] to a hospital that is not subject to the methodology prescribed by the authority under
ORS 442.392.

SECTION 21. ORS 243.256, as amended by section 29, chapter 746, Oregon Laws 2017, is
amended to read:

243.256. (1) A carrier that contracts with the Public Employees' Benefit Board to provide to el-
igible employees and their dependents a health benefit plan that reimburses the cost of inpatient
or outpatient hospital services or supplies shall reimburse a claim for the cost of a hospital service
or supply that is covered by, or is similar to a service or supply that is covered by, the Medicare
program in an amount that does not exceed:

(a) For claims submitted by in-network hospitals, 200 percent of the amount paid by Medicare
for the service or supply; or
(b) For claims submitted by out-of-network hospitals, 185 percent of the amount paid by Medicare for the service or supply.

[(2) A self-insurance program administered by a third party administrator that is offered by the board to eligible employees and their dependents and that reimburses the cost of inpatient or outpatient hospital services or supplies shall reimburse a claim for the cost of a hospital service or supply that is covered by, or is similar to a service or supply that is covered by, the Medicare program in an amount that does not exceed:]

[(a) For claims submitted by in-network hospitals, 200 percent of the amount paid by Medicare for the service or supply; or]

[(b) For claims submitted by out-of-network hospitals, 185 percent of the amount paid by Medicare for the service or supply.]

[(3) A provider who is reimbursed in accordance with subsection (1) or (2) of this section may not charge to or collect from the patient or a person who is financially responsible for the patient an amount in addition to the reimbursement paid under subsection (1) or (2) of this section other than cost sharing amounts authorized by the terms of the health benefit plan.

[(4) If a carrier or third party administrator does not reimburse claims on a fee-for-service basis, the payment method used must take into account the limits specified in subsections (1) and (2) of this section. Such payment methods include, but are not limited to:

(a) Value-based payments;
(b) Capitation payments; and
(c) Bundled payments.

[(5) This section does not apply to reimbursements paid by a carrier or third party administrator to:

(a) A type A or type B hospital as described in ORS 442.470;
(b) A rural critical access hospital as defined in ORS 315.613; or
(c) A hospital:
(A) Located in a county with a population of less than 70,000 on August 15, 2017;
(B) Classified as a sole community hospital by the Centers for Medicare and Medicaid Services; and
(C) With Medicare payments composing at least 40 percent of the hospital’s total annual patient revenue.

[(6) This section does not require a health benefit plan offered by the board to reimburse claims using a fee-for-service payment method.

SECTION 22. ORS 243.285 is amended to read:

243.285. (1) Upon receipt of the request in writing of an eligible employee [so to do] the payroll disbursing officer authorized to disburse funds in payment of the salary or wages of the eligible employee may deduct from the salary or wages of the employee, or from the employee’s allotment described in section 5 of this 2018 Act, an amount of money indicated in the request for payment of the applicable amount set forth in benefit plans selected by the employee or selected on the employee’s behalf for:

(a) Group health and related services and supplies, including such insurance for family members of the eligible employee.
(b) Group life insurance, including life insurance for family members of the eligible employee.
(c) Group dental and related services and supplies, or any other remedial care recognized by
state law and related services and supplies, recognized under state law, including such insurance for family members of the eligible employee.

(d) Group indemnity insurance for accidental death and dismemberment and for loss of income due to accident, sickness or other disability, including such insurance for family members of the eligible employee.

(e) Other benefits, including self-insurance programs, that are approved and provided by the Public Employees’ Benefit Board.

(2) Moneys deducted under subsection (1) of this section shall be paid over promptly:

(a) to the carriers or persons responsible for payment of premiums to carriers, in accordance with the terms of the contracts made by the eligible employees or on their behalf; or

(b) With respect to self-insurance benefits, in accordance with rules, procedures and directions of the Public Employees’ Benefit Board.

SECTION 23. ORS 243.302 is amended to read:

243.302. The Public Employees’ Benefit Board may group retired state employees and state employees who are not retired for the purpose of entering into contracts with one or more carriers to provide health benefit plans and other insurance coverage.

SECTION 24. ORS 292.051 is amended to read:

292.051. (1) Except as authority over contracts for health benefit plans described in ORS 243.135 is vested in the Public Employees’ Benefit Board, Upon receipt of the request in writing of an officer or employee so to do, the state official authorized to disburse funds in payment of the salary or wages of the officer or employee may deduct from the salary or wages of the officer or employee, or from the officer’s or employee’s allotment described in section 5 of this 2018 Act, an amount of money indicated in the request for payment of the applicable amount set forth in benefit plans selected by the officers or employees or in their behalf for:

(a) Group life insurance, including life insurance for dependents of officers or employees.

(b) Group dental and related services and supplies, or any other remedial care recognized by state law and related services and supplies, other than medical, surgical or hospital care, recognized under state law, including such insurance for dependents of state officers or employees.

(c) Group indemnity insurance for accidental death and dismemberment and for loss of income due to accident, sickness or other disability, including such insurance for dependents of state officers or employees.

(d) Automobile casualty insurance under a monthly payroll deduction program endorsed or offered by an employee organization representing 500 or more state employees. Membership in the employee organization is not a requirement for participation in this program.

(e) Legal insurance under a monthly payroll deduction program endorsed or offered by an employee organization representing 500 or more state employees.

(f) Self-insurance programs that are approved and provided by the Public Employees’ Benefit Board.

(2) The Oregon Health Authority may establish and collect a fee to cover costs of administering this section.

(3) No state official authorized to disburse funds in payment of salaries or wages is required to make deductions as authorized by subsection (1) of this section for more than one benefit plan of the type referred to in each of the paragraphs in subsection (1) of this section per eligible employee.

(4) Moneys deducted under subsection (1) of this section shall be paid over promptly:

(a) to the insurance companies, agencies or hospital associations, or persons responsible for
payment of premiums to the companies, agencies or associations, in accordance with the terms of
the contracts made by the officers or employees or in their behalf; or]

[(b) With respect to self-insurance benefits, in accordance with rules, procedures and directions of
the Public Employees' Benefit Board].

(5) As used in this section, “officer or employee” means all persons who receive salaries or
wages disbursed by any state official.

SECTION 25. Section 6, chapter 538, Oregon Laws 2017, is amended to read:

Sec. 6. (1) If [the Public Employees' Benefit Board or] an insurer fails to timely file a verified
form or to pay an assessment required under section [3 or] 5, [of this 2017 Act] chapter 538, Oregon
Laws 2017, the Department of Consumer and Business Services shall impose a penalty on the board
or insurer of up to $500 per day of delinquency. The total amount of penalties imposed under this
section for a calendar quarter may not exceed five percent of the assessment due for that calendar
quarter.

(2) Any penalty imposed under this section is in addition to and not in lieu of the assessment

COLLECTIVE BARGAINING

SECTION 26. ORS 243.650 is amended to read:

243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

(1) “Appropriate bargaining unit” means the unit designated by the Employment Relations Board
or voluntarily recognized by the public employer to be appropriate for collective bargaining. How-
ever, an appropriate bargaining unit may not include both academically licensed and unlicensed or
nonacademically licensed school employees. Academically licensed units may include but are not
limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and
similar positions. This limitation does not apply to any bargaining unit certified or recognized prior
to June 6, 1995, or to any school district with fewer than 50 employees.

(2) “Board” means the Employment Relations Board.

(3) “Certification” means official recognition by the board that a labor organization is the ex-
clusive representative for all of the employees in the appropriate bargaining unit.

(4) “Collective bargaining” means the performance of the mutual obligation of a public employer
and the representative of its employees to meet at reasonable times and confer in good faith with
respect to employment relations for the purpose of negotiations concerning mandatory subjects of
bargaining, to meet and confer in good faith in accordance with law with respect to any dispute
concerning the interpretation or application of a collective bargaining agreement, and to execute
written contracts incorporating agreements that have been reached on behalf of the public employer
and the employees in the bargaining unit covered by such negotiations. The obligation to meet and
negotiate does not compel either party to agree to a proposal or require the making of a concession.
This subsection may not be construed to prohibit a public employer and a certified or recognized
representative of its employees from discussing or executing written agreements regarding matters
other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-
tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

(5) “Compulsory arbitration” means the procedure whereby parties involved in a labor dispute
are required by law to submit their differences to a third party for a final and binding decision.

(6) “Confidential employee” means one who assists and acts in a confidential capacity to a per-
son who formulates, determines and effectuates management policies in the area of collective barg-
gaining.

(7)(a) “Employment relations” includes, but is not limited to, matters concerning direct or indi-
rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of
employment.

(b) “Employment relations” does not include subjects determined to be permissive, nonmanda-
tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

(c) After June 6, 1995, “employment relations” does not include subjects that the Employment
Relations Board determines to have a greater impact on management’s prerogative than on employee
wages, hours, or other terms and conditions of employment.

(d) “Employment relations” does not include subjects that have an insubstantial or de minimis
effect on public employee wages, hours, and other terms and conditions of employment.

(e) For school district bargaining, “employment relations” excludes class size, the school or edu-
cational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
gum chewing and similar matters of personal conduct, the standards and procedures for student
discipline, the time between student classes, the selection, agendas and decisions of 21st Century
Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this
subsection.

(f) For employee bargaining involving employees covered by ORS 243.736 and employees of the
Department of Corrections who have direct contact with inmates, “employment relations” includes
safety issues that have an impact on the on-the-job safety of the employees or staffing levels that
have a significant impact on the on-the-job safety of the employees.

(g) “Employment relations”:

(A) Does not include health benefit plan coverage as described in sections 5 and 28 of this
2018 Act.

(B) Does include health insurance coverage for retired employees as provided in ORS
238.410, 238.415, 238.420, 243.252 and 243.303.

(C) Does include dental only, vision only and long term care insurance coverage.

(gf) (h) For all other employee bargaining except school district bargaining and except as pro-
vided in paragraph (f) of this subsection, “employment relations” excludes staffing levels and safety
issues (except those staffing levels and safety issues that have a direct and substantial effect on the
on-the-job safety of public employees), scheduling of services provided to the public, determination
of the minimum qualifications necessary for any position, criteria for evaluation or performance
appraisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable
dress, grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and
similar matters of personal conduct at work, and any other subject proposed that is permissive un-
der paragraphs (b), (c) and (d) of this subsection.

(8) “Exclusive representative” means the labor organization that, as a result of certification by
the board or recognition by the employer, has the right to be the collective bargaining agent of all
employees in an appropriate bargaining unit.

(9) “Fact-finding” means identification of the major issues in a particular labor dispute by one
or more impartial individuals who review the positions of the parties, resolve factual differences and
make recommendations for settlement of the dispute.
(10) “Fair-share agreement” means an agreement between the public employer and the recognized or certified bargaining representative of public employees whereby employees who are not members of the employee organization are required to make an in-lieu-of-dues payment to an employee organization except as provided in ORS 243.666. Upon the filing with the board of a petition by 30 percent or more of the employees in an appropriate bargaining unit covered by such union security agreement declaring they desire that the agreement be rescinded, the board shall take a secret ballot of the employees in the unit and certify the results thereof to the recognized or certified bargaining representative and to the public employer. Unless a majority of the votes cast in an election favor the union security agreement, the board shall certify deauthorization of the agreement. A petition for deauthorization of a union security agreement must be filed not more than 90 calendar days after the collective bargaining agreement is executed. Only one such election may be conducted in any appropriate bargaining unit during the term of a collective bargaining agreement between a public employer and the recognized or certified bargaining representative.

(11) “Final offer” means the proposed contract language and cost summary submitted to the mediator within seven days of the declaration of impasse.

(12) “Labor dispute” means any controversy concerning employment relations or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment relations, regardless of whether the disputants stand in the proximate relation of employer and employee.

(13) “Labor organization” means any organization that has as one of its purposes representing employees in their employment relations with public employers.

(14) “Last best offer package” means the offer exchanged by parties not less than 14 days prior to the date scheduled for an interest arbitration hearing.

(15) “Legislative body” means the Legislative Assembly, the city council, the county commission and any other board or commission empowered to levy taxes.

(16) “Managerial employee” means an employee of the State of Oregon or a public university listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or who represents management's interest by taking or effectively recommending discretionary actions that control or implement employer policy, and who has discretion in the performance of these management responsibilities beyond the routine discharge of duties. A “managerial employee” need not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection, “managerial employee” does not include faculty members at a community college, college or university.

(17) “Mediation” means assistance by an impartial third party in reconciling a labor dispute between the public employer and the exclusive representative regarding employment relations.

(18) “Payment-in-lieu-of-dues” means an assessment to defray the cost for services by the exclusive representative in negotiations and contract administration of all persons in an appropriate bargaining unit who are not members of the organization serving as exclusive representative of the employees. The payment must be equivalent to regular union dues and assessments, if any, or must be an amount agreed upon by the public employer and the exclusive representative of the employees.

(19) “Public employee” means an employee of a public employer but does not include elected officials, persons appointed to serve on boards or commissions, incarcerated persons working under [section 41.] Article I, section 41, of the Oregon Constitution, or persons who are confidential employees, supervisory employees or managerial employees.

(20) “Public employer” means the State of Oregon, and the following political subdivisions:
Cities, counties, community colleges, school districts, special districts, mass transit districts, metropolitan service districts, public service corporations or municipal corporations and public and quasi-public corporations.

(21) “Public employer representative” includes any individual or individuals specifically designated by the public employer to act in its interests in all matters dealing with employee representation, collective bargaining and related issues.

(22) “Strike” means a public employee’s refusal in concerted action with others to report for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his or her absence in whole or in part from the full, faithful or proper performance of his or her duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; however, nothing shall limit or impair the right of any public employee to lawfully express or communicate a complaint or opinion on any matter related to the conditions of employment.

(23)(a) “Supervisory employee” means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment. Failure to assert supervisory status in any Employment Relations Board proceeding or in negotiations for any collective bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent board proceeding or contract negotiation.

(b) “Supervisory employee” includes a faculty member of a public university listed in ORS 352.002 or the Oregon Health and Science University who:

(A) Is employed as a president, vice president, provost, vice provost, dean, associate dean, assistant dean, head or equivalent position; or

(B) Is employed in an administrative position without a reasonable expectation of teaching, research or other scholarly accomplishments.

(c) “Supervisory employee” does not include:

(A) A nurse, charge nurse or nurse holding a similar position if that position has not traditionally been classified as supervisory;

(B) A firefighter prohibited from striking by ORS 243.736 who assigns, transfers or directs the work of other employees but does not have the authority to hire, discharge or impose economic discipline on those employees; or

(C) A faculty member of a public university listed in ORS 352.002 or the Oregon Health and Science University who is not a faculty member described in paragraph (b) of this subsection.

(24) “Unfair labor practice” means the commission of an act designated an unfair labor practice in ORS 243.672.

(25) “Voluntary arbitration” means the procedure whereby parties involved in a labor dispute mutually agree to submit their differences to a third party for a final and binding decision.

OREGON EDUCATORS BENEFIT BOARD

SECTION 27. Section 28 of this 2018 Act is added to and made a part of ORS 243.860 to 243.886.

SECTION 28. (1) A public employer shall annually allot to each eligible employee an
amount equal to the benefit cap for the year. The employee may use the allotment to pay
the premiums for any of the health benefit plans offered under ORS 243.866. The employee
shall pay any premium costs that exceed the allotment. If the employee declines the health
benefit plans offered by the Oregon Educators Benefit Board, the allotment shall be available
as described in subsection (2) of this section.

(2) An employee who declines health benefit plan coverage described in ORS 243.866 or
whose premiums cost less than the amount of the employee's allotment may elect to have
the remainder of the allotment distributed by the public employer by:
(a) Payment to a retirement account;
(b) Deposit in an qualified tuition program described in 26 U.S.C. 529;
(c) Deposit in a cafeteria plan or qualified transportation fringe benefit plan that is not
includable in the taxable income of the employee by reason of 26 U.S.C. 125 or 132(f)(4);
(d) Contribution to a deferred compensation arrangement that is not included in the
taxable income of the employee by reason of 26 U.S.C. 402(e)(3);
(e) Payment to the employee; or
(f) Payment to a third party selected by the employee.
(3) The board shall provide assistance to eligible employees and their family members in
selecting health benefit plans described in ORS 243.866 and in making the elections described
in subsection (2) of this section.
(4) As used in this section:
(a) “Benefit cap” has the meaning given that term in section 6 of this 2018 Act.
(b) “Public employer” has the meaning given that term in ORS 238.005.
SECTION 29. ORS 243.860 is amended to read:
243.860. As used in ORS 243.860 to 243.886, unless the context requires otherwise:
(1) “Benefit plan” includes but is not limited to:
(a) Contracts for insurance or other benefits, including [medical,] dental, vision, life, disability
and [other health] long term care [recognized by state law], and related services and supplies; and
[(b) Self-insurance programs managed by the Oregon Educators Benefit Board; and]
[(c)] (b) Comparable benefits for employees who rely on spiritual means of healing.
(2) “Carrier” means an insurance company or health care service contractor holding a valid
certificate of authority from the Director of the Department of Consumer and Business Services, or
two or more companies or contractors acting together pursuant to a joint venture, partnership or
other joint means of operation, or a [board-approved] provider or guarantor of benefit plan coverage
and compensation that is approved by the Oregon Educators Benefit Board.
(3) “District” means a common school district, a union high school district, an education service
district, as defined in ORS 334.003, or a community college district, as defined in ORS 341.005.
(4)(a) “Eligible employee” includes:
(A) An officer or employee of a district or a local government who elects to participate in one
of the benefit plans described in ORS 243.864 to 243.874; and
(B) An officer or employee of a district or a local government, whether or not retired, who:
(i) Is receiving a service retirement allowance, a disability retirement allowance or a pension
under the Public Employees Retirement System or is receiving a service retirement allowance, a
disability retirement allowance or a pension under any other retirement or disability benefit plan
or system offered by the district or local government for its officers and employees;
(ii) Is eligible to receive a service retirement allowance under the Public Employees Retirement
System and has reached earliest service retirement age under ORS chapter 238; 
(iii) Is eligible to receive a pension under ORS 238A.100 to 238A.250 and has reached earliest 
retirement age as described in ORS 238A.165; or 
(iv) Is eligible to receive a service retirement allowance or pension under any other retirement 
benefit plan or system offered by the district or local government and has attained earliest retire-
ment age under the plan or system.

(b) Except as provided in paragraph (a)(B) of this subsection, “eligible employee” does not in-
clude an individual:

(A) Engaged as an independent contractor;
(B) Whose periods of employment in emergency work are on an intermittent or irregular basis;

or

(C) Who is employed on less than a half-time basis unless the individual is employed in a posi-
tion classified as a job-sharing position or unless the individual is defined as eligible under rules of 
the Oregon Educators Benefit Board or under a collective bargaining agreement.

(5) “Family member” means an eligible employee’s spouse or domestic partner and any unmar-
ried child or stepchild of an eligible employee within age limits and other conditions imposed by the 
Oregon Educators Benefit Board with regard to unmarried children or stepchildren.

(6) “Health benefit plan has the meaning given that term in ORS 743B.005.

“(7) “Local government” means any city, county or special district in this state.

“(8) “Payroll disbursing officer” means the officer or official authorized to disburse moneys 
in payment of salaries and wages of officers and employees of a district or a local government.

“(9) “Premium” means the monthly or other periodic charge, including administrative fees 
of the Oregon Educators Benefit Board, for a benefit plan.

“(10) “Primary care” means family medicine, general internal medicine, naturopathic medicine, 
obstetrics and gynecology, pediatrics or general psychiatry.

“(10) “Total medical expenditures” means payments to reimburse the cost of physical and mental 
health care provided to eligible employees or their family members, excluding prescription drugs, vision 
care and dental care, whether paid on a fee-for-service basis or as part of a capitated rate or other type 
of payment mechanism.

SECTION 30. ORS 243.862 is amended to read:

243.862. (1) There is established in the Oregon Health Authority an Oregon Educators Benefit 
Board consisting of at least 12 members appointed by the Governor, including:

(a) Two members representing district boards;
(b) Two members representing district management;
(c) Two members representing nonmanagement district employees from the largest labor organ-
ization representing district employees;
(d) One member representing nonmanagement district employees from the second largest labor 
organization representing district employees;
(e) One member representing nonmanagement district employees who are not represented by 
labor organizations described in paragraphs (c) and (d) of this subsection; and
(f) Two members with expertise in health policy or risk management; and

(g) Two members, one representing local government management and one representing 
local government nonmanagement employees.

[(2)(a) If the governing body of a local government elects to participate in a benefit plan offered 
by the board, in addition to the members appointed under subsection (1) of this section, the Governor]
shall appoint two members, one of whom represents local government management and one of whom
represents local government nonmanagement employees]

[(b) (2)(a) After the appointment of members under [paragraph (a) of this subsection] subsection (1)(g) of this section, if the number of eligible employees of a local government or local governments enrolled in a benefit plan or plans offered by the board exceeds 25,000, the Governor shall appoint two additional members, [one of whom represents] representing local government management and [one of whom represents] representing local government nonmanagement employees.

[(c) (b) After the appointment of members under [paragraphs (a) and (b)] paragraph (a) of this subsection, for every additional 25,000 eligible employees of a local government or local governments enrolled in a benefit plan or plans offered by the board, the Governor shall appoint one additional member representing local government management and one additional member representing local government nonmanagement employees.

(3) A maximum of three members may be appointed by the Governor to represent local government management under subsections (1) and (2) of this section and a maximum of three members may be appointed by the Governor to represent local government nonmanagement employees.

(4) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor to take office upon the date of that expiration. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(5) A member of the board is not entitled to compensation, but may be reimbursed from funds available to the board for actual and necessary travel and other expenses incurred by the member in the performance of the member’s official duties in the manner and amount provided in ORS 292.495.

(6) The board shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the board determines.

(7) A majority of the members of the board constitutes a quorum for the transaction of business.

(8) The board shall meet at times and places specified by the call of the chairperson or of a majority of the members of the board.

(9) Appointments of members to the board by the Governor are subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

SECTION 31. ORS 243.864 is amended to read:

243.864. (1) The Oregon Educators Benefit Board:

(a) Shall adopt rules for the conduct of its business and for carrying out ORS 243.879; and

(b) May adopt rules not inconsistent with ORS 243.860 to 243.886 to determine the terms and conditions of eligible employee participation in and coverage under benefit plans.

(2) The board shall study all matters connected with the provision of adequate benefit plan coverage for eligible employees on the best basis possible with regard to the welfare of the employees and affordability for the districts and local governments. The board shall design benefits, prepare specifications, analyze carrier responses to advertisements for bids and award contracts. Contracts shall be signed by the chairperson on behalf of the board.

(3) In carrying out its duties under subsections (1) and (2) of this section, the goal of the board is to provide high-quality health, dental and other benefit plans for eligible employees at a cost af-
forndable to the districts and local governments, the employees and the taxpayers of Oregon.

(4)(a) The board shall prepare specifications, invite bids and take actions necessary to award contracts for health and dental benefit plan coverage of carriers to provide health benefit plans and benefit plans for dental, long term care and vision coverage to eligible employees. Health benefit plan coverage must be in accordance with the criteria set forth in ORS 243.866 (1).

(b) Premium rates established by the board for a self-insured health benefit plan and premium rates negotiated by the board with a carrier that offers a health benefit plan to eligible employees must take into account any reduction in the cost of hospital services and supplies anticipated to result from the application of ORS 243.879.

(c) The Public Contracting Code does not apply to contracts for benefit plans provided under ORS 243.860 to 243.886. The board may not exclude from competition to contract for a benefit plan an Oregon carrier solely because the carrier does not serve all counties in Oregon.

(5) The board may retain consultants, brokers or other advisory personnel when necessary and shall employ such personnel as are required to perform the functions of the board. If the board contracts for actuarial or technical support to manage the functions of the board, the board shall, no less than every three years, solicit invitations to bid and the proposals must include all of the following:

(a) An explanation of how the bidder has assisted other clients in creating incentives to improve the quality of care provided to enrollees;

(b) An explanation of how the bidder will support the board’s efforts to maximize provider efficiencies and achieve more organized systems of care; and

(c) A description of the bidder’s experience in assisting other clients in structuring contracts that use risk-based networks of providers and alternative provider reimbursement methodologies.

SECTION 32. ORS 243.866 is amended to read:

243.866. (1) Notwithstanding any other benefit plan contracted for and offered by the Oregon Educators Benefit Board, the board shall contract for benefit plans best designed to meet the needs and provide for the welfare of eligible employees, the districts and local governments. In considering whether to enter into a contract for a benefit plan, the board shall place emphasis on:

with a carrier to provide a group of health benefit plans selected by the board from the plans that are offered by the carrier. In selecting the plans to be offered to eligible employees by the carrier, the board shall select health benefit plans that provide minimum essential coverage, as defined in 26 U.S.C. 5000A, and shall place emphasis on:

(a) Employee choice among high-quality plans;

[b] Encouragement of a competitive marketplace;]

[(c)] (b) Plan performance and information;

[(d) District and local government flexibility in plan design and contracting;]

[(e)] (c) Quality customer service;

[(f)] (d) Creativity and innovation;

[(g) Plan benefits as part of total employee compensation;]

[(h)] (e) Improvement of employee health; and

[(i)] (f) Health outcome and quality measures, described in ORS 413.017 (4), that are reported by the plan.

(2) The board may approve more than one carrier for [each type of benefit plan] health benefit plans offered, but the board shall limit the number of carriers to a number consistent with adequate service to eligible employees and family members.
(3) When appropriate, the board shall provide options under which an eligible employee may arrange coverage for family members under a health benefit plan.

(4) A district or a local government shall provide that payroll deductions for health benefit plan costs that are not payable by the district or local government may be made upon receipt of a signed authorization from the employee indicating an election to participate in the health benefit plan or plans selected and allowing the deduction of those costs from the employee’s pay.

(5) In developing any health benefit plan, the board may provide an option of additional coverage for eligible employees and family members at an additional premium.

(6) [The board shall adopt rules providing that transfer of enrollment from one benefit plan to another is open to all eligible employees and family members. Because of the special problems that may arise involving acceptable provider-patient relations between a particular panel of providers and a particular eligible employee or family member under a comprehensive group practice benefit plan,] The board shall provide a procedure under which [any eligible employee] eligible employees and their family members may apply at any time to substitute [another benefit plan for participation in a comprehensive group practice benefit plan] one health benefit plan for another.

(7) An eligible employee who is retired is not required to participate in a health benefit plan offered under this section in order to obtain dental benefit plan coverage. The board shall establish by rule standards of eligibility for retired employees to participate in a dental benefit plan.

(8) The board shall evaluate a health benefit plan that serves a limited geographic region of this state according to the criteria described in subsection (1) of this section.

[9] By January 1, 2023, the board shall spend at least 12 percent of its total medical expenditures in self-insured health benefit plans on payments for primary care.

[(10) No later than February 1 of each year, the board shall report to the Legislative Assembly on the board’s progress toward achieving the target of spending at least 12 percent of total medical expenditures on payments for primary care.]

(9) Eligible employees must have the opportunity to select health benefit plans using an Internet portal.

SECTION 33. ORS 243.866, as amended by section 28, chapter 746, Oregon Laws 2017, is amended to read:

243.866. (1) Notwithstanding any other benefit plan contracted for and offered by the Oregon Educators Benefit Board, the board shall contract for benefit plans best designed to meet the needs and provide for the welfare of eligible employees, the districts and local governments. In considering whether to enter into a contract for a benefit plan, the board shall place emphasis on:

with a carrier to provide a group of health benefit plans selected by the board from the plans that are offered by the carrier. In selecting the plans to be offered to eligible employees by the carrier, the board shall select health benefit plans that provide minimum essential coverage, as defined in 26 U.S.C. 5000A, and shall place emphasis on:

(a) Employee choice among high-quality plans;

[(b) Encouragement of a competitive marketplace;]

[(c)] (b) Plan performance and information;

[(d) District and local government flexibility in plan design and contracting;]

[(e)] (c) Quality customer service;

[(f)] (d) Creativity and innovation;

[(g) Plan benefits as part of total employee compensation;]

[(h)] (e) Improvement of employee health; and
(f) Health outcome and quality measures, described in ORS 413.017 (4), that are reported by the plan.

The board may approve more than one carrier for each type of benefit plan offered, but the board shall limit the number of carriers to a number consistent with adequate service to eligible employees and family members who are not enrolled in another health benefit plan offered by the board or the Public Employees’ Benefit Board. An eligible employee who declines coverage in a health benefit plan offered by the Oregon Educators Benefit Board or the Public Employees’ Benefit Board and who is enrolled as a spouse or family member in another health benefit plan offered by the Oregon Educators Benefit Board or the Public Employees’ Benefit Board may not be paid the employer contribution for the plan that was declined.

(3) When appropriate, the board shall provide options under which an eligible employee may arrange coverage for family members under a health benefit plan.

A district or a local government shall provide that payroll deductions for health benefit plan costs that are not payable by the district or local government may be made upon receipt of a signed authorization from the employee indicating an election to participate in the health benefit plan or plans selected and allowing the deduction of those costs from the employee’s pay.

In developing any health benefit plan, the board may provide an option of additional coverage for eligible employees and family members at an additional premium.

[The board shall adopt rules providing that transfer of enrollment from one benefit plan to another is open to all eligible employees and family members. Because of the special problems that may arise involving acceptable provider-patient relations between a particular panel of providers and a particular eligible employee or family member under a comprehensive group practice benefit plan, the board shall provide a procedure under which any eligible employee and their family members may apply at any time to substitute another benefit plan for participation in a comprehensive group practice benefit plan.]

(7) An eligible employee who is retired is not required to participate in a health benefit plan offered under this section in order to obtain dental benefit plan coverage. The board shall establish by rule standards of eligibility for retired employees to participate in a dental benefit plan.

(8) The board shall evaluate a health benefit plan that serves a limited geographic region of this state according to the criteria described in subsection (1) of this section.

(9)(a) The board shall use payment methodologies in self-insured health benefit plans offered by the board that are designed to limit the growth in per-member expenditures for health services to no more than 3.4 percent per year.

(b) The board shall adopt policies and practices designed to limit the annual increase in premium amounts paid for contracted health benefit plans to 3.4 percent.

(10) A carrier [or third party administrator] that contracts with the board to provide [or administer] a health benefit plan shall, at least once each plan year, conduct an audit of the health benefit plan enrollees’ continued eligibility for coverage as spouses or dependents or any other basis that would affect the cost of the premium for the plan.

(11) By January 1, 2023, the board shall spend at least 12 percent of its total medical expenditures in self-insured health benefit plans on payments for primary care.

(12) No later than February 1 of each year, the board shall report to the Legislative Assembly on the board’s progress toward achieving the target of spending at least 12 percent of total medical expenditures on payments for primary care.

(11) Eligible employees must have the opportunity to select health benefit plans using an
SECTION 34. ORS 243.866, as amended by section 17, chapter 489, Oregon Laws 2017, and section 28, chapter 746, Oregon Laws 2017, is amended to read:

243.866. (1) Notwithstanding any other benefit plan contracted for and offered by the Oregon Educators Benefit Board, the board shall contract for benefit plans best designed to meet the needs and provide for the welfare of eligible employees, the districts and local governments. In considering whether to enter into a contract for a benefit plan, the board shall place emphasis on:

(a) Employee choice among high-quality plans;

(b) Encouragement of a competitive marketplace;

(c) Plan performance and information;

(d) District and local government flexibility in plan design and contracting;

(e) Quality customer service;

(f) Creativity and innovation;

(g) Plan benefits as part of total employee compensation;

(h) Improvement of employee health; and

(i) Health outcome and quality measures, described in ORS 413.017 (4), that are reported by the plan.

(2) The board may approve more than one carrier for each type of benefit plan offered, but the board shall limit the number of carriers to a number consistent with adequate service to eligible employees and family members who are not enrolled in another health benefit plan offered by the board or the Public Employees’ Benefit Board. An eligible employee who declines coverage in a health benefit plan offered by the Oregon Educators Benefit Board or the Public Employees’ Benefit Board and who is enrolled as a spouse or family member in another health benefit plan offered by the Oregon Educators Benefit Board or the Public Employees’ Benefit Board may not be paid the employer contribution for the plan that was declined.

(3) When appropriate, the board shall provide options under which an eligible employee may arrange coverage for family members under a health benefit plan.

(4) A district or a local government shall provide that payroll deductions for health benefit plans costs that are not payable by the district or local government may be made upon receipt of a signed authorization from the employee indicating an election to participate in the health benefit plan or plans selected and allowing the deduction of those costs from the employee's pay.

(5) In developing any health benefit plan, the board may provide an option of additional coverage for eligible employees and family members at an additional premium.

(6) The board shall adopt rules providing that transfer of enrollment from one benefit plan to another is open to all eligible employees and family members. Because of the special problems that may arise involving acceptable provider-patient relations between a particular panel of providers and a particular eligible employee or family member under a comprehensive group practice benefit plan, the board shall provide a procedure under which any eligible employee and their family members may apply at any time to substitute another benefit plan for participation in a comprehensive group practice benefit plan.

(7) An eligible employee who is retired is not required to participate in a health benefit plan.
offered under this section in order to obtain dental benefit plan coverage. The board shall establish
by rule standards of eligibility for retired employees to participate in a dental benefit plan.

(8) The board shall evaluate a health benefit plan that serves a limited geographic region of this
state according to the criteria described in subsection (1) of this section.

[(9)(a) The board shall use payment methodologies in self-insured health benefit plans offered by
the board that are designed to limit the growth in per-member expenditures for health services to no
more than 3.4 percent per year.]

[(b)] (9) The board shall adopt policies and practices designed to limit the annual increase in
premium amounts paid for contracted health benefit plans to 3.4 percent.

(10) A carrier [or third party administrator] that contracts with the board to provide [or admin-
istrator] a health benefit plan shall, at least once each plan year, conduct an audit of the health benefit
plan enrollees’ continued eligibility for coverage as spouses or dependents or any other basis that
would affect the cost of the premium for the plan.

[(11) If the board spends less than 12 percent of its total medical expenditures in self-insured health
benefit plans on payments for primary care, the board shall implement a plan for increasing the per-
centage of total medical expenditures spent on payments for primary care by at least one percent each
year.]

[(12) No later than February 1 of each year, the board shall report to the Legislative Assembly on
any plan implemented under subsection (11) of this section and on the board’s progress toward
achieving the target of spending at least 12 percent of total medical expenditures on payments for pri-
mary care.]

(11) Eligible employees must have the opportunity to select health benefit plans using an
Internet portal.

SECTION 35. ORS 243.867 is amended to read:

243.867. (1) The governing body of a local government [may elect to] shall participate in a benefit
plan [offered by the Oregon Educators Benefit Board] described in ORS 243.866 that is paid for in
the manner prescribed in section 28 of this 2018 Act.

(2) The decision of the governing body of a local government to participate in a benefit plan
offered by the board other than a health benefit plan described in ORS 243.866 is in the discretion of the governing body of the local government and is a permissive subject of collective
bargaining.

[(3) If the governing body of a local government elects to offer a benefit plan through the board,
the governing body may elect one time only to provide alternative group health and welfare insurance
benefit plans to eligible employees if:]

[(a) The alternative benefit plan is offered through the health insurance exchange under ORS
741.310 (1)(b); and]

[(b) The participation of the local government is not precluded under federal law on or after Janu-
ary 1, 2017.]

SECTION 36. ORS 243.876 is amended to read:

243.876. (1) Upon receipt of a request in writing from an eligible employee, the payroll disburs-

ing officer may deduct from the salary or wages of the employee, or from the employee’s allot-
ment described in section 28 of this 2018 Act, an amount of money indicated in the request for
payment of the amount set forth in benefit plans selected by the employee for the employee and
family members.

(2) Amounts deducted under subsection (1) of this section shall be paid over promptly[.]
[(a)] to the Oregon Educators Benefit Board, the carriers or the persons responsible for payment
of premiums to carriers in accordance with the terms of contracts for benefit plans; or
[(b) With respect to self-insurance benefits, in accordance with rules and procedures adopted by the
board].

(3) The payroll disbursing officer shall submit reports to the board regarding claims experience
and benefit plan coverage for eligible employees as the board considers desirable.

SECTION 37. ORS 243.878 is amended to read:

243.878. (1) The Oregon Educators Benefit Board may employ whatever means are reasonably
necessary to carry out the purposes of ORS 243.860 to 243.886. This authority includes, but is not
limited to, authority to [self-insure and to] seek clarification, amendment, modification, suspension
or termination of any agreement or contract.

(2) Upon providing specific notice in writing to the carrier, the affected labor organization or
organizations, the districts, the local governments, the Oregon Health Authority and the affected
eligible employees, and after affording opportunity for a public hearing on the issues that may be
involved, the board may enter an order withdrawing approval of a benefit plan. Thirty days after
entry of the order, the board shall terminate all withholding authorizations of eligible employees and
terminate all board-approved participation in the plan.

(3) The board by order may terminate the participation of a district or a local government in a
benefit plan if, within three months, the district or local government fails to perform an action re-
quired by ORS 243.860 to 243.886 or by board rule.

SECTION 38. ORS 243.879 is amended to read:

243.879. (1) A hospital that provides services or supplies under a health benefit plan offered by
the Oregon Educators Benefit Board shall be reimbursed using the methodology prescribed by the
Oregon Health Authority under ORS 442.392 and may not be reimbursed for each service or supply
provided.

(2) This section applies to hospital payments made by a carrier under a contract with the board
[and to hospital payments made under a self-insurance program administered by a third party admin-
istrator on behalf of the board] under ORS 243.886.

(3) This section does not apply to reimbursements paid by a carrier [or third party
administrator] to a hospital that is not subject to the methodology prescribed by the authority under
ORS 442.392.

SECTION 39. ORS 243.879, as amended by section 31, chapter 746, Oregon Laws 2017, is
amended to read:

243.879. (1) A carrier that contracts with the Oregon Educators Benefit Board to provide to el-
igible employees and their dependents a health benefit plan that reimburses the cost of inpatient
or outpatient hospital services or supplies shall reimburse a claim for the cost of a hospital service
or supply that is covered by, or is similar to a service or supply that is covered by, the Medicare
program in an amount that does not exceed:

(a) For claims submitted by in-network hospitals, 200 percent of the amount paid by Medicare
for the service or supply; or

(b) For claims submitted by out-of-network hospitals, 185 percent of the amount paid by Medi-
care for the service or supply.

[(2) A self-insurance program administered by a third party administrator that is offered by the
board to eligible employees and their dependents and that reimburses the cost of inpatient or outpatient
hospital services or supplies shall reimburse a claim for the cost of a hospital service or supply that]
is covered by, or is similar to a service or supply that is covered by, the Medicare program in an
amount that does not exceed:]

[(a) For claims submitted by in-network hospitals, 200 percent of the amount paid by Medicare for
the service or supply; or]

[(b) For claims submitted by out-of-network hospitals, 185 percent of the amount paid by Medicare
for the service or supply.]

[(3) (2) A provider who is reimbursed in accordance with subsection (1) [or (2)] of this section
may not charge to or collect from the patient or a person who is financially responsible for the
patient an amount in addition to the reimbursement paid under subsection (1) [or (2)] of this section
other than cost sharing amounts authorized by the terms of the health benefit plan.

[(4) (3) If a carrier [or third party administrator] does not reimburse claims on a fee-for-service
basis, the payment method used must take into account the limits specified in [subsections (1) and
(2)] subsection (1) of this section. Such payment methods include, but are not limited to:

(a) Value-based payments;
(b) Capitation payments; and
(c) Bundled payments.

[(5) (4) This section does not apply to reimbursements paid by a carrier [or third party admin-
istrator] to:

(a) A type A or type B hospital as described in ORS 442.470;
(b) A rural critical access hospital as defined in ORS 315.613; or
(c) A hospital:
   (A) Located in a county with a population of less than 70,000 on August 15, 2017;
   (B) Classified as a sole community hospital by the Centers for Medicare and Medicaid Services;
   and
   (C) With Medicare payments composing at least 40 percent of the hospital’s total annual patient
   revenue.

[(6) (5) This section does not require a health benefit plan offered by the board to reimburse
claims using a fee-for-service payment method.

SECTION 40. ORS 243.884 is amended to read:

243.884. (1) There is created the Oregon Educators Revolving Fund, separate and distinct from
the General Fund. Moneys in the Oregon Educators Revolving Fund are continuously appropriated
to the Oregon Educators Benefit Board to cover the board’s expenses incurred in connection with
the administration of ORS 243.860 to 243.886. Moneys in the Oregon Educators Revolving Fund may
be retained for limited periods of time as established by the board by rule. Among other purposes,
the board may retain the funds to pay premiums, control expenditures[,] and stabilize premiums [and
self-insure]. The board may establish subaccounts within the Oregon Educators Revolving Fund.

(2) Except for moneys that are allotted to employees under section 28 of this 2018 Act,
the following moneys shall be paid into the Oregon Educators Revolving Fund:

(a) All unused employer contributions for benefit plans;
(b) All refunds, dividends, unused premiums and other payments attributable to an employee
contribution or employer contribution made from a carrier that has provided benefit plans adminis-
tered by the board; and
(c) All interest earned on the moneys in the fund.

SECTION 41. ORS 741.310 is amended to read:

741.310. (1)(a) Individuals and families may purchase qualified health plans through the health
[(b) The following groups may purchase qualified health plans through the Small Business Health Options Program:] 

[(A)] (b) Employers with no more than 100 employees may purchase qualified health plans through the Small Business Health Options Program.

[(B)] Districts and eligible employees of districts that are subject to ORS 243.886, unless their participation is precluded by federal law.

(2)(a) Only individuals who purchase health plans through the exchange may be eligible to receive premium tax credits under section 36B of the Internal Revenue Code and reduced cost-sharing under 42 U.S.C. 18071.

(b) Only employers that purchase health plans through the SHOP may be eligible to receive small employer health insurance credits under section 45R of the Internal Revenue Code.

(3) Only an insurer that has a certificate of authority to transact insurance in this state and that meets applicable federal requirements for participating in the exchange may offer a qualified health plan through the exchange. Any qualified health plan must be certified under ORS 741.002. Coordinated care organizations that do not have a certificate of authority to transact insurance may serve only medical assistance recipients through the exchange and may not offer qualified health plans.

(4)(a) The Department of Consumer and Business Services shall adopt by rule uniform requirements, standards and criteria for the certification of qualified health plans, including requirements that a qualified health plan provide, at a minimum, essential health benefits and have acceptable consumer and provider satisfaction ratings.

(b) The department may limit the number of qualified health plans that may be offered through the exchange as long as the same limit applies to all insurers.

(5) The department shall certify as qualified a dental only health plan as permitted by federal law.

(6) The department, in collaboration with the Oregon Health Authority and the Department of Human Services, shall coordinate the application and enrollment processes for the exchange and the state medical assistance program.

(7) The Department of Consumer and Business Services may establish risk mediation programs within the exchange.

(8) The department shall establish by rule a process for certifying insurance producers to facilitate the transaction of insurance through the exchange, in accordance with federal standards and policies.

(9) The department shall ensure that an insurer charges the same premiums for plans sold through the exchange as for identical plans sold outside of the exchange.

(10) The department is authorized to enter into contracts for the performance of the department’s duties, functions or operations with respect to the exchange, including but not limited to contracting with:

(a) Insurers that meet the requirements of subsections (3) and (4) of this section, to offer qualified health plans through the exchange; and

(b) Navigators, in-person assisters and application counselors certified by the department under ORS 741.002.

[(11)(a) The department shall consult with stakeholders, including but not limited to representatives of school administrators, school board members, school employees and the Oregon Educators Benefit
Board, regarding the plans that may be offered through the exchange to districts and eligible employees
of districts under subsection (1)(b)(B) of this section and the insurers that may offer the plans.)

[(b) The board and the department shall each adopt rules to ensure that:]

[(A) Any plan offered under subsection (1)(b)(B) of this section is underwritten by an insurer using
a single risk pool composed of all eligible employees who are enrolled or who will be enrolled in the
plan both through the exchange and by the board; and]

[(B) In every plan offered under subsection (1)(b)(B) of this section, the coverage is comparable to
plans offered by the board.]

[(12) (1) The department is authorized to apply for and accept federal grants, other federal
funds and grants from nongovernmental organizations for purposes of developing, implementing and
administering the exchange. Moneys received under this subsection shall be deposited in the Health
Insurance Exchange Fund.

CONFORMING AMENDMENTS

SECTION 42. ORS 656.247 is amended to read:

656.247. (1) Except for medical services provided to workers subject to ORS 656.245 (4)(b)(B),
payment for medical services provided to a subject worker in response to an initial claim for a
work-related injury or occupational disease from the date of the employer’s notice or knowledge of
the claim until the date the claim is accepted or denied shall be payable in accordance with sub-
section (4) of this section.

(2) Notwithstanding subsection (1) of this section, no payment shall be due from the insurer or
self-insured employer if the insurer or self-insured employer denies the claim within 14 days of the
date of the employer’s notice or knowledge of the claim.

(3) (a) Disputes about whether the medical services provided to treat the claimed work-related
injury or occupational disease under subsection (1) of this section are excessive, inappropriate or
ineffectual or are consistent with the criteria in subsection (1) of this section shall be resolved by
the Director of the Department of Consumer and Business Services. The director may order a med-
ical review by a physician or panel of physicians pursuant to ORS 656.327 (3) to aid in the review
of such services. If a party is dissatisfied with the order of the director, the dissatisfied party may
request review under ORS 656.704 within 60 days of the date of the director’s order. The order of
the director may be modified only if it is not supported by substantial evidence in the record or if it
reflects an error of law.

(b) Disputes about the amount of the fee or nonpayment of bills for medical treatment and ser-
vices pursuant to this section shall be resolved pursuant to ORS 656.248.

(c) Except as provided in subsection (2) of this section, when a claim is settled pursuant to ORS
656.289 (4), all medical services payable under subsection (1) of this section that are provided on or
before the date of denial shall be paid in accordance with subsection (4) of this section. The insurer
or self-insured employer shall notify each affected service provider of the results of the settlement.

(4) (a) If the claim in which medical services are provided under subsection (1) of this section
has not been accepted or denied and a health benefit plan provides benefits to the worker, the
health benefit plan shall expedite preauthorizations and guarantee payment of expenses for medical
services provided prior to acceptance or denial of the claim according to the terms, conditions and
benefits of the plan.

(b) If the claim for which medical services are provided under subsection (1) of this section is
accepted, after the claim has been accepted the insurer or self-insured employer shall pay for the
medical services provided for accepted conditions, including reimbursements for medical expenses,
copayments and deductibles paid by the injured worker or the health benefit plan. Payments made
under this subsection are subject to the fee schedules, limitations and conditions of this chapter.

(c) If the claim for which medical services are provided under subsection (1) of this section is
denied and a health benefit plan provides benefits to the worker, after the claim is denied the health
benefit plan shall pay for medical services provided according to the terms, conditions and benefits
of the plan.

(d) As used in this subsection, “health benefit plan” has the meaning given that term in ORS
743B.005 and also means [self-insured benefit plans and] health benefit plans offered by the Oregon
Educators Benefit Board and the Public Employees’ Benefit Board.

SECTION 43. ORS 741.300 is amended to read:
741.300. As used in ORS 741.001 to 741.540:
(1) “Coordinated care organization” has the meaning given that term in ORS 414.025.
(2) “Essential health benefits” has the meaning given that term in ORS 731.097.
(3) “Health benefit plan” has the meaning given that term in ORS 743B.005.
(4) “Health care service contractor” has the meaning given that term in ORS 750.005.
(5) “Health insurance” has the meaning given that term in ORS 731.162, excluding disability
income insurance.
(6) “Health insurance exchange” or “exchange” means an American Health Benefit Exchange
as described in 42 U.S.C. 18031, 18032, 18033 and 18041.
(7) “Health plan” means health insurance, a health benefit plan or health care coverage offered
by an insurer.
(8) “Insurer” means an insurer as defined in ORS 731.106 that offers health insurance, a health
care service contractor, a prepaid managed care health services organization or a coordinated care
organization.
(9) “Insurance producer” has the meaning given that term in ORS 731.104.
(10) “Prepaid managed care health services organization” has the meaning given that term in
ORS 414.025.
(11) “State program” means a program providing medical assistance, as defined in ORS 414.025,
and any [self-insured health benefit plan or] health plan offered to employees by the Public
Employees’ Benefit Board or the Oregon Educators Benefit Board.
(12) “Qualified health plan” means a health benefit plan available for purchase through the
health insurance exchange.
(13) “Small Business Health Options Program” or “SHOP” means a health insurance exchange
for small employers as described in 42 U.S.C. 18031.

SECTION 44. ORS 291.055 is amended to read:
291.055. (1) Notwithstanding any other law that grants to a state agency the authority to es-
tablish fees, all new state agency fees or fee increases adopted during the period beginning on the
date of adjournment sine die of a regular session of the Legislative Assembly and ending on the date
of adjournment sine die of the next regular session of the Legislative Assembly:
(a) Are not effective for agencies in the executive department of government unless approved
in writing by the Director of the Oregon Department of Administrative Services;
(b) Are not effective for agencies in the judicial department of government unless approved in
writing by the Chief Justice of the Supreme Court;
(c) Are not effective for agencies in the legislative department of government unless approved in writing by the President of the Senate and the Speaker of the House of Representatives;
(d) Shall be reported by the state agency to the Oregon Department of Administrative Services within 10 days of their adoption; and
(e) Are rescinded on adjournment sine die of the next regular session of the Legislative Assembly as described in this subsection, unless otherwise authorized by enabling legislation setting forth the approved fees.

(2) This section does not apply to:
(a) Any tuition or fees charged by a public university listed in ORS 352.002.
(b) Taxes or other payments made or collected from employers for unemployment insurance required by ORS chapter 657 or premium assessments required by ORS 656.612 and 656.614 or contributions and assessments calculated by cents per hour for workers' compensation coverage required by ORS 656.506.
(e) Fees or payments required for:
(A) Health care services provided by the Oregon Health and Science University, by the Oregon Veterans' Homes and by other state agencies and institutions pursuant to ORS 179.610 to 179.770.
(B) Copayments and premiums paid to the Oregon medical assistance program.
(C) Assessments paid to the Department of Consumer and Business Services under [sections 3 and] section 5, chapter 538, Oregon Laws 2017.
(d) Fees created or authorized by statute that have no established rate or amount but are calculated for each separate instance for each fee payer and are based on actual cost of services provided.
(e) State agency charges on employees for benefits and services.
(f) Any intergovernmental charges.
(g) Forest protection district assessment rates established by ORS 477.210 to 477.265 and the Oregon Forest Land Protection Fund fees established by ORS 477.760.
(h) State Department of Energy assessments required by ORS 456.595 and 469.421 (8).
(i) Assessments on premiums charged by the Director of the Department of Consumer and Business Services pursuant to ORS 731.804 or fees charged by the director to banks, trusts and credit unions pursuant to ORS 706.530 and 723.114.
(j) Public Utility Commission operating assessments required by ORS 756.310 or charges paid to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987.
(k) Fees charged by the Housing and Community Services Department for intellectual property pursuant to ORS 456.562.
(L) New or increased fees that are anticipated in the legislative budgeting process for an agency, revenues from which are included, explicitly or implicitly, in the legislatively adopted budget or the legislatively approved budget for the agency.
(m) Tolls approved by the Oregon Transportation Commission pursuant to ORS 383.004.
(n) Portal provider fees as defined in ORS 276A.270 and established by the State Chief Information Officer under ORS 276A.276 (3) and recommended by the Electronic Government Portal Advisory Board.
(o) Fees set by the State Parks and Recreation Director and approved by the State Parks and Recreation Commission under ORS 390.124 (2)(b).

(3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unexpected and temporary revenue surpluses may be increased to not more than their prior level without
compliance with subsection (1) of this section if, at the time the fee is decreased, the state agency
specifies the following:
(A) The reason for the fee decrease; and
(B) The conditions under which the fee will be increased to not more than its prior level.
(b) Fees that are decreased for reasons other than those described in paragraph (a) of this sub-
section may not be subsequently increased except as allowed by ORS 291.050 to 291.060 and 294.160.

SECTION 45. ORS 731.292 is amended to read:
731.292. (1) Except as provided in subsections (2), (3) and (4) of this section, all fees, charges and
other moneys received by the Department of Consumer and Business Services or the Director of the
Department of Consumer and Business Services under the Insurance Code shall be deposited in the
fund created by ORS 705.145 and are continuously appropriated to the department for the payment
of the expenses of the department in carrying out the Insurance Code.
(2) All taxes and penalties paid pursuant to the Insurance Code shall be paid to the director and
after deductions of refunds shall be paid by the director to the State Treasurer, at the end of every
calendar month or more often in the director’s discretion, for deposit in the General Fund to become
available for general governmental expenses.
(3) All premium taxes received by the director pursuant to ORS 731.820 shall be paid by the
director to the State Treasurer for deposit in the State Fire Marshal Fund.
(4) Assessments received by the department under [sections 3 and] section 5, chapter 538,
Oregon Laws 2017, and penalties received by the department under section 6, chapter 538, Oregon
Laws 2017, shall be paid into the State Treasury and credited to the Health System Fund established
under section 2, chapter 538, Oregon Laws 2017.

REPEALS

SECTION 46. ORS 243.142, 243.215 and 243.886 and sections 3 and 4, chapter 538, Oregon
Laws 2017, are repealed.

APPLICABILITY AND OPERATIVE DATES

SECTION 47. The amendments to ORS 243.650 by section 26 of this 2018 Act apply to
collective bargaining agreements entered into on or after the effective date of this 2018 Act.
SECTION 48. Sections 1, 5, 6 and 28 of this 2018 Act, the amendments to ORS 243.105,
292.051, 656.247, 731.292, 741.300 and 741.310 and section 6, chapter 538, Oregon Laws 2017, by
sections 8 to 26, 29 and 31 to 45 of this 2018 Act and the repeal of ORS 243.142, 243.215 and
243.886 and sections 3 and 4, chapter 538, Oregon Laws 2017, by section 46 of this 2018 Act
become operative on January 1, 2019.
SECTION 49. The Public Employees’ Benefit Board and the Oregon Educators Benefit
Board may take any action before the operative date specified in section 48 of this 2018 Act
that is necessary for the Public Employees’ Benefit Board or the Oregon Educators Benefit
Board to exercise, on and after the operative date specified in section 48 of this 2018 Act, all
of the duties, functions and powers conferred on the Public Employees’ Benefit Board or the
Oregon Educators Benefit Board by sections 1, 5, 6 and 28 of this 2018 Act and the amend-
243.879, 243.884, 291.055, 292.051, 656.247, 731.292, 741.300 and 741.310 and section 6, chapter 538,
Oregon Laws 2017, by sections 8 to 26, 29 and 31 to 45 of this 2018 Act.

CAPTIONS

SECTION 50. The unit captions used in this 2018 Act are provided only for the conven-
ience of the reader and do not become part of the statutory law of this state or express any
legislative intent in the enactment of this 2018 Act.

EMERGENCY CLAUSE

SECTION 51. This 2018 Act being necessary for the immediate preservation of the public
peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect
on its passage.