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HB 2269 Employer Health Care Responsibility Act
Frequently Asked Questions

Despite Oregon's health insurance coverage rate of 94 percent, too many Oregonians remain uninsured or underinsured and struggle to pay for coverage and out-of-pocket health care costs. At the same time, public programs are subsidizing employers that pay relatively low wages and do not provide health care coverage or whose workers cannot afford the coverage offered through their employer. HB 2269 ensures that larger businesses in Oregon take responsibility for contributing to the health of their workers. The bill is the fourth component of Governor Brown's proposed Medicaid funding package, which takes a long-term approach to stabilizing funding for the Oregon Health Plan.

How does the Employer Health Care Responsibility Act work?
The Employer Health Care Responsibility Act requires large employers (companies with 50 or more employees) to spend 50 cents per work hour per employee on employees' health care. Under the Act, employers have the option of either spending directly on workers through group health coverage or other health care services (i.e. paying directly for a procedure or office visit) or paying an equivalent amount to a state Health Care Access Fund.

- Covered employees include those who have been working for at least 90 days, perform eight or more hours of work per week on average, and do not meet any of the exemption criteria.
- Firms with 50 or more employees in their first year of operation would be exempted for their first year.

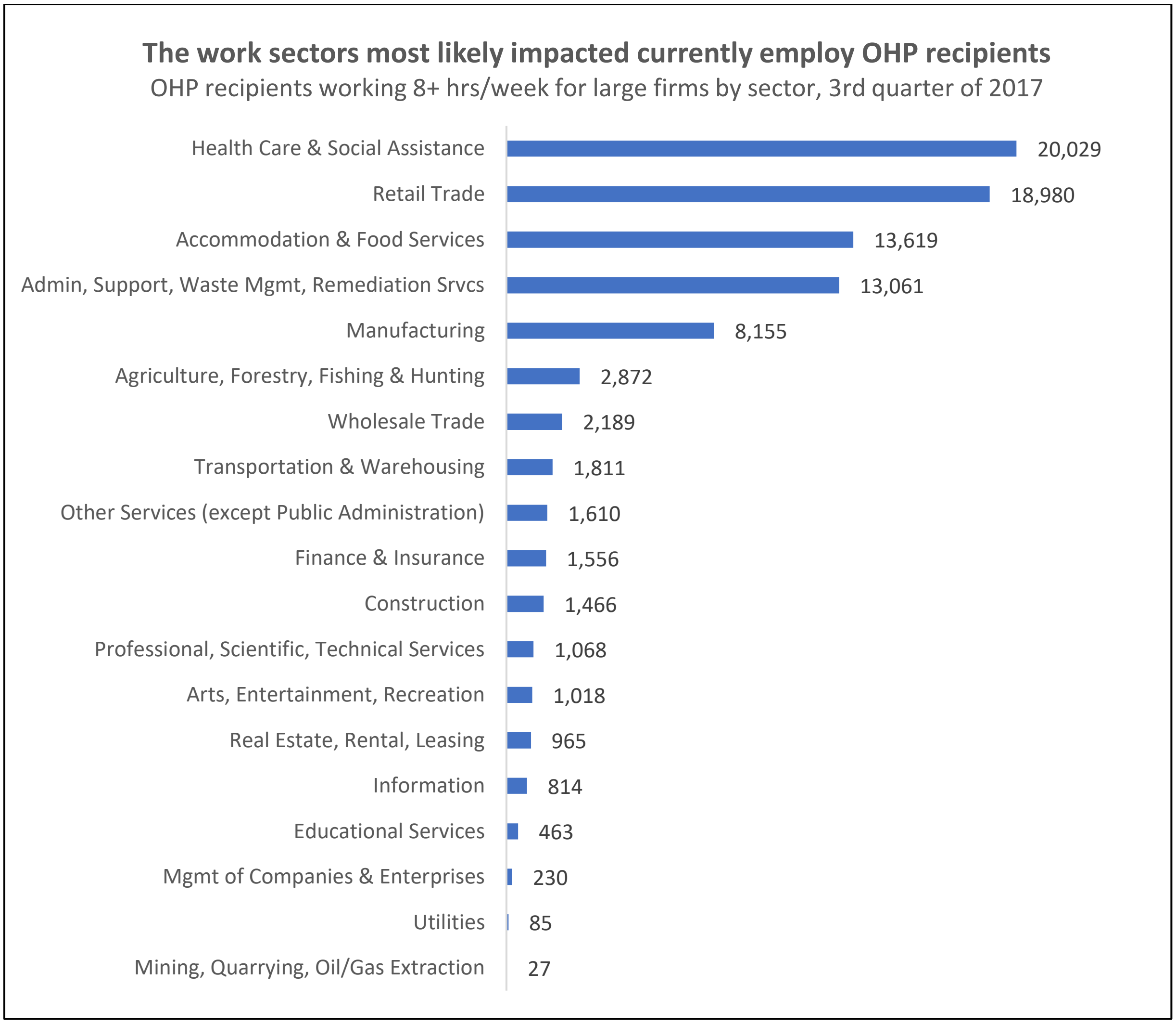
<u>The Health Care Access Fund</u> would be split between the Oregon Health Plan ($120M) and a new program to increase affordability and access for employees purchasing insurance on the Marketplace ($329-$397M). Employers can contribute to the fund on behalf of any employee and can decide on an employee-by-employee basis whether they will use the Access Fund to comply with the spending requirement.

Which employers will be most impacted by the spending requirement?
There are more than 100,000 private businesses in Oregon, and the vast majority are smaller firms with few employees. Less than 5 percent of all employers in Oregon have 50 or more employees, but they employ 61 percent of all Oregonians.[1] The biggest share of large

[1] https://www.qualityinfo.org/-/most-oregon-employers-have-fewer-than-20-employees

employers are in the health care and social assistance sector, followed by retail and manufacturing.

There is no available employer-specific data that details which employees receive employer-sponsored health coverage or other health care benefits. To better understand which work sectors are most likely to have a higher percentage of employees who do not receive health coverage or other health care benefits from their employer, we can look at employed Oregon Health Plan (OHP) members. Analysis of large firms and employed individuals who are covered by OHP shows that the largest sectors are health care, retail trade, accommodation and food services, and administrative and support.



Who are the workers that will benefit from the spending requirement?

Of the 1 million workers in Oregon who are employed by large employers, approximately one in four are either ineligible or not offered health care coverage through their employer. Another 150,000 are offered but not enrolled in employer health care coverage. In the third quarter of

2017, approximately 90,000 Oregonians working more than 8 hours a week for large employers were enrolled in the Oregon Health Plan. These employees are most likely to work in industries such as health care, retail, food service and hotels.

In addition to the data that shows which industries are most likely to employ OHP members, we can also look at the type of jobs in Oregon that pay less than $12 an hour. In 2018 361,300 jobs in Oregon paid $12 an hour or less. These low wage workers are likely to benefit from HB 2269.

Percent of Oregon Employees Making Less than $12 Per Hour by Occupation, 2018[2]

Occupation	Percent of Jobs in Occupation Paying Less than $12/hr
Total, All Occupations	20%
Dishwashers	78%
Combined Food Prep and Serving Workers, Including Fast Food	76%
Cashiers	70%
Counter Attendants, Cafeteria, Food Concession, and Coffee Shop	70%
Wait Staff	69%
Cooks, Fast Food	67%
Bartenders	66%
Childcare Workers	60%
Maids and Housekeeping Cleaners	57%
Food Preparation Workers	55%
Personal Care Aids	55%
Retail Salespersons	51%
Packers and Packagers	48%
Janitors and Cleaners, Except Maids and Housekeeping	37%
Cooks, Restaurant	34%
Stock Clerks and Order Fillers	32%
Laborers and Freight, Stock, and Material Movers, Hand	30%

Will large non-profit organizations be required to comply with this policy?

All private employers with 50 or more employees are required to comply with this policy, including non-profit organizations. Most non-profit organizations with 50 or more employees are hospitals. Any employer with less than 50 employees, whether for-profit or non-profit are exempt.

[2] Johnson, Anna. (December, 2018). Occupations with the Most Jobs Paying Less than $12.00 per Hour. Oregon Employment Department. Retrieved from https://oregonemployment.blogspot.com

How was the per hour spending requirement amount determined?

The 50 cent per hour spending requirement was designed to be a reasonable amount for large employers while providing for meaningful investments in programs that support workers' health.

How does the spending requirement compare to the cost of employer-sponsored health insurance coverage?

The spending requirements are lower than the average cost of comprehensive (i.e., not catastrophic coverage only) health plans on the individual market.

- For full time employees who work 40 hours per week, the annual spending requirement would amount to $1,040, or less than $90 per month.
- For employees who work 30 hours per week for an entire year, the annual spending requirement would total $780, or $65 per month.
- For employees who work 20 hours per week for an entire year, the annual spending requirement is $520, or less than $45 per month.

For comparison, the average annual employer contribution for health insurance in Oregon is about $5,000 or $417 per month.

Can employers raise revenue specifically to cover the cost of the spending requirement?

Employers may generate additional revenue to cover worker health care costs. Revenue raised through surcharges specifically identified as going to pay for health care costs must be used for these purposes. For example, a business adding a surcharge to customers' bills to cover worker health care costs must direct all revenue from the surcharge to the purpose intended. Excess revenue at the end of the year must be reinvested in health care spending.

Which workers are exempt from the spending requirement?

The intent of HB 2269 is to increase spending on behalf of workers who are not benefiting from health coverage through their employer. However, there is some flexibility for employers and workers in Oregon through exemptions and waivers.

Exempt workers include those who:

- Choose to waive their right to have their employers spend the minimum amount for their benefit.
- Qualify as managers, supervisors, or other exempt employees and earn more than the applicable salary exemption amount.
- Are covered by Medicare or TRICARE (the health care program serving Uniformed Service members, retirees and their families). In order to claim these exemptions, an employer must be able to document employee eligibility.

- Are employed by a non-profit corporation for up to one year as trainees in a bona fide training program consistent with federal law.

What if employees turn down the employer-sponsored coverage offered to them?

Employees turning down an offer of employer-based coverage does not, by itself, eliminate the employer's responsibility to contribute towards the health care costs of their employees.

Employees may voluntarily sign waivers to exempt the employer from the spending responsibility, but employers may not require employees sign such a waiver. Employers may also choose to meet the spending requirement in other ways for any employees who decline an offer of health insurance coverage through the employer.

Employers may provide financial incentives, such as monthly stipends to help offset a worker's personal health care spending, for employees to sign waivers of their right to have their employer contribute towards their health care costs. Employers may not coerce their employees into signing a waiver.

What is the timeline for implementation of HB 2269?
The Department of Revenue will begin collecting spending requirement contributions on January 1, 2020. The Marketplace subsidies for eligible employees will become available during the 2021 Open Enrollment period.

Will HB 2269 cause employers to drop employees' insurance coverage and instead contribute to the Health Care Access Fund?

The intention of HB 2269 is to ensure large employers provide a minimum contribution for their employees' health care either directly through coverage or other benefits or indirectly through the Health Care Access Fund. An employer's benefits, including health care benefits, are an important incentive to attract and retain workers. A new requirement to spend a minimum amount per worker hour does not change the rationale as to why employers offer coverage. HB 2269 also does not change the ACA requirements related to insurance coverage.

How does HB 2269 interact with other health insurance legislation and requirements?

Health Insurance Premium Tax
If workers are enrolled in the employer's offered health insurance, the premiums paid for those employees would be subject to the premium tax. Because the spending requirement in HB 2269 is well below the typical cost of employer-sponsored coverage, employers' contributions toward health insurance likely exceed the spending requirement.

If an employer has any non-exempt workers who are not eligible or not enrolled in the employer's offered health insurance, the employer would be subject to the spending requirement but would not pay a premium tax for these employees.

Affordable Care Act
The spending requirement is not related to the ACA's employer mandate. Contributions to the access fund are not intended to help employers meet federal requirements under the ACA. The spending requirement is based on work hours and is not a penalty. The spending requirement ensures employers contribute to their employees' health care in some form but does not require any particular form of contribution. The ACA's employer mandate uses a full-time equivalent concept to determine if an employer is subject to any penalty.

Which details will be determined through the rulemaking process?

Many details related to the Employer Health Care Responsibility Act will be developed publicly through a rulemaking process. This includes details related to employer reporting requirements, specific requirements related to employee-level exemptions, and other programmatic details of the Health Care Access Fund.