

Enrolled
Senate Bill 889

Sponsored by COMMITTEE ON HEALTH CARE

CHAPTER

AN ACT

Relating to containing the cost of health care; and declaring an emergency.

Whereas there is a need to enhance transparency and accountability in health care costs; and

Whereas health care spending in Oregon has historically outpaced inflation and Oregon’s economic growth; and

Whereas it is in the best interest of Oregonians to recognize that public and private health care spending needs to drive greater access to high quality care at lower cost; and

Whereas population health and prices can be measured and reported and used to pay for the value rather than the volume of health care; and

Whereas the state is committed to reducing the total cost of health care for all Oregonians; and

Whereas the establishment, monitoring and implementation of an annual health care cost growth benchmark is an appropriate means to achieve the goal of improved health care quality at reduced cost; and

Whereas with the passage of House Bill 3650 (2011) and Senate Bill 1580 (2012), Oregon established cost containment and payment reform for the state medical assistance program; and

Whereas with the 2017 renewal by the Centers for Medicare and Medicaid Services of Oregon’s demonstration project under section 1115 of the Social Security Act, Oregon has committed to a target cap in the rate of cost growth for the medical assistance program until at least June 30, 2022; and

Whereas target caps for the rate of cost growth are currently in place for the health care coverage of one-third of Oregonians; and

Whereas the Task Force on Health Care Cost Review, created by Senate Bill 419 (2017), recognized the importance of aligning cost growth containment efforts with work being done to promote better health quality and health outcomes, including Senate Bill 440 (2015), which initiated the development of a strategic plan to collect and use health outcome and quality data, Senate Bill 231 (2015) and Senate Bill 934 (2017), which established minimum targets for medical expenditures on primary care, and House Bill 4005 (2018), which established price reporting requirements for prescription drugs; and

Whereas the task force also recognized the value of and need for establishing an annual health care cost growth benchmark for all payers and provider types, measuring and reporting on the total cost of health care in Oregon and analyzing and reporting performance relative to established cost growth target caps; now, therefore,

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

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

(1) "Health care" means items, services and supplies intended to improve or maintain human function or treat or ameliorate pain, disease, condition or injury, including but not limited to the following types of services:

- (a) Medical;
- (b) Behavioral;
- (c) Substance use disorder;
- (d) Mental health;
- (e) Surgical;
- (f) Optometric;
- (g) Dental;
- (h) Podiatric;
- (i) Chiropractic;
- (j) Psychiatric;
- (k) Pharmaceutical;
- (L) Therapeutic;
- (m) Preventive;
- (n) Rehabilitative;
- (o) Supportive; or
- (p) Geriatric.

(2) "Health care cost growth" means the annual percentage change in total health expenditures in this state.

(3) "Health care cost growth benchmark" means the target percentage for health care cost growth.

(4) "Health care entity" means a payer or a provider.

(5) "Health insurance" has the meaning given that term in ORS 731.162.

(6) "Net cost of private health insurance" means the difference between health insurance premiums received by a payer and the claims for the cost of health care paid by the payer under a policy or certificate of health insurance.

(7) "Payer" means:

(a) An insurer offering a policy or certificate of health insurance or a health benefit plan as defined in ORS 743B.005;

(b) A publicly funded health care program, including but not limited to Medicaid, Medicare and the State Children's Health Insurance Program;

(c) A third party administrator; and

(d) Any other public or private entity, other than an individual, that pays or reimburses the cost for the provision of health care.

(8) "Provider" means an individual, organization or business entity that provides health care.

(9) "Total health expenditures" means all health care expenditures in this state by public and private sources, including:

(a) All payments on providers' claims for reimbursement of the cost of health care provided;

(b) All payments to providers other than payments described in paragraph (a) of this subsection;

(c) All cost-sharing paid by residents of this state, including but not limited to copayments, deductibles and coinsurance; and

(d) The net cost of private health insurance.

SECTION 2. (1) The Legislative Assembly intends to establish a health care cost growth benchmark, for all providers and payers, to:

(a) Support accountability for the total cost of health care across all providers and payers, both public and private;

(b) Build on the state's existing efforts around health care payment reform and containment of health care costs; and

(c) Ensure the long-term affordability and financial sustainability of the health care system in this state.

(2) The Health Care Cost Growth Benchmark program is established. The program shall be administered by the Oregon Health Authority in collaboration with the Department of Consumer and Business Services, subject to the oversight of the Oregon Health Policy Board. The program shall establish a health care cost growth benchmark for increases in total health expenditures and shall review and modify the benchmark on a periodic basis.

(3) The health care cost growth benchmark must:

(a) Promote a predictable and sustainable rate of growth for total health expenditures as measured by an economic indicator adopted by the board, such as the rate of increase in this state's economy or of the personal income of residents of this state;

(b) Apply to all providers and payers in the health care system in this state;

(c) Use established economic indicators; and

(d) Be measurable on a per capita basis, statewide basis and health care entity basis.

(4) The program shall establish a methodology for calculating health care cost growth:

(a) Statewide;

(b) For each provider and payer, taking into account the health status of the patients of the provider or the beneficiary of the payer; and

(c) Per capita.

(5) The program shall establish requirements for providers and payers to report data and other information necessary to calculate health care cost growth under subsection (4) of this section.

(6) Annually, the program shall:

(a) Hold public hearings on the growth in total health expenditures in relation to the health care cost growth in the previous calendar year;

(b) Publish a report on health care costs and spending trends that includes:

(A) Factors impacting costs and spending; and

(B) Recommendations for strategies to improve the efficiency of the health care system; and

(c) For providers and payers for which health care cost growth in the previous calendar year exceeded the health care cost growth benchmark:

(A) Analyze the cause for exceeding the health care cost growth benchmark; and

(B) If appropriate, require the provider or payer to undertake a performance improvement action plan.

SECTION 3. (1) The Health Care Cost Growth Benchmark Implementation Committee is established under the direction of the Oregon Health Policy Board.

(2) The membership of the committee consists of the following:

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

(b) The Director of the Department of Consumer and Business Services or the director's designee;

(c) An expert in health care financing and administration appointed by the Director of the Oregon Health Authority;

(d) An expert in health economics appointed by the Director of the Oregon Health Authority;

(e) At least one insurance broker appointed by the Director of the Department of Consumer and Business Services; and

(f) No more than 13 members appointed by the Governor to represent:

(A) The Health Insurance Exchange Advisory Committee created under ORS 741.004;

(B) The division of the Oregon Department of Administrative Services that serves as the department's office of economic analysis;

- (C) The Oregon Health Leadership Council;
 - (D) Health care systems or urban hospitals;
 - (E) Rural hospitals;
 - (F) Consumers;
 - (G) Members of the business community that purchase health insurance for their employees;
 - (H) Licensed and certified health care professionals; and
 - (I) The insurance industry.
- (3) The committee shall design an implementation plan, in accordance with section 4 of this 2019 Act, for the Health Care Cost Growth Benchmark program established in section 2 of this 2019 Act.
- (4) A majority of the members of the committee constitutes a quorum for the transaction of business.
- (5) Official action by the committee requires the approval of a majority of the members of the committee.
- (6) The Governor shall select one member to serve as chairperson.
- (7) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.
- (8) The committee shall meet at times and places specified by the call of the chairperson or of a majority of the members of the committee.
- (9) The committee may adopt rules necessary for the operation of the committee.
- (10) The Oregon Health Authority shall provide staff support to the committee.
- (11)(a) Members of the committee, other than members representing consumers, are not entitled to compensation or reimbursement for expenses and serve as volunteers on the committee.
- (b) Members representing consumers are not entitled to compensation but may be reimbursed from funds available to the authority for actual and necessary travel and other expenses incurred by the members in the performance of official duties in the manner and amount provided in ORS 292.495.
- (12) All agencies of state government, as defined in ORS 174.111, are directed to assist the committee in the performance of the duties of the committee and, to the extent permitted by laws relating to confidentiality, to furnish information and advice that the members of the committee consider necessary to perform their duties.

SECTION 4. (1) As used in this section:

- (a) "Health care" has the meaning given that term in section 1 of this 2019 Act.
 - (b) "Health care cost growth" has the meaning given that term in section 1 of this 2019 Act.
 - (c) "Health care cost growth benchmark" has the meaning given that term in section 1 of this 2019 Act.
 - (d) "Health care entity" has the meaning given that term in section 1 of this 2019 Act.
 - (e) "Health insurance" has the meaning given that term in ORS 731.162.
 - (f) "Payer" has the meaning given that term in section 1 of this 2019 Act.
 - (g) "Provider" has the meaning given that term in section 1 of this 2019 Act.
 - (h) "Total health expenditures" has the meaning given that term in section 1 of this 2019 Act.
- (2) The Health Care Cost Growth Benchmark Implementation Committee, in designing the implementation plan for the Health Care Cost Growth Benchmark program, shall:
- (a) Recommend the governance structure for the program.
 - (b) Recommend a methodology to establish the health care cost growth benchmark and the economic indicators to be used in establishing the benchmark.
 - (c) Establish the initial benchmark and specify the frequency and manner in which the benchmark should be reevaluated and updated.

(d) Identify the data that providers and payers shall report for the program to be able to:

- (A) Measure the benchmark;
- (B) Validate the benchmark; and

(C) Identify the health care cost growth of an institutional provider or provider group and of providers that are part of the institutional provider or provider group.

(e)(A) Determine the technical assistance and support necessary to support providers and payers working to remain at or below the health care cost growth benchmark; and

(B) Identify opportunities to leverage existing public and private financial resources, or alternative funding, to provide the technical assistance and support.

(f) Recommend approaches for measuring the quality of care that account for patient health status.

(g) Seek to align the approaches for measuring the quality of care under paragraph (f) of this subsection with the outcome and quality measures adopted by the Health Plan Quality Metrics Committee.

(h) Identify opportunities for lowering costs, improving the quality of care and improving the efficiency of the health care system by using innovative payment models for all payers, including payment models that do not use a per-claim basis for payments.

(i) Recommend a system for identifying:

- (A) Unjustified variations in prices or in health care cost growth; and
- (B) The factors that contribute to the unjustified variations.

(j) Identify providers and payers that are required to report.

(k) Recommend accountability and enforcement processes, which may be phased in over time, including:

(A) Measures to ensure compliance with reporting requirements;

(B) Procedures for imposing a performance improvement action plan or other escalating enforcement actions when a provider or payer fails to remain at or below the benchmark; and

(C) Measures to enforce compliance with the health care cost growth benchmark in programs administered by the Oregon Health Authority and the Department of Consumer and Business Services, including but not limited to:

(i) The medical assistance program;

(ii) Medical, dental, vision and other health care benefit plans offered by the Public Employees' Benefit Board;

(iii) Medical, dental, vision and other health care benefit plans offered by the Oregon Educators Benefit Board;

(iv) Insurance offered through the health insurance exchange; and

(v) The review of health insurance premium rates by the department.

(L) Make recommendations regarding the reporting of data collected by the Health Care Cost Growth Benchmark program, including recommendations for:

(A) Publication of an annual health care cost trends report and analyses on the statewide health care cost growth benchmark, total health expenditures and spending by each type of health care entity;

(B) Elements to be included in the annual health care cost trends report, such as:

(i) Services provided, sorted by provider organization;

(ii) Services paid for, sorted by the type of payer;

(iii) Variations in cost trends, sorted by category of service; and

(iv) Affordability of health care, based on prices, insurance premiums and types of payment;

(C) Frequency and format of public hearings conducted in accordance with section 2 (6)(a) of this 2019 Act;

(D) Publication of recommendations for policies and strategies for achieving the health care cost growth benchmark;

(E) Publication of performance improvement action plans and other enforcement actions; and

(F) Reporting to the Legislative Assembly.

(m) Establish an implementation timeline and the phases of implementation that may include the establishment of the initial health care cost growth benchmark under paragraph (c) of this subsection in 2021, with reporting, enforcement and penalties beginning in 2022.

SECTION 5. (1) No later than September 15, 2020, the Health Care Cost Growth Benchmark Implementation Committee shall report to the Oregon Health Policy Board for approval, and to the interim committees of the Legislative Assembly related to health, the committee's recommendations under section 4 of this 2019 Act. The report shall include a legislative concept for carrying out the provisions of section 4 (2)(k)(B) of this 2019 Act regarding the imposition of performance improvement action plans or other escalating enforcement actions when a provider or payer fails to remain at or below the health care cost growth benchmark.

(2) The Oregon Health Authority and the Department of Consumer and Business Services shall implement the recommendations of the committee, except for the provisions in the legislative concept described in subsection (1) of this section, upon approval by the board.

SECTION 6. Sections 3, 4 and 5 of this 2019 Act are repealed on January 2, 2022.

SECTION 7. In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Health Authority, for the biennium beginning July 1, 2019, out of the General Fund, the amount of \$993,797, which may be expended for carrying out sections 1 to 4 of this 2019 Act.

SECTION 8. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by Senate June 13, 2019

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 19, 2019

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2019

Approved:

.....M.,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

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Bev Clarno, Secretary of State