

HB 2269-1
(LC 376)
3/13/19 (LHF/ps)

Requested by HOUSE COMMITTEE ON HEALTH CARE (at the request of Oregon Health Authority)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2269**

1 In line 2 of the printed bill, after the semicolon delete the rest of the line
2 and insert “creating new provisions; and amending ORS 741.004.”.

3 Delete lines 4 through 12 and insert:

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

5 **“(1) ‘Covered employee’ means an employee who:**

6 **“(a) Has worked for a covered employer for a total of 90 days or**
7 **more;**

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

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

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

14 **“(2) ‘Covered employer’ means an employer who has at least 50**
15 **covered employees, as defined by the department by rule under section**
16 **2 (2)(b) of this 2019 Act.**

17 **“(3) ‘Health care’ means any of the essential health benefits as de-**
18 **finied in ORS 731.097.**

19 **“(4) ‘Health care access contribution’ means a payment by a cov-**
20 **ered employer to the department that is used for the Employer Par-**
21 **ticipation Program created in section 2 of this 2019 Act.**

1 **“(5)(a) ‘Health care expenditure’ means an expenditure by a covered**
2 **employer:**

3 **“(A) To a covered employee or to a third party on behalf of a cov-**
4 **ered employee for the purpose of providing health care or reimbursing**
5 **the cost of health care for the employee or the employee’s spouse,**
6 **children or other dependents; and**

7 **“(B) That is made by the covered employer:**

8 **“(i) To pay all or part of the cost of a premium to enroll a covered**
9 **employee, or a covered employee and the employee’s spouse, children**
10 **or other dependents, in employer-sponsored health insurance offered**
11 **by the covered employer;**

12 **“(ii) To pay all or part of the cost of a premium to enroll a covered**
13 **employee, or a covered employee and the employee’s spouse, children**
14 **or other dependents, in health insurance offered on the commercial**
15 **market or through the health insurance exchange;**

16 **“(iii) To pay a health care provider for health care provided to a**
17 **covered employee or a covered employee’s spouse, child or other de-**
18 **pendent;**

19 **“(iv) To contribute to a health savings account or other arrange-**
20 **ment for reimbursing the health care costs of a covered employee, or**
21 **a covered employee and the employee’s spouse, children or other de-**
22 **pendents, subject to limitations prescribed by the department in ac-**
23 **cordance with federal law; or**

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

26 **“(b) ‘Health care expenditure’ does not include any portion of the**
27 **cost of expenditures described in paragraph (a)(B) of this subsection**
28 **that are paid by a covered employee.**

29 **“(6) ‘Health care expenditure rate’ means the health care expendi-**
30 **ture amount, as specified in rules adopted by the department under**

1 section 2 (2)(a) of this 2019 Act, that a covered employer is required
2 to pay per payable hour for each of the employer's covered employees.

3 “(7) ‘Payable hour’ means an hour of work for which a covered
4 employee is paid wages or is entitled to be paid wages, including paid
5 leave, beginning on the employee’s 91st day of employment by a cov-
6 ered employer.

7 “(8) ‘Qualified health plan’ has the meaning given that term in ORS
8 741.300.

9 “(9) ‘Required health care expenditure’ means the health care ex-
10 penditure rate multiplied by the number of payable hours, up to 172
11 payable hours in a calendar month, for each of a covered employer’s
12 covered employees.

13 **“SECTION 2. (1) The Employer Participation Program is established**
14 **in the Department of Consumer and Business Services. The purpose**
15 **of the program is to ensure access to health care by low-income**
16 **workers by collecting contributions from employers that do not oth-**
17 **erwise meet a minimum threshold of spending on health care for their**
18 **employees and use the contributions to:**

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

23 **“(b) Improve the access of low-income employees to the state med-**
24 **ical assistance program.**

25 **“(2) The department shall, in consultation with the Health Insur-**
26 **ance Exchange Advisory Committee created in ORS 741.004 and con-**
27 **sistent with the purposes of the program described in subsection (1)(a)**
28 **of this section and the provisions of this section, prescribe by rule the**
29 **criteria for the program, including but not limited to:**

30 **“(a) Adopting and updating annually the health care expenditure**

1 rate prescribed by the Oregon Health Policy Board under subsection
2 (4) of this section.

3 “(b) Defining covered employees and prescribing the method for
4 determining the number of a covered employer’s covered employees.

5 “(c) Prescribing the manner, forms and procedures for covered
6 employers to pay health care access contributions if a covered em-
7 ployer chooses to make the employer’s required health care expendi-
8 tures in that manner.

9 “(d) Prescribing the application procedures and the financial as-
10 sistance provided to covered employees.

11 “(3) The department may, in consultation with the Health Insur-
12 ance Exchange Advisory Committee, prescribe by rule:

13 “(a) An assessment and the methodology for calculating any as-
14 sessment to be imposed on a covered employer that fails to make
15 payments that satisfy its required health care expenditure and the
16 manner for collecting the assessment;

17 “(b) Limits, if any, on surcharges that may be collected by covered
18 employers from their customers to reimburse the cost of health care
19 expenditures and how the surcharges collected must be spent;

20 “(c) Those employees whose hours shall be exempt from the calcu-
21 lation of the required health care expenditure, such as management
22 or supervisory employees, or employees who earn a salary or wages
23 that exceed a specified threshold; or

24 “(d) Other modifications that are necessary to adjust the program
25 in accordance with the expected revenue from health care access
26 contributions or to improve the effectiveness of the program in im-
27 proving access to health care for low-income workers.

28 “(4) The Oregon Health Policy Board shall develop the methodology
29 for establishing the health care expenditure rate and establish the
30 health care expenditure rate annually.

1 “(5) In each calendar quarter, a covered employer must spend no
2 less than the employer’s required health care expenditure. If a covered
3 employer spends less than the employer’s required health care ex-
4 penditure, the employer shall pay a health care access contribution to
5 the department that is equal to the difference between the employer’s
6 required health care expenditure and the employer’s health care ex-
7 penditures in the calendar quarter. The covered employer may elect
8 to make the health care access contribution on an annual basis. The
9 department shall deposit the health care access contributions in the
10 Health Care Access Fund established in section 5 of this 2019 Act.

11 “(6) A covered employer shall post at each workplace where a cov-
12 ered employee works a notice developed by the department that ex-
13 plains the requirements imposed on employers by the Employer
14 Participation Program and the employees’ rights under the program.

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

19 “SECTION 3. (1) As used in this section and section 4 of this 2019
20 Act, ‘covered employer,’ ‘health care expenditure’ and ‘required health
21 care expenditure’ have the meanings given those terms in section 1
22 of this 2019 Act.

23 “(2) The Department of Revenue, in collaboration with the Depart-
24 ment of Consumer and Business Services, shall prescribe by rule re-
25 quirements for covered employers to report to the Department of
26 Revenue the employer’s health care expenditures and the employer’s
27 required health care expenditure.

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

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

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

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

15 “SECTION 4. (1) In addition to any other penalty provided by law,
16 the Department of Revenue may impose a civil penalty in an amount
17 prescribed by the department by rule, on any covered employer that
18 fails to report to the department the employer’s health care expendi-
19 tures or the employer’s required health care expenditure, as required
20 by section 3 of this 2019 Act, or fails to pay a health care access con-
21 tribution as required by section 2 of this 2019 Act.

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

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

26 “SECTION 5. (1) The Health Care Access Fund is established in the
27 State Treasury, separate and distinct from the General Fund, consist-
28 ing of health care access contributions paid to the Department of
29 Consumer and Business Services under section 2 of this 2019 Act and
30 civil penalties imposed by the Department of Revenue under section 4

1 of this 2019 Act. Moneys in the Health Care Access Fund are contin-
2 uously appropriated to the Department of Consumer and Business
3 Services.

4 “(2) A portion of the moneys in the Health Care Access Fund shall
5 be used by the department to provide financial assistance, as pre-
6 scribed by the department under section 2 of this 2019 Act, to any in-
7 dividual whose employer paid a health care access contribution on
8 behalf of the individual, to pay the cost of premiums or other out-of-
9 pocket costs for a qualified health plan purchased through the health
10 insurance exchange.

11 “(3) Any moneys that exceed the amount needed to provide finan-
12 cial assistance as described in subsection (2) of this section shall be
13 transferred to the Oregon Health Authority Fund established in ORS
14 413.101 and shall be expended by the Oregon Health Authority to pro-
15 vide medical assistance under ORS chapter 414.

16 “**SECTION 6.** ORS 741.004 is amended to read:

17 “741.004. (1) The Health Insurance Exchange Advisory Committee is cre-
18 ated to advise the Director of the Department of Consumer and Business
19 Services **on the Employer Participation Program established in section**
20 **2 of this 2019 Act and** in the development and implementation of the poli-
21 cies and operational procedures governing the administration of a health
22 insurance exchange in this state [*including, but*]. **The committee shall**
23 **advise the director on the development and implementation of policies**
24 **regarding the health insurance exchange that include, but are not**
25 limited to, all of the following:

26 “(a) The amount of the assessment imposed on insurers under ORS
27 741.105.

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

30 “(c) The processes and procedures to enable each insurance producer to

1 be authorized to act for all of the insurers offering health benefit plans
2 through the health insurance exchange.

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

5 “(e) Outreach strategies for reaching minority and low-income communi-
6 ties.

7 “(f) Solicitation of customer feedback.

8 “(g) The affordability of health benefit plans offered through the ex-
9 change.

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

16 “(3) The 13 members appointed by the Governor must represent the in-
17 terests of:

18 “(a) Insurers;

19 “(b) Insurance producers;

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

22 “(d) Health care providers;

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

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

27 “(g) Enrollees in health benefit plans; and

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

30 “(4) The Director of the Department of Consumer and Business Services

1 may solicit recommendations from the committee and the committee may
2 initiate recommendations on its own.

3 “(5) The committee shall provide annual reports to the Legislative As-
4 sembly, in the manner provided in ORS 192.245, of the findings and recom-
5 mendations the committee considers appropriate, including a report on the:

6 “(a) Adequacy of assessments for reserve programs and administrative
7 costs;

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

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

10 “(d) Number and demographics of individuals enrolled in qualified health
11 plans;

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

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

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

23 “(7) The employees of the Department of Consumer and Business Services
24 are directed to assist the committee in the performance of its duties under
25 subsection (1) of this section and, to the extent permitted by laws relating
26 to confidentiality, to furnish such information and advice as the members
27 of the committee consider necessary to perform their duties under subsection
28 (1) of this section.”.

29