

TO: Bruce Goldberg
FROM: Chuck Sheketoff
DATE: July 7, 2022
SUBJECT: Defining “resident” eligible for universal health care

As you know, for some time I have been having trouble with the Task Force’s definition of who is eligible for the universal health care plan (UHCP). I thought I should lay out the problem and propose a solution in writing.

The root of the problem is that the enabling legislation SB 770 has three flaws. It (1) fails to explicitly state in its lists of purposes, values, and principles (sections 3,4, and 5 of the legislation) that there is a goal of disconnecting health insurance from employment and, more importantly; (2) inartfully says in Section 7(1) that a “nonresident who works full time in” Oregon (and that nonresident’s dependents regardless of where they live) is eligible¹, and (3) fails to define “resident.”

This is an important issue not only because it deals with people getting crucial public benefits (health insurance and health care), but also because the cost is significant. The most recent estimate the actuaries provided to the Expenditures & Revenue Analysis (ERA) Workgroup is that providing UHC plan out-of-state employees in border states would cost \$2.69 billion.²

Disconnecting Health Insurance from Employment for Oregon Residents

The Task Force members’ unanimous belief that we are to design a system that disconnects health insurance (and subsequent access to health care) from employment somehow morphed into the Task Force incorrectly stating in materials and at input forums that the bill directed us to accomplish that disconnect.

We need to stop making that claim and instead note that it is implied by the bill and we inferred that the disconnect should be part of our plan. Moreover, the Task Force should report to the Legislature that we are in unanimous agreement that our plan must have as a goal the disconnect. And last, the Task Force should make sure our decisions about funding and plan design are consistent with the goal of disconnecting health insurance from employment.

¹ A nonresident is eligible if they work an uncertain number of hours in Oregon (full time is not defined) and “contributes to the plan,” whatever that means. It doesn’t say the employer is in Oregon.

² I have little confidence in that figure because it is not clear whether or how the actuaries calculated the number of “full time” people and it only addresses border states while SB 770 addresses all states.

Only Residents, not Nonresidents, Eligible

SB 770 refers to “resident” or “residents” numerous times as the only people who benefit from the plan. The terms “resident” and “nonresident” are not defined, though a nonresident is presumably anyone who isn’t a resident.³ While refining the details of the definition of “resident” should be a system setup task for the new UHC board, I believe the Legislature should give the UHC board some sideboards to work with and the Task Force ought to be suggesting those sideboards to the Legislature in our report. The need is clear because SB 770 at Section 7(1) conflicts with our goal of disconnecting health insurance from employment, violates the call for equity in SB 770, and is too broad and too vague.

The “nonresident” eligibility provision is inconsistent with the bill’s goal of equity, as it disfavors many low income nonresidents by favoring only those working full time. It continues the insurance-tied-to-employment problem.

The nonresident eligibility provision is clearly too vague and too broad. What is full time? Is full time with only one employer or combined hours of all work in Oregon? “Works in this state” is not the same as “works for an Oregon employer.” Is someone who lives on the East Coast and works remotely for an employer but also travels to Oregon to live in an apartment and work full time one week a month eligible? Is “telework” or “remote work” for an Oregon employer the same as “works in this state?” What does “contributes to the plan” mean? The term is undefined and nowhere in the bill is there guidance.

Proposal for Resident Definition and Nonresident Oregon Worker Eligibility

I would define eligibility this way:

Eligibility is available to

- (1) All residents of Oregon are eligible for the UHC plan and a resident is someone who is not registered to vote in another state or country and
 - (a) If both 16 or older and a US citizen is eligible to register to vote in Oregon, or
 - (b) If under 16 or a non-citizen and would otherwise be eligible to register to vote in Oregon but for age or citizenship status.
- (2) Persons who do not qualify as residents but physically work in Oregon for Oregon employers may become eligible if they pay a premium.

³ As noted in text above, SB 770 does not limit nonresidents to just border state residents.

That's the definition we should suggest to the Legislative Assembly to adopt and recommend that we leave it to the UHC board to further refine it and flush out the nuances consistent with how the Secretary of State and local elections officials do so. We should leave it to the UHC board to address anomalies such as military personnel here and elsewhere, people who are sent overseas for work or choose to live as "ex pats" elsewhere but maintain citizenship and voting in Oregon, etc., and maintain Oregon voting capability as well. The bill addresses protecting "residents" by "[r]emoving cost as a barrier to accessing health care." Nonresidents are not afforded the same protection.

There is no shortage of law on eligibility to vote, with the most recent summary set forth in the Oregon Supreme Court decision on Nick Kristoff's eligibility to be a candidate for Governor.⁴ The state law that lists the criteria for eligibility to vote used by the Secretary of State and local elections officials is at ORS 247.035.⁵

⁴ See <https://bit.ly/nkristofdecision2022>

⁵ ORS 247.035 provides:

(1) An elections official, in determining the residence and qualifications of a person offering to register or vote, shall consider the following rules, so far as they may be applicable:

(a) The person's residence shall be the place in which habitation is fixed and to which, when the person is absent, the person intends to return.

(b) If a person's property is split by a jurisdictional line, the person shall be registered where the residence is located. If the residence is split by a jurisdictional line, the person shall register where the greatest value of the residence is located according to county assessment and taxation records.

(c) A person shall not be considered to have gained a residence in any location in this state into which the person comes for temporary purposes only, without the intention of making it the person's home.

(d) If a person moves to another state with the intention of making a permanent home, the person shall be considered to have lost residence in this state.

(e) If a person goes from this state into any other state or territory and votes there, the person shall be considered to have lost residence in this state.

(f) A person who has left the place of the person's residence for a temporary purpose only shall not be considered to have lost residence.

(2) Notwithstanding subsection (1) of this section, a person who has left the place of the person's residence for a temporary purpose only, who has not established another residence for voter registration purposes and who does not have a place in which habitation is fixed shall not be considered to have changed or lost residence. The person may register at the address of the place the person's residence was located before the person left.

(3) An elections official may consider, but is not limited to considering, the following factors in determining residency of a person for voter registration purposes:

(a) Where the person receives personal mail;

(b) Where the person is licensed to drive;

(c) Where the person registers motor vehicles for personal use;

(FOOTNOTE CONTINUED ON NEXT PAGE)

The definition I propose not only saves us the \$2.69 billion our actuaries claim the nonresident full time workers and dependents would cost, but it could bring in significant dollars via the premium. I can foresee it bringing in over \$5 billion.⁶ While Oregon residents would still never have to pay a premium, the premium paid by nonresidents would be their contribution, and to keep the system efficient for providers and patients alike, the contribution would only be a premium, no copays or deductibles. The payroll tax would still be paid by the employer, and some of those nonresident would still be paying the non-resident personal income tax and its health care supplemental income tax contribution on their nonresident Oregon income tax return. To avoid ERISA issues, the Oregon employer of the nonresident could choose to pay the worker's premium or reimburse the worker for that premium. And Oregon could change current tax law to start considering those UHC premiums as income to the worker, further improving the UHC system's financial picture.⁷

(FOOTNOTE CONTINUED FROM PRIOR PAGE)

- (d) Where any immediate family members of the person reside;
- (e) The address from which the person pays for utility services; and
- (f) The address from which the person files any federal or state income tax returns.

⁶ Here is a perspective on the savings impact. If the average monthly premium for the 287,000 nonresident employees from border states were to be \$780, it would generate \$2.69 billion. That means the UHC would have \$5.38 it would not have to raise from our new payroll tax (estimated today at \$12.85 billion) or the new health care contribution through the income tax (estimated today at \$8.5 billion), allowing the tax rates to be lowered.

⁷ Under current tax law, while all remuneration from work is considered taxable income, Oregon chooses to follow federal tax law and exempts the cost of employer provided health insurance from the income of the employee, thus reducing the amount of state income taxes the employee would otherwise pay. There is no reason to continue that tax expenditure that undermines our universal health care plan and, more importantly, is at the heart of the connection between employment and health insurance.