

## ANALYSIS

### Item 15: Oregon Health Authority State Hospital Rebalance

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**Analyst:** Matt Stayner

**Request:** Acknowledge receipt of a report from the Oregon Health Authority on the 2023-25 financial status and budget rebalance request for the Oregon State Hospital.

**Analysis:** For the fall 2024 rebalance request, the Oregon Health Authority (OHA) has bifurcated its rebalance plan between the Oregon State Hospital and the other OHA programs. The Oregon State Hospital rebalance is generally categorized between items relating to the Centers for Medicare and Medicaid Services (CMS), projected budget shortfall, and operational issues.

#### **Centers for Medicare and Medicaid Services items**

##### State Hospital Response to CMS Findings

Four surveys by CMS, one in 2023 and three in 2024, have identified operational deficiencies at the State Hospital that necessitate corrective actions to remain in compliance with CMS requirements. At the time of the report, the 2023 and 2024-C corrective plans had been accepted by CMS and were already being executed by the agency, but the 2024-A and -B plans were still pending. The funding requested is specifically for the two pending plans.

As further detailed below, the Oregon State Hospital (OSH) has contracted with a consulting firm to assist with the completion and submission of these plans, which have been accepted by CMS. However, it is unclear if the requested funding in the rebalance plan is in accordance with the corrective plans accepted by CMS.

The rebalance requests the establishment of 11 new positions: five nurse positions addressing medical emergencies, and six incident review and data analysis positions that will be phased-in through the remainder of the biennium at a cost of \$1.5 million General Fund. These are in addition to contracted mental health security positions and equipment that OSH has already brought on to immediately address the identified issues at a cost of \$5.2 million, for a total of \$6.7 million General Fund for the 2023-25 biennium. For the 2025-27 biennium, OSH plans on discontinuing the use of contracted employees and adding an additional 65 positions, for a total of 76 positions to be added in response to the CMS findings. The estimated cost in the 2025-27 biennium is \$21.8 million General Fund.

### Contracted Consulting for Corrective Action Plans

The CMS process for approving corrective action plans does not allow for CMS to act as a consultant on plan proposals, rather CMS evaluates proposed plans and either approves or disapproves the proposal. CMS will allow for the submittal of corrective action plans twice before terminating further payments for services. CMS established a termination date of October 24, 2024, that would have made OSH ineligible for further Medicare or Medicaid payments without a corrective plan in place. Due to this timeline, OSH engaged the services of a contracted consultant to assist with corrective plan development and implementation. The OSH request includes \$1.7 million General Fund for the cost of these contracted services.

### Repayment of Ineligible Cost Reimbursements

An audit finding from CMS identified \$13.7 million in payments made to OSH services that were certified as medically necessary by Psychiatric Mental Health Nurse Practitioners (PMHNP), but CMS rules require that these certifications to be done by a physician. Therefore, these payments have been deemed ineligible and OSH is required to refund those payments received. OSH proposed an extended repayment schedule, which would accrue interest expenses at a weighted average of 12.5% per annum. Instead, the rebalance plan requests General Fund to make the repayments in full to avoid interest expenses.

### **Projected Budget Shortfall**

OSH is projecting a shortfall between projected total revenues and projected total expenditures of \$50.2 million across all funds. This is largely the result of two issues: lower than anticipated Other Funds revenues from private insurance and other cost recoveries, and higher than budgeted personal services expenditures for contracted personnel and overtime payments.

To address the shortfall in Other Funds revenue, the rebalance proposes backfilling the shortfall with \$7.5 million General Fund. For the increased personal services costs, OSH is requesting an additional \$42.7 million General Fund. Actual expenditures through August, which may not include all accruals, indicate a utilization of 60% of projected revenues, after adjusting for the shortfall in Other Funds and increased Federal Funds for the Disproportionate Share Hospital program, which is about 1.67% higher than would be anticipated at this point in the biennium. OSH believes that this rate of overspend will increase as accruals and other expenditures are accounted for throughout the remainder of the biennium.

### **Operational Issues**

#### Forensic Evaluation Services

Through the rebalance, OSH is seeking additional funding to extend four current contracts for forensic evaluation services by three additional months. Forensic evaluation services involve

the evaluation of individuals that have been remanded to the State Hospital or community restoration, on their ability to aid in their own defense. Current staffing at OSH doing this work included 21 Clinical Psychologists, a Supervising Psychiatrist, a Psychology Manager, two administrative specialists, and seven contractors. These evaluative services are required for patients remanded to the State Hospital, but OSH is also providing these services at no charge for certain individuals in community restoration settings. The total cost of extending these four contracts would be \$85,734 General Fund and would provide roughly 130 additional hours of contracted evaluation work.

#### Conversion of Contracted Psychiatry Positions to Budgeted Employees

As part of the rebalance, OSH is requesting to establish three Psychiatric Nurse Practitioner positions, totaling \$501,648, which would be funded within existing resources currently budgeted within services and supplies.

#### Mental Health Technician Series Posting Factor

Regular scheduling of personnel at OSH accounts for the overall population and assumed acuity needs, but cannot fully account for unanticipated sick days, unscheduled leave, vacation days, or other protected leave taken by personnel. When these events occur, OSH utilizes overtime or contracted on-call positions, at costs that exceed the normal rate of budgeted positions.

OSH believes that for a significant number of these events it could use an increased level of Mental Health Technicians staffing to address the care needs of its population, and reduce its use of overtime and contracted services. The additional costs of the new positions is expected to be offset by the corresponding reduction in overtime and contracted services through the end of the current biennium, and is projected to offset \$14.4 million of the anticipated \$26.1 million in cost of these 136 new positions in the upcoming biennium. However, these savings may not materialize if the reduction in nursing overtime is not achievable while maintaining minimum staffing requirements.

**Recommendation:** The Legislative Fiscal Office recommends that the Emergency Board acknowledge the receipt of the report, with the understanding that any recommendations for budgetary changes would be included in a budget reconciliation bill during the 2025 legislative session.

**Request:** Report on the financial status of the Oregon State Hospital through Fall 2024 by the Oregon Health Authority.

**Recommendation:** Acknowledge receipt of the report.

**Discussion:** The Oregon Health Authority (OHA) has submitted a rebalance plan for the Oregon State Hospital (OSH) for the 2023-25 biennium. OHA conducts a budget rebalancing exercise over the biennium to ensure that multiple funding streams and programs in OHA's budget function smoothly throughout the biennium. The OSH rebalance plan identifies a total General Fund increase of \$72,380,983, and an increase of 14 positions (5.44 FTE) and position authority for 136 positions (39.94 FTE). The proposals identify actions needed to support sufficient staffing levels at OSH to meet patient needs, implement plans following site visits this biennium by the Centers for Medicare and Medicaid Services (CMS), and continue work to ensure hospital operations comply with federal court orders related to aid and assist patients at OSH.

Cost overruns: Over the past two biennia, the budget for OSH has increased in order to provide the staffing needed to meet patient needs. Despite these budget increases, OSH has faced additional operational issues, resulting in these investments not having the full impact as intended. In the 2023-25 biennium, costs have increased due to a series of conditions under which OSH must comply with, including recent orders from CMS, Mink-Bowman court orders, and Nurse Staffing laws. These additional parameters have placed demands on staffing and required OSH to allocate staffing differently to meet patient treatment needs and maintain compliance with regulatory requirements.

OSH is still operating with a high number of licensed nurse vacancies in the post pandemic environment. To manage these shortfalls, OSH often depends on the use of contract staffing to fill positions. While this may fill some positions, each position filled by contract staffing is approximately 1.5 times more costly than if the position was filled by a state employee. A second way OSH manages these vacancies, is through overtime shifts to employees that either volunteer or are required to fill open shifts.

OSH estimates a need for \$42,692,986 to cover anticipated demand for contract staffing and overtime payments for the remainder of the 2023-25 biennium.

CMS Response: During this biennium, CMS identified several operational deficiencies at OSH based on issues related to patient health and safety, and campus security. CMS determined that if OSH did not put in place measures to resolve those deficiencies and prevent future issues from occurring, OSH would not be a certified facility recognized by CMS and would lose the ability to bill Medicaid for services provided to patients. This summer, OSH leadership developed and has begun to implement plans resolving those issues flagged by CMS. In October, CMS conducted a series of surveys to evaluate if the plans developed by OSH sufficiently addressed the issues raised earlier this biennium.

CMS determined the plans were sufficient; as a result, OSH retains the ability to bill Medicaid for services.

OSH estimates that the costs to implement these plans in this biennium will be \$6,663,276 (11 Positions, 4.18 FTE) for patient staffing and support for implementing the corrective action plans that CMS evaluated during its site visits in October 2024.

Nursing Positions / MHT Posting Factor: OSH continues to have open positions due to staff on unplanned absences or on protected leave. To fill these positions, the rebalance plan for OSH includes a request for position authority to establish 136 Mental Health Technicians (MHTT) positions (39.94 FTE).

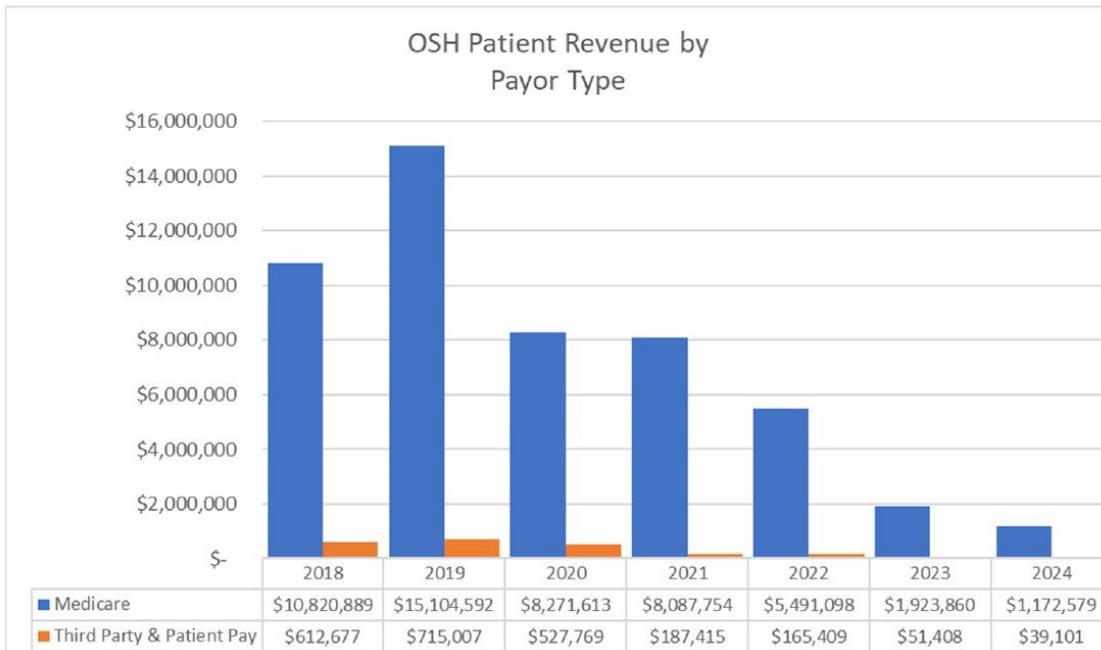
Psychiatry Positions – Conversion of Contract Services & Supplies: To provide psychiatric services to patients, OSH uses both Psychiatrists as well as Psychiatric Mental Health Nurse Practitioners (PMHNP). PMHNPs are considered independent practitioners in Oregon and OSH has been successful in filling positions at this level, with psychiatrists being in such high demand across the country. OSH requests position authority to approve and fill these positions. The agency can fully offset the costs of these positions by reducing the use of contracted providers. The funding to establish positions comes from the agency's Medical Services and Supplies budget line item.

Forensic Evaluation Services: Staff at OSH utilize the services of forensic evaluators to determine if a patient is ready to return to court and aid and assist in their own defense. As of October, OSH reports the number of people in community restoration on the wait list for evaluation is approximately 290. OSH plans to request \$85,734 to hire three forensic evaluators.

CMS Consultant: CMS has continued to identify operational deficiencies at OSH over the course of the 2023-25 biennium. While OSH develops and implements plans to remain in CMS compliance, OHA and OSH leadership want to identify ways to reduce the likelihood of OSH becoming out of compliance with CMS in the future. To address this goal, OSH has retained the services of Chartis to develop strategies for OSH to operate long-term within CMS compliance. The cost of this contract is \$1,730,000 and work will conclude by the end of the current biennium.

Revenue True-up: OSH is experiencing a shortfall in collection of revenue from insurance providers. To cover this shortfall, the rebalance plan includes \$7.5 million in General Fund to address the shortfall. During the 2023-25 biennium, OSH has seen a decline in the percentage of patients entering the hospital with Medicare or other health insurance – 318 patients in 2020 (41 percent of patients admitted to OSH) down to 251 patients in 2024 (~20 percent), this information is depicted in Chart 1.

Chart 1: Insurance Revenue Collected (by Payor Type)



In addition, the data breach that Change Healthcare experience during the biennium has continued to delay OSH's ability to fully recuperate costs for billed services.

**CMS Extended Repayment Schedule:** CMS rules define the types of duties that can be performed by specific staff at medical facilities. This year, staff at OSH identified that duties performed by Psychiatric Mental Health Nurse Practitioners were not in compliance with a CMS rule, as those duties were allowed to be performed only by physicians. As a result, OSH calculated an overpayment of \$13,686,581 for the six year review period that is the typical look-back period required by CMS in these situations. OSH submitted a waiver that would allow OSH to make payments towards the fine over 60 months as well as waive interest being accrued to the fine. CMS denied that waiver. As a result, the rebalance plan includes funding to pay the full balance of \$13,686,581 this biennium.

Tina Kotek, Governor

November 4, 2024

Senator Rob Wagner, Co-Chair  
Representative Julie Fahey, Co-Chair  
State Emergency Board  
900 Court Street NE  
H-178 State Capitol  
Salem, OR 97301

Dear Co-Chairs:

**Nature of the Request**

The Oregon Health Authority (OHA) requests receipt of this letter as its Fall 2024 Rebalance Report for the Oregon State Hospital for the 2023-25 biennium.

**Agency Action**

Oregon State Hospital (OSH) has experienced operational challenges that have necessitated significant necessary and unplanned expenditures in the current biennium. The principal drivers of these expenditures include temporary agency staffing, responses to the Centers for Medicare and Medicaid Services (CMS) surveys, and revenue shortfalls due to limited third party reimbursement opportunity.

Cost overruns due to agency/contracted staffing: Staffing issues related to the Nurse Staffing Law, enhanced patient supervision requirements, and the restoration timelines established by the Mink-Bowman federal order have been exacerbated by a significant number of vacant licensed nursing positions, high call-out rates, and utilization of various types of protected leave. To remain compliant with multiple regulatory bodies, OSH has relied heavily on both overtime and contracted labor to meet staffing requirements. Contracted nursing services personnel are roughly 1.5 times more expensive than state employees of equivalent classifications.

CMS Response: Four Centers for Medicare and Medicaid Services (CMS) surveys have resulted in functional changes to the hospital necessary to maintain

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Senator Rob Wagner  
Representative Julie Fahey

compliance. As part of an immediate Plan of Correction (PoC) to address CMS deficiencies, OSH stood up a video monitoring team staffed by temporary agency staff to immediately enhance the safety of the unit milieu. Additionally, PoCs in response to deficiencies cited revealed the need for 16 additional FTE for medical emergency response and training, as well as administrative and data analysis capacity to meet CMS expectations for quality assurance and performance improvement.

Nursing Positions/MHT Posting Factor: As a cost containment strategy, OSH is seeking to address ongoing staffing issues by establishing a posting factor for the Mental Health Technician classification series of positions to cover for staff who are not at work due to unscheduled absences and usage of protected leave. Without this posting factor, non-delivered staffing coverage can only be met by utilizing overtime or nurse agency staffing at higher expense. This request is for position authority only as the cost will be offset by reductions in temporary agency use and staff overtime.

Psychiatry Positions – Conversion of Contract Services & Supplies: OSH requests position authority to promote recruitment and retention of three Psychiatric Mental Health Nurse Practitioners. This request is for position authority only as the cost is offset by reductions in the use of contracted providers through locum tenens agencies.

Forensic Evaluation Services: OSH needs additional forensic Psychologists to address the waitlist for forensic evaluations of people placed in community restoration that are scheduled for evaluations with more than a year wait. Current OSH staff must prioritize evaluations for people admitted to Oregon State Hospital prior to performing any community evaluations as there are statutory timelines associated with evaluations for OSH patients.

CMS Consultant: A nationally recognized consultant was procured to address current CMS findings and assist with resolving condition-level deficiencies. The scope of contracted services will include but are not limited to current-state assessment and regulatory gap analyses, survey readiness, policy and procedure modifications, refinements to Plan of Correction documents, action plan and roadmap development, as well as implementation and monitoring phases.

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**Revenue True-Up:** OSH has experienced a declining number of patients admitted with Medicare and other third-party insurance resources, which they previously relied on to recover costs from uncompensated care. Additionally, general billing delays due to system issues and a nationwide data breach that occurred with a vendor, Change Healthcare, have resulted in OSH's inability to meet revenue targets this biennium.

**CMS Extended Repayment Schedule:** A repayment is due to CMS because of a CMS rule disallowing Psychiatric Mental Health Nurse Practitioners (PMHNP) from certifying medical necessity and continued stay. CMS requires this work be done by a physician.

OSH estimates the total 2023-25 budget and resource need to address the identified issues at rebalance to consist of \$72,380,982 and 150 positions (45.38 FTE).

Description	General Fund	Positions	FTE
Cost overruns due to Agency/Contracted staffing	\$ 42,692,988	-	-
CMS Response	\$ 6,663,276	11	4.18
Nursing Positions / MHT Posting Factor	\$ -	136	39.94
Psychiatry Positions / Conversion of Contracted S&S	\$ -	3	1.26
Forensic Evaluation Services	\$ 85,734	-	-
CMS Consultant	\$ 1,730,000	-	-
Revenue True-up	\$ 7,522,404	-	-
CMS Extended Repayment Schedule	\$ 13,686,581	-	-
<b>Grand Total</b>	<b>\$ 72,380,983</b>	<b>150</b>	<b>45.38</b>

### Action Requested

Acknowledge receipt of this report.

### Legislation Affected

Oregon Laws 2023, Chapter 591, Section 1, Subsection 5, increase General Fund \$72,380,983

Oregon Laws 2023, Chapter 591, Section 2, Subsection 7, decrease Other Funds \$7,522,404

November 4, 2024  
Senator Rob Wagner  
Representative Julie Fahey

Sincerely,



Sejal Hathi, MD MBA  
Director

EC: Matt Stayner, Legislative Fiscal Office  
Patrick Heath, Department of Administrative Services  
Jason Trombley, Department of Administrative Services  
Amanda Beitel, Legislative Fiscal Office  
Kate Nass, Department of Administrative Services