

# DRAFT

## SUMMARY

Modifies funding mechanism for public employees' health care benefit to avoid excise tax under Patient Protection and Affordable Care Act. Requires local governments and school districts to participate in modified health care benefit plan. Permits public employees to redirect funds from health care premiums to other benefits. Dedicates portion of health care benefit costs to future health care costs and to critical services. Requires Public Employees' Benefit Board and Oregon Educators Benefit Board to assist employees in selecting benefit options. Excludes collective bargaining for specified health insurance benefits. Prohibits Public Employees' Benefit Board and Oregon Educators Benefit Board from self-insuring.

Establishes Task Force on Flexible Benefits for Public Employees to monitor implementation of new benefit plans. Sunsets task force December 31, 2020.

## A BILL FOR AN ACT

Relating to public employee benefits; creating new provisions; amending ORS 243.061, 243.105, 243.107, 243.125, 243.129, 243.135, 243.145, 243.160, 243.163, 243.167, 243.252, 243.256, 243.285, 243.302, 243.650, 243.860, 243.862, 243.864, 243.866, 243.867, 243.876, 243.878, 243.879, 243.884, 292.051, 656.247, 741.300, 741.310, 743A.058, 743B.601 and 743B.810; and repealing ORS 243.142, 243.215 and 243.886.

Whereas the Patient Protection and Affordable Care Act (ACA) became law on March 23, 2010; and

Whereas the provisions and requirements of the ACA have been phased in over time and will continue to be phased in until 2020; and

Whereas one of the provisions of the ACA imposes an excise tax or "Cadillac Tax" on high-cost health insurance plans beginning in 2018; and

Whereas the excise tax on high-cost health insurance plans will be borne by the insurance companies that will in turn bill the increased costs to the policyholders; and

Whereas nearly every public employer health insurance plan in the State of Oregon would likely be subject to the excise tax in 2018 for employee-only health insurance plans valued in excess of \$10,200, and plans insuring families of state workers would be subject to the excise tax when the plan is valued at \$27,500 or more; and

Whereas the caps on the value of health insurance plans not subject to the excise tax will be indexed at regular intervals by the federal government; and

Whereas the increased costs borne by public employers on these insurance premiums incorporating the excise tax would be unfairly weighted based on the marital status of the employee, causing a benefit inequity among public employees; and

Whereas without legislative intervention, the excise tax on high-cost health insurance plans will likely be subject to collective bargaining negotiations by public employee unions before the implementation of the excise tax, potentially resulting in a cost increase to taxpayers or a decrease in services to taxpayers; and

Whereas the State of Oregon cannot absorb the cost of the excise tax, which will increase health care premiums, without a likely reduction to the General Fund and a reduction of services across all state agencies, commissions and quasi-governmental agencies; and

Whereas local school districts and education service districts cannot absorb the cost of the excise tax, reflected in increased health insurance premiums, without a loss of school days, increased class sizes, decreased academic offerings for students or teacher layoffs; and

Whereas public universities and community colleges cannot absorb the cost of the excise tax, reflected in increased health insurance premiums, without an offset to their budgets that would most likely include tuition in-

1 creases for students; and

2 Whereas special districts cannot absorb the cost of the excise tax, re-  
3 flected in increased health insurance premiums, without a likely increase in  
4 rates paid for services; and

5 Whereas public transit districts, already strapped by burgeoning health  
6 care costs, cannot absorb the cost of the excise tax, reflected in increased  
7 health insurance premiums, without an increase in rider fares or a decrease  
8 in transportation services to commuters, which would create a financial  
9 hardship to low-income and senior transit users; and

10 Whereas police, fire or other public safety service districts cannot absorb  
11 the cost of the excise tax, reflected in increased health insurance premiums,  
12 without a potential decrease in response times, and a reduction in public  
13 safety services and the presence of first responders in the community; and

14 Whereas city, county and Metro governments cannot absorb the cost of  
15 the excise tax, reflected in increased health insurance premiums, without  
16 likely suspending key critical human services, local infrastructure invest-  
17 ments and other necessary community functions; and

18 Whereas all public employers have the obligation of serving the needs of  
19 the citizens of Oregon first and foremost; and

20 Whereas the Legislative Assembly believes that we must balance the need  
21 to provide critical services to our constituents with a commitment to re-  
22 specting those who serve the public; and

23 Whereas the excise tax to be levied in 2018 by the federal government is  
24 one of the single most expensive components of the ACA to public employers,  
25 with a direct cost that will be borne by all Oregon taxpayers at every level  
26 that the government taxes the people of Oregon; and

27 Whereas the transfer of taxpayer resources from the state government to  
28 the federal government would create a fiscal budget crisis for the State of  
29 Oregon, a potential reduction in force of public employees in order to com-  
30 pensate for looming budget cuts and a financial hardship and loss of services  
31 for all the citizens of Oregon; and

Whereas in order to ensure that all levels of state and local government can be provided relief from the coming federal excise tax, a solution must be passed into law no later than the end of the 2016 regular session of the Legislative Assembly, and implemented no later than December 31, 2017; and

Whereas if no relief is provided to state, school district and local governments, the excise tax could drive up the cost of public employee health insurance plans by hundreds of millions of dollars in new costs each biennium; now, therefore,

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

## **LEGISLATIVE INTENT**

**SECTION 1. The intent of the Legislative Assembly in sections 5, 6 and 24 of this 2016 Act is to implement a plan to:**

**(1) Ensure that public employees have access to quality health care and increased employee benefit choices;**

**(2) Reduce the overall costs of health care so that any savings can be redirected to fund future public employee health care costs, the Public Employees Retirement System's actuarial liability, additional public employee benefit options or critical services across state and local governments; and**

**(3) Promise all Oregonians, both private and public employees alike, that they will not be burdened by the additional costs that a federally imposed excise tax would create for public employers and taxpayers.**

## **FLEXIBLE BENEFITS TASK FORCE**

**SECTION 2. (1) The Task Force on Flexible Benefits for Public Employees is established, consisting of 13 members appointed as follows:**

**(a) The President of the Senate shall appoint one member from**

1 among members of the Senate.

2 (b) The Speaker of the House of Representatives shall appoint one  
3 member from among members of the House of Representatives.

4 (c) The Governor shall appoint 11 members consisting of:

5 (A) Three members representing public employers in this state;

6 (B) Three members representing public employees in this state;

7 (C) Three members with expertise in federal requirements con-  
8 cerning employer-sponsored health plans, flexible benefit plans and  
9 related tax advantages and penalties;

10 (D) One member representing the Department of Consumer and  
11 Business Services; and

12 (E) One member representing an organization with a certificate of  
13 authority to transact health insurance in this state.

14 (2) The task force shall collect and synthesize information about the  
15 federal excise tax on employer-sponsored health plans and flexible  
16 benefit plans. The task force shall also monitor implementation of  
17 sections 5, 6 and 24 of this 2016 Act, audit any General Fund savings  
18 generated by sections 5 and 24 of this 2016 Act and make recommen-  
19 dations for legislative changes to public employee benefit plans.

20 (3) A majority of the members of the task force constitutes a quo-  
21 rum for the transaction of business.

22 (4) Official action by the task force requires the approval of a ma-  
23 jority of the members of the task force.

24 (5) The task force shall elect one of its members to serve as chair-  
25 person.

26 (6) If there is a vacancy for any cause, the appointing authority  
27 shall make an appointment to become immediately effective.

28 (7) The task force shall meet at times and places specified by the  
29 call of the chairperson or of a majority of the members of the task  
30 force.

31 (8) The task force may adopt rules necessary for the operation of

1 the task force.

2 (9) The task force shall submit to an interim committee of the  
3 Legislative Assembly related to health care in the manner provided  
4 by ORS 192.245:

5 (a) An initial report and the recommendations described in sub-  
6 section (2) of this section no later than September 15, 2018.

7 (b) A second report and the recommendations described in sub-  
8 section (2) of this section no later than September 15, 2019.

9 (c) A final report and the recommendations described in subsection  
10 (2) of this section no later than September 15, 2020.

11 (10) The Oregon Health Authority shall provide staff support to the  
12 task force.

13 (11) Members of the task force who are not members of the Legis-  
14 lative Assembly are not entitled to compensation, but may be reim-  
15 bursed for actual and necessary travel and other expenses incurred by  
16 them in the performance of their official duties in the manner and  
17 amounts provided for in ORS 292.495. Claims for expenses incurred in  
18 performing functions of the task force shall be paid out of funds ap-  
19 propriated to the Oregon Health Authority for purposes of the task  
20 force.

21 (12) All agencies of state government, as defined in ORS 174.111, are  
22 directed to assist the task force in the performance of its duties and,  
23 to the extent permitted by laws relating to confidentiality, to furnish  
24 such information and advice as the members of the task force consider  
25 necessary to perform their duties.

26 SECTION 3. Section 2 of this 2016 Act is repealed on December 31,  
27 2020.

28  
29 **PUBLIC EMPLOYEES' BENEFIT BOARD**

30  
31 SECTION 4. Section 5 of this 2016 Act is added to and made a part

of ORS 243.105 to 243.285.

**SECTION 5. (1) A public employer shall annually allot to each eligible employee an amount equal to the benefit cap for the year. The employee may use the allotment to pay the premiums for any of the health benefit plans offered under ORS 243.135. The employee shall pay any premium costs that exceed the allotment. If the employee declines the health benefit plans offered by the Public Employees' Benefit Board, the allotment shall be available as described in subsection (2) of this section.**

**(2) An employee who declines health benefit plan coverage described in ORS 243.135 or whose premiums cost less than the amount of the employee's allotment may elect to have the remainder of the allotment distributed by the public employer as follows:**

**(a) Payment to a retirement account;**

**(b) Deposit in a qualified tuition program described in 26 U.S.C. 529;**

**(c) Deposit in a cafeteria plan or qualified transportation fringe benefit plan that is not includable in the taxable income of the employee by reason of 26 U.S.C. 125 or 132(f)(4);**

**(d) Contribution to a deferred compensation arrangement that is not included in the taxable income of the employee by reason of 26 U.S.C. 402(e)(3);**

**(e) Payment to the employee; or**

**(f) Payment to a third party selected by the employee.**

**(3) The board shall provide assistance to eligible employees and their family members in selecting health benefit plans described in ORS 243.135 and in making the elections described in subsection (2) of this section.**

**(4) As used in this section:**

**(a) "Benefit cap" has the meaning given that term in section 6 of this 2016 Act.**

**(b) "Public employer" has the meaning given that term in ORS**

238.005.

**SECTION 6. (1) As used in this section:**

(a) “Benefit cap” means the applicable dollar amount for self-only coverage specified in 26 U.S.C. 4980I, as modified by the health cost adjustment percentage and, for employers the majority of whose employees covered by a health benefit plan are engaged in a high-risk profession or employed to repair or install electrical or telecommunications lines, any adjustment under 26 U.S.C. 4980I(b)(3)(C)(iv).

(b) “Composite rate” means the average annualized cost, in dollars per year per employee, of the health benefit plan premiums paid by a public employer, calculated for all of the employees of the public employer in 2017.

(c) “Investment amount” means the difference between the composite rate of a public employer and the benefit cap for 2018 multiplied by the total number of employees of the public employer.

(d) “Paying the costs of critical services” means:

(A) Maintaining the medical assistance program;

(B) Maintaining the number of days in the school calendar;

(C) Maintaining public safety; and

(D) Preventing layoffs of public employees.

(e) “Public employer” has the meaning given that term in ORS 238.005.

(2) Each public employer shall establish two investment accounts to be held in trust for the following purposes:

(a) One account must be dedicated to:

(A) Paying the costs of critical services;

(B) Paying the costs of actuarial liabilities owed by the public employer to the Public Employees Retirement System; or

(C) Paying the costs of benefits for employees of the public employer arising from a collective bargaining agreement; and

(b) One account must be dedicated to paying the increased cost, if



any, of the benefit cap over the prior year resulting from the application of the health cost adjustment percentage.

(3) Interest and earnings from each account described in subsection (2) of this section shall be deposited to the account.

(4) Each calendar year, a public employer shall deposit to the account described in:

(a) Subsection (2)(a) of this section, an amount equal to 50 percent of the investment amount; and

(b) Subsection (2)(b) of this section, an amount equal to 50 percent of the investment amount, minus the amount paid by the public employer for the increase in the cost of the benefit cap over the prior year resulting from the health cost adjustment percentage.

(5) A public employer may withdraw and expend moneys in each account described in subsection (2) of this section only for the purposes specified for that account.

**SECTION 7.** ORS 243.061 is amended to read:

243.061. (1) There is created in the Oregon Health Authority the Public Employees' Benefit Board consisting of at least *[eight]* **10** voting members and two members of the Legislative Assembly as nonvoting advisory members. Two of the voting members are ex officio members and *[six]* **eight** are appointed by the Governor. The *[voting]* **following** members shall be **voting members**:

(a) Four members representing the state as an employer and management employees, who shall be as follows:

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

(B) The Administrator of the Office for Oregon Health Policy and Research or a designee of the administrator; and

(C) Two management employees appointed by the Governor from areas of state government other than the Oregon Health Authority or the Office for Oregon Health Policy and Research[; and].

(b) Four members appointed by the Governor and representing nonmanagement representable employees, who shall be as follows:

(A) Two persons from the largest employee representative unit;

(B) One person from the second largest employee representative unit; and

(C) One person from representable employees not represented by employee representative units described in subparagraphs (A) and (B) of this paragraph.

**(c) Two members appointed by the Governor, one representing local government management employees and one representing local government nonmanagement employees.**

(2) One member of the Senate shall be appointed by the President of the Senate and one member of the House of Representatives shall be appointed by the Speaker of the House to serve as nonvoting advisory members.

*[(3)(a) If the governing body of a local government elects to participate in a benefit plan offered by the board, in addition to the members appointed under subsections (1) and (2) of this section, the Governor shall appoint two voting members, one of whom represents local government management and one of whom represents local government nonmanagement employees.]*

*[(b)]* **(3)(a)** After the appointment of members under *[paragraph (a) of this subsection]* **subsection (1)(c) of this section**, if the number of eligible employees of a local government or local governments enrolled in a benefit plan or plans offered by the board exceeds 25,000, the Governor shall appoint two additional voting members, one *[of whom represents]* **representing** local government management **employees** and one *[of whom represents]* **representing** local government nonmanagement employees.

*[(c)]* **(b)** After the appointment of members under *[paragraphs (a) and (b)]* **paragraph (a)** of this subsection, for every additional 25,000 eligible employees of a local government or local governments enrolled in a benefit plan or plans offered by the board, the Governor shall appoint one additional voting member representing local government management **employees** and one additional voting member representing local government nonmanagement

employees.

(4) A maximum of three members may be appointed **by the Governor under subsections (1) and (3) of this section** to represent local government management **employees** and a maximum of three members may be appointed **by the Governor** to represent local government nonmanagement employees.

(5) The term of office of each appointed voting member is four years, but an appointed voting member serves at the pleasure of the Governor. Before the expiration of the term of a voting member appointed by the Governor, the Governor shall appoint a successor to take office upon the date of that expiration. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(6) The appointments by the Governor of voting members of the board are subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(7) Members of the board who are not members of the Legislative Assembly shall receive no compensation for their services, but shall be paid for their necessary and actual expenses while on official business in accordance with ORS 292.495. Members of the board who are members of the Legislative Assembly shall be paid compensation and expense reimbursement as provided in ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(8) As used in this section, “benefit plan” and “local government” have the meanings given those terms in ORS 243.105.

**SECTION 8.** ORS 243.105 is amended to read:

243.105. As used in ORS 243.105 to 243.285, unless the context requires otherwise:

(1) “Benefit plan” includes, but is not limited to:

(a) Contracts for insurance or other benefits, including [*medical*,] dental, vision, life, disability and [*other health*] **long term** care [*recognized by state law*], and related services and supplies; **and**

(b) Comparable benefits for employees who rely on spiritual means of healing.[]; and]

[(c) *Self-insurance programs managed by the Public Employees' Benefit Board.*]

(2) "Board" means the Public Employees' Benefit Board.

(3) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services, or two or more companies or contractors acting together pursuant to a joint venture, partnership or other joint means of operation, or a board-approved guarantor of benefit plan coverage and compensation.

(4)(a) "Eligible employee" means an officer or employee of a state agency or local government who elects to participate in one of the [group] benefit plans [described in ORS 243.135] **offered by the board**. The term includes, but is not limited to, state officers and employees in the exempt, unclassified and classified service, and state officers and employees, whether or not retired, who:

(A) Are receiving a service retirement allowance, a disability retirement allowance or a pension under the Public Employees Retirement System or are receiving a service retirement allowance, a disability retirement allowance or a pension under any other retirement or disability benefit plan or system offered by the State of Oregon for its officers and employees;

(B) Are eligible to receive a service retirement allowance under the Public Employees Retirement System and have reached earliest retirement age under ORS chapter 238;

(C) Are eligible to receive a pension under ORS 238A.100 to 238A.250, and have reached earliest retirement age as described in ORS 238A.165; or

(D) Are eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by the State of Oregon and have attained earliest retirement age under the plan or system.

(b) "Eligible employee" does not include individuals:

(A) Engaged as independent contractors;

(B) Whose periods of employment in emergency work are on an intermittent or irregular basis;

(C) Who are employed on less than half-time basis unless the individuals are employed in positions classified as job-sharing positions, unless the individuals are defined as eligible under rules of the board;

(D) Appointed under ORS 240.309;

(E) Provided sheltered employment or make-work by the state in an employment or industries program maintained for the benefit of such individuals;

(F) Provided student health care services in conjunction with their enrollment as students at a public university listed in ORS 352.002; or

(G) Who are members of a collective bargaining unit that represents police officers or firefighters.

(5) "Family member" means an eligible employee's spouse and any unmarried child or stepchild within age limits and other conditions imposed by the board with regard to unmarried children or stepchildren.

**(6) "Health benefit plan" has the meaning given that term in ORS 743B.005.**

[(6)] (7) "Local government" means any city, county or special district in this state or any intergovernmental entity created under ORS chapter 190.

[(7)] (8) "Payroll disbursing officer" means the officer or official authorized to disburse moneys in payment of salaries and wages of employees of a state agency or local government.

[(8)] (9) "Premium" means the monthly or other periodic charge for a benefit plan.

[(9)] (10) "State agency" means every state officer, board, commission, department or other activity of state government.

**SECTION 9.** ORS 243.107 is amended to read:

243.107. A person employed by a public university listed in ORS 352.002 or the Oregon Health and Science University [*may*] **shall** be considered an

eligible employee for participation in one of the [group] **health** benefit plans described in ORS 243.135 *[if the governing board of the public university, or the Oregon Health and Science University Board of Directors for Oregon Health and Science University employees, determines that funds are available therefor and if:]* **and paid for in the manner prescribed in section 5 of this 2016 Act, if:**

(1) Notwithstanding ORS 243.105 (4)(b)(F), the person is a student enrolled in an institution of higher education and is employed as a graduate teaching assistant, graduate research assistant or a fellow at the institution and elects to participate; or

(2) Notwithstanding ORS 243.105 (4)(b)(B) or (C), the person is employed on a less than half-time basis in an unclassified instructional or research support capacity and elects to participate.

**SECTION 10.** ORS 243.125 is amended to read:

243.125. (1) The Public Employees' Benefit Board shall prescribe rules for the conduct of its business and for carrying out ORS 243.256. The board shall study all matters connected with the providing of adequate benefit plan coverage for eligible employees on the best basis possible with relation both to the welfare of the employees and to the state and local governments. The board shall design benefits, devise specifications, analyze carrier responses to advertisements for bids and decide on the award of contracts. Contracts shall be signed by the chairperson on behalf of the board.

(2) In carrying out its duties under subsection (1) of this section, the goal of the board shall be to provide a high quality plan of health and other benefits for employees at a cost affordable to both the employer and the employees.

(3) Subject to ORS chapter 183, the board may make rules not inconsistent with ORS 243.105 to 243.285 and 292.051 to determine the terms and conditions of eligible employee participation and coverage.

(4) The board shall prepare specifications, invite bids and do acts necessary to award contracts *[for]* **to carriers to provide** health benefit *[plan]*

**plans and benefit plans for long term care, vision and dental** [*benefit plan*] coverage [*of*] **to** eligible employees. **Health benefit plan coverage must be** in accordance with the criteria set forth in ORS 243.135 (1).

(5) The executive director of the board shall report to the Director of the Oregon Health Authority.

(6) The board may retain consultants, brokers or other advisory personnel when necessary and, subject to the State Personnel Relations Law, shall employ such personnel as are required to perform the functions of the board.

**SECTION 11.** ORS 243.129 is amended to read:

243.129. (1) The governing body of a local government [*may elect to*] **shall** participate in a **health** benefit plan [*offered by the Public Employees' Benefit Board*] **described in ORS 243.135 that is paid for in the manner prescribed in section 5 of this 2016 Act.**

(2) The decision of the governing body of a local government to participate in [*a*] benefit [*plan*] **plans, other than health benefit plans**, offered by the board is in the discretion of the governing body of the local government and is a permissive subject of collective bargaining.

[(3) *If the governing body of a local government elects to offer a benefit plan through the board, the governing body may elect one time only to provide alternative group health and welfare insurance benefit plans to eligible employees if:*]

[(a) *The alternative benefit plan is offered through the health insurance exchange under ORS 741.310 (1)(b); and*]

[(b) *The participation of the local government is not precluded under federal law on or after January 1, 2017.*]

**SECTION 12.** ORS 243.135, as amended by section 4, chapter 389, Oregon Laws 2015, is amended to read:

243.135. (1) Notwithstanding any other benefit plan contracted for and offered by the Public Employees' Benefit Board, the board shall contract [*for a health benefit plan or plans best designed to meet the needs and provide for the welfare of eligible employees, the state and the local governments. In con-*]

sidering whether to enter into a contract for a plan,] **with a carrier to provide a group of health benefit plans selected by the board from the plans that are offered by the carrier. In selecting the plans to be offered to eligible employees by the carrier, the board shall select health benefit plans that provide minimum essential coverage, as defined in 26 U.S.C. 5000A, and shall** place emphasis on:

- (a) Employee choice among high quality plans;
- [(b) A competitive marketplace;]
- [(c)] **(b)** Plan performance and information;
- [(d) Employer flexibility in plan design and contracting;]
- [(e)] **(c)** Quality customer service;
- [(f)] **(d)** Creativity and innovation;
- [(g) Plan benefits as part of total employee compensation;]
- [(h)] **(e)** The improvement of employee health; and
- [(i)] **(f)** Health outcome and quality measures, described in ORS 413.017 (4), that are reported by the plan.

(2) The board may approve more than one carrier for *[each type of plan]* **health benefit plans** contracted for and offered but the number of carriers shall be held to a number consistent with adequate service to eligible employees and their family members.

(3) Where appropriate for a contracted and offered health benefit plan, the board shall provide options under which an eligible employee may arrange coverage for family members.

(4) Payroll deductions for costs that are not payable by the state or a local government may be made upon receipt of a signed authorization from the employee indicating an election to participate in the plan or plans selected and the deduction of a certain sum from the employee's pay.

(5) In developing any health benefit plan, the board may provide an option of additional coverage for eligible employees and their family members at an additional cost or premium.

(6) Transfer of enrollment from one **health benefit** plan to another shall



be open to all eligible employees and their family members under rules adopted by the board. Because of the special problems that may arise in individual instances under *[comprehensive group practice]* **health benefit** plan coverage involving acceptable provider-patient relations between a particular panel of providers and particular eligible employees and their family members, the board shall provide a procedure under which any eligible employee may apply at any time to substitute *[a health service benefit plan for participation in a comprehensive group practice benefit plan]* **one health benefit plan for another.**

(7) The board shall evaluate a **health** benefit plan that serves a limited geographic region of this state according to the criteria described in subsection (1) of this section.

**(8) Employees must have the opportunity to select health benefit plans using an Internet portal.**

**SECTION 13.** ORS 243.145 is amended to read:

243.145. (1) The Public Employees' Benefit Board shall have authority to employ whatever means are reasonably necessary to carry out the purposes of ORS 243.105 to 243.285 and 292.051. The board's authority includes, but is not limited to, the authority to *[self-insure and to]* seek clarification, amendment, modification, suspension or termination of any agreement or contract that in the board's judgment requires such action.

(2) Upon providing specific notice in writing to the carrier, the affected employee organization or organizations, the Oregon Health Authority and affected eligible employees, and after affording opportunity for a public hearing upon the issues that may be involved, the board may enter an order withdrawing approval of any benefit plan. Thirty days after entry of the order, the board shall terminate all withholding authorizations of eligible employees and terminate all board-approved participation in the plan.

(3) The board by order may terminate the participation of any state agency or local government if within three months the state agency or local government fails to perform any action required by ORS 243.105 to 243.285

and 292.051 or by board rule.

**SECTION 14.** ORS 243.167 is amended to read:

243.167. (1) There is created the Public Employees' Revolving Fund, separate and distinct from the General Fund. The balances of the Public Employees' Revolving Fund are continuously appropriated to **the Public Employees' Benefit Board** to cover expenses incurred in connection with the administration of ORS 243.105 to 243.285 and 292.051. Assets of the Public Employees' Revolving Fund may be retained for limited periods of time as established by the [*Public Employees' Benefit*] board by rule. Among other purposes, the board may retain the funds to control expenditures[,] **and** stabilize benefit premium rates [*and self-insure*]. The board may establish subaccounts within the Public Employees' Revolving Fund.

(2) There is appropriated to the Public Employees' Revolving Fund all unused employer contributions for employee benefits and all refunds, dividends, unused premiums and other payments attributable to any employee contribution or employer contribution, **other than moneys allotted to employees under section 5 of this 2016 Act**, made from any carrier or contractor that has provided employee benefits administered by the board, and all interest earned on such moneys.

**SECTION 15.** ORS 243.252 is amended to read:

243.252. (1) The state may pay none of the cost of making health benefit plan coverage available to a retired state employee who is an eligible employee and to family members or may agree, by collective bargaining agreement or otherwise, to pay part or all of that cost.

(2) Nothing in subsection (1) of this section or other law[, *except ORS 243.886,*] prohibits a collective bargaining unit from agreeing with an employer that is a public body, as defined in ORS 174.109, to establish a retiree medical trust, voluntary employees' beneficiary association, health reimbursement arrangement or other agreement for health care expenses of employees or retirees if the provisions of the trust, association, arrangement or other agreement comply with the requirements of the Insurance Code.

1     **SECTION 16.** ORS 243.256 is amended to read:

2     243.256. (1) A hospital that provides services or supplies under a **health**  
3     benefit plan offered by the Public Employees' Benefit Board shall be reim-  
4     bursed using the methodology prescribed by the Oregon Health Authority  
5     under ORS 442.392 and may not be reimbursed for each service or supply  
6     provided.

7     (2) This section applies to hospital payments made by a carrier under a  
8     contract with the board [*and to hospital payments made under a self-*  
9     *insurance program administered by a third party administrator on behalf of*  
10    *the board*] **under ORS 243.135.**

11    (3) This section does not apply to reimbursements paid by a carrier [*or*  
12    *third party administrator*] to a hospital that is not subject to the methodol-  
13    ogy prescribed by the authority under ORS 442.392.

14    **SECTION 17.** ORS 243.285 is amended to read:

15    243.285. (1) Upon receipt of the request in writing of an eligible  
16    employee, [*so to do,*] the payroll disbursing officer authorized to disburse  
17    funds in payment of the salary or wages of the eligible employee may deduct  
18    from the salary or wages of the employee, **or from the employee's allot-**  
19    **ment described in section 5 of this 2016 Act,** an amount of money indi-  
20    cated in the request for payment of the applicable amount set forth in benefit  
21    plans selected by the employee or selected on the employee's behalf for:

22    (a) Group health and related services and supplies, including such insur-  
23    ance for family members of the eligible employee.

24    (b) Group life insurance, including life insurance for family members of  
25    the eligible employee.

26    (c) Group dental and related services and supplies, or any other remedial  
27    care recognized by state law and related services and supplies, recognized  
28    under state law, including such insurance for family members of the eligible  
29    employee.

30    (d) Group indemnity insurance for accidental death and dismemberment  
31    and for loss of income due to accident, sickness or other disability, including

such insurance for family members of the eligible employee.

(e) Other benefits[, *including self-insurance programs,*] that are approved and provided by the Public Employees' Benefit Board.

(2) Moneys deducted under subsection (1) of this section shall be paid over promptly[:]

[(a)] to the carriers or persons responsible for payment of premiums to carriers, in accordance with the terms of the contracts made by the eligible employees or on their behalf.[: or]

[(b) *With respect to self-insurance benefits, in accordance with rules, procedures and directions of the Public Employees' Benefit Board.*]

**SECTION 18.** ORS 243.302 is amended to read:

243.302. The Public Employees' Benefit Board may group retired state employees and state employees who are not retired for the purpose of entering into contracts [*for*] **with one or more carriers to provide health benefit plan and other** insurance coverage.

**SECTION 19.** ORS 243.160 is amended to read:

243.160. A retired state or local government officer or employee is not required to participate in one of the [*group*] **health** benefit plans described in ORS 243.135 in order to obtain dental benefit plan coverage. The Public Employees' Benefit Board shall establish by rule standards of eligibility for retired officers or employees to participate in a dental benefit plan.

**SECTION 20.** ORS 243.163 is amended to read:

243.163. A member of the Legislative Assembly who is receiving a pension or annuity under ORS 238.092 (1)(a) or 238A.250 (1) shall be eligible to participate as a retired state officer in one of the [*group*] **health** benefit plans described in ORS 243.135 after the member ceases to be a member of the Legislative Assembly if the member applies to the Public Employees' Benefit Board within 60 days after the member ceases to be a member of the Legislative Assembly.

**SECTION 21.** ORS 292.051 is amended to read:

292.051. (1) [*Except as authority over contracts for health benefit plans de-*

*scribed in ORS 243.135 is vested in the Public Employees' Benefit Board,]*  
 Upon receipt of the request in writing of an officer or employee, *[so to do,]*  
 the state official authorized to disburse funds in payment of the salary or  
 wages of the officer or employee may deduct from the salary or wages of the  
 officer or employee, **or from the officer's or employee's allotment de-**  
**scribed in section 5 of this 2016 Act,** an amount of money indicated in the  
 request for payment of the applicable amount set forth in benefit plans se-  
 lected by the officers or employees or in their behalf for:

(a) Group life insurance, including life insurance for dependents of offi-  
 cers or employees.

(b) Group dental and related services and supplies, or any other remedial  
 care recognized by state law and related services and supplies, other than  
 medical, surgical or hospital care, recognized under state law, including such  
 insurance for dependents of state officers or employees.

(c) Group indemnity insurance for accidental death and dismemberment  
 and for loss of income due to accident, sickness or other disability, including  
 such insurance for dependents of state officers or employees.

(d) Automobile casualty insurance under a monthly payroll deduction  
 program endorsed or offered by an employee organization representing 500  
 or more state employees. Membership in the employee organization is not a  
 requirement for participation in this program.

(e) Legal insurance under a monthly payroll deduction program endorsed  
 or offered by an employee organization representing 500 or more state em-  
 ployees.

*[(f) Self-insurance programs that are approved and provided by the Public  
 Employees' Benefit Board.]*

(2) The Oregon Health Authority may establish and collect a fee to cover  
 costs of administering this section.

(3) No state official authorized to disburse funds in payment of salaries  
 or wages is required to make deductions as authorized by subsection (1) of  
 this section for more than one benefit plan of the type referred to in each

of the paragraphs in subsection (1) of this section per eligible employee.

(4) Moneys deducted under subsection (1) of this section shall be paid over promptly[:]

[(a)] to the insurance companies, agencies or hospital associations, or persons responsible for payment of premiums to the companies, agencies or associations, in accordance with the terms of the contracts made by the officers or employees or in their behalf.[: or]

[(b) *With respect to self-insurance benefits, in accordance with rules, procedures and directions of the Public Employees' Benefit Board.*]

(5) As used in this section, "officer or employee" means all persons who receive salaries or wages disbursed by any state official.

## COLLECTIVE BARGAINING

**SECTION 22.** ORS 243.650 is amended to read:

243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

(1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board or voluntarily recognized by the public employer to be appropriate for collective bargaining. However, an appropriate bargaining unit may not include both academically licensed and unlicensed or nonacademically licensed school employees. Academically licensed units may include but are not limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and similar positions. This limitation does not apply to any bargaining unit certified or recognized prior to June 6, 1995, or to any school district with fewer than 50 employees.

(2) "Board" means the Employment Relations Board.

(3) "Certification" means official recognition by the board that a labor organization is the exclusive representative for all of the employees in the appropriate bargaining unit.

(4) "Collective bargaining" means the performance of the mutual obli-

gation of a public employer and the representative of its employees to meet at reasonable times and confer in good faith with respect to employment relations for the purpose of negotiations concerning mandatory subjects of bargaining, to meet and confer in good faith in accordance with law with respect to any dispute concerning the interpretation or application of a collective bargaining agreement, and to execute written contracts incorporating agreements that have been reached on behalf of the public employer and the employees in the bargaining unit covered by such negotiations. The obligation to meet and negotiate does not compel either party to agree to a proposal or require the making of a concession. This subsection may not be construed to prohibit a public employer and a certified or recognized representative of its employees from discussing or executing written agreements regarding matters other than mandatory subjects of bargaining that are not prohibited by law as long as there is mutual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

(5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute are required by law to submit their differences to a third party for a final and binding decision.

(6) "Confidential employee" means one who assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining.

(7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment.

(b) "Employment relations" does not include subjects determined to be permissive, nonmandatory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

(c) After June 6, 1995, "employment relations" does not include subjects that the Employment Relations Board determines to have a greater impact on management's prerogative than on employee wages, hours, or other terms and conditions of employment.

(d) “Employment relations” does not include subjects that have an in-substantial or de minimis effect on public employee wages, hours, and other terms and conditions of employment.

(e) For school district bargaining, “employment relations” excludes class size, the school or educational calendar, standards of performance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking, gum chewing and similar matters of personal conduct, the standards and procedures for student discipline, the time between student classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS 329.704, requirements for expressing milk under ORS 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

(f) For employee bargaining involving employees covered by ORS 243.736 and employees of the Department of Corrections who have direct contact with inmates, “employment relations” includes safety issues that have an impact on the on-the-job safety of the employees or staffing levels that have a significant impact on the on-the-job safety of the employees.

**(g) “Employment relations”:**

**(A) Does not include health benefit plan coverage as described in sections 5 and 24 of this 2016 Act.**

**(B) Does include health insurance coverage for retired employees as provided in ORS 238.410, 238.415, 238.420, 243.252 and 243.303.**

**(C) Does include dental only, vision only and long term care insurance.**

[(g)] **(h)** For all other employee bargaining except school district bargaining and except as provided in paragraph (f) of this subsection, “employment relations” excludes staffing levels and safety issues (except those staffing levels and safety issues that have a direct and substantial effect on the on-the-job safety of public employees), scheduling of services provided to the public, determination of the minimum qualifications necessary for any



1 position, criteria for evaluation or performance appraisal, assignment of du-  
2 ties, workload when the effect on duties is insubstantial, reasonable dress,  
3 grooming, and at-work personal conduct requirements respecting smoking,  
4 gum chewing, and similar matters of personal conduct at work, and any  
5 other subject proposed that is permissive under paragraphs (b), (c) and (d)  
6 of this subsection.

7 (8) "Exclusive representative" means the labor organization that, as a  
8 result of certification by the board or recognition by the employer, has the  
9 right to be the collective bargaining agent of all employees in an appropriate  
10 bargaining unit.

11 (9) "Fact-finding" means identification of the major issues in a particular  
12 labor dispute by one or more impartial individuals who review the positions  
13 of the parties, resolve factual differences and make recommendations for  
14 settlement of the dispute.

15 (10) "Fair-share agreement" means an agreement between the public em-  
16 ployer and the recognized or certified bargaining representative of public  
17 employees whereby employees who are not members of the employee organ-  
18 ization are required to make an in-lieu-of-dues payment to an employee or-  
19 ganization except as provided in ORS 243.666. Upon the filing with the board  
20 of a petition by 30 percent or more of the employees in an appropriate bar-  
21 gaining unit covered by such union security agreement declaring they desire  
22 that the agreement be rescinded, the board shall take a secret ballot of the  
23 employees in the unit and certify the results thereof to the recognized or  
24 certified bargaining representative and to the public employer. Unless a  
25 majority of the votes cast in an election favor the union security agreement,  
26 the board shall certify deauthorization of the agreement. A petition for de-  
27 authorization of a union security agreement must be filed not more than 90  
28 calendar days after the collective bargaining agreement is executed. Only  
29 one such election may be conducted in any appropriate bargaining unit dur-  
30 ing the term of a collective bargaining agreement between a public employer  
31 and the recognized or certified bargaining representative.

(11) “Final offer” means the proposed contract language and cost summary submitted to the mediator within seven days of the declaration of impasse.

(12) “Labor dispute” means any controversy concerning employment relations or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment relations, regardless of whether the disputants stand in the proximate relation of employer and employee.

(13) “Labor organization” means any organization that has as one of its purposes representing employees in their employment relations with public employers.

(14) “Last best offer package” means the offer exchanged by parties not less than 14 days prior to the date scheduled for an interest arbitration hearing.

(15) “Legislative body” means the Legislative Assembly, the city council, the county commission and any other board or commission empowered to levy taxes.

(16) “Managerial employee” means an employee of the State of Oregon or a public university listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or who represents management’s interest by taking or effectively recommending discretionary actions that control or implement employer policy, and who has discretion in the performance of these management responsibilities beyond the routine discharge of duties. A “managerial employee” need not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection, “managerial employee” does not include faculty members at a community college, college or university.

(17) “Mediation” means assistance by an impartial third party in reconciling a labor dispute between the public employer and the exclusive representative regarding employment relations.

(18) “Payment-in-lieu-of-dues” means an assessment to defray the cost for

1 services by the exclusive representative in negotiations and contract admin-  
2 istration of all persons in an appropriate bargaining unit who are not mem-  
3 bers of the organization serving as exclusive representative of the employees.  
4 The payment must be equivalent to regular union dues and assessments, if  
5 any, or must be an amount agreed upon by the public employer and the ex-  
6 clusive representative of the employees.

7 (19) "Public employee" means an employee of a public employer but does  
8 not include elected officials, persons appointed to serve on boards or com-  
9 missions, incarcerated persons working under [section 41,] Article I, **section**  
10 **41**, of the Oregon Constitution, or persons who are confidential employees,  
11 supervisory employees or managerial employees.

12 (20) "Public employer" means the State of Oregon, and the following pol-  
13 itical subdivisions: Cities, counties, community colleges, school districts,  
14 special districts, mass transit districts, metropolitan service districts, public  
15 service corporations or municipal corporations and public and quasi-public  
16 corporations.

17 (21) "Public employer representative" includes any individual or individ-  
18 uals specifically designated by the public employer to act in its interests in  
19 all matters dealing with employee representation, collective bargaining and  
20 related issues.

21 (22) "Strike" means a public employee's refusal in concerted action with  
22 others to report for duty, or his or her willful absence from his or her posi-  
23 tion, or his or her stoppage of work, or his or her absence in whole or in  
24 part from the full, faithful or proper performance of his or her duties of  
25 employment, for the purpose of inducing, influencing or coercing a change  
26 in the conditions, compensation, rights, privileges or obligations of public  
27 employment; however, nothing shall limit or impair the right of any public  
28 employee to lawfully express or communicate a complaint or opinion on any  
29 matter related to the conditions of employment.

30 (23) "Supervisory employee" means any individual having authority in the  
31 interest of the employer to hire, transfer, suspend, lay off, recall, promote,

discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment. Failure to assert supervisory status in any Employment Relations Board proceeding or in negotiations for any collective bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent board proceeding or contract negotiation. Notwithstanding the provisions of this subsection, "supervisory employee" does not include:

(a) A nurse, charge nurse or nurse holding a similar position if that position has not traditionally been classified as supervisory; or

(b) A firefighter prohibited from striking by ORS 243.736 who assigns, transfers or directs the work of other employees but does not have the authority to hire, discharge or impose economic discipline on those employees.

(24) "Unfair labor practice" means the commission of an act designated an unfair labor practice in ORS 243.672.

(25) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute mutually agree to submit their differences to a third party for a final and binding decision.

## OREGON EDUCATORS BENEFIT BOARD

**SECTION 23.** Section 24 of this 2016 Act is added to and made a part of ORS 243.860 to 243.886.

**SECTION 24.** (1) A public employer shall annually allot to each eligible employee an amount equal to the benefit cap for the year. The employee may use the allotment to pay the premiums for any of the health benefit plans offered under ORS 243.866. The employee shall pay any premium costs that exceed the allotment. If the employee declines the health benefit plans offered by the Oregon Educators Benefit Board, the allotment shall be available as described in subsection (2)

of this section.

(2) An employee who declines health benefit plan coverage described in ORS 243.866 or whose premiums cost less than the amount of the employee's allotment may elect to have the remainder of the allotment distributed by the public employer as follows:

(a) Payment to a retirement account;

(b) Deposit in an qualified tuition program described in 26 U.S.C. 529;

(c) Deposit in a cafeteria plan or qualified transportation fringe benefit plan that is not includable in the taxable income of the employee by reason of 26 U.S.C. 125 or 132(f)(4);

(d) Contribution to a deferred compensation arrangement that is not included in the taxable income of the employee by reason of 26 U.S.C. 402(e)(3);

(e) Payment to the employee; or

(f) Payment to a third party selected by the employee.

(3) The board shall provide assistance to eligible employees and their family members in selecting health benefit plans described in ORS 243.866 and in making the elections described in subsection (2) of this section.

(4) As used in this section:

(a) "Benefit cap" has the meaning given that term in section 6 of this 2016 Act.

(b) "Public employer" has the meaning given that term in ORS 238.005.

**SECTION 25.** ORS 243.860 is amended to read:

243.860. As used in ORS 243.860 to 243.886, unless the context requires otherwise:

(1) "Benefit plan" includes but is not limited to:

(a) Contracts for insurance or other benefits, including *[medical,]* dental, vision, life, disability and *[other health]* **long term** care *[recognized by state*

law], and related services and supplies; **and**

[(b) *Self-insurance programs managed by the Oregon Educators Benefit Board; and*]

[(c)] **(b)** Comparable benefits for employees who rely on spiritual means of healing.

(2) “Carrier” means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services, or two or more companies or contractors acting together pursuant to a joint venture, partnership or other joint means of operation, or a [board-approved] provider or guarantor of benefit plan coverage and compensation **that is approved by the Oregon Educators Benefit Board.**

(3) “District” means a common school district, a union high school district, an education service district, as defined in ORS 334.003, or a community college district, as defined in ORS 341.005.

(4)(a) “Eligible employee” includes:

(A) An officer or employee of a district or a local government who elects to participate in one of the benefit plans described in ORS 243.864 to 243.874; and

(B) An officer or employee of a district or a local government, whether or not retired, who:

(i) Is receiving a service retirement allowance, a disability retirement allowance or a pension under the Public Employees Retirement System or is receiving a service retirement allowance, a disability retirement allowance or a pension under any other retirement or disability benefit plan or system offered by the district or local government for its officers and employees;

(ii) Is eligible to receive a service retirement allowance under the Public Employees Retirement System and has reached earliest service retirement age under ORS chapter 238;

(iii) Is eligible to receive a pension under ORS 238A.100 to 238A.250 and has reached earliest retirement age as described in ORS 238A.165; or

(iv) Is eligible to receive a service retirement allowance or pension under any other retirement benefit plan or system offered by the district or local government and has attained earliest retirement age under the plan or system.

(b) Except as provided in paragraph (a)(B) of this subsection, “eligible employee” does not include an individual:

(A) Engaged as an independent contractor;

(B) Whose periods of employment in emergency work are on an intermittent or irregular basis; or

(C) Who is employed on less than a half-time basis unless the individual is employed in a position classified as a job-sharing position or unless the individual is defined as eligible under rules of the Oregon Educators Benefit Board or under a collective bargaining agreement.

(5) “Family member” means an eligible employee’s spouse or domestic partner and any unmarried child or stepchild of an eligible employee within age limits and other conditions imposed by the Oregon Educators Benefit Board with regard to unmarried children or stepchildren.

**(6) “Health benefit plan” has the meaning given that term in ORS 743B.005.**

~~[(6)]~~ (7) “Local government” means any city, county or special district in this state.

~~[(7)]~~ (8) “Payroll disbursing officer” means the officer or official authorized to disburse moneys in payment of salaries and wages of officers and employees of a district or a local government.

~~[(8)]~~ (9) “Premium” means the monthly or other periodic charge, including administrative fees of the Oregon Educators Benefit Board, for a benefit plan.

**SECTION 26.** ORS 243.862 is amended to read:

243.862. (1) There is established in the Oregon Health Authority an Oregon Educators Benefit Board consisting of at least ~~10~~ **12** members appointed by the Governor, including:

(a) Two members representing district boards;

(b) Two members representing district management;

(c) Two members representing nonmanagement district employees from the largest labor organization representing district employees;

(d) One member representing nonmanagement district employees from the second largest labor organization representing district employees;

(e) One member representing nonmanagement district employees who are not represented by labor organizations described in paragraphs (c) and (d) of this subsection; *[and]*

(f) Two members with expertise in health policy or risk management~~].~~; **and**

**(g) Two members, one representing local government management employees and one representing local government nonmanagement employees.**

*[(2)(a) If the governing body of a local government elects to participate in a benefit plan offered by the board, in addition to the members appointed under subsection (1) of this section, the Governor shall appoint two members, one of whom represents local government management and one of whom represents local government nonmanagement employees.]*

*[(b)]* **(2)(a)** After the appointment of members under *[paragraph (a) of this subsection]* **subsection (1)(g) of this section**, if the number of eligible employees of a local government or local governments enrolled in a benefit plan or plans offered by the board exceeds 25,000, the Governor shall appoint two additional members, one *[of whom represents]* **representing** local government management **employees** and one *[of whom represents]* **representing** local government nonmanagement employees.

*[(c)]* **(b)** After the appointment of members under *[paragraphs (a) and (b)]* **paragraph (a)** of this subsection, for every additional 25,000 eligible employees of a local government or local governments enrolled in a benefit plan or plans offered by the board, the Governor shall appoint one additional member representing local government management **employees** and one ad-



ditional member representing local government nonmanagement employees.

(3) A maximum of three members may be appointed **by the Governor** to represent local government management **under subsections (1) and (2) of this section** and a maximum of three members may be appointed **by the Governor** to represent local government nonmanagement employees.

(4) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor to take office upon the date of that expiration. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(5) A member of the board is not entitled to compensation, but may be reimbursed from funds available to the board for actual and necessary travel and other expenses incurred by the member in the performance of the member's official duties in the manner and amount provided in ORS 292.495.

(6) The board shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the board determines.

(7) A majority of the members of the board constitutes a quorum for the transaction of business.

(8) The board shall meet at times and places specified by the call of the chairperson or of a majority of the members of the board.

(9) Appointments of members to the board by the Governor are subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

**SECTION 27.** ORS 243.864 is amended to read:

243.864. (1) The Oregon Educators Benefit Board:

(a) Shall adopt rules for the conduct of its business and for carrying out ORS 243.879; and

(b) May adopt rules not inconsistent with ORS 243.860 to 243.886 to determine the terms and conditions of eligible employee participation in and

1 coverage under benefit plans.

2 (2) The board shall study all matters connected with the provision of ad-  
3 equate benefit plan coverage for eligible employees on the best basis possible  
4 with regard to the welfare of the employees and affordability for the districts  
5 and local governments. The board shall design benefits, prepare specifica-  
6 tions, analyze carrier responses to advertisements for bids and award con-  
7 tracts. Contracts shall be signed by the chairperson on behalf of the board.

8 (3) In carrying out its duties under subsections (1) and (2) of this section,  
9 the goal of the board is to provide high-quality health, dental and other  
10 benefit plans for eligible employees at a cost affordable to the districts and  
11 local governments, the employees and the taxpayers of Oregon.

12 (4) The board shall prepare specifications, invite bids and take actions  
13 necessary to award contracts *[for]* **to carriers to provide health benefit**  
14 **plans and benefit plans for** dental *[benefit plan]*, **long term care and vi-**  
15 **sion** coverage *[of]* **to** eligible employees. **Health benefit plan coverage**  
16 **must be** in accordance with the criteria set forth in ORS 243.866 (1). The  
17 Public Contracting Code does not apply to contracts for benefit plans pro-  
18 vided under ORS 243.860 to 243.886. The board may not exclude from compe-  
19 tition to contract for a benefit plan an Oregon carrier solely because the  
20 carrier does not serve all counties in Oregon.

21 (5) The board may retain consultants, brokers or other advisory personnel  
22 when necessary and shall employ such personnel as are required to perform  
23 the functions of the board.

24 **SECTION 28.** ORS 243.866, as amended by section 5, chapter 389, Oregon  
25 Laws 2015, is amended to read:

26 243.866. (1) **Notwithstanding any other benefit plan contracted for**  
27 **and offered by** the Oregon Educators Benefit Board, **the board** shall con-  
28 tract *[for benefit plans best designed to meet the needs and provide for the*  
29 *welfare of eligible employees, the districts and local governments. In consider-*  
30 *ing whether to enter into a contract for a benefit plan,]* **with a carrier to**  
31 **provide a group of health benefit plans selected by the board from the**

plans that are offered by the carrier. In selecting the plans to be offered to eligible employees by the carrier, the board shall select health benefit plans that provide minimum essential coverage, as defined in 26 U.S.C. 5000A, and shall place emphasis on:

- (a) Employee choice among high-quality plans;
- [(b) Encouragement of a competitive marketplace;]
- [(c)] (b) Plan performance and information;
- [(d) District and local government flexibility in plan design and contracting;]
- [(e)] (c) Quality customer service;
- [(f)] (d) Creativity and innovation;
- [(g) Plan benefits as part of total employee compensation;]
- [(h)] (e) Improvement of employee health; and
- [(i)] (f) Health outcome and quality measures, described in ORS 413.017 (4), that are reported by the plan.

(2) The board may approve more than one carrier for *[each type of benefit plan]* health benefit plans offered, but the board shall limit the number of carriers to a number consistent with adequate service to eligible employees and family members.

(3) When appropriate, the board shall provide options under which an eligible employee may arrange coverage for family members under a health benefit plan.

(4) A district or a local government shall provide that payroll deductions for health benefit plan costs that are not payable by the district or local government may be made upon receipt of a signed authorization from the employee indicating an election to participate in the health benefit plan or plans selected and allowing the deduction of those costs from the employee's pay.

(5) In developing any health benefit plan, the board may provide an option of additional coverage for eligible employees and family members at an additional premium.

(6) The board shall adopt rules providing that transfer of enrollment from one **health** benefit plan to another is open to all eligible employees and family members. Because of the special problems that may arise involving acceptable provider-patient relations between a particular panel of providers and a particular eligible employee or family member under a *[comprehensive group practice]* **health** benefit plan, the board shall provide a procedure under which any eligible employee may apply at any time to substitute *[another benefit plan for participation in a comprehensive group practice benefit plan]* **one health benefit plan for another.**

(7) An eligible employee who is retired is not required to participate in a health benefit plan offered under this section in order to obtain dental benefit plan coverage. The board shall establish by rule standards of eligibility for retired employees to participate in a dental benefit plan.

(8) The board shall evaluate a **health** benefit plan that serves a limited geographic region of this state according to the criteria described in subsection (1) of this section.

**(9) Employees must have the opportunity to select health benefit plans using an Internet portal.**

**SECTION 29.** ORS 243.867 is amended to read:

243.867. (1) The governing body of a local government *[may elect to]* **shall** participate in a **health** benefit plan *[offered by the Oregon Educators Benefit Board]* **described in ORS 243.866 that is paid for in the manner prescribed in section 24 of this 2016 Act.**

(2) The decision of the governing body of a local government to participate in a benefit plan offered by the board **other than a health benefit plan described in ORS 243.866** is in the discretion of the governing body of the local government and is a permissive subject of collective bargaining.

*[(3) If the governing body of a local government elects to offer a benefit plan through the board, the governing body may elect one time only to provide alternative group health and welfare insurance benefit plans to eligible employees if:]*

1     *[(a) The alternative benefit plan is offered through the health insurance*  
2     *exchange under ORS 741.310 (1)(b); and]*

3     *[(b) The participation of the local government is not precluded under fed-*  
4     *eral law on or after January 1, 2017.]*

5     **SECTION 30.** ORS 243.876 is amended to read:

6     243.876. (1) Upon receipt of a request in writing from an eligible employee,  
7     the payroll disbursing officer may deduct from the salary or wages of the  
8     employee, **or from the employee's allotment described in section 24 of**  
9     **this 2016 Act**, an amount of money indicated in the request for payment of  
10    the amount set forth in benefit plans selected by the employee for the em-  
11    ployee and family members.

12    (2) Amounts deducted under subsection (1) of this section shall be paid  
13    over promptly[:]

14    *[(a)]* to the Oregon Educators Benefit Board, the carriers or the persons  
15    responsible for payment of premiums to carriers in accordance with the  
16    terms of contracts for benefit plans.[: *or]*

17    *[(b) With respect to self-insurance benefits, in accordance with rules and*  
18    *procedures adopted by the board.]*

19    (3) The payroll disbursing officer shall submit reports to the board re-  
20    garding claims experience and benefit plan coverage for eligible employees  
21    as the board considers desirable.

22    **SECTION 31.** ORS 243.878 is amended to read:

23    243.878. (1) The Oregon Educators Benefit Board may employ whatever  
24    means are reasonably necessary to carry out the purposes of ORS 243.860 to  
25    243.886. This authority includes, but is not limited to, authority to [*self-*  
26    *insure and to]* seek clarification, amendment, modification, suspension or  
27    termination of any agreement or contract.

28    (2) Upon providing specific notice in writing to the carrier, the affected  
29    labor organization or organizations, the districts, the local governments, the  
30    Oregon Health Authority and the affected eligible employees, and after af-  
31    fording opportunity for a public hearing on the issues that may be involved,

the board may enter an order withdrawing approval of a benefit plan. Thirty days after entry of the order, the board shall terminate all withholding authorizations of eligible employees and terminate all board-approved participation in the plan.

(3) The board by order may terminate the participation of a district or a local government in a benefit plan if, within three months, the district or local government fails to perform an action required by ORS 243.860 to 243.886 or by board rule.

**SECTION 32.** ORS 243.879 is amended to read:

243.879. (1) A hospital that provides services or supplies under a **health** benefit plan offered by the Oregon Educators Benefit Board shall be reimbursed using the methodology prescribed by the Oregon Health Authority under ORS 442.392 and may not be reimbursed for each service or supply provided.

(2) This section applies to hospital payments made by a carrier under a contract with the board [*and to hospital payments made under a self-insurance program administered by a third party administrator on behalf of the board*] **under ORS 243.866.**

(3) This section does not apply to reimbursements paid by a carrier [*or third party administrator*] to a hospital that is not subject to the methodology prescribed by the authority under ORS 442.392.

**SECTION 33.** ORS 243.884 is amended to read:

243.884. (1) There is created the Oregon Educators Revolving Fund, separate and distinct from the General Fund. Moneys in the Oregon Educators Revolving Fund are continuously appropriated to the Oregon Educators Benefit Board to cover the board's expenses incurred in connection with the administration of ORS 243.860 to 243.886. Moneys in the Oregon Educators Revolving Fund may be retained for limited periods of time as established by the board by rule. Among other purposes, the board may retain the funds to pay premiums, control expenditures[,] **and** stabilize premiums [*and self-insure*]. The board may establish subaccounts within the Oregon Educators

Revolving Fund.

(2) **Except for moneys that are allotted to employees under section 24 of this 2016 Act**, the following moneys shall be paid into the Oregon Educators Revolving Fund:

(a) All unused employer contributions for benefit plans;

(b) All refunds, dividends, unused premiums and other payments attributable to an employee contribution or employer contribution made from a carrier that has provided benefit plans administered by the board; and

(c) All interest earned on the moneys in the fund.

**SECTION 34.** ORS 741.310 is amended to read:

741.310. (1)(a) Individuals and families may purchase qualified health plans through the health insurance exchange.

*[(b) The following groups may purchase qualified health plans through the Small Business Health Options Program:]*

*[(A)]* (b) Employers with no more than 100 employees **may purchase qualified health plans through the Small Business Health Options Program.***[,] and]*

*[(B) Districts and eligible employees of districts that are subject to ORS 243.886, unless their participation is precluded by federal law.]*

(2)(a) Only individuals who purchase health plans through the exchange may be eligible to receive premium tax credits under section 36B of the Internal Revenue Code and reduced cost-sharing under 42 U.S.C. 18071.

(b) Only employers that purchase health plans through the SHOP may be eligible to receive small employer health insurance credits under section 45R of the Internal Revenue Code.

(3) Only an insurer that has a certificate of authority to transact insurance in this state and that meets applicable federal requirements for participating in the exchange may offer a qualified health plan through the exchange. Any qualified health plan must be certified under ORS 741.002. Coordinated care organizations that do not have a certificate of authority to transact insurance may serve only medical assistance recipients through

1 the exchange and may not offer qualified health plans.

2 (4)(a) The Department of Consumer and Business Services shall adopt by  
3 rule uniform requirements, standards and criteria for the certification of  
4 qualified health plans, including requirements that a qualified health plan  
5 provide, at a minimum, essential health benefits and have acceptable con-  
6 sumer and provider satisfaction ratings.

7 (b) The department may limit the number of qualified health plans that  
8 may be offered through the exchange as long as the same limit applies to all  
9 insurers.

10 (5) The department shall certify as qualified a dental only health plan as  
11 permitted by federal law.

12 (6) The department, in collaboration with the Oregon Health Authority  
13 and the Department of Human Services, shall coordinate the application and  
14 enrollment processes for the exchange and the state medical assistance pro-  
15 gram.

16 (7) The Department of Consumer and Business Services may establish risk  
17 mediation programs within the exchange.

18 (8) The department shall establish by rule a process for certifying insur-  
19 ance producers to facilitate the transaction of insurance through the ex-  
20 change, in accordance with federal standards and policies.

21 (9) The department shall ensure that an insurer charges the same premi-  
22 ums for plans sold through the exchange as for identical plans sold outside  
23 of the exchange.

24 (10) The department is authorized to enter into contracts for the per-  
25 formance of the department's duties, functions or operations with respect to  
26 the exchange, including but not limited to contracting with:

27 (a) Insurers that meet the requirements of subsections (3) and (4) of this  
28 section, to offer qualified health plans through the exchange; and

29 (b) Navigators, in-person assisters and application counselors certified by  
30 the department under ORS 741.002.

31 [(11)(a) *The department shall consult with stakeholders, including but not*



*limited to representatives of school administrators, school board members, school employees and the Oregon Educators Benefit Board, regarding the plans that may be offered through the exchange to districts and eligible employees of districts under subsection (1)(b)(B) of this section and the insurers that may offer the plans.]*

*[(b) The board and the department shall each adopt rules to ensure that:]*

*[(A) Any plan offered under subsection (1)(b)(B) of this section is underwritten by an insurer using a single risk pool composed of all eligible employees who are enrolled or who will be enrolled in the plan both through the exchange and by the board; and]*

*[(B) In every plan offered under subsection (1)(b)(B) of this section, the coverage is comparable to plans offered by the board.]*

*[(12)] (11) The department is authorized to apply for and accept federal grants, other federal funds and grants from nongovernmental organizations for purposes of developing, implementing and administering the exchange. Moneys received under this subsection shall be deposited in the Health Insurance Exchange Fund.*

## CONFORMING AMENDMENTS

**SECTION 35.** ORS 656.247 is amended to read:

656.247. (1) Except for medical services provided to workers subject to ORS 656.245 (4)(b)(B), payment for medical services provided to a subject worker in response to an initial claim for a work-related injury or occupational disease from the date of the employer's notice or knowledge of the claim until the date the claim is accepted or denied shall be payable in accordance with subsection (4) of this section.

(2) Notwithstanding subsection (1) of this section, no payment shall be due from the insurer or self-insured employer if the insurer or self-insured employer denies the claim within 14 days of the date of the employer's notice or knowledge of the claim.

1 (3)(a) Disputes about whether the medical services provided to treat the  
2 claimed work-related injury or occupational disease under subsection (1) of  
3 this section are excessive, inappropriate or ineffectual or are consistent with  
4 the criteria in subsection (1) of this section shall be resolved by the Director  
5 of the Department of Consumer and Business Services. The director may or-  
6 der a medical review by a physician or panel of physicians pursuant to ORS  
7 656.327 (3) to aid in the review of such services. If a party is dissatisfied  
8 with the order of the director, the dissatisfied party may request review un-  
9 der ORS 656.704 within 60 days of the date of the director's order. The order  
10 of the director may be modified only if it is not supported by substantial  
11 evidence in the record or if it reflects an error of law.

12 (b) Disputes about the amount of the fee or nonpayment of bills for med-  
13 ical treatment and services pursuant to this section shall be resolved pursu-  
14 ant to ORS 656.248.

15 (c) Except as provided in subsection (2) of this section, when a claim is  
16 settled pursuant to ORS 656.289 (4), all medical services payable under sub-  
17 section (1) of this section that are provided on or before the date of denial  
18 shall be paid in accordance with subsection (4) of this section. The insurer  
19 or self-insured employer shall notify each affected service provider of the  
20 results of the settlement.

21 (4)(a) If the claim in which medical services are provided under subsection  
22 (1) of this section has not been accepted or denied and a health benefit plan  
23 provides benefits to the worker, the health benefit plan shall expedite pre-  
24 authorizations and guarantee payment of expenses for medical services pro-  
25 vided prior to acceptance or denial of the claim according to the terms,  
26 conditions and benefits of the plan.

27 (b) If the claim for which medical services are provided under subsection  
28 (1) of this section is accepted, after the claim has been accepted the insurer  
29 or self-insured employer shall pay for the medical services provided for ac-  
30 cepted conditions, including reimbursements for medical expenses,  
31 copayments and deductibles paid by the injured worker or the health benefit

1 plan. Payments made under this subsection are subject to the fee schedules,  
2 limitations and conditions of this chapter.

3 (c) If the claim for which medical services are provided under subsection  
4 (1) of this section is denied and a health benefit plan provides benefits to the  
5 worker, after the claim is denied the health benefit plan shall pay for med-  
6 ical services provided according to the terms, conditions and benefits of the  
7 plan.

8 (d) As used in this subsection, “health benefit plan” has the meaning  
9 given that term in ORS 743B.005 and also means [*self-insured benefit plans*  
10 *and*] health benefit plans offered by the Oregon Educators Benefit Board and  
11 the Public Employees’ Benefit Board.

12 **SECTION 36.** ORS 741.300 is amended to read:

13 741.300. As used in ORS 741.001 to 741.540:

14 (1) “Coordinated care organization” has the meaning given that term in  
15 ORS 414.025.

16 (2) “Essential health benefits” has the meaning given that term in ORS  
17 731.097.

18 (3) “Health benefit plan” has the meaning given that term in ORS  
19 743B.005.

20 (4) “Health care service contractor” has the meaning given that term in  
21 ORS 750.005.

22 (5) “Health insurance” has the meaning given that term in ORS 731.162,  
23 excluding disability income insurance.

24 (6) “Health insurance exchange” or “exchange” means an American  
25 Health Benefit Exchange as described in 42 U.S.C. 18031, 18032, 18033 and  
26 18041.

27 (7) “Health plan” means health insurance, a health benefit plan or health  
28 care coverage offered by an insurer.

29 (8) “Insurer” means an insurer as defined in ORS 731.106 that offers  
30 health insurance, a health care service contractor, a prepaid managed care  
31 health services organization or a coordinated care organization.

(9) “Insurance producer” has the meaning given that term in ORS 731.104.

(10) “Prepaid managed care health services organization” has the meaning given that term in ORS 414.025.

(11) “State program” means a program providing medical assistance, as defined in ORS 414.025, and any *[self-insured health benefit plan or]* health plan offered to employees by the Public Employees’ Benefit Board or the Oregon Educators Benefit Board.

(12) “Qualified health plan” means a health benefit plan available for purchase through the health insurance exchange.

(13) “Small Business Health Options Program” or “SHOP” means a health insurance exchange for small employers as described in 42 U.S.C. 18031.

**SECTION 37.** ORS 743A.058 is amended to read:

743A.058. (1) As used in this section:

(a) “Health benefit plan” includes[:]

[(A)] a health benefit plan as defined in ORS 743B.005[; and].

[(B) A *self-insured health plan offered through the Public Employees’ Benefit Board or the Oregon Educators Benefit Board.*]

(b) “Health professional” means a person licensed, certified or registered in this state to provide health care services or supplies.

(c) “Originating site” means the physical location of the patient.

(2) A health benefit plan must provide coverage of a health service that is provided using synchronous two-way interactive video conferencing if:

(a) The plan provides coverage of the health service when provided in person by a health professional;

(b) The health service is medically necessary;

(c) The health service is determined to be safely and effectively provided using synchronous two-way interactive video conferencing according to generally accepted health care practices and standards; and

(d) The application and technology used to provide the health service meet all standards required by state and federal laws governing the privacy and security of protected health information.

(3) A health benefit plan may not distinguish between rural and urban originating sites in providing coverage under subsection (2) of this section.

(4) The coverage under subsection (2) of this section is subject to:

(a) The terms and conditions of the health benefit plan; and

(b) The reimbursement specified in the contract between the plan and the health professional.

(5) This section does not require a health benefit plan to reimburse a health professional:

(a) For a health service that is not a covered benefit under the plan; or

(b) Who has not contracted with the plan.

**SECTION 38.** ORS 743B.601, as amended by section 1, chapter 800, Oregon Laws 2015, is amended to read:

743B.601. (1) As used in this section:

(a) “Health plan” means:

(A) A “health benefit plan” as defined in ORS 743B.005; and

(B) A self-insured health plan offered by [*the Public Employees’ Benefit Board, the Oregon Educators Benefit Board or*] the Oregon Health and Science University.

(b) “Synchronization policy” means a procedure for aligning the refill dates of a patient’s prescription drugs so that drugs that are refilled at the same frequency may be refilled concurrently.

(2) A health plan that includes prescription drug coverage shall implement a synchronization policy for the dispensing of prescription drugs to the plan’s enrollees.

(3) A health plan shall reimburse the cost of prescription drugs dispensed in accordance with the plan’s synchronization policy.

(4) If a drug is dispensed in less than a 30-day supply for the purpose of synchronizing a patient’s prescription drug refills, a health plan shall:

(a) Prorate the copayment; or

(b) Adjust the copayment using a method approved by the Department of Consumer and Business Services.

1 (5) A health plan shall fully reimburse the dispensing fee for partially  
2 filled or refilled prescription drugs.

3 (6) This section does not apply to prescription drugs that:

4 (a) Are in unit-of-use packaging for which synchronization is not possible;

5 (b) Are controlled substances; or

6 (c) Have been identified by the United States Drug Enforcement Admin-  
7 istration as having a high risk of diversion.

8 (7) The coverage required by this section may be limited by formulary  
9 restrictions applied to a prescription drug by a health plan.

10 (8)(a) This section does not apply to a prepaid group practice health plan  
11 with at least 200,000 enrollees in this state.

12 (b) As used in this subsection, “prepaid group practice health plan” means  
13 a health care service contractor that provides physician services to its  
14 enrollees through an integrated health care delivery system using, primarily,  
15 a single group of physicians contracted on a prepaid, capitated basis.

16 **SECTION 39.** ORS 743B.810 is amended to read:

17 743B.810. (1) A health benefit plan may not exclude, and shall expedite  
18 preauthorizations required for, work-related injuries or occupational diseases  
19 if:

20 (a) The injured worker is covered by workers’ compensation insurance  
21 and the health benefit plan; and

22 (b) The injured worker has submitted a workers’ compensation claim for  
23 the work-related injury or occupational disease that has not been accepted  
24 or denied by the workers’ compensation carrier.

25 (2) A health benefit plan subject to this section shall guarantee payment  
26 for preauthorized medical services to the provider of those medical services  
27 according to the terms, conditions and benefits of the plan if the claim is  
28 found not to be a compensable workers’ compensation claim.

29 (3) As used in this section, “health benefit plan” has the meaning given  
30 that term in ORS 743B.005 and also means [*self-insured benefit plans and*]  
31 health benefit plans provided by the Oregon Educators Benefit Board and the

Public Employees' Benefit Board.

(4) The provisions of ORS 743A.001 do not apply to this section.

## REPEALS

**SECTION 40. ORS 243.142, 243.215 and 243.886 are repealed.**

## APPLICABILITY AND OPERATIVE DATES

**SECTION 41. The amendments to ORS 243.650 by section 22 of this 2016 Act apply to collective bargaining agreements entered into on or after the effective date of this 2016 Act.**

**SECTION 42. Sections 1, 4 to 6, 23 and 24 of this 2016 Act, the amendments to ORS 243.105, 243.107, 243.125, 243.129, 243.135, 243.145, 243.160, 243.163, 243.167, 243.252, 243.256, 243.285, 243.302, 243.650, 243.860, 243.864, 243.866, 243.867, 243.876, 243.878, 243.879, 243.884, 292.051, 656.247, 741.300, 741.310, 743A.058, 743B.601 and 743B.810 by sections 8 to 22, 25 and 27 to 39 of this 2016 Act and the repeal of ORS 243.142, 243.215 and 243.886 by section 40 of this 2016 Act become operative on January 1, 2018.**

**SECTION 43. The Public Employees' Benefit Board and the Oregon Educators Benefit Board may take any action before the operative date specified in section 42 of this 2016 Act that is necessary for the Public Employees' Benefit Board or the Oregon Educators Benefit Board to exercise, on and after the operative date specified in section 42 of this 2016 Act, all of the duties, functions and powers conferred on the Public Employees' Benefit Board or the Oregon Educators Benefit Board by sections 1, 5 and 24 of this 2016 Act and the amendments to ORS 243.105, 243.107, 243.125, 243.129, 243.135, 243.145, 243.160, 243.163, 243.167, 243.252, 243.256, 243.285, 243.302, 243.650, 243.860, 243.864, 243.866, 243.867, 243.876, 243.878, 243.879, 243.884, 292.051, 656.247, 741.300,**

1 **741.310, 743A.058, 743B.601 and 743B.810 by sections 8 to 22, 25 and 27 to**  
2 **39 of this 2016 Act.**

3  
4 **CAPTIONS**

5  
6 **SECTION 44. The unit captions used in this 2016 Act are provided**  
7 **only for the convenience of the reader and do not become part of the**  
8 **statutory law of this state or express any legislative intent in the**  
9 **enactment of this 2016 Act.**

10 \_\_\_\_\_