

CHAPTER 51

AN ACT

HB 2081

Relating to health care costs; creating new provisions; and amending ORS 442.385, 442.386 and 442.993 and sections 3, 4 and 5, chapter 560, Oregon Laws 2019.

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

SECTION 1. ORS 442.385 is amended to read: 442.385. As used in this section and ORS 442.386:

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

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

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

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

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

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

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

[(7)] (6) "Payer" means:

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

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

(c) A third party administrator; and

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

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

[(9)] (8)(a) "Total health expenditures" means all health care expenditures *[in]* **on behalf of residents**

of this state by public and private sources, including:

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

[(b)] (B) All payments to providers other than payments described in *[paragraph (a)]* **subparagraph (A) of this *[subsection]* paragraph;**

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

[(d)] (D) The net cost of private health insurance.

(b) "Total health expenditures" may include expenditures for care provided to out-of-state residents by in-state providers to the extent practicable.

SECTION 2. ORS 442.386 is amended to read:

442.386. (1) The Legislative Assembly intends to establish a health care cost growth *[benchmark,]* **target**, for all providers and payers, to:

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

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

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

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

(3) The health care cost growth *[benchmark]* **target** must:

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

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

(c) Use established economic indicators; and

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

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

(a) Statewide;

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

(c) Per capita.

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

- (6) Annually, the program shall:
- (a) Hold public hearings on the growth in total health expenditures in relation to the health care cost growth in the previous calendar year;
- (b) Publish a report on health care costs and spending trends that includes:
- (A) Factors impacting costs and spending; and
- (B) Recommendations for strategies to improve the efficiency of the health care system; and
- (c) For providers and payers for which health care cost growth in the previous calendar year exceeded the health care cost growth [*benchmark*] **target:**
- (A) Analyze the cause for exceeding the health care cost growth [*benchmark*] **target**; and
- (B) [*If appropriate,*] Require the provider or payer to **develop and** undertake a performance improvement [*action*] plan.
- (7)(a) The authority shall adopt by rule criteria for waiving the requirement for a provider or payer to undertake a performance improvement plan, if necessitated by unforeseen market conditions or other equitable factors.**
- (b) The authority shall collaborate with a provider or payer that is required to develop and undertake a performance improvement plan by:**
- (A) **Providing a template for performance improvement plans, guidelines and a time frame for submission of the plan;**
- (B) **Providing technical assistance such as webinars, office hours, consultation with technical assistance providers or staff, or other guidance; and**
- (C) **Establishing a contact at the authority who can work with the provider or payer in developing the performance improvement plan.**
- (8) A performance improvement plan must:**
- (a) **Identify key cost drivers and include concrete steps a provider or payer will take to address the cost drivers;**
- (b) **Identify an appropriate time frame by which a provider or payer will reduce the cost drivers and be subject to an evaluation by the authority; and**
- (c) **Have clear measurements of success.**
- (9) The authority shall adopt by rule criteria for imposing a financial penalty on any provider or payer that exceeds the cost growth target without reasonable cause in three out of five calendar years or on any provider or payer that does not participate in the program. The criteria must be based on the degree to which the provider or payer exceeded the target and other factors, including but not limited to:**
- (a) **The size of the provider or payer organization;**
- (b) **The good faith efforts of the provider or payer to address health care costs;**
- (c) **The provider's or payer's cooperation with the authority or the department;**
- (d) **Overlapping penalties that may be imposed for failing to meet the target, such as requirements relating to medical loss ratios; and**

(e) A provider's or payer's overall performance in reducing cost across all markets served by the provider or payer.

SECTION 3. Section 3, chapter 560, Oregon Laws 2019, is amended to read:

Sec. 3. (1) The Health Care Cost Growth [*Benchmark*] **Target** Implementation Committee is established under the direction of the Oregon Health Policy Board.

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

- (a) The Director of the Oregon Health Authority or the director's designee;
- (b) The Director of the Department of Consumer and Business Services or the director's designee;
- (c) An expert in health care financing and administration appointed by the Director of the Oregon Health Authority;
- (d) An expert in health economics appointed by the Director of the Oregon Health Authority;
- (e) At least one insurance broker appointed by the Director of the Department of Consumer and Business Services; and
- (f) No more than 13 members appointed by the Governor to represent:
- (A) The Health Insurance Exchange Advisory Committee created under ORS 741.004;
- (B) The division of the Oregon Department of Administrative Services that serves as the department's office of economic analysis;
- (C) The Oregon Health Leadership Council;
- (D) Health care systems or urban hospitals;
- (E) Rural hospitals;
- (F) Consumers;
- (G) Members of the business community that purchase health insurance for their employees;
- (H) Licensed and certified health care professionals; and
- (I) The insurance industry.
- (3) The committee shall design an implementation plan[, *in accordance with section 4 of this 2019 Act*] for the Health Care Cost Growth [*Benchmark*] **Target** program established in [*section 2 of this 2019 Act*] **ORS 442.386.**

(4) A majority of the members of the committee constitutes a quorum for the transaction of business.

(5) Official action by the committee requires the approval of a majority of the members of the committee.

(6) The Governor shall select one member to serve as chairperson.

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

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

(9) The committee may adopt rules necessary for the operation of the committee.

(10) The Oregon Health Authority shall provide staff support to the committee.

(11)(a) Members of the committee, other than members representing consumers, are not entitled to compensation or reimbursement for expenses and serve as volunteers on the committee.

(b) Members representing consumers are not entitled to compensation but may be reimbursed from funds available to the authority for actual and necessary travel and other expenses incurred by the members in the performance of official duties in the manner and amount provided in ORS 292.495.

(12) All agencies of state government, as defined in ORS 174.111, are directed to assist the committee in the performance of the duties of the committee and, to the extent permitted by laws relating to confidentiality, to furnish information and advice that the members of the committee consider necessary to perform their duties.

SECTION 4. Section 4, chapter 560, Oregon Laws 2019, is amended to read:

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

(a) “Health care” has the meaning given that term in [section 1 of this 2019 Act] **ORS 442.385**.

(b) “Health care cost growth” has the meaning given that term in [section 1 of this 2019 Act] **ORS 442.385**.

(c) “Health care cost growth [benchmark] target” [has the meaning given that term in section 1 of this 2019 Act] **means the health care cost growth target established under ORS 442.386**.

(d) “Health care entity” has the meaning given that term in [section 1 of this 2019 Act] **ORS 442.385**.

(e) “Health insurance” has the meaning given that term in ORS 731.162.

(f) “Payer” has the meaning given that term in [section 1 of this 2019 Act] **ORS 442.385**.

(g) “Provider” has the meaning given that term in [section 1 of this 2019 Act] **ORS 442.385**.

(h) “Total health expenditures” has the meaning given that term in [section 1 of this 2019 Act] **ORS 442.385**.

(2) The Health Care Cost Growth [Benchmark] Target Implementation Committee, in designing the implementation plan for the Health Care Cost Growth [Benchmark] Target program, shall:

(a) Recommend the governance structure for the program.

(b) Recommend a methodology to establish the health care cost growth [benchmark] target and the economic indicators to be used in establishing the [benchmark] target.

(c) Establish the initial [benchmark] target and specify the frequency and manner in which the [benchmark] target should be reevaluated and updated.

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

- (A) Measure the [benchmark] target;
- (B) Validate the [benchmark] target; and
- (C) Identify the health care cost growth of an institutional provider or provider group and of pro-

viders that are part of the institutional provider or provider group.

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

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

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

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

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

(i) Recommend a system for identifying:

(A) Unjustified variations in prices or in health care cost growth; and

(B) The factors that contribute to the unjustified variations.

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

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

(A) Measures to ensure compliance with reporting requirements;

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

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

(i) The medical assistance program;

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

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

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

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

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

(A) Publication of an annual health care cost trends report and analyses on the statewide health care cost growth [benchmark] target, total health

expenditures and spending by each type of health care entity;

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

(i) Services provided, sorted by provider organization;

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

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

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

(C) Frequency and format of public hearings conducted in accordance with [section 2 (6)(a) of this 2019 Act] **ORS 442.386 (6)(a)**;

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

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

(F) Reporting to the Legislative Assembly.

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

SECTION 5. Section 5, chapter 560, Oregon Laws 2019, is amended to read:

Sec. 5. (1) No later than September 15, 2020, the Health Care Cost Growth [Benchmark] **Target** Implementation Committee shall report to the Oregon Health Policy Board for approval, and to the interim committees of the Legislative Assembly related to health, the committee's recommendations under section 4, [of this 2019 Act] **chapter 560, Oregon Laws 2019**. The report shall include a legislative concept for carrying out the provisions of section 4 (2)(k)(B), [of this 2019 Act] **chapter 560, Oregon Laws 2019**, regarding the imposition of performance improvement [action] plans or other escalating enforcement actions when a provider or payer fails to remain at or below the health care cost growth [benchmark] **target**.

(2) The Oregon Health Authority and the Department of Consumer and Business Services shall implement the recommendations of the committee, *except for the provisions in the legislative concept de-*

scribed in subsection (1) of this section, upon approval by the board].

SECTION 6. ORS 442.993 is amended to read:

442.993. [(1) Any reporting entity that fails to report as required in ORS 442.373 or rules of the Oregon Health Authority adopted pursuant to ORS 442.373 may be subject to a civil penalty.]

[(2)] (1) The **Oregon Health** Authority shall adopt a schedule of **civil** penalties not to exceed \$500 per day of violation, determined by the severity of the violation, **for:**

(a) **Any reporting entity that fails to report as required by ORS 442.373 or rules adopted by the authority.**

(b) **Any provider or payer that fails to report cost growth data or to develop and implement a performance improvement plan if required by ORS 442.386 or rules adopted by the authority.**

[(3)] (2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

[(4)] (3) Civil penalties imposed under this section may be remitted or mitigated upon such terms and conditions as the authority considers proper and consistent with the public health and safety.

[(5)] (4) Civil penalties incurred under any law of this state are not allowable as costs for the purpose of rate determination or for reimbursement by a third-party payer.

(5) **Moneys collected from providers and payers described in subsection (1)(b) of this section shall be deposited in the Oregon Health Authority Fund established by ORS 413.101 and used by the authority to support programs that expand access to health care and that support populations adversely affected by high health care costs.**

SECTION 7. A financial penalty described in ORS 442.386 (9), as amended by section 2 of this 2021 Act, may be imposed no earlier than January 1, 2026, for performance by a provider or payer in meeting cost growth targets during calendar years 2021 to 2025.

Approved by the Governor May 21, 2021

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