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# 2019 LEGISLATIVE SESSION

*OPCA End of Session Report*

# OREGON PRIMARY CARE ASSOCIATION

## 2019 LEGISLATIVE SESSION

### END OF SESSION REPORT

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#### **Acknowledgements**

OPCA's policy team would like to thank Policy Committee members and our OPCA colleagues for their hard work and responsiveness during this especially challenging session. We look forward to working with all of you as we begin the process of developing the OPCA's agenda for the 2020 legislative session. Thank you very much for your efforts. We are proud to represent the interests of Oregon's community health centers.

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# 2019 SESSION

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## Legislative Dynamics

The 2019 Legislative Session came to a close on Sunday, June 30, with just hours to spare before the midnight constitutional deadline. While each legislative session brings unique challenges and opportunities, this session was marked by divisive partisanship that could have far-reaching implications for sessions to come.

Democratic supermajorities in both chambers (which is a significant shift after the 2018 midterm elections) meant that the Democrats had the votes needed to pass their priorities (including education funding and climate change) without a single Republican vote. Gov. Kate Brown's priorities and budget also shaped the dynamics of session and included decreasing money in politics and improving voter access, increasing efficiency and reducing waste in government, affordability of housing, health care, the opioid epidemic, environmental and climate protections, and a \$2 billion investment in education. With limited recourse in this Democratic-led Legislature, the session saw not one, but two, Republican walkouts, bringing the session to a halt both times.

## Big Issues Govern Session

The Legislature took up two major policies early in session: **HB 2010** extended the healthcare assessments approved by voters in January 2018's Measure 101 and made up a significant portion of the Oregon Health Plan budget deficit. **HB 608** revisited Oregon's statewide rent stabilization proposal in addition to preventing rent spikes and no-cause eviction. Both of these were priorities for OPCA; the speed at which these bills progressed through the chambers was unprecedented, with both bills on the Governor's desk just 45 days into the 160-day session.

As session progressed and legislators worked through some 2,768 bills, tensions between the two parties continued to escalate and came to a head in early May when **HB 3427**, known as the Student Success Act, came up for a vote on the Senate floor. The bill sought to accomplish the Governor's chief priority—injecting \$2 billion into Oregon schools. HB 3427 was the result of over a year's worth of public input punctuated by members of the Joint Committee on Student Success visiting school districts across the state. The package divides roughly half the new money among districts based on enrollment with the remaining dollars dedicated to early learning and statewide initiatives to support students.

Before that vote could happen, GOP Senators staged a four-day walkout in protest of the measure. They resorted to what became known as the “nuclear option” and vacated the Capitol ahead of the scheduled vote on the package. The move denied Democrats a 20-member quorum, halting all business in the Senate.

To negotiate their return to the floor, Gov. Brown reached a deal that resulted in the demise of **HB 3063**, a bill that would have removed non-medical vaccination exemptions for public school students and **SB 978**, an omnibus gun violence prevention package. These policy bills ignited more public engagement than possibly all other proposed legislation combined. With a negotiation reached, Senate Republicans returned on May 13 for a vote on the Student Success package, which passed the chamber along party lines.

Less than two weeks prior to the constitutionally required Sine Die, news spread that Republicans were threatening the “nuclear option” once more. Earlier concerns that any negotiations with Senate Republicans would set a pattern of denying quorum came to fruition as the same Senators fled a second time. This walkout focused on their staunch opposition to **HB 2020**, the cap and invest policy which became known as the “carbon bill.” The legislation would have capped emissions to move Oregon closer to previously set climate goals, but Republicans argued the cost of the allowances would harm rural businesses. The issue rose to the national media stage as Gov. Brown, at the request of Senate leadership, deployed Oregon State Police to retrieve absent senators. (continued)

The move was largely symbolic as most had left the state, outside of Oregon Trooper jurisdiction.

After nine days, an agreement was struck to kill **HB 2020** and many of the Senate Republicans finally returned. With less than 48 hours to spare before the legislative session would be forced to adjourn, the Senate chamber began moving the remaining docket with lightning speed. The chamber voted on 105 bills on Saturday and with just hours to spare on Sunday, many of the remaining priorities were negotiated through the Senate chamber. The last policy vote taken by the Senate was on **HB 2270**, referring the \$2 per pack tobacco tax increase to the ballot. Republicans and the tobacco lobby mounted an impressive defense that pushed the policy down to the wire. Procedural requirements dictate bills must have readings on the floor in the days leading up to a vote taking place. Thus, it became clear those final two days the passage of the tax required rules be suspended, forcing Democrats to rely on Republican votes for the tax to move. This gave Republicans substantial leverage for their priorities and any investments dedicated to their districts. In the final moments of the session, Republicans granted the necessary suspension, allowing a vote to take place, ultimately passing it on a party-line vote.

## Budget

Session's final quarterly revenue forecast was released on May 15, showing Oregon's economy far exceeded expectations, providing the state with record-breaking resources. In the forecast, an additional \$870 million was made available to the Legislature to invest, resulting in about \$500 million above what a typical year would bring. This windfall means that Oregon's largest-ever kicker will take effect in 2020, anticipated to cost the state around \$1.4 billion. In spite of the positive news, concerns loomed that the exemplary boom was indicative of economic patterns ahead of a downturn. Economists who presented the forecast said this is typical of something we'd see prior to a crash. Given the uncertain future, lawmakers ended the '17-'19 biennium with about \$3.5 billion in reserves, far larger than anything Oregon has saved to date, using the unanticipated resources as a cushion for a downturn to come.

At the advent of session, Oregon's Medicaid budget faced upwards of a \$922 million gap and with health care funding a central tenet of the Governor's budget, an interim stakeholder group composed of healthcare entities and business and labor, developed a funding package to fund the Oregon Health Plan (OHP) for six years. Two of the three components—**HB 2010**, which extends taxes on hospitals and expands taxes on health insurers and **HB 2270**, which increases the tobacco tax by \$2 per pack and initiates a 65 percent of wholesale tax on vaping and e-cigarette devices, were passed. **HB 2270** was referred to Oregon voters and will be on the November 2020 ballot; both these bills ensure sustainable, long-term funding for OHP to ensure that our patients aren't losing access to coverage or care and our providers are adequately reimbursed.

**SB 5525**, the \$23.1 billion Oregon Health Authority funding bill includes \$2.7 billion in General Fund dollars to further maintain the existing level of health care benefits for the Oregon Health Plan. The bill also makes key additional General Fund investments including \$31.6 million as part of the Behavioral Health investment package; \$13 million to increase behavioral health provider rates; \$10 million for Public Health Modernization; \$2.9 million for a new voluntary universal home visiting program; and \$1.8 million to support the CCO 2.0 initiative.

## OPCA Advocacy

In the following pages of this report, you'll find a review of many (but not all!) of the bills monitored by OPCA over the course of session that relate to your work. OPCA staff, in tandem with Eames Consulting, worked diligently to elevate our member's voice in the building and strategically engaged in coalitions where our voice had the most impact. We successfully secured sustainable funding for Medicaid (**HB 2010** and **HB 2270**) and saw the passage of the Paid Family Leave Act (**HB 2005**). We advocated for strengthening vaccine provisions (through removal all non-medical exemptions for public school children (**HB 3063**), testified in support of programs for people experiencing homelessness (**HB 3349**) and for moving the primary care system into a model that pays for value-based care (**SB 765**).

*Please note: In the review that follows, unless otherwise noted, bills reviewed were passed this session and become law.*

# BILL REVIEW

## BUDGET

### SB 5525 – OHA Budget

\$23.1 billion health authority funding bill which includes \$2.7 billion in General Fund dollars to maintain the existing level of health care benefits for OHP. Additional funding includes:

- Healthcare Provider Incentive Fund remains at current service level (programs include loan forgiveness, loan repayment, Scholars for a Healthy Oregon, and rural malpractice subsidy)
- \$31.6 million as part of the Behavioral Health investment package;
- \$13 million to increase behavioral health provider rates;
- \$10 million for Public Health Modernization;
- \$2.9 million for a new voluntary universal home visiting program; and
- \$1.8 million to support the CCO 2.0 initiative.

### HB 2010 – Hospital and Insurance Tax to improve access to health care

Stakeholder workgroup developed a three-part package to secure long-term funding for the Oregon Health Plan over six years prior to session. HB 2010 was one part of that package, raising about half of the revenue necessary to fill the Medicaid funding gap. The bill renews the hospital assessment for large hospitals at 6% of net patient revenue, for which they can be reimbursed via federal Medicaid dollars and includes a lesser tax on small and rural hospitals. It also expands and increases a tax on insurance providers. It is expected to raise \$335M this biennium and \$1.8B in 2021-23. Effective Jan. 1, 2020

### HB 5005 – Permanent Supportive Housing

\$150 million in general obligation bonds are allocated to build more affordable homes for rent and for sale through the LIFT (Local Innovation and Fast Track) program. This includes \$25 million in lottery bonds to preserve and maintain access to affordable housing. This nearly doubles the amount previously earmarked for LIFT assistance. The bill also provides an additional \$50 million for permanent supportive housing (PSH). PSH is one of the key solutions to ending homelessness for people who experience health conditions, mental health issues, or addictions disorders.

## COORDINATED CARE ORGANIZATIONS (CCOs)

### SB 134 – Standardized System of Care for CCOs

Addresses the lack of transparency in how CCOs treat patients with mental illness and substance use disorder. It requires CCOs to publish behavioral health treatment options and resources online, making treatment systems more transparent and navigable. The bill also makes clear that “tribal-based practices” for mental health and substance abuse prevention are recognized and paid for by Medicaid. Effective October 2019

### SB 889 – Health Care Cost Growth Benchmark

The bill establishes a healthcare cost growth benchmark. The benchmark program, similar to a Massachusetts program, would contain cost growth across all payers and providers. Already, Oregon’s Medicaid program, Public Employees Benefit Board and Oregon Educators Benefit Board adhere to an annual growth rate of 3.4 percent, covering costs for nearly a third of the state’s population. SB 889 also establishes an implementation committee under the Health Policy Board to develop program details and requires a report back to the legislature in November 2020.

### SB 1041 – CCO Financial Transparency

Improves transparency in coordinated care organizations’ financial reporting and provides OHA with some of the regulatory tools available to Department of Consumer and Business Services (DCBS) and the Insurance Division. Effective Jan. 1, 2020

### HB 2267 – Oregon Health Authority’s CCO 2.0 Legislation

Implements statutory changes identified and approved by the Oregon Health Policy Board, which are needed to support implementation of CCO 2.0. The bill makes several changes including enhancing consumer voices in CCO decision making, creates a formal process for engaging tribes, broadens the Community Health Assessment and Community Health Improvement planning process, allows for rate adjustments after initial six months of coverage, and establishes a reinsurance program to combat the rising expense of specialty pharmaceuticals.

## MEDICAID

### HB 2270 – Tobacco Tax

The bill increases the tobacco tax by \$2 per pack, initiates a 65 percent of wholesale tax on vaping and e-cigarette devices and increases the cigar tax up to \$1. Oregon’s current cigarette tax of \$1.33 per pack would increase to \$3.33, putting it in line with California (\$2.87 per pack) and Washington (\$3.025 per pack). The proposed tax goes to voters in November 2020, so collection of the new tax wouldn’t begin until January 2021. The policy is estimated to raise \$346 million per biennium, but with the late start it would only raise \$115 million in the remaining part of this biennium. 90 percent of the funds are directed to the Oregon Health Plan and invests 10 percent in prevention, cessation, and public health programs to improve the health of our communities.

## HEALTH CARE

### SB 140 – Emergency Department Boarding Prevention

Sought to establish an emergency department boarding pilot project at OHA to determine the effectiveness of strategies for providing immediate access to appropriate treatment for individuals experiencing behavioral health crises who are being held in an emergency room due to the lack of alternative treatment options. The project would have created a task force appointed by the Governor, including experts from across the healthcare delivery system. Early in session, OPCA identified that primary care was not represented on this task force. We worked with the committee of jurisdiction to draft and ultimately adopt an amendment that added an FQHC representative to the task force. The bill proposed pilots in six hospitals, one of which is a rural/frontier hospital, with \$250,000 for each pilot. *Did not pass this session.*

### SB 250 – Affordable Care Act Alignment

Insurance Division added key provisions of the Affordable Care Act (ACA) to Oregon law to protect consumers in case the ACA, or key components, are replaced or eliminated. Among other provisions, the bill maintains protections for people with

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pre-existing conditions, clarifies that mental health parity requirements apply to individual and group plans, and enables Department of Business and Consumer Services (DCBS) to run a state-based risk adjustment program, if necessary. Effective Jan. 1, 2020.

### **SB 526 – Universal Home Visitation**

OHA to establish a voluntary, statewide universal nurse home visitation program for families with newborns, based on Family Connects, an evidence-based model used in other states. The plan requires health insurers to pay for the service with no cost sharing, coinsurance or deductibles. About half of the 40,000 babies born in the state are covered by the Oregon Health Plan. Requires health insurers to cover the \$600 price tag for these visits, and enables the state to receive the federal Medicaid match for those children.

### **SB 765 – Primary Care Spending**

Over the past four years, insurers and CCOs have reported how much they spend on primary care as a percentage of their total medical spend. In 2017, Oregon passed a law requiring insurers to increase spending on primary care to 12% of total medical expenditures. SB 765 built on this work by requiring insurers to meet value-based spending targets for primary care. The bill also sought to make the formula used to calculate that spending align with the national standard, so Oregon's primary care spending can be compared with other states. *Did not pass this session.*

### **SB 770 – Health Care for All Oregon**

Directs OHA to develop a Medicaid buy-in program targeting residents with incomes up to 600% FPL. The plan will have benefits comparable to commercial plans sold in the Marketplace with minimal cost sharing, deductibles or co-pays. The bill directs OHA to utilize the CCO delivery model and CCO provider networks. That work is to be completed by May 1, 2020. Appoints a 20-member Task Force on Universal Health Care to recommend the design of a single payer system covering everyone including those who use Medicare, Medicaid, commercial insurance and the VA.

### **HB 2220 – Vaccinations by Dentists**

Allows dentists to administer vaccinations to dental patients. Requires utilization of existing reporting mechanisms, protocols and storage requirements as well as vaccine-specific training, approved by the Board of Dentistry, prior to administration. Effective May 6, 2019.

### **HB 3063 – Non-Medical Vaccine Exemptions**

HB 3063 would have continued to allow medical exemptions for vaccinations, but eliminated religious and philosophical exemptions. The bill was amended to allow for unvaccinated students to participate in online courses but they would not be allowed to participate in school-related activities where they share physical space with other individuals. The bill passed the House and was expected to win passage in the Senate when Senate Republicans walked out in protest over the corporate activities tax (HB 3427). *Did not pass this session; including in negotiation on HB 3427.*

### **HB 3253 – Primary Care Trust**

Would have required all healthcare payers pay a portion of their total medical expenditures into a fund that in turn reimbursed primary care clinics in a singular way. Simplifies administrative side of billing for clinic and reduces overhead for insurers (no claims processing). An informational hearing was held on this ahead of the 2020 session.

## **OUD/SUD**

### **HB 2257 – Declares Substance Use Disorder a Chronic Illness**

Codifies SUD/OUD as a chronic illness with the goal of reducing the stigma often associated with this epidemic to help the public understand that treatment is an ongoing process. Directs OHA advisory group to study and implement training standards for SUD treatment. Other elements of the bill include:

- Data to healthcare providers on opioid prescribing patterns;
- Expands access to a variety of treatment options, including Medication Assisted Treatment (MAT) in communities and in the corrections system;
- Supports families, especially new mothers, struggling with addiction issues;
- Prohibits CCOs, PEBB and OEBC from requiring prior authorization for the payment of MAT;
- Better access to the Prescription Drug Monitoring Program (PDMP) for Dental Care Organization (DCO) dental directors, pharmacy directors and CCO medical directors; and
- Pilots a SUD treatment project in up to four counties for pregnant women using the Project Nurture model, which works with peer mentors and doulas to support new mothers.

The legislature approved \$2.5 million to begin this project.

## **PRESCRIPTION DRUGS**

### **SB 698 – Prescription Label Translations**

People who have limited English proficiency are twice as likely to misuse a medication. Requires pharmacies to provide translated instructions in the top 14 languages spoken in Oregon on the prescription label or informational insert. It allows the Board of Pharmacy to require other languages in the future based on demographic changes. The bill takes effect Sept. 29, 2019, to allow for rules to be adopted prior to the operative date of January 2021, which is when pharmacies will be required to comply with the law. OPCA's Policy Committee supported the bill with the extension of the operative date to allow time for health center pharmacies to implement the appropriate software.

### **HB 2185 – PBM Requirements**

Restricts how Pharmacy Benefit Managers operate by:

- Allowing patients to use a local pharmacy rather than mandating a mail order pharmacy
- Permits local pharmacies to mail prescription drugs to patients
- Defines specialty drugs
- Prevents PBMs from paying 340B pharmacies, including FQHCs and some hospital pharmacies, differently than other pharmacies
- Bans gag clauses that prohibit pharmacists from telling consumers about lower cost options

### **HB 2303 – Over-the-Counter Sales of Pseudoephedrine**

HB 2303 removes requirement that consumers have a prescription to buy pseudoephedrine, limits and requires tracking of sales using a system called NPLeX, requires pharmacists to keep the drug off shelves and under lock and key, restricts purchase to those 18 years and older, and limits the quantity a person may purchase in a 30-day period.

### **HB 2609 – Dental Directors Access to PDMP**

Allows Dental Directors to access the Prescription Drug Monitoring Database for the purposes of overseeing the operations of a dental clinic or system of dental clinics and ensuring the delivery of quality dental care within the clinic. Effective May 2, 2019.

### **HB 2689 – Drug Importation from Canada**

This bill would have made lower-priced drugs from Canada available to Oregon consumers and also required Oregon to design and, with federal approval, implement a state program to import and distribute wholesale prescription drugs from Canada. The program would ensure consumer safety on par with the U.S. drug supply chain system and significant consumer cost savings. *Did not pass this session.*

### **HB 3273 – RX “Take Back” Program**

Requires drug manufacturers to create a statewide drug take-back program that is run by a non-profit contractor. Department of Environmental Quality will oversee the program with costs covered by fees on generic and over-the-counter drug companies. Program becomes operational in February 2021.

## **SOCIAL DETERMINANTS OF HEALTH**

### **SB 608 – Tenant Protections**

Oregon became the first state to pass statewide rent stabilization and ban no-cause evictions for renters with the passage of SB 608. The bill:

- Provides protection from no-cause evictions for tenants after the first year of occupancy
- Provides statewide protection from economic evictions by limiting rent increased to more than 7 percent plus the consumer price index percentage (exempts affordable housing and new construction for the first 15 years).

### **SB 727 / HB 2837 – SNAP Double Up Food Bucks**

Both bill addressed one of the most common social determinants of health by providing matching dollars for Supplemental Nutrition Assistance Program (SNAP) recipients who use their benefits on locally grown fruits and vegetables from participating farmers' markets, farm share sites and retail outlets. Original ask was for \$3 million to encourage people using SNAP to buy locally grown fruits and vegetables, to expand current pilot program known as Double Up Food Bucks. Funded at \$1.5 million in the end-of-session budget bill (SB 5050).

### **HB 2015 – Driver's licenses for all**

Extends driving privileges to Oregonians who otherwise meet the qualifications to obtain a standard driver license or identification card, by removing requirement to provide proof of legal presence.

### **HB 2614 – End Practice of Debt-Based License Suspension**

In Oregon, 334,338 individuals in the past decade have had their driving privileges suspended—not for highway safety reasons, but because they could not pay fines associated with non-criminal traffic violations. The bill would not absolve drivers of financial penalties, but would have ended license suspension for failure to pay traffic fines and associated fees. *Bill did not pass this session.*

### **HB 3349 – Mortgage Interest Deduction**

Bill would have provided additional supports for affordable housing and specifically invested in permanent supportive housing (PSH) by eliminating mortgage tax deduction on rental/second homes. PSH is one of the key solutions to ending homelessness for people who experience health conditions, mental health issues, or addictions disorders. *Bill did not pass this session.*

## **BEHAVIORAL HEALTH**

### **SB 22 – Behavioral Health Homes**

Modifies Patient-Centers Primary Care Home (PCPCH) statute to include standards for Behavioral Health Homes. Changes from “certifying” school-based health centers as PCPCHs to “identifying” them as such. Funding including in OHA budget (\$560K) to implement bill.

### **HB 2691 – OPAL Status**

Oregon Psychiatric Access Line (OPAL), which provides real time psychiatric consultation to primary care providers, is codified in statute, making it a permanent program, funded through the OHA budget (no funding this year as was funded \$900 million in 2018).

## **END OF LIFE CARE**

### **SB 177 and SB 178 – Hospice Services**

Allows licensed hospice programs to provide palliative care (SB 177) and healthcare providers to choose hospice treatment for an incapacitated patient who doesn't have an advance directive. Some FQHCs do have hospice programs and supported both bills.

## **WORKFORCE**

### **HB 2005 – Paid Family Leave Act**

HB 2005 does the following:

- Provides 12 weeks of paid leave per year (plus four unpaid weeks) to care for a new child, sick family member, or a death in the family.
- People experiencing domestic violence would also be eligible.
- Employers and employees split the cost of the paid leave insurance pool, with employers covering 40% and employees covering 60%.
- Employers with fewer than 25 employees are not required to pay the employer contribution but if they choose to, will be eligible for grants to hire temporary workers or cover overtime in the event an employee takes paid leave.
- People earning up to 65 percent of Oregon's average weekly wage (~\$1000) will receive 100 percent of their weekly earnings. For people making more, the percentage declines.
- Employees are eligible once they have worked 90 days or earned \$1000.

The Employment Department will begin collecting contributions to the program on Jan. 1, 2022, with benefits beginning on Jan. 1, 2023.

### **HB 2341 – Pregnancy Accommodation**

Businesses with 6 or more employees required to make “reasonable accommodations” for pregnant employees, including modifying equipment, more frequent or longer breaks, and assistance with manual labor or modification of work schedules or job assignments. Effective Jan. 1, 2020.

### **HB 2593 – Nursing Mothers**

Employers with 10 or more employees required to provide unpaid rest periods for nursing mothers so they can express milk. Must also make reasonable effort to provide a workspace, other than a closet or restroom, where nursing mother express milk. Effective Oct. 1, 2019.

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