

**FISCAL IMPACT OF PROPOSED LEGISLATION**

**Measure: HB 2002 - 5**

82nd Oregon Legislative Assembly – 2023 Regular Session

Legislative Fiscal Office

*Only Impacts on Original or Engrossed Versions are Considered Official*

Prepared by: MaryMichelle Sosne

Reviewed by: Amanda Beitel, Steve Robbins, Kim To, John Borden, Ben Ruef, Haylee Morse-Miller, John Terpening

Date: March 28, 2023

**Measure Description:**

Modifies provisions relating to reproductive health rights.

**Government Unit(s) Affected:**

Department of Consumer and Business Services, Oregon Youth Authority, Oregon Health and Science University, District Attorneys, Judicial Department, Public Defense Services Commission, Oregon Medical Board, Board of Naturopathic Medicine, Board of Nursing, Board of Pharmacy, Oregon Health Authority, Department of Justice, Department of Corrections, Counties, Cities, Criminal Justice Commission, Higher Education Coordinating Commission

**Summary of Fiscal Impact:**

The estimated cost to administer the measure with the -5 amendment is \$566,327 General Fund (\$679,503 total funds) and three positions (2.00 FTE) in the 2023-25 biennium and \$674,109 General Fund (\$787,285 total funds) and three positions (2.50 FTE) in the 2025-27 biennium. The cost of non-administrative components remains indeterminate, including potential funding made available for the Student Health Center Reproductive Health Grant Fund established in section 16 and a blank appropriation established in section 54 for the Office of Rural Health. The amount of funding appropriated for these purposes could impact the corresponding administrative costs. The measure has an indeterminate impact on counties due to the potential for additional action filed against them; the impact on cities is indeterminate but expected to be minimal. The measure has either a minimal fiscal impact or no fiscal impact on other state agencies.

**Analysis:**

The measure declares an individual’s decisions regarding their reproductive health as a fundamental right and provides clarification on the extent of this right and options available when these rights are violated. The measure permits any person to bring an action against listed groups for injunctive relief to enforce reproductive freedom and the court may award attorney fees and costs to the prevailing plaintiff. The measure permits minors to seek reproductive health information and services without parental consent and clarifies disclosure rights when a minor receives care without parental consent.

Student health centers in Oregon are required to provide emergency contraception and abortion medication to enrolled students. By January 1, 2025, and on or before January 1 of each year thereafter, the Oregon Health Authority (OHA) is required to provide guidance to public institutions of higher education according to minimum requirements outlined in the measure. By April 1, 2025, and on or before April 1 of each year thereafter, public institutions of higher education are required to submit a plan to OHA to demonstrate how the institutions are providing access to medication abortions. By July 1, 2025, and on or before July 1 of each year thereafter, OHA must evaluate the institutions’ plans and provide guidance if deemed inadequate. The measure requires OHA to submit a report to the interim Legislative Assembly committees on health care before September 15 each year and describes the contents of the report.

The measure establishes the Student Health Center Reproductive Health Grant Fund. Moneys in the fund are continuously appropriated to OHA for grants to institutions seeking to comply with the student health center

requirements of this measure and may also be used to support OHA's costs to administer the grant program. The Student Health Center Reproductive Health Grant Fund is to consist of moneys appropriated, allocated, deposited or transferred to the fund by the Legislative Assembly, as well as any donations or grants received for the purpose of the fund. The measure does not specify an initial appropriation to the fund.

The measure defines "gender-affirming treatment" and prohibits health benefit plans in Oregon from denying or limiting coverage of gender-affirming treatment under certain conditions. Carriers must ensure adequate network coverage and prompt delivery of services. The Department of Consumer and Business Services (DCBS) is required to evaluate compliance in each examination or analysis of the market conduct of an insurer and report to the interim legislative committees related to health by December 31, 2026. Additionally, DCBS must conduct a targeted market conduct examination of all carriers that meet the requirements of the measure.

Medical assistance provided to a member of a coordinated care organization or a medical assistance recipient who is not enrolled in a coordinated care organization shall include gender-affirming treatment. The measure also prohibits the Public Employees' Benefit Board and Oregon Educators Benefit Board from denying or limiting coverage of gender-affirming treatment.

OHA is required to ensure payment of prescription contraceptives for an individual in a medical assistance program for a period of 12 calendar months. The measure requires OHA to implement reproductive health services and education programs in Oregon. Health insurers seeking federal, or state funding or reimbursement must be certified or authorized by OHA. OHA is authorized to establish rules for health care provider certification and authorization and adopt fees for certification and authorization.

The measure appropriates an unspecified amount of General Fund to the Office of Rural Health to administer a program to provide grants to two federally qualified health centers to operate a pilot project to expand reproductive health services to areas of the state where there is limited access to reproductive health care.

Protection is provided for authorized individuals against malpractice claims or actions on their provider license when providing reproductive or gender-affirming health care services that are legal in Oregon and provides additional direction for insurers and provider boards. The measure declares laws in other states that permit civil or criminal action against a person seeking or providing reproductive healthcare or gender-affirming treatment as contrary to the public policy of this state. The measure defines what recourse may be taken for these interstate actions. The measure makes interfering with healthcare facilities with the intent to disrupt operations a Class A misdemeanor and addresses other transgressions.

The measure amends the definition of "because of sex" under unlawful employment discrimination statutes; the amended definition applies to all discrimination occurring before, on, or after the enactment of the measure.

The measure declares an emergency and is effective on passage.

#### Oregon Health Authority

The fiscal impact on the gender-affirming treatment services available to medical assistance recipients is indeterminate. The Oregon Health Plan currently provides more limited gender-affirming treatment to individuals with a gender dysphoria diagnosis as long as the treatment is deemed by the provider as medically necessary. The requirement for coordinated care organizations to not deny as a cosmetic service a medically necessary procedure prescribed by a physical or behavioral health care provider as gender-affirming treatment could broaden the number of procedures done. While this potential fiscal impact remains indeterminate, OHA may need to contract with a physician specialist to conduct gender-affirming treatment case reviews. Based on the agency's estimate, the biennial costs for this would total an estimated \$226,352, which includes \$113,176 General Fund and \$113,176 Federal Funds.

OHA will also need additional positions in the Public Health Division for the ongoing work required of the agency under the provisions governing reproductive health services provided by student health centers. In 2023-25, this includes up to three positions (2.00 FTE) and \$453,151 General Fund for the personal services and position-related services and supplies costs. The positions include one full-time Program Analyst 3 position (0.75 FTE) to coordinate the Student Health Center Reproductive Health Grant Program and associated fund, assist and support stakeholders, and review and make determinations on submitted applications. A full-time Operations and Policy Analyst 1 position (0.75 FTE) would manage the grant contracts and one part-time Fiscal Analyst 2 position (0.50 FTE) would provide fiscal support for the contracting process. In 2025-27, these positions are estimated to cost \$560,933 General Fund (2.50 FTE). Depending on the amount of funds available to support grants, costs to administer the grant program could vary. The measure does not include an appropriation or other funding source for the Student Health Center Reproductive Health Grant Fund, so the amount of funding available to support the grant program is unknown.

#### Counties

The measure has an indeterminate impact due to the potential for additional action filed against counties as a result of this measure. Oregon counties are either self-insured or insured through Citycounty Insurance Services (CIS), which does not cover claims for injunctive or declaratory relief, so costs of litigation for any cases filed would be incurred by the county.

#### Cities

The measure has an indeterminate impact on cities but is anticipated to be minimal. City health plans include reproductive health care services and city Emergency Medical Services (EMS) provide reproductive care when needed, but the impact of the measure is not anticipated to be significant.

#### Oregon Health and Science University Office of Rural Health

The measure directs the Office of Rural Health within the Oregon Health and Science University (OHSU) to administer grants to two federally qualified health centers located in rural and medically underserved areas with limited access to reproductive care. On or before September 15, 2025, the Office of Rural Health is required to report on the progress of the pilot project and present recommendations to the interim Legislative Assembly committees on health care. An unspecified amount of General Fund is appropriated to the Office of Rural Health for the 2023-25 biennium.

The fiscal impact to OHSU is indeterminate depending on the level of funding available for the pilot program. OHSU anticipates needing additional staff to manage the pilot project and assumes that staffing and other administrative costs will be allowable use of the General Fund appropriation.

#### Higher Education Coordinating Commission

The Higher Education Coordinating Commission and public universities anticipate a minimal fiscal impact assuming any costs resulting from the requirement that student health centers provide enrolled students with access to emergency contraception and medication abortion would be covered by student health center revenue and Student Health Center Reproductive Grants.

#### Other Agencies

The measure has a minimal fiscal impact on the Board of Pharmacy, Department of Consumer and Business Services, Department of Human Services, Department of Justice, and Oregon Judicial Department.

The measure has no fiscal impact on the Criminal Justice Commission, Department of Corrections, District Attorneys, Oregon Board of Naturopathic Medicine, Oregon Medical Board, Oregon State Board of Nursing, Oregon Youth Authority, or Public Defense Services Commission.