Oregon Association of Hospitals and Health Systems

February 21, 2023

Oregon State Legislature
900 Court St. NE
Salem, OR 97301

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Chair Nosse and Members of the House Committee on Behavioral Health and Health Care:

The Oregon Association of Hospitals and Health Systems (OAHHS) is a mission-driven, nonprofit association representing Oregon's 62 community hospitals. Together, hospitals are the sixth largest private employer statewide, employing more than 70,000 employees. Committed to fostering a stronger, safer Oregon with equitable access to quality health care, OAHHS provides services to Oregon's community hospitals ensuring all are able to deliver dependable, comprehensive health care to their communities; educates government officials and the public on the state's health landscape; and works collaboratively with policymakers, community organizations, and the health care community to build consensus on and advance health care policy benefiting the state's 4 million residents.

Hospitals are more than just buildings; they are cornerstones within the communities they serve. Our hospitals are employers, partners in community projects, and community spaces—all while providing vital health services to generation after generation of families in communities across Oregon. We know that when our hospitals are strong, our communities win.

We appreciate the opportunity to support House Bill 2742, which would modify the Health Care Cost Growth Target Program in two important ways to address challenges that have emerged from our current health care and economic environment. First, HB 2742 would change the way the program measures total health expenditures so that hospitals and other health care entities can continue taking steps to maintain access to care without risking penalties for exceeding the cost growth target. Second, for certain legislative proposals, the bill would require a fiscal impact statement that would help measure the tradeoffs between improving health care and lowering costs to help policy makers make more informed choices.

Background

The Oregon Legislature, through Senate Bill 889 (2019) and House Bill 2081 (2021), established the Sustainable Health Care Cost Growth Target Program within the Oregon Health Authority (OHA). A Sustainable Health Care Cost Growth Target Implementation Committee was directed to design the implementation plan for the program.[1] Through the process outlined in the law, the annual per capita

[1] SB 889 (2019), Section 4 (2).

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health care cost growth target was set at 3.4% for 2021-2025 and 3% for 2026-2030.[2] The cost growth target applies to all payers and providers in the health care system in Oregon.[3] Cost growth is measured at four different levels: (1) statewide, (2) by market (Medicaid, Medicare, Commercial), (3) by payers, and (4) by provider organization.[4] The Implementation Committee recommended that a future governance committee be established to oversee the program in 2022 and beyond.[5] That governance committee is now the Cost Growth Target Advisory Committee.[6]

A reexamination of the cost growth target program is needed considering all that has changed since its inception. A cost growth target program made sense in 2018—inflation was stable, the coordinated care model showed promise in the Medicaid program, and Oregon was continuing to lead on health reform. Since then, the COVID-19 pandemic and its unforeseen consequences have highlighted the fragility of our delivery system, the volatility of our economy, and the steps necessary to ensure access to care for patients. As hospitals navigate the effects of a broken continuum of care, a severe workforce shortage, and persistent financial strain, our primary goals are to preserve and protect access to quality care, support health care workforce development and retention, and stabilize the state's health care system. With respect to how this program continues, we must ground our expectations and shared goals in the reality of the health care system we have today, not the system we had in 2019.

Current State

Existing law directs OHA to require a payer or provider to develop and undertake a performance improvement plan if the payer or provider exceeded the health care cost growth target in the previous calendar year.[7] The law also directs OHA to adopt by rule criteria for waiving this requirement "if necessitated by unforeseen market conditions or other equitable factors."[8] Further, OHA "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."[9]

The cost growth target program attempts to measure health care cost growth in terms of "total health expenditures," which means "all health care expenditures on behalf of residents of this state by public and private sources," including items as listed in the law.[10] These items encompass payments to health care providers made by health insurers and patients themselves as well as health insurance premium payments beyond the amount the insurer uses to pay for care delivered. The cost growth target program does not currently measure the costs that health care providers incur in delivering that care, such as salaries and benefits for their employees, supplies, facilities overhead, and prescription drugs. The current health care and economic environment and the care needs that have

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[2] Sustainable Health Care Cost Growth Target: [Implementation Committee Recommendations Final Report to the Oregon Legislature](), January 2021, p. 5.
[3] ORS 442.386 (3)(b).
[4] Sustainable Health Care Cost Growth Target: [Implementation Committee Recommendations Final Report to the Oregon Legislature](), January 2021, p. 5.
[5] Sustainable Health Care Cost Growth Target: [Implementation Committee Recommendations Final Report to the Oregon Legislature](), January 2021, p. 7.
[6] More information about the Advisory Committee can be found here: [Oregon Health Authority : Cost Growth Target Advisory Committee : Office of Health Policy : State of Oregon]()
[7] ORS 442.386 (6)(c).
[8] ORS 442.386 (7)(a). OHA has not yet undertaken rulemaking pursuant to this section.
[9] ORS 442.386 (9). OHA has not yet undertaken rulemaking pursuant to this section.
[10] ORS 442.385 (8).

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emerged in our communities have revealed that this is a critical gap. It is important to account for these costs because they are likely to translate to rising total health expenditures, which may trigger enforcement actions against hospitals and other provider organizations. Given the costs associated with the workforce shortage, patient discharge delays, high inflation, and other factors, it is unreasonable to expect that most hospitals could restrict their cost growth to 3.4% per year without reducing services or jeopardizing their long-term financial stability.

Limitations of the Existing Program

Members of the Cost Growth Target Advisory Committee recently acknowledged that attempts to restrict cost growth could have unintended consequences for access to care and considered whether the current 3.4% cost growth target makes sense due to the rising costs of providing care.[11] Still, OHA has maintained that the existing enforcement process is flexible enough to account for the impact of the current health care and economic environment.[12] OHA has the discretion to evaluate the reasonableness of a health care entity's cost growth, and therefore determine the entity's accountability, in accordance with the factors identified by the Implementation Committee.[13] In listing the factors that may cause an organization to reasonably exceed the target, the Implementation Committee noted that not all factors can be predicted.[14] OHA recently recommended adding "macro-economic factors" to the list.[15] OHA also acknowledged feedback from payers and provider organizations requesting more certainty as to how OHA will apply the relevant reasonableness standards.[16] At the January 2023 Advisory Committee meeting, OHA recommended that the 3.4% target remain and that accountability under the program be delayed by one year—that is, OHA would not put any payer or provider organization on a performance improvement plan for 2021-2022 cost growth.[17] The Advisory Committee supported these recommendations.

While we appreciate that the Advisory Committee and OHA are recognizing these realities, their actions have been insufficient to protect access to quality care in our communities. The past three years have exposed and magnified limitations in the ability of the cost growth target program to contain costs without unacceptable tradeoffs. First, the program's reliance on OHA discretion for enforcement leaves too much uncertainty about what cost growth will be considered reasonable given the current costs of delivering care and supporting the health care workforce. Second, the enforcement process relies on an assumption that individual entities have a certain level of control over their cost growth when many of the current major cost drivers are systemic in nature.

> **Uncertainty about what cost growth will be considered reasonable.** Delaying enforcement by a year does not change the current program structure, which requires health care entities to defend their cost growth retrospectively and gives OHA significant discretion to decide what was or would have been reasonable in hindsight. Hospitals and other health care entities should be able to know whether they will be compliant with the law at the time they are making decisions about how to best serve their communities. These decisions have become much more complex and difficult than they typically were when the cost growth

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[11] *See* Cost Growth Target Advisory Committee November 2022 Meeting Summary.
[12] *See* Cost Growth Target Advisory Committee November 2022 Meeting Summary.
[13] *See* Sustainable Health Care Cost Growth Target: Implementation Committee Recommendations Final Report to the Oregon Legislature, January 2021, p. 48.
[14] Sustainable Health Care Cost Growth Target: Implementation Committee Recommendations Final Report to the Oregon Legislature, January 2021, p. 48.
[15] *See* Cost Growth Target Advisory Committee Meeting Slides, November 2022, slides 53-71.
[16] *See* Cost Growth Target Advisory Committee November 2022 Meeting Summary.
[17] Cost Growth Target Advisory Committee Meeting Slides, January 2023, slide 34.

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target program was developed, which adds to the uncertainty inherent in the existing enforcement process.

Despite this uncertainty, some hospitals have made significant investments in their workforce to help preserve access to quality care. For example, last week, St. Charles Health System announced across-the-board pay increases for all caregivers, stating, "Retaining our people and recruiting new permanent staff is our most critical long-term strategy for stability and success."[18]

Investments like these should be applauded. Instead, if the cost growth target program continues without modification, these organizations may find themselves in a meeting with OHA sometime in 2025 attempting to explain how these investments justified an increase in cost growth to keep the organization financially sustainable. This is an unreasonable analysis given that workforce costs alone make up over half of a hospital's total operating expenses and are increasing at several times the 3.4% cost growth target rate.[19]

Entity-level cost growth analysis. Requiring individual provider organizations to evaluate the reasonableness of their cost growth in isolation is also untenable in the current environment and creates risk that the program standards will be applied inconsistently. Many of the factors currently contributing to health care cost growth are systemic in nature. For instance, hospitals are shouldering the cost burden of breakdowns across the continuum of care. They typically receive little or no reimbursement to care for the hundreds of patients in Oregon on any given day who are ready to be discharged but do not have a safe or appropriate place to continue their care. These breakdowns involve many aspects of our health care ecosystem and are far beyond the control of a single hospital or health system. Adding the pervasive impact of macro-economic factors such as inflation and labor market trends, we do not see how it is possible to conduct a meaningful entity-level analysis of whether a particular level of cost growth is reasonable during this time.

Hospitals and other health care entities need support through the cost growth target program and other state policy to manage the increasing costs of maintaining access to care while remaining financially sustainable and without risking penalties for doing so. At this point, a broader conversation is needed at the legislative level to ensure that the program will be useful as we work toward stabilizing and improving our health care system. HB 2742 proposes such changes.

HB 2742, Section 1: Measuring Total Health Expenditures

We do not believe the legislature intended for hospitals and other health care providers to be penalized for covering the costs of providing the services their communities need. HB 2742 would mitigate this risk by excluding from the definition of total health expenditures any expenditures that reflect costs incurred by a health care entity to meet a community's need for access to health care, including but not limited to workforce costs, pharmaceutical costs, and costs of essential services.

These are costs over which health care entities have limited control, and they are the most likely to impact access to quality care. By clarifying upfront that these costs are not intended to be included in the measurement—rather than undertaking a retrospective, discretionary, and indirect evaluation of

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[18] St. Charles Health System, February 13, 2023, available here.

[19] *See* Apprise Health Insights, Oregon Hospital Utilization & Financial Analysis: 2021 Year-End & Current Trends; Apprise Health Insights, Oregon Hospital Utilization & Financial Analysis: Q3 2022 & Current Trends.

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their impact—hospitals and other health care entities will be better equipped to invest in supporting their workforce and maintaining access to quality care.

Work to contain health care costs for consumers remains critical. Affordability can be just as much a barrier to accessing care as the availability of services, and we are open to continuing the discussion around how to balance these concerns with the realities of operating financially sustainable hospitals. We have been collaboratively engaged with our labor partners this session and are willing to refine the scope of the costs that are discussed in the definition of total health expenditures to ensure we support not only our patients but also our workforce. We agree with SEIU's comment to the Advisory Committee in November 2022 that "the Cost Growth Target program was never meant to be balanced on the backs of workers."[20] We hope to return to this committee with further updates on how this work is moving forward.

It is also important to note that an increase in total health expenditures, as measured by the cost growth target program, does not directly translate to an increase in consumers' out-of-pocket costs. Most of the cost of receiving care is paid by commercial insurance companies, public programs like Medicare and Medicaid, and other sources such as hospital financial assistance programs. By setting premiums and cost sharing amounts, commercial insurers have a significant role in determining the extent to which rising health care costs are passed down to consumers. Insurers in Oregon have generally remained profitable throughout the pandemic, and they must be part of the conversation about how to ensure access to quality care and shield consumers from rising health care costs.

HB 2742, Sections 2-4: Fiscal Impact Statement

Policy proposals intended to improve health care often come at a cost, and policy makers need to understand the tradeoffs. These policy proposals may also contribute to health care cost growth above any target. The Implementation Committee acknowledged this in developing its list of potential factors that may cause an organization to reasonable exceed the target, which include, for example: [21]

- Changes in mandated benefits;
- New pharmaceuticals or treatments/procedures entering the market;
- Changes in taxes or other administrative factors;
- Changes in federal or state law; and
- Investments to improve population health and/or address health equity.

There is currently no objective mechanism to quantify the impact of such factors and to weigh a new policy proposal against the policy objectives of the cost growth target program during the legislative process to help inform decision making. HB 2742 fills this gap by requiring a fiscal impact statement describing the impact the legislation would have, if enacted, on the ability of the state, payers, and providers to meet the target. This would help legislators and stakeholders understand the effects of the proposal and the tradeoffs that are sometimes necessary between improving health care and lowering costs.

Conclusion

While we continue to support the underlying policy goals of the cost growth target program as a tool to help understand cost drivers in our health care system, promote transparency, and make informed

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[20] Available here: 10.-Public-Comment_SEIU.pdf (oregon.gov)

[21] Sustainable Health Care Cost Growth Target: Implementation Committee Recommendations Final Report to the Oregon Legislature, January 2021, p. 48.

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policy decisions, our current health care and economic environment has amplified the program's potential to create serious unintended consequences for patients in our communities. The program must be modified to mitigate these risks so that hospitals and other health care providers can support their workforce and preserve access to quality care.

Modifying the cost growth target program because the circumstances surrounding the program have shifted and new information has emerged is not a sign of failure. In fact, the opposite is true. Failure would be clinging to an outdated idea that no longer serves Oregonians. The modifications proposed in HB 2742 would result in a better-informed cost growth target program that identifies and protects the health care services our communities cannot sacrifice and empowers us to take a balanced policy approach in working to improve our health care system for the future.

Thank you for the opportunity to engage on behalf of our members and the communities they serve.

Thank you,

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