



House Bill 2665 Program and Policy Development Webinar

Overviewing the purpose of the HB 2665 program, related policies, and the partners engaged.

August 2, 2024



House Bill 2665 Summary

House Bill (HB) 2665 directs Oregon Health Authority (OHA) to adopt rules and set maximum rates for select temporary health care staff who provide direct care within specific hospitals and facilities by January 1, 2025.

BILL OVERVIEW

HB 2665 requires implementation of the following work:

- Rules to set the maximum rates for temporary staffing agencies (TSA) for selected positions
- A waiver process for entities that use temporary staff
- Processes for complaints, investigations and civil penalties through OHA's Health Licensing Office
- Annual review of the maximum rates

IMPACTED PERSONNEL

Changes affect temporary staff working at specific facilities in the following roles:

- Registered nurse
- Licensed practical nurse
- Certified medical assistant
- Certified nursing assistant
- Direct caregiver

COMPLETED WORK

OHA has completed the following work:

- Received feedback from temporary staffing agencies and providers of long-term care services, acute care services and primary care services, or representatives of the providers
- Considered all components mentioned in House Bill 2665
- Conducted an environmental scan to inform the development of the maximum rates for TSAs
- Developed initial maximum rates temporary staffing agencies can charge health care facilities

Rule Sections: OAR 409-039-0000 to 409-039-0130

The following sections correspond to HB 2665 implementation

| | | | |
|--------------|---|--------------|--|
| 409-039-0000 | Purpose | 409-039-0060 | Application Process and Review of Emergency Waiver Requests |
| 409-039-0010 | Definitions | 409-039-0070 | Application Process and Review of Waiver Requests in Circumstances other than an Emergency (Non-Emergency) |
| 409-039-0020 | Scope and Applicability | 409-039-0080 | Reconsideration Process for Denied Waivers |
| 409-039-0030 | Health Professions (Personnel) Covered | 409-039-0090 | Annual Evaluation of Maximum Rates |
| 409-039-0040 | Maximum Rates for a Hospital or Facility | 403-039-0010 | Regular Review of Waiver Conditions and Processes |
| 409-039-0050 | Waivers to Charge More than the Maximum Rates | 409-039-0110 | Annual Evaluation of Maximum Rates |
| | | 409-039-0120 | Information Sharing and Data Usage |

Introduction to HB 2665 Rate Setting: Purpose

The following rule outlines the main purpose of HB 2665.

OAR 409-039-0000

*“These rules (OAR 409-039-0000 to 409-039-0130) establish requirements related to the **maximum rates that a temporary staffing agency** authorized under ORS 676.698 to operate in the state of Oregon **may charge to or receive from a Hospital or entity that engages the temporary staffing agency**, as directed by ORS 676.716, except as provided in ORS 676.719.”*

Development and Advisory Groups

The guidance and decisions made by the following advisory committees were essential in the rate setting process.

Technical Advisory Group (TAG)

- Consisted of **economists, actuaries, data analysts, equity and inclusion** and other OHA employees with an expertise helpful to the rate setting process
- **Review data** related to the temporary healthcare workforce
- Discuss **potential rate methodologies, components, and implications**
- Provide **feedback and input** on decisions related to rate setting
- React to **potential risks, actions, issues,** and decisions regarding rate setting decisions

Cross-Agency Advisory Group

- Consisted of teams from **Health Policy, Government Relations, Director's Office, Strategic Action Team, Equity and Inclusion Division, Oregon State Hospital, long-term services and supports policy, Aging and People with Disabilities (APD), and health care regulation and quality improvement**
- Inform **strategic direction** for HB2665 activities
- **Remove barriers and identify resources** to align with overall project goals
- Provide **feedback and input** on project
- React to **potential risks, actions, issues,** and decisions

Obtaining Data from Partners

OHA deployed a request to secure important data about temporary and permanent health care staff in Oregon¹

WHO

Sent to 1000+ facilities and temporary staff agency contacts operating in the state of Oregon based on contacts identified by OHA Health Licensing Office, ODHS APD, trade associations, and health care unions.

WHEN

Data was collected in February and March of 2024. A public informational session was hosted to provide an overview and instructions regarding the data request on March 5, 2024 (120+ attendees) and was posted on the HB 2665 website.

DATA COLLECTED

- ❖ Wages and Rates of temporary and permanent health care staff personnel across Oregon, for the positions and facilities included in the bill
- ❖ Cost data on the Temporary Staff agencies such as administrative salaries, profit, fringe benefits
- ❖ Data by region and licensed care setting to help OHA evaluate the degree to which geographic variation and facility type affects the maximum rates

¹A notable limitation regarding the Partner data collected include the significant variance in the number of responses for each position, facility, and region. Minimum, average, and maximum wages provided in Partner data are less credible than other wage data sources.

Partner Data Summary

Received a 4.4% response rate from facilities and TSAs, combined. The data request was sent to 21.4%¹ of facilities (of those, 13.4% completed) and 30.7%² of agencies (of those, 11.9% completed) operating in Oregon³

HOSPITAL AND FACILITY SUMMARY

 25 responses


 Representatives from facilities in the Portland Metro, Standard Counties, and Nonurban Counties

 7+ facility types of various sizes

TEMPORARY STAFFING AGENCY SUMMARY

 20 responses⁴

 Majority of representatives work in all regions in Oregon

 Only 4 TSAs operate solely in Oregon, while all others provide services nationally in addition to serving Oregon

¹Facility count is inclusive of hospitals, memory care endorsement, residential care facility, in-home care agencies, and skilled nursing facilities identified by OHA and [OHCA \(2024\)](#).

²Agency count based on OHA Health Licensing Office authorized Oregon temporary staffing agencies list as of April 2024.

³All response rates are estimated based on available information regarding the number of facilities and agencies operating in Oregon as of April 2024.

⁴One agency submitted 6 separate responses for different divisions. Each was recorded separately.

Focus Groups

In April 2024, OHA conducted 5 interviews with TSAs, 3 focus groups with facilities and 1 focus group with health care workers

BACKGROUND



Objective: To gather additional feedback to inform HB 2665 implementation including perspectives on specific components of the rate build and considerations for other aspects of this work.



Format: 60-Min Virtual Meeting



Data Collected:

- **Rate setting:** factors for consideration in the development of rate model
- **Waivers:** considerations for exemptions from max rate
- **Definitions:** perspective or rule set language

INTERVIEW / FOCUS GROUPS CONDUCTED (April 2024)

Invitees included those who completed the Spring 2024 Rate Setting Data Request and opted-in to participate and with contacts recommended by health care unions and trade associations.



Temporary Staffing Agencies

16.7% Response Rate
(invited 30 agencies)



Hospitals and Facilities

24% Response Rate
(invited 25 agencies)



SEIU Union and Workforce

- Permanent health care staff
- Temporary health care staff

Internal Contributors and Collaborators

The following internal communities and staff were key contributors to program processes



OHA Health Policy and Analytics Division Policy Staff

Related to waiver development and overall implementation of the legislation.



OHA Equity and Inclusion Division staff

REAL-D/SOGI team guidance related to future data collection and evaluation strategies



Department of Justice

Rules and regulations interpretation and legal



Health Licensing Office

Rules and Regulations advice and guidance



OHA Office of Information Services

Waiver and Application Development

Communications and Information Sharing

Key internal groups were updated on program decisions via a bi-weekly report outlined below

Bi-Weekly Report

Who?

Distributed to all project team members and the Cross-Agency Advisory Group

What?

A comprehensive summary of completed activities and upcoming work with a brief narrative. Includes key decisions, project milestones, and upcoming engagements

When?

Reports are sent out on a bi-weekly cadence

Upcoming Public Engagement



Continued Engagement

- OHA plans for **continued engagement** and closing the feedback loop with those who have contributed to program and policy development.



Rule Advisory Committee

- OHA will host **two Rule Advisory Committee sessions** for each group identified as impacted by the legislation.
- In the second session, Program staff will inform the public on what input was utilized and what was not, as well as why.

Waiver Concepts (1/2)



Emergency Waiver

- A hospital or facility may request an Emergency Waiver of the maximum rates pursuant to the process outlined in OARs, in the following circumstances:
- There is an Emergency.
 - The Governor by proclamation declares either:
 - a state of emergency pursuant to ORS 401.165, or
 - a public health emergency pursuant to ORS 433.441.
- Emergency waivers are automatically approved for 30 days, and may be renewed with an additional application.
- Applicants must submit a “complete” (include all pertinent information) application in order to receive an approval for Emergency waiver of maximum rates.

Waiver Concepts (2/2)



Non-Emergency Waiver

- A temporary staffing agency, hospital, or facility may apply to the Authority for a Non-Emergency Waiver of the maximum rates in the following circumstances where vital staffing resources are limited and temporary intervention is needed:
 - An acute incident has occurred or
 - An imminent event is anticipated.
- The Program Webpage will publish examples of acute incidents and/or imminent events upon release of waiver application.


Closing

Thank you for your attendance and engagement!

For Question and/or Comments, please contact:

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House Bill 2665 Rate Setting Webinar

Overviewing the rate setting methodology and decisions to develop draft maximum rates in response to HB 2665.

August 2, 2024



Agenda (30 mins)

- 1 | HB2665 Background and Rate Setting Process**
- 2 | Rate Setting Methodology**
- 3 | Maximum Rate Components and Definitions**
- 4 | Maximum Rate Decisions**
- 5 | Maximum Rates and Next Steps**

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Rate Setting Process

OHA conducted an environmental scan of the temporary staffing landscape, engaged health care and rate setting subject-matter-experts, and collaborated with OHA leaders to inform the development of maximum rates.

MAXIMUM RATE SETTING APPROACH

PLAN

RESEARCH

DEVELOP

REFINE

IMPLEMENT

SUMMARY OF KEY ACTIVITIES

- OHA analyzed national data on similar legislation, issued a data request to health care facilities and temporary staffing agencies in Oregon, conducted focus groups with these partners, and analyzed the data in the House Bill 2665 Environmental Scan Report.
 - Partners engaged in focus group sessions included temporary staff agencies, hospitals, and other facilities operating in Oregon.
- Utilizing the Environmental Scan Report, OHA collaborated with a Technical Advisory Group (TAG) comprised of subject-matter-experts (i.e., economists, data analysts, Oregon Employment Department (OED) representatives, and actuaries) in iterative working sessions to make recommendations on the rate structure and components that make up maximum rates.
- As a result of the House Bill language and TAG and partner engagement, OHA decided on specific components to be considered in the maximum rate.

Rate Setting Methodology

The rate setting methodology selected by OHA establishes maximum rates and a set limit on the amount of agency margin that can be retained.

Bill Rates

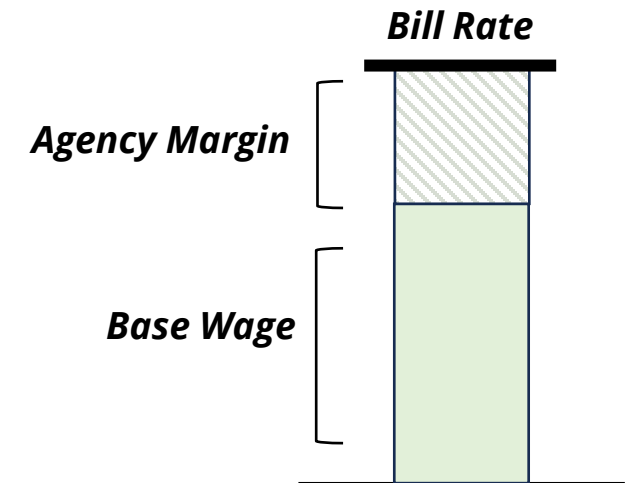
The bill rate a TSA charges a hospital or facility is comprised of the pay rate and agency margin. The **base wage** is the amount that the temporary staff receives, and the **agency margin** is the remaining amount of the bill rate the temporary staff agency retains.

Maximum Rates

The rates generated by the rate setting methodology, per the bill's intent, are to serve as the maximum bill rate a temporary staffing agency can charge to an entity that engages them.

Rate Setting Methodology

The rate setting methodology selected by OHA is inclusive of a set maximum on the amount a temporary staffing agency can bill and a set maximum on the amount of margin within the contracted bill rate an agency can retain.



Rate Setting Components and Definitions

The rate setting components defined below were selected by OHA to be the building blocks that make up the maximum rate.



BASE WAGE: The base wage is the portion of the bill rate that the temporary worker receives for pay.



REGIONAL VARIATION: Regional variation accounts for the difference in pay amongst the geographic regions in Oregon.



LICENSED CARE SETTING: Licensed care setting accounts for differences in pay at various facility types such as hospitals, in-home care facilities, or skilled nursing facilities.



SPECIALTY PAY: Specialty pay is the increased level of pay that healthcare staff receive for their tenure, licensing, and specialty training.



SHIFT DIFFERENTIAL: Shift differential pay is the additional pay received for shifts such as on-call, night, and weekends.



COMPENSATION ALIGNMENT FACTOR (CAF): The Compensation Alignment Factor is a factor that aligns permanent staff wages to that of temporary staff.



AGENCY MARGIN: The agency margin is the portion of the bill rate that the agency receives for things like benefits, profit, charges for administrative and contract fees, and other special charges.



HOLIDAY & OVERTIME PAY: Holiday & overtime pay is the additional pay health care staff received on holidays or for overtime hours.

Component Decision - Base Wage



The base wage is the portion of the bill rate that the temporary worker receives for pay. OHA determined the wage source, type, and statistic for base wage of the maximum rates.

☑ DECISION

OHA set the base wage component of the maximum bill rate as the **average wage** of permanent health care staff in Oregon **from Bureau of Labor Statistics (BLS)**¹.

Decision Support

- Basing maximum rates on average permanent health care wages is consistent with the intent of the bill to more closely align the wages of permanent and temporary staff.
- Other states with similar legislation (Minnesota and Massachusetts) have used average wages as the base of their maximum rates.

¹Bureau of Labor Statistics OEWS May 2023 estimates.

Component Decision - Regional Variation



Regional variation accounts for differences in pay throughout Oregon. OHA selected the level of regional variation and adjustment factors needed to account for these differences.

☑ DECISION

OHA decided to create **one statewide rate** (rather than different rates for different regions).

OHA considered regional differences when setting the statewide rate at the highest of the regions' wage/pay levels (Portland Metro).

Decision Support

- Setting statewide maximum rates eases administrative burden, as well as simplifies maximum rates. It also eliminates having many rates per personnel type.
- Minimum wage and other health care wage data suggests that pay is higher in the Portland Metro area (1.1-4.3% higher pay) as compared to all other regions of Oregon¹.
- As such, OHA decided to set one statewide rate using statewide wage data with an adjustment for the Portland Metro pay level, as it is the highest wage.

¹Bureau of Labor Statistics OEWS May 2023 estimates.

Component Decision - Licensed Care Setting



Licensed care setting adjustments account for differences in pay at various facility types. OHA determined if maximum rates should apply factors or differentiation based on the licensed care setting of each personnel type in HB 2665.

☑ DECISION

For Registered Nurses only, OHA decided to have separate maximum rates for hospitals and all other facilities.

There is **no licensed care setting adjustment** applied to maximum rates for all other personnel types.

Decision Support

- BLS data suggests higher wages are paid to health care staff working in hospitals as compared to their counterparts working in other facility settings, particularly for RNs. RNs practicing in hospitals receive on average, 12% higher pay than their counterparts working in other facilities.
- This degree of differentiation does not exist for the other personnel types¹.

¹Bureau of Labor Statistics OEWS May 2023 estimates.

Component Decision - Specialty Pay & Shift Differentials



Specialty pay is the increased level of pay that healthcare staff receive for their tenure, licensing and training. Shift differential pay is the increased level of pay that healthcare staff receive for shifts such as on-call or weekend. OHA determined if there should be adjustments to the maximum rates for specialty pay and shift differentials.

☑ DECISION

OHA decided there would **not be separate maximum rates for various shift times or specialties.**

However, the maximum rates do include a compensation alignment factor that accounts for variance based on health care worker tenure, licensing and training of temporary healthcare staff.

Decision Support

- No differential was selected for specialty pay as it was determined that high-level experience and tenure are already included by applying the compensation alignment factor (CAF).
- Likewise, no adjustment was applied to maximum rates for shift differentials as it was determined that differences in pay for shifts such as on-call or weekend are captured in the application of the CAF.
- Additionally, there was limited data regarding specialty pay in Oregon.

Component Decision - Compensation Alignment Factor



The compensation alignment factor accounts for the difference in pay between permanent and temporary staff. OHA determine if this factor should be applied to maximum rates, and if the factor should vary by position.

✓ DECISION

OHA decided to include a **Compensation Alignment Factor to adjust the maximum rate upward** in consideration of differences in temporary and permanent staff compensation.

These adjustments are applied separately for each personnel type.

Decision Support

- BLS wage data supports temporary health care staff being paid 10–31% higher wages than permanent staff¹.
- To align permanent staff wages to that of temporary staff, the permanent staff wage is modified for each type of personnel, by applying a CAF based on current market variations specific to each group.

¹Bureau of Labor Statistics OEWS May 2023 estimates.

Component Decision - Agency Margin



Agency margin is the portion of the bill rate that the agency receives for items such as agency costs, fringe benefits, and profit. OHA determined at what level the agency margin should be set within the maximum rate model build.

☑ DECISION

OHA used a **34.2% agency margin** in the build-up of the maximum rates.

OHA also **capped the margin an agency is allowed to retain** at 34.2%.

Decision Support

- OHA selected a 34.2% margin as it represents the average margin recorded in the temporary staff agency data submissions received during the rate setting process.
- Given limited reporting and anecdotal remarks, both agency costs and benefits typically account for 20-40% of the bill rate^{1,2}.

¹AMN Annual 2023 Report

²SIA NATHO Travel Nurse Benchmarking Survey

Maximum Rate Table

The maximum rates selected by OHA as a result of the rate setting process are shown in the table below.

Maximum Rate Description:

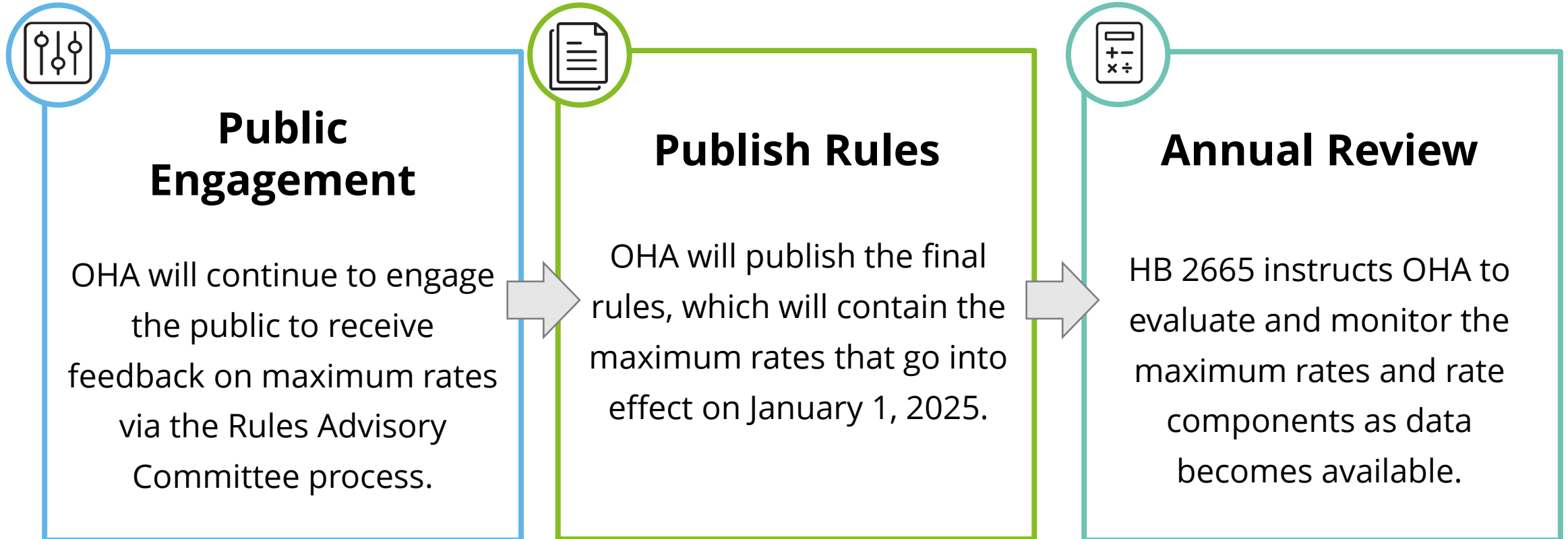
- The maximum rates set by OHA limit the maximum amount a temporary staffing agency can bill as well as limit the amount of margin an agency can retain. Agency margin is limited to 34.2%¹.
- Maximum rates are statewide rates that do not vary by region, but account for geographic differences by setting rates at the Portland Metro pay level.
- Maximum rates include a compensation alignment factor to adjust the permanent wages to account for differences in temporary and permanent staff compensation (wage and benefits).
- To account for differences in wages at various licensed care settings, maximum rates for RNs include one rate for staff in hospitals and another for staff in all other facility types.

Maximum Rate Table:

| Personnel Type | Maximum Rates | Maximum Rates (Holiday and Overtime)* |
|------------------------------|---------------|---------------------------------------|
| RN (Hospital) | \$131.95 | \$197.93 |
| RN (Other Facilities) | \$117.49 | \$176.24 |
| LPN/LVN | \$70.32 | \$105.74 |
| CNA | \$42.23 | \$63.35 |
| CMA | \$47.06 | \$70.59 |
| Direct Caregiver | \$36.28 | \$54.42 |

**OHA determined that the holiday rates and overtime rates were to be 150% of maximum rates, per industry standards noted in Partner data submissions and in publicly available information.*

Next Steps for HB 2665 Implementation



Thank you for your attendance and engagement!


Closing

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