Oregon's Health Care Cost Growth Target Program

Summary of Rules Advisory Committee Input & Incorporated Rules Changes

June 2024

Background

Although more people than ever in Oregon have health insurance, the rising cost of health care continues to have an outsized impact on the ability of households to make ends meet. In 2021, health care expenditures increased by more than 12% per person for those with commercial insurance, and increased another 1.6% per person in 2022.[iii] In recent years, Oregon households spent nearly 22% of their budget on health-related expenses, and around a third of people in the state reported delaying or skipping care due to costs.[iii] [iv]

The Oregon Legislature created the Sustainable Health Care Cost Growth Target (CGT) Program within the Oregon Health Authority (OHA) to better understand and identify where in Oregon's health care system costs are becoming unaffordable. The program established a goal for the annual per capita rate of growth of total health care spending in the state—a rate that aligns with projected growth of wages and the state's economy. Cost increases of health insurance companies and health care provider organizations are compared to the growth target each year. Legislation requires entities that exceed the cost growth target without an acceptable reason to develop and implement a performance improvement plan. If an entity continues to exceed the cost growth target in three out of five years without an acceptable reason, OHA must issue a financial penalty.

To guide implementation of the legislation, OHA initiated a Rules Advisory Committee (RAC). The RAC was asked to provide input on a set of draft rules regarding important accountability components of the program including:

- reasonable causes of health care cost growth,
- performance improvement plans, and
- financial penalties

Rules Advisory Committee

OHA hosted five RAC meetings from January to May 2024 during which OHA and RAC members discussed draft rules, sub-regulatory guidance documents, and more. All meeting materials were published at least one week before the meeting and all input received from RAC members and the public was posted on the program's website.

Program staff sent the RAC recruitment to all individuals subscribed on the Cost Growth Target program's GovDelivery list and every individual who expressed interest in receiving updates about the Implementation Committee, Advisory Committee, or Technical Advisory Group. Staff also sent the solicitation – via the Government Relations team – to all Legislators who are members of a health committee and Legislative leaders of both parties with a specific request to forward the invitation to anyone who may be interested.

Program staff consulted with tribal liaisons to ensure Tribal Governments were aware of the RAC and the program changes. Staff also developed a list of individuals and organizations to notify about the RAC in order to ensure diverse RAC membership.

Staff created a plain language invitation with a timeline and high-level discussion topics for the RAC. OHA posted this invitation to the program website. Program staff created a form to collect race, ethnicity, age, and other demographic information from RAC members. Staff used this information to assess how RAC members represented affected communities and priority populations. OHA included a notice that people may request translation of materials, interpretation during the RAC meeting, and other accommodations.

Individuals interested in serving on the RAC self-nominated and no person or organization was denied participation on the RAC.

Transparency

OHA published on the CGT website all recordings of the RAC meetings, all written comments received from RAC members, and all meeting materials such as slide presentations and red-line documents.

RAC Members

- Asante
- Aviva Health
- Cambia Health Solutions/Regence BlueCross BlueShield of Oregon
- Central Oregon Independent Practice Association
- Children's Health Alliance
- Coquille Indian Tribe
- Evergreen Family Medicine
- Family Recovery Inc.
- Grande Ronde Hospital, Inc.
- Grants Pass Clinic, LLP
- Hawthorne Auto Clinic (retired), Main Street Alliance
- Healthcare Solutions
- Hospital Association of Oregon
- Kaiser Permanente
- Legacy Health
- Manatt Health Strategies, LLC
- Metropolitan Pediatrics
- Moda Health
- Neighborhood Health Center
- North Bend Medical Center
- Northwest Primary Care, PC
- Optum
- Oregon AARP
- Oregon Health & Science University
- PacificSource
- Pediatric Associates of the Northwest, PC
- Praxis Health
- Providence
- Providence Health Plan
- Purchaser Business Group on Health
- Salem Health Hospitals & Clinics
- Salem Pediatric Clinic
- Samaritan Health Plans, Intercommunity Health Network (IHN)
- SEIU Oregon State Council
- Sky Lakes Medical Center
- St. Charles Health System
- The Children's Clinic
- The Corvallis Clinic, P.C.
- Trillium Community Health Plan Health Net Health Plan of Oregon
- UnitedHealthcare
- West Portland Physical Therapy

RAC Members' Suggestions that OHA Adopted

In addition to the adopted suggestions outlined below, OHA responded to requests from RAC members by developing and publishing a financial penalty calculator and examples showing the penalty calculation.

Defining Reasonable Causes of Cost Growth – Adopted Suggestions

- Modified the sub-regulatory guidance document to allow OHA to consider other contextual information when determining reasonable cause for cost growth. Other contextual information includes the entity's performance in other markets, the implementation of policies that improve health outcomes or reduce costs, and more.
- Added to the rule specifying the Authority shall conduct analyses to understand potential systematic causes, market conditions, or other factors that might result in entities exceeding the cost growth target.
- Added a new option of "indeterminate" as a result of the discussions to identify a reasonable cause of the cost growth. Such a finding does not warrant a performance improvement plan and would not result in a financial penalty.
- Changed rule to allow for multiple reasonable causes for an entity to exceed the cost growth target.
- One of the reasonable causes of cost growth is new treatments (e.g., a new pharmaceutical comes to market). Staff updated the rules and sub-regulatory guidance documents to allow for new treatments as well as new uses of existing pharmaceuticals as a reasonable cause.
- One of the reasonable causes of cost growth is changes in mandated benefits. Staff updated the rules and sub-regulatory guidance documents to specify "changes in mandated benefits, to the extent that the mandated benefits are not defrayed under applicable law."
- One of the reasonable causes of cost growth is changes in federal or state law. Staff updated the rules and sub-regulatory guidance documents to specify that this reason includes changes or prohibitions on patient cost-sharing.

- One of the reasonable causes of cost growth is macroeconomic factors such as high inflation. Staff updated the rules and sub-regulatory guidance documents to specify that these must be wholly outside of the ability of the entity to influence or mitigate.
- Added a definition of the term "high-cost outlier" and specified that high-cost outliers are a reasonable cause for exceeding the cost growth target whether or not the high-cost outliers are subject to the Oregon Reinsurance Program.
- Replaced the term "good reasons" for cost growth with "reasonable causes" of cost growth.
- Added clarity as to what the following phrase means: "participate in conversations" regarding the determination of reasonable cause.
- Specified in sub-regulatory guidance that the public will have the opportunity to provide comment on an entity's cost growth after OHA publishes the Annual Report and as a component of the public hearing process.
- Modified the rules to allow an entity to request OHA to reconsider and, if necessary, appeal OHA's decision about reasonable cost growth.
- Added to rules that OHA will formally notify the entity in writing when a performance improvement plan is required.
- Updated sub-regulatory guidance to include the entity's performance relative to their peers when OHA determines whether the cost growth is due to a reasonable cause.
- Updated rules requiring large and medium-sized provider organizations to submit frontline worker compensation data. If the cost growth of frontline worker compensation is greater than or equal to the total value of the entity's cost growth over the target across all markets, then OHA will deem the growth reasonable.

Performance Improvement Plans (PIP) – Adopted Suggestions

- Modified the rules to specify that a PIP may not yield cost savings that can be passed on to consumers, but the entity must report the plan for any generated savings that may be applied.
- Specified in rule that OHA shall collaborate with the accountable entity required to develop and undertake a PIP.

- Allowed OHA to waive the requirement that an entity develop and undertake a PIP.
- Specified in rule that OHA will not release confidential information and will maintain it as such.
- Increased the word limit on the PIP template to allow for more comprehensive responses.
- Added a new rule specifying that OHA shall reassess the PIP process in 2030.

Financial Penalty – Adopted Suggestions

- Revised the financial penalty structure such that no funds are paid to the state and the financial penalty amount is paid in a manner to directly benefit the penalized entity's consumers.
- Delayed the timing of when the first penalty could be imposed by one year.
- Modified the penalty calculation methodology such that any years in which the entity's cost growth was less than the cost growth target, the penalty amount is reduced accordingly. Also, updated the rule so that the first instance of a penalty is slightly higher.
- Specified in rule that a penalty only applies if an entity exceeds the target with statistical confidence and without a reasonable cause for three out of five years in a single market (e.g., Medicare Advantage, commercial, or OHP).
- Specified in rule that a given performance year applies only once towards the calculation of a penalty.
- Updated sub-regulatory guidance document to allow for a provider organization's reasonable cause for exceeding the target to also apply to a payer if the number of member months attributed to the provider organization is sufficient enough to also explain the payer's cost growth in excess of the target. The reverse scenario applies as well: a payer's reasonable cause for exceeding the target may also apply to a provider organization.
- Modified the rule language regarding medical loss ratio.
- Modified rule to allow an entity to exhaust all appeal and contested case processes before submitting a penalty payment plan to OHA.

- Updated rule language to state that contested case hearings brought by an entity will be open to the public.
- Modified the rule language pertaining to the annual public hearing such that OHA will first request the presence of an entity.
- Added a new rule specifying that OHA shall reassess the penalty calculation methodology in 2030, after three years of potential penalties.

Main Themes from RAC Members' Suggestions that OHA did Not Adopt

Suggestion	OHA's Rationale for Not Adopting
When determining an entity's cost growth, exclude all payments made to providers other than the primary care providers.	The Cost Growth Target Program Implementation Committee, which was comprised of representatives from provider organizations, payers, consumer advocates, and more, recommended that the program use a primary care-based attribution method to identify the total medical expenditures of Oregon residents.[v]
Adjust entities' cost growth when publishing data by subtracting frontline worker cost growth.	An entity's cost growth is based on data reported to OHA by insurance companies based on payments made for consumers' health care services. OHA allows for demographic adjustment based on age and sex but does not otherwise adjust an entity's cost growth. Even if an entity's cost growth above the target is due to a reasonable cause, OHA will publish the entity's cost growth as is, with a description of the reasonable cause for exceeding the target.
Allow entities up 180 days to develop a PIP instead of the 90 days specified in rule.	Consumers face high health care costs today. Delaying the development of a PIP by months will not help consumers.

Suggestion	OHA's Rationale for Not Adopting
Instead of requiring entities to submit public and confidential versions of the PIP, allow the entities to summarize the PIP.	Transparency is a critical element of this program. As such, the full PIP will be published for the general public to read with confidential information redacted.
Some RAC members wanted to delay the implementation of financial penalties, while others wanted immediate financial accountability.	OHA delayed penalty implementation by 1 year such that cost growth between 2021-2022 will serve as the first year counting towards potential penalties. OHA also committed to reassessing the penalty calculation methodology in 2030.
When calculating the penalty amount, OHA should reduce the entity's cost growth by the amount the entity is able to justify with a reasonable cause.	If an entity adequately justifies the cost growth over the target with a reasonable cause, OHA will not require a PIP or impose a penalty. If, however, any amount of cost growth over the target is found unreasonable in three out of five years with statistical confidence, the penalty would be calculated on the entire cost growth over the target.
Cap penalty amounts at $10,000. Another RAC member requested a penalty cap of $50,000 to $250,000, depending on how many times the entity continues to exceed the target. Other RAC members cautioned OHA from limiting the size of penalties such that they do not incentivize change.	OHA modeled a maximum penalty of $10,000 and for the largest provider organizations, such a penalty would equal 0.0001% of the revenue attributed to that entity. The currently proposed penalty calculation methodology considers the size of the entity, the cost growth over the target, and other statutorily required factors.
If a provider organization is penalized for cost growth, do not also hold the payer responsible.	Both provider organizations and payers are accountable to the cost growth target, as designed by the Implementation Committee and legislation.

Suggestion	OHA's Rationale for Not Adopting
The penalty calculation methodology is excessively lenient for accountable entities and the concerns of the health care industry are outweighing the concerns of consumers, employers, and purchasers who bear the cost of health care.	OHA committed to reassessing the penalty calculation methodology in 2030.

Next Steps

OHA will finalize the draft program rules in June and July 2024.

For more information, visit Oregon's Sustainable Health Care Cost Growth Target Program webpage. Also, subscribe to receive email updates and stay apprised of program developments.

You can get this document in other languages, large print, braille, or a format you prefer. Contact the Sustainable Health Care Cost Growth Target Program at 503-385-5948 or email HealthCare.CostTarget@oha.oregon.gov.

[i] Oregon Health Authority. Health Care Cost Growth Trends in Oregon, 2020-2021. Portland, OR. May 9, 2023.
[ii] Oregon Health Authority. Health Care Cost Growth Trends in Oregon, 2021-2022. Portland, OR. May 28, 2024.
[iii] Oregon Health Authority. Impact of Health Care Costs on People in Oregon, 2021. Portland, Oregon. Sept 2023
[iv] Gallop pole, Jan 2023 https://news.gallup.com/poll/4708/healthcare-system.aspx
[v] Sustainable Health Care Cost Growth Target: Implementation Committee Recommendations Final Report to the Oregon Legislature. Senate Bill 889 (2019), January 2021.