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July 8, 2019

To: Oregon Society of Physician Assistants
From: Elizabeth Remley and Rachael Wiggins Emory, Thorn Run Partners
Re: Activity Summary for OSPA - Oregon's 2019 Legislative Session

Dear OSPA,

It is a sincere pleasure to work with you and represent OSPA at Oregon's Capitol. What follows is a summary of OSPA's activity and outcomes in Oregon for the 2019 legislative session, which ran from January 22 to June 30. Thank you for the opportunity to partner with your organization!

Sincerely,

Elizabeth Remley
Partner

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Senior Legislative Associate

General Summary

Oregon's 2019 Legislative Session will be interpreted in a variety of different ways. For some this will be perceived as a well-run disciplined session where legislative leadership, prior to a successful election, identified four distinct and significant priorities—funding the Medicaid gap, raising revenue for schools, passing carbon legislation and passing new housing affordability policies. Indeed, legislative leadership nearly ran the table successfully with only carbon regulation unable to cross the finish line. For others, this session saw the vitriolic and aggressive nature of national politics reach down and plague Oregon's previously sanguine and respectful politic. Heated rhetoric, armed threats by sitting Senators, walk-outs and undisclosed out-of-state hiding spots were hallmarks of the 2019 session and politics at its worst. Still for others, it will be the story of an emboldened urban elite, that with supermajority power, cemented a cultural divide between urban and rural Oregon. This report won't resolve these differences, but it will outline Thorn Run Partners work on your behalf.

The legislature started out slow and somber, first dealing with issues around harassment that have rattled the Capitol for nearly two years. Early legislative action included the passage of SB 608 that instituted controversial and unique tenant protections designed to improve housing affordability. The Joint Carbon Committee conducted a statewide listening session on a

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proposed carbon “cap-and-trade” bill (HB 2020) and a fight around vaccinations (HB 3063) boiled over with the backdrop of a measles outbreak in the Pacific Northwest. Over the course of the session, two memorial services were conducted, as Secretary of State Dennis Richardson and State Senator Jackie Winters died after long battles with cancer.

Mid-session, all eyes turned towards the proposed revenue package to fund K-12 education (HB 3427). The Joint Committee on Student Success passed a corporate activities tax that provides \$2 billion in new revenue for schools. While the measure split the business community, Republicans remained aligned against the bill. The House approved the legislation, but the Senate Republicans refused to come to the floor to vote, denying the Senate a quorum. Senate rules requires 20 members (two-thirds) present to conduct business—Democrats have 18 seats and thus rely on two Republicans for a quorum. In a deal to bring the Republicans back to the table, legislation related to gun safety (SB 978) and mandatory vaccinations (HB 3063) were sacrificed, and an agreement was reached to “reset” carbon legislation. Upon the Republican Senators’ return, the \$2 billion corporate activities tax cleared the Senate and was signed by the Governor.

Late in the session, the carbon bill (HB 2020) picked up steam and after a six-hour debate was approved in the House without any Republican support. When HB 2020 arrived on the Senate floor, Senate Republicans claimed that the previous deal to bring them back for quorum was violated and once again refused to come to the floor to vote—this time fleeing the state to avoid the jurisdiction of the Oregon State Police. This left hundreds of bills stranded with only two weeks before the Constitution required adjournment. After a nine-day absence, Republicans returned to the Senate after assurances that the carbon bill would not proceed. In the final 48 hours of session, the Legislature cleared almost 150 bills including many of the state’s budgets and controversial measures related to housing; a bill to allow driver licenses without legal presence; and an increase in tobacco taxes that will help pay for the State’s Medicaid budget.

OSPA’s Activity

OSPA pursued an ambitious agenda in 2019: First, modernizing the PA profession through the implementation of the Optimal Team Practice model in House Bill 3311; and second, updating the Workers Compensation statute to allow PAs to treat workers compensation patients as frequently as needed, for whatever duration is needed. OSPA also offered support to a variety of common-sense health care policies and continued to build its reputation and Capitol relationships. Below is a summary of those efforts.

Optimal Team Practice (OTP) – HB 3311

OSPA’s main priority was House Bill 3311, an Oregon version of the AAPA model to modernize PA practice acts by removing the direct link between a PA and a single physician. HB 3311

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ultimately did not pass, after OSPA made a decision mid-session to pursue more in-depth conversations with various stakeholders before putting forth a bill.

OSPA started in the spring of 2018 to identify the problem sections of Oregon law: specifically, that the administrative and legal burdens placed on health care institutions and supervising physicians were creating barriers to employment for Oregon PAs. While it was easy to identify the current problems, OSPA struggled through the fall of 2018 with the details of a policy solution. OSPA reached out to members in an online survey; it was discussed in two different sessions at the CME/member meeting; and the GAC and Board engaged in numerous discussions on the issue.

From that outreach, OSPA worked through Rep. Alonso Leon (D-Woodburn), a member of the House Health Care Committee and champion for PAs, to draft House Bill 3311. Legislative counsel returned a draft of the bill in late December, but an LC backlog delayed revisions until late January, which meant HB 3311 did not get introduced until early February—considered very late in session. OSPA immediately gathered feedback both internally and from stakeholders such as the Oregon Medical Association, who shared their concerns with the bill, especially around the issue of removing supervising physicians, while also providing helpful feedback on the concept language. Additionally, OSPA leadership met with staff of the Oregon Medical Board (OMB), and while the OMB was supportive of the idea of a bill to modernize the PA profession, they were unsupportive of passing a bill in the 2019 session.

Due to the combination of factors—lack of time to fully engaged in a thorough stakeholder process and concerns from the Medical Board and the Medical Association—OSPA leadership made the decision in March to pull the bill prior to the first chamber deadline and to work in the interim to introduce an Oregon OTP bill that had the support of relevant stakeholders.

OSPA has always prided itself on developing consensus around its policy proposals. The concept that OSPA developed is a solid one, and the next steps are to meet with stakeholders: OMA, large hospitals that employ PAs, the Nurses Association, Family Physicians, and other interested parties. Those meetings will help flesh out the details of the OTP concept and refine it so that it truly works for employers and providers alike. OSPA expects to pursue OTP in 2020.

Workers Compensation

In addition to OTP, OSPA explored a change to the workers' compensation statute. Currently in workers compensation law, PAs are considered Type B Attending Physicians and are allowed to treat workers comp patients for up to 60 days or 18 visits. They can also approve time loss for workers for up to 30 days. In contrast, medical doctors (MDs) and osteopathic physicians (DOs) are classified as Type A attending physicians and are allowed to treat patients for however long and however many visits are needed. And nurse practitioners are authorized to treat for 180

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consecutive days. The arbitrary disparity among primary care providers both reduces access to treatment for Oregon's workers and runs counter to a PA's practice agreement, which stipulates that PAs may practice any medical service necessary so long as it is included in that agreement.

OSPA requested a draft bill through Rep. Salinas (D-Lake Oswego) to move PAs to Type A Attending Physicians, allowing them to treat workers compensation patients as frequently as needed, for whatever duration is needed, so long as the treatment of worker compensation patients is included in a PA's practice agreement.

OSPA presented the concept to the state workers comp board, the Management and Labor Commission (MLAC), in late fall, and the commissioners expressed hesitancy and concern with increasing the amount of time PAs are authorized to treat. Specifically, they stated their belief that injuries that take longer than 60 days to treat are either complicated or require a specialist, and therefore should be treated by an MD and DO. OSPA also participated in a phone call with representatives from SAIF, Oregon's nonprofit workers' compensation insurance company, who shared many of MLAC's concerns.

Due to those concerns expressed by MLAC and SAIF, OSPA chose not to pursue a bill this session. Both organizations have significant influence in the Legislature and their support will be needed to make changes to workers compensation statute. Despite this setback, there were some benefits to the conversations with MLAC. Commission members were surprised to hear that a study of patient access to workers' compensation providers had not been conducted since 2006, and they expressed interest in having a larger discussion on how the current statute regarding workers compensation providers impacts patient access. OSPA should continue to engage with MLAC and SAIF on workers compensation issues to establish a strong working relationship, which will be beneficial should OSPA decide to pursue legislation in future sessions.

Other Bills

Medicaid Budget

Provider and

Premium Tax: Full funding for the Medicaid Budget was one of the four pillars of the Democrats' agenda this session. The legislature was facing a \$700 million gap at the beginning of the session. Through HB 2010, the legislature extended and expanded taxes on hospitals and insurance premiums to raise \$334.5 million for Medicaid.

Supported/Passed

Tobacco Tax: Several bills (HB 2123, HB 2158, HB 2159, HB 2169 and HB 2270), which expand and increase the tobacco tax, were combined into one Tobacco Tax omnibus

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bill—HB 2270. The bill increases the tobacco tax by \$2.00 per pack and expands the type of tobacco products taxed to include e-cigarettes and vape-based products beginning on January 1, 2021. The estimated \$115 million in revenue from this increase will be used to fund the Oregon Health Plan through the Oregon Health Authority, and a small percentage will be allocated to tribal health providers and tribal health programs.

Negotiations for this bill extended all the way to the last day of session, where it almost died on the Senate floor. Ultimately, HB 2270 passed out of both chambers of the legislature on party-line votes. Oregonians will have an opportunity to ratify the legislation in the next (2020) general election.

Supported/Passed

Provider Issues

HB 2011 *Requires health care professional regulatory boards to require licensees to complete cultural competency continuing education.*

OSPA supported this priority of House Speaker Tina Kotek (D-Portland), who introduced HB 2011 after she heard from many of her constituents that it was difficult to find a health care provider with cultural competencies. OSPA provided significant feedback to Speaker Kotek on how best to implement continuing education (CE) and the bill was amended to: (1) require the completion of the CE every other licensing period and (2) allow for boards to determine what qualifies as a cultural competency CE. OSPA testified in support of the bill and submitted a letter in support to the record with the agreement that HB 2011 would be the only mandated CE passed this session. HB 2011 passed out of both chambers with overwhelming support and will go into effect on the 91st day following Sine Die.

Supported/Passed

HB 2014 *Removes limit on noneconomic damages in liability cases.*

Several bills (HB 2014, HB 2255 and SB 592), proposed by the Oregon Trial Lawyers Association, to remove the \$500,000 limitation on awards of noneconomic damages in claims for wrongful death were introduced this session. Two, HB 2255 and SB 592, died in their respective committees without receiving a hearing. House Bill 2014 passed out of the House on a party-line vote but died on the Senate floor after failing to receive majority support.

Proponents of the bill argued that the \$500,000 cap is an arbitrary number that does not consider any of the information considered by the jury and that it

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prohibits the ability of the victim or victim's families to be made whole. Opponents of the bill, including the OMA, argued that removing the limits could drive up the cost of health care as it would potential increase the liability and therefore the malpractice insurance for health care providers.

Opposed/Failed

**HB 2694/
SB 125** *Requires the credentialing of all providers of a medical group is one provider is already credentialed.*

ZoomCare priority bills. Died in their respective health care committees without receiving a hearing as a result of ZoomCare's acquisition by PeaceHealth.

Neutral/Failed

HB 2695 *Requires physician assistants who practice medicine full-time to receive eight hours of supervision each month.*

ZoomCare introduced HB 2695 after they identified the same administrative burdens hiring PAs. However, their solution contained several flaws, including enshrining in statute the Oregon Medical Board rule that requires 8 hours of direct supervision for licensed PAs. OSPA shared their concerns with the bill with House and Health Care committee leadership and the bill died in committee without receiving a hearing.

Opposed/Failed

SB 139 *Creates new requirements applicable to prior authorization, step therapy and other utilization review policies and procedures on insurers offering health benefit plans and health insurance, medical services contracts, multiple employer welfare arrangements, health care service contracts and pharmacy benefit managers.*

This was Oregon Medical Association's (OMA) priority legislation for the 2019 session. OMA engaged in a significant stakeholder process with insurers and patient advocates and worked to include multiple amendments to address concerns that were raised throughout the session. The bill was ultimately waylaid by the \$25 million fiscal impact on Public Employees' Benefit Board (PEBB) and Oregon Educators' Benefit Board (OEBB) members. The OMA was ultimately unable to overcome the large fiscal impact but are planning to bring back the issue in the 2020 session, most likely with an exemption for PEBB and OEBB members.

Supported/Failed

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SB 565 *Establishes that immunizations may not be mandated as condition of employment for registered nurses or other medical staff unless required by federal law.*

Died in Senate Workforce without receiving a hearing.

Supported/Failed

SB 808 *Requires certain health care licensees to complete three to six hours of continuing education related to suicide risk assessment, treatment and management every six years.*

Senate Bill 808 was introduced by Sen. Frederick (D-Portland) on behalf of a constituent. While the bill was passed out of Senate Health Care, it died in the Full Committee on Ways and Means as part of the deal to pass only one continuing education mandate bill this session.

Opposed/Failed

SB 61 *Increases membership of Oregon Medical Board by one public member.*

The Oregon Medical Board introduced SB 61 to increase the public membership of the Board by one, placing the ratio of public to professional representation on par with other professional boards. The bill passed with bipartisan support and went into effect upon passage.

Supported/Passed

SB 293 *Establishes Indian Health Scholarship Program to provide free tuition and fees for qualifying Indian health profession students in exchange for student commitment to work at tribal service site after graduation.*

This bill was introduced by Sen. Hansell (R-Athena) following multiple failed attempts by former Sen. Ferrioli (R-Ontario). If funded, the scholarship would have been available only at the Oregon Health and Sciences University, as there is a legal issue with allocating public dollars to private schools. Unfortunately, the Ways and Means Co-Chairs declined to fund the bill this session and it died in the Full Ways and Means committee.

Neutral/Failed

SB 1027 *Allows health care practitioners who receive needlestick injury during provision of medical care to patient who is unconscious or otherwise unable to consent to test patient for HIV for purpose of determining necessary course of treatment for health care practitioner.*

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Senate Bill 1027 was introduced on behalf of the Oregon Medical Association and other health care providers. It allows health care practitioner to perform a blood draw on an unconscious patient in the event of a needlestick injury, so long as the patient is not expected to regain consciousness or the ability to consent in enough time for the practitioner to receive appropriate medical attention. The bill requires that the results of the test be anonymous, be shared with the patient or patient's legal guardian, and not be included in the patient's medical record or made available to law enforcement agencies.

The bill was amended to remove specific reference to human immunodeficiency virus (HIV) following concerns that the bill unintentionally continues the marginalization and stigmatization of individuals with HIV, raised by the Cascade AIDS project. Senate Bill 1027 received unanimous support in both the Senate and the House and goes into effect on the 91st day following sine die.

Supported/Passed

Rx Drugs

Several bills relating to the high cost of prescription drugs were introduced this session. Two bills relating to wholesale importation (SB 409 and HB 2689) passed out of their respective health care committees but failed to receive funding in Ways and Means.

A bipartisan vote passed House Bill 2658, requiring manufacturers to report to the Department of Consumer and Business services planned increase in price of prescription drugs at least 60 days before the date of the increase. The bill applies to increases in prices of more than 10% or \$10,000 for brand-name prescription drugs and more than 25% or \$300 for generic prescription drugs. Prescription drugs manufactured by four or more companies are exempted from the reporting requirement. The bill goes into effect on January 1, 2020.

Supported/Passed

SB 9

Allows pharmacists to prescribe and dispense emergency refills of insulin.

This bill was introduced as priority legislation by Sen. Linthicum (R-Klamath Falls) who has Type-1 diabetes. It was amended to limit the number of times emergency insulin can be dispensed to three and the amount that can be dispensed to 30-day supply. The bill received unanimous support in both the Senate and the House and went into effect upon passage.

Supported/Passed

SB 698

Requires pharmacists to label prescription drugs in language other than English if patient to whom prescription drug is dispensed is person of limited English proficiency.

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This bill was introduced as priority legislation for Rep. Alonso Leon (D-Woodburn). It was amended to direct the Board of Pharmacy to determine: (1) which pharmacies the label or informational insert requirements apply to, (2) which prescription drugs will need an information insert, and (3) at least 14 languages other than English for labels and informational inserts to be available based on specified data sources. Additionally, the Board is required to reassess and update the set of languages at least once every 10 years. Finally, the bill exempts institutional pharmacies (long term care facilities, correctional institutions, etc.) from the labeling requirements.

The bill received bipartisan support in both the Senate and the House and goes into effect on the 91st day following sine die.

Supported/Passed

Vaccines

HB 3063

Vaccine mandate: Removes the philosophical exemption from vaccine mandates for public school children, maintains medical exemption.

This bill would have removed the religious and philosophical exemption for enrolling children in public and private school or daycare. The bill had contentious hearings in House Health Care committee and the Ways and Means Subcommittee on Human Services, where it was amended several times. In its final form, the bill also expanded the types of providers that can write medical exemptions from just physicians to physicians, NPs and naturopaths. PAs were inadvertently left out of that expansion and OSPA had several conversations with chief sponsor Sen. Elizabeth Steiner Hayward (D-Tualatin) about this oversight.

Ultimately, HB 3063 fell victim to negotiations between the Senate Republicans and Governor Brown and was killed in exchange for their return to the Senate floor. Proponents of the bill are exploring a few avenues for bringing back this issue in the next session and if they are successful, Sen. Steiner Hayward has committed to OSPA that PAs will be included in the expanded list of providers who can approve medical exemptions.

Supported/Failed

Health Care Reform

SB 770

Establishes Task Force on Universal Health Care charged with recommending to Legislative Assembly design of Health Care for All Oregon Plan, administered by

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Health Care for All Oregon Board to provide publicly funded, equitable, affordable, comprehensive and high-quality health care to all Oregonians.

This bill and House Bill 2012 were combined and passed in the last hours of the session.

Supported/Passed

HB 2012 *Requires Oregon Health Authority to develop plan for Medicaid Buy-In program for public option for Oregon residents who do not have access to health care.*

This bill passed as part of SB 770.

Supported/Passed

HB 2447 *Requires the Oregon Health Authority to convene a forum for vertically integrated, nonprofit health care systems to collaborate and envision a health care delivery system of the future.*

This bill was introduced as priority legislation for Rep. Greenlick (D-Tualatin), who viewed it as his legacy bill. Called the “EPCOT Bill” as Rep. Greenlick repeatedly referred to it as implementing the “health care of tomorrow, today”. House Bill 2447 authorizes the OHA to set up a series of meetings with health care organizations in a way that creates safe harbor protections for each organization’s trade secrets, with the goal of creating a fully integrated health care delivery system. While the bill goes into effect on January 1, 2020, it is unclear how much of the bill will be implemented as Rep. Greenlick has stated that this will be his last term as a representative.

Supported/Passed

Next Steps

The 2020 session will begin on February 3, 2020. In advance of session, there are several deadlines we will need to consider and monitor:

- September: Interim Committee Days take place September 16-18.
- November: Interim Committee Days take place November 18-20. Legislators must deliver request for draft bill to Legislative Counsel by November 22.
- January: Legislative Counsel is required to return draft bills by January 13. Legislators are required to drop their bills for the session by January 17. Interim Committee Days take place January 13-15.

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Optimal Team Practice (OTP)

Representatives from OSPA should meet with stakeholder organizations throughout the summer to review the goals of OTP and discuss their concerns with modernizing the PA profession, similar to the meeting held with the OMA in June. Those stakeholders include:

- Oregon Medical Board
- Oregon Nurses Association
- Oregon Academy of Family Physicians
- Oregon Chapter of the American College of Emergency Physicians
- Oregon Association of Orthopedic Surgeons
- Oregon Psychiatric Physicians Association
- Oregon Association of Hospitals and Health Systems
- Providence Health & Services
- PeaceHealth/ZoomCare
- Kaiser Permanente
- Legacy Health

Thorn Run will begin outreach to these organizations and include OSPA leadership as the meetings are scheduled.

Once these conversations have taken place, a draft concept for stakeholder review and feedback will need to be approved by the OSPA board, with the goal of presenting the final concept language to the OSPA membership at the annual CME conference in late October. Our bill request will need to be submitted to Legislative Counsel for drafting by November 22.

Workers' Compensation

OSPA leadership will have to decide if there is a need to pursue a change to workers compensation statute in the 2020 legislative session. If so, thorough outreach to OSPA members to determine the number of PAs currently treating workers' compensation injuries and how they are being negatively impacted by current statute is necessary.

Unless there is strong objection, TRP recommends placing this change on hold and instead focusing OSPA's energy on passing OTP legislation in the short session. With only 35 days, it can be difficult to pass multiple bills and OTP has a greater potential to positively impact the PA profession.

Other policy proposals

Other legislative concepts that have been floated and should be discussed:

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- Technical fix to ORS 431A.570 to allow for results from testing following exposure to bodily fluids be shareable with a designated PA, in addition to a physician or nurse practitioner. (Rachel Stappler suggestion)
- Technical fix to SB 1027 to update language to law enforcement and other infection disease. (Rachel Stappler suggestion)