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Northwest Permanente, P.C.  
Physicians & Surgeons

Before the Senate Committee on Health Care and Human Services  
Senate Bill 365—Treatment for Autism Spectrum Disorders

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Please accept this testimony on behalf of Northwest Permanente, P. C., Physicians and Surgeons, an independent, multi-specialty group practice comprised of 1,100 physicians and allied clinicians responsible for the medical care of Kaiser Permanente enrollees in Oregon and Southwest Washington.

Our patients may receive applied behavior analysis (ABA) in the treatment for autism spectrum disorder (ASD). These services are available when a patient is diagnosed with ASD and when ordered by their clinician as a medically necessary part of the patient's treatment plan. While we have found ABA to be an appropriate intervention, particularly for younger patients, our services are not limited because of the patient's age. Neither do they hinge on hours of service provided weekly to patients. Our multi-disciplinary clinical services do require active engagement by parents or guardians in their child's treatment and demonstrable progress in meeting the child's treatment needs. If a service, whether ABA or another of the array of services available within our care delivery system for patients with autism, is not working, our clinicians will seek other treatment services.

Senate Bill 365 proposes to mandate coverage of treatment for autism spectrum disorders by the Oregon Health Plan (OHP), small employer health benefit plans, the Public Employees' Benefit Board and the Oregon Educators' Benefit Board. While we do not support the bill as introduced, we have not yet been able to review proposed amendments you may be considering to assess their impact on the current services we are providing or any additional costs such a mandate might involve.

Nonetheless, we urge your careful consideration of two issues before deciding whether to approve the bill, either in its original form or with additional amendments.

First, we draw your attention to ORS 171.870 to 171.880. These statutes generally recognize that:

“A systematic review of legislation proposing mandated or mandatorily offered health coverage that explores all ramifications of the proposed legislation will assist the Legislative Assembly determining whether mandating a particular coverage or offering is in the public interest.” ORS 171.870(3)(b).

ORS 171.875 directs that: “Every proposed legislative measure that mandates a health insurance coverage . . . shall be accompanied by a report that assesses both the social and financial effects of the coverage . . . .” The questions expected to be answered by such a report are specified in ORS 171.880. We are not aware that any such report accompanies SB 365.

Second, we believe that enactment of this legislation may disqualify Oregon families from receiving federal subsidies for the mandated services when they obtain coverage through Cover Oregon. Under the Affordable Care Act (ACA), the federal government will subsidize coverage for middle to lower income individuals and families for Essential Health Benefits (EHBs). But to qualify for such subsidies, EHBs must have been covered by a state’s benchmark plan before January 1, 2012.

SB 365’s mandate for coverage of applied behavior analysis proposes to take effect on January 1, 2014, two years after the federal deadline. This means that Oregon will have to pay the costs of this mandated coverage for enrollees through Cover Oregon (in addition to its payment for services under the OHP and for public employees and their families through PEBB and OEBC). Our concern is that passage of the legislation, at least to the extent it affects individual or small group coverage requirements, may jeopardize certain Oregonians’ receipt of federal subsidies for their coverage—something federal law will require in 2014 that they purchase. While there may be ways to avoid such a result, we do not read SB 365 as preserving available federal subsidies for treatment of ASD.

On February 25, the federal government adopted the following regulation as a part of 45 CFR:

Sec. 155.170 Additional required benefits.

(a) Additional required benefits. (1) A State may require a QHP to offer benefits in addition to the essential health benefits.

(2) A State-required benefit enacted on or before December 31, 2011 is not considered in addition to the essential health benefits.

(3) The Exchange shall identify which state-required benefits are in excess of EHB.

(b) Payments. The State must make payments to defray the cost of additional required benefits specified in paragraph (a) of this section to one of the following:

(1) To an enrollee, as defined in Sec. 155.20 of this subchapter; or

(2) Directly to the QHP issuer on behalf of the individual described in paragraph (b)(1) of this section.

(c) Cost of additional required benefits. (1) Each QHP issuer in the State shall quantify cost attributable to each additional required benefit specified in paragraph (a) of this section.

(2) A QHP issuer's calculation shall be:

(i) Based on an analysis performed in accordance with generally accepted actuarial principles and methodologies;

(ii) Conducted by a member of the American Academy of Actuaries; and

(iii) Reported to the Exchange.

[<http://www.gpo.gov/fdsys/pkg/FR-2013-02-25/html/2013-04084.htm>]

How much might Oregon forego in federal subsidies for coverage of treatment of autism spectrum disorder? We are not able to quantify the financial impact. We believe that many of our patients who are receiving such treatment through our medical care program will be beneficiaries of such subsidies, whether they are paid by the federal government or by Oregon state government.

One of the reasons Oregon law requires studies of mandated benefits before their adoption is so that you have as complete information as possible about the effects your acts may have. We urge you to make sure that this legislation does not produce results far different than you intend.

I would be happy to answer any questions you may have.