

SB416: External Review Quality Assurance

Testimony in Support by

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Introduction – Paul Terdal

- 25+ years of professional experience in regulatory environments
 - Lead critical projects; develop business processes, systems for regulatory compliance
 - Nuclear, healthcare, communications, education
 - John M. Olin Fellow in the Study of Markets and Regulatory Behavior at Yale
- Volunteer consumer advocate assisting families with insurance appeals related to autism coverage
 - Assisted more than 80 families with insurance denials, coverage issues
 - Wrote 22 External Review appeals on behalf of consumers in last 2 years (approximately 7% of entire volume of External Review appeals in Oregon)
 - 16 overturned insurer denial (73%)
 - 5 upheld insurer denial (22%)
 - 1 declined – out of scope for external review
 - 3 involved IRO non-compliance with ORS / OAR, confirmed by DCBS (14%)

Several IROs made critical errors in implementing Oregon Law and Administrative Rules

- ER11104 – Lumetra:
 - Did not provide any references to scientific evidence to support decision, in violation of OAR 836-053-1325(6)(a)
 - Did not provide qualifications for reviewer, in violation of OAR 836-053-1325(6)(c)
- ER11138 – AMR:
 - IRO returned decision immediate decision based on insurer's information only – without waiting for consumer to submit supporting documentation, in violation of ORS 743.862 and OAR 836-053-1340
- ER12131 – Medwork:
 - Cited references to scientific evidence to support decision that did not meet acceptable standards in violation of OAR 836-053-1325(4)(a) and OAR 836-053-1325(6)(a)
 - Did not provide qualifications for reviewer, in violation of OAR 836-053-1325(6)(c)

DCBS has minimal authority to enforce laws / rules, conduct quality assurance of external review process

OAR 836-053-1335 Procedures for Complaint Investigation*

- (1) The Director may audit, examine and conduct an on-site review of records to investigate complaints alleging that an independent review organization or medical reviewer committed conduct contrary to ORS 743.857 to 743.862, OAR 836-053-1300 to 836-053-1365 or the contract between the Director and the independent review organization.
- (2) A person, including, but not limited to, an enrollee, insurer or provider, may submit a written complaint to the Director alleging that an independent review organization committed conduct described in this rule. The Director may consider the complaint in relation to the terms of the contract with the independent review organization and in relation to ORS 743.857 to 743.862 and OAR 836-053-1300 to 836-053-1365 and take action as appropriate under the contract. The Director shall notify the complainant of the results of the Director's determinations and of any action taken or to be taken.

* *ORS 743.858(4)(d) – DCBS shall adopt rules including “Procedures for complaint investigations”*

- After consulting with DoJ, DCBS concluded it lacked the authority to enforce Oregon Law and Administrative Rules – except by terminating IRO contract
 - **Non-compliant IRO decisions are legally binding on both consumer and insurer**

SB416 was modeled on existing OAR 836-053-1335 – with new authority to take corrective action

- If DCBS finds that IRO has failed to comply with ORS 743.857 or 743.862 or has failed to comply with rules adopted by the director ... the department may reassign the adverse benefit determination dispute to a different IRO for de novo review
- Authority to reassign review to another IRO is based solely on compliance with laws and administrative procedures governing external review
 - DCBS won't be permitted to second-guess expert medical judgment by an IRO
- SB416 also restores mandatory civil penalties for insurer non-compliance with IRO decisions by insurers that existed in 2011

SB416 enhances compliance with Affordable Care Act

U.S. Departments of Health and Human Services, Labor, and Treasury have set minimum standards for External Reviews for compliance with PPACA, Section 2719(b)(1) of the Public Health Service Act

Standards for a State-administered external review process include:

- “(9) If the state contracts with, or otherwise identifies one or more IROs to provide external review, the State must have a process in place for quality assurance of IROs.”
 - SB416 establishes process, empowers state to assure quality of IROs and take action to protect consumers, insurers when IROs fail to comply
- “(11) The IRO decision is binding and must be enforceable by the State”
 - SB416 restores minimum civil penalties for insurer non-compliance – ensuring that IRO decisions are binding and enforced

Regulatory emphasis is on minimum standards for consumer protection – a floor, not a ceiling; states may adopt stronger consumer protection