



In Support of Oregon Senate Bill 309
February 12, 2015

Position: PhRMA supports Oregon SB 309, which prohibits discrimination based on age, expected length of life, present or predicted disability, degree of medical dependency or quality of life in health benefit plans and in determination of medical services covered by state medical assistance programs.

The Pharmaceutical Research and Manufacturers of America (PhRMA) represents the country's leading innovative biopharmaceutical research and biotechnology companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier, and more productive lives. In 2013, biopharmaceutical companies invested more than \$51.1 billion in the discovery and development of medicines.

PhRMA strongly supports the provisions of federal law that prevent discrimination based on age, expected length of life, present or predicted disability, degree of medical dependency, or quality of life. This legislation ensures compliance with the provisions in the Affordable Care Act (ACA), which impose the requirement plans available for purchase through the exchange not discriminate in benefit design or in the implementation of benefit design based on an individual's age, expected length of life, race, color, national origin, sex, gender identity or sexual orientation, present or predicted disability, degree of medical dependency, quality of life, present or predicted diagnosis, disease or health condition. In addition, this legislation speaks to the importance of upholding the "doctor/patient relationship" when the provider deems it necessary for his/her patient to have access to innovative treatments. SB 309 ensures that healthcare providers, not bureaucrats, are making treatment decisions for their patients.

Before the passage of the Affordable Care Act (ACA), insurers could deny consumers health care coverage based on a pre-existing condition or could charge higher premiums based on a known health condition or past medical history. Although ACA prohibits health plans from discriminating against patients based on health status, the AIDS Institute and the National Health Law Program filed a complaint in 2014 with the federal Department of Health and Human Services Office for Civil Rights ("OCR")^{1,2} alleging that four health insurance companies operating in Florida's Health Insurance Exchange were violating certain discrimination protections for persons living with HIV/AIDS based on plans' coverage and cost sharing requirements for certain HIV/AIDS-related prescription drugs.³ The complaint alleged that while these insurers covered many HIV/AIDS medicines, the plans' discriminatory practices placed all of the HIV/AIDS drugs covered by their formularies at the highest cost-sharing tier while this benefit design practice was not instituted for other diseases. In separate

¹ OCR has the legal authority for enforcing certain protections against discrimination under the Affordable Care Act (ACA)

² The states maintain similar enforcement authorities under the ACA, and, in fact, are permitted to enact even more stringent consumer protections.

³ The four plans are Coventry Health Care, Inc., Cigna, Humana and Preferred Medical. See AIDS Institute and NHeLP Administrative Complaint dated May 29, 2014, <http://www.healthlaw.org/issues/disability-rights/HHS-HIV-Complaint#.VBY3Qlaaq2w>.

settlements, all four plans have changed their formularies for 2015 to patient lower cost-sharing responsibility for AIDS drugs.

Inspired by the Florida case, the department of Health Policy and Management at Harvard School of Public Health investigated formulary tiering for HIV medicine in 12 states using the federal Marketplace and published its findings in the January 2015 issue of the New England Journal of Medicine. Researchers found “evidence of adverse tiering in 12 of the 48 plans [reviewed]...adverse-tiering plans (ATPs) enrollees had an average annual cost per drug of more than triple that of enrollees in non-ATPs (\$4,892 vs. \$1,615).” In addition, an Avalere analysis of Exchange plans found that over half of reviewed formularies place all analyzed oncology and multiple sclerosis products on the highest formulary tier.

In summary given that discriminatory practice in formulary design has been documented in Exchange plans across the nation, PhRMA believes that SB 309 takes a good first step at making needed medicines more accessible to patients. To ensure that consumers are protected against discriminatory insurance design, PhRMA strongly urges Oregon legislators to support Senate Bill 309.