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February 11, 2016

The Honorable Laurie Monnes Anderson  
Chair, Senate Committee on Health Care  
900 Court St NE  
Salem, OR 97301

RE: Potential Impact and Considerations of Senate Bill 1568

Dear Chair Monnes Anderson and Members of the Senate Committee on Health Care:

Senate Bill 1568 prohibits health care services from being denied in the Oregon Health Plan based on age, expected length of life, present or predicted disability, degree of medical dependency, or quality of life. The bill also requires the Health Evidence Review Commission to ensure services are not denied on the same bases, and applies similar provisions to certain commercial insurance markets.

This bill is similar to legislation that was introduced in both 2014 (Senate Bill 1565) and 2015 (Senate Bill 309). The bill is not exactly aligned with federal regulations and goes beyond federal law, creating ambiguity in the State's ability to ensure medically appropriate and effective services are provided in the Oregon Health Plan. The bill could also potentially limit the State's ability to manage costs and quality based on considering effectiveness and appropriateness of treatment.

Proponents have raised concerns that protections in federal law could be waived beginning in 2017.

Federal regulations and guidance on Affordable Care Act section 1332 waivers do not include the anti-discrimination provisions as one of the provisions which could be waived. Additionally federal law requires that the federal government may only grant a waiver if coverage is at least as comprehensive as that offered through the exchange marketplace plans. Additionally, separate legislation (HB 4017) being considered this session requires the State to report to the Legislature in 2017 on any waivers it plans to seek under section 1332 of the Affordable Care Act.

The federal government also requires waiver requests to be made available for public comment before they are submitted.

Federal regulations under the ACA aim to prevent benefit plans from being designed or administered in a way that is discriminatory. SB 1568 on the other hand prohibits any individual service that is requested from being denied on the basis of age, expected length of life, present or predicted disability, degree of medical dependency, or quality of life. Additionally, as introduced, the bill does not explicitly allow for use of reasonable medical management techniques. Federal regulations do allow for reasonable medical management techniques.

There are numerous instances when age, for example, would be an appropriate consideration. Knee replacements in teenagers are generally not considered appropriate because they would have to be replaced multiple times over the course of one's life given that they wear out over time. Another example is the use of opioids. As we combat a serious opioid addiction epidemic, the state should maintain the ability to have clinically appropriate prescribing guidelines for opioids.

We have a strong history in this state of establishing covered services in the Oregon Health Plan through the Health Evidence Review Commission (HERC) by ranking services by priority according the comparative benefits of each service, then establishing the line of what services will be covered on that list through funding available and approved by the Legislature.

HERC does not make determinations about treatment for individual members. The same benefits are available for pre-ACA and ACA expansion populations in the Oregon Health Plan, with the exception of children and pregnant women, who have additional services available. The process, which has been in place for more than two decades, strikes a delicate balance of providing the most effective services to vulnerable Oregonians within our state's limited sources.

Finally, it should be noted that the federal government is currently undergoing rulemaking to implement a separate set of anti-discrimination provisions in the ACA not addressed in this bill that prohibit discrimination based on race, color, national origin, sex, age, or disability. We will be re-examining Oregon age and disability protections once these comprehensive federal regulations become final in a few months.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Lynne Saxton". The signature is written in a cursive, flowing style.

Lynne Saxton  
Director