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March 15, 2017

The Honorable Mitch Greenlick  
Chair, House Committee on Health Care  
State Capitol  
Salem, Oregon 97301

RE: HB 3391 – Insurer abortion mandate

Dear Chair Greenlick and members of the committee,

On behalf of Providence Health Plans and Providence Health & Services, thank you for the opportunity to outline our serious concerns regarding specific provisions of House Bill 3391.

Providence is a faith-based, not-for-profit health system that proudly serves as Oregon's largest health care provider, largest health plan and the largest private employer. As a health care provider that includes eight hospitals, 49 primary care clinics, 22 immediate and express care clinics, comprehensive behavioral health services, specialty programs and research, a range of elderly services, along with palliative and hospice care – we are committed to clinical excellence.

Fundamental to any success in improving health outcomes, is Providence's commitment to increasing access to health insurance coverage. For more than 30 years, Providence Health Plans has served Oregonians by offering coverage options in a wide range of markets. Since the implementation of the Affordable Care Act and Medicaid expansion – which Providence strongly supports – we have been committed to serving all Oregonians. With a reputation for trusted, compassionate service, our membership has grown by 61 percent since 2013. In the individual market, we are one of only two carriers dedicated to ensuring access statewide. Today, almost 50 percent of Oregonians who purchase individual coverage on the exchange do so through Providence Health Plans. In total, Providence provides managed care services for more than one million individuals, including approximately 642,000 insured and self-funded plan members.

Providence Health Plans' commitment to compassionate service for all, particularly the poor and vulnerable, is strongly rooted in our Mission and tradition – established 160 years ago when the Sisters of Providence arrived in the Northwest from Montreal. As a Catholic-sponsored organization, Providence Health Plans operates under the Ethical and Religious Directives for Catholic Health Care Services, which emphasize respect for the sanctity of life and provide important direction related to Catholic thought and tradition. The Directives also provide clear instruction that Catholic institutions are not permitted to provide, or cooperate with the provision of, abortion services. This would be considered material cooperation – and is a red line for Providence Health Plans that cannot be crossed.

We are strongly opposed to House Bill 3391 in its current form. Requiring Providence Health Plans to include abortion as a covered benefit directly violates the ERDs and puts at risk those who receive coverage through Providence on the individual and group markets – that’s as many as 260,000 Oregonians. This is an unfortunate position to find ourselves in, especially when there are portions of the bill, like CAWEM expansion, that Providence would support as a stand-alone bill. Regrettably, our good-faith efforts with advocates and legislative leadership to identify a path forward have failed to produce a result that provides a narrowly tailored conscience clause for insurers sponsored by a religious organization; that would provide the certainty we require.

Proponents have argued that Section 2(10) (page 3, lines 39-42) would provide Providence a sufficient exemption. The provision states:

(10) If the Department of Consumer and Business Services concludes that the enforcement of this section may adversely impact the allocation of federal funds to this state, the department may grant an exemption to the requirements, but only to the minimum extent necessary to ensure the continued receipt of federal funds.

Any exemption granted under this subsection seems to rely on the Weldon Amendment, a federal provision started in 2005 that is required to be adopted each year as part of the Labor, Health and Human Services and Education appropriation bill. It prohibits the federal government, or any state or local government, from discriminating against a health care entity (including insurers) for refusal to provide, pay for, provide coverage of or refer for abortion services. If the amendment is violated, the federal government could penalize states by withholding all federal funds from HHS, the Department of Education and the Department of Labor. The Weldon Amendment has never been enforced. In part because the penalty is so severe, and it offers no ability for individuals or entities to seek enforcement or other relief.

The provisions of Section 2(10) are insufficient to provide certainty for Providence Health Plans for several reasons, including:

- The subsection provides DCBS the ability to subjectively decide whether federal funds **may** be adversely affected by the enforcement of the bill. Posing questions such as: Are federal funds at risk merely by the existence of the Weldon Amendment? Would DCBS conclude federal funds are at risk only if the state was notified of the imminent withdrawal of federal funds? Without specific criteria, people can disagree as to whether federal funds may be affected and allow DCBS to make a very consequential decision without clear guidance as to what constitutes “adversely affected” with respect to federal funds.
- The Weldon Amendment is a federal requirement, subject to the Congressional budget process. Any changes to the amendment – in enforcement provisions or otherwise – may result in a different conclusion, thereby triggering the requirement for Providence Health Plans to comply with the provisions of Section 2.
- The subsection does not require DCBS to issue an exemption even if the agency concludes that federal funds may be adversely affected. Instead, it says that DCBS **may** issue an exemption.
- The lack of specific criteria for DCBS to reach a conclusion of “adversely affected” federal funds means that the definition/interpretation of the meaning of the section will be open to review when there are changes in the leadership of the agency and/or in the governor’s office.

For an issue that determines whether we can provide health insurance coverage in Oregon, Providence Health Plans cannot rely on the language in the subsection that lacks specific criteria for determining whether federal funds are adversely affected and a federal amendment, which must be approved each year.

We appreciate that proponents share our goal in ensuring that thousands of Oregonians do not lose their insurance carrier as a result of the passage of this bill. However, we see the solution to this goal quite differently – proponents believe Section 2(10) addresses our shared objective, and Providence believes that in order to provide certainty, we need a narrowly crafted statutory conscience clause. It is our position that if the proponents believe that the language in Section 2(10) would provide Providence a guaranteed exemption, then it is unclear to us why there's an objection to language that ensures the mandatory coverage of abortion services does not place Oregon's largest health insurer and the health care coverage for as many as 260,000 Oregonians at risk.

We appreciate the opportunity to express our serious concerns with this HB 3391 as proposed. As this bill continues to be debated, we welcome the opportunity to work with proponents to explore statutory options that provide certainty that Providence Health Plans will not be required to cover abortion services in direct violation of the ERDs. We urge this policy committee to address the issue at hand and not pass the bill to Ways and Means without having resolved this critical issue. Absent a consensus solution, Providence requests that this committee exercise its wise judgment and experience with the health care environment to provide a conscience clause for religious-sponsored insurers.

Sincerely,



Michael L. Cotton  
Chief Executive  
Providence Health Plans