



March 21, 2019

Senate Committee on Judiciary  
Oregon 2019 Legislative Session

Subject: AOC Testimony on SB 299

Dear Chair Prozanski, Vice-Chair Thatcher and Members of the Committee,

Thank you for the opportunity to testify today.

**AOC strongly supports SB 299.** SB 299 will help “crack the door” on important approaches that Oregon can and should actively take to gain increased access to more federal Medicaid dollars to better serve the physical and behavioral health needs of our residents.

While Oregon has succeeded remarkably well in implementing Medicaid expansion for about 400,000 Oregonians, thereby reducing our uninsured rate from about 15% five years ago to about 6% today, we still can make more progress. In particular, Oregon can continue to be innovative in seeking Medicaid funding for some of our most vulnerable citizens who suffer from mental illness and/or addictions and who are involved in criminal justice system.

Traditionally, Medicaid funds cannot be accessed to serve inmates of state correctional facility or local jails where an individual is in “custody.” This Medicaid exception has commonly been referred to as the “inmate exclusion.” Similarly, for nearly all individuals who reside at the Oregon State Hospital, there is another Medicaid exclusion called the “institutions for mental disease” or “IMD” exclusion that prohibits the use of federal Medicaid dollars in mental health institutions serving more than 16 individuals.

While SB 299 is by no means a golden ticket for greater access to Medicaid dollars that can reduce our state’s general fund burden, the bill does give policy direction to OHA to continually search for cutting edge practices to seek increased federal funding. The bill directs OHA to specifically seek Medicaid funds for juveniles who may not be in “custody” in the very technical and legal sense of that word. SB 299 would give policy guidance to the state to take more steps to seek an 1115 waiver (and conceivably other agreements) with the federal government. This general kind of approach is being pursued in other states with respect to both the “inmate exclusion” and the “IMD exclusion” with some measure of success. Under the bill, the strategy could help juveniles access federal Medicaid dollars for healthcare services, including behavioral health.

One reason for hope under the bill --- there is a recent federal government policy contained in a CMS (Center for Medicare and Medicaid Services) letter to State Medicaid Directors (Spring 2016) which outlined when federal Medicaid funds can be used for persons under some level of restriction or detention, so long as a three part test is met. This test is not insurmountable.

Another creative way states have accessed increased Medicaid is call the “inpatient exception.” As a general rule, a person becomes ineligible for Medicaid coverage when he or she is booked into jail, which means that counties are solely responsible for the cost of medical or behavioral health care provided to individuals in their jails. The inpatient exception, however, makes clear that these individuals are eligible for Medicaid reimbursement “during that part of the month in which the individual is not an inmate of a public institution.” This means that counties can seek Medicaid reimbursement for care provided to inmates who are treated for at least 24 hours in a medical institution outside of the jail.

Thank you again for the opportunity to testify on SB 299. The approach this bill seeks is not easy or perfect path, but it does point us in the right direction to keep innovating in search of ways to maximize our state’s access to federal Medicaid resources.

Sincerely,

Andy Smith, Policy Manager  
Association of Oregon Counties