

March 15, 2019

The Honorable Laurie Monnes Anderson
Chair, Senate Health Committee
900 Court St. NE, S-211
Salem, Oregon 97301

Dear Chairwoman Monnes Anderson and Committee Members:

On behalf of the American Kidney Fund (AKF) and all the people we serve in Oregon, including the nearly 1,000 low-income patients who received financial assistance through our Health Insurance Premium Program (HIPP) in 2018, we are writing to express our respectful opposition to SB 900. We believe this bill puts vulnerable patients in the middle of a longstanding financial feud between insurers, unions and providers. If passed, this legislation will cause direct and significant harm to low-income end stage renal disease (ESRD) patients in Oregon.

AKF opposes the bill due to how it directly and indirectly conflicts with the explicit federal guidelines under which our program was established and operates. **If SB 900 is passed, it will quickly force AKF to stop helping low-income Oregonians living with kidney failure.** The harm would not be limited to patients receiving assistance for private insurance. More than two-thirds of our grants--68%--were for Medicare, Medicare Advantage and Medigap plans. 12% were for employer-provided plans (EGHP and COBRA) and the remaining 19% were for commercial plans. All of these individuals would be equally affected and significantly harmed, as we explain below.

As you know, the Office of the Inspector General (OIG) in the U.S. Department of Health and Human Services is the federal office established to fight health care waste, fraud and abuse. In 1997, the OIG issued Advisory Opinion 97-1 (97-1) to AKF after fully vetting our proposal to establish the HIPP program. This Advisory Opinion allowed AKF to create the HIPP program, through which we have been providing charitable assistance to low-income Oregonians with ESRD for over 20 years. The opinion contains strict guardrails that dictate how the program can operate in compliance with federal law while being funded by dialysis providers.

Our concerns with SB 900 and its potential impact include the following:

- **We believe SB 900 conflicts with AKF's ability to comply with Advisory Opinion 97-1 (97-1), which is the foundation for the HIPP program. If enacted, it will quickly force us to stop helping low-income dialysis and transplant patients in Oregon.**

First, the OIG sought to protect the integrity of the program by prohibiting AKF from disclosing whether a dialysis provider is a voluntary donor to its program and ensuring that its assistance be available to any financially needy kidney failure patient regardless of whether their provider is a voluntary donor to AKF. The unprecedented disclosure requirements being imposed in SB 900, however, would make it clear in Oregon (and for some providers, nationally) which providers choose to donate to AKF, as there are no restrictions on the insurance companies' (and government agencies') use of and ability to disclose this information.

Second, SB 900 impacts the protections the OIG gave to low-income kidney failure patients under 97-1. The OIG sought to protect patients' freedom to choose any provider. It stated that "AKF's payment of premiums would expand, rather than limit, beneficiaries' freedom of choice." SB 900 introduces a compelling reason for health care providers to turn away premium-assisted patients, potentially limiting their choice of provider in the event they move or want to change to a different dialysis provider for another reason.

Finally, SB 900 could serve a devastating blow to the HIPP program not only in Oregon but across the entire United States. The OIG made it clear that voluntary contributions to AKF be made "without any restrictions or conditions placed on the donation." If SB 900 were to pass, it could provide an incentive for providers to stop their voluntary donations, leaving more than 74,000 low-income Americans living with kidney failure nationwide without a safety net for health insurance premiums they cannot afford.

- **The bill contains loopholes that will enable insurers to reject our payments, putting patient coverage in jeopardy.**

Insurers across the country have already shown they will take any opportunity to deny our payments, and nothing in this bill prevents them from continuing to do so. Dialysis patients are very expensive patients, but not only because of their dialysis treatments. They are under the care of multiple specialists because of the comorbidities associated with the disease; they are hospitalized at higher rates than other patients; and they take multiple specialty medications to help replace some of the functions of healthy kidneys.

The bill states that third-party payors "*shall provide assistance solely on the basis of the enrollee's financial need.*" This provision appears to preclude AKF from considering our charitable purpose in deciding whom we assist, or, if we do, it could render us in violation of the provisions of the bill. Our premium assistance program is federally approved for kidney failure patients who cannot afford the cost of their health insurance. As SB 900 is written, Oregonians with cancer or diseases other than ESRD could come to us for assistance and we would be in violation of the legislation if we were to turn them away. Here again, SB 900 appears to conflict with the federal guidance on our program; 97-1 was issued for a specific patient population that aligns with our mission.

Further, because AKF pays the insurance premiums for people with end stage renal disease who are on dialysis or have had transplants, we also have concerns about this provision: "*If the entity provides coverage for an insured with end stage renal disease, the entity shall agree not to condition financial assistance on eligibility for, or receipt of, any surgery, transplant, procedure, drug, or device.*" End-stage renal disease patients have only two options to stay alive: an ongoing course of dialysis or a transplant. This provision is subject to interpretation. One reasonable interpretation is that it rules out AKF providing assistance based on the patient's need for dialysis or receipt of a transplant.

- **We take issue with definitions and requirements in the bill that mischaracterize AKF and perpetuate a false narrative about who we are and what we do.**

AKF is not a "financially interested entity." We are an independent 501(c)(3) publicly supported nonprofit that is one of the top-rated charities in the United States. We provide a full spectrum of programs addressing kidney disease prevention, disease management, clinical research and treatment

costs. Our Health Insurance Premium Program helps patients pay for the health insurance in which they are already enrolled and have chosen as the best option for them and their families.

It was envisioned by 97-1 that dialysis providers would be the funders of the HIPP program and that these donations would occur on a voluntary basis. To prevent conflicts of interest, 97-1 also stipulates that providers who make these voluntary donations cannot, in any way, earmark their contributions to assist specific patients. As the opinion makes clear, AKF has absolute autonomy on how these contributions are spent.

We make all decisions independently of our donors. We place all contributions to HIPP in a single nationwide funding pool. We help patients on a first-come, first-served basis. We make our funding decisions based on patient financial need. No one has ever been denied assistance because they receive care from a dialysis provider who does not contribute to HIPP. Our program frequently runs at a deficit because we do not receive sufficient funding from providers to assist all patients who are in need. Patients are free to change providers anytime they wish, and those who are fortunate enough to receive a transplant continue to receive premium assistance for their full plan year.

We have an independent board of trustees, none of whom is employed by or has a financial relationship with a dialysis provider, and strict conflict of interest policies for our board and staff. AKF has 61,000 donors nationwide who support our broad range of programs. We were founded almost 50 years ago, and our mission has always been to assist kidney patients—people at all stages of kidney disease, people on dialysis and those who have had transplants—as well as at-risk populations. Our multitude of programs help our target populations with financial support, education and counseling to help them live healthier lives and achieve the best possible outcomes.

We ensure that patients are aware that our HIPP program is available to help them. We frequently post about our program to our social media audience of more than 155,000 followers. Our website, kidneyfund.org, is one of the most-visited sites on the Internet for people seeking information about kidney patient financial assistance. In 2018, about 60,000 people came to our website looking for information about our grant programs. And for our current grant recipients, we publish a quarterly newsletter that keeps them informed about our program and their rights and responsibilities as grant recipients.

Patients also learn about the program from dialysis social workers, who are required by CMS to help patients navigate the considerable financial and psychosocial burdens that come with being on dialysis. All the major dialysis providers have signed AKF's Code of Conduct, which details our expectation that renal companies and professionals that assist patients in obtaining AKF assistance adhere to the same standards we follow: compliance with all applicable laws and regulations, the highest standards of ethics and accountability, and with the primary mission of serving patients.

We understand that SB 900 is intended to reduce the cost of care for ESRD patients while ensuring that their access to life-saving care continues. Respectfully, we are very concerned that the bill does not achieve either objective. We believe the bill would prevent AKF from providing charitable premium assistance to patients in Oregon. This would result in thousands of low-income dialysis patients having to make the tough choices between paying for their health insurance or paying for rent and food. This is not raising a false alarm. We have numerous patients who are in just that situation.

If AKF does not assist these patients, who else will help them in paying for Medigap and Medicare Part B premiums? Who will help them afford their employer and COBRA premiums? Does anyone want dialysis patients to impoverish themselves to become eligible for Medicaid, or worse yet, to go without health coverage altogether and go to emergency rooms for treatment? What about those patients whose incomes are just slightly too high for Medicaid or who otherwise do not qualify?

We are anxious to work with you to achieve what we think is your and our mutual goal of continuing affordable access to care for the nearly 1,000 ESRD patients that AKF assisted in 2018 in Oregon. This goal can be achieved, but SB 900 simply falls short despite its intended goal.

Thank you for your consideration of these important issues.

Sincerely,



LaVarne A. Burton
President and CEO