Testimony on SB 491: Oregon Fertility Mandate

February 27, 2023

Chair Patterson and Members of the Committee,

My name is Mary Anne Cooper, and I am the Oregon Director of Public Affairs and Government Relations at Cambia Health Solutions, which operates Regence Blue Cross Blue Shield of Oregon. While we understand the positive intentions behind SB 491, I am here today to express concerns with technical aspects of the bill, which would create a coverage mandate for infertility treatment and conception assistance in Oregon.

As one of the state's largest health insurers, Regence is committed to addressing both persistent and emerging health needs for the nearly one million Oregonians we serve. In keeping with our values as a tax paying nonprofit, 86.9% of every premium dollar goes to pay our members' medical claims and expenses. Any mandate requiring coverage of costly voluntary procedures will raise the overall rate of premiums for all members and decrease members' abilities to choose the coverage that is most appropriate for their health needs.

I want to start by acknowledging that Regence is sensitive to the challenges faced by those are struggling to conceive. However, this mandate differs from traditional coverage mandates, will create equity issues, and will contribute to the rising cost of healthcare in Oregon. Instead of moving forward a bill this session, we encourage the state to look to a more comprehensive study of a fertility mandate, looking at rate impacts and mandate design, before moving forward with legislation. House Bill 3157 would set up an appropriate venue for that work.

The way this bill is structured also raises significant equity issues. As you may be aware, the state can only mandate insurance coverage for fully insured plans. The state cannot mandate coverage for high deductible health plans or self-insured plans, which cover well over 1/3 of the covered lives in the state. Most notably, as drafted, the bill does not mandate coverage for those on the Oregon Health Plan, even though the state can include OHP in their coverage mandates. OHP covers well over

another 1/3 of covered lives in the state. This means that the current bill would result in coverage for less than 1/3 of Oregonians at significant premium increases for those Oregonians. Further, the exclusion of the OHP would not help those who can least afford fertility treatments. This approach to covering fertility treatment does not align with the state's health equity goals and seems designed to pass along costs to those who are privately insured that the state is not willing to bear for those who are publicly insured.

Additionally, this mandate has the potential to be one of the mostly costly in Oregon history. We estimate the costs of the base bill to be around $3.5-4 million in additional cost to our fully insured plans. As a non-profit health insurer, those costs will be directly passed onto members in the form of higher premium rates. If the state opts to move forward with PEBB-like coverage, we understand that cost was approximately $3.50 PMPM, which would make it one of the most expensive mandates in Oregon history. While that cost may seem small in isolation, when paired with the costs of the other mandate bills that are moving forward this session and the skyrocketing costs of healthcare, this bill is proposing to significantly increase insurance rates at a time when members can least afford it.

Further, when the state puts forward a mandate like fertility coverage, that means that all employers must put it into their plans, whether their employees want it or not. The increased costs associated with this mandate may result in higher co-pays and deductibles, more excluded services or medicines, or other changes in policies to accommodate this mandate which could have negative impacts on those policy holders.

Under the ACA, the state is also required to cover the costs of any mandates put into place after December 31, 2011 that are applicable to QHPs in the state. While the state has traditionally not addressed this federal requirement and obligation, it is one we believe that the state should take seriously, particularly as it relates to coverage that is incredibly costly.

Finally, we believe some elements of the bill are unclear and could lead to unintended interpretations that could increase overall costs for members. For example, the bill requires unspecified coverage for surrogacy. However, insurance only covers the insured life, and cannot be used for anyone other than the insured. To that end, the state cannot mandate coverage for a surrogate who may not be insured by the same company, and who is not listed on the policy.

Additionally, the requirement of storage of reproductive specimens for the appropriate time deemed medically necessary is unclear. The length of "appropriate time" has potential to leave health plans on the hook for unused specimens indefinitely.

The language on the unlimited embryo transfers requirement is also unclear. Will the transfers only apply to embryos produced from the covered six retrievals or any embryos created from the enrollee in their lifetime?

We understand and support the goals of this legislation. However, for the state to mandate such a high-cost mandate at a time when skyrocketing healthcare costs are already making premiums unaffordable for Oregonians is unwise. And to do it in a manner that excludes low-income Oregonians from the mandate is poor public policy.

We have significant concerns about SB 491 both as drafted and if amended to align with the PEBB benefit. We urge the state to undertake a more thoughtful and collaborative discussion before moving a fertility policy forward and encourage the state to follow Washington in undertaking a comprehensive study, including looking at rate impacts and mandate design, before moving forward with legislation.

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