



Oregon
Tina Kotek, Governor



TO: Senate Health Care Committee
Chair: Sen. Deb Patterson
Vice Chair: Sen. Cedric Hayden

FROM: Jesse Ellis O'Brien, policy manager
Division of Financial Regulation
Department of Consumer and Business Services

RE: SB 822

DATE: March 26, 2025

Dear Chair Patterson, Vice Chair Hayden, and members of the Senate Health Care Committee,

Thank you for hearing SB 822, Division of Financial Regulation's (division) agency bill to improve access to needed health care services for Oregonians enrolled in commercial health insurance coverage. This bill is urgently needed, as Oregon's current law providing oversight for health insurance network adequacy, ORS 743B.505, is limited in scope and does not provide the division with all the tools needed to ensure timely access to covered services for consumers.

I am writing to address several questions about the bill raised by stakeholders. This letter, in conjunction with the -2 amendment to the bill, should serve to clarify our intent in bringing the legislation forward and our plans for rulemaking and implementation following passage.

Federal standards and state flexibility

SB 822 with the -2 amendment states that quantitative network standards adopted under the new provisions shall be consistent with federal standards for Qualified Health Plans on the health insurance marketplace, but "may incorporate flexibility to address issues specific to this state."

Questions have been raised about the scope of flexibility this entails and the division's intent for rulemaking to implement this provision. The division intends to adhere as closely as possible to existing federal requirements while preserving the opportunity to adopt Oregon-specific standards to reflect genuinely unique aspects of Oregon law, Oregon's health care marketplace, or the unique needs of Oregon consumers.

For example, the division would not entertain adopting significantly more stringent time and distance standards for broad categories of services such as primary care or specialty office visits, or attempt to generate an entirely state-specific set of quantitative standards for access to basic services out of whole cloth. We would, however, consider adopting Oregon-specific standards as needed to ensure timely access to specific services or provider types not addressed in federal rules but required to be covered by state law. Flexibility to deviate from federal standards would also better enable the division to respond to market conditions in regions of the state that might not be well addressed by the federal standards, such as shortages of specific provider types in specific areas.

Any such standards would be developed via a transparent, careful and deliberate process with extensive input from all affected stakeholders.

Effects on network contracting

Concerns have been raised that network adequacy standards could be used by health care provider organizations as leverage in contract negotiations to secure higher reimbursement rates, disadvantaging health insurance carriers and potentially undercutting state cost containment efforts.

As the state's regulator of insurer solvency and a partner with the Oregon Health Authority in its cost growth target program, the division is keenly aware of the importance of containing health care costs. Any potential effect on negotiating dynamics is a factor that will be considered as we move forward with rulemaking and implementation efforts.

We also recognize that the availability and willingness of providers to contract is not entirely within the control of health insurance carriers. If a carrier were to fall out of compliance with access standards developed under the provisions of this legislation, any regulatory action the division would take would be highly fact-dependent. This may include taking steps to ensure that carriers are not being held responsible for factors outside their control, or expected to accommodate unreasonable demands from counterparties. In accordance with the division and department's overall regulatory philosophy, the focus of any such efforts would be working with all parties to achieve compliance, in this case to ensure adequate access to covered services for consumers.

However, we do not believe that network adequacy standards should be compromised to enable carriers to purport to offer adequate networks in regions of the state where they are unable to provide meaningful access to key covered services.

Health equity and cultural competence

SB 822 adds new provisions requiring that a health insurance carrier's network must be adequate to provide culturally appropriate care to all enrollees, including those with unique access needs or challenges. Questions have been raised about the intent of these provisions and how they would be implemented, especially in light of concerns about availability and willingness of providers to work with carriers in this area.

Implementing these provisions is expected to be an iterative process over the course of many years. Since, to the best of our knowledge, there are not yet any detailed nationally-recognized standards in this area, the division would not expect to adopt any such standards in the short term. Instead, the division would expect carriers to make all reasonable efforts to work with their networks of providers to seek to address access concerns for disadvantaged groups, understanding that these factors are not entirely within the control of the carrier.

Reproductive health

SB 822 explicitly adds reproductive health to the list of services for which health insurance carriers must demonstrate that they have an adequate network. Some parties have expressed opposition to the bill on the basis of their moral and ethical stance in opposition to certain reproductive health services.

The division would like to clarify for the record that the bill does not make any changes to what reproductive health services are allowed to be provided or required to be covered. Since the legislation only applies to health insurance carriers, it does not apply to or require any changes in service delivery or practice from health care providers. The effect of adding reproductive health to the statute is simply to clarify that this is an important area for network adequacy oversight, given widespread public interest in ensuring adequate access to these services.

Telemedicine

SB 822 adjusts current law to enable health insurance carriers to include access to telemedicine as a factor in network adequacy compliance, subject to rules adopted by the division. Currently, under ORS 743A.058, carriers are entirely prohibited from using telemedicine to demonstrate network adequacy, an inflexible approach that does not reflect major changes in health care utilization trends in recent years and does not enable the division to exercise appropriate oversight of the role of telemedicine in network access.

Questions have been raised about the intent of the division in rulemaking in this area, including the scope of telemedicine that would be allowed to demonstrate compliance and how it might vary between different services and provider types. The division intends to adopt rules allowing telemedicine to be used to some extent to demonstrate compliance for any services where telemedicine is a feasible form of service delivery, with variation as appropriate depending on factors including but not limited to utilization trends, clinical best practices and technological developments.

We would expect to allow for a higher percentage of services to be delivered via telemedicine for, e.g., behavioral health, where telemedicine has become very common, than for services more commonly provided in-person. We would also expect to disallow the use of telemedicine for network adequacy compliance for services where it is not clinically appropriate, such as surgery.

Although some parties have suggested that the allowance for telemedicine be spelled out in more specific detail in statute, the division believes it is important to enable a flexible approach to rulemaking in this area so that changes can be made in a timely fashion as appropriate to reflect the fast-changing nature of the market for telemedicine services.

In conclusion, this legislation will represent a significant step forward for consumer protection in Oregon by better enabling the division to take steps to ensure access to needed care. We urge your support of SB 822 with the -2 amendments.

Please do not hesitate to contact me and my colleagues if you have any remaining questions or concerns.

Sincerely,

Jesse Ellis O'Brien
Policy Manager
Division of Financial Regulation
350 Winter St. NE
Salem, OR 97301
jesse.e.obrien@dcbs.oregon.gov