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February 23, 2016

The Honorable Laurie Monnes Anderson, Chair  
Senate Committee on Health Care  
900 Court St NE  
Salem, OR 97301

Re: House Bill 4107-A

Dear Chair Monnes Anderson and the Senate Committee on Health Care:

The Oregon Health Authority appreciates the opportunity to provide additional testimony regarding our concerns about the potential budget impacts of House Bill 4107-A, specifically if passed with the –A5 amendments. OHA and the Department of Justice believe that the A-5 amendments may significantly impact the Oregon Health Plan (OHP), coordinated care organizations (CCOs), and OHA. OHA does support the -4 Amendment because it is prospective to only January 1, 2017 contract rate amendments. We have several points we would like to highlight:

1. When first approved by the House, OHA believed the intent of HB 4107 was to memorialize for 2017 what was always a key OHA consideration during the 2015 rate redevelopment process – *to avoid the possibility of overpayment or an invalid CCO contract amendment and their recoupment in the future* in order to stabilize the Oregon Health Plan.
2. Representative Davis' floor speech and comments by FamilyCare have made clear that OHA was incorrect in its assumptions about the bill's intent. By stating that the intended effect of HB 4107 is to nullify language in the 2016 amendments to CCO contracts, the proponents of HB 4107 have made clear that the intent is to circumvent key contract provisions required by OHA in order to comply with federal law. This intent has drawn significant concern from the Department of Justice. OHA can only support legislation with *prospective* impact on any *future* contract amendment.

3. The Center for Medicare and Medicaid Services has indicated that it cannot approve any CCO contract amendment that does not include the revised payment rates approved by CMS in December of 2015. More importantly, CMS has also indicated that it likely would consider any payments made by the state to a CCO without an approved contract rate amendment to be unauthorized. If this bill prevented OHA from recovering any such unauthorized payment, there will be a significant impact to Oregon's state general fund. As detailed in the fiscal impact statement (FIS), this impact could be in excess of \$500 million from Oregon's state general fund.
4. At this time, the only CCO that has not signed the CMS-approved 2015 contract rate amendment is FamilyCare. FamilyCare is also the only CCO that has not repaid the overpayment (which is then paid to the federal government) or entered into a repayment plan.

For all other 15 CCOs in Oregon, their 2015 contract rate amendments are signed and their 2015 rates are approved by CMS.

In our conversations with CMS and its lawyers, CMS has indicated they will be offering a written determination of how they will resolve this outstanding 2015 rate redetermination issue. It is anticipated that CMS will provide guidance within the next few weeks regarding:

- a. whether the entirety of the federal share of FamilyCare's 2015 Oregon Health Plan revenue must be returned to the federal government because FamilyCare does not have a CMS-approved 2015 rate amendment contract in effect; or
  - b. whether FamilyCare must return the overpayment due to the difference between rates originally paid to FamilyCare and the revised rates, which CMS is prepared to approve.
5. As outlined in the fiscal impact statement, OHA believes that there are several possible circumstances that would create a significant fiscal impact to the State of Oregon:
    - a. If the one remaining 2015 CCO contract rate amendment (by FamilyCare) is not signed, the Center for Medicare and Medicaid Services (CMS) could determine that OHA does not have a valid CMS approved contract. If this occurs, the State of Oregon would not be in compliance with federal regulation 42 CFR 438.6, and may be disallowed federal financial payments

- made to FamilyCare during CY 2015. This could require the State of Oregon to repay CMS more than **\$532 million**.
- b. If the outstanding CCO contract is signed, but the funds not recouped from FamilyCare, the State of Oregon would still be required to repay the federal fund portion of the difference in what was paid to FamilyCare and what the CMS approved rate is. This would result in **\$56M General Fund**.
  - c. If OHA is not able to make recoupment of the \$56M from FamilyCare, it may initiate requests from the remaining CCOs for return of their payments of the additional \$51M associated with the 2015 rate redetermination for a total State fund impact of \$107M

In addition to the overarching concerns with the clearly stated intent of HB 4107-A and the –A5 amendments, OHA also has serious concerns with the additional substantive changes in the –A5 amendments that would only allow retroactive contract changes “necessitated by a change in” federal law. This language would seem to preclude amendments necessitated by current federal law. As such, OHA has serious concerns that about CMS’ willingness to approve future contracts that would seemingly preclude overpayment recoupments.

Sincerely,



Lynne Saxton  
Director