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ON BEHALF OF HEALTH SHARE OF OREGON

IN OPPOSITION TO SB 18

SENATE COMMITTEE ON HEALTH CARE

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SB 18 Threatens Oregon's Medicaid Demonstration Project

1. **Current Law is Pro-Competitive and Leads to Lower Costs.** Oregon's current law (ORS 646.735) recognizes that the Triple Aim cannot be fulfilled by CCOs unless CCOs and providers cooperate to change delivery systems and payment methodologies. Antitrust laws exist to discourage cooperation.

2. **The Triple Aim Cannot Be Fulfilled if SB 18 Passes.** Fortunately, current law recognizes that antitrust laws' discouragement of cooperation has no place in Oregon's CCO demonstration project because "collaboration among public payers, private health carriers, third party purchasers and providers to identify appropriate service delivery systems and reimbursement methods to align incentives in support of integrated and coordinated health care delivery is in the best interest of the public." (ORS 646.735). This type of collaboration must continue if CCOs, and State Medicaid policy, are to succeed.

3. **Alternative Payment Methodologies Will Not Be Developed if SB 18 Passes.** Oregon's waiver from CMS for the CCO Medicaid demonstration project requires a move away from fee-for-service and the development of alternative payment methodologies. Current law allows coordinated care organizations, physicians, behavioral health workers, hospitals, dentists, dental care organizations, and other providers to work together to develop methods of payment that reward value.

   If SB 18 passes, CCOs and their providers will fear that their actions may be perceived as running afoul of federal and state antitrust laws that create criminal and civil liability for price fixing: agreements on pricing terms even if the effect is a downward pressure on prices. If CCOs cannot work with providers to develop alternative payment methodologies, then Oregon will jeopardize one of the six Levers ("Implementing alternative payment methodologies to focus on value and pay for improved outcomes") that the Oregon Health Authority reports quarterly to CMS to justify the $1.9 Billion.

By way of example, if SB 18 passes, behavioral health providers who contract with a CCO to provide professional services to Medicaid recipients will be discouraged from meeting as a task force to make recommendations to the CCO regarding different ways that behavioral health providers could be compensated to move away from fee-for-service to outcomes-based payments. Such meetings could violate antitrust laws even though State health policy would encourage such meetings.

4. **SB 18 Will Declare New State Policy That Cooperation Within Health Care Is Harmful.** The traditional antitrust policy concern—that prices will increase and consumers will be harmed—does not exist here. The State is the "consumer" and it unilaterally establishes prices for the CCOs. There is no risk that harm will result if CCOs and providers candidly discuss reimbursement and develop mechanisms to pay for value rather than quantity. In fact, the opposite is true: if SB 18 passes, then CCOs and providers will face the risk of criminal and civil liability and old models of fee-for-service payments will remain. Resulting federal and state antitrust investigations and private lawsuits will divert attention and resources away from healthcare transformation and the development of alternative payment methodologies.

5. **Current Law Works.** While movement away from fee-for-service is difficult, current law supports CCOs and providers as they work together to develop new reimbursement methods. Why change a law that works and expose CCOs and providers to criminal and civil investigations, and possible jail time? Because of the unusual market for CCO services—the State controls funding for Medicaid—the State is in the perfect position to prevent any anti-competitive effect of current state law. Unlike a consumer in a free market, the State, alone, sets the price for CCO services.