



**FRESENIUS
MEDICAL CARE**

March 18, 2019

The Honorable Senator Laurie Monnes Anderson
Chair, Senate Committee on Health Care
State Capitol
900 Court Street NE
Salem, OR 97301

RE: SB 900 – Letter of Opposition

Dear Chair Senator Monnes Anderson and Senate Health Committee Members,

Fresenius Medical Care North America (FMCNA) operates approximately 40 kidney dialysis facilities in Oregon, caring for over 2,700 patients with kidney failure, also known as End Stage Renal Disease (ESRD). First among FMCNA's core values is our commitment to place our patients first and to serve their best interests, and on their behalf, we oppose SB 900. We believe SB 900 is discriminatory policy against low-income ESRD patients receiving charitable assistance to pay their insurance premiums.

Our Legal Obligations

ESRD patients interact closely with their clinic staff due to their ongoing and frequent need for life-sustaining dialysis treatments. Because dialysis providers have such frequent and intimate interaction with patients, we have special obligations toward them, both legal and clinical. In accordance with the Centers for Medicare & Medicaid Services (CMS) Conditions for Coverage under which we operate, we are required to educate patients on their health insurance options, so that patients may make their own informed choices among the health coverage options available to them. The guiding principle is to act in the best interest of our patients.

We are also required to educate patients on available community resources. The American Kidney Fund (AKF) Health Insurance Premium Program (HIPP) is one such resource. The AKF HIPP has been operating since 1997 under the tenets of an advisory opinion of the federal Office of Inspector General (OIG). The program operates the same today as it did when it began over 20 years ago. Dialysis providers are not allowed to publicly advertise the AKF program to dialysis patients. When patients express concern about their financial situation, dialysis providers may then, and only then, refer patients to the AKF HIPP as a possible resource. The AKF then determines whether patients meet financial eligibility for the program.

OIG guidance indicates the design of the AKF HIPP program enhances patients' freedom to choose among available health insurance options. As the OIG stated in its 1997 Advisory Opinion, dialysis companies can contribute to the program without being seen as being incentivized or benefiting from the program: "Simply put, the contributions to AKF by the Companies are not made to or on behalf of beneficiaries.... AKF's payment of premiums will expand, rather than limit, beneficiaries' freedom of choice." (Office of Inspector General, Advisory Opinion 97-1).



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Our Patients and Insurance Coverage

Supporters of SB 900 have alleged that dialysis providers “steer” patients toward commercial plans through improper utilization of premium assistance programs. Approximately 365 of our 2,700 Oregon Fresenius dialysis patients receive assistance through the AKF HIPP to help pay their insurance premiums. **On average, our patients did not receive assistance through the HIPP program until after they had been on dialysis for over 34 months.** This is contrary to the claim that dialysis staff are “steering” patients to enroll in commercial plans. Our internal data and experience further refute this claim:

Of our 365 patients currently receiving charitable assistance -

- **247 patients use the assistance for their Medicare or Medigap premiums, and**
- **118 patients use the assistance for commercial plans or state Exchange plans. 60 out of the 118 patients are undocumented and rely on off Exchange plans as their only source of insurance coverage.**

The vast majority of our patients (90%) have Medicare or Medicaid as their primary insurance, but some patients choose to maintain private health coverage instead of applying for Medicare when they are eligible. It is their legal right to do so and in fact, the updated *Frequently Asked Questions Medicare and the Marketplace* from June 2016 states, “Individuals with ESRD are not required to sign up for Medicare; it is voluntary.” Patients’ decisions to maintain commercial insurance are done for a variety of personal, healthcare and family reasons.

An allegation made by the proponents of this legislation is that dialysis providers switch patients’ insurance coverage from Medicare to commercial insurance without the patients’ knowledge. We do not and would never switch patients’ insurance plans without their knowledge or advise them to drop Medicare after they have already enrolled to obtain private insurance. Dropping Medicare would be highly risky and ill-advised for a dialysis patient because of premium penalties that would incur, and we would never put our patients at risk in this manner.

A final claim used to justify the need for SB 900 is that private insurance rates are many times the Medicare rate for dialysis patients. This is an exaggeration. Similar to most other areas of healthcare, contracted rates with commercial insurers must cover the gap for the public payor losses as well as provide for profit which allow us to engage in activity such as rolling money back into improving and upgrading our facilities and equipment, citing and building new facilities in areas of unmet need and providing tuition reimbursement to our employees looking to further their education and careers in this field.

The American Kidney Fund

Proponents of SB 900 believe there is a need to include an amendment in the bill to prevent any financial incentives for entities who contribute to charities that provide premium support. However, safeguards already exist within the AKF HIPP program. As the OIG recognized: “In sum, the interposition of AKF, a bona fide, independent, charitable organization, and its administration of HIPP provides sufficient insulation so that the premium payments should not be attributed to the Companies. The Companies who contribute to AKF will not be assured that the amount of HIPP assistance their patients receive bears any relationship to the amount of their donations. Indeed, the Companies are not guaranteed that beneficiaries they refer to HIPP will receive any assistance at all. In these circumstances, we do not believe that the donations by the Companies to AKF can reasonably be construed as payments to eligible beneficiaries of a Federal health care program.”



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Nevertheless, SB 900 penalizes dialysis providers who legally contribute to the AKF program by reducing insurance payments down to Medicare rates instead of as required by network contracts or express plan terms. SB 900 would supplant private contracts, to the sole benefit of insurance companies. This only leads to destabilization of an already stressed economical system and interferes with contracted rates.

Precedent

Oregon has already dealt with the issue of charitable premium assistance. Oregon's Department of Consumer and Business Services Insurance Division released a bulletin in November, 2014 outlining specific criteria for insurers to accept charitable premium assistance and summarized as follows: "Oregon law does not prohibit issuers from accepting premium assistance from non-employer third parties including those from (1) well-established premium assistance programs operated by bona fide tax-exempt, non-profit charitable organizations in accordance with applicable law, and (2) other legitimate tax-exempt, non-profit charitable organizations that provide premium or cost-share assistance on less than a policy-year basis when such assistance is at least in part need-based."

Summary

While other states have recognized the need to preserve protection for this vulnerable patient population, SB 900 could create substantial access to care issues for patients and hurt those who benefit from charitable premium assistance programs. The HIPP program has been working well with federal government oversight for over 20 years. Continuity of care and maintaining insurance coverage is extremely important for people with kidney failure who rely on life-sustaining treatments.

For these reasons, we urgently ask you to vote no on SB 900.

Sincerely,

Wendy Funk Schrag

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