

March 27, 2019

Senator Laurie Monnes Anderson, Chair
Senate Committee on Health Care
Oregon State Legislature

Re: SB 250

Dear Chair Monnes Anderson, Vice-Chair Linthicum, and Committee Members:

The Oregon State Public Interest Research Group (“OSPIRG”) strongly supports SB 250, presuming adoption of the -1 amendment. As a consumer advocacy organization with over 30,000 members and supporters throughout the state, we supported passage of the Affordable Care Act (“ACA”), and have fought to preserve and strengthen the law’s implementation in Oregon throughout the last decade.

Given the current national environment on health care, it is important that Oregon take steps to protect the gains of the ACA in our state. Preserving the guaranteed issue market and protecting individuals with preexisting health conditions is an important step in that direction. However, we want to caution the committee that SB 250-1 is not enough on its own to protect Oregon consumers, and further actions will ultimately be needed to preserve a stable individual health insurance marketplace in Oregon.

Federal Actions Continue to Undermine and Threaten the Marketplace

Over the last two years, a number of federal policy changes have disrupted the health insurance marketplace. This included cutbacks to funding for consumer outreach during open enrollment, interruptions to certain subsidies for insurance companies, and the repeal of the individual responsibility mandate in the 2017 tax bill. These actions introduced increased uncertainty into the individual health insurance marketplace, raising insurance premiums by around 16% nationally, at a time when prices were just beginning to stabilize.¹ In fact, some experts have suggested that premiums could have gone down for the 2019 plan year in the absence of these disruptions.²

¹ If insurers cannot bar patients with preexisting conditions, there is no incentive to purchase coverage prior to illness. This leaves insurers with a risk pool filled with sick people, and premium rates rise to meet the costs until the market collapses. The clearest historical example of an insurance death spiral is the individual market in Washington state during the Mid-90s. See Avik Roy, [“Want to See a Health Insurance Death Spiral? Visit Washington State,”](#) *Forbes*, March 30, 2012.

² Alison Kodjak, [“Analysts Predict Health Care Marketplace Premiums Will Stabilize for 2019 Coverage,”](#) *NPR*, September 3, 2018.

The entirety of the ACA is further threatened by the lawsuit *Texas v. Azar*, in which a District Court judge recently ruled the entire law unconstitutional following the repeal of the individual mandate. Legal experts from both political parties agree that this decision was legally absurd.³ In spite of this, the Federal Department of Justice announced this week that it would back this interpretation of the law as *Texas v. Azar* proceeds to appeal.

If a higher court follows this line of reasoning, it would be a catastrophic blow to the health care of millions of Americans and Oregonians: rolling back the expansion of Medicaid, which currently has nearly 1 million enrollees in Oregon; eliminating hundreds of thousands of dollars of consumer assistance through Advance Premium Tax Credits (“APTCs”) - which help middle and working class families afford health insurance; and removing protections for individuals with pre-existing conditions - an issue that 63% of voters overall identified as either the most important issue, or a very important issue in deciding their vote in the 2018 midterm elections.⁴

While we believe it is extremely unlikely that a higher court will rule in the same manner as the District Court, there is still a risk that the *Texas* lawsuit will succeed in whole, or in part, in rolling back the ACA. The Oregon legislature should act now to preserve the ACA’s consumer protections and prevent uncertainty moving forward.

As Amended, SB 250 Will Preserve Important Consumer Protections

DCBS has discussed a number of policies with stakeholders that they plan to integrate into SB 250. Most of these policies are small, but important, steps to preserve consumer protections in Oregon - such as maintaining mental health parity and clarifying language on nondiscrimination. Other proposed policies could give DCBS additional tools to expand options and manage risk on the marketplace, giving the agency the ability to create a risk adjustment program or multiple standard plan designs at the bronze level.

Most importantly, however, DCBS has proposed preserving the policy of guaranteed issue, that is: protections for individuals with preexisting health conditions. The ACA’s requirement that health benefit plans be offered on a guaranteed issue basis represented a fundamental change in how Americans think about health insurance.

³ Dylan Scott, [“The New Anti-Obamacare Lawsuit Heads to Court Today. Scholars Think it’s ‘Absurd,’”](#) Vox, September 5, 2018.

⁴ Ashley Kirzinger, et al, [“Kaiser Health Tracking Poll - July 2018: Changes to the Affordable Care Act: Health Care in the 2018 Midterms, and the Supreme Court,”](#) Kaiser Family Foundation, July 25, 2018.

Since this policy has been in effect, consumers have become accustomed to the idea that if they want health coverage, they can purchase it without fearing a denial on the basis of an illness or condition that they likely have no control over.

Further Legislation, Such as a State Individual Responsibility Mandate, Will be Needed to Maintain a Stable Health Insurance Marketplace

However, our support for these policies comes with a substantial caveat. The policies DCBS has proposed are not enough on their own to protect Oregon consumers in the event of full or even a partial ACA repeal. Importantly, it does not replace APTCs, which are estimated by the Kaiser Family Foundation to represent \$524,000 annually in premium assistance to Oregonians.⁵ This premium support has helped the marketplace remain surprisingly healthy even after the repeal of the individual mandate.

We urge this committee to take further actions to maintain marketplace stability alongside SB 250. Specifically, we encourage the committee to consider creating a state level individual insurance mandate. A guaranteed issue insurance market without a mandate is subject to a significant free-rider problem, which can lead to an insurance “death spiral” if not addressed.⁶

It’s also notable that while ideally, the penalty associated with an individual mandate will not collect any money, it can also be source of revenue, depending on how it is structured. Funds collected from individuals through an individual responsibility penalty could be used for a variety of programs related to marketplace stability, such as providing premium assistance to middle-class individuals and families who are not currently eligible for APTC assistance under the ACA.

⁵ “[Estimated Total Premium Tax Credits Received by Marketplace Enrollees](#),” *Kaiser Family Foundation*, retrieved March 26, 2018.

⁶ If insurers cannot bar patients with preexisting conditions, there is no incentive to purchase coverage prior to illness. This leaves insurers with a risk pool filled with sick people, and premium rates rise to meet the costs until the market collapses. The clearest historical example of an insurance death spiral is the individual market in Washington state during the Mid-90s. See Avik Roy, “[Want to See a Health Insurance Death Spiral? Visit Washington State](#),” *Forbes*, March 30, 2012.

Conclusion

We support the consumer protections DCBS proposes to implement via SB 250-1, regardless of whether the legislature takes further steps to stabilize the market, such as implementing a state-level individual mandate. However, we urge the committee to remember that these policies are not enough on their own to preserve the marketplace in the event of further disruptions, such as an adverse ruling in *Texas v. Azar*.

Thank you for your time and consideration.

Respectfully Submitted,



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OSPIRG