



**Samuel Bagenstos**  
**Frank G. Millard Professor of Law**

June 24, 2020

Senator Sara Gelser  
Chair, Senate Human Services Committee  
900 Court Street NE  
Salem, OR 97301

*Re: SB 1606*

Dear Senator Gelser:

I currently serve as the Frank G. Millard Professor of Law at the University of Michigan Law School, where I teach Disability Rights Law among other courses. I edit one of the leading law school casebooks on the subject of disability law, and I have studied, written about, and practiced disability rights law for 25 years. During the Obama Administration, I served as Principal Deputy Assistant Attorney General for Civil Rights in the United States Department of Justice. Among other responsibilities, I supervised all of the Department's enforcement of the disability rights laws.

At your request, I have reviewed the nondiscrimination language in the current version of SB1606. As I understand it, that language provides:

(6)(a) It is an unlawful practice for a provider or any person acting on behalf of a provider to deny medical treatment to a patient that is likely, based on an individualized assessment of the patient using objective medical evidence, to benefit the patient or to limit or restrict in any manner the allocation of medical resources to the patient based on the patient's race, color, national origin, sex, sexual orientation, gender identity, age or disability.

(b) In determining whether medical treatment is likely to benefit a patient, a provider shall work with the patient, the patient's family and others authorized to act on behalf of a patient, if available.

I understand that some controversy may have arisen concerning whether that language goes beyond the obligations that federal law imposes on health providers.

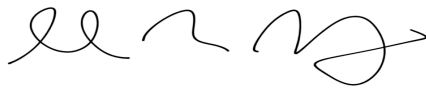
Based on my experience, I can assure you that the current language in the proposed bill essentially tracks federal law. Both Section 1557 of the Affordable Care Act and Section 504 of the Rehabilitation Act impose on health providers the obligation not to discriminate against qualified

individuals with disabilities. A patient who will benefit from a treatment is qualified for that treatment. Federal law thus forbids a health provider from refusing to treat an individual based on pre-existing disabilities that do not affect the patient's ability to benefit from the treatment.

I extensively describe the relevant legal principles in a recent article, *Who Gets the Ventilator? Disability Discrimination in COVID-19 Medical-Rationing Protocols*, 130 YALE L.J. FORUM 1 (2020). The current language of SB1606 is fully consistent with the principles I lay out in that article.

I hope this analysis is helpful to you and the Senate as you consider this important piece of legislation.

Sincerely,

A handwritten signature in black ink, consisting of a series of loops and curves, representing the name Samuel R. Bagenstos.

Samuel R. Bagenstos