March 8, 2021

Senate Committee on Health Care
Oregon State Capitol
900 Court St. NE
Salem, OR 97302

Chair Patterson, Vice-Chair Knopp, and members of the committee,

Without question, the undersigned organizations are deeply committed to delivering health care services to patients in Oregon that is free from discriminatory conduct. Our dedicated health care workforce in hospitals, medical clinics, and other health care settings seek to provide care based upon the unique health care needs of each patient regardless of race, color, age, sexual orientation, disability or other protected class.

SB 567 states that it relates to discrimination in the provision of health care and presumably seeks to achieve the goal of preventing discriminatory conduct. Unfortunately, the bill is critically vague regarding both the method to prevent discrimination as well as the breadth of its application to health care provided every day to Oregonians. SB 567 contains similar provisions as SB 1606 (2020 1st Special Session). Our organizations supported key components of that measure, but we raised concerns about this provision. Ultimately, the Special Session committee declined to adopt the provision on discrimination and no additional work between stakeholders has taken place during the interim.

First, SB 567 amends ORS 659A.855, which is a statute that primarily applies to state government and prohibits unlawful employment practices. Adding new provisions governing the practice of medicine and administration of health care is inconsistent with the other provisions and causes confusion. Moreover, the bill appears to create a legal cause of action for providing or withholding health care in violation of the new law as well as impose oversight by a state agency with authority wholly unrelated to health care. A breach of the new statutory provision would be enforced by the Bureau of Labor and Industries or a private cause of action under ORS 659A.885, which allows for compensatory damages, punitive damages, and attorney fees. If the intent is to correct discriminatory conduct in a health care facility or by a provider, it would seem alternate approaches such as raising a complaint with a relevant and appropriate state licensing agency rather than forcing a patient to bring a lawsuit or file a complaint with an employment oversight agency would be a more effective corrective action approach.

Second, SB 567 creates two new standards that are drafted so broadly and vaguely that almost any type of treatment or medical decision about a patient could be called into question and result in litigation.

The first standard under paragraph (6)(a)(A), would make it unlawful to deny medical treatment that is ***likely to benefit*** a patient based upon an individualized assessment. While this should be based upon objective medical evidence, it is not clear who ultimately decides, and the provision invites unwarranted lawsuits as well as unnecessary health care services provided solely to avoid a lawsuit. A provider must work with a patient, a patient's family and others who are so authorized to decide what medical treatment is likely to benefit a patient and there often will be disagreement as to that benefit. Treatment decisions are medical decisions for which a patient may give or decline consent. Many treatments give a patient or a family member hope, but due to a patient's medical condition ultimately may be of limited benefit. These are difficult medical decisions providers face every day. SB 567 would allow family or others to make a claim of unlawful practice when they disagree with a determination that a treatment is unlikely to benefit a patient or force provision of the treatment through threat of lawsuit. Lawsuits also could arise when a treatment is likely to benefit a patient, but the patient expressed a clear desire to forgo the treatment.

The second standard under paragraph (6)(a)(B) would make it unlawful to ***limit or restrict in any manner*** the allocation of medical resources to a patient. The defined term "medical resources" includes ***but is not limited to*** medical devices or equipment, prescription drugs, and laboratory testing. This definition is so broad as to include anything medically related. If adopted as law, health care providers would be required to provide all medical resources to any patient of any age or medical condition regardless of the efficacy or appropriateness of the treatment. Would a frail elderly patient whose family members desire a knee replacement be required to have a knee replacement? Would a provider for a pediatric patient under age 16 or adult patient under age 65 who are not yet eligible for COVID vaccines under federal and state age category limitations be required to be provided the vaccine? Would the husband of a spouse with severe dementia be able to demand that all available treatments be provided regardless of their efficacy? What about a patient with a POLST limiting end of life treatment; must all medical resources nonetheless be provided? Would a patient desiring a specific brand name prescription drug have the right to be provided that drug even though a lower cost, generic drug or alternate therapy would be considered more appropriate? These all appear to be legitimate questions.

To be clear, the undersigned organizations support the presumptive goal of the bill and follow federal law related to discrimination. As written, however, SB 567 would fundamentally change the practice of medicine and health care protocols, substantially increase of the cost of the health, and lead to unnecessary and costly lawsuits. We urge the committee to explore alternative approaches to the aim of this bill.

Thank you.

Fawn Barrie, Legislative Advocates

1249 Commercial St. SE

Salem, OR 97302

fbarrie@legadv.com

503-580-5487

******* See signers on next page *******

Testimony signed by:

OMA
OREGON
MEDICAL
ASSOCIATION

ORANA
OREGON ASSOCIATION of
NURSE ANESTHETISTS

Oregon Association
of Hospitals and Health Systems

allcare health™

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OREGON HEALTH
CARE ASSOCIATION

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