



TO: The Senate Judiciary Committee
FROM: Disability Rights Oregon (DRO)
DATE: March 8, 2021
RE: DRO 's Testimony in Support of SB 567

Dear Chair, Vice Chairs, and Members of the Committee:

The Facts about SB 567

This bill is not creating new rights, it is clarifying existing law.

Section 1557 is a civil rights provision in the ACA that prohibits discrimination on the basis of race, color, national origin, sex, sexual orientation, gender identity, age, and disability in certain health programs or activities. In Section 1557, Congress prohibited covered health programs or activities from discriminating on any of the grounds protected by four longstanding federal civil rights statutes:

1. Title VI of the Civil Rights Act of 1964 (Title VI) (prohibiting discrimination on the basis of race, color, or national origin).
2. Title IX of the Education Amendments of 1972 (Title IX) (prohibiting discrimination on the basis of sex, sexual orientation, and gender identity).
3. Section 504 of the Rehabilitation Act of 1973 (Section 504) (prohibiting discrimination on the basis of disability).
4. Age Discrimination Act of 1975 (Age Act) (prohibiting discrimination on the basis of age).

Section 1557 has been in effect since 2010 and the HHS Office for Civil Rights has been enforcing the provision since it was enacted.

Why is this language being placed in ORS 659A?

ORS 659A is titled "*Unlawful discrimination in employment, public accommodations and real property transactions; Administrative and Civil Enforcement*". This is the chapter of the Oregon statutes that explicitly prohibits discrimination because of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, age, disability or expunged juvenile record. Healthcare settings are "public accommodations" under ORS 659A. SB 567 is making clear that when speaking about discrimination in public accommodation, health care providers are explicitly included in this section of law.

Why would BOLI have a role in the complaint process?

Because they already are in charge of complaints of discrimination in public accommodations. This is not new to SB 567. People may remember the fines BOLI gave to a bakery that refused to back a cake for a lesbian couple. Medical discrimination would fall under this same enforcement mechanism today. In ORS 659A.885 section 1a states:

If the Commissioner of the Bureau of Labor and Industries files a complaint under ORS 659A.825 (complaints filed by Attorney General or commissioner) alleging an unlawful practice other than an unlawful employment practice, and the commissioner finds that

the respondent engaged in the unlawful practice, the commissioner may, in addition to other steps taken to eliminate the unlawful practice, impose a civil penalty upon each respondent found to have committed the unlawful practice.

This bill will not force anyone to have medical care they do not wish to have.

SB 567 only prohibits providers from refusing treatment that the patient is consenting to and is likely to benefit from, when the reason for refusal is that the patient is a member of a protected class. A patient regardless of protected status can always refuse care. This bill does not address the rights of patients to refuse treatment, but rather the obligations of providers to not make health care decisions based on bias or discrimination.

Providers will not be forced to give care that is not beneficial to patients.

SB 567 clearly states it would be unlawful to deny medical treatment to the patient because the patient is a member of a protected class. SB 567 clearly allows for a provider to deny treatment when, based on an individualized assessment of the patient using objective medical evidence, the patient would not benefit, the treatment would be harmful to the patient, the treatment is not medically necessary, and any other lawful reason treatment is denied to a patient today. Denying care because that care is not likely to benefit a patient is clearly allowable.

There is no evidence this bill will increase health care costs.

Those who oppose this bill have provided no evidence SB 567 will increase health care cost. In fact, current law already prohibits health care providers for discriminating against people in the same protected classes included in SB 567. So long as they are already following the law by not discriminating, there will be no increase in health care cost.

We need this bill in order to save lives.

It is clear through the testimony provided to the legislature on this bill that discrimination in health care is a very real and deadly problem. Bias in medical care is well documented and costs people their lives. Yet providers in Oregon seem unaware of the laws regarding medical treatment and discrimination based on one protected class. This law is to make it crystal clear what their legal obligations are. We need legislation that will allow for an individual or their representative to get timely resolution to health care discrimination before it is too late. This language will give the courts clear language in order to make quick decisions. Discrimination in health care is real and persistent. COVID-19 has only highlighted an already serious problem. We must do all we can to prevent bias from denying people the care they desperately need.