



February 25, 2021

The Honorable Rachel Prusak
Chair, House Health Care Committee
State Capitol
Salem, Oregon 97301

RE: House Bill 2328 – Provider Non-Discrimination

Dear Representative Prusak and members of the committee:

Providence Health Plan is committed to ensuring that Oregonians have access to high-quality, affordable health care. For the reasons outlined below, Providence Health Plan recommends waiting for the forthcoming guidance from the Federal rulemaking process before passing House Bill 2328.

Provider nondiscrimination is being addressed at the Federal level

The proponents of the house bill have argued in multiple sessions that the Federal government has been derelict in appropriately interpreting and applying section 2706(a) of the Affordable Care Act since its passage. We have disagreed with the proponents, but that difference of opinion is about to become academic. Congress has directed the agencies responsible for implementing the Affordable Care Act to weigh in.

The “No Surprises Act,” part of the Consolidated Appropriations Act of 2021, requires rulemaking to implement protections against provider discrimination by January 1, 2022. Specifically, Section 108 of the No Surprises Act states, “Not later than January 1, 2022, the Secretary of Health and Human Services, the Secretary of Labor, and the Secretary of the Treasury shall issue a proposed rule implementing the protections of section 2706(a) of the Public Health Service Act (42 U.S.C. 300gg-5(a)).”

This rulemaking specifically addresses provider nondiscrimination as follows:

A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not discriminate with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider’s license or certification under applicable State law. This section shall not require that a group health plan or health insurance issuer contract with any health care provider willing to abide by the terms and conditions for participation established by the plan or issuer. Nothing in this section shall be construed as preventing a group health plan, a health insurance issuer, or the Secretary from establishing varying reimbursement rates based on quality or performance measures. (42 U.S.C. 300gg-5(a))

Providence respectfully opposes House Bill 2328 and would like to avoid potential preemption and conflicts with forthcoming Federal regulations.

The proponents of House Bill 2328 have been attempting to codify an interpretation of section 2706(a) of the Affordable Care Act that has been contentious nationwide, and not been embraced by the Federal government to date. That interpretation would increase the total cost of care without ascertainable benefit to health plan members. We recommend that Oregon wait to see how Federal agencies interpret the law as required by the recent appropriations act.

Thank you for the opportunity to provide comments. We look forward to further discussion.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Gluckman". The signature is fluid and cursive, with a large initial "R" and "G".

Robert Gluckman, M.D., MACP
Chief Medical Officer for Providence Health Plans