



March 21, 2023

The Honorable Deb Patterson  
Senate Committee on Health Care  
900 Court St. NE  
Salem, Oregon 97301

SUBJECT: SB 492 information

Chair Patterson and Members of the Senate Committee on Health Care:

Thank you for the opportunity to provide information regarding Senate Bill 492. The Oregon Health Authority (OHA) has no position on the legislation, however, the passage of SB 492, as introduced, would require OHA to implement a number of changes to the state's benefit determinations process and change the way Oregonians experience the delivery of their health care. Below you will find information on relevant issues that may provide useful context to the Committee.

### **Transfers Benefit Determination Authority from Legislature to OHA**

SB 492 Sections 1 and 4 transfer the authority for determining covered services for the Oregon Health Plan (OHP) from the Health Evidence Review Commission (HERC), an independent Commission, to the Oregon Health Authority (OHA). This proposed legislation would remove the role of the Oregon Legislature in determining the funding line for the Prioritized List of Health Services.

As part of OHA's renewal of its 1115 Demonstration Waiver with the Centers for Medicare and Medicaid Services (CMS) in August of 2022, the agency's work to change how benefits are determined in the Oregon State Plan is currently underway, with an expected implementation date of January 1, 2027. The draft work plan includes community engagement as well as legal and fiscal analysis to ensure that benefit design and medical necessity policy determinations are grounded in health equity principles to best serve OHP members and reduce health inequities. If SB 492 were to pass as introduced during this session, it would truncate this timeline to January 1, 2024. This timeline would have three impacts:

- 1) Limit the agency's ability to leverage community outreach, engagement, and comprehensive analysis to ensure an equity-centered transition;
- 2) Limit the input of other agencies, community members and advocates;
- 3) Impact OHA's ability to properly staff, resource and implement community engagement processes to eliminate health inequities.

### **Modifies HERC Evidence Standards, Meeting Process, and Review Process**

SB 492 Sections 2 and 3 require extensive additional public comment opportunities related to the selection, analysis, and presentation of any evidence for the Commission's consideration. Section

March 21, 2023

Page 2 of 2

3 prohibits HERC from using “quality of life” measures when determining if a health service is cost-effective, recommended, or valuable; this could inadvertently adversely affect people with disabilities or chronic conditions when HERC considers services that could improve quality of life as reported by the patients themselves. It also requires HERC to publish the biennial Prioritized List several months earlier than it does today, with an additional comment period, and requires an additional report on the impact of Prior Authorization.

Regardless of the disposition of SB 492, OHA plans a number of changes to make it easier for the public to have meaningful participation in HERC decisions, Specifically, OHA plans to:

- Convene a rules advisory committee (RAC) to revise the timeline for presenting meeting materials and public comments, allowing the public more time to comment on draft materials prior to each HERC public meeting.
- Pilot holding 90-minute office hours three times during 2023 to allow for more in-depth conversations between staff and advocates, providers, and industry representatives than is possible in a public HERC Commission/subcommittee meeting. People who register in advance would be allowed 10 minutes to present and up to an additional 10 minutes for a question-and-answer session with HERC staff. If multiple people register on the same topic and there are other topics on the agenda, people may need to share their 10 minutes. At the end of 2023, HERC staff will assess the pilot process to determine whether any changes are necessary.
- Continued engagement with advocates to ensure that Quality Adjusted Life Years (QALYs) and other potentially discriminatory measures are appropriately addressed in HERC’s staff’s research and recommendation to ensure that the use of these measures does not result in discriminatory benefit design.

### **Creates Appeals Rights for Unfunded Conditions**

SB 492 Section 1 adds hearing and appeal rights to adults for services currently below the funding line on the Prioritized List. HSD leadership agrees that adding appeal rights may be accomplished without further legislation, aligned with policy for children and youth under the Early & Periodic, Screening Diagnostic and Treatment Program (EPSDT).

OHA is committed to a transparent, evidence-based and collaborative process in regard to coverage determination of health services for OHP members. Staff are able to provide further clarification or additional information for any questions by the Senate Committee on Health Care.

Sincerely,



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