February 11, 2026

Rep. Rob Nosse, Chair
Rep. Ed Diehl, Vice Chair
Rep. Travis Nelson, Vice Chair
House Health Care Committee
900 Court St. NE
Salem, OR 97301

Dear Chair Nosse, Vice Chairs Diehl and Nelson, and members of the Committee,

OHA greatly appreciates the committee's consideration of HB 4003, relating to the Prioritized List of Health Services and the mandate from CMS to transition away from certain features of the current system. OHA wishes to further clarify information based on questions which arose during the public hearing on Feb. 3, 2026.

The state must transition away from ranking services on a single list and using a funding line for denial purposes. In the Special Terms and Conditions of the 1115 Medicaid waiver approved in 2022, CMS stated "The waiver of amount, duration, and scope as related to the Prioritized List will end by Jan. 1, 2027. As of that date, the Oregon Health Plan must comply with all state plan rules,"[1] which requires a standard phase-out plan. In their January 2026 response to OHA seeking additional clarification, CMS confirmed that the state can no longer "make coverage and denial decisions based on the ranked position of a treatment-condition pair relative to the funding line."

OHA currently has the authority as the federally-designated single state Medicaid agency to implement and pursue the State Plan Amendment changes needed to comply with CMS directives. However, it is our analysis that the most straightforward pathway to ensure clarity in the transition is through passage of HB 4003 -3, which provides narrow changes to statutory references to the Prioritized List to align with the effect of the CMS directive. OHA's responsibility is to manage Medicaid in a manner

[1] https://www.oregon.gov/oha/HSD/Medicaid-Policy/Documents/2022-2027-Demonstration-Amendment.pdf Page 16

that complies with federal law and regulation and reduces the risk of CMS sanctions and/or loss of funding. OHA analysis indicates that the alignment of state statute, and not just the state plan, with federal law is preferable to avoid legal risk to the state and to CCOs in the appeals and denial process.

Given the current timelines of the Legislative Session, the agency wants to provide our plan should there not be time to enact HB 4003 and establish this clarity. In this case, OHA will still follow the language and spirit of the legislative proposal put forward in the -3 amendment. While this will not address the risks discussed above, it will at least ensure that Oregon's state plan itself is in compliance with federal law and regulation. The -3 amendment, like the -1 before it, is a narrow distillation of the recommendations of the Benefit Update Project workgroup, which OHA convened over the latter half of 2025. Below you will find details on the steps OHA will take in arriving at an 1115 waiver phase-out plan and the subsequent state plan amendment, should HB 4003 not be enacted.

OHA will:

1. Make the changes necessary, and only those changes, to the structure of the Prioritized List to be in compliance with federal law and regulation, as set forth by CMS.
2. Seek to preserve the spirit and permissible portions of the Prioritized List as it operates today, including:
    a. Maintaining the functions, responsibilities and outputs of the Health Evidence Review Commission, continuing its centrality to a transparent, evidence-based benefit system;
    b. Ensuring that the future list of covered health services and other guidance developed by the HERC are published on a single webpage.
3. Clearly define the use of the Prioritized List in supporting the hearings and appeals processes and ensure it allows for individual medical review
    a. Continue to assess opportunities to increase alignment where possible between CCOs and the Fee-For-Service processes.
4. Conduct a transparent State Plan Amendment process, leaving time for partner feedback and consideration.
5. Communicate clearly with partners, including CCOs, the Nine Federally Recognized Tribes of Oregon, Benefit Update Project workgroup members, and other interested parties. This will include:
    a. The creation of tailored technical assistance and other materials.
6. Work closely with legislative partners and other interested parties to ensure adequate funding for any changes that result from this transition.

7. Study the feasibility of developing a “not medically necessary” region of the Prioritized List and the creation of a hierarchy for decision making around coverage decisions that OHA and CCOs can rely on.
8. Evaluate whether and how HERC can consider utilization data in making changes to the Prioritized List of health services.
9. Keep the legislature apprised as to progress towards these objectives.

1115 Waiver Phase Out Plan Process

1. Create and submit a phase-out plan to CMS by June 30, 2026, as directed by CMS in their 1115 Waiver Special Terms and Conditions, including a 30-day period for public comment starting April 1, 2026.
2. Participate in Tribal consultation with distribution of Dear Tribal Leader Letter related to the phase-out plan on April 1, 2026.
3. Amend draft phase-out plan based on Tribal consultation and public comments, if needed.
4. Keep interested parties informed of the status of the phase-out plan submission.

State Plan Amendment Process

1. Draft state plan amendment language, including a 30-day period for public notice beginning June 1, 2026.
2. Participate in Tribal consultation with distribution of Dear Tribal Leader Letter related to the state plan amendments by April 1, 2026.
3. Amend draft state plan amendment language based on Tribal consultation and public comments, if needed.
4. Submit state plan amendments to CMS by Oct. 1, 2026.
5. Keep interested parties informed of the status of the state plan amendment submissions.

In addition to the commitments above, OHA will continue working to communicate forthcoming changes clearly to the public, to OHP members, providers and CCOs, to reduce confusion. Our objective is to ensure that all OHP members can access the medically necessary services and treatments to which they are entitled. Thank you again for your engagement on this topic.

Sincerely,

Sejal Hathi, MD MBA
Director