

Protecting and Strengthening the Affordable Care Act in Oregon

SB 250

The passage of the federal Patient Protection and Affordable Care Act (ACA) resulted in sweeping changes to the nation's health care system. Since the full implementation of the ACA, Oregon has seen dramatic progress toward reducing the uninsured rate, and now, approximately 94% of Oregonians have access to health care coverage.

However, the ACA remains under threat, and along with it, the coverage gains and consumer protections that benefit Oregonians. The federal government continues to pursue administrative action to weaken the law's protections, and in late 2018, a district court judge in Texas issued a ruling that would strike down the entire ACA. Oregon has joined with many other states to intervene in defense of the ACA in that suit, but the future remains uncertain.

In Oregon, the Department of Business Services (DCBS) is responsible for administering the ACA's reforms to the commercial health insurance market. Because the ACA largely preempts state law, Oregon statutes do not always align with the requirements of the ACA. Since its passage, the Legislature has enacted several bills that essentially reconnect Oregon law to the ACA.

The intent of this legislation is to ensure that the key protections of the ACA will remain available to Oregonians in the face of ongoing uncertainty at the federal level. It also includes provisions making technical changes to improve the functioning of the Oregon Insurance Code and enable DCBS to regulate Oregon's health insurance markets more effectively.

This bill is a work in progress.

Key proposed provisions of SB 250 include:

- *Protections for people with pre-existing conditions:* SB 250 would explicitly require that individual health plans in Oregon must be offered on a guaranteed issue basis, without pre-existing condition exclusions or higher premiums for people with pre-existing conditions. DCBS previously enacted each of these reforms through its administrative rules. This legislation would codify these important requirements in statute.
- *Mental health parity:* SB 250 clarifies that the mental health parity requirements in the Oregon Insurance Code apply to both group and individual health plans. Current law applies these requirements only to group plans; DCBS has applied mental health parity to individual plans through rulemaking enacting the ACA's parity provisions. This legislation would codify these requirements in Oregon law.
- *Nondiscrimination:* The ACA prevents health insurers that receive federal funds from discriminating on the basis of race, color, national origin, sex, age, or disability. The rules implementing these requirements include a prohibition on discrimination on the basis of

gender identity as a type of sex discrimination. In addition to the threats to the ACA itself, recent proposed federal action would more narrowly define gender, thereby removing many of the protections against discrimination currently in place in federal law for transgender individuals. This legislation would help ensure that these protections remain in place in the context of health insurance in Oregon by codifying them into statute.

- *Risk adjustment:* To better enable health insurers to provide coverage without excluding or discriminating against people with pre-existing conditions, the ACA established a permanent risk adjustment program that is intended to minimize the financial losses experienced by health insurers with a disproportionately sick membership base. In addition to the threats to the ACA itself, the future of the risk adjustment program has been thrown into doubt by a case challenging the program in federal district court in New Mexico. This legislation would enable DCBS to step in to administer a state-level risk adjustment program if needed to provide market stability and assurance of continuity for health insurers.
- *Health Reimbursement Arrangement (HRA) changes:* The federal government recently proposed changes to make it easier for a small employer to help an employee pay premiums for health insurance plans purchased in the individual market. This legislation will ensure that Oregon small employers can take advantage of the additional federal flexibility.
- *Bronze standard plans:* Senate Bill 91 (2011) requires health insurance carriers in Oregon to offer plans at the Bronze and Silver level with standardized benefits and out-of-pocket costs specified in rule by DCBS. Current law only enables DCBS to require a single standardized plan design at each metal tier, which has resulted in limited plan offerings in some parts of the state and concerns about the availability of HSA-eligible plans. To provide Oregonians with more options when purchasing insurance, this legislation will enable DCBS to require multiple standard Bronze plan designs.
- *Out-of-state coverage fix:* HB 2240 (2013) amended the Oregon Insurance Code to remove all group health insurance from the list of authorized exemptions to the definition of transacting insurance in Oregon. This change had the inadvertent effect of preventing employees of out-of-state employers who reside in Oregon from being insured under master group health policies issued outside of the state. This legislation would allow out-of-state group health plans that cover Oregonians to be exempt from our regulatory requirements when the insurer is authorized to do insurance business in the state where the master policy is issued and the policyholder is domiciled or otherwise has a bona fide status.

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