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Committee on Ways and Means

Protecting Americans with Pre-Existing Conditions

Testimony of

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Introduction

Chairman Neal, Ranking Member Brady, and members of the Ways and Means Committee, thank you for inviting me today for this important discussion. My name is Andrew Stolfi and I am the insurance commissioner and administrator for the Oregon Division of Financial Regulation.

My division is a part of the Department of Consumer and Business Services, which is Oregon's largest consumer protection and business regulatory agency. The Division of Financial Regulation protects consumers by regulating insurance, banks, credit unions, trust companies, securities, and consumer financial products and services.

Since Oregon implemented the major provisions of the Affordable Care Act (ACA), more than 350,000 Oregonians have gained health insurance. The uninsured rate in the state has dropped more than 11 percent, from a high of more than 17 percent to about 6 percent. Today, more than 3.7 million Oregonians, 94 percent, are covered by health insurance and our goal is to maintain coverage for 99 percent of adults and 100 percent of children.

Governor Brown's vision and our goal is not just a number – it is for all Oregonians to have quality, affordable health care, regardless of who they are or where they live. The ACA has greatly advanced this goal, especially for people with pre-existing health conditions, and we urge this Congress to protect the gains that have already been made while continuing to work towards bending the cost curve for consumers.

Oregon's health insurance market prior to the ACA

Oregon's health insurance market has traditionally been competitive and offered consumers choice. For example, in 2009,[1] Oregon's seven largest health insurers earned 90 percent of the premiums in the individual health market. This contrasted with many other states in which a single insurance company dominated the market.

Oregon has also been a leader in implementing progressive, consumer-focused health reforms. Health insurance rates in the individual and small group markets required division approval years before the ACA. Health insurers have also been required to file individual and group health policies, or forms, with the division and obtain approval of each form before offering it to consumers. Through its review, the division ensures that the forms include all required policy provisions and mandated benefits, and do not contain provisions that are unjust, unfair, or inequitable.

[1] For purposes of this testimony, unless otherwise noted, 2009 is being used as a baseline for pre-ACA references due to it being the last full year before ACA reforms were adopted.

Before the ACA, Oregon law also contained several consumer protections limiting an insurance company's ability to use a consumer's health status in the issuance or renewal of a policy, including:

- ***Standard health statement***. Companies selling individual policies were required to use a division-approved questionnaire to obtain the health history of an applicant. The statement limited the "look back" period to five years.[2]
- ***Pre-existing conditions***. Based on responses to the standard health statement, companies could decline to offer coverage due to an applicant's health history. However, if a policy had a pre-existing condition exclusion or waiver, i.e. denial of coverage for specific conditions, it could only be imposed for a specific period of time ranging up to 24 months.
- ***Rating restrictions***. Companies were prohibited from basing premium rates on an individual's health or claims experience – age was the only individual characteristic that could influence a rate and rates could only be increased once a year.
- ***Guaranteed renewability***. Companies were required to renew an individual plan as long as the individual continued to make the required premium payment, regardless of the individual's health claims during the preceding policy year.

While Oregon may have been ahead in some areas, as shown in the following table, the state's uninsured rate in 2009 was higher than the national average at more than 17 percent.

	2009	2018
Type of Coverage	**Individuals (share of Oregonians)**	**Individuals (share of Oregonians)**
Individual	193,000 (5.2%)	188,000 (4.5%)
Portability	21,000 (0.6%)	0 (0%)
Small Group	228,000 (6.1%)	175,000 (4.2%)
High Risk Pool	15,000 (0.4%)	0 (0%)
Large Group[3]	1,128,000 (30.2%)	1,643,000 (39.2%)
Associations, Trusts & Other	213,000 (5.7%)	235,000 (5.6%)
Medicare	602,000 (16.1%)	831,000 (19.8%)
Medicaid	475,000 (12.7%)	980,000 (23.4%)
Uninsured	**647,000 (17.3%)**	**279,000 (6.8%)**

Fig. 1. Oregon health insurance enrollment comparison[4]

[2] But it was extremely broad, asking if an applicant "had any medical advice, diagnosis, care, or treatment, including prescribed medications, recommended or received from a licensed health care professional, or had any illness, ailment, injury, health problem, symptoms, physical impairment, surgery, or hospital confinement related to any of" nearly 50 listed conditions.

[3] Including fully insured and self-insured.

[4] Enrollment numbers do not total 100 percent of Oregon's population because the numbers are rounded to the nearest thousand and come from several sources. The uninsured rate in the 2018 column reflects the rate in 2017 as the 2018 number is not available at the time of writing.

Without a comprehensive set of consumer protections such as those found in the ACA, insurers were free to limit individual market coverage, and therefore their risk exposure, using a number of methods. Examples include:

- Annual and lifetime dollar limits to significantly restrict treatments – one insurer had a $1,000 calendar year limit for speech therapy and, in one policy, mental health benefits were limited to a lifetime maximum of $1,000.
- Excluding or limiting coverage for prescription drugs. Insurers were not required to provide coverage for prescription drugs, allowing them to restrict treatment of certain conditions.
- Exclusion of essential health benefits such as rehabilitation or offering the benefits as an add-on to those who paid extra. Other benefits such as chemical dependency and alcohol treatment, durable medical equipment (e.g. hospital beds, wheelchairs and crutches), outpatient mental health services, cardiac rehabilitation, and outpatient pulmonary rehabilitation were either excluded or extensively limited.
- Condition-specific treatment limitations or exclusions so that a policy might cover physical, occupational, and speech therapy for stroke patients but not for children with developmental disabilities.

Oregonians experienced high rates of denials based on pre-existing conditions – a 2007 division report revealed the denial rate was about 30 percent.

For those unable to obtain a policy, the state operated a high-risk pool, the Oregon Medical Insurance Pool, which was funded by premiums as well as carrier assessments of around $4 per member/per month. Residents who had certain identified pre-existing conditions were eligible, and the premium rates were up to 25 percent higher than individual market rates.

Oregon's health insurance market post-ACA

Although there is more work to do, the ACA has brought important benefits to Oregon, particularly for those with pre-existing conditions who previously faced high costs or coverage limitations. About 94 percent of Oregonians and 98 percent of Oregon children have health insurance coverage, with our uninsured rate dropping almost 11 percent since 2009. Approximately 115,000 Oregonians qualify annually for tax credits that, on average, reduced on-exchange premiums in 2018 by about $315 a month. Oregon hospitals have saved millions in uncompensated care – falling from $1.28 billion in 2013 to $476 million in 2015 – and we added 23,000 new health care jobs from 2013 to 2016.

More than 1.6 million Oregonians with pre-existing medical conditions are protected from coverage denials or limitations. Pregnant mothers know they can get the care they and their babies need. Children with developmental disabilities can get all of the essential physician-recommended physical, occupational, and behavioral therapy they need to grow to their fullest potential.

Individual policies are offered by at least two carriers in each of our 36 counties, with seven carriers offering plans on the individual market and nine in the small group market. In 2019, we are even seeing expansion into new markets by two carriers. Oregon is also one of the first states to implement a reinsurance program under Section 1332 of the ACA. The Oregon Reinsurance Program leverages federal and state funds to keep individual insurance rates about 6 percent lower than they would be without.

These numbers reflect the work that has been done in Oregon to provide stability to the state's health insurance market. After a few years of adjustment, our market was maturing and stabilizing. Large individual market rate increases in 2016 (23 percent) and 2017 (27 percent) have been followed by smaller increases in 2018 (13 percent) and 2019 (7 percent). This follows a positive trend in insurer net profits, which moved from negative $217 million in 2015 and negative $35 million in 2016 to plus $195 million in 2017.

Unfortunately, other numbers demonstrate the harm recent federal actions have caused Oregonians. Federal rule changes to short-term, limited-duration plans and association health plans along with zeroing out the individual mandate penalty have raised 2019 individual health insurance rates about 7 percent. Cutting off funding for cost-sharing reductions has added another 7 percent to 2019 silver plan rates, meaning individual health insurance rates in Oregon are about 7 to 14 percent higher in 2019 than they could have been without unnecessary and avoidable federal uncertainty.

Looked at another way, as the table below shows, 2019 individual health insurance rate increases for four of our seven carriers are lower than medical trend. Without the harm caused by federal uncertainty, virtually every Oregonian in the individual market would have seen rate increases in 2019 lower than medical trend.

Company	Medical trend (2019)	Additional Rate Increase Attributed to Federal Uncertainty (2018)	Additional Rate Increase Attributed to Federal Uncertainty (2019)	Final 2019 Individual Health Rates	Individual Health Enrollment Sept. 2018[5]
Providence	7.6%	5.1%	2.8%	9.5%	83,590
Kaiser	4.0%	2.4%	5.5%	9.4%	41,139
Moda	8.0%	2.4%	1.9%	6.3%	37,861
PacificSource	5.7%	2.4%	2.5%	-9.6%	12,513
Regence	6.5%	5.1%	2.8%	0.0%	3,925
BridgeSpan	6.5%	5.1%	2.8%	4.5%	984
Health Net	6.2%	2.4%	1.9%	10.1%	550

Fig. 2. Some components of individual health insurance rate changes in Oregon

[5] Latest time period available at time of writing.

Protecting individuals with pre-existing conditions: Many spokes in a wheel

Pre-existing conditions can be as common as allergies or as serious as cancer and affect millions of people nationwide, including more than 1.6 million Oregonians. The ACA's consumer protections are critically important to ensuring that Americans can access the healthcare they need, regardless of health conditions they did not choose to have or develop.

Providing protection for people with pre-existing conditions requires a comprehensive set of interlocking laws that work together like spokes in a wheel – any single one would be inadequate on its own. The most important of these protections work together as follows:

- ***Community rating*** prohibits an insurer from basing a premium on an individual's health status or gender. A premium may vary only based on age, tobacco use, geographic rating area and whether it is for an individual or family.
- ***Guaranteed availability*** requires an insurer to accept anyone who applies for a policy, without regard to the person's health status.
- ***Guaranteed renewability*** requires insurers to renew a policy at the discretion of the policyholder and regardless of claim experience during the preceding year.
- ***Ban on pre-existing condition exclusions*** prevents an insurer from denying, limiting, or excluding coverage of a specific health care service on the basis of a person's health status.
- ***Annual and lifetime dollar limits*** cannot be imposed on any essential health benefits, therefore protecting an individual from having insurance, but not healthcare.
- ***Preventive health services***, such as immunizations, must be provided at no cost. Preventive care helps people stay healthy, avoid or delay the onset of disease, and keep health care costs down.
- ***Essential health benefits*** must be covered. Many of these benefits, such as maternity care, mental health and substance use disorder services, prescription drugs, and rehabilitative and habilitative services[6] were either not covered or covered with significant limitations pre-ACA.

Looked at another way, for an individual with a pre-existing condition these spokes fit together like this:

Guaranteed issue lets you buy a policy you need, ***community rating*** prevents you from being charged more just because of your condition, ***guaranteed renewability*** prevents an insurer from cancelling your policy if you use its benefits, a ban on ***pre-existing condition exclusions*** ensures that your policy covers the treatment you need, ***preventive services*** can keep your problem from getting worse, ***essential health benefits*** ensure that all the treatments you need are covered, and a ban on ***annual and lifetime dollar limits*** protects you from crippling out-of-pocket expenses when you use your essential benefits.

[6] Services and devices to help people with injuries, disabilities, or chronic conditions gain or recover mental and physical skills.

Oregon's experience pre-ACA shows why each of these elements are essential and work together to protect individuals with pre-existing conditions.

In 2009, we technically had protections for individuals with pre-existing conditions. Insurers could not charge a higher premium because of your health status or claims history, were required to renew a policy (if premiums were paid) even if you got sick, could consider only five years of health history, and could not permanently limit coverage for a pre-existing condition. However, within these meager protections, insurers had ample room to limit their risk exposure and control costs.

First, individuals with pre-existing conditions, including pregnant women, could outright be denied a policy. A state high-risk pool existed if you had one of a list of specific conditions, but it cost up to 25 percent more than individual commercial health insurance, had a waiting list, and could exclude coverage of pre-existing conditions – the reason you needed the high-risk pool – for up to six months.

If an individual policy was issued, it could:

- Limit treatment for a pre-existing condition for up to 24 months – a clearly unworkable situation for an individual with diabetes.
- Impose miniscule limitations on benefits, e.g., lifetime limits of $1,000 on mental health benefits and pulmonary rehabilitation, making coverage essentially meaningless for those who needed it.
- Provide coverage of the same treatment for one disease but not another – e.g. a policy could cover speech therapy after a stroke but not for children with developmental disabilities.
- Not include any prescription drug coverage or, when it was, include exclusions or limitations for a myriad of conditions.
- Exclude or limit coverage for individuals with injuries from "high-risk activities" such as skiing, snowboarding, and horseback riding.

Even with these risk-controlling mechanisms, over time, a pool of individuals with the same policy could grow too unhealthy, and therefore too expensive. In response, an insurer could discontinue that policy and force all the individuals who had it to choose between a suggested new plan with the same insurer, most likely with fewer benefits and higher costs, or to submit to a new medical questionnaire to get another plan. For those with pre-existing conditions, the choice was to take an insurer's limited terms or likely live without insurance.

Conclusion

The ACA has helped provide Oregonians and their families with access to comprehensive health care. It has greatly reduced our uninsured population, created tens of thousands of new jobs, and saved hospitals hundreds of millions a year in uncompensated care. More people are healthier than they would be without it.

Unfortunately, uncertainty at the federal level has threatened our work and unnecessarily added costs to the system. Oregonians with pre-existing conditions face the greatest uncertainty if the strides we have taken since 2009 are suddenly erased, but this is not just a problem for our most vulnerable. Access to affordable healthcare is important for everyone and it is time we focus more on innovative solutions to control costs and maintain a stable health insurance market than on dismantling the gains we have made.

Under Governor Brown's leadership, we will continue to protect consumers' access to healthcare through the ACA. We will continue to build on our successes, fight to increase consumer access, and search for ways to make health insurance in Oregon more affordable for everyone.