

November 26, 2013

Ms. Laura Cali, Insurance Commissioner  
Department of Consumer & Business Services  
Insurance Division  
PO Box 14480  
Salem, Oregon 97309-0405

Re: Request for Comments on Provisions in Health Reform Proposed Rules that Relate to  
24-Month Transplant Waiting Period

Dear Commissioner Cali:

As America's largest patient-led organization representing 26,000 dialysis patients and family members, Dialysis Patient Citizens (DPC) strives to improve the quality of life for all dialysis patients through education and advocacy. We are writing on behalf of all of Oregon's 3,244 people on dialysis, of whom some 700 are waiting for kidney transplants, to make sure that their health and interests are treated equitably within the State's health insurance exchange. To that end, please accept our comments on the 24-month waiting period included in certain plans offered through Oregon's health insurance marketplace.

A two-year coverage waiting period for transplant surgeries is discriminatory towards people with end stage renal disease (ESRD). 45 C.F.R. § 156.125 specifies that a plan does not provide essential health benefits "if its benefit design, or the implementation of its benefit design, discriminates based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions." The Social Security Administration guidelines clearly state people that rely on renal replacement treatment to live qualify as disabled.<sup>1</sup>

Moreover, for people enrolled in small group plans through Oregon's health insurance marketplace, the two-year waiting will increase costs due to Medicare Secondary Payer (MSP) provisions. MSP provisions permit ESRD patients to maintain group coverage for 30 months. According to a rule issued by CMS, "...QHPs offered in the small group market fall under the definition of a group health plan subject to MSP provisions codified in section

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<sup>1</sup> 20 C.F.R. § 404 Appendix I

1862(b)(1) of the Social Security Act. This would result in parity between the [Small Business Health Options Program] SHOP and non-Exchange small group market regarding the applicability of MSP rules that pertain to ESRD coverage."<sup>2</sup> This ruling guarantees small group health insurance plans offered in insurance marketplaces will cover dialysis services as a primary payer during the entire 30-month waiting period.

Medicare pays approximately \$88,000 per year to cover 80% of the cost of dialysis services when it is the primary payer.<sup>3</sup> Transplant surgery generally costs \$110,000, and the immunosuppressive drugs used to maintain a kidney transplant costs about \$24,000 per year. Enrollees in small group health plans might gain access to transplants before the 24 month waiting period is complete through altruistic live donation or preemptive cadaveric transplantation. Assuming the small group health plans in the health insurance marketplace pay a similar rate as Medicare for these services, disallowing these enrollees access to transplants during the first 24 months of coverage could add additional costs of around \$64,000 per year. Making renal transplants available to recipients sooner places a smaller burden on the small group health plan risk pool.

Aside from the cost savings from eliminating coverage wait periods, allowing a person with ESRD to receive a kidney transplant vastly improves his or her quality of life.<sup>4</sup> Whether peritoneal dialysis, home hemodialysis or in-center hemodialysis, compared to organ transplantation dialysis can be extremely rigorous and challenging for patients. Not only does dialysis require extensive regular treatment, but transportation, work schedules and the more restrictive diet are often added complications in the lives of dialysis patients. Kidney transplants also allow people with ESRD to enjoy better health outcomes and to pursue their life endeavors on their own terms without the restrictions imposed by dialysis regimens. Delaying this process unnecessarily could be devastating to expecting graft recipients.

We respectfully encourage you to consider our concerns and the concerns of kidney patients across Oregon as you move forward. If you have any questions, or if we can be of further assistance, please do not hesitate to contact us.

Sincerely,



Hrant Jamgochian  
Executive Director

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<sup>2</sup> 45 C.F.R. § 155, 156, and 157

<sup>3</sup> U. S. Renal Data System, USRDS 2013 Annual Data Report: Atlas of Chronic Kidney Disease and End-Stage Renal Disease in the United States, National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Bethesda, MD, 2013.

<sup>4</sup> Fiebiger, Obertauer, and Mitterbauer, "Health-related quality of life outcomes after kidney transplantation," *Health Quality of Life Outcomes* 2:2 (January 2004)