



OREGON LEGISLATIVE POLICY & RESEARCH OFFICE

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Health and Human Services Team

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Basics on . . . **BALLOT MEASURE #39**

TITLE: AMENDS CONSTITUTION: GOVERNMENT, PRIVATE ENTITIES CANNOT DISCRIMINATE AMONG HEALTH CARE PROVIDER CATEGORIES

The Constitution of the State of Oregon is amended by creating a new section 42 to be added to and made part of Article I and to read:

Section 42. (1) No law shall be enacted to restrain any person from seeking or receiving the services of the person's chosen category of health care provider working within the provider's scope of practice as established by law. No official, board, commission or agency of this state or any political subdivision or municipality in this state or any private entity subject to the laws of this state shall discriminate among categories of health care providers rendering the same or similar services within their scopes of practice when such services are required.

(2) As used in this section, "health care provider" means a person who is licensed, certified, registered or otherwise regulated in accordance with applicable state law to furnish to any person services for the purpose of assisting in childbirth or preventing, alleviating, curing, or healing human illness, physical disability or injury.

(3) Nothing in this section shall be construed as to prevent an entity from employing measures that would control costs of health care as long as the measures do not violate subsection (1) and (2) of this section.

(4) This section shall not apply to health care services provided to persons incarcerated in correctional institutions.

What does Ballot Measure #39 do?

Passage of Ballot Measure 39 would amend the Oregon Constitution to prohibit enactment of any laws restricting a person's ability to receive services from a chosen category of healthcare provider. The amendment would also prohibit public and private entities from discriminating among categories of healthcare providers that provide the same or similar services. A healthcare provider is defined as a person regulated by state law to furnish services for assisting in childbirth or preventing, alleviating, curing or healing human illness, physical disability, or injury. The amendment would not apply to healthcare services provided to those persons incarcerated in correctional institutions.

Debate on this measure has focused on consumer access to alternative medicine providers and the effect on overall healthcare costs

Substitution vs. addition:

One of the fundamental arguments in this debate is that of substitution vs. addition of healthcare services. Supporters of Measure 39 maintain that consumers will not increase their utilization of services with the increased choice of provider categories but, instead, will "substitute" the services of a traditional provider with those of an "alternate" provider. Opponents of Measure 39 contend that consumers will continue to receive the same amount of services from their traditional providers and

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seek “additional” services from alternative providers.

What providers does the measure include?

Providers in all categories of healthcare licensed or otherwise regulated by the State of Oregon are covered by the measure including, but not limited to “alternative medicine” providers licensed or otherwise regulated by the state. Measure 39 would likely include the following: direct entry midwives, psychologists, psychiatrists, physicians (including osteopathic physicians), physician assistants, acupuncturists, podiatrists, respiratory care practitioners, nurses, nurse practitioners, nursing assistants, dentists, dental assistants, dental hygienists, audiologists, speech-language pathologists, emergency medical technicians, optometrists, ophthalmologists, chiropractors, naturopaths, physical therapists, radiologic technologists, dieticians, and massage therapists. Measure 39 may, under certain circumstances, pertain to occupational therapists, counselors, denturists, opticians, and pharmacists.

What is selective contracting?

Healthcare organizations, especially managed care organizations, often contract with selected providers to provide healthcare services to their members. Healthcare organizations discourage their members from using non-contracted providers by not covering any of their costs or covering a lower portion of their costs. Healthcare organizations refer to this selection of providers as “selective contracting.”

DEBATE

Proponents’ Arguments

- increased consumer choice and access
- decreased healthcare costs due to less expensive care and increased competition
- allows continued use of other cost

Proponents of Measure 39 argue that selective contracting restricts patient care by limiting consumer choice of providers and services. They contend that passage of this measure will guarantee consumers the right to choose the healthcare services that best suit them. Proponents specifically highlight alternative medicine and explain that most healthcare organizations do not contract with or cover costs associated with alternative medicine providers. Supporters maintain that many of the alternative providers covered by this measure offer treatments that are often less invasive, more effective, less expensive, and more preventive. Currently, only those consumers who have the financial means to cover the costs not covered by their healthcare organization can receive these services. By allowing consumers access to these options, healthcare costs arguably will decrease.

Supporters contend that Measure 39 will lead to increased competition, further decreasing healthcare costs. They assert that current costs are high due to the monopoly that traditional providers have on the market. By opening the market to all licensed or otherwise regulated categories of healthcare providers, all providers will have to compete to acquire consumers and consumers will have more options when seeking the best

containment measures

use of their healthcare dollars.

Supporters also maintain that Measure 39 specifically allows organizations to continue to use cost control measures as long as they do not exclude entire categories of healthcare providers. Organizations can continue to contract with selected providers (selective contracting), but will not be able to exclude categories of providers providing similar services as contracted providers.

Opponents' Arguments

- increased healthcare costs due to larger provider network lessening provider incentive to give discounts

Opponents argue that Measure 39 would weaken the ability of healthcare organizations to control the membership size of their provider networks and result in higher healthcare costs. By maintaining a specific level of provider membership, the organization can guarantee the provider a certain number of members. With a guaranteed patient volume, healthcare organizations can often negotiate discounts from the providers. If organizations are required to contract with a provider in every category of state licensed and regulated healthcare, opponents argue that the resulting increase in the provider network size will decrease the number of members that can be guaranteed to the providers. Arguably, this would weaken the organization's ability to negotiate discounts and cause an increase in healthcare costs. Opponents also explain that selective contracting does not limit consumer choice since the consumer can choose a plan with fewer restrictions on their choice of provider.

- increased healthcare costs due to difficulty in monitoring compliance of utilization policies and increased administrative costs

Additionally, opponents contend that by limiting the size of the provider network, selective contracting also helps the organization monitor that their utilization policies and practices are being followed. These polices are used to ensure that adequate and necessary services are provided to members while avoiding costs associated with unnecessary services. With an over-sized network, healthcare organizations contend that assuring compliance by providers will be more difficult and costs will increase. Opponents explain that credentialing and monitoring additional providers will also drive up administrative costs and result in higher healthcare costs. Some opponents also question whether alternative provider fees will increase once they are included in health plan networks and no longer need to rely on consumer discretionary income.

- vague language locked into constitution

Opponents also stress the potential fiscal effect on workers' compensation. They assert that by removing restrictions on coverage to include alternative providers, workers' compensation costs will increase. Six years ago, Oregon passed workers' compensation reform legislation that, among many other system changes, allows only medical doctors, osteopaths, and oral surgeons to serve indefinitely as attending physicians (similar to a gatekeeper). Chiropractors may serve as such for 30 days or

12 visits. Opponents attribute the recently announced \$80 million decrease in workers' compensation costs to these reforms and speculate that this measure may render parts of this system unconstitutional. With the increase in employee healthcare and workers' compensation costs, opponents argue that businesses will be less able to afford adequate insurance for their employees.

Opponents are concerned about the vague constitutional language that would be the result of this measure's passage. Any revision of language would have to come through the initiative or referendum process, as neither the Governor nor the legislature can amend the Constitution. While Measure 39 would allow continued implementation of other cost containment measures, opponents question whether "gatekeeping" practices would remain legal since most healthcare organizations limit primary care physicians, or "gatekeepers," to specific categories of physicians (such as family practitioners, general practitioners, and pediatricians).

What will the fiscal impact be?

The Oregon Secretary of State's Office, through a committee comprised of the Secretary of State, the State Treasurer, the director of the Department of Revenue, and the director of the Department of Administrative Services, provides fiscal impact estimates for direct government revenues/ expenditures due to ballot measures, and does not provide estimates for private firms or the public. The Secretary of State's Office anticipates an increase in healthcare costs should Measure 39 pass, based on estimates provided by existing insurance plans and independent actuarial analysis. State government expenditures are expected to increase \$22.4 million annually and local government expenditures are expected to increase \$8 million annually to cover increased employee healthcare costs in terms of premium increases. Included in this estimate is an anticipated \$16.8 million increase in expenditures for the Oregon Health Plan and \$2.2 million anticipated increase in expenditures for workers' compensation.

Proponents and opponents disagree with this fiscal estimate. Proponents claim that healthcare costs will actually decrease and opponents claim healthcare costs will increase by a greater amount than has been estimated. Both sides have offered studies and related data in support of their claims.

CONTACTS:

PROPOSERS	OPPOSERS
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**** Please Note: Ballot Measure 39 was rejected by Oregon voters in November 1996**