Oregon Insurance Division
PO Box 14480
Salem, OR 97309

ATTN: Douglas Beck

Re: Public Comment Meeting on Health Plan Coverage of Dialysis for End State Renal Disease (ESRD), October 23, 2015

Thank you for the opportunity to appear and speak at the public comment meeting on October 23, 2015. DaVita appreciates the efforts expended by the OID staff to ensure all stakeholders and impacted parties had an opportunity to have their voices heard.

It was telling to see only one insurance carrier speak at the meeting and attempt to defend the plan designs in question. We believe that some of the other implicated insurers chose not to speak because they knew that defending these plan designs publicly is impossible.

I'm certain OID staff observed that Regence chose not to refute the allegations at hand, but rather tried to excuse their actions as a cost control measure. Despite the fact that OID has made clear it has no role to play in contract negotiations—and despite the fact that comments made by the provider and patient community made clear their concerns focused on whether the plans misled consumers and unlawfully discriminated against members with ESRD—the insurer representatives limited their comments almost exclusively on provider rates. These irrelevant comments do not merit a reply, except for this observation: With these plan designs, Regence (and BridgeSpan) is attempting to put patients in the middle as a way to try to solve their purported concern about rates, a point highlighted by their treatment of patient out-of-pocket costs.

If anything, the OID stakeholder meeting made clear that at least some of the insurers, despite the fact that they cannot refute the allegations, are not inclined to withdraw the plan designs unless specifically instructed by the OID. Therefore a formal ruling by the OID is more important – and more urgent – than ever.

Though the arguments made by Regence were largely irrelevant to the matter at hand, I do want to point out that the only substantive argument made to try to defend their plan designs was factually untrue. The Regence representatives took issue with provider and patient speakers who noted that the plan's "dialysis benefit" applied regardless of whether the individual actually met all eligibility requirements for Medicare. Said differently, the Regence representatives insisted

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that the out-of-pocket exclusions did not apply if the member with ESRD was not eligible for Medicare.

In fact, the plain language of the Regence and BridgeSpan plans negate the Regence representations. Multiple plans filed with OID for 2016, including the Regence Bronze and Silver Standard plans and the BridgeSpan Essential 6850 Individual Exchange Plans, specifically state that after the first treatment period of outpatient dialysis the plan will pay a set amount and then reads that for any balances owed by the member:

> *If You are not enrolled in Medicare Part B, You may be responsible for some balances, which will not apply toward the Out-of-pocket Maximum.*

The exact language of the plan states that the out-of-pocket exclusion applies if the member does **not** enroll in Medicare, regardless of whether they are even eligible to enroll in Medicare. Thus the representations of the provider and patient communities in the hearing regarding this benefit were accurate, and the Regence representation was not accurate. It may be that the Regence representatives meant to say that the insurer would not actually apply the exclusion on out-of-pocket expenditures if the member was not enrolled in Medicare. However, were that the case, then this language is another example of how the insurers' plans are written to mislead the plan members about Medicare enrollment. Even if the plans were modified to work in the way Regence suggests, this plan design would actually be more discriminatory towards patients than the current form.

The provider and patient community present at the hearing openly expressed their specific concerns about the illegality of these plans as misleading and discriminatory under Oregon law. Given the order of the presentations established by OID, the insurance community, having had the same notice of this meeting as the providers and patients and having had the opportunity to hear all those comments, chose not to address or rebut the substantive concerns raised by the providers and patients. Instead, only representatives for Regence spoke, and chose to focus their public comments on the subject of provider rates, indicating that any substantive response on the actual issues voiced by the providers and patients would be submitted in writing separately to the OID. Fundamental fairness would dictate that any responses submitted by the insurers on the actual issues raised be shared with the provider and patient community, just as the provider and patient comments were shared at the open meeting with the insurers. Additionally, we would respectfully request that the provider and patient community be given an opportunity to respond to the insurer comments just as the insurers are being given an opportunity to respond to the public comments made by providers and patients at the meeting.

Again, thank you for affording stakeholders the opportunity to express our concerns publicly. We view the issues raised by the providers and patients on the discriminatory nature of the plan designs as pretty black and white: these plans impose different conditions of coverage on

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beneficiaries with ESRD solely because they have ESRD, in addition to misleading beneficiaries about the advantages and disadvantages of Medicare enrollment. With open enrollment upon us, the public is looking to OID to act quickly and clearly. We look forward to hearing that OID has made its determination and recommend Commissioner Cali take swift action.

Sincerely,

Jeremy Van Haselen
Vice-President, Government Affairs
DaVita HealthCare Partners

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