Principles for Financial Penalty Development

When establishing financial penalties for insurers and provider organizations that exceed state-set cost growth targets, it is critical to balance the enforcement of fiscal discipline with the maintenance of quality healthcare.

1. Corrective Guidance Prior to Penalties

Financial penalties should serve as a measure of last resort, to be employed only after an insurer or provider organization has not met the obligations laid out in their Performance Improvement Plan (PIP).

Before penalties are levied, entities should be given the opportunity to engage in a structured, supportive, and transparent Performance Improvement Plan that is specifically tailored to help them address and rectify issues that led to exceeding the cost growth target. This plan would include clear objectives, timelines, and strategies for cost management and quality improvement. Regular monitoring and intermediate checkpoints should be part of the PIP to assess progress and provide feedback.

If, after sufficient time and support, the insurer or provider organization fails to make adequate progress according to the predefined milestones, only then would penalties be considered. This approach reinforces the primary goal of improving health care cost management and efficiency, rather than immediately resorting to punitive measures, and underscores the commitment to collaborative improvement over coercive enforcement.

2. Equity

The financial penalty system should account for the size and financial capacity of the entity. In absolute terms penalties should avoid crippling financial burdens that could threaten the viability of the entity or the community's access to care. However, the penalty should be meaningful to enough to deter future behavior.

3. Transparency

The process for determining when penalties are assessed, how they are calculated, and how the funds collected are used should be transparent. Stakeholders, including the penalized entities, should have a clear understanding of the methodology and be able to anticipate and plan for potential penalties.

4. Appeal and Adjustment Mechanism

There should be an appeal process that allows insurers and provider organizations to contest penalties if they believe they have been wrongly assessed or if there were extenuating circumstances that led to their exceeding the cost target.

These principles aim to ensure that Oregon's cost growth target financial penalty system is not only a punitive measure but also a tool to promote efficiency, equity, and quality in health care, without compromising access or the financial stability of insurers and provider organizations.

Background Information

From HB 2081 (2021):

Section 2: (9) The authority shall adopt by rule criteria for imposing a financial penalty on any provider or payer that exceeds the cost growth target without reasonable cause in three out of five calendar years or on any provider or payer that does not participate in the program. The criteria must be based on the degree to which the provider or payer exceeded the target and other factors, including but not limited to:

a. The size of the provider or payer organization;
b. The good faith efforts of the provider or payer to address health care costs;
c. The provider's or payer's cooperation with the authority or the department;
d. Overlapping penalties that may be imposed for failing to meet the target, such as requirements relating to medical loss ratios; and
e. A provider's or payer's overall performance in reducing cost across all markets served by the provider or payer.

Section 7: A financial penalty described in ORS 442.386 (9), as amended by section 2 of this 2021 Act, may be imposed no earlier than January 1, 2026, for performance by a provider or payer in meeting cost growth targets during calendar years 2021 to 2025.

Notes from September 2023 Advisory Committee Meeting

Helpful analogy: Financial penalties are like a speeding ticket: there is a clear speed limit (cost growth target), there are known consequences for speeding (immediate: PIP, longer-term: penalties).

<u>What is the purpose of the financial penalty?</u>

- Financial penalties are a tool to help achieve payer and provider organization compliance with the cost growth target; they provide incentive for payers and provider organizations to manage cost growth.
- Financial penalties are the "last resort" to achieving compliance with the cost growth target.
- Financial penalties are primarily a tool for accountability, not transformation. The Performance Improvement Plans are more likely to be the accountability mechanism that drives transformation, but the avoidance of financial penalties may also drive transformation.

<u>What would the financial penalty need to look like to serve its purpose?</u>

- Financial penalties need to create a significant enough impact on the payer or provider organization to be sufficient incentive to influence actions.
- Financial penalties should be calibrated to be "meaningful, but not destructive."

- There may be different ways to make financial penalties meaningful enough to impact behavior: materiality [how big the penalty is] is just one consideration.

- There needs to be public clarity on how an entity gets to the point of a financial penalty being imposed.

<u>How often should penalties be imposed?</u>

- Financial penalties should be rare, and only imposed after careful consideration of whether the entity had the opportunity to control costs and whether the entity has demonstrated good faith efforts in working to control costs and to implement a performance improvement plan.

<u>What parameters should be considered in developing penalties?</u>

- Graduation – do penalties ramp up over time?
- Impact on solvency