

February 3, 2020  
Senate Committee on Health Care  
Background Regarding Immunity Language via DCBS

Chair Monnes Anderson and members of the committee:

The immunity language in Section 3(14) of SB 1535 is intended to clarify that disclosures under HB 4005 are subject to comparable immunity to releases under other similar provisions of law related to disclosure of public records and potentially trade secret information. Specifically, the language draws from two existing statutes:

1. Oregon's public records law at ORS 192.335(1), which states that "*A public body that, acting in good faith, discloses a public record in response to a request for public records is not liable for any loss or damages based on the disclosure unless the disclosure is affirmatively prohibited by state or federal law or by a court order applicable to the public body.*"
2. Oregon's Uniform Trade Secret Act at ORS 646.473(3), which states that "*Notwithstanding any other provision in ORS 646.461 to 646.475, public bodies and their officers, employees and agents are immune from any claim or action for misappropriation of a trade secret that is based on the disclosure or release of information in obedience to or in good faith reliance on any order of disclosure issued pursuant to ORS 192.311 to 192.431 or on the advice of an attorney authorized to advise the public body, its officers, employees or agents.*"

We believe the language we've recommended is important because HB 4005 establishes a somewhat unusual framework for disclosing information reported to the Department and there is potentially some ambiguity about whether the protections above would apply to our drug price transparency program.

As to whether we need these exact protections to carry out the intent of the bill, we have of course been implementing the program, receiving reports, disclosing reported information and doing our best to realize legislative intent for some time now. However, we believe this clarification would put us in a more secure position moving forward.

Best,

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