

# PASSPORT TO LANGUAGES INC.



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## **Testimony Opposing House Bill 4115**

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House Committee on Health Care

Robin Lawson

Dear Chair Salinas, Vices Chair Nosse and Hayden, and members of the committee. My name is Robin Lawson. I am the Owner/President of Passport To Languages Inc, based in Portland, OR.

This letter is written in opposition to HB 4115 as it is currently written.

While we are certainly in favor of utilizing healthcare qualified and certified interpreters, we are not in favor of the extreme measures called out in this bill. By only utilizing the current Certified/Qualified interpreter base (which this bill is advocating), it would artificially limit the quantity of interpreters in the market space. This bill would then serve to compromise the health equity of an already expanding LEP population, by causing potential language access gaps in the network. As it stands, there aren't enough interpreters overall to cover the current demand. Restricting the use of other highly valued interpreters would cause shortages statewide, and continuity of care would diminish as a result. As an agency, we utilize and maximize all the contracted certified and qualified interpreters that we can. Simply put, they are not in large enough numbers to cover the entire workload. In fact, it is our understanding that they comprise less than 50% of the entire state interpreter workforce. Of course, we are in favor of all interpreters becoming certified/qualified; but not in the way that this bill is written.

We additionally oppose HB 4115 for its disregard to the negative economic impact it would cause, and for its inherent disdain of previously established market relationships and free commerce. This bill would serve to disrupt the integrity of private, state-approved legal contracts that agencies have acquired and been awarded through vigorous, competitive pursuits in the market space. These contracts are binding and have no stipulation that would support their trading partner having to submit, apply, and pay for membership to a health authority; only to access the very interpreters they themselves have recruited, cultivated, and contracted with for decades. In fact, this very idea is so restrictive, that it defies the defined concept of free commerce. Agencies certainly do not need to be regulated to the extent that their very own business licenses and ability to operate are at stake; lying in the whimsical hands of a state

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agency that has no tangible plans to explain how they would operationalize this bill. Currently we work in conjunction with the OHA by utilizing the interpreters on the state registry, many of whom we have supported along the way in their pursuit toward becoming healthcare qualified or certified.

Another reason that we oppose this bill is that we don't fully support the narrative created that NON-certified/qualified healthcare interpreters create health inequities for patients across the state. Just because an interpreter is in the process of getting certified, it doesn't mean that LEP patients aren't receiving optimal healthcare. There is a myriad of reasons why many interpreters have not yet become certified. As the bill points out, many have not been able to afford the courses; while others who have, were so poorly trained by the state approved courses, they were unable to pass the national test. As an agency, we certainly do not favor NON-certified/qualified interpreters over those that are. In fact, quite the opposite. It is in our best interest to work with the elite in this workforce, and there is certainly no financial incentive not to, in the face of liability. However, by utilizing the ENTIRE workforce/ALL interpreters, we as an agency demonstrate a commitment to the health and well-being of all residents in all counties throughout the state; by providing meaningful language access to all LEP patients. (including those with languages of lesser diffusion) This in fact is congruent and in alignment with CCO directives-which strive for sustainability and better health outcomes; which in turn reduce overall health costs. This is certainly an arguable improvement in areas where many patients previously had to rely on family members. If these interpreters were creating health inequities, we would have certainly heard about this in the over three decades that we have served the community. In fact, in our recent experience we have found the opposite to be true. We have had more provider complaints about Certified interpreters than non. The complaints range from pure arrogance towards providers, to disdain towards certain health rules and HIPAA, to lacking the very ethics and standards they are supposed to be upholding. This has much to do with how they were trained. Despite all this, we still push people towards becoming certified/qualified, we check in on their progress, and we continuously promote ALL educational opportunities via various channels and through social media.

We also oppose this bill because of the false narrative created by the assumption that only certified and qualified interpreters should have access to the market space. This assumes that we as an agency just let anyone become an interpreter, which is misleading and not true. As an agency, we have a thorough, vertical process for vetting candidates and proving fluency and apprehension of terminology. No one receives a badge until all metrics are met, including background checks, immunizations, and passing tests in HIPAA and Standards and Ethics. The state constantly needs new interpreters, and they need to start somewhere. They also need to achieve many hours of real practicum as one of the components in becoming qualified or certified. We as an agency create that opportunity, while also providing new assets for the LEP

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community; addressing social determinants of health and health equity. As an agency, we also serve as a weathervane to determine emerging language trends, and to leverage our recruitment in ways that meet these new access needs. We also connect with key providers, educating them on best practices for accessing services and optimally engaging with healthcare interpreters. By aligning our efforts with healthcare providers, we have been able to strategically define demographics in the state; which has served to align our coverage in ways that meet and exceed language access needs, critical for all of Oregon's LEP patient needs. These are simply things that an agency provides, which can never be supplanted by a state-run organization, or a small cadre of Certified Healthcare interpreters. This expertise comes from consistent decades of work experience in a highly competitive industry. Agencies are clearly not fungible, and this bill shows no clear path to creating an equal enterprise or mechanism that would effectively run the day to day needs that the industry demands; in a way that agencies have already proven that they can.

Another reason that we oppose HB4115 is that it is based on yet another false, unsubstantiated narrative, in that it claims health care interpreters "suffer from the inequitable practices of interpretation service companies". This is patently false, and we vigorously oppose this accusation and pattern of rhetoric. If there was any actual truth to this, we would have had previous litigation or arbitration on this very subject; which we have not. ALL interpreters can set their own agreed upon rate with us as a contractor. We do not discriminate and have never had any issue remotely relating to that, nor have we participated in any "inequitable practices". All our contracted interpreters are paid on time, and are treated fairly, equitably, and with deference. Lastly, if ANY interpreter ever did have a contract issue that remained untenable, they would be free to utilize the same legal options and channels that anyone with a legitimate dispute would have; rather than submissively seeking protection in a house bill by using unsubstantiated rhetoric as subterfuge. As an agency we demand verification on these claims. We have read some of the individual testimonials from HB 2231 (2019), and were frankly appalled by the false, unsubstantiated claims that were twisted and shaped to serve this narrative.

One of the strongest reasons that we oppose this bill is due to its lack of understanding of how it directly relates to the Oregon Health Plan and its initiatives (ultimately administered by the OHA itself). When CCOs were first constructed and introduced, the law suggested that CCOs would pay for and reimburse providers for interpreter services, with the caveat that they work with Healthcare Certified and/or Qualified interpreters. So, essentially, this law is and was already in place. This was in 2012, and at the time was an unfunded mandate. However, this served as a critical component for Oregon CCOs to receive and access Medicaid funds as a source to pay for interpreting. This paradigm shift took the interpreter fee off the provider, and on to the CCO; as long as the patient presented their OHP information and had been

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legitimately verified. There is obviously a strong connection with Oregon's LEP population and the Oregon Health Plan.

Initially, there were no approved training courses for interpreters, nor even rules yet set up on how to become recognized by the state as Healthcare Qualified or Certified. It took years of partnerships to develop programs, courses, and protocols so that interpreters knew how to pay for and weave through the multiple mazes directed at them. On the business end, the inception of CCOs predicated that specific rates were set across the state to agencies- which was initially based off the national Medicaid rate for reimbursement for language services. This addressed onsite and telephonic appointments only. As an agency, and to the best of our ability, we negotiated rates with these CCOs, keeping in mind the sustainability of every dollar spent and the effort towards creating healthier outcomes. Having set contracted rates governs how we administer the workflow. We also have strict performance provisions and concessions to adhere to regarding cancellations, interpreter no-shows, and last-minute givebacks; which heavily favor the interpreter, not the agency. Our role requires (but is not limited to) taking appointments, filling them, billing them, verifying patient OHP/CCO eligibility, all while adhering to previous and emerging CMS requirements and confidentiality. The rates set by CCOs help to keep the Medicaid funds sustainable and the basic model intact. The fallacy in all of this, is that certain interpreters demand such a high pay rate that it far exceeds what CCOs are paying the agencies. These rate demands have no real market relevance or understanding of what the market can bear. Typically, their only justification is that they are certified, and were promised higher pay in their training. It is this lack of understanding of the market constraints that makes this bill out of touch with the realities of the actual market space and the rate threshold.

If this assumption and attitude were to hypothetically continue across the board, the entire industry would implode, while driving UP the costs of healthcare, and not down. It would also leave many LEP patients without the language access that they are entitled to. The CCOs depend heavily on the agencies to actualize optimal implementation and provide consistent outcomes. As well, the recent laws governing CCO 2.0 should spell out the current requirements for all Oregon CCOs.

The last point of contention regarding HB4115 is the idea of "bundling" workers comp as a benefit for interpreters. While we as an agency are in favor of our contractors having this benefit, it should be something that they themselves are paying for as independent contractors. Providing this as an agency would serve to obfuscate the actual law in place. State law mandates that all contracted interpreters in the state of Oregon are not employees. This is a law that we assisted with over two decades ago and remains the rule of law in place.

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In closing we would state that ultimately this appears to be about money, and a handful of interpreters and politicians that don't fully grasp the complexity of the industry that they are in or speaking about. While we fully support the professional development of interpreters and encourage their efforts towards certification/qualification, we also need to be mindful of the going rate for their services. If the state would like to establish a higher rate for providers in general, that would seem to be the only logical step to preserve the current model in place. Agencies take on the entire risk and must be fully indemnified to work the contracts that they are awarded. All while working on extremely low and diminishing margins.

Since interpreters were recently set up with their own "union" for collective bargaining, it would only seem logical that they do what other unions do, and engage in fair practice negotiations, instead of trying to write laws that serve to destabilize an industry while putting patients at risk. It is very transparent and obvious that the union is behind this bill and is trying to change or manipulate existing laws to further their agenda. The crux is this: for unions to organize interpreters, they would have to be defined as employees; which they are currently not. Their employment classification by state law is CONTRACTOR. Unions can't organize contractors, and this is an important, known formality for unions.

We have always been in favor of working with the OHA and doing what is practicable legally to further assist in the certification process. We would love nothing more than seeing all interpreters in the state become certified/qualified. We would also be in favor of free courses for the interpreters. This would certainly be an incentive towards professionally advancing that sector of the industry. However, we vehemently oppose the methods that this bill suggests – on the basis that it not only contradicts the current law in place, but that it defies the very essence of free commerce; an element that we have come to embrace in our democratic society. The industry doesn't need to be regulated, rather it needs cooperation and the alignment of all parties to push for mutual agendas.

Our goal for the future is to create wider awareness for all members, and to create sustainable and affordable training for interpreters; so that they can continue to elevate towards certification/qualification within a system that supports them and provides consistent work via ethical and efficient means.

It is our strong desire to maintain our relationship with the OHA and continue to engage with the provider networks that support their membership. We would be in favor of tweaking the bill as it is written, or re-writing it entirely in a more practicable fashion. One that lists the details necessary to produce a cooperative paradigm shift, where all parties win, and the LEP patients in Oregon continue to receive the equity they are entitled to for language access.