



February 10, 2020

Dear Chair Monnes Anderson, Vice Chair Linthicum, and Members of the Committee:

I am writing to provide comments on Section 5 of Senate Bill 1551, which addresses so-called trade secrets of coordinated care organizations in the Oregon Health Plan.

1. **Trade secrets undermine Oregon's coordinated care model.** The coordinated care model – as designed by the legislature – envisioned coordinated care organizations as incubators of innovation serving the public interest with billions of dollars at stake each year. If a CCO prevents disclosure of public records submitted to the Oregon Health Authority (OHA) on the basis that it has trade secrets, then it is undermining the public interest and the CCO model itself. It is in the public interest to share publicly funded innovation and best practices across the Oregon Health Plan to lower costs for taxpayers and provide the best possible quality of care to members regardless of where they live. In its 2012 CCO implementation report, the Oregon Health Policy Board wrote that transparency of payments for health care “should allow consumers, providers and purchasers to understand the incentives created by the payment method, the price of treatment options and the variations in price and quality of care across providers.”
2. **There is no competition in Oregon's Medicaid program.** Oregon's CCO contracts were never awarded through a competitive bidding process. The CCOs operate in assigned service areas in specific geographic regions where there is very little overlap. In fact, in most regions of the state, providers and members have only one CCO option available to them. OHA's recent CCO 2.0 procurement was also not a competitive process because the request-for-applications (RFA) was based on publicly available criteria set by OHA, the sole entity with the power to award or terminate CCO contracts. In theory, every CCO that met the criteria received a contract. OHA then developed rates for every CCO *after* this RFA process concluded, and all CCO applications and awarded *five-year* contracts are now publicly available. Even so, competition in and of itself is not a bad thing. Competition breeds innovation, and protecting monopolies and millions in Medicaid profits is not in the public interest.
3. **CCOs cannot withhold information from the OHA because of trade secrets.** Oregon law and federal regulations require that CCOs report financial and health care data to the OHA (ORS

442.464). The 361-page CCO contracts contain at least 178 deliverables or reports that are required of the CCO on an annual or quarterly basis, and Senate Bill 1040 required that those be made publicly available. Failure to comply with data reporting would expose the CCO to “sanctions, including but not limited to civil penalties, barring any new enrollment in the coordinated care organization and termination of the contract” (ORS 414.591). Therefore, there are numerous provisions in the contract for sanctions if a CCO fails to comply with its contractual obligations.

4. **Individual provider information should be protected from public disclosure.** The vast majority of CCO reports and data submissions do not contain individual member or provider details. To the extent there are, those should not be disclosed to the public. However, the current CCO contract allows the CCO to label anything a trade secret, including any “production data or compilation of information” as long as it claims some theoretical business value. This very broad definition gives CCOs the ability to withhold information that has public value. These are public records, and current law would still require disclosure when it is in the public interest to do so.

In conclusion, it is our belief that trade secrets do not exist in the Oregon Health Plan. Any claims to the contrary are theoretical at best and damaging to the Oregon Health Plan at worst. Individual member information or provider-specific contract and payment terms are the only categories of information deserving protection from public disclosure. Please let me know if you have any questions.

Sincerely,

Art Suchorzewski
Director, Government Affairs