

Esteemed Representative Salinas and Members of the Committee,

I am a Certified interpreter and I would like to take the time to respond to some of the points made by Passport to Languages in their testimony. I would like to remain anonymous out of fear of retaliation.

“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.”

This bill is not advocating for “only using the current Certified/Qualified interpreter base.” This bill is advocating for holding agencies accountable for sending interpreters who are Certified and Qualified to appointments whenever practicable, as described in Section 7 (3). There is already a requirement to use Certified and Qualified interpreters whenever possible--ORS 413.552 (3)--so this is nothing new. This bill is merely opening the door to a rulemaking process establishing an enforcement mechanism for the existing statute, allowing for the definition of specific steps that must be taken as part of a good faith effort to comply with the law.

Furthermore, while Certified and Qualified interpreters may currently comprise a small share of the workforce, those who are not Certified and Qualified will not make an effort to become Certified or Qualified until they see that their investment will pay off. If they can get comparable pay and as much, or more, work without credentials, they will not make the investment in time and energy to obtain a credential. Establishing steps for agencies to take to make an effort to send Certified and Qualified interpreters to appointments when practicable would mean incentivizing the Certification and Qualification process for interpreters, thus growing the trained, credentialed workforce.

Those who are already Certified and Qualified will be more likely to remain in the profession if they are able to charge fair rates and get enough work, both of which this bill would facilitate.

“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.”

Interpreters who have been trained are linked to better patient outcomes and fewer errors. Qualified and certified interpreters must go through a 60-hour training program. This doesn’t mean they never commit errors, but they are far less likely to do so than interpreters with no training or only a HIPAA training and no actual interpreter skills training.

“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.”

This bill specifically addresses the issue of cost--see Section 5 (2) (a).

Interpreter training programs teach interpreting skills, not language skills--they cannot help an interpreter gain language skills. Some interpreters may go through training and understand the ethics and strategies necessary for interpreting, but lack the language skills necessary and therefore be unable to get Certified or Qualified.

But if there is really an issue with training programs, that is better addressed by improving OHA's training requirements, not discarding the idea of requiring training altogether, especially since studies have shown time and time again that trained interpreters are linked to better quality interpreting and better health outcomes for patients.

"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 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."

I have found plenty of evidence regarding health inequities facing Limited English Proficient patients without access to trained interpreters across our nation, and I believe plenty has been provided with the testimonies already submitted. I am surprised Passport to Languages has not heard of these health inequities, and seems to think untrained interpreters in Oregon provide better quality interpreting than trained interpreters, despite having only anecdotal evidence to support this idea.

As far as complaints, I myself have been complained about for upholding the Code of Ethics and Standards of Practice I adhere to as an interpreter and abiding by role boundaries. I have been asked to watch a mental health patient eat to make sure she didn't choke. I have been asked to explain a consent form to a patient, when she should have had it explained to her by the provider like any English-speaking patient would have. I've been asked to do many inappropriate things and said no. This is not arrogance, it's a sense of ethical responsibility.

But if there is a legitimate complaint against an interpreter, this bill provides a mechanism for that complaint to be investigated--see Section 3 (2) (a) (A).

"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."

This “assumption” that only certified and qualified interpreters should serve patients, barring circumstances making that impossible, is already in statute; this bill merely seeks to enforce what the Legislative Assembly has already ingrained in ORS 413.552 (3).

Proving fluency and knowledge of terminology is not equivalent to undergoing a training program which teaches interpreting skills.

They also need to achieve many hours of real practicum as one of the components in becoming qualified or certified.

This can be achieved by shadowing and being shadowed by a certified or qualified interpreter, which is what I did before becoming certified or qualified.

“Another reason that we oppose HB 4115 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.”

Many agencies have a flat rate, pre-printed on contracts, that they pay all interpreters or all interpreters with the same credential. Interpreters who are not willing to sign the contract as-is are easily substituted with interpreters who are not credentialed and are willing to accept lower pay. I wouldn't call this setting our own rate.

If an interpreter were to take legal action, which many may not be able to afford to do, they would be putting their livelihood at risk. This is something few interpreters would be willing to do. Interpreters need the option to be able to report issues anonymously. Individuals with legitimate disputes make whistleblower complaints in many industries; anonymity does not delegitimize their claims.

“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.”

Absolutely, this law exists, but this is not enforced. This bill would enable the creation of an enforcement mechanism.

It is also important to note that OHP patients are not the only ones who should have the right to access trained interpreters. Patients who are uninsured or have private insurance should also have these rights. Looking just at CCOs and their members is shortsighted.

"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."

If an interpreter doesn't show up for work, they won't get paid, so it is in the interpreter's best interest to show up whenever possible. However, as humans, we sometimes get sick, have car troubles, or face inclement weather and that prevents us from getting to appointments.

Passport to Languages will not pay us if a Care Oregon appointment is canceled more than four hours before the scheduled start time, but we have to give them 72 hours notice, and if we give less than 24 hours' notice they state that they can charge us our hourly rate for the appointment. In my view, that does not "heavily favor the interpreter," but I will allow you to decide.

"The last point of contention regarding HB 4115 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 we assisted with over two decades ago and remains the rule of law in place."

My understanding is that the fact that a worker is paid as an independent contractor does not negate the requirement that the person awarding the contract, or the person to whom the contract is awarded, typically has to pay for workers' compensation insurance for workers (not the workers themselves). There are differences between the standards for being paid as an independent contractor and being classified as an independent contractor by the Worker's Compensation Division. While I agree that I am paid as a 1099 contractor, I think interpreters should be provided with workers' compensation insurance coverage just like other workers engaged in labor that is a normal and customary part of the contract awardee's trade or business.

ORS 656.029 states:

"If a person awards a contract involving the performance of labor where such labor is a normal and customary part or process of the person's trade or business, the person awarding the contract is responsible for providing workers' compensation insurance coverage for all individuals, other than those exempt under ORS 656.027 (Who are subject workers), who perform labor under the contract unless the person to whom the contract is awarded provides such coverage for those individuals before labor under the contract commences. If an individual who performs labor under the contract incurs a compensable injury, and no workers' compensation insurance coverage is provided for that

individual by the person who is charged with the responsibility for providing such coverage before labor under the contract commences, that person shall be treated as a noncomplying employer and benefits shall be paid to the injured worker in the manner provided in this chapter for the payment of benefits to the worker of a non complying employer."

"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 currently are not. Their employment classification by state law is CONTRACTOR. Unions can't organize contractors, and this is an important, known formality for unions."

HB 2231 already passed last year, so no, this bill is not an attempt to get interpreters reclassified to enable the formation of a union, if this is what Passport to Languages is implying.

Despite the implication here, as far as I know an interpreters' union does not yet exist in Oregon. I personally would like to see a union comprised of Certified and Qualified interpreters enter into contract negotiations with the state, as permitted by HB 2231. This would ensure that OHP patients have access to Certified and Qualified interpreters. However, I recognize that even if such a union were created, it would not necessarily improve access for LEP patients who are uninsured or have private insurance. This bill would ensure access to Certified and Qualified interpreters for all patients, whether or not a union is created.

The way this letter is written demonstrates the agency's contempt towards interpreters seeking to become credentialed and their opposition to this bill shows they do not want to lose their control.