



Date February 1, 2023

TO: The Honorable Senator Patterson, Chair
Senate Health Care Committee

FROM: Marjorie McGee, Director
REALD & SOGI Unit
Equity & Inclusion Division
Oregon Health Authority

SUBJECT: Testimony in support of SB 216

Chair Patterson, Vice-Chair Hayden, and members of the committee; I am Marjorie McGee, Director of the REALD (race, ethnicity, language, disability) & SOGI (sexual orientation, gender identity) Unit of the Oregon Health Authority. I am here today to provide information and background for SB 216. This bill does two things.

1. SB 216 amends ORS 181A.161 by exempting the REALD race/ethnicity questions adopted under ORS 413.161. For context:
 - ▶ ORS 413.161, passed in 2013, which resulted in this question: *How do you identify your race, ethnicity, tribal affiliation, country of origin, or ancestry?* codified in Oregon administrative rules (943-070-0030(1)).
 - ▶ ORS 181A.823 subsection (1)(b), passed in 2021, prohibits any inquiry or collection of certain listed information by public bodies including country of birth (aka national origin).

Exempting REALD race/ethnicity questions from ORS 181A.823 would

- ▶ Keep community commitments, as the REALD open-ended question was developed through a comprehensive rulemaking process with local communitiesⁱ most impacted by health inequities and was:
 - Designed to prompt individuals to identify their racial/ethnic identity in any way they want
 - Help individuals answer the open-ended question about racial or ethnic identity with the additional prompts in the question (*tribal affiliation, country of origin, or ancestry*)

It is difficult to make any assumptions about immigration status based on answers to the race/ethnicity question. For example, an individual who answered

“Vietnam” is just as likely to be a citizen of the United States as an immigrant or non-immigrant from Vietnam.

Eliminating “*country of origin*” from the question will require systemic changes for data systems already compliant with the REALD data collection standards (OAR Chapter 943, Division 70).

2. SB 216 also amends 413.161 by indicating that data collected under ORS 413.161 is confidential and not subject to disclosure under the Public Records Act (ORS 192.311 to 192.478).
 - ▶ Currently REALD & SOGI demographic data collected by OHA and other public bodies is subject to public records act unless already otherwise protected in other statutes or OARs relating to specific programs or exempt from public records act (ORS 192.311 to 192.478).
 - ▶ We cannot guarantee that their REALD & SOGI information at an individual level is exempt from Public Records Act. One example of a setting vulnerable to Public Records Act is relating to those who serve on OHA commissions, committees, and boards. Sharing and or reporting individual’s responses to demographic questions, along with their name or position, in response to a public records request:
 - Increases the possibility of harm and exposure to racism, disablism, linguistic discrimination, and other systems of oppression; this information will allow bad actors to prey on those most vulnerable. For example, knowing that a committee member has a particular disability could make that person vulnerable to harm.
 - Reduces response rates which would decrease data quality. Poor data quality makes it harder for OHA and ODHS to identify and address inequities in services, outcomes and in processes, including language access and ADA accessibility, and to assess if there is diverse representation in programs and activities conducted by OHA & ODHS, including boards, commissions, workgroups, rulemaking advisory committees, and in other settings with stakeholders.

The -1 amendment would remove a sentence from ORS 413.164(4). DOJ has advised that the intent of ORS 413.164(4) and ORS 413.163 is that certain entities are permitted to have access to the REALD and SOGI data, but the current language in ORS 413.164(4) does not allow for this. Leaving this text as is would adversely impact OHA by prohibiting the agency from carrying out its traditional functions involving data sharing that is allowable and appropriate per legal statutes, rules, and governance processes.

In summary, SB 216 strengthens OHA & ODHS implementation of REALD & SOGI standards with fidelity to best practices and the established standards. With these protections, OHA & ODHS is better able to ensure confidentiality, and be known as a

trusted source of data and evidence-based practice for improving health and health equity.

I'm glad to provide any additional information. Thank you to the Committee for the opportunity to testify.

ⁱ HB 2134 passed in 2013 was sponsored by the House Interim Committee on Health Care for Asian Pacific American Network of Oregon (APANO) and Oregon Health Equity Alliance (OHEA); the subsequent rulemaking advisory committee included representatives from the following racial/ethnic community-based organizations: APANO, Coalition of Communities of Color, Latino Health Coalition, Center for intercultural Organizing, and OHEA.