



February 19, 2023

Representative Paul Holvey, Chair
Representative Lucetta Elmer, Vice-Chair
Representative Nathan Sosa, Vice-Chair
House Committee on Business and Labor
900 Court Street NE
Salem, OR 97301

Delivered electronically.

Re: Opposition to House Bill 2277

Chair Holvey, Vice-Chairs Elmer and Sosa, and members of the committee:

The PacificSource companies are independent, not-for-profit health insurance providers based in Springfield, Oregon. We serve over 600,000 commercial, Medicaid, and Medicare Advantage members in four states. PacificSource Community Solutions is the contracted coordinated care organization (CCO) in Central Oregon, the Columbia River Gorge, Marion & Polk Counties, and Lane County. Our mission is to provide better health, better care, and better value to the people and communities we serve.

We appreciate the opportunity to offer testimony on House Bill 2277, which amends current Oregon law regarding the regulation of third-party administrators (TPAs). We acknowledge the Department of Consumer and Business Services' (DCBS) work with stakeholders on this bill. A proposed -1 amendment addresses some concerns that carriers raised with DCBS over the course of the interim. We also understand that DCBS refined the -1 amendment recognizing that certain records should be treated as confidential. We also understand and appreciate the intent to consider subsequent amendments. We have some remaining concerns to note for the record.

- **We oppose disclosure of sensitive business records.** Under the proposed amendment, health insurance carriers would be required to disclose the "names and contact information for all such plans for which the insurer provides such services." Once disclosed, we have no assurance that the information would not be released to competitors or anyone making a request through the Public Records Law. At a minimum, the section should include language specifically deeming the records either "confidential" or "not subject to disclosure." This way, current protections from disclosure in the Insurance Code¹ may cover the records. The business community should have a say as to whether their private business arrangements are disclosed to the state. An amendment will clarify DCBS' intent to keep these records confidential.

¹ See ORS 705.137

- **DCBS should resolve federal preemption issues before the bill moves forward.** Throughout the interim, we raised federal preemption issues with DCBS. A federal law governing employer benefit plans, the Employee Retirement Income Security Act of 1974 (ERISA)² may preempt DCBS from requiring plans to disclose information related to plan administration through the consumer advocacy process, irrespective of registration. DCBS must confirm it can apply compliance and enforcement tools in Oregon law against a carrier for complying with ERISA provisions. Understanding the scope of ERISA preemption here is crucial to understand if the bill as introduced will solve the purported problem.
- **The bill could create a competitive disadvantage vis-à-vis other state licensed TPAs and health carriers.** Oregon health carriers and TPAs do not operate in a vacuum. Other state licensing regimes may offer more efficient or less restrictive TPA standards under which they can provide similar services to Oregon employers. While we understand that the bill draws from optional guidelines published by the National Association of Insurance Commissioners, portions of the draft may apply uniquely in Oregon. For instance, the requirement to disclose client information may be unique among the states. Requiring insurers to produce the books and records of a TPA may also be unique among the states. We disagree with DCBS' view that the bill as amended does not create an uneven playing field among states.

In sum, we must respectfully oppose the bill as amended. We are always open to further conversations with the DCBS to alleviate our concerns.

For questions or concerns, please contact me at or richard.blackwell@pacificsource.com.

Sincerely,

/s

Richard Blackwell
Director, Oregon Government Relations

² 29 U.S.C. 1001 *et seq.*