



CHIP SHIELDS
STATE SENATOR
DISTRICT 22
N/NE PORTLAND
OREGON STATE LEGISLATURE

February 25, 2015

To: Senate Health Committee
Re: Testimony on Senate Bill 18

Colleagues:

For the record, my name is Chip Shields and I am the state senator for District 22, representing N/NE Portland. I also drafted Senate Bill 18, which removes the anti-trust exemption that Coordinated Care Organizations currently enjoy.

A lot of folks have asked me the background of Senate Bill 18. There is a long answer and a short answer to that question. I will save you from recounting the history of anti-trust law in this country, but the premise of this bill is that there are historical, economic, and ethical reasons why we have anti-trust laws. Anti-trust laws grew in direct response to the adverse effect of American monopolies on the market over the past 100 years. As such, antitrust laws are designed to insure that markets are competitive, because competitive markets ostensibly drive down cost and increase value to the consumer. Perhaps more importantly, anti-trust laws also protect consumers against price collusion. A central tenant of anti-trust is that competitors should never be allowed to exchange information about pricing and reach agreements about what price to pay or to charge. Such behavior has and can continue to reduce competition and output, while increasing price.

Just today, hot off the presses, the United States Supreme Court released their decision on North Carolina State Board of Dental Examiners vs the Federal Trade Commission. The ruling addresses state statutory immunity in antitrust violations. The Court ruled that the State Dental Board did not have anti-trust immunity because the state had not provided active supervision. The opinion argues that state entities, "controlled by active market participants pose the very risk of self-dealing the supervision requirement was created to address. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals."

Turning to Oregon and our own Coordinated Care Organizations, I am not arguing the merit of coordinated care organizations. There is very good reason for why we undertook health care transformation. However, I have not heard any reasonable explanation for why we need to confer such a broad anti-trust exemption. Coordinated care may require the sharing of information, but it should not allow the collusion of pricing.





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If the goal is to encourage coordination and competition, the present immunity is simply too broad and creates a perverse incentive for private health carriers and third party purchasers to avoid competition.

The immunity should be either eliminated or narrowed to provide immunity for certain specified conduct. For example, we have immunized the setting of prices in the blackberry (ORS 646.737), grass seed (ORS 646.738) and seafood (ORS 646.739) industries, so if immunity is important here we should clearly delineate the conduct we are trying to encourage and protect from liability. Therefore, to the opponents of the bill, I ask that they testify to what specific conduct should be immunized and why.

The bottom line is this: Coordinated Care Organizations are in charge of millions of dollars of public money. However, CCO boards make decisions behind closed doors without any transparency to the public. Without transparency, we need to remove the anti-trust exemption to ensure that CCO's are not colluding on price to the detriment of the public.

Sincerely,

Chip Shields
Oregon State Senator
District 22 (N/NE Portland)

