

May 30, 2017

To: Sen. Laurie Monnes Anderson, Chair, Senate Health Care Committee  
From: Paul Terdal  
Re: Support for Amendments to HB2342A

Dear Chair Monnes Anderson and members of the committee,

I'm writing in support for DCBS' proposed amendments to HB2342A, which will:

- Change the scope of provisions subject to DCBS authority in section 1(1) from “state law governing health insurance” to “the insurance code”
- Exempt specific statutes in the insurance code from being subject to the authority granted to DCBS if the triggering events described in HB 2342 occur:
  - Health insurance mandates (Chapter 743A), pre-existing condition protections (ORS 743B.011(4), ORS 743B.013(1)(c), ORS 743B.105(2), or ORS 743B.125(2)(b)) and the Essential Health Benefit statute (ORS 731.097).

These amendments are largely in response to concerns that I and other consumer health advocates raised with the current version of HB2342A, which provides the Director of the Department of Consumer and Business Services (DCBS) with emergency powers to temporarily waive essentially any state law governing health insurance in the event that changes to the Patient Protection and Affordable Care Act or other federal actions destabilize the insurance market in Oregon.

Our concern was that this authority was so sweeping that it could lead to sacrificing critical consumer protections for coverage of mandated health benefits (like Oregon's Mental Health Parity act); Essential Health Benefits; and coverage of individuals with pre-existing conditions. Since HB2342A's scope extended to any state law – not just the insurance code – it could even override critical protections in Oregon's Civil Rights Act.

The proposed amendment resolves these concerns by narrowing the scope to the insurance code, and specifically exempting Oregon's health insurance mandates, pre-existing conditions protections, and Essential Health Benefits from the scope of these emergency powers. For reference, I have attached my correspondence with DCBS explaining our concerns and DCBS support for our proposed resolution.

I thank DCBS Director Patrick Allen and his staff for working with me and my fellow consumer health advocates to address these concerns.

Sincerely,

Paul Terdal

**From:** [ALLEN Patrick \\* DCBS](#)  
**To:** [Paul Terdal](#)  
**Cc:** [Allen Patrick \(patrick.allen@state.or.us\)](#); [CALIROBISON Laura \\* DCBS](#); [BLACKWELL Richard Y \\* DCBS](#)  
**Subject:** RE: Please stop or fix HB2342A to ensure that the rights of health consumers are protected  
**Date:** Monday, May 15, 2017 2:05:18 PM

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Yes, the statement is fine, thanks.

Pat.

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**From:** Paul Terdal [mailto:paul@terdal.org]  
**Sent:** Monday, May 15, 2017 10:14 AM  
**To:** ALLEN Patrick \* DCBS  
**Cc:** Allen Patrick (patrick.allen@state.or.us); CALIROBISON Laura \* DCBS; BLACKWELL Richard Y \* DCBS  
**Subject:** RE: Please stop or fix HB2342A to ensure that the rights of health consumers are protected

Dear Pat,

Thanks for your quick follow-up on this, and for agreeing with this approach.

Since I've already sent out an "action alert," I'll need to send a follow-up note explaining our agreement.

Would you agree to this statement:

DCBS Director Patrick Allen has contacted me to let me know that he agrees with our proposal to amend HB2342A to protect consumer rights to Essential Health Benefits and coverage of pre-existing conditions, such as:

- "Notwithstanding the rule-making authority granted in subsection (1), the Department of Consumer and Business Services may not adopt any rule that is not in compliance with the provisions of Chapter 743A [Health Insurance Mandates], Chapter 659A [Civil Rights], or ORS 731.097 [Essential Health Benefits]; or that permit health insurers to exclude consumers with pre-existing conditions."

For procedural reasons, he prefers to move the bill through the House to be amended in the Senate, and we look forward to working with him to adopt this important amendment.

How does that look?

Sincerely,

Paul Terdal  
(503)984-2950

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**From:** ALLEN Patrick \* DCBS [mailto:Patrick.Allen@oregon.gov]  
**Sent:** Monday, May 15, 2017 5:44 PM  
**To:** Paul Terdal  
**Cc:** Allen Patrick ([patrick.allen@state.or.us](#)); CALIROBISON Laura \* DCBS; BLACKWELL Richard Y \* DCBS  
**Subject:** Re: Please stop or fix HB2342A to ensure that the rights of health consumers are protected

Paul,

We agree this is a good approach which is consistent with our intent. The bill with the -4 amendments is on its way to the House floor. Are you comfortable standing down for now, and we'll get this amendment in the Senate?

Pat.

Sent from my iPhone

On May 14, 2017, at 4:21 PM, Paul Terdal <[paul@terdal.org](mailto:paul@terdal.org)> wrote:

Dear Director Allen and Commissioner Cali,

I'm writing to follow-up on HB2342A. As I testified (in writing) to the House Rules committee on Thursday, I have serious concerns with the bill. I fully appreciate your concerns, and know that you are trying to avoid a melt-down of the insurance market that could hurt consumers as well as insurers.

However, I think the proposed solution is focused too much on financial protection of insurers and not enough on protection of consumer's rights to coverage of health care. As written, the bill appears to be an invitation to cut costs for insurers by slashing health benefits or leaving some groups of "expensive" patients out in the cold.

While I think the bill is unnecessary, my e-mail to the legislature, below, proposes a compromise in the form of an amendment that would protect consumers:

- "Notwithstanding the rule-making authority granted in subsection (1), the Department of Consumer and Business Services may not adopt any rule that is not in compliance with the provisions of Chapter 743A [Health Insurance Mandates], Chapter 659A [Civil Rights], or ORS 731.097 [Essential Health Benefits]; or that permit health insurers to exclude consumers with pre-existing conditions."

I would argue that any decision to waive these very basic consumer protections should be made by the legislature, and I hope you agree that you wouldn't want to be in the position of picking and choosing health benefits or groups of patients to exclude through an emergency rule-making process. Adopting an amendment such as this would go a long way towards reassuring consumers that the State of Oregon is committed to looking out for them.

Sincerely,

Paul Terdal  
(503)984-2950

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**From:** Paul Terdal

**Sent:** Monday, May 15, 2017 1:11 AM

**To:** Rep Williamson ([Rep.JenniferWilliamson@oregonlegislature.gov](mailto:Rep.JenniferWilliamson@oregonlegislature.gov)); ['rep.mikemclane@oregonlegislature.gov'](mailto:'rep.mikemclane@oregonlegislature.gov'); ['rep.danrayfield@state.or.us'](mailto:'rep.danrayfield@state.or.us'); [rep.gregbarreto@state.or.us](mailto:'rep.gregbarreto@state.or.us'); [rep.jodihack@state.or.us](mailto:'rep.jodihack@state.or.us'); Rep Holvey ([Rep.PaulHolvey@oregonlegislature.gov](mailto:'Rep.PaulHolvey@oregonlegislature.gov')); [Rep.BillKennemer@state.or.us](mailto:'Rep.BillKennemer@state.or.us'); [Rep.RobNosse@state.or.us](mailto:'Rep.RobNosse@state.or.us'); ['rep.barbarasmithwarner@state.or.us'](mailto:'rep.barbarasmithwarner@state.or.us'); [Rep.TinaKotek@state.or.us](mailto:'Rep.TinaKotek@state.or.us'); ['sen.petercourtney@oregonlegislature.gov'](mailto:'sen.petercourtney@oregonlegislature.gov')

**Subject:** Please stop or fix HB2342A to ensure that the rights of health consumers are protected

Dear Speaker Kotek, President Courtney, and members of the House Rules Committee,

Thank you for considering my testimony on the -2 amendments to HB2342. I appreciate that my comments were considered, and that the final version (in the -4 amendments) addressed some of the issues I raised.

Over this past weekend, I have reviewed HB2342A with a number of local and national health policy experts, and remain seriously concerned that it can be very harmful to health consumers and is not the right answer to the risks we face with changes to national laws governing health insurance.

As we read HB2342A, it grants the Director of the Department of Consumer and Business Services (DCBS) emergency powers to “adopt rules that are not in compliance with state law governing health insurance” if either:

- (a) There is a change in federal law (e.g., the American Health Care Act of 2017 (AHCA)) that would cause existing insurance plans to become actuarially unsound or significantly increase the cost to consumers of insurance, or
- (b) The Trump Administration stops making cost-sharing payments to health insurers.

In the national debate over the AHCA, there are two main concerns:

- First, if the AHCA eliminates key protections of the Patient Protection and Affordable Care Act (PPACA) – like the Essential Health Benefits package, or coverage of pre-existing conditions – then patients who need health care most will be unable to obtain it.
  - Talk show host Jimmy Kimmel recently popularized this issue by describing his new baby’s heart condition – and pointing out that without PPACA’s coverage of Essential Health Benefits and pre-existing conditions, a family with a child like his would likely face death and bankruptcy.
- Second, if existing national insurance laws are changed abruptly, or cost sharing payments are suddenly stopped, then insurance companies could face significant financial difficulty and may simply stop offering health insurance plans through the state-based exchanges.
  - Indeed, President Trump has used the threat of withholding payments to insurers as leverage to pressure legislators to accept the AHCA.

Americans across the country have raised the alarm about the first concern – flooding congressional town hall meetings and denouncing the threat to reduce critical health care services.

Oregon's HB2342A essentially grants the Director of DCBS unlimited authority to respond to the second concern – the risk that insurers could face financial difficulty – by sacrificing the first – that insurance plans would stop providing coverage of Essential Health Benefits. In a very real sense, HB2342A represents a pre-emptive surrender to President Trump's threat to withhold payments.

It's no secret that the easiest way to cut costs for insurers is to eliminate or restrict coverage of expensive health care services – the very services that our neediest patients require to survive or thrive. This could include the re-imposition of strict age and visit limits on treatment for autism, elimination of mental health parity benefits, and even pregnancy and childbirth expenses.

Since HB2342A supersedes ANY Oregon law governing health insurance – not just the insurance code – it could even waive Oregon's civil rights code, and permit discriminatory insurance practices that eliminate coverage for individuals with disabilities or gender dysphoria.

This is not an imaginary scenario. When Oregon's Mental Health Parity law was enacted in 2005, it required coverage of medically necessary care for all mental health conditions. Against the unanimous advice of numerous mental health professional and advocacy organization in testimony to the rule-making process, DCBS restricted the definition of "mental health" to exclude conditions such as developmental disabilities and gender dysphoria, to reduce costs for insurers. It did so despite a written warning from one civil rights attorney that the only basis for doing so appeared to be that they were "unpopular." This error was finally corrected in 2012 (gender dysphoria) and 2015 (developmental disabilities), with an explicit acknowledgement from DCBS that these exclusions violated Oregon's civil rights act. There are many other examples I could cite where insurer concerns about costs were put ahead of consumer rights to health care.

HB2342A specifically permits "temporary" rules under ORS 183.335(5), which can be issued without prior public notice, comment or hearing for up to 6 months. It seems certain that the Insurance Industry will be working closely with DCBS on any such rules – as they should – but that health consumers and providers will have no such guarantees. Indeed, this bill was developed in consultation with the Insurance Industry – but not health care advocates. I'm a member of the DCBS Health Care Advocates group – I was never consulted or even informed.

The health policy experts that I have consulted think HB2342A is simply unnecessary – if there's truly an emergency that requires a tradeoff between insurer profitability, insurance premium rates, and coverage of Essential Health Benefits, the Governor should call a Special Session of the legislature to make those decisions in a public and transparent manner.

If DCBS is to be granted this extraordinary authority, it should come with limits to ensure that consumers are protected, with an amendment, such as:

- "Notwithstanding the rule-making authority granted in subsection (1), the Department of Consumer and Business Services may not adopt any rule that is not in compliance with the provisions of Chapter 743A [Health Insurance Mandates], Chapter 659A [Civil Rights], or ORS 731.097 [Essential Health

Benefits]; or that permit health insurers to exclude consumers with pre-existing conditions.”

I encourage you to reconsider your support of HB2342A – and to work with health consumer advocates on an amendment such as the one above to ensure that the basic rights of health consumers are protected.

Sincerely,

Paul Terdal  
(503)984-2950