



Quality and Value Based Benefits
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May 3, 2023

Re: Comments on HB 3013

Oregon House Committee on Rules
Honorable Julie Fahey, Chair
Honorable Breese Iverson Vice-Chair
Honorable Jason Kropf, Vice-Chairs

Dear Committee Members,

I am writing to ask you to oppose Oregon HB 3013, as currently proposed. The pending amendment will increase the costs of Oregon union health plans and may not be enforceable, as Oregon DCBS has acknowledged.

My experience in dealing with the cost of healthcare on behalf of working people includes nearly 40 years as part of a collective bargaining team, as a public sector union Executive Board member and union President, and as Board Secretary and Executive Director of the Pacific Health Coalition (PHC) representing health benefit plans in Washington, Oregon, and Alaska. Additionally, I have represented PHC for eighteen years on the Board of the National Labor Alliance of Healthcare Coalitions (NLA), and for the last three years I have served as NLA President, representing over six million covered union lives.

The NLA is concerned with the language proposed in the pending amendment for HB 3013. Our primary concerns with this amendment are: 1) the inclusion of self-insured in the definition of a PBM in Section 1, 2) language in Sections 4 and 8 relating to dispensing fee reimbursements, and 3) replacing the MAC list with a mechanism that is not utilized in surrounding states. More generally, we are concerned about the overall erosion of the self-insured ERISA preemption provisions, which will limit contractual arrangements and increase costs to plan participants.

In enacting the Employee Retirement and Income Security Act of 1974 (ERISA), Congress sought to provide national standards for employee benefit plans. To minimize the potential patchwork effect of each state enacting its own laws regulating employee benefits, Congress included a broad preemption of state laws that would interfere with the uniform administration of ERISA plans. More than half of Americans, including half of Oregonians, receive their health insurance through employer coverage that is governed under ERISA. This affords employers consistency and uniformity of health plan administration while encouraging health care coverage that improves the health and financial stability of employees and their families.

ERISA's preemption provision was upheld in the Supreme Court case *Rutledge v. PCMA*, 141 S. Ct. 474 (2020). This case affirmed the long-standing precedent that state laws are preempted by ERISA when they impact a core function of health plan administration or directly relate to the health plan. The *Rutledge* Court clarified a very narrow set of activities that states could regulate. Nevertheless, the *Rutledge* Court did not create a new category of permissive state regulation, which HB 3013 attempts to accomplish.

Unfortunately, HB 3013 seeks to regulate activity well beyond the narrow confines of the *Rutledge* ruling. By redefining Pharmacy Benefit Managers to include self-insurers, this legislation has the potential to open the state to ERISA litigation and invites the very patchwork of administration that ERISA was intended to avoid, by forcing multi-state health plans to offer a plan design in Oregon that conflicts with the benefits it offers all other employees residing in sister states.

Finally, although HB 3013 purportedly target PBMs, the consequence of this bill is to diminish the power of our union health plan trustees to incorporate and implement cost savings measures in our union health plans. Drug manufacturers and a handful of pharmacy allies are already participating in litigation that targets PBMs, causing the erosion of ERISA, which provides foundational protections for our labor groups. Unions, private employers, and governmental entities currently have access to their ability to wield their aggregated numbers to negotiate better pricing for the groups they represent. Without them, our working people lose ability to push back against soaring drug prices that drug manufacturers unilaterally control.

Therefore, we ask that you please refuse to tie the hands of our participating union members, who already have limited ability to influence and lower health care costs. We appreciate this opportunity to provide testimony and look forward to discussing with you how best to move forward on HB 3013. We welcome the opportunity to work with you on these concerns.

Respectfully Submitted,

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