

Submitter: Henry O'Keeffe
On Behalf Of: Coalition for a Healthy Oregon
Committee: House Committee On Behavioral Health and Health Care
Measure, Appointment or Topic: HB2029

Chair Nosse, Vice Chairs Javadi and Nelson, Members of the Committee:

For the record, my name is Henry O'Keeffe. I am the vice-president of health care policy at the Pac/West Lobby Group. I am here today on behalf of my client the Coalition for a Healthy Oregon (COHO) to testify in opposition to HB 2029. COHO is a group of coordinated care organizations that covers more than 360,000 members on the Oregon Health Plan.

Fortunately, HB 2029 is very similar to HB 2455 from 2023. Unfortunately, it shares many of the same flaws, typified by Section 5. Specifically, as to Section 5(3) lines 9-11 on page 4, requires CCO's to notify providers not less than 30 days in advance of certain contract changes, notwithstanding the ability of the Oregon health authority to change the upstream contracts with CCOs on less notice under certain circumstances.

Section 5(4)(b), lines 15-16 on page 4, limits the lookback period to five years, when 42 CFR Part 401 Subpart D requires the lookback period to be six years. According to the commentary associated with the 2016 final rule, CMS "contemplated the appropriate length of time in which overpayments must be reported and returned. A time period of 10 years was proposed, as this is the outer limit of the False Claims Act statute of limitations. [CMS] solicited comment on this issue . . . [CMS] agreed with commenters that a period of 6 years was more appropriate and will reduce the burden imposed on providers and suppliers by this final rule compared to the longer proposed lookback period of 10 years."

This issue is further perplexing in light of a similar requirement in the commercial context going back six years, see Section 2(5)(a) on page 2 at lines 12-15.

Section 5(5), lines 21-24 on page 4, requires that if CCOs request additional information concerning a claim, that CCOs provide findings to a provider within 180 days unless there is an extension agreed to by all of the parties. However, there is no reasonableness requirement regarding whether or not to agree to an extension. This is particularly tough for CCOs as the triggering condition is requesting additional information, but if the reason for the needed delay is that the provider has not provided the additional requested information, the provider appears to still have the right to refrain from agreeing to an extension. This would be unworkable in practice.

Section 5(6)(b), lines 29-31 on page 4, provides that a provider is entitled to receive a revised audit if the provider believes bases a finding of error on an incorrect provision of law, irrespective of whether the belief is accurate or reasonable.

For these reasons, COHO urges the committee not to advance HB 2029.