Senate Insurance and Financial Institutions Committee
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Chairman Hottinger, Vice Chairman Hackett, Ranking Member Brown, and members of the Senate Insurance and Financial Institutions Committee, thank you for the opportunity to provide comments on Senate Bill 227, a measure which would require health plans to disclose employees' claims data information to their employers.

The Ohio Association of Health Plans (OAHP) is the leading state trade association representing the health insurance industry. OAHP members provide health benefits to more than 9 million Ohioans through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare, Medicaid and the Health Insurance Exchange marketplace. Our members offer a broad range of health insurance products to Ohioans in the commercial marketplace and are committed partners in public programs.

OAHP opposes legislation that would require health plans to disclose HIPAA protected claims utilization data with small employers.

Disclosure of claims data to small employers could result in disclosure of protected health information (PHI) if the employer can identify specific employees to whom the claims data relates.

Senate Bill 227 requires health plans to disclose: (1) the net claims paid by month; (2) if the group policyholder is an employer, then the monthly enrollment by employee only, employee and spouse, and employee and family; if the group policyholder is not an employer, the monthly enrollment shall be provided and organized in a relevant manner; (3) the amount of any claims reserve established by the health plan issuer against future claims under the policy; (4) Claims over $10,000, including claim identifier other than name and the date of occurrence, the amount paid toward each claim, which claims are unpaid or outstanding, and claimant health condition or diagnosis; (5) a complete listing of all potential catastrophic ***diagnoses and prognoses*** involving persons covered under the policy provisions.

Small employers with fully insured plans are generally not entitled to know about the medical diagnoses, prognoses, and treatment of employees, which is personal in nature, without the employee's consent and providing claims data to small employers raises privacy concerns for employees.

It is easier for smaller employers to associate claims data – including diagnoses and prognoses – to specific employees, and therefore it is more likely such a disclosure may violate an employee's privacy rights and HIPAA. Even if an attempt is made to de-identify data in accordance with HIPAA, the risk of re-identification is significantly higher for small employers compared to large employers. For example, if a small employer knows about a large cancer-related claim, the employer can easily identify which employee has cancer. This is why claims data is not shared with small employers.

Once an employer knows about an employee's health conditions, it can easily use that information to make other decisions.

The notion that a health insurer may generally share PHI with an employer is not correct.

To the contrary, HIPAA has detailed requirements that must be satisfied before PHI can be shared with an employer because employers are not directly regulated by HIPAA. PHI may be shared only to the extent that it relates to administration of a health plan. For example, persons administering the plan at the employer may not generally share PHI with persons not directly involved in administering the plan, including senior leadership of the company. Given that employers are not directly subject to HIPAA, sharing health information with employers creates substantial privacy risks. In fact, these substantial risks are exactly why HIPAA created significant barriers to sharing PHI with employers.

Claims data is not required for small employers to administer fully insured plans.

Claims data has no relevance to what coverage is offered, the premium rates charged, or how a fully insured small group plan is administered. Coverage for large employers is different because coverage is priced based directly on the group's claims data. Coverage for self-insured plans is different as well because self-insured plans are at risk for the health care costs of their employees. The same is not true for small employers with fully insured plans.

Fully insured small employers are not at risk for the health care costs of their employees; the health insurer is. The rates charged to small employers, 50 or less, do not consider the group's claims data in pricing coverage. Rather, rates for small employers are based on the following factors: (1) age of employees, (2) smoking status, (3) the level of coverage, and (4) the location of employees. Consequently, a small employer's claims data is not needed by the small employer with respect to any issue related to product pricing.

With fully insured coverage, if claims data is not used to price coverage and the insurer is solely responsible to pay all claims, claims data is not needed by the employer to perform any function of the fully-insured plan.

Several other states require the release claims data to employers.

Proponents of Senate Bill 227 have pointed to other states that have enacted similar regulations as a reason for Ohio to move forward. While it is true that a handful of other states have enacted requirements, it is important to note:

- Those states enacted requirements *prior to* the full enactment of the Affordable Care Act (ACA). Why is this important? Prior to the ACA (and the subsequent Community Rating of all small groups that were not "transitional"), health plans utilized HIPAA compliant rating methodologies that had a claims experience component. As a result, it would have made sense to enact that legislation making carriers provide claims data that directly impacted a small group's renewal rate. Under the ACA, compliant Metal Plans are Community Rated and only utilize age and geographic location to determine rates. Thus, in a post-ACA environment claims experience of a small group bears no reference on premiums charged to them.

- Those states have more narrowly defined the type of information that must be disclosed to ensure compliance with HIPAA and the privacy of the employee is protected.

- Those states have outlined clear exceptions where HIPAA might be violated. In fact, some state laws that previously allowed insurers to disclose protected health information to groups have been amended by states to avoid HIPAA Privacy problems. For example, Wis. Stat. 632.797 was modified in 2011 to comport with the HIPAA Privacy Rules.

OAHP is working directly with stakeholders to craft solutions aimed at driving down the underlying cost of health care for Ohioans consumers.

Despite our concerns with SB 227, it is important to note that OAHP has been working diligently with the Ohio Association of Health Underwriters over the past couple of months to better understand their objective which is help their clients shop for more affordable health insurance. These conversations have been productive, and we would respectfully request that this Committee refrain from moving forward on this bill to allow that process to move forward. If this Committee decides to move this bill as currently drafted, OAHP would request that you vote to oppose this legislation for all the reasons previously articulated.

OAHP appreciates the efforts of the bill's sponsor, interested parties and the work of this committee to develop policy measures that will address the underlying issue presented here – the affordability of health care costs for Ohioans. OAHP stands ready to provide meaningful public policy solutions to ensure quality health care and access to a variety of affordable health care benefits for all consumers in Ohio.

Again, thank you for the opportunity to comment on behalf of OAHP and its member plans.