LOBBYOREGON

# 2012 End-of-Session Report

Prepared for ORHA

**March 6, 2012**

## HEALTH CARE REFORM

**CCO TRANSFORMATION (SB 1580)** *Passed*

The Legislature approved the plan to transform the way the Oregon Health Plan is delivered by encouraging development of a system of regional coordinated care organizations (CCOs) designed to achieve better health outcomes by coordinating physical, mental and oral health care.

The new CCOs will include physicians, hospitals, mental health and addiction treatment providers, safety net clinics, dental groups, county government and consumers.

The state is not dictating the size or geography for any CCO. Instead, it is allowing communities to get together and decide for themselves what makes sense.

The legislature added amendments to the bill including:

- An 8-member work group on liability reform to bring legislation to the 2013 session.
- Additional CCO criteria including experience, ability to take financial risk, and minimum reserve requirements.
- Governance requirements mandating two health providers including a primary care physician or nurse practitioner, and a mental health or chemical dependency treatment provider, plus additional community members be added to the board.
- A new 9-member metrics committee to develop outcome and quality measures.
- Anti-trust language for CCO planning groups.
- Details on the Community Advisory Councils.
- Innovator agents – OHA representatives, housed at the CCO, who can report back to OHA and share what's working with other CCOs.
- Non-discrimination language including an appeals process to the Oregon Health Authority (contained in SB 1509).

The biggest debate during the 2012 session was over the issue of medical liability reform and whether or how to include that in the bill. Senate Republicans were adamant that healthcare transformation would not work without it. "Time after time this issue has been ignored," Sen. Frank Morse (R-Albany) said on the floor of the Senate. "If we truly want health care transformation to succeed, we need to give providers assurances that liability reform will be a reality."

The Governor promised that if his work group cannot agree on a proposal, that he will bring liability reform legislation to the 2013 session.

The federal government has promised up to $500 million per year for five years as incentive payments to help Oregon make the transition to this new coordinated care model.

The Oregon Health Authority plans to go through the rulemaking process this spring and certify the first CCOs by July.

**PSYCHOLOGICAL AND SOCIAL DETERMINANTS OF HEALTH (SB 1522)** *Died*

The Oregon Primary Care Association's bill — to help CCOs figure out how to budget for patients with complex psychological and socio-economic factors that impact their health — died in the Senate Health Committee. OPCA testified that we know how to weight budgets for diabetics but not for diabetics who are mentally ill and homeless.

Sen. Alan Bates (D-Medford) said these chronically ill patients are what the CCOs are all about.

OPCA hopes to work with the Oregon Health Policy Board to develop a methodology that all the CCOs could use when allocating resources to care for these complex patients.

**INSURANCE EXCHANGE PLUS OEBB OPT OUT (HB 4164)** *Passed*

The Insurance Exchange bill was pretty simple:

- Approves the Corporation's Business Plan
- Corrects a drafting error regarding financial accounts for the Exchange
- Clarifies the contracting process under the Public Contracting Code and
- Allows Exchange employees to pilot innovative health plans.

As HB 4164 moved out of the House Health Committee, Rep. Mitch Greenlick (D-Portland) said, "This bill has managed to avoid any opposition, so we hope to move it quickly." No such luck.

Because the Governor wanted the Exchange, House Republicans decided to take it hostage. Essentially, the Exchange became trade bait for other bills at the end of the short session. What House Republicans got was an OEBB opt out provision added to the bill.

Beginning in October 2015, if the Exchange can get a federal waiver, school districts will be able to opt out of the Oregon Educator's Benefit Board if they purchase their new insurance through the Insurance Exchange. If they opt out of OEBB, they must stay out for five years.

**OHP BUDGET**

The February revenue forecast was down another $35 million. On top of two earlier forecasts, that put state revenues down $340 million since the end of the 2011 session.

Ways and Means made approximately $200 million in budget adjustments during the 2012 session. Funding for the Oregon Health Plan (OHP) is maintained at current levels. Ways and Means made a point of saying that services are maintained for dental benefits, mental health benefits, addiction services and prescription drug benefits. The prioritized list of services is maintained at its current level. Payments for Graduate Medical Education are also maintained.

A total of $16.8 million from the 1% insurance premium tax was redirected to pay for children's programs in OHP Plus and FHIAP.

Four wards in the new Oregon State Hospital will not be opened until the 2013 biennium, saving $19.6 million General Funds.

All community mental health services are maintained at current levels.

OHA is counting on $500 million per year in new federal funds to help with CCO conversion. This resulted in mixed messages from legislators. Some said this will help fill the $239 million hole in the second year of the OHP budget that was attributed to "savings" from the new CCOs. Others said the new federal funds could not be used to backfill this hole.

**PROVIDENCE WINS FEDERAL LOANS TO START CO-OP HEALTH PLAN**

Providence Health Plan working with the Freelancers Union won $59.5 million in low and no-interest federal loans to create a nonprofit, consumer-run health insurance plan in Oregon. The Freelancers Union, best known for its work in New York City where it started a health plan in 2009, has 919 members in Oregon. But the Freelancers Union CO-OP health plan in Oregon will be open to all Oregonians starting in October 2013, with benefits beginning in January 2014, when the Insurance Exchange takes effect. The CO-OP says it anticipates insuring 35,000 Oregonians within five years after opening enrollment.

## OTHER KEY HEALTH RELATED ISSUES

**FLU VACCINATIONS FOR HEALTH PROFESSIONALS (SB 1503)** *Interim work group*

*(Reminder: This bill had ORHA members on opposing sides. The Oregon Nurses Association sponsored the bill and the Hospital Association opposed it.)*

The bill, introduced by the Oregon Nurses Association would have required hospitals and surgery centers to encourage health care providers to receive annual flu vaccinations by providing education campaigns and access to flu shots coupled with a signed declination form by those who refused. Data about why healthcare providers declined would be collected by the Public Health Department. The ONA said this formula has worked to increase vaccination rates to 80% or above in some facilities.

The hospital association objected. It says patient safety should drive state policy on flu vaccinations and SB 1503 would have perpetuated the law that says receiving a flu shot cannot be made a condition of employment. Oregon is the only state with that prohibition in law.

The Senate passed SB 1503 but Rep. Jim Thompson (R-Dallas), co-chair of the House Health Committee, blocked the bill. Public Health has had a work group on the issue since 2010. Thompson told the to group to work for a consensus bill for the 2013 session.

**HIV INFORMED CONSENT (SB 1507)** *Passed*

The Cascade AIDS Project led efforts to remove the need for special informed consent for HIV testing in hospitals. Instead, they say HIV tests should not be singled out in consent forms.

ACLU opposed embedding HIV testing in the general consent form, “We continue to think there is something unique about HIV that deserves this unique consent.”

Sen. Elizabeth Steiner Hayward challenged that saying, “Why this should be treated differently than other diseases like Hepatitis C? Frankly, as a practicing physician, I don’t see the difference.”

In hearings on the House side, Rep. Jim Thompson (R-Dallas) said, “Why is this any different? It seems like we are putting a stigma on it. We are perpetuating the stigma. We long ago recognized that HIV is not a gay disease, it is a population disease.”

The bill passed unanimously in both chambers and was signed by the Governor.

**EXPANDED PRACTICE DENTAL HYGIENISTS (SB 1509)** ***Amended out***

The Oregon Dental Hygienists Association thought they could use SB 1509 to fix a problem created by the Board of Dentistry’s interpretation of SB 738 passed in 2011.

In SB 738, legislative counsel replaced the word “locations” with “populations” to describe where Expanded Practice Dental Hygienists could work. This was simply

changed for clarity and was not meant to change the meaning of the statute. But the Board interpreted it very differently. As a result, the Board sent letters to working EPD Hygienists in Oakridge saying they could no longer practice there. That was the opposite of the intent of SB 738, so the ODHA proposed an amendment to SB 1509 adding the word "locations" to the description. They also proposed adding language to make it very clear that EPD Hygienists can always work in:

- Dental underserved areas and
- Places where dentists can get tax credits as rural health practitioners.

That was fine with the Senate Health Committee but not with the ODA. Sen. Laurie Monnes Anderson (D-Gresham), who is opposed by a dentist in her re-election bid, did not want another fight with Sen. Fred Girod (R-Stayton) over this issue, so she sent the bill back to the Rules Committee where amendments eliminated all of the ODHA language. So now the Expanded Practice Dental Hygienist issue is back in the hands of the Board of Dentistry where the problem began.

SB 1509 did pass with language allowing licensed, out-of-state dentists to volunteer at ODA's Mission of Mercy events. SB 1509 also included an amendment dealing with CCO discrimination.

**LIABILITY IMMUNITY FOR VOLUNTEERS (HB 4027)** *Passed*

Organizations providing medical services to homeless camps in Central Oregon say more medical professionals would volunteer but they are worried about liability issues. HB 4027 provides civil immunity to registered volunteers working with nonprofits that provide services to homeless and at risk populations. It also expands liability protections for medical and dental providers working with charitable organizations.

**IMPAIRED HEALTH PROFESSIONALS (HB 4009)** *Passed*

This program is for health professionals with substance abuse problems. Holly Mercer, Director of the Board of Nursing, says HB 4009 eliminates a layer of monitoring in the program that didn't work in practice. It also makes some administrative changes that save $115,000 per biennium. The Board of Dentistry and Pharmacy also support the bill. There was no opposition.

**TOXIC CHEMICAL DISCLOSURE (HB 4123)** *Died*

Both Washington and California publish lists of chemicals of concern for children's health. HB 4123 would require the Public Health division in Oregon to compile and publish a similar list. Sen. Elizabeth Steiner Hayward (D-Portland) testified, "We are aware that multiple factors contribute to the onset of chronic diseases. We are increasingly aware that exposure to potentially harmful chemicals in childhood can have more severe consequences down the road."

Rep. Jason Conger (R-Bend) described it as a thoughtful bill saying, "These are chemicals that can come out of the products they are in."

American Chemistry Council testified that children's toys are already heavily regulated at the federal level. They said all this law will do is result in a list of chemicals but with no information about what that means or does not mean.

The House Health Committee held a public hearing but did not take action on the bill.

## INSURANCE ISSUES

**NURSE PRACTITIONER PAYMENT PARITY (HB 4010)** *Died*

*(Reminder: This bill had ORHA members on opposing sides. The Oregon Nurses Association sponsored the bill with support from OPCA. The OMA and OAFP opposed.)*

The Oregon Nurses Association introduced HB 4010 saying insurers dramatically decreased payments to nurse practitioners who bill using the same codes as physicians. They say the problem started with psychiatric nurse practitioners but is now expanding to primary care.

Rep. Mitch Greenlick (D-Portland) sided with the nurses saying, "I see it as an issue of equal pay for equal work."

Rep. Alissa Keny-Guyer (D-Portland) disagreed saying a psychiatrist with nine years of clinical training is not the same as a psychiatric nurse practitioner with two years of training, even if they do use the same billing codes.

The House Health Committee passed HB 4010 on a 6-2 vote. But Rep. Jason Conger (R-Bend) derailed on the bill when it came to the House floor for debate. Conger moved that it be sent to the Rules Committee for additional work. His motion, which is usually seen as a veiled attempt to kill the bill, passed 33-26.

Insurers offered the ONA a compromise that would have limited the parity rule to those nurse practitioners who are credentialed with an insurer as a primary care practitioner and who operate in an area defined as rural by the Office of Rural Health.

While insurers don't like the idea of the legislature mandating contract language, they say this would address one of the nurses stated concerns about access to primary care services in rural areas. The nurses rejected that amendment and the bill died.

**AUTISM MANDATE (SB 1568)** *Interim work group*

Insurers say they are closer to reaching an agreement with autism advocates on a bill that would provide behavior therapy for those with autism spectrum disorders. Two issues are delaying that agreement: credentialing or qualifying providers who are not licensed, and putting some limitation on the benefit.

Reportedly, 26 states now have some type of autism mandate but most limit that benefit, for example, Missouri limits it to $40,000 per year. Because of the way Oregon's mental health parity law and the federal laws are written, Oregon lawmakers are finding it difficult to put similar limits on the benefit here.

The Senate Health Committee held a public hearing but did not take action on the bill. Meetings on the issue will continue during the interim with the goal of preparing a bill for the 2013 session.

**CLEFT PALATE ORTHODONTIA MANDATE (HB 4128)** *Passed*

Families whose children have cleft palates or lips say they often had to choose between paying out of pocket for expensive orthodontia and dental care not covered by their medical insurance or have their child undergo more expensive surgeries that were not really necessary but were covered by medical insurance.

HB 4128 solves that by requiring medical insurance to pay for orthodontia that is medically necessary for cleft lip and palate. The Oregon Health Plan already covers it. This would apply to commercial insurers. Supporters say about 60 or 70 children are born in Oregon each year with this condition.

Sen. Elizabeth Steiner Hayward (D-Portland) said, “This bill will save lives, health and money down the road.”

Insurers amended the bill to clarify that it does not cover TMJ.

**CASH INCENTIVES FOR WELLNESS PROGRAMS (HB 4074)** *Died*

This bill would allow health plans to pay up to $1000 to enrollees who participate in wellness programs such as tobacco cessation, weight control, fitness and nutrition. Supporters say this extra incentive would help encourage more to participate and follow through with their commitment.

The House Health Committee approved the bill and sent it to the Revenue Committee where it died. The $1000 would have been a tax deduction, costing the state $74 per person. Apparently, that is revenue the legislature is unwilling to give up.

## PHARMACY REGULATIONS

**PBM REGULATION (HB 4122)** *Interim work group*

Small, local pharmacies, especially those in rural areas, say they are being squeezed out by “big, powerful” pharmacy benefit management companies. HB 4122 would require PBMs to be licensed by the Board of Pharmacy.

The PBMs say shifting their regulation to the Board of Pharmacy would create a conflict of interest because the bill would also require the PBMs to divulge financial information and the Board of Pharmacy is controlled by five pharmacists.

Supporters say PBMs are currently unregulated and this would bring transparency regarding rebates to the system.

The PBMs testified that the Federal Trade Commission opposed similar legislation in Mississippi, saying it would increase Rx prices and reduce competition.

This was too complicated for the committee to deal with in the short session, so it was sent to a formal work group to work on for the 2013 session.

**GENERIC RX IN OHA (HB 4109)** *Interim work group*

Rep. Jim Weidner (R-Yamhill) wants the Oregon Health Authority to more aggressively negotiate for the generic drugs it buys. Because of federal regulations, the Oregon Prescription Drug Program says that is not as simple as it sounds. The House Health Committee decided to form an interim work group to figure out if there are opportunities to save money in this area.

A budget note in one of the final budget bills (SB 5701) directed the Oregon Health Authority to pursue a competitive bidding process for the purchase of lower cost generic drugs within the Medicaid program, which may pre-empt the need for the work group.

**OPDP REQUIREMENT FOR STATE AGENCIES (SB 1577)** *Died*

Sen. Diane Rosenbaum (D-Portland), the bill’s sponsor, said individuals and agencies have saved hundreds of thousands of dollars by pooling their purchasing power through the Oregon Prescription Drug Program. This bill would require agencies to use OPDP unless they could show they would save money by purchasing prescription drugs elsewhere.

“Who would make that determination? Sen. Alan Bates (D-Medford) asked. Tom Burns, the OPDP administrator, said the bill give him that authority. “That’s a concern for me,” Bates said.

Supporters of the bill say a study done after the 2011 session showed the Department of Corrections would save $1.4 million by purchasing half of their drugs through OPDP. But the DOC does not believe those numbers and is now doing a 90-day study that won't be completed until May.

Providence and Regence testified that they have larger purchasing pools than OPDP and that if prescription drugs are carved out, the integration of case management with claims data would be lost.

Two other prescription drug bills — one dealing with generics in the Medicaid program and the other dealing with Pharmacy Benefit Managers — were sent to interim work groups for the 2013 session. "Maybe this bill should be added to that same work group," Rep Tim Freeman (R-Roseburg) suggested.

**IMMUNOSUPPRESSANT RX CARVE OUT (SB 1570)** *Died*

This is another carve out, requiring the Oregon Health Plan to pay for prescriptions for seizure, cancer, HIV/AIDS and immunosuppressant drugs. The Oregon Health Authority says it is difficult to say how much this will cost but the agency could lose up to $2.2 million per year.

Sen. Jackie Winters (R-Salem) sponsored the bill saying, "We do not want to do any harm to this population as we make the transition to CCOs."

Sen. Alan Bates (D-Medford) added, "I think a temporary carve out is appropriate. In the long term, they are going to have to come under managed care."

The bill passed the Senate but did not come up for a vote in the House before the session ended.

**PA RX DISPENSING (SB 1565)** *Passed*

Zoom Care describes this as a modest reform allowing physician assistants to dispense a limited formulary of non-narcotic drugs. The Medical Board and Board of Pharmacy would jointly develop a drug dispensing training program for PAs.

Rep. Julie Parrish (R-Tualatin) said, "This is moving the dial forward for consumers to make health care more convenient for a few."

###