



Office of the Director

John A. Kitzhaber, MD, Governor

Oregon
Health
Authority

January 31, 2012

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The Honorable Senator Peter Courtney, Senate President
The Honorable Representative Bruce Hanna, Co-Speaker
The Honorable Representative Arnie Roblan, Co-Speaker
900 Court Street NE
S-201, H-269 State Capitol
Salem, OR 97301-4048

Re: HB 3650 Section 16 Report and Recommendations (Medical Liability)

Dear Legislators:

HB 3650 (2011), Section 16 directed the Oregon Health Authority (OHA) to conduct a study and develop recommendations for legislative and administrative remedies that will contain health care costs by reducing defensive medicine and the overutilization of health services, while protecting access to services for those in need and their access to seek redress through the judicial system for harms caused by medical malpractice. Specifically, Section 16 directed the OHA to explore the costs, benefits and impacts of defensive medicine and several types of medical liability reform options.

To accomplish this work, OHA procured expert consultants in the areas of medical liability reform and health care data analysis and worked with the Oregon Department of Justice (DOJ) on a legal analysis of related policy. Over the last few months, OHA solicited input from several stakeholders on the best possible sources of information and ideas to consider in regards to medical liability reform options in the Oregon marketplace. This input was forwarded to the consultants for use in their studies.

I have attached an executive summary as well as the following final reports:

1. *Medical Liability Reform in Oregon: Possibilities, Costs and Benefits*; Michelle Mello, J.D., Ph.D. and Allen Kachalia, M.D., J.D., Harvard School of Public Health; January 2, 2012.
2. *Defensive Medicine in Oregon: Estimating Prevalence & Costs*; Bill Wright, Ph.D., Providence Center for Outcomes Research and Kate Baicker, Ph.D., Harvard School of Public Health; January 13, 2012.
3. *Medical Liability Reform in Oregon: A Legal Analysis of Several Alternatives Under Oregon Law*; Joseph McNaught, Amy Alpaugh, and David Hicks, Assistant Attorneys General, Oregon Department of Justice; January 6, 2012.
4. *Stark Law and Related Limitations on Financial Interests in Health Care Reimbursement*; Linda Grimms, Assistant Attorney General, Oregon Department of Justice; January 6, 2012.

These documents will also be available online at: www.oregon.gov/OHA/legactivity/. OHA's recommendations are below.

Conclusions and Recommendations

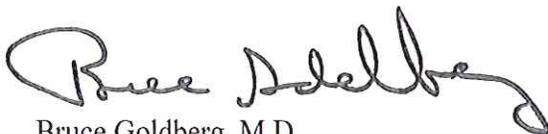
In summary, liability reform is a highly-charged political issue that will require political leadership and compromise. These studies can provide detailed analysis and information to help policymakers make these tough decisions. However, they do not suggest any single solution that will solve all the issues of medical liability or defensive medicine in the health care system. An efficient medical liability system is a critical aspect of an efficient health care system, but it also has an impact on Oregon's workforce as it relates to provider education, retention and recruitment. Further, workforce capacity is strained when time is spent providing unnecessary lab or X-ray studies, or hospital stays ordered for defensive medicine purposes. Ultimately, any reforms chosen need to balance three key factors: reduction of costs, improved patient safety, and equity for those individuals who are injured as a result of medical errors.

Therefore, OHA recommends that the appropriate body, or in the case that no appropriate body is identified, the Oregon Health Policy Board, review these studies in detail, outline advantages and disadvantages as to how options meet the desired policy goals and then as appropriate, draft legislative concepts for the 2013 Legislature. Such suggestions may include:

- Consideration of the key next steps for an Administrative Compensation System (ACS) in Oregon. This evaluation should include assessing the best design for such a system and include an actuarial evaluation, specifically estimating the premiums paid and the potential number of injured, including a definition of "fault" vs. "no-fault," and setting payment thresholds.
- Evaluate the suggested refinements to Oregon's Joint and Several Liability statutes and assess the feasibility of making those changes in the 2013 Legislative session.
- Evaluate the feasibility and affordability of extending the OTCA or another type of liability funding arrangement for Oregon providers.
- Evaluate the viability of pursuing caps on non-economic damages, considering our current partial caps for wrongful death, prenatal and perinatal injury.
- Evaluate how CCOs could partner with hospitals in their community to adopt optimal apology and offer arrangements among their networks, and assess any needed statutory changes or other barriers to implementation.
- Evaluate the use of safe harbors through establishing a standard of care, with consideration of the results of Oregon's AHRQ grant-funded analysis of Safe Harbor closed-claims analysis.

Please let me know if you have any questions.

Sincerely,



Bruce Goldberg, M.D.
Director

CC: Scott Burgess, Legislative Administrator