

OREGON LAW CENTER

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Testimony of John Mullin, Legislative Advocate (503) 867-6236
Oregon Health Policy Board, November 8, 2011

Thank you for the opportunity to testify today.

First of all, I want to be clear that the Oregon Law Center (OLC) is very supportive of the basic goals of HB 3650, and we look forward to its implementation. The focus on a “person centered” approach, coupled with the Triple Aim, and integration of physical, oral, mental health and addiction services, has the potential to be transformational.

Previously, I have testified on: the role of the Department of Human Services (DHS) as an important partner to the Oregon Health Authority (OHA); the collaborative opportunities of Medicaid/Medicare integration; as well as issues from the perspective of the legal services network in Oregon.

Today I want to emphasize consumer centric and client protection issues including:

- Ensuring health equity across all populations and the attainment of a truly person centered approach, with a corresponding commitment to independence, dignity, and choice;
- Development of clear rules on the appropriate protection of information, with special attention to those who have experienced domestic violence or sexual assault;
- Guaranteeing model practices in the areas of notice, grievance procedures, and hearing rights, including CCOs and their network of providers;
- Maintaining and further development of strong, responsive ombudsman functions in OHA and in Coordinated Care Organizations (CCOs).

In addition, you will note that I have attached a paper on medical debt. It is not my request that the board specifically focus on this issue. However, it is an illustration of the many complex issues facing OHA and its partners.

Toward that end, I continue to support the creation of a stakeholder group to advise OHA and DHS in matters that pertain to services and functions affecting consumers in both systems. It should be clear that DHS and OHA will need to develop the appropriate structures and processes to be successful in monitoring and enhancing quality in the transformed system.

Finally, I would just add that I appreciate the good work of staff and your leadership.

Thank you for your consideration.

ACTION REPORT: The Problem of Wrongful Medical Debt Collection and the Oregon Health Plan (OHP)

Date: November 7, 2011

By: Dee Weston, Staff Attorney, Oregon Law Center
John Mullin, Legislative Advocate, Oregon Law Center

PROBLEM:

Medical debt is a major problem in the United States. It leads to bankruptcies¹, garnishment of wages, and negative credit reporting, not to mention significant stress and anxiety. Bad credit and outstanding debt listed in credit reports prevent some people from getting loans. Potential landlords can also reject applications on the basis of the bad credit reports. Bad credit can even cause problems in employment. Some with medical debt may succumb to aggressive tactics and pay toward medical bills instead of other, more immediately pressing concerns. Or they may pay out of fear they will be turned away for further needed treatment if they don't pay². Individuals may also forgo treatment out of fear of incurring debt they cannot afford to repay.

These problems certainly and predictably affect the uninsured. But shockingly, they also hit those on OHP. The trouble isn't the law: state and federal law would absolutely prevent OHP clients from racking up medical debt. The trouble is, all too often, providers don't follow the law, and they wrongfully bill OHP clients.

OREGON PROTECTIONS:

Oregon law clearly places responsibility on providers to screen for OHP eligibility³, to properly and timely bill third party payers before seeking OHP reimbursement⁴, and to

¹ A study published in the American Journal of Medicine in 2009 concludes: "Illness and medical bills contribute to a large and increasing share of US bankruptcies." Medical Bankruptcy in the United States, 2007: Results of a National Study. The American Journal of Medicine (2009); David U. Himmelstein, MD,^a Deborah Thorne, PhD,^b Elizabeth Warren, JD,^c Steffie Woolhandler, MD, MPH^a

² Emergency Medical Treatment and Labor Act (EMTALA) prohibits patient dumping, but non-ER providers may still turn people away for non-emergency services, and many patients aren't aware of the protections.

³ Providers have an affirmative duty to enquire into OHP enrollment, and cannot escape OHP member protections under a "don't ask, don't tell" policy. DMAP-enrolled providers must document their attempts to find out if an individual patient is enrolled in OHP. OAR 410-120-1280(2)(b)(B).

⁴ OAR 410-120-1280(16)(c).

properly and timely bill OHP⁵. A provider who fails to meet these and other billing obligations is prohibited from billing the OHP client⁶.

Oregon law protects OHP clients against collection in almost every case. Aside from the modest copayments that sometimes apply, providers are strictly prohibited from billing OHP clients for *covered* services in all but the rarest circumstances⁷.

Moreover, providers may *only* bill an OHP member for *non-covered* services if the member first knowingly and voluntarily signs a valid informed consent⁸. To be valid, the form must state the service is not covered and list the estimated cost.

These protections apply to all OHP clients – including OHP Standard and Citizen Alien Waived Emergent Medical (CAWEM.)

Despite these protections, providers frequently bill clients in violation of the law. In so doing, providers risk liability for damages and attorney fees, and potentially punitive damages under Oregon's Unlawful Debt Collection Practices law (ORS § 646.639 et seq.).

Some clients actually pay some or all of the debt. Others call their medical providers to complain about a bill, and to remind the provider that it should be covered by OHP. They may disregard future bills, assuming the provider is still "working on it." Other clients ignore wrongful billing because they can't afford to pay the debt and don't realize they have a defense. They end up with judgments against them, negative credit reports and garnishments.

RECOMMENDATIONS:

- 1. The Oregon Health Authority (OHA) should investigate, or at the minimum, record every wrongful billing complaint. (NOTE: Previously we have engaged in this issue with the Department of Medical Assistance Programs (DMAP.) It is unclear to us where in OHA this responsibility will be assigned.)**

OHA should seek to reverse individual cases of wrongful billing. OHA should look for patterns of repeated errors and poor practices. Where a pattern emerges,

⁵ See generally, OAR 410-120-1280.

⁶ Oregon law prohibits providers from billing OHP clients for "services or treatment that has been denied due to provider error (e.g., required documentation not submitted, prior authorization not obtained, etc.)." OAR 410-120-1280(2)(b)(G).

⁷ See OAR 410-120-1280(2)(b).

⁸ OAR 410-120-1280(3)(a).

OHA should take action to prevent future incidents, including assessing appropriate penalties.

2. OHA should track and investigate *regardless* of whether the account has been referred to collections.

The seriousness of the wrongful billing problem warrants a serious response, and it should be no different just because an account is already assigned to a collections agency. The billing is just as illegal and contrary to public policy, and providers generally remain willing to "pull back" an account if it was referred in error. Certainly, providers have a definite legal interest in pulling such accounts back. Unfortunately, under current Client Service Unit (CSU – a function of DMAP) policy, CSU does not track or investigate complaints of wrongful billing once the bill is in collections. As a result, OHA only knows of the tip of the wrongful billing iceberg. Moreover, some providers are particularly aggressive and refer accounts to collections very quickly. OHA should, we believe, take a more active role.

3. OHA should update and improve provider training.

OHA should update and improve provider training so OHP providers better understand the OHP client billing protections. OHA should make it clear that wrongful billing will not be tolerated. Training should be mandatory.

4. OHA should better explain client protections to OHP members.

As noted above, clients sometimes disregard billing statements because they do not realize they have a defense. OHA can help by better explaining these protections to clients.

5. Managed Care Organizations, and Coordinated Care Organizations, once established, should share responsibility for making sure network providers follow the law.