



MEMORANDUM

To: Sen. Chip Shields, Chair, Senate General Government, Consumer and Small Business Protection Committee
Sen. Larry George, Vice-Chair, Senate General Government, Consumer and Small Business Protection Committee
Members of the Senate General Government, Consumer and Small Business Protection Committee

From: Gwen Dayton, JD, OMA

Date: April 3, 2013

Re: Opposition of SB 683 - health care practitioner referrals to health care entities

Chair Shields, Vice-chair George, members of the committee, I am Gwen Dayton, General Counsel for the OMA. The OMA testifies today in opposition to SB 683.

As we work toward the imperative of a more efficient health care system, the OMA supports appropriate oversight of health care utilization. We do not believe, however, that SB 683 is the right tool to achieve that oversight.

SB 683 attempts to adopt a version of the federal Stark law for Oregon. The federal Stark law is a very complex, much revised law that regulates referrals by specified health care practitioners for designated health services provided through federal health care programs.

The OMA questions whether now is the right time to adopt an Oregon Stark law. The CCOs are just getting started and referral relationships within the CCO are essential to effective implementation. Indeed, the legislature in 2011 stated in HB 3650 that the CCOs may even need a waiver from the federal Stark law to fully function. HB 3650 states:

HB 3650: Section 17(2)(b) A waiver of or exemption from the provisions of 42 U.S.C. 1395nn(a) to (e) and implementing regulations or other authorization the authority determines may be necessary to permit physician referrals to other providers as needed to support the transition to and implementation of global and alternative payment systems and formation of coordinated care organizations.

Before Oregon adopts further restrictions on provider referrals, we should watch how the CCO relationships are working and then tailor any restrictions we might want to consider to those relationships and the needs of the CCOs.

The OMA recognizes that imaging services have been a source of concern regarding over utilization. Notably, the federal Accountable Care Act took on that issue by requiring that a physician who refers patients for in-office MRI, computed tomography (CT) and positron emission tomography (PET) services provide written notice to the patient at the time of the referral stating that the patient may obtain the same services from another imaging service and listing other suppliers of the service in the immediate area. This law gives patients a choice while preserving the ability of physicians to offer these services. The law went into effect in 2011 and Oregon should monitor its effectiveness before adopting further restrictions.

Further, it is always complicated to adopt state law that parallels federal law because any inconsistencies create significant compliance challenges for those regulated by the law. These inconsistencies can exist in the law as passed, or arise over time as federal law changes. SB 683 presents inconsistencies now that will only grow with time as Stark is further revised. For example, SB 683 refers to payment by "any individual, third party payer or other person" while federal law only regulates services paid for by federal health care programs. State law refers to bona fide employment "agreements" instead of the "relationships" referred to in Stark.

Finally, we understand SB 683 is based on a similar Maryland law. We further understand that this law does not have a significant history of implementation yet. Rather than rely on that law now we should wait until they determined if it resulted in significant and appropriate reductions in utilization.

Thank you for considering our testimony and I am happy to answer any questions you may have.

The Oregon Medical Association is an organization of over 7,500 physicians, physician assistants, and medical students organized to serve and support physicians in their efforts to improve the health of Oregonians. Additional information can be found at www.theOMA.org.