

February 14, 2013

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RE: Senate Judiciary Committee - Senate Bill 483

The Doctors Company insures approximately 40% of physicians practicing in Oregon. The Company and its predecessor companies, Northwest Physicians Mutual Insurance Company and Northwest Physicians Insurance Company have insured Oregon physicians since 1983. Over the last 5 years in Oregon, medical professional liability premiums have decreased and are currently at or below the premiums paid by physicians in 2002. Frequency, or the number of claims made against Oregon physicians, has decreased by 30%. There are many theories as to why claims frequency has dropped but a contributing factor is the focus of physicians and insurers on patient safety. Professional liability insurers, physicians and hospitals have invested heavily in patient safety efforts over the last decade.

SB 483 is not liability reform. It is designed loosely after an alternative system in place at the University of Michigan Health System. There are major differences between Oregon and the situation in Michigan. Michigan has been very active in legislating liability reform. The early disclosure and resolution process in Michigan is part of a comprehensive plan including liability reform. The University of Michigan system is also a closed healthcare system where the system assumes liability for all healthcare providers. Noting the major differences between the University of Michigan and Oregon, the University of Michigan system has increased associated costs of managing the liability system and increased the number of claims managed under the system. While there may have been reduced overall costs, those costs reductions are believed by many to be less than the overall reduction of liability costs outside the University of Michigan system. There is very limited data available to support the effectiveness of the University of Michigan process as it compares to the rest of the state.

The cost of liability insurance is determined by frequency (number of claims) and the severity (cost per claim) plus administrative costs. SB 483 has the strong potential to increase the number of claims and the administrative costs of dealing with more claims and an additional administrative process. If the underlying costs increase then the cost of insurance will increase for healthcare providers.

Healthcare professionals, defense attorneys and hospitals share several specific concerns regarding SB 483:

- SB 483 will increase the cost of insurance for healthcare providers.
- Confidentiality is not guaranteed for the early disclosure and discussion process. Although there are some protections, there is a concern that discussions and the process will be admissible if the case ultimately is litigated.

- Lack of inclusion in the development of this legislation and exclusion from the Task Force to evaluate its effectiveness. Professional liability insurers, hospitals and defense attorneys were actively engaged in following the development of this legislation but were not included directly. We respectfully request that a representative from the professional liability insurance industry and a defense attorney be included in the Task Force created by this legislation.
- No provision has been made to address or discuss liability reform. Participating healthcare providers and CCO managers have major concerns about additional liability and exposures created by CCOs and the insurability of those exposures. CCOs do not have ERISA protection against professional liability claims and both CCOs and providers are concerned about vicarious liability, ostensible agency and other liability exposures that now exist as a result of the creation of CCOs and the participation of healthcare providers.

I support the efforts that went into the development of SB 483. With the voluntary nature of this legislation and the many questions regarding its effectiveness, I question the number of health care incidents that will be reported and utilize the process.

I actively encourage this committee and the legislature to consider liability reform measures especially as they relate to added liabilities created for healthcare providers participating in CCOs.

Thank you for allowing me to testify today.