



May 13, 2013

Health Share of Oregon Comments on HB 3309

Members of the House Committee on Rules:

Thank you for the opportunity to comment on House Bill 3309, which would insert the Oregon Health Authority (OHA) into governance of coordinated care organizations (CCOs) by allowing a CCO to petition the OHA to remove a board member with a 2/3 vote of the CCO governing board. CCOs contract with the State to provide high quality, high value, coordinated care to Oregon Health Plan (OHP) members. Health Share of Oregon is the state's largest CCO, serving approximately 165,000 members in the Tri-County area. Health Share was created through collaboration of 11 existing organizations that serve OHP members and is organized as a private non-profit corporation.

Health Share strongly opposes the passage of HB 3309 because the potential rationale for removal of board members is ill-defined and the penalties for the organization that employs the removed board member are so severe they will harm CCOs: the employer would be prohibited from contracting with any CCO for five years and would be reimbursed at a rate of 58% of Medicare payment rates. In addition, this bill:

Is Unnecessary and Redundant

- Health Share already has a process for removing board members in its bylaws. Other CCOs should have similar processes, developed internally and outside of the legislative process.
- Oregon law already provides for state removal of directors of corporate boards (for-profit and non-profit), members of LLCs, and dissolution of partnerships in LLPs. HB 3309 would be redundant and may conflict with existing law.

Pre-empts Local Control

HB 3309 would pre-empt local control of CCOs. A foundational aspect of CCOs was that they would be formed locally and reflect the communities that they serve. *This local control starts at the governance level.* Existing law dictates the general makeup of a CCO governance board, but OHA should not have the authority to select the individuals who serve on the board. The State could be putting itself at risk of litigation every time it was asked to remove a board member.

Discourages Health Care Providers from Participating in CCO Governance

The failure to define "health care entity" discourages organizations that employ board members from permitting them to participate in CCO governance. Any organization that has a relationship to health would be included—counties, physician offices, dental care organizations, FQHCs, or even health care advocacy organizations could be subject to these severe penalties upon removal from the Board. *This weakens CCO governance boards by discouraging those who actually provide care to OHP members from participating in CCO governance.*

Changes the Nature of CCO Board Directors

While health care entities may appoint directors to CCO boards, directors do not “represent” their employers on governance boards. They act as individuals and owe a fiduciary duty to the CCO and are liable for breach of that duty. HB 3309 would shift that duty to the Director’s employer and confuse the relationship between directors and boards.

Fails to Define Requirements of Directors’ Employers

The bill does not define how the OHA will assess whether a Director should be removed or which actions put the CCO at risk of decertification—something as routine and necessary as failing to accept new patients could be a reason.

Invites More Litigation

There are many reasons a board member’s employer might refuse to deliver contracted services. Some of these reasons may be legitimate and others not. Whether there has been a breach of contract or fiduciary duty in an individual case cannot be predetermined by legislation or regulation. The legal system has long been the proper venue for resolving such disputes. This legislation invites, rather than discourages, future litigation.

Some proponents of this legislation have suggested that its purpose is to influence ongoing litigation between one CCO and an employer of one of its board members. Separation of powers is an important part of American government, and just as courts are not equipped to legislate, legislative bodies are not intended to adjudicate private legal disputes. The potential for setting a precedent of legislative interference into private contract disputes should concern all businesses and citizens in the state.

HB 3309 is unnecessary, would likely limit the involvement of important partners in CCO governance, and would encourage litigation. For these reasons, Health Share urges your “no” vote.

Respectfully submitted by Janet L. Meyer, Chief Executive Officer