



June 10, 2013

### **Health Share of Oregon Comments in Opposition to HB 3309A**

Members of the Joint Committee on Ways and Means Subcommittee on Human Services:

Coordinated Care Organizations (CCOs) contract with the State to provide high quality, high value, integrated 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.

Thank you for the opportunity to comment on House Bill 3309A, which would insert the Oregon Health Authority (OHA) into governance of CCOs by creating a pilot project to allow a CCO in Marion and Polk Counties to petition the OHA to remove a board member with a 2/3 vote of the CCO governing board. Health Share continues to strongly oppose the passage of HB 3309A. Policy for a single CCO should not be legislated, and we are concerned about setting a precedent for singling out CCOs for legislation. Further, it is clear from the requirement that the OHA report on the statewide expansion of this policy within twelve months of passage that the intent of this bill is to implement this detrimental policy throughout the state.

Health Share opposes the underlying bill 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-- including the CCO targeted by the current version of this bill 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 3309A would be redundant and may conflict with existing law. (See ORS §§ 60.324, 60.327, 63.209, 65.324, 65.327, 65.331, 67.220, 67.225, and 67.230.)

#### **Pre-empts Local Control**

HB 3309 would pre-empt local control of CCOs. A foundational tenet 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. The Legislature's attempt to dictate policy for a single CCO is a significant intrusion into the local control of CCOs.

### **Discourages Health Care Providers from Participating in CCO Governance**

The failure to define “health care entity” will discourage provider organizations and their employees from serving as a governance board member of a CCO. Any organization that has a relationship to health would be included (with the exception to Marion and Polk counties, which are exempted from removal under the pilot project)—physician offices, dental care organizations, FQHCs, hospitals 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.* If this policy is implemented statewide, some CCO board members could be counseled by their legal and risk mitigation advisors to resign from board membership, rather than subject their organizations to the potential penalties if the board member were removed. This would result in a fundamental restructuring of CCOs, would make governance boards less representative of the communities we serve, and could significantly jeopardize transformation efforts.

The most recent amendments to this bill make it clear that the purpose of this legislation is to influence ongoing litigation between one CCO and the hospital that employs one of its board members. Separation of powers is an important part of American government, and the courts are granted the power 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.

Finally, although this bill has been considered by two policy committees in the House, neither committee chose to move the bill with a “do pass” recommendation. Both committees simply moved the bill forward without recommendation.

HB 3309A is unnecessary, would likely limit the involvement of important partners in CCO governance, and would encourage litigation and in-fighting among board members and CCOs while discouraging meaningful deliberation at board meetings. The current version of HB 3309 is doubly concerning because it sets a precedent for legislating policy for a single CCO in addition to laying the groundwork for implementing policy that is potentially damaging to CCOs statewide. For these reasons, Health Share urges your “no” vote.

Respectfully submitted by Janet L. Meyer, Chief Executive Officer

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