
MEMORANDUM

Legislative Fiscal Office
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To: Human Services Subcommittee of the Joint Committee on Ways and Means

From: Linda Ames, Legislative Analyst

Date: February 26, 2013

Subject: SB 483-A - Relating to resolution of matters related to health care

SB 483-A establishes processes and procedures for health care facilities, health care providers and patients to report adverse health care incidents to the Oregon Patient Safety Commission to improve patient safety and facilitate dispute resolution. The bill is the product of the Patient Safety and Defensive Medicine Task Force that was established by SB 1580 in the 2012 session.

The fiscal impact is estimated at \$1.6 million General Fund in 2013-15 for the Oregon Patient Safety Commission to carry out their new responsibilities. The Governor's 2013-15 Budget includes \$1.6 million General Fund in the budget of the Oregon Health Authority, to be used as pass-through funding for the Oregon Patient Safety Commission.

The Legislative Fiscal Office recommends that the Human Services Subcommittee move SB 483-A to the Joint Committee on Ways and Means with a "do pass" recommendation.

Motion: I move SB 483-A to the Joint Committee on Ways and Means with a "do pass" recommendation.

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

Action:	Do Pass as Amended and Be Printed Engrossed and Be Referred to the Committee on Ways and Means by Prior Reference
Vote:	5 - 0 - 0
Yeas:	Close, Dingfelder, Kruse, Roblan, Prozanski
Nays:	0
Exc.:	0
Prepared By:	Anna Braun, Counsel
Meeting Dates:	2/14

WHAT THE MEASURE DOES: Defines “adverse health incident.” Allows patient (except inmate), health care facility including location operated by health facility or provider to file notice of adverse health incident with Oregon Patient Safety Commission (OPSC). Charges OPSC with gathering and disseminating patient safety information. Provides mechanism for discussion and options for responding to notice. Tolls statute of limitation for six months after notice filed. Makes discussions confidential and inadmissible with exception. States evidence of participation or non-participation in program is inadmissible. Allows for option of mediation after discussion. Ensures any payments are not considered written claim or demand for payment. Prohibits professional liability carrier from denying coverage based on participation but allows carriers to impose reasonable requirements or policy provisions. Does not preclude negligence claim in court. Authorizes rulemaking. Creates 14-member Task Force on Resolution of Adverse Health Care Incidents. Requires report to legislature in five years. Establishes 10-year sunset. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Experience of Michigan
- Role of insurers

EFFECT OF COMMITTEE AMENDMENT: Changes task force membership from 12 to 14 people. Adds one member from the hospital industry and one advocate for patient safety. Clarifies task force charge. Changes nurse reference to ORS 678.010-678.410. Adds “location operated by health care facility” to health care facility that may file a notice. States whether or not a party participated remains inadmissible. Clarifies professional liability carriers may impose reasonable policy provisions. Prohibits inmates from filing notice under the bill.

BACKGROUND: On May 19, 2012, representatives from the Oregon Medical Association and the Oregon Trial Lawyer Association convened an advisory group to address issues of medical liability. The work group agreed on the principles of improved patient safety, preservation of access to justice and reduced costs. The draft proposal was for an early discussion and resolution process, which was submitted to the Governor on June 21, 2012. The Patient Safety and Defensive Medicine (PSDM) Task Force was established by Senate Bill 1580 in the 2012 session and continued the work of the advisory group. Senate Bill 483A is the product of that work group.

FISCAL IMPACT OF PROPOSED LEGISLATION

Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session
Legislative Fiscal Office

Measure: SB 483 - A

*Only Impacts on Original or Engrossed
Versions are Considered Official*

Prepared by: Kim To
Reviewed by: Linda Ames, John Terpening, Steve Bender
Date: 2/20/2013

Measure Description:

Authorizes health care facility, health care provider and patient to file notice of adverse health care incident with Oregon Patient Safety Commission.

Government Unit(s) Affected:

Oregon Health Authority (OHA), Oregon Patient Safety Commission [Semi-Independent Agency], Oregon Judicial Department (OJD)

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:

SB 483 establishes processes and procedures for health care facilities, health care providers and patients to report adverse health care incidents to the Oregon Patient Safety Commission to improve patient safety and facilitate dispute resolution. The bill outlines parameters for reporting and mediation, and directs the Oregon Patient Safety Commission to establish requirements and procedures necessary to implement the provisions of this bill. The bill prohibits an inmate from filing a notice of adverse health care incident. The bill prohibits an insurer from declining or refusing to defend or indemnify a health practitioner or health care facility with response to a claim for any reason that is based on either a notice of adverse health care incident or participation in mediation under this Act. The bill does not allow a notice of adverse health care incident to satisfy an insurer's obligation to report claims of professional negligence to applicable licensing boards. The bill establishes the Task Force on Resolution of Adverse Health Care Incidents charged with evaluating the implementation and effects of implement the provisions of this Act. Certain sections of the bill apply to adverse health care events that occur on or after July 1, 2014, and become operative on July 1, 2014. Certain sections of the bill sunset on December 31, 2023. The bill contains an emergency clause and takes effect on passage.

Oregon Patient Safety Commission (OPSC)

The Oregon Patient Safety Commission is a semi-independent state agency subject to ORS 182.456 to 182.472. The agency's budget is not subject to Executive Branch review, or approval or modification by the Legislative Assembly. Currently, the Oregon Patient Safety Commission oversees a confidential, voluntary serious adverse event reporting system in Oregon to promote quality improvement techniques to reduce system errors. The Commission shares evidence-based prevention practices to improve patient outcomes. The Commission is not a regulatory body and has no authority to review licenses, permits, certifications, or registrations. The Commission is funded primarily by revenue generated from fees paid by the organizations that are eligible to participate in Oregon's Patient Safety Reporting Program: hospitals, nursing homes, ambulatory surgical centers, pharmacies, and renal dialysis facilities.

Passage of this bill will require the Oregon Patient Safety Commission to:

1. Establish the administrative rules, build the technology, and institute processes to facilitate the reporting of adverse events from providers, healthcare facilities, and the public.
2. Develop and maintain a panel of qualified individuals to serve as mediators.

3. Provide support to the 14-member Task Force on Resolution of Adverse Health Care Incidents. The bill requires the task force to report to a committee of the Legislative Assembly before December 31 of each year on the progress and effects of implementing the provisions of this Act. The task force is also directed to report to a committee of the Legislative Assembly or before October 1, 2018 to evaluate the success of the process and whether any improvements to the process are necessary.

OPSC anticipates establishing 6 permanent positions (5.25 FTE) to work with healthcare facilities, providers, and the public to carry out these new responsibilities. OPSC estimates the fiscal impact of this work at \$1.6 million General Fund.

Oregon Health Authority (OHA)

The Governor's 2013-15 Budget includes \$1.6 million General Fund allocated to the Oregon Health Authority as pass-through funding for the Oregon Patient Safety Commission to carry out the provisions of this bill.

Oregon Judicial Department (OJD)

The fiscal impact of this bill on the Judicial Department is indeterminate. OJD anticipates the bill will have an impact on circuit courts and the Court of Appeals. If the rule making process results in challenges filed in the Court of Appeals, appellate court staff time would be required to prepare an opinion, including research and drafting; and judges' time would be required for conferences, oral argument, preparation, and opinion review. At this time, OJD cannot determine whether the measure will reduce the number of circuit court filings for medical malpractice.