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BEFORE THE HOUSE HEALTH COMMITTEE
Testimony on HB 3087 - Notification of Patient Choice

Submitted by Diana E. Godwin, Attorney, on behalf of
Oregon Physical Therapists in Independent Practice (OPTIP)

OPTIP is an association of approximately 165 independent practice physical therapy
clinics located throughout Oregon

My organization supports the adoption of HB 3087, together with the Dash-2 proposed amendment. This new legislation is needed because the provisions of Senate Bill 683, adopted by the 2013 Legislature, are not being implemented to accomplish the purpose of protecting a patient's choice of where to receive ancillary medical services when a physician refers the patient for those services. We support the new language that requires a referring physician to provide oral notice to a patient each time the physician refers the patient for ancillary services that the patient has a right to choose where to receive the ancillary medical services. Oral notice of choice is the most effective way to educate patients and protect their rights.

SB 683 delegated to the Oregon Health Authority (OHA) the task of adopting rules addressing the form and manner of the notice to be given to patients of their right of choice. The rules OHA adopted in May of last year allow notice to be provided either orally or in writing, and unfortunately, although one of the rules requires that notice of choice be provided both at the time the patient establishes care with the practitioner and at the time the referral is communicated to the patient, a separate rule specifically provides that no notice needs to be given the second time the physician refers the patient to a particular facility. This latter rule means that if a patient was referred to the facility for medical or diagnostic testing services, say two years prior, with notice of patient choice provided at that time, and the patient is again being referred to that same facility two years later, perhaps for a wholly different service, the referring physician is not required to give a fresh notice of patient choice.

Approximately six months after the Oregon Health Authority adopted the final, amended version of the administrative rules under SB 683, I emailed all of my OPTIP member clinics asking them to update me about their experiences and what they are hearing from their patients regarding how and whether referring physicians are complying with the provisions of SB 683 and the newly adopted administrative rules. Below are some of their responses.

“I’ve been seeing a Medicare patient for her neck for about 6 weeks now. She’s doing great, and she just saw her MD about her hip. Her MD (@ OHSU) then proceeded to send her to their physical therapist without telling her she could go anywhere she prefers. This, as you can imagine, is very frustrating for obvious reasons. The patient has received one treatment and is scheduled for a second tomorrow. I’ve asked the patient to choose one therapy provider and discharge the other rather than having two sets of appointments, two co-pays, and two billings to Medicare when she could simply have one. What, if anything, can I, or should I, do?”

- Thank you, Portland area private practice physical therapist

“Without giving names, I have a referring physician who uses backdoor methods to refer to me because Adventist Health pressures its doctors to refer within and tracks the referral habits of each doctor. This physician feels the pressure strongly enough that none of the referrals to me are done through the office EMR (Epic). I have heard similar reports from other doctors within that system as well. I do not feel comfortable giving the physician’s name because of concerns that involvement with this issue might jeopardize his/her employment.

“Hope this helps.”

- Portland area private practice physical therapist

“Hi Diana:

“I read your email this weekend with intrigue. I have been told by many of our patients that they were told by their physician that they prefer patients to go to the hospital physical therapy department for treatment. The patients are not advised of their right of choice but because they have previously received care at our clinic, they choose to come to our office regardless of their physician’s direction. The physician is employed by the hospital. I also spoke with one of the physicians regarding this very issue and was told that the physicians’ referrals are being tracked electronically and physicians are threatened by the administrator. I have yet to see or talk to a patient who has been given a notice, written or verbal, that they have a choice of where to receive their physical therapy treatments.

“I am certain that my experiences here on the coast mirror the experiences of my colleagues in the valley. It is especially a concern for our practice because most of the physicians here are employed by the hospital. As always, thank you and good luck on your testimony.”

- Oregon coast private practice physical therapist

“Diana,

“I am not sure how I can be of help, but I do know that we run into this situation with Adventist Health. I happen to have three family members who work for Adventist who “will get in trouble” if they refer to a clinic that is not an Adventist clinic. My spouse is an Adventist patient and was fast tracked for physical therapy at an Adventist clinic, too. The hospital never advised my

spouse of the right to choose where to receive physical therapy. They handed my spouse a referral and the Adventist-owned physical therapy clinic started calling within minutes of leaving the doctor's office.

“Let me know if I can provide any other details for you.”

- Portland area private practice physical therapy clinic

“Diana,

“Thank you for your help in this matter. Patients who are seen at Providence Medical Clinic in our area are not given a choice of who they would like to see when referred to physical therapy. When the patient comes in with a referral from a Providence physician, I always ask the patient, ‘How did you hear about us?’ The patient then tells me that a friend told them about us, so they had to tell their doctor that they did not want to go to Providence, they wanted to come and see us. They were not advised up front that they had a choice.

“There have also been several cases where the patient asks to see us and then is contacted by the Providence PT clinic to schedule an appointment because the referral was sent in-house on the hospital's electronic system.

“Providence also has its own insurance company that they will not allow us into. When I contacted them to see if they would allow us in the network, I was told that they would not contract with me because I was their competition. I told them that I was not looking to get into an HMO plan, but just the PPO plan and was told the same thing.

“These kinds of actions are driving healthcare costs up because clinics associated with hospitals can bill more for their services. Referrals for profit have been shown time and time again to increase healthcare costs with no increase in quality.”

- Portland area private practice physical therapy clinic

“Diana,

“As you know, I have a physician-owned physical therapy practice in my community and I hear from patients almost weekly that they are told they have to go to the physician-owned clinic, and are simply given no choice. If I am seeing them before their surgery, I coach them that they can go any place they want for their post-surgery physical therapy. The patients who make it back to me after surgery, without exception, tell me that the physician wanted them to go to the physician-owned clinic and that they had to affirmatively ask to see me. That said, the physicians in the group are good about referring to us because we have kept a good relationship with them. This happens not just in our community. There is a group in another town down the valley that insists patients receive their care from the clinic with which the physicians are affiliated even if this means the patient has to drive a distance to the clinic.”

- Mid-Willamette Valley private practice physical therapy clinic

“We continue to get reports from old patients that they are instructed to see the physician owned PT clinic (owned by South Coast Orthopedics) without any financial interest disclosure, even when the patients request to come to our clinic.

“Current laws do not seem to have much impact.”

- South coast private practice physical therapy clinic

“Thank you for your Memo, Diana.

“You asked me to let you know if I have asked patients whether they were given any notice – oral or written – that they had a choice of where to receive their physical therapy.

“Yes, I have asked clients if they were told anything along these lines and the response has very regularly been “no.” More often, clients have had to ask to work with my clinic. This is especially true because my practice is not listed on physician referral pads even though I have requested to be added since my practice opened two and a half years ago.”

- Columbia Gorge area private practice physical therapy clinic

“Hi Diana,

“We have had more than one incident of this occurring here in eastern Oregon with the local hospital. We are considering legal action against the hospital. Please let us know how this goes. We have dropped from 25-30 referrals/week to 15 and thus are in danger.

“Thank you.”

Eastern Oregon private practice physical therapy clinic

“I have a small, one-therapist practice in the Eugene area. There is a physical therapy practice in our area which some physicians at a local urgent care clinic have a financial interest in. The doctors there refer all the private pay, workers’ compensation, and motor vehicle accident patients to their physical therapy clinic. Patients who have previously seen me and who wanted to come to me for their new course of care have told me that the physicians at this local clinic did not tell them they had a choice and would not give them a referral to my clinic. But these same physicians do refer the low paying Medicaid patients to me.”

- Eugene area private practice physical therapy clinic

“Our local hospital has recently expanded its facilities and hired a substantial number of additional physicians. A couple of the physicians who work for the hospital have told me personally that the MDs are being “incentivized” (their word) by the hospital to refer patients to the hospital-owned out-patient clinics (not just the physical therapy clinic).

“Two of our patients whom we treated prior to their scheduled orthopedic surgeries, and who came back to our clinic for their post-surgery rehab, told us that they were initially referred to the hospital-owned physical therapy clinic. They had to object and firmly insist that they wanted to receive their care from us. They were not advised that they had a choice.”

- Southern Oregon private practice physical therapy clinic

Thank you for the opportunity to submit this testimony, and I would be happy to be available to the Committee or provide any additional information .

Very truly yours,

Diana E. Godwin