Medical Professional Liability Update:

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Medical Professional Liability Update

• Federal Legislative Activity
• Washington Legislative Activity
• Oregon Legislative Activity
Overview – Federal Effort

• H.R. 5: Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act of 2011
• H.R. 3586: Good Samaritan Health Professional Act of 2011
• H.R. 816: Provider Shield Act of 2011
H.R. 5: HEALTH Act

- H.R. 5: To improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system
- Introduced by Rep. John “Phil” Gingrey (R-GA) on 1/24/11
- 3/22/12 passed 112th Congress (vote 223-181)
- Nationally – 7 D’s crossed party line; 10 R’s opposed
- Washington – Inslee D absent, 4 R’s yea, 4 D’s no
- Oregon – 1 R yea, 4 D’s no
- 1st vote on medical liability reform in House in 7 years – small victory
H.R. 3586: Good Samaritan Act

- H.R. 3586: To amend the Public Health Service Act to limit the liability of health care professionals who volunteer to provide health care services in response to a disaster.
- Introduced by Rep. Clifford Stearns (R-FL) on 12/6/11
- Status – referred to Committee
- This bill has a slim chance (3%) of being enacted
- 16 co-sponsors to date (none from WA or OR)
H.R. 816: Provider Shield Act

- H.R. 816: To prevent the Patient Protection and Affordable Care Act from establishing health care provider standards of care in medical malpractice or medical product liability cases, and for other purposes.
- Introduced by Rep. John “Phil” Gingrey (R-GA) on 2/18/11
- Status – referred to Committee
- This bill has a low chance (10%) of being enacted
- 23 co-sponsors to date (none from WA or OR)
Washington

• Medicaid Fraud 2012
• Other 2012 Legislative Activity
• 2013 Legislative Proposals
“The important question isn’t how to keep bad physicians from harming a patient; it is how to keep good physicians from harming patients. Medical malpractice suites are a remarkably ineffective remedy.”
Medicaid Fraud – ESSB 5978
Adds *qui tam* provision to our State’s Medicaid False Claims Act: persons or entities with evidence of fraud against Federal programs or contracts to sue the wrongdoer on behalf of the government
Columbia Law Review: 73% of all *qui tam* actions are ultimately dismissed
Governor Partial Veto – Emergency Clause
*Qui Tam* Provision – Sunset Clause to terminate and repeal – June 30, 2017
Washington

- Pain Management – access, claims and education
- Mandated CME’s for physicians – suicide prevention and others
- Best practice guidelines
- Medical Panels
- Vicarious Liability – Accountable Care Organizations
- Budget – ACOs – EMR – Payment Reform
- 2013 Medical Professional Liability Reform Proposals
Oregon

- 2011-2012 Legislative Activity
- 2013 Legislative Proposals
Anonymous Physician

“Physicians are men and women who prescribe medicines of which they know little; to cure diseases of which they know less; in human beings of whom they know nothing.”
Oregon

• Oregon – Coordinated Care Organizations
  o “Better health, better care and lower costs”
  o $1.9 billion for Oregon Health overhaul over 5 year (10% of the allocation)
  o Oregon may end up with the best health "system“ in the country

• Budget – Electronic Medical Records – Payment Reform

• OHPB Medical Liability Task Force – Recommendations

• Oregon Transformation Bill – SB 1580
Oregon

• Governor’s Advisory Committee and Patient Safety and Defensive Medicine Work Group:
  o Improves patient safety
  o More effectively compensates individuals who are injured as a result of medical errors
  o Reduces the collateral costs associated with the medical liability system, including the costs associated with insurance administration, litigation and defensive medicine

• Governor Kitzhaber (D) – 2013 Medical Liability Reform
• 2013 Medical Professional Liability Reform Proposals
John F. Kennedy

“Change is the law of life:
Those that look only to the past or the present are surely to miss the future.”

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Thank You!

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