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Date: December 26, 2012

From: Bruce Goldberg, MD, Director 

To: Petitioners

Cc: Coordinated Care Organization Executives
Dental Care Organization Executives
Interested Parties

Subject: OHA Order and Next Steps

I am forwarding to you an Oregon Health Authority (OHA) Order dated December 26, 2012 which is in response to a Petition to Amend an Administrative Rule received by OHA on September 27, 2012. We carefully considered testimony. However, as outlined in the order, the Petition is denied. The Order explains in detail that OHA "lacks statutory authority to make the requested change".

OHA will now move forward with implementation planning for operationalizing formal contractual relationships between Coordinated Care Organizations (CCOs) and Dental Care Organizations (DCOs).

We plan to re-convene the CCO / DCO Workgroup to provide a forum for discussing policies, procedures and timelines that will guide implementation. Barney Speight will be contacting Workgroup members in early January to schedule meetings during the First Quarter, 2013.

If you have questions about the Order, please feel free to contact myself or Judy Mohr Peterson. Contact Judy or Barney if you have questions about the Workgroup and next steps.

State of Oregon
Oregon Health Authority
Division of Medical Assistance Programs

PETITION TO AMEND
ADMINISTRATIVE RULE

IN THE MATTER OF AMENDMENT)	
OF OAR 410-141-3160)	OHA ORDER
CLARIFICATION OF TRANSITION)	
PERIOD OF A DCO INTO A CCO)	

The Oregon Health Authority (OHA) received a Petition to Amend an Administrative Rule, specifically OAR 410-141-3160. In accordance with ORS 183.390 and OAR 137-001-0070, the OHA invited public comment on OAR 410-141-3160. The decision before the OHA is whether to deny the Petition or to initiate rulemaking proceedings. For the reasons that follow, the Petition is denied.

PROCEDURAL BACKGROUND

On September 27, 2012, OHA received a Petition for Request of an Amendment to an Administrative Rule (Petition). The Petition seeks an amendment to OAR 410-141-3160, proposing to add the language in bold below:

(c) By July 1, 2014, each CCO must have a contractual relationship with any dental care organization that serves members in the area where they reside. **Until July 1, 2017, each Coordinated Care Organization shall provide all Dental Services and Denturist Services under the Oregon Health Plan to a Client solely through a contractual relationship with a Dental Care Organization that existed on or before February 23, 2012 (the enactment of SB 1580). Prior to July 1, 2017, each Coordinated Care Organization shall not contract directly with any Dentist, Denturist, Dental Hygienist, or a Dental Entity for the purpose of providing Dental Services or Denturist Services to a Client under the Oregon Health Plan. For purposes of this section, "Dental Entity" shall include any dental practice or dental clinic or any other entity that provides dental services whether or not formed as a corporation, limited liability company, partnership or sole proprietor, but shall not include a Dental Care Organization formed on or before February 23, 2012.**

Petitioners are Mike Shirtcliff, DMD, President/CEO, Advantage Dental Services, LLC, a Dental Care Organization (DCO), and two legislators. This Petition, filed in accordance with ORS 183.390, was provided to the public by an OHA Notice and Invitation for Public Comment on October 9, 2012. The public comment period included a public hearing on November 14, 2012 and ended on November 30, 2012. OHA received public comments, and has considered them for purposes of this decision.

STATUTORY FRAMEWORK

The primary question for decision is whether taking the rulemaking action requested in the Petition is within the statutory authority of the Oregon Health Authority. If the requested rule language would be outside of OHA's statutory authority, the Petition must be denied.

1. State law requires each CCO to have a formal contractual relationship with any DCO that services the CCO's member.

With the enactment of the laws establishing the Integrated and Coordinated Health Care Delivery System in 2011, legislatively approved for implementation in 2012¹, Oregon's health care delivery system is in the process of evolution and transformation. Health care, mental health care, and addictions treatment previously delivered by separate "managed care organizations" are being delivered through coordinated care organizations so that OHP clients receive integrated person-centered care and services. This Order focuses on the integration of dental services into the coordinated care model which is part of the larger statutory framework for a fully integrated health care delivery system.

ORS 414.625(5)², enacted as part of the original bill creating the Integrated and Coordinated Health Care Delivery System (known as "HB 3650"), included the following provision:

On or before July 1, 2014, each coordinated care organization must have a formal contractual relationship with any dental care organization that serves members of the coordinated care organization in the area where they reside.

Thus, integration of dental services into CCOs by means of contracts between each CCO and all of the DCOs serving the CCO's members in the area where they reside has always been part of the statutory framework. Consistent with this statutory requirement, OAR 410-141-3160(1)(c) provides as follows:

(c) By July 1, 2014, each CCO must have a contractual relationship with any dental care organization that serves members in the area where they reside.

The rule language is consistent with statute because it essentially re-states the statutory requirement in ORS 414.625(5).

¹ Enacted in 2011 as HB 3650, 2011 Or Laws Chapter 602, the law charged the Oregon Health Authority with providing a detailed plan for legislative approval prior to implementation. The legislature approved the plan and authorized OHA to implement the new delivery system in SB 1580, 2012 Or. Laws Ch 8.

² Originally, this provision was codified as ORS 414.625(3). It was re-numbered as ORS 414.625(5) due to other changes to ORS 414.625 in SB 1580 (2012 Or Laws, Chap. 8). In this Order, OHA uses ORS 414.625(5).

2. CCO contracts with DCOs must be executed by July 1, 2014.

Prior law utilized “prepaid managed health care services organizations” (commonly known as “managed care organizations” or “MCOs”) for delivery of medical assistance services. Dental care organizations (DCOs) are defined as one type of prepaid managed care health services organization. *See* ORS 414.736(4). DCOs contract with the Oregon Health Authority to provide dental services to Oregon Health Plan members. The chief Petitioner, Advantage Dental Services, LLC, is a DCO.

The legislature provided for a transition period for existing managed care organizations, including DCOs. Quoted above, one of those transition provisions was ORS 414.625(5), requiring CCOs to contract with DCOs by July 2014.

Another transition provision was enacted as Section 14 of HB 3650, which provides in pertinent part as follows:

Sec. 14. (1) Notwithstanding ORS 414.631 and 414.651, *in any area of the state where a coordinated care organization has not been certified, the Oregon Health Authority shall continue to contract with one or more prepaid managed care health services organizations, as defined in ORS 414.736, that serve the area and that are in compliance with contractual obligations owed to the state or local government.*

(4) The authority shall continue to renew the contracts of prepaid managed care health services organizations that have a contract with the authority on July 1, 2011, until the earlier of the date the prepaid managed care health services organization becomes a coordinated care organization or July 1, 2014. Contracts with prepaid managed care health services organizations must terminate no later than July 1, 2017.

*** (Emphasis added)

Thus, a statutory framework was established for transitioning from the former managed care delivery system to the coordinated care delivery system. Pursuant to Section 14(4), for DCOs under contract with OHA as of July 1, 2011, OHA may no longer enter into DCO contracts after July 1, 2014, and OHA must affirmatively terminate any of its DCO contracts not later than July 1, 2017. (This aligns with ORS 414.625(5), requiring CCOs to contract with DCOs in their service areas not later than July 1, 2014.) After July 1, 2014, the only OHA/DCO contracts that may potentially continue are in those areas of the state where there are no CCOs.

Finally, ORS 414.625(1) establishes an additional part of the statutory framework. ORS 414.625(1) provides:

(1) The Oregon Health Authority shall adopt by rule the qualification criteria and requirements for a coordinated care organization and shall integrate the criteria and requirements into each contract with a coordinated care organization. Coordinated care organizations may be local, community-based organizations or statewide organizations

with community-based participation in governance or any combination of the two. **Coordinated care organizations may contract with counties or with other public or private entities to provide services to members.** The authority may not contract with only one statewide organization. A coordinated care organization may be a single corporate structure or a network of providers organized through contractual relationships. The criteria adopted by the authority under this section must include, but are not limited to, the coordinated care organization's demonstrated experience and capacity for: **** (Emphasis supplied.)

ORS 414.625(1) is part of the same statute that requires CCOs to contract with all DCOs by July 2014. Since both sections are part of the same statute, ORS 414.625, the statute must be interpreted as a whole to achieve legislative intent. Specific to DCOs, CCOs must contract with all DCOs serving the CCO's members; however, pursuant to the same statute, OHA is not permitted to prohibit CCOs from contracting with other organizations or providers. Both of these statutory provisions must be given their full meaning.

DISCUSSION

The Petition does not challenge the current rule language; however, the Petition requests OHA to add rule language (quoted on page 1 of this Order) to OAR 410-141-3160(1)(c). In light of the statutory framework described above, the question for OHA is whether the rule language requested in the Petition falls within OHA's statutory authority. The supporting arguments in the Petition are discussed below.

a. Petitioners: The proposed rule would clarify the transition period of DCOs into CCOs

Petitioners assert that OAR 410-141-3160(1)(c) is unclear as to whether a CCO may form its own dental network. Also, they assert that unless there is a period of time (until July 2017) before CCOs can contract with other dental providers, it will circumvent the DCOs' ability to transition into a CCO over time. They submit that their proposed rule language would allow an orderly transition of dental services into a CCO structure to assure continuity of care and continued patient access. Their solution is to adopt this rule language that would prohibit CCOs from contracting with any other dental service providers until July 2017; and require that until July 2017, all dental services within a CCO be provided only through a DCO in operation on or before February 23, 2012.³

OHA finds that ORS 414.625(5) requires CCOs to have a contractual relationship with all DCOs serving their members by July 2014. As of July 2014, all DCOs should have a formal contractual arrangement with CCOs, allowing for an orderly transition of dental services into each CCO, and assurance of continuity of care for the DCOs dental members. As the DCO becomes part of the CCO, the DCO's contract will be with the CCO for those members.

³ The Petition proposes February 23, 2012 as the operative date for determining which CCOs have a contract with OHA for purposes of their rule language. February 27 is the date that the legislature signed the SB 1580. However, the effective date of SB 1580 is March 2, 2012. Furthermore, Section 14(4) of HB 3650 applies to prepaid managed health care organizations (including any DCOs) with an OHA contract as of July, 2011. Consequently, OHA will use July 1, 2011 as the operative date for discussion of DCOs covered by Section 14(4) of HB 3650.

Consequently, ORS 414.625(5) and existing OAR 414-141-3160(1)(c) provides clarity about the transition period for CCOs to contract with DCOs.

The Petition proposes that until “July 2017”, OHA rule must mandate that CCOs continue to contract exclusively with DCOs, prohibiting other contractual arrangements for dental services. However, OHA finds that the date of July 2017 (taken from Section 14(4) of HB 3650 – quoted in the Statutory Framework portion of this Order) does not relate to CCO contracts at all. Section 14(4) relates solely to requirements for contracts between existing DCOs and OHA. Therefore, Section 14(4) does not authorize OHA to require CCOs to contract with DCOs until July 2017.

Moreover, ORS 414.625(1) explicitly provides that CCOs may contract with any county, public or private entity to provide services to their members. Therefore, OHA cannot adopt a rule prohibiting CCOs from contracting with counties (which may include federally qualified health centers with dental services), or other public or private entities to provide services to members.

OHA concludes that the formal contractual arrangements between CCOs and DCOs are statutorily mandated to be achieved by July 2014. CCOs must contract with each DCO serving the CCO’s members in the service area. OHA may not prohibit a CCO from also contracting with other dental service providers. Consequently, OHA lacks statutory authority to engage in rulemaking as requested by petitioners, and the Petition must be denied.

b. Petitioners: The proposed rule would reduce negative economic impact on business

Petitioners assert that many CCOs do not fully comprehend the level of complexity required to deliver dental services. In addition, Petitioners assert that implementation of the rule will decimate the existing DCOs by substantially decreasing the number of enrollees coming into the DCO. This argument asserts that requiring CCOs to contract exclusively with existing DCOs until 2017 will reduce the impact of the OHA rule on their dental care business.

Supporters of the Petition from among the Petitioner DCO’s panel of providers asserted that they would lose patients if the petition is not granted and if CCOs are allowed to contract outside of DCOs before July 1, 2017. Supporter comments included statements such as: “Forcing the providers, such as myself, to contract directly with CCOs does not make sense from both a financial perspective and from a patient care perspective. What does make sense is to require the CCOs to contract with DCOs because DCOs have an established delivery model that has not experienced the same increase in health care costs as physical and mental health.” “Rushing this process and forcing over 300 providers to frantically renegotiate contracts with 15 CCOs will be a nightmare... It would make more sense to allow me to focus on patient care and to have Advantage Dental, with whom I already have a contract with, do the contracting with the CCOs for me.”⁴

⁴ The comments supplied by Advantage Dental Services providers used common language. Examples of the quoted language can be found in the letters from the Advantage Dental Services provider network, including but not limited to Daniel Floyd, DMD (Nov. 13, 2012); Mark Francis, DDS (Nov. 13, 2012); Lance Heppler (Nov. 21, 2012); Russell Kilpatrick (Nov. 26, 2012); Brian Kruse, DMD (Nov. 26, 2012); Jenny Deen, RDH, EPP (Nov. 28, 2012);

Opponents of the Petition indicate that CCOs should be encouraged to contract with DCOs as soon as feasible. Several CCOs submitted comments, signaling their desire to begin to contract with DCOs. Adding dental services to the array of integrated and coordinated care services should occur within the statutory time period up to July 1, 2014. They are concerned about proposed rule language that might limit a CCO's ability to seek additional dental provider capacity.

OHA acknowledges that transition can present challenges and opportunities. The legislature has set the benchmarks and OHA's rule is consistent with those benchmarks. All CCOs must have contracts with all DCOs serving the CCO's members in their areas by July 1, 2014. Consequently, CCOs and DCOs must work together to ensure effective and timely service delivery for integrated and coordinated care that includes dental services. OHA cannot conclude that departing from the statutory framework for CCO and DCO contracting is authorized, nor that it would avoid the concerns about the transition process identified by the petitioners. Rather, the DCOs and CCOs are encouraged to work together on their contractual arrangements as the best venue to address these concerns.

CONSIDERATION OF STATUTORY FACTORS

In reviewing this Petition, OHA is required by ORS 183.390 to consider the following statutory factors. During the public comment period, OHA invited public comments on these factors and provides the following response.

- (a) **The continued need for the rule:** ORS 414.625(1) requires OHA to adopt, by rule, the qualifications and requirements for a CCO. There is a continued need for the rule.
- (b) **The nature of complaints or comments received concerning the rule:** OHA received comments in support of and in opposition to the Petition to change the rule.
 - ***Comments in support of the Petition and proposed rule language:*** The chief petitioner, Advantage Dental Services, and over 80 individuals and clinics generally associated with Advantage Dental Services supported the Petition, along with a State Senator (co-petitioner), and two State Representatives (including one of the co-petitioners), a dental clinic and a CPA.

All commenters in support of the Petition favor a gradual transition that avoids disruption of patient access and promotes continuity of care. Many of these commenters associated with the Petitioner DCO were concerned about the anticipated challenges for dental providers in light of additional contract negotiations, and the prospects of working with a CCO that (it is feared) may not fully understand the needs of the dental service delivery system and how to integrate with physical and behavioral health services. There also appears to be a specific concern that existing law requires individual dental providers to negotiate directly with CCOs. Commenters conclude: "What does make sense is to

Randolph Morgan, DMD (Nov. 28, 2012); Christopher Baley, DDS (Nov. 29, 2012); Liann Drechesel, DMD (Nov. 29, 2012); Jeffrey Dryden, DDS (Nov. 29, 2012); and others.

require the CCOs to contract with DCOs...”⁵

In response to this concern by these individual DCO providers, OHA rule confirms that CCOs must contract directly with DCOs. ORS 414.625(5) explicitly requires CCOs to contract with each DCO serving CCO members in their area.

- ***Comments in opposition to the Petition and proposed rule language:*** Four CCOs; one DCO; Oregon Academy of General Dentistry; Oregon Primary Care Association⁶; American Dental Hygienists Assoc.; and a school district filed comments in opposition to the Petition and proposed rule language.

Many of these commenters in opposition to the Petition prefer to move forward with integrated and coordinated care including dental services, by July 1, 2014, which they recognize as the timeline established by statute. Explicit concern was expressed about rule language that would limit CCOs from contracting with DCOs and other dental providers. Most commenters opposing the Petition asserted that the proposed rule language exceeded OHA’s statutory authority.

- ***Additional comment in response to the Petition:*** One DCO (not a petitioner) also provided comments, not clearly supporting or opposing the Petition. This commenter expressed hope that DCOs and CCOs could work collaboratively together to develop contractual relationships by July 1, 2014. At the same time, this commenter suggested that additional guidance from OHA would be helpful, particularly where there are more than one DCO in an area, or more than one CCO in an area. “A recurring theme woven through my comments; there continues to be a need for rule clarification, beget the language different from that proposed.”⁷

- (c) **The complexity of the rule:** OAR 410-141-3160(1)(c) is a simple rule that re-states statute. Implementation of the requirements for integrated and coordinated care, including the glide-path for DCOs to have formal contractual arrangements with CCOs by July 2014, was established by the Legislative Assembly in 2011, and confirmed in February 2012.
- (d) **The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations:** OAR 410-141-3160(1)(c) does not overlap, duplicate or conflict with other state rules, federal regulations, or local government regulations.
- (e) **The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule:** Since the Legislative Assembly approved implementation of the integrated and coordinated care system in February 2012, 16 CCOs have been certified in virtually all areas of the state. Most have started full CCO operations in

⁵ Same sources cited in footnote 4.

⁶ The Oregon Primary Care Association filed comments in partnership with the Oregon Law Center, Oregon State Public Interest Research Group, Oregon Nurses Association, Asian Pacific American Network of Oregon, and Metropolitan Alliance for the Common Good, and the Oregon School Based Health Center Network.

⁷ Representative for Capitol Dental Care (Nov. 29, 2012).

August, September and November 2012. When OAR 410-141-3160 was adopted, there were no CCOs and the procurement process was underway. Approximately 90% of OHP Clients are now enrolled in CCOs. These changes are consistent with legislative objectives to transform the health care delivery system by integrating and coordinating health care. There is no basis in statute or in light of the current progress being made to transform health care in Oregon for any delay in including dental services.

- (f) **The statutory citation or legal basis for the rule:** ORS 414.625(1) and (5) provide statutory authority for this rule.

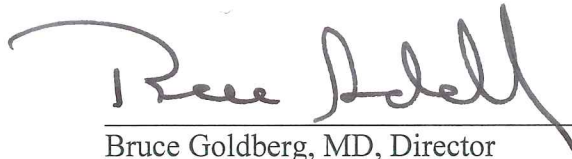
CONCLUSION

OHA has given full consideration to the Petition and the proposed rule language requested in the Petition, as well as to all public comment. OHA appreciates that transition to a delivery system that incorporates physical, mental health, addictions and dental services presents challenges and opportunities for everyone involved, from the DCOs and CCOs that will be contracting together for the first time, as well as the DCOs' providers of dental services and CCO health services providers, and the communities that are also engaged in improving the health of their communities. The legislature has provided a framework and benchmarks for making these transitions that are incorporated into OHA rule. OAR 410-141-3160(1)(c) appropriately reflects statutory requirements. OHA will actively assist CCOs and DCOs to meet their contractual requirement within that time frame.

After due consideration of the proposed rule language in the Petition, OHA has determined that it lacks statutory authority to make the requested change. Therefore, the Petition is denied.

DATED this 26th day of December, 2012.

OREGON HEALTH AUTHORITY



Bruce Goldberg, MD, Director

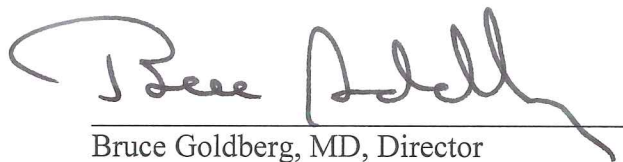
CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of December, 2012, I served the within OHA ORDER on Petition to Amend Administrative Rule, via electronic mail and via first class mail by then depositing in the United States Post Office at Salem, Oregon, a full, true and correct copy thereof, postage prepaid, addressed to:

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A handwritten signature in dark ink, appearing to read "Bruce Goldberg", written over a horizontal line.

Bruce Goldberg, MD, Director
OREGON HEALTH AUTHORITY