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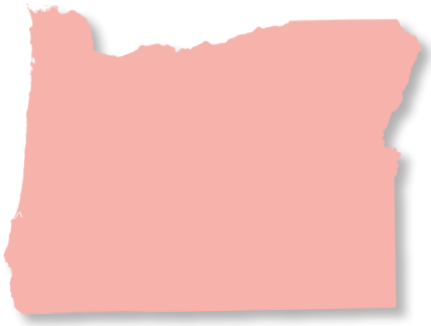

Protecting Patients' Privacy in Health Insurance Billing & Claims: An Oregon Profile

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Abigail English
Amanda Mulligan
Clare Coleman

National Family Planning & Reproductive Health Association

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Introduction

Confidential & Covered was a three-year research project led by the National Family Planning & Reproductive Health Association (NFPRHA) and funded by the US Department of Health & Human Services' Office of Population Affairs as part of its Affordable Care Act Collaborative. The project was designed to identify policies and practices to mitigate revenue loss at Title X-funded health centers due to the provision of confidential health services. The purpose was to improve service sites' sustainability while preserving one of Title X's core principles, namely the provision of confidential services for patients served by this essential program. Confidential & Covered partnered with the Center for Adolescent Health & the Law (CAHL), the George Washington University's Milken Institute School of Public Health, and the University of California, San Francisco's Bixby Center for Global Reproductive Health to conduct research on insurance use and confidentiality throughout the payment process—in other words, payment that does not breach privacy.[1]

Protecting patient confidentiality is complex and has presented particular challenges in the health insurance arena. The insurance landscape is replete with opportunities for disclosure of private information, some of which are the result of explicit legal requirements or insurance carriers' policies and practices, such as the sending of explanations of benefits (EOBs) when insurance claims are filed and acted upon. These disclosures may result in a patient's information reaching a family member, often the policyholder for the health insurance, even when the patient wants the information to remain private. In some cases, the information could pertain to family planning or other sensitive health services where the patient would be in jeopardy due to the disclosure. In this context, the *Confidential & Covered* project has worked to identify ways to protect confidentiality without forfeiting the opportunity to secure health insurance payments for patients insured as dependents on a family member's policy.

In the first year of the project (2014-2015), the *Confidential & Covered* policy team at NFPRHA and CAHL undertook extensive research and detailed analysis of federal and state laws and policies relevant for publicly funded family planning that provide confidentiality protection or, on the other hand, that can lead to the disclosure of confidential information via billing and health insurance claims. The team published a white paper[2] and policy guide[3] based on that research and analysis.

In the second and third years of the project (2015-2017), the team visited six states that have laws in place designed to enable individuals to use their health insurance coverage without foregoing confidentiality protection or triggering privacy breaches. Profiles of California, Colorado, and Washington were published in 2016; profiles of Illinois and Maryland were released in 2017 along with this profile of Oregon.

This report provides a profile of the current policy environment for confidentiality and insurance in Oregon based on a review of Oregon laws and in-person interviews with key informants conducted in April 2017. The informants included a variety of stakeholders, such as family planning providers, school-based health center clinicians and administrators, adolescent and young adult health experts, advocates, state insurance agency representatives, and public health officials.[4]

The profile offers background on the legal and policy framework for confidentiality and insurance in Oregon; explains H.B. 2758, a state statute enacted in 2015 to improve privacy protection for individuals with health insurance;[5] describes the origins and implementation efforts for the statute; and considers positive

1 Publications and other resources developed as part of the *Confidential & Covered* project are available at www.confidentialandcovered.com.

2 Abigail English, Robin Summers, Julie Lewis, and Clare Coleman, Confidentiality, Third-Party Billing, & the Health Insurance Claims Process: Implications for Title X (Washington, DC: National Family Planning & Reproductive Health Association, 2015). http://www.confidentialandcovered.com/file/ConfidentialandCovered_WhitePaper.pdf.

3 Julie Lewis, Robin Summers, Abigail English, and Clare Coleman, Proactive Policies to Protect Patients in the Health Insurance Claims Process (Washington, DC: National Family Planning & Reproductive Health Association, 2015). http://www.confidentialandcovered.com/file/ConfidentialandCovered_PolicyGuide.pdf.

4 A list of individuals interviewed is included in Appendix A.

5 H.B. 2758, 78th Leg. Assem., Reg. Sess. (Or. 2015); 2015 Or. Laws ch. 470.

features associated with the law as well as implementation challenges. The report represents a composite picture drawn from the varied comments of the informants interviewed.

Background: Confidentiality & Insurance in Oregon

Since the enactment of the Affordable Care Act (ACA) in 2010, Oregon has experienced an increase in the number of individuals with health insurance,[6] resulting in nearly 95% of Oregonians being insured by 2015.[7] The increase has largely been driven by successful enrollment in marketplace plans through the federal health insurance exchange,[8] via the state's expansion of Medicaid in the Oregon Health Plan,[9] and as a result of the ACA provision allowing young adults (often referred to as adult children) to remain on a parent's health insurance up to age 26.[10]

Many of the newly insured individuals who gained health insurance coverage as a result of the ACA as well as those with coverage under employer-based plans are covered as dependents on a family member's plan.[11] These include young adults and adolescents, as well as spouses and domestic partners, some of whom are affected by intimate partner violence. When health insurance reimbursement is sought for dependents' care, these individuals may have their privacy infringed. This occurs due to legal and policy requirements for disclosure of information in the health insurance billing and claims process, or as a result of health plan contracts and practices, and in spite of existing legal protections for the confidentiality of health information.

HIPAA Privacy Rule Protections

In Oregon, as in every state, the federal privacy regulations under the Health Insurance Portability and Accountability Act—the HIPAA Privacy Rule—requires health care providers and health insurers to protect patients' privacy. Of particular importance, the rule includes two special protections that restrict disclosure of protected health information (PHI) and provide for confidential communications. The first allows patients to request restrictions on the disclosure of their PHI.[12] Health care providers and health plans are not generally required to comply with such requests unless they agree to do so, but they must agree if the care has been fully paid for by the patient or someone other than the health plan. The second special protection allows patients to request that they "receive communications of protected health information … by alternative means or at alternative locations."[13] It is noteworthy that with respect to requests for confidential communications, the HIPAA rule for health care providers differs from the requirement for health plans. Health care providers must accommodate reasonable requests and may not require patients to claim they would be endangered by disclosure; health plans must accommodate reasonable requests when there is a claim of endangerment. Thus, plans are only required to comply with requests if endangerment is claimed. These HIPAA privacy protections served as an important part of the foundation for H.B. 2758, the bill passed by the Oregon legislature in 2015.

6 Assistant Sec'y for Planning & Eval., U.S. Dept. of Health & Human Services. Compilation of State Data on the Affordable Care Act. https://aspe.hhs.gov/compilation-state-data-affordable-care-act; Namrata Uberoi, Kenneth Finegold, and Emily Gee. Health Insurance Coverage and the Affordable Care Act, 2010-2016. Mar. 3, 2016. https://aspe.hhs.gov/system/files/pdf/187551/ACA2010-2016.pdf.

7 Oregon Health Authority, Oregon Health Insurance Survey: Trends in Health Coverage Fact Sheet 2015. https://www.oregon.gov/oha/analytics/InsuranceData/2015-OHIS-Trends-Fact-Sheet.pdf; New Report Details Impact of the Affordable Care Act in Oregon. The Lund Report, Dec. 14, 2016. https://www.thelundreport.org/content/new-report-details-impact-affordable-care-act-oregon.

8 Oregon initially operated its own exchange, CoverOregon, which was disbanded in 2014; beginning in 2015 individuals in Oregon have enrolled in marketplace plans through the federal health care exchange, www.healthcare.gov.

9 Louise Norris, Oregon and the ACA's Medicaid Expansion. Sept. 26, 2016. https://www.healthinsurance.org/oregon-medicaid/. Ass't. Sec'y for Planning & Eval., U.S. Dept. of Health & Human Services. Medicaid Expansion Impacts on Insurance Coverage and Access to Care. Jan. 18, 2017. https://aspe.hhs.gov/system/files/pdf/255516/medicaidexpansion.pdf. Enrollment in Oregon's Medicaid program is available at www.healthcare.oregon.gov.

10 Oregon Health Authority, Oregon Health Insurance Survey: Trends in Health Coverage Fact Sheet 2015. https://www.oregon.gov/oha/analytics/InsuranceData/2015-OHIS-Trends-Fact-Sheet.pdf. Jason Furman and Matt Fiedler. 4.5 Million Young Adults Have Gained Coverage Since 2010, Improving Access to Care and Benefitting Our Economy. Jan. 29, 2015. https://obamawhitehouse.archives.gov/blog/2015/01/29/45-million-young-adults-have-gained-coverage-2010-improving-access-care-and-benefitt.

11 The U.S. Department of Health & Human Services' Assistant Secretary for Planning Evaluation tracks and disseminates insurance enrollment. Enrollment numbers can be found at https://aspe.hhs.gov/affordable-care-act-research.

12 45 C.F.R. § 164.522(a)(1).

13 45 C.F.R. §§ 164.502(h); 164.522(b)(1).

Oregon Privacy Laws

Oregon law contains extensive confidentiality protections for individuals' health information.[14] Several of these statutes parallel the HIPPA Privacy Rule and include specific provisions governing the use and disclosure of protected health information by health care providers and insurers with and without authorization from the individual. One statute explicitly states: "It is the policy of the State of Oregon that an individual has: (a) The right to have protected health information of the individual safeguarded from unlawful use or disclosure; and (b) The right to access and review protected health information of the individual."[15] The same statute further references the HIPAA Privacy Rule as establishing additional rights and obligations regarding use and disclosure of individuals' protected health information.[16] According to the statute, Oregon insurers must also notify enrollees of the insurers' procedures for protecting medical records and other enrollee information.[17] Other laws provide varied protections, such as those for the confidentiality of HIV test results[18] and the privacy of public assistance recipients' information.[19]

Minor Consent Laws

In addition to the laws that provide confidentiality protection for individuals of all ages, Oregon has detailed laws that allow minors to consent for their own care in a broad range of situations and provide confidentiality protection for the health information associated with that care. Some minors are allowed to consent for most of their own health care. A particularly noteworthy Oregon statute allows minors age 15 or older to consent for care provided by a licensed physician, dentist, nurse practitioner, or physician assistant.[20] Minors of any age may consent for family planning services and contraception[21] and for diagnosis and treatment of "reportable venereal disease"[22] and for HIV testing and treatment.[23] Minors who are age 14 or older may consent for diagnosis and treatment for drug and alcohol problems and outpatient mental health treatment.[24]

When Oregon law allows minors to consent for care, parental consent or notification is not required. However, health care providers are sometimes allowed to inform parents about the care if clinically appropriate or if necessary to protect the minor's health.[25] Parents often are not financially responsible for care for which minors may give their own consent;[26] this suggests that they would not need to be informed simply for financial reasons. Oregon law allowing disclosure to parents would not apply in situations when a minor has consented to family planning services that are funded by Title X or Medicaid and are therefore subject to the confidentiality requirements of those programs.

Insurance Disclosure Laws

As in other states, the confidentiality protections for medical and health information in Oregon law are not absolute. In particular, the insurance laws contain various requirements for the disclosure of otherwise confidential information. Oregon statutes and regulations specify when authorization is required for disclosure of personal health information and when disclosure may occur without authorization.[27] Many

14 E.g.,"Protected Health Information," Or. Rev. Stat. §§ 192.553-192.581.
15 Or. Rev. Stat. § 192.553(1).
16 Or. Rev. Stat. § 192.553; 45 C.F.R. Parts 160 and 164.
17 Or. Rev. Stat. § 743B.250(1)(p).
18 Or. Rev. Stat. § 433.045.
19 Or. Admin. R. 407-014-0030.
20 Or. Rev. Stat. § 109.640.
21 Or. Rev. Stat. § 109.640.
22 Or. Rev. Stat. § 109.610; Or. Admin. R. 333-018-0015.
23 Or. Rev. Stat. §§ 109.610, 433.045; Or. Admin. R. 333-018-0015, 333-012-0265(1), 413-040-0430, 416-600-0030.
24 Or. Rev. Stat. § 109.675.
25 Or. Rev. Stat. §§ 109.650, 109.680
26 Or. Rev. Stat. §§ 109.610, 109.690.
27 Or. Rev. Stat. § 192.558.

requirements of these regulations are similar to or track the requirements of the HIPAA Privacy Rule. For example, consistent with the HIPAA Privacy Rule, disclosure under Oregon law is permissible without authorization for treatment, payment, or health care operations.[28]

In particular, the Oregon laws that allow disclosure for purposes of payment could result in the communication by health insurers of otherwise confidential information about an insured dependent to a policyholder.[29] In addition to the requirements of Oregon law, federal law contains important requirements for notice to be given when claims are denied; these requirements also risk disclosure of an insured dependent's confidential health information. (See text box.)

Federal Notice Requirements for "Denials"

Federal law requires that insurers and health plans share information about denials of claims with policyholders, subscribers, and enrollees – as detailed in the Affordable Care Act (ACA), Employee Retirement Income Security Act (ERISA), and Medicaid Managed Care regulations.[30] These denial notices are commonly sent in a format that looks like an EOB. See *Confidentiality, Third-party Billing, and the Health Insurance Claims Process: Implications for Title X* for a robust discussion of federal insurance law and its impact on privacy.[31]

The Oregon Statute

The Oregon statute enacted in 2015[32]—often still referred to by its legislative bill number, H.B. 2758—created new requirements related to protected health information, building on the protections already in existence under Oregon law and the HIPAA Privacy Rule. The new statute requires health insurers to allow health plan enrollees to request that communications be sent directly to them and not to the policyholder.

28 Or. Rev. Stat. § 192.558.
29 Or. Rev. Stat. § 192.558(2)(c).
30 45 C.F.R § 147.136; 26 C.F.R § 54.9815-2719; 29 C.F.R. § 2590.715-2719; 42 C.F.R. § 438.404.
31 Abigail English, Robin Summers, Julie Lewis, and Clare Coleman, Confidentiality, Third-Party Billing, & the Health Insurance Claims Process: Implications for Title X (Washington, DC: National Family Planning & Reproductive Health Association, 2015). http://www.confidentialandcovered.com/file/ConfidentialandCovered_WhitePaper.pdf.
32 H.B. 2758, 78th Leg. Assem., Reg. Sess. (Or. 2015); 2015 Or. Laws ch. 470, adding a new section to the insurance code, Or. Rev. Stat. § 743B.555.

Key Elements

The Oregon statute contains a number of key elements: a series of definitions as well as delineation of a right for enrollees in health insurance plans, obligations of insurers, and requirements for the state agency responsible for regulating insurance.

Definitions

Enrollee	"Enrollee" means an employee, dependent of the employee, or an individual otherwise eligible for a group or individual health benefit plan who has enrolled for coverage under the terms of the plan[33]
Carrier	"Carrier" means any provider of health benefit plans including: • licensed insurance company • health care service contractor • health maintenance organization • multiple employer welfare arrangement • person or corporation responsible for the payment of benefits or provision of services[34]
Communication	"Communication" includes: • explanation of benefits notice • information about an appointment • notice of adverse benefit determination • request for additional information regarding a claim • notice of a contested claim • name and address of a provider, a description of services provided, and other visit information • written, oral, or electronic communication to a policyholder, certificate holder, or enrollee that contains protected health information[35]
Confidential Communications Request	"Confidential communication request" means a request from an enrollee to a carrier or third-party administrator that communications be sent directly to the enrollee and that the carrier or third-party administrator refrain from sending communications concerning the enrollee to the policyholder or certificate holder[36]

33 Or. Rev. Stat. §§ 743B.005(9) and (15).
34 Or. Rev. Stat. § 743B.005(5) (formerly § 743.730).
35 Or. Rev. Stat. § 743B.555.
36 Or. Rev. Stat. § 743B.555.

Protected Health Information	"Protected health information" means individually identifiable health information that is maintained or transmitted in any form of electronic or other medium by a covered entity[37]

Legislative Elements

Individual Rights	Any enrollee has a right to: • request that communications be sent directly to the enrollee • request that communications concerning the enrollee not be sent to the policyholder
Health Insurer Obligations	A carrier or third party administrator is required to: • permit any enrollee to submit a confidential communication request • inform enrollees of their right to make confidential communication requests • create a procedure for making requests that is easy to understand and complete • allow enrollees to use a standardized form created pursuant to the law • allow enrollees at the discretion of the insurer to make a request electronically or by telephone • act on electronic requests within 7 days and hard copy requests within 30 days • inform enrollees of the status of their request if they inquire
Insurance Agency Obligations	The Department of Consumer and Business Services is required to: • work with stakeholders to create a standardized form for enrollees to use to make confidential communications requests • submit a report to the legislature by December 1, 2016, regarding progress on implementation of H.B. 2758

H.B. 2758 has several noteworthy and important features that make it comprehensive in its reach. First, it applies to all enrollees in commercial health insurance plans regulated by the state, including minors as well as adults. Second, it applies to a broad range of communications. Third, requests that communications be confidential may be made with respect to any services, not just sensitive services such as family planning or mental health services. In spite of its breadth as written, and the support it had leading to its enactment, H.B. 2758 has not achieved as broad a reach in its implementation. (See *Implementation Progress*.)

37 Or. Rev. Stat. § 192.556 (11)(a).

Origins of the Statute

The passage of H.B. 2758 was preceded by considerable interest among family planning and other health care providers, advocates, and public health officials about the effects of billing and insurance on confidentiality. Particular concerns focused on the needs of adolescents and individuals affected by domestic violence. The results of a 2015 Oregon Health Authority survey of providers on confidentiality issues indicated that approximately one third of survey respondents were reluctant to bill insurance due to confidentiality concerns, directed patients to other providers who could assure confidentiality, or lost revenue as a result of not billing insurance; respondents included more than 200 health care providers in Oregon.[38]

The specific impetus for H.B. 2758 came from family planning advocates. The bill was supported by a diverse coalition—including partners from reproductive health providers, domestic violence organizations, representatives of ethnically diverse community groups, and legal advocates—that communicated extensively with legislators. Resistance came primarily from the insurance carriers based on concerns about the logistics of implementation and the financial liability of policyholders. Some additional opposition came from parents' rights advocates. The legislature ultimately passed the bill on a party line vote.

Implementation Progress

Government agencies in Oregon, including both the Oregon Health Authority (OHA) and the Department of Consumer and Business Services (DCBS) moved promptly to implement H.B. 2758 once it was enacted into law. H.B. 2758 contained a requirement for DCBS to create a standardized form for confidential communications and submit a report to the legislature on implementation efforts by December 1, 2016.[39] The short implementation time frame established in the bill meant that the government agencies had to move very quickly.

State Agency Actions

DCBS convened an advisory committee of stakeholders to assist the development of the standardized form. The advisory committee included a medical provider, staff from OHA's Public Health Division, consumer advocates, and insurance carrier representatives. The advisory committee was aware of the need for the form to be user-friendly and therefore required the inclusion of only the minimum information necessary for an insurer to be able to identify the enrollee and the policy. The form was adopted by rule and made available on the DCBS website in September 2015, a few months after the law was enacted.[40] Although the form itself was made available online, the completed form had to be submitted in a hard copy paper version. DCBS worked with stakeholders and staff from the Adolescent Health Policy section of OHA's Public Health Division to develop a webpage for consumers to assist them in exercising their right to request confidential communications.[41] Because of OHA's relationships with providers, DCBS has and will continue to rely on OHA's assistance with implementation.

Among state agencies in Oregon, OHA took the most active steps to implement H.B. 2758. It incorporated a section about the law into its manual for family planning providers,[42] developed a set of slides

38 Oregon Health Authority, Patient Privacy and Confidentiality: A Survey of Health Care Providers in Oregon. January 2016. https://public.health.oregon.gov/HealthyPeopleFamilies/ReproductiveSexualHealth/Resources/Documents/Data%20and%20Reports/ProviderCconfidentialitySurveyResults.pdf.

39 Or. Rev. Stat. § 743B.555(4).

40 http://dfr.oregon.gov/gethelp/Documents/5059.pdf.

41 http://dfr.oregon.gov/gethelp/ins-help/health/Pages/privacy-rights.aspx.

42 Reproductive Health Manual for Oregon: A Guide for Title X and CCare Clinics. https://public.health.oregon.gov/HealthyPeopleFamilies/ReproductiveSexualHealth/Resources/Documents/FP_Program_Manual/eManual.pdf.

for a presentation for providers,[43] and created a background document on H.B. 2758[44] and a poster for health care providers to use to make patients aware of the law. OHA also conducted interviews about confidentiality with school-based health care providers, which revealed that despite some general familiarity with the law, there was also a great deal of uncertainty about the process for making requests and lack of confidence that the process is secure.

Role of Insurance Carriers

In addition to the state agencies, insurers took some steps to implement H.B. 2758, using multiple methods for outreach, including both traditional notices to enrollees and publications for medical providers as well as social media and company websites. The administrative rules issued by DCBS contained requirements for the data that insurers were required to report one time on implementation of the law. The report DCBS submitted to the legislature indicated that in the first six months after the law became effective, 90 requests were made for redirection (i.e. confidential communication requests) and 41 complaints were filed, 39 of which were against one insurer.[45]

Stakeholders in Oregon had different perceptions of the insurance carriers' stance regarding the new law, with some viewing them as simply going through the motions of implementation, and others seeing them as acting in good faith. Beyond the one-time report to the legislature required by the bill, there is no mechanism in place to assess carrier compliance on an ongoing basis.

Provider and Patient Concerns

In spite of the steps taken by DCBS, OHA, and insurers, many providers and patients seemed unaware of the law nearly two years after it was enacted. Moreover, few providers had taken formal steps to implement it. This lack of implementation by providers and apparent minimal use by enrollees seems to be attributable to several factors:

- hesitation by providers to offer guarantees to patients based on processes in which they are not involved;
- general mistrust of insurers on the part of many family planning providers and other health care providers;
- lack of detailed information available to providers about the requirements of the law and how they should be implemented;
- patients' lack of understanding of how insurance works;
- burden on patients to initiate and follow through on confidential communication requests without sufficient support from insurers or providers;
- concern that the time frames for insurance carrier implementation of a confidential communication request are too long (up to 30 days for a hard copy request) to be useful to patients; and
- concerns about the lingering issue of information about deductibles, coinsurance, and other financial liabilities going to policyholders.

43 Protecting Patient Confidentiality—What You Need to Know, February 18, 2016.

44 Protecting Patient Privacy: The Oregon Confidential Communication Request—What Providers Need to Know. https://public.health.oregon.gov/HealthyPeopleFamilies/ReproductiveSexualHealth/Resources/Documents/Data%20and%20Reports/PatientPrivacyProviderEducation.pdf.

45 Report of the Department of Consumer and Business Services on the Effectiveness of the Confidential Communication Process in Accordance with House Bill 2758 (2015). http://dfr.oregon.gov/business/report-data/Documents/legislature/2016-dfr_legislation-reports_hb2758.pdf.

Nevertheless, many stakeholders expressed ongoing interest in efforts to improve confidentiality protections for patients and sustainability for providers through both more effective implementation of H.B. 2758 and other measures such as:

- further education to providers by OHA on the details of the requirements of H.B. 2758 and how the law should be implemented;
- better information from insurance carriers about the steps they take to facilitate submission of confidential communication requests and implement requests received;
- clear assurance from carriers that they actually redirect communications when requests are received from enrollees;
- educational posters containing more detailed information about the law to be displayed at service sites;
- a more patient-friendly website about how to request insurance communication redirection as assured by the law;
- a standardized form for confidential communication requests that can be filled out and submitted electronically;
- mechanisms for providers to split bills and segment claims so that services needing greater confidentiality protection can be separated from less sensitive services; and
- procedures for ensuring that patients have an opportunity at each health visit to complete paperwork regarding confidential communication requests.

Lessons for State Advocates

A number of important themes related to the enactment and implementation of H.B. 2758 emerged from interviews with key informants in Oregon and may offer useful lessons for advocates in other states.

Concerned and Committed Stakeholders

Coalition of Providers and Advocates

Oregon was fortunate that leadership emerged in the family planning community to pursue a legislative approach to increasing confidentiality protections in the insurance arena. Once a bill was proposed, a coalition of providers and advocates supported it with concerted advocacy, which found a positive reception in the state legislature.

Actively Engaged Public Health Officials

Both prior and subsequent to the enactment of H.B. 2758, Oregon public health officials took great interest in confidentiality issues affecting providers and patient populations. They expressed this interest by conducting surveys, working with stakeholders, supporting the insurance agency's implementation efforts, and conducting a range of implementation efforts of their own.

Oregon Policy Landscape

Protections for Minors

Oregon law contains provisions that provided an important foundation for extending H.B. 2758 to include minors. In addition to the range of laws allowing minors to consent to various specific services, Oregon has a statute that authorizes minors to consent to most of their own care beginning at age 15. Confidentiality protections also extend to situations in which minors are allowed to consent for their own care.

Generous Health Insurance Programs

In the past, Oregon has had an expansive approach toward health insurance, Medicaid, and family planning, including a family planning waiver program, CCare. More recently, the enactment of the ACA led Oregon to expand Medicaid and implement other beneficial provisions thus expanding coverage and benefits to large numbers of Oregonians. This environment has enabled many safety-net providers to offer confidential care to their patients and helped them be receptive to H.B. 2758.

Implementation Terrain

Wary Attitudes

In spite of committed and receptive stakeholders and a generally positive policy landscape in Oregon, attitudes toward H.B. 2758 have been cautious in ways that have limited full-scale implementation of the law. Generalized suspicion of insurers and lack of trust that the carriers will effectively honor confidential communication requests have made providers reluctant to encourage their patients to submit confidential communications requests and pursue redirection of communications through their insurance carrier. Without either significant facilitation by insurers or active support from providers, patients have neither been aware of or capable of initiating the process on their own without support.

Absence of Enforcement Mechanisms

Neither the Oregon insurance agency nor the public health agency have reporting requirements and enforcement mechanisms available to hold insurance carriers accountable for implementing H.B. 2758.

Need for Safety-Net Sustainability

Safety-net providers in Oregon are interested in finding ways to improve their sustainability as long as the means of doing so do not require them to limit privacy protection for their patients. In the past, providers have been willing to forgo revenue or refer patients to other providers in order not to risk confidentiality breaches through the insurance billing process; the policy landscape in Oregon, including the availability of programs like CCare, has allowed them to do this. However, sustainability is an increasingly urgent concern that is motivating providers to look at new avenues of capturing all realizable revenue including measures such as H.B. 2758.

Conclusion

Oregon is one of several states that, in recent years, has taken active steps to address the long-standing concern that billing and communications associated with insurance claims can lead to loss of confidentiality. A breach of confidentiality presents particular risks for vulnerable individuals insured as dependents who seek sensitive services or have special needs for privacy protection. Against the backdrop of a positive policy environment and with the cooperation of a receptive legislature and public health agency, family planning advocates and a coalition of other health care and safety-net providers successfully pushed for enactment of H.B. 2758. This law allows enrollees in commercial health insurance to request confidential communications and requires insurers to honor those requests. H.B. 2758 is an ambitious attempt to address the conundrum of confidentiality and insurance: it applies to a broad range of insurer communications, covers both minors and adults, and is not limited to sensitive services. Even so, its implementation has not yet achieved the law's aims. Implementation has been hampered by formal compliance but seemingly insufficient efforts on the part of insurers, lack of adequate awareness on the part of patients and providers, and reluctance by providers to trust insurers enough to risk their patients' privacy. The commitment of providers and public health officials in Oregon offers hope for future progress.

Appendix A: List of Key Informants

The *Confidential & Covered* project staff would like to thank the many key informants that contributed to this work. All comments are a composite of interviews conducted, and comments should not be construed to represent the views of the organizations listed below.

Organization	Name	Title
Kaiser Permanente Physicians and Surgeons	Anne Toledo, MD	Physician, Mt. Talbert Medical Office, Urgent Care Department
Multnomah County Health Department SBHC Program	Steven Bardi	Program Supervisor
Multnomah County Health Department SBHC Program	Kristin Case	Clinical Lead Provider/Nurse Practitioner
Multnomah County Health Department SBHC Program	Alex Lowell	Program Manager
Oregon Division of Financial Regulation	Gayle Woods	Senior Policy Advisor, Department of Consumer and Business Services
Oregon Health Authority	Emily L. Elman	Reproductive Health Program Senior Policy Analyst, Public Health Division
Oregon Health Authority	Kate O'Donnell, MPH	SBHC Systems Development Specialist, Public Health Division, School-Based Health Center Program
Oregon Health Authority	Helene M. Rimberg	Adolescent, Genetics and Reproductive Health Section Manager
Oregon Health Sciences University	Barbara Long, MD	Physician (emerita), Adolescent & Young Adult Clinic, Doernbecher Children's Hospital
Oregon Health Sciences University	Wayne Sells, MD	Division Head, Division of Adolescent Medicine, Doernbecher Children's Hospital
Outside In	John Duke, MD	Director of Strategic Partnerships
Planned Parenthood Advocates of Oregon	Laurel Swerdlow, MPH	Advocacy Director
Planned Parenthood Columbia Willamette	Stacy Cross	President & CEO
Planned Parenthood Columbia Willamette	Kathy J. S. Fritz, JD, BSN	Corporate Compliance Manager
Planned Parenthood Columbia Willamette	Hayley Nunn	Director of Strategic Initiatives
Planned Parenthood of Southwestern Oregon	Lisa Gardner	President & CEO
Planned Parenthood of Southwestern Oregon	Sera R. Miller, OPMA	Quality Improvement & Compliance Coordinator
Reed College Health & Counseling Center	Jen Edman, MD	Physician

Appendix B: The Oregon Statute

Or. Rev. Stat. § 743B.555 Confidential communications.

(1) As used in this section:
(a) "Carrier" has the meaning given that term in ORS 743B.005.
(b) "Communication" includes:
(A) An explanation of benefits notice;
(B) Information about an appointment;
(C) A notice of an adverse benefit determination;
(D) A carrier's or third party administrator's request for additional information regarding a claim;
(E) A notice of a contested claim;
(F) The name and address of a provider, a description of services provided and other visit information; and
(G) Any written, oral or electronic communication described in this paragraph from a carrier or a third party administrator to a policyholder, certificate holder or enrollee that contains protected health information.
(c) "Confidential communications request" means a request from an enrollee to a carrier or third party administrator that communications be sent directly to the enrollee and that the carrier or third party administrator refrain from sending communications concerning the enrollee to the policyholder or certificate holder.
(d) "Protected health information" has the meaning given that term in ORS 192.556.
(2) A carrier and a third party administrator doing business in this state:
(a) Shall permit any enrollee to submit a confidential communications request.
(b) Shall update an enrollee on the status of implementing a confidential communications request upon the enrollee's inquiry.
(3) The procedure adopted by a carrier or third party administrator for enrollees to make confidential communications requests:
(a) Must allow enrollees to use the form described in subsection (4) of this section and may also allow enrollees to make the request by other means such as telephone or the Internet.
(b) Shall ensure that the confidential communications request remains in effect until the enrollee revokes the request in writing or submits a new confidential communications request.
(c) Shall ensure that the confidential communications request is acted upon and implemented by the carrier or third party administrator not later than seven days after receipt of a request by electronic means or 30 days after receipt of a request in hard copy.
(d) May not require an enrollee to waive any right to limit disclosure under this section as a condition of eligibility for or coverage under a health benefit plan.
(e) Must be easy to understand and to complete.
(4) The Department of Consumer and Business Services shall work with stakeholders to develop and make available to the public a standardized form that an enrollee may submit to a carrier or third party administrator to make a confidential communications request. The department may encourage health care providers to clearly display the form and make it available to patients. At a minimum, the form must:
(a) Inform an enrollee about the enrollee's right to have protected health information sent to the enrollee and not disclosed to the policyholder or certificate holder;
(b) Allow an enrollee to indicate where to redirect communications containing protected health information, including a specified mail or electronic mail address or specified telephone number;
(c) Allow an enrollee to designate a mail or electronic mail address or telephone number for the carrier or third party administrator to contact the enrollee if additional information or clarification is necessary to process the confidential communications request; and
(d) Include a disclaimer that it may take up to 30 days from the date of receipt for a carrier or third party administrator to process the form.
(5) If an insurer makes an adverse benefit determination regarding a claim concerning health care provided to an enrollee who has made a confidential communications request:
(a) The enrollee has the right to appeal the determination; and
(b) The policyholder or certificate holder may not appeal the adverse benefit determination unless the enrollee has signed an authorization to disclose claims information relevant to the appeal.
(6) As used in this section, "enrollee" does not include an individual who is in the custody of the Department of Corrections.
(7) The department shall interpret this section in a manner that is consistent with federal law.

Appendix C: The Oregon Form[46]

OREGON
REQUEST FOR CONFIDENTIAL COMMUNICATION

You have the right to have protected health information* sent to you instead of the person who pays for your health insurance plan. You can ask to be contacted:

- At a different mailing address
- By email
- By telephone

To make this request, complete, sign, and send this form to your insurer. You can send it by mail, fax, or email. To find contact information for your health insurance plan, visit http://www.oregon.gov/DCBS/insurance/gethelp/health/Pages/confidential-communications.aspx.

Please note: It can take up to 30 days from the date your insurer receives your hard-copy request to process it. Requests made by telephone, by email, or over the Internet must be implemented by your insurer within seven days of receipt.

Name of your health insurance company

Your name

Your date of birth Your insurance member # (if available) Your insurance group # (if available)

Please tell us how we should contact you. If you mark more than one way, put a "1" next to your first choice, "2" next to your second choice, and so on. Your health plan must contact you through at least one of the communication methods noted below:

- ☐ Email to the following email address:_____
- ☐ U.S. Mail at this address:_____
  _____
- ☐ Text to the following phone #:_____
- ☐ Message through online insurance patient portal: _____
- ☐ Phone call to the following number:_____

IMPORTANT! The following two sections MUST be completed:

1. If a communication cannot be sent in the above selected formats, or if you want information by U.S. mail, provide the address below:
   _____
2. Is there a phone number or email to use if there are questions regarding this request?
   _____

_____

Signature Date

PLEASE NOTE: If you change insurance companies, you will need to make a new request to the new insurance company. Until your request is processed, the insurance company may continue to send your protected health insurance to the person who is paying for your health insurance.

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46 dfr.oregon.gov/gethelp/Documents/5059.pdf.

*Protected Health Information means individually identifiable health information your insurer has or sends out in any form.
Confidential communication of protected health insurance covered under this request includes:

- An explanation of benefits notice
- Information about an appointment
- A claim denial
- A request for additional information about a claim
- A notice of a contested claim
- The name and address of a provider, a description of services provided, and other visit information
- Any written, oral, or electronic communication described on this list to a policyholder, certificate holder, or enrollee that contains protected health information

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About *Confidential & Covered*

Confidential & Covered is a multi-year research project designed to understand the factors that may make it difficult for Title X-funded family planning providers to seek reimbursement due to patient privacy concerns. Learn more at www.confidentialandcovered.com.

About NFPRHA

NFPRHA represents the broad spectrum of family planning administrators and clinicians serving the nation's low-income and uninsured. NFPRHA serves its members by providing advocacy, education, and training to those in the family planning and reproductive health care fields. For over 40 years, NFPRHA members have shared a commitment to providing high-quality, federally funded family planning care - making them a critical component of the nation's public health safety net.