



REPORT OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES ON THE EFFECTIVENESS OF THE CONFIDENTIAL COMMUNICATION PROCESS

In Accordance with House Bill 2758 (2015)

The Department of Consumer and Business Services (DCBS) is pleased to submit this report to the Legislative Assembly, as directed by ORS 192.245. Paper copies of this report may be obtained at 350 Winter St. NE Salem, OR 97302. Electronic copies of this report may be downloaded at <http://dfr.oregon.gov/pages/index.aspx>.

INTRODUCTION

House Bill 2758 (2015) requires DCBS to report on the effectiveness of the process established through this legislation for allowing health insurance enrollees to redirect insurance communications containing protected health information, the extent to which enrollees are using the process and whether the process is working properly. DCBS is also required to report on the education and outreach activities conducted by carriers or third party administrators to inform Oregonians about their right to have protected health information redirected.

In addition to reporting on the above, HB 2758 required DCBS to work with stakeholders to develop and make available to the public a standardized form for enrollees to use when making a confidential communications request.

BACKGROUND

DCBS convened an advisory committee to assist in developing the standardized form for use in requesting confidential communication of protected health information. The advisory committee, which included a medical provider, staff from the Oregon Health Authority's Public Health Division, consumer advocates and insurance carrier representatives, met on July 21, 2015 and September 2, 2015. This group also provided feedback on the data necessary to measure the effectiveness of this bill.

During the stakeholder meetings, carriers informed DCBS that allowing redirection of protected health information was a process they had in place prior to HB 2758.

The standardized form was adopted by rule and made available on the DCBS website in September of 2015. The standardized form is available online at <http://dfr.oregon.gov/gethelp/Documents/5059.pdf>.

The administrative rules also set forth the data reporting requirements for carriers and third party administrators to establish a baseline and to report on experience for the first six months this new law was effective. The baseline data included the following:

- Total number of requests to redirect confidential information and the method used to make the request (telephone, email, hard copy);
- Timeliness of processing the request segregated by method used (telephone, email, hard copy);
- Number of complaints and grievances received that were related to confidential communication;
- Total number of enrolled members;
- Total number of policyholders or certificate holders; and
- Total number of dependent members.

The department engaged with stakeholders and staff from the Adolescent Health Policy section of the Oregon Health Authority's (OHA) Public Health Division to develop a webpage for consumers to assist them in exercising these privacy rights. The webpage, <http://dfr.oregon.gov/gethelp/ins-help/health/Pages/privacy-rights.aspx>, includes links to carriers' information about how to request confidential communication and also includes a link to information for health care providers.

FINDINGS RELATED TO HB 2758

Data Collection

Through the data collection process, the department learned that not all entities required to report collected the baseline information in the same format specified in the rules. For example, some carriers were unable to identify the reason a confidential communication was made because they had not implemented a process to track this information. In one company, some of the requests could have been related to a release of information to another person about a specific condition, so for that company the data submitted is likely to include a count of requests unrelated to HB 2758.

Once they were notified of the format, entities responsible for reporting began collecting data that aligns with the format specified in rule. As a result, comparisons between the baseline data and the data for the first six months this law has been in effect can only give us a general idea of how well the law is working.

Usage

Ninety requests for redirection of protected health information were made during the first six months of 2016, which is about 50% less than the number of requests made during the baseline period. While one may expect to see an increase in the number of requests following passage of HB 2758, the fact that some reporting entities were unable to segregate these requests from other general requests for confidential communication limits our full understanding of the effectiveness of the new law.

Timeliness of Requests

It appears there has been improvement in the timeliness of responding to requests for confidential communication since HB 2758 was enacted. Baseline data revealed:

- 84% of electronic and telephone requests were processed within seven days or less; and
- 97% of requests made in hard copy format were processed within 30 days or less.

Over the first six months of 2016, entities reported 100% compliance with the processing requirements for requests received via each of these formats.

Consumer Complaints

The department learned of just one complaint filed with insurers during the baseline period compared to 41 reported during the first six months after HB 2758 became effective. Of the 41 complaints, 39 were made against just one insurer.

The department did not receive any complaints regarding requests for confidential communication during the first six months of 2016.

Method of Outreach

Carriers and third party administrators used these mechanisms for outreach and education about Oregonians' rights to have protected health information redirected:

- Notification upon initial enrollment in a plan
- Inclusion of information about these rights in an annual notice sent to policyholders. This is one of most prominent methods of outreach used by carriers.
- Social media platforms
- Publications for medical providers
- Company websites for both consumers and medical providers
- Member newsletter
- Communication with group administrators via producer

Starting in 2017, one carrier will be including a disclosure about these rights on the evidence of coverage form furnished to enrollees.

As part of our outreach to OHA, the department learned of OHA's interviews with Oregon School-Based Health Centers this year. One of the items they discussed was directly related to HB 2758. While the majority of those interviewed (23 of 29) were familiar with this new law, 26 of the respondents had neither developed an internal process to request confidential communication nor worked with a client to submit a request. Concerns that school-based health centers expressed about HB 2758 included:

- The actual process for requesting confidential communication;
- Length of time allowed for insurers to respond to these requests;
- Lack of confidence that the process is secure;
- Risk of disclosure to parents; and
- Lack of confidence in an insurance company's ability to respond to confidential communication requests in a prompt and thorough manner.

Although tools are in place to facilitate redirection of protected health information, more work is needed to ensure certain vulnerable populations, such as adolescents, have access to this right to privacy.

Continuing to collaborate with OHA in developing additional resources for patients, providers and insurers along with partnering with OHA in outreach efforts will help provide these consumers with the knowledge and tools they need in order to exercise these rights.