

Legislative Committee

Monday, February 6, 2012

12:00 p.m.

Lunch will be available at 11:30 a.m.

Local Government Center, Room 113

1201 Court Street NE

Salem, Oregon

Agenda

12:00 p.m.

1. Call to order

President Tammy Baney

1.1 Agenda approval **(Action)**

1.2 Minutes of January 23, 2012 meeting **(Action)** *page 3*

12:05 p.m.

2. Discussion with Senator Jackie Dingfelder

Emily Ackland & Mike McArthur

Mercury lighting & product stewardship

12:30 p.m.

3. Action or possible action items

3.1 Federal legislative agenda

Mike McArthur

– Willamette Basin Reservoir *page 7*

Gil Riddell

– EPA's guidance on waters protected by Clean Water Act *page 8*

Emily Ackland

– Renewable energy production tax credit *page 10*

Emily Ackland

3.2 Dam resolution *page 11*

Commissioner Pope

3.3 NACo resolution on stormwater runoff from logging roads *page 13*

Emily Ackland

3.4 NACo resolution on energy storage *page 15*

Emily Ackland

3.5 CCO governance *page 16*

Commissioner Carlson & Mark Nystrom

3.6 Governance Committee work plan *page 26*

Commissioners Duyck & Fisher

3.7 Other priority items from committees

President Baney

1:30 p.m.

4. Discussion with Treasurer Ted Wheeler

Mike McArthur

HB 4040 Oregon Investment Act

1:50 p.m.

5. Steering Committee reports

5.1 Communications Policy

Jeanne Burch, chair

5.2 Economic & Community Development

Tony Hyde & Diane McKeel, co-chairs

5.3 Energy & Environment

Larry Givens, chair

- 5.4 Governance
- 5.5 Human Services
- 5.6 Public Lands
- 5.7 Public Safety
- 5.8 Transportation
- 5.9 Water Policy

Andy Duyck & Earl Fisher, co-chairs
 Janet Carlson, chair
 Steve Grasty & Joe Laurance, co-chairs
 Jim Bernard & Jay Dixon, co-chairs
 Al Switzer & Fred Warner, co-chairs
 Craig Pope & Alan Unger, co-chairs

2:20 p.m.

6. Affiliate Organizations reports

- 6.1 OSACA (Assessors)
- 6.2 OCCA (Clerks)
- 6.3 NACA (County Administrators)
- 6.4 ODAA (District Attorneys)
- 6.5 OACES (Engineers & Surveyors)
- 6.6 OJPA (Justices of the Peace)
- 6.7 OSSA (Sheriffs)
- 6.8 OACTC (Tax Collectors)
- 6.9 OACTFO (Treasurers & Finance Officers)

Scot Langton
 Dana Jenkins
 Ralph Wyatt
 Eric Nisley
 Robb Paul
 Charles Fadeley
 Jack Crabtree
 Bob Vroman
 Laurie Steele

2:35 p.m.

7. Other business

- 7.1 AOC Legislative Reception, February 20, 4:30-6:30 p.m., Capitol Galleria

President Baney

8. Adjourn

President Baney

Next AOC Legislative Committee meeting – February 20, 2012
12 p.m. at the Local Government Center, Salem

Scheduled AOC Legislative Committee meetings for 2012

- February 20
AOC Legislative Reception, February 20, 4:30-6:30 p.m., Capitol Galleria
- March 12
- April 9
- May 14
- September 10
- October 8
- December 10

June 10 – 12, AOC Spring Conference (*in Deschutes County, location TBD*)
 November 13 – 15, AOC Annual Conference (*location TBD*)

Association of Oregon Counties
Legislative Committee

Monday, January 23, 2012
12:00 p.m.

Local Government Center, Room 113
1201 Court Street NE
Salem, Oregon

Present: First Vice President Mary Stern, Judge Pat Shaw, Commissioner Earl Fisher, Commissioner Tony Hyde, Commissioner Joe Laurance, Commissioner Larry Givens, Commissioner Gary Thompson, Commissioner Sam Brentano, Commissioner Chris Perry, Commissioner Annabelle Jaramillo, Commissioner Jeanne Burch, Commissioner Alan Unger, Commissioner Craig Pope, Commissioner Will Tucker, Commissioner Jim Bernard, Commissioner Mike McCabe, Commissioner Greg Malinowski

Via telephone: President Tammy Baney, Commissioner Mark Labhart, Commissioner Bill Hansell, Commissioner Tim Josi, Commissioner Jay Dixon, Administrator Ralph Wyatt, Public Works Director Robb Paul

Guests: Commissioner Henry Heimuller, Commissioner Ann Lininger, Bobby Green, Jeremy Vandehey, Bill Thomas, Betty Roppe, Steve Forrester, Jim McCauley, Barb Young, Troy Rayburn, Jared Anderson, Greg Wolf, Lisa Howard, Troy Rayburn, Althea Gregory (via telephone)

Staff and consultants: Mike McArthur, Gil Riddell, Emily Ackland, Mark Nystrom, Mike Eliason, Paul Snider, Eric Schmidt, Laura Cleland, Doris Penwell, Joann Hendrix

First Vice President Mary Stern called the meeting to order at 12:00 p.m. and asked for self-introductions.

Commissioner Tony Hyde moved to approve the agenda of January 23, 2012, seconded by Commissioner Annabelle Jaramillo. Motion carried.

Commissioner Larry Givens moved to approve the minutes of the January 9, 2012 meeting, seconded by Commissioner Jaramillo. Motion carried.

Guest Speakers

Health Transformation

Dr. Bruce Goldberg, director of the Oregon Health Authority, reviewed LC 97. He said that LC 97 provides for legislative approval of Oregon Health Authority proposals for coordinated care organizations. He stated that the concept requires the authority to report quarterly to legislative committees on implementation of the coordinated care organization model of health care delivery. Dr. Goldberg said that the concept authorizes sharing and use of information between Department of Consumer and Business Services and the authority for specified purposes. The

bill goes on to prohibit discrimination against types of providers by coordinated care organizations and specified managed care organizations.

Mass Ingenuity, Budgeting for Outcomes

Mass Ingenuity President and CEO Aaron Howard shared that the company is a management-consulting firm that provides organization development and transformation services to the public and private sectors. Mass Ingenuity's mission is to close the gap between what leaders envision and what employees deliver.

Action or possible action items

Priority Items from Committees

Public Safety

Commissioner Jim Bernard spoke in reference to several legislative concepts that will be presented during the February 2012 Legislative Session. Commissioner Bernard asked for support by the Legislative Committee on the following:

LC 294 & 295 – Address several issues that have arisen since the passage of HB 2710 concerning filing fees for civil actions.

Commissioner Bernard moved to support LC 294 and 295, seconded by Commissioner Hyde. Motion carried.

LC 296 – Addresses filing fees.

Commissioner Bernard moved to support LC 296, seconded by Judge Pat Shaw. Motion carried.

LC 170 – Requires Office of Emergency Management to distribute 9-1-1 tax revenues directly to 9-1-1 jurisdictions. It also speaks to distributions from emergency communications account after January 1, 2013.

Commissioner Bernard moved to oppose LC 170, seconded by Commissioner Larry Givens. Motion carried.

LC 79 – Requires moneys in emergency communications account, including enhanced 9-1-1 sub-account, to be used for purposed of 9-1-1 emergency communications unless statutory exception is made during state of fiscal emergency.

Commissioner Bernard moved to support LC 79, seconded by Commissioner Givens. Motion carried.

LC 97 – Provides legislative approval of Oregon Health Authority proposals for coordinated care organizations.

Commissioner Bernard moved to support LB 97, seconded by Commissioner Hyde. Motion carried.

LC 101 – Reduces the amount payable by municipal or justice court for criminal fine account from \$60 to \$45.

Commissioner Bernard moved to support LC 101, seconded by Commissioner Hyde. Motion carried.

Endorse NACo proposal

Commissioner Bernard requested Legislative Committee endorsement of NACo's proposal regarding providing Medicaid benefits to inmates.

Commissioner Bernard moved endorsement of NACo's proposed resolution regarding providing Medicaid benefits to inmates, seconded by Commissioner Pope. Motion carried.

NACo Resolution on Energy Storage

Judge Gary Thompson requested consensus of legislative committee members to submit to NACo the proposed resolution on energy storage. NACo supports legislation that encourages the development of energy storage technology such as, but not limited to, S. 1845, the Storage Technology for Renewable and Green Energy Act of 2011.

Consensus was to submit to NACo for review but resubmit to legislative committee for a vote to support at February 6 meeting.

Facebook Data Service Center/Enterprise Zone Exemption

Gil Riddell introduced the topic of economic development and revenue/taxation issues in regards to Facebook data centers in Crook County. Judge Mike McCabe introduced Betty Roppe, mayor of Prineville, and Steve Forrester, city manager of Prineville, who spoke on the improvement of job availability in their community since the data center has opened.

Steering Committee Reports

Communications Policy – no report

Economic & Community Development – no report

Energy & Environment – no report

Governance – no report

Human Services – no report

Public Lands & Natural Resources – no report

Public Safety – no report

Transportation – no report

Water Policy – no report

Affiliate Organizations Reports

Assessors – no report

Clerks – no report

Administrators – no report

District Attorneys – no report

Engineers and Surveyors – no report

Justices of the Peace – no report

Sheriffs – no report

Tax Collectors – no report

Treasurers & Finance Officers – no report

Other Business

Community Corrections Formula

Ginger Martin, assistant director of the Oregon Department of Corrections, reviewed the Community Corrections Partnership Act of 1997, including the goals of Oregon's realignment to improve financial status, the criminal justice system and the building of the community corrections budget for 2011-2013.

NACo

Eric Schmidt announced that the NACo Legislative Conference starts on March 3. He asked that anyone interested in a White House tour please fill out the authorization form and he will submit the names of the Oregon delegation to White House security for screening of individuals prior to the tour.

There being no further business, the meeting was adjourned at 3:00 p.m.

Date: February 6, 2012
To: AOC Legislative Committee
From: Gil Riddell, policy coordinator
Subject: AOC 2012 Federal Agenda: Willamette Basin Reservoir – support federal funding for small-scale allocation study

Requested action:

Join a broad group of Oregon stakeholders to obtain federal funding for a small-scale allocation study of the Willamette Basin Storage Project.

Background:

The 13 reservoirs in the Willamette Basin Project have “conservation storage” of 1.64 million acre-feet. The storage projects were authorized in 1938 and 1950 to control floods, and to release water for navigation, generation of hydroelectric power, irrigation, recreation, potable water supply and reduction of stream pollution. Of the stored water, about 1.56 million acre feet have not been contracted.

State and federal agencies and stakeholders have been engaged in efforts to address the diverse demands for stored water in the basin. Stakeholders include state and local governments, agricultural groups, environmental groups, water utilities and water control districts. Beginning in 1996, the U.S. Army Corps of Engineers (USACE) began to work cooperatively with the state and stakeholders to evaluate whether changes in operation or allocation of water would better serve water resources needs. The study was put on hold in 2000 following listing of Willamette River stocks of salmon and steelhead as threatened under the Endangered Species Act, but was intended to be reinitiated after the biological opinion was issued. The National Oceanic and Atmospheric Administration issued the Bi-Op in 2008, but federal agencies have been precluded from participating in discussions due to lack of funding.

The USACE estimates that it would cost \$200,000 to fund a year of this study. Senators Wyden and Merkley have requested the secretary of the USACE to include this funding in the agency’s budget.

Date: February 6, 2012
To: AOC Legislative Committee
From: Emily Ackland, environmental policy manager
Subject: AOC 2012 Federal Agenda: EPA's "Guidance on Identifying Waters Protected by the Clean Water Act"

Requested action:

Add to the AOC Federal Agenda information on how the EPA's draft "Guidance on Identifying Waters Protected by the Clean Water Act" will affect Oregon counties if is implemented as rule. Also, include in the packet the requests of the EPA that are bulleted below.

Background:

The following comments were submitted to the EPA in a letter from AOC. These comments align with NACo's platform and NACo has also submitted comments to EPA.

The Environmental Protection Agency intends on using its draft "Guidance on Identifying Waters Protected by the Clean Water Act" to develop its rule regarding jurisdiction of waters under the Clean Water Act (CWA). Counties will be impacted by the implementation of the guidance, particularly because the regulatory jurisdiction of the EPA and U.S. Army Corps of Engineers (ACOE) will be expanded.

Expanding regulatory jurisdiction and requiring permits to work in small waterbodies will be an unnecessary requirement that will be burdensome to counties and ultimately not do much more to serve the environment.

Expanding the coverage of the CWA will also trigger other federal regulations such as the Endangered Species Act and the National Historic Preservation Act. This could involve extensive environmental studies and public comment periods for even small scale projects. This will be costly for counties and time consuming for regulatory agencies.

With an increase in regulated waters, counties will be required to obtain more permits for road construction and maintenance activities that are associated with waterways. If this expansion of federal regulatory jurisdiction is to take place, it is critical that:

1. ACOE continue to honor existing maintenance exemptions for transportation related structures to keep the impact of the rule to a lesser degree;

2. The ACOE Nationwide Permits with section 401 certifications and Regional Conditions must be continued;
3. Other regulatory agencies impacted by this change, such as the National Marine Fisheries Service, must develop programmatic permits that expedite project review and permitting, particularly for routine actions;
4. Federal rules should include the flexibility to honor state regulatory processes with environmental programs. County road projects currently face problems with concurrently satisfying wetland mitigation criteria by both state and federal agencies.

This is because in Oregon, the ACOE removal/fill regulatory rules do not always accept the same form of mitigation (specifically the in-lieu fee programs) as the state fill/removal rules. Expanding federal jurisdiction over wetlands will exacerbate this problem, leaving wetland mitigation more difficult to successfully achieve and more expensive.

Date: February 6, 2012
To: AOC Legislative Committee
From: Emily Ackland, environmental policy manager
Subject: AOC 2012 Federal Agenda: Federal Renewable Energy
Production Tax Credit

Requested action:

Add to the AOC Federal Agenda a request for supporting the continuance of the Federal Renewable Energy Production Tax Credit (PTC)

Background:

The PTC was initiated in 1992 under the Energy Policy Act. Under present law, the PTC provides an income tax credit of 2.2 cents/kilowatt-hour for the production of electricity from utility-scale wind turbines. In the past, the credit had bipartisan support and has been renewed. Currently, the PTC is scheduled to expire on December 31, 2012.

In order to continue wind energy development, the wind industry needs a more consistent and longer-term federal tax policy. Extending the production tax credit this year and keeping it in its current form rather than delaying action, is critical to the stability and growth of wind energy production. A multi-year extension of at least four years would encourage investment of new capital, help catalyze the export of wind energy technologies and related products and support the goal of increasing domestic energy production. Without policy certainty, investors, developers and manufacturers will most likely move projects and jobs elsewhere.

Wind energy has been a large economic driver in Oregon. According to the American Wind Energy Association, the wind industry has been able to lower the cost of wind power by more than 90 percent, provide power to the equivalent of 10 million American homes and foster economic development in all 50 states. If extended, it will mean that federal dollars will continue to come into our state. Maintaining the PTC is a crucial piece to continue wind development and economic development in Oregon.

Date: February 6, 2012
To: AOC Legislative Committee
From: Gil Riddell, policy coordinator
Subject: Proposed AOC Resolution: Dam Removal or Breaching as Final Option

Requested action:

The proposed resolution calling for dam breaching or removal as the last option was recommended for AOC adoption unanimously by the AOC Water Policy Committee on January 23, 2012.



RESOLUTION 2012-

Dam Removal or Breaching as the Final Option

WHEREAS, the National Association of Counties American County Platform 2011-12 provides: “Before any decision is made to continue drawdowns, removal or breaching of dams, a full review of all relevant scientific and socioeconomic implications of such actions should be made and affected counties consulted”;

WHEREAS, dams can provide safe, healthful, economically viable, and culturally positive techniques for efficient use of water as a critical renewable resource, and clean pollution-free energy;

WHEREAS, dams provide water storage, flood control, irrigation management, fresh water for drinking and industrial uses, clean carbon-free hydroelectric generation opportunities, recreational opportunities, and appropriate levels of instream flow for fish and wildlife habitat;

WHEREAS, environmental values can be addressed more effectively by enhancing stream flow from reservoirs in a regulated manner than by non-management of flows;

WHEREAS, critical water management requires an informed weighing of competing needs and integration of economic, social, and environmental values;

WHEREAS, when properly managed, dams can play a key role;

NOW, THEREFORE, BE IT RESOLVED that the Association of Oregon Counties firmly agrees with the NACo American County Platform statement above;

BE IT FURTHER RESOLVED that AOC finds that all other means of water management by appropriate operation of a dam should be explored and rejected by relevant scientific and socioeconomic findings before there is a decision to breach or remove the dam.

February 6, 2012

Date: February 6, 2012
To: AOC Legislative Committee
From: Commissioner Larry Givens, chair
Energy & Environment Committee
Subject: NACo Resolution on Stormwater Runoff from Logging Roads
Staff: Emily Ackland, environmental policy manager

Requested action:

AOC support the proposed NACo resolution on stormwater runoff from logging roads.

Background:

This resolution was brought to NACo in 2011 and passed the NACo Board.

The current draft of the proposed NACo Resolution is as follows:

Issue: A statutory exemption for stormwater runoff from logging roads.

Proposed Policy: NACo supports the statutory exemption for logging roads (and forest roads) from the Clean Water Act's National Pollution Discharge Elimination System (NPDES) permits.

Background:

On August 17, 2010, the United States Court of Appeals for the Ninth Circuit held that a National Pollution Discharge Elimination System (NPDES) permit is required for stormwater runoff from logging roads.

The Clean Water Act (CWA) requires a National Pollution Discharge Elimination System (NPDES) permit for the discharge of any pollutant to any navigable water (AKA "water of the U.S.") from any point source. Since 1973, rules promulgated by the Environmental Protection Agency ("EPA") have distinguished between point source and non-point source pollution in the CWA. Non-point source pollution, which is not defined in the CWA, includes any source of water pollution not characterized as a point source discharge.

Included in the CWA rules is the so-called Silvicultural Rule found at 40 C.F.R. § 122.27(b)(1), which has remained substantially in its current form since 1976. The Silvicultural Rule specifically defines timber "harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff" to be "non point source silvicultural activities," and thus, excluded from NPDES permitting requirements.

The Ninth Circuit disagreed with the Silvicultural Rule, holding that stormwater runoff that is collected and channeled in a system of ditches and culverts before being discharged into streams and rivers constitutes a point source, and that EPA lacks authority to promulgate a rule to the contrary. The Ninth Circuit stated that Congress has a history of providing specific statutory exemptions for certain categories of discharges. The court went on to say that federal courts have invalidated EPA regulations that provided similar regulatory exemptions.

The court's decision has potentially sweeping implications. If broadly read, this opinion would require NPDES permits for every road in the country that is served by ditches or culverts that eventually discharge to natural surface waters and that is not already regulated by the CWA.

The court's opinion also leaves many critical questions unanswered. Even if the opinion were limited to logging roads, what constitutes a logging road? Contrary to the court's assumptions of fact, many forest roads, including the roads at issue in this case, are not dedicated just to logging. They are used for a variety of purposes, both public and private, beyond just logging. If this is the case, who is responsible for obtaining these required permits? The court did not address whether the permit obligation rests with the owner of the roads or every entity that transports logs on the roads, or even those using the roads to access the forest for recreation.

This proposed policy is consistent with current NACo policy that states that stormwater from all roads, gutters and ditches should not be considered a "water of the U.S." under the CWA.

Fiscal Urban/ Rural Impact: If rural county owned roads, such as logging or forest roads, require federal NPDES permits, this will be an unfunded mandate and preemption on county governments.

Sponsor: Tim Josi, Commissioner, Tillamook County, Oregon

Date: February 6, 2012
To: AOC Legislative Committee
From: Commissioner Larry Givens, chair
Energy & Environment Committee
Subject: NACo Resolution on Energy Storage
Staff: Emily Ackland, environmental policy manager

Requested action:

AOC support the proposed NACo resolution on energy storage.

Background:

The current draft of the proposed NACo Resolution is as follows:

Issue: Energy Storage

Proposed Policy: NACo supports legislation that encourages the development of energy storage technology such as, but not limited to S. 1845, the Storage Technology for Renewable and Green Energy Act of 2011.

Background: Energy produced from renewable sources such as wind and solar is increasing. Given the nature of these types of energy supplies however, it is generally harvested intermittently depending on the weather and/or time of day. Improvements in energy storage technologies will enable more efficient management of energy availability and demand while promoting further growth of renewable energy projects across the country.

Legislation such as the “Storage Technology for Renewable and Green Energy Act of 2011” (S. 1845) offer an investment tax credit for storage systems directly connected to the grid and for on-site storage projects (for businesses and homeowners). An increase in the amount of energy stored will make our nation’s electricity grid more reliable, secure, and enable more efficient use of energy sources.

Fiscal Urban/Rural Impact: Counties directly benefit from renewable energy projects. If storage of energy is increased, more renewable energy projects will be brought online. This will result in an increase in jobs and revenue to counties.

Sponsor: Gary Thompson, Judge, Sherman County, Oregon

Date: February 6, 2012
To: AOC Legislative Committee
From: Mark Nystrom, policy manager
Subject: CCO Governance

Requested action:

During the past few months, AOC has worked to influence health care transformation legislation regarding governance of coordinated care organizations (CCOs) through a variety of channels. The current version of OHA's Implementation Proposal is silent on counties involvement in the governance of CCOs. To strengthen this role, the legislative committee may be asked to support specific language to be used in an amendment. Four options are offered below for the committee's review. The bill follows the proposed options.

Proposed Health Care Transformation language that supports an enhanced county governance role. *(NOTE: staff prepared these amendments)*

- **OPTION 1 – HEALTH COUNCILS.** Offers all counties the opportunity to form health councils, as was provided to Central Oregon in SB 204 (2011), Oregon Laws, Chapter 418.

SECTION 1. (1) Any county or counties may form a health council when the governing body of each participating county adopts a resolution signifying the body's intention to do so.

SECTION 2. (1) The governing body of the health council shall consist of the following members, at a minimum:

(a) A formative governing body consisting of:

(A) One member each from the governing bodies of each county that is participating in the council, appointed by each body;

(B) The chief executive officers, or designees of the chief executive officers, of the health care systems serving the region; and

(C) The chief executive officers, or a designees of the chief executive officers, of the Medicaid contractors serving the region; and

(b) At least three members appointed by the formative council established under paragraph (a) of this subsection. Members appointed under this paragraph shall be representatives of:

- (A) Consumers or consumer advocates of physical and behavioral health services;
 - (B) Health care professionals;
 - (C) School districts or educational service districts; or
 - (D) The business community; or
- (2) The term of office of the members of the governing body is four years.
 - (3) A majority of the members of the governing body constitutes a quorum for the transaction of business.
 - (4) The governing body shall elect a member of the governing body to serve as the chairperson.
 - 5) If there is a vacancy for any cause, the appointing authority shall make an appointment to the vacated position to become effective immediately.
 - (6) The governing body may enter into necessary contracts, apply for and receive grants, hold and dispose of property and take other actions necessary to carry out the activities, services and responsibilities assumed by the governing body.
 - (7) The governing body may adopt rules necessary for the operation of the governing body.

SECTION 3. (1) A health council formed under Section 1 of this act may enter into agreements with a coordinated care organization for the purpose of promoting effective delivery of integrated health care to residents of the participating county or counties.

(2) A council shall consult with the Oregon Health Authority in the formation and execution of health council functions.

(3) The council shall implement the requirements of the local mental health authority in determining local needs for mental health services and developing a comprehensive local plan for the delivery of mental health services, pursuant to ORS 430.620(11) and the local public health authority in developing the local annual plan pursuant to ORS 431.385.

- **OPTION 2 – FINANCIAL RISK. Specifies that counties have a financial risk in the coordinated care organization structure.**

Amend ORS 414.625 as follows:

(o) Each coordinated care organization has a governance structure that includes:

(A) A majority interest consisting of the persons **or entities** that shares in the financial risk of the organization;

(B) The major components of the health care delivery system; and

(C) The community at large, to ensure that the organization’s decision-making is consistent with the values of the members and the community.

(2) Recognizing the financial risk to counties as providers of last resort, the interests of public health authorities pursuant to ORS 431.375(2) and local mental health authorities pursuant to ORS 430.630(1) shall be represented in the coordinated care organization governance structure. Financial risks represented by county participation in the coordinated care organization include, but are not limited to:

(a) Contributing general, special or in-kind funds to supplement community health needs;

(b) Delivering health care safety net services;

(c) Delivering health care for incarcerated adults and youths; or

(d) Assuming financial responsibility for civilly committed persons.

(3) [(2)] The authority shall consider the participation of area agencies and other nonprofit agencies in the configuration of coordinated care organizations.

(4) [(3)] 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. [2011 c.602 §4]

- **OPTION 3 – COMMUNITY VALUES. Specifies that counties as the public health and mental health authorities express community values in determining community needs and creating community plans for public and mental health.**

Amend ORS 414.625(1) as follows:

(o) Each coordinated care organization has a governance structure that includes:

(A) A majority interest consisting of the persons that share in the financial risk of the organization;

(B) The major components of the health care delivery system; and

(C) The community at large, **including representatives of the local public health authority pursuant to ORS 431.375(2) and the local mental health authority pursuant to ORS 430.630(11)**, to ensure that the organization’s decision-making is consistent with the values of the members and the community.

- **OPTION 4 – LOCAL GOVERNING BODY REPRESENTATION.** Requires the coordinated care governing board to include a representative of the local governing board.

Amend ORS 414.625(1) as follows:

(o) Each coordinated care organization has a governance structure that includes:

(A) A majority interest consisting of the persons that share in the financial risk of the organization;

(B) The major components of the health care delivery system; and

(C) The community at large to ensure that the organization’s decision-making is consistent with the values of the members and the community.

(D) An elected official or designee representing the governing body of the local public authority as defined in ORS 431.375 and the local mental health authority as defined in ORS 430.630 (11), unless the county declines to participate.

Senate Bill 1580

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber for Oregon Health Authority)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides legislative approval of Oregon Health Authority proposals for coordinated care organizations. Requires authority to report quarterly to legislative committees on implementation of coordinated care organization model of health care delivery. Authorizes sharing and use of information between Department of Consumer and Business Services and authority for specified purposes. Prohibits discrimination against types of providers by coordinated care organizations and specified managed care organizations.

Makes technical corrections.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to health care delivery; creating new provisions; amending ORS 414.033, 414.632, 414.635, 414.740 and 416.540 and sections 14, 62, 63 and 64, chapter 602, Oregon Laws 2011; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

LEGISLATIVE APPROVAL OF COORDINATED CARE ORGANIZATION PROPOSAL

SECTION 1. The Legislative Assembly approves the proposals presented by the Oregon Health Authority as required by section 13, chapter 602, Oregon Laws 2011.

SECTION 2. Section 14, chapter 602, Oregon Laws 2011, is amended to read:

Sec. 14. (1) Notwithstanding ORS [414.725 and 414.737] **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.

(2) Prepaid managed care health services organizations contracting with the authority under this section are subject to the applicable requirements for, and are permitted to exercise the rights of, coordinated care organizations under [sections 4, 6, 8, 10 and 12 of this 2011 Act and] ORS 414.153, **414.625, 414.635, 414.638, 414.651, 414.655, 414.679**, 414.712, [414.725,] 414.728, 414.743, 414.746, 414.760, 416.510 to 416.610, 441.094, 442.464, 655.515, 659.830 and 743.847.

(3) The authority may amend contracts that are in place on [the effective date of this 2011 Act] **July 1, 2011**, to allow prepaid managed care health services organizations that meet the criteria [approved by the Legislative Assembly under section 13 of this 2011 Act] **adopted by the authority under ORS 414.625** to become coordinated care organizations.

(4) The authority shall continue to renew the contracts of prepaid managed care health services

NOTE: Matter in **boldfaced** type in an amended section is new; matter [italic and bracketed] is existing law to be omitted. New sections are in **boldfaced** type.

1 organizations that have a contract with the authority on *[the effective date of this 2011 Act]* **July 1,**
 2 **2011**, until the earlier of the date the prepaid managed care health services organization becomes
 3 a coordinated care organization or July 1, 2014. Contracts with prepaid managed care health ser-
 4 vices organizations must terminate no later than July 1, 2017.

5 (5) The authority shall continue to renew contracts or ensure that counties renew contracts
 6 with providers of residential chemical dependency treatment until the provider enters into a con-
 7 tract with a coordinated care organization but no later than July 1, 2013.

8 (6) Notwithstanding *[sections 4 (1)(g) and 6 (2) of this 2011 Act]* **ORS 414.625 (1)(g) and 414.655**
 9 **(2)**, the authority shall allow for a period of transition to the full adoption of health information
 10 technology by coordinated care organizations and patient centered primary care homes. The au-
 11 thority shall explore options for assisting providers and coordinated care organizations in funding
 12 their use of health information technology.

13 **SECTION 3.** Section 62, chapter 602, Oregon Laws 2011, is amended to read:

14 **Sec. 62.** *[(1)]* The Oregon Health Authority may not implement any *[provisions of this 2011 Act*
 15 *that require]* **provision of chapter 602, Oregon Laws 2011, that requires** federal approval, or that
 16 *[require]* **requires** federal approval to receive federal financial participation, until the authority has
 17 received the **federal** approval.

18 *[(2) Until the authority has received the approval of the Legislative Assembly under section 13 of*
 19 *this 2011 Act, the authority may not:]*

20 *[(a) Adopt by rule the qualification criteria for a coordinated care organization under section 4 of*
 21 *this 2011 Act or contract with a coordinated care organization;]*

22 *[(b) Adopt by rule a global budgeting process or establish global budgets for coordinated care or-*
 23 *ganizations; or]*

24 *[(c) Implement a process for financial reporting by coordinated care organizations or establish fi-*
 25 *nancial reporting requirements under ORS 414.725 (1)(c).]*

26 **SECTION 4.** Section 63, chapter 602, Oregon Laws 2011, is amended to read:

27 **Sec. 63.** The amendments to *[section 8 of this 2011 Act]* **ORS 414.635** by section 9 *[of this 2011*
 28 *Act]*, **chapter 602, Oregon Laws 2011**, become operative *[January 1, 2014]* **on the effective date**
 29 **of this 2012 Act.**

30 **SECTION 5.** ORS 414.635, as amended by section 9, chapter 602, Oregon Laws 2011, is amended
 31 to read:

32 414.635. (1) The Oregon Health Authority shall adopt by rule safeguards for members enrolled
 33 in coordinated care organizations that protect against underutilization of services and inappropriate
 34 denials of services. In addition to any other consumer rights and responsibilities established by law,
 35 each member:

36 (a) Must be encouraged to be an active partner in directing the member's health care and ser-
 37 vices and not a passive recipient of care.

38 (b) Must be educated about the coordinated care approach being used in the community and how
 39 to navigate the coordinated health care system.

40 (c) Must have access to advocates, including qualified peer wellness specialists where appropri-
 41 ate, personal health navigators, and qualified community health workers who are part of the
 42 member's care team to provide assistance that is culturally and linguistically appropriate to the
 43 member's need to access appropriate services and participate in processes affecting the member's
 44 care and services.

45 (d) Shall be encouraged within all aspects of the integrated and coordinated health care delivery

1 system to use wellness and prevention resources and to make healthy lifestyle choices.

2 (e) Shall be encouraged to work with the member’s care team, including providers and commu-
 3 nity resources appropriate to the member’s needs as a whole person.

4 (2) The authority shall establish and maintain an enrollment process for individuals who are
 5 dually eligible for Medicare and Medicaid that promotes continuity of care and that allows the
 6 member to disenroll from a coordinated care organization that fails to promptly provide adequate
 7 services and:

8 (a) To enroll in another coordinated care organization of the member’s choice; or

9 (b) If another organization is not available, to receive Medicare-covered services on a fee-for-
 10 service basis.

11 (3) Members and their providers and coordinated care organizations have the right to appeal
 12 decisions about care and services through the authority in an expedited manner and in accordance
 13 with the contested case procedures in ORS chapter 183.

14 (4) A health care entity may not unreasonably refuse to contract with an organization seeking
 15 to form a coordinated care organization if the participation of the entity is necessary for the or-
 16 ganization to qualify as a coordinated care organization.

17 (5) A health care entity may refuse to contract with a coordinated care organization if the re-
 18 imbursement established for a service provided by the entity under the contract is below the rea-
 19 sonable cost to the entity for providing the service.

20 (6) A health care entity that unreasonably refuses to contract with a coordinated care organ-
 21 ization may not receive fee-for-service reimbursement from the authority for services that are
 22 available through a coordinated care organization either directly or by contract.

23 (7) The authority shall maintain the process[, *approved by the Legislative Assembly,*] for resolving
 24 disputes involving an entity’s refusal to contract with a coordinated care organization under sub-
 25 sections (4) and (5) of this section. The process must include the use of an independent third party
 26 arbitrator.

27 (8) A coordinated care organization may not unreasonably refuse to contract with a licensed
 28 health care provider.

29 (9) The authority shall:

30 (a) Monitor and enforce consumer rights and protections within the Oregon Integrated and Co-
 31 ordinated Health Care Delivery System and ensure a consistent response to complaints of violations
 32 of consumer rights or protections.

33 (b) Monitor and report on the statewide health care expenditures and recommend actions ap-
 34 propriate and necessary to contain the growth in health care costs incurred by all sectors of the
 35 system.

36
 37 **IMPLEMENTATION OF OREGON INTEGRATED**
 38 **AND COORDINATED CARE DELIVERY SYSTEM**
 39

40 **SECTION 6. (1) The Department of Consumer and Business Services and the Oregon**
 41 **Health Authority may enter into agreements governing the disclosure of information re-**
 42 **ported to the department by insurers with certificates of authority to transact insurance in**
 43 **this state.**

44 **(2) The authority may use information disclosed under subsection (1) of this section for**
 45 **the purpose of carrying out ORS 414.625, 414.635, 414.638, 414.645 and 414.651.**

SECTION 7. Section 8 of this 2012 Act is added to and made a part of ORS chapter 414.

SECTION 8. (1) A fully capitated health plan, physician care organization or coordinated care organization may not discriminate in the participation or reimbursement of any health care provider based on the provider's license or certification if the provider is acting within the scope of the provider's license or certification. A plan or organization must give written notice containing the reasons for its action if the plan or organization declines the participation of any provider or group of providers.

(2) Subsection (1) of this section does not:

(a) Require a plan or organization to contract with more providers than are necessary to meet the needs of its members;

(b) Preclude the plan or organization from using different reimbursement amounts for different specialties or different practitioners in the same specialty; or

(c) Preclude the plan or organization from establishing measures that are designed to maintain the quality of services and control costs and are consistent with the plan's or organization's responsibilities to its members.

SECTION 9. Section 8 of this 2012 Act is amended to read:

Sec. 8. (1) A *[fully capitated health plan, physician care organization or]* coordinated care organization may not discriminate in the participation or reimbursement of any health care provider based on the provider's license or certification if the provider is acting within the scope of the provider's license or certification. *[A plan or]* **An** organization must give written notice containing the reasons for its action if the *[plan or]* organization declines the participation of any provider or group of providers.

(2) Subsection (1) of this section does not:

(a) Require *[a plan or]* **an** organization to contract with more providers than are necessary to meet the needs of its members;

(b) Preclude the *[plan or]* organization from using different reimbursement amounts for different specialties or different practitioners in the same specialty; or

(c) Preclude the *[plan or]* organization from establishing measures that are designed to maintain the quality of services and control costs and are consistent with the *[plan's or]* organization's responsibilities to its members.

SECTION 10. The amendments to section 8 of this 2012 Act by section 9 of this 2012 Act become operative July 1, 2017.

SECTION 11. In each calendar quarter, the Oregon Health Authority shall report to the appropriate committees or interim committees of the Legislative Assembly on the implementation of the Oregon Integrated and Coordinated Care Delivery System.

SECTION 12. Section 11 of this 2012 Act is repealed July 1, 2017.

TECHNICAL CORRECTIONS AND CONFORMING AMENDMENTS

SECTION 13. Section 64, chapter 602, Oregon Laws 2011, as amended by section 70, chapter 602, Oregon Laws 2011, is amended to read:

Sec. 64. (1) ORS 414.705 is repealed.

(2) Sections 13~~, 14~~ and 17 *[of this 2011 Act]*, **chapter 602, Oregon Laws 2011**, are repealed January 2, 2014.

(3) ORS 414.610, 414.630, 414.640, 414.736, 414.738, 414.739 and 414.740 are repealed July 1, 2017.

1 **(4) Section 14, chapter 602, Oregon Laws 2011, as amended by section 2 of this 2012 Act,**
 2 **is repealed July 1, 2017.**

3 **SECTION 14.** ORS 414.033 is amended to read:

4 414.033. The Oregon Health Authority may:

5 (1) Subject to the allotment system provided for in ORS 291.234 to 291.260, expend such sums
 6 as are required to be expended in this state to provide medical assistance. Expenditures for medical
 7 assistance include, but are not limited to, expenditures for deductions, cost sharing, enrollment fees,
 8 premiums or similar charges imposed with respect to hospital insurance benefits or supplementary
 9 health insurance benefits, as established by federal law.

10 (2) Enter into agreements with, join with or accept grants from[,] the federal government for
 11 cooperative research and demonstration projects for public welfare purposes, including, but not
 12 limited to, any project for:

13 (a) Providing medical assistance to individuals who are dually eligible for Medicare and
 14 Medicaid using **global or** alternative payment methodologies or integrated and coordinated health
 15 care and services; or

16 (b) Evaluating service delivery systems.

17 **SECTION 15.** ORS 414.632 is amended to read:

18 414.632. (1) Subject to the Oregon Health Authority obtaining any necessary authorization from
 19 the Centers for Medicare and Medicaid Services [*under section 17, chapter 602, Oregon Laws 2011*],
 20 coordinated care organizations that meet the criteria adopted under ORS 414.625 are responsible for
 21 providing covered Medicare and Medicaid services, other than Medicaid-funded long term care ser-
 22 vices, to members who are dually eligible for Medicare and Medicaid in addition to medical assist-
 23 ance recipients.

24 (2) An individual who is dually eligible for Medicare and Medicaid shall be permitted to enroll
 25 in and remain enrolled in a:

26 (a) Program of all-inclusive care for the elderly, as defined in 42 C.F.R. 460.6; and

27 (b) [A] Medicare Advantage plan, as defined in 42 C.F.R. 422.2, until the plan is fully integrated
 28 into a coordinated care organization.

29 (3) Except for the enrollment in coordinated care organizations of individuals who are dually
 30 eligible for Medicare and Medicaid, the rights and benefits of Medicare beneficiaries under Title
 31 XVIII of the Social Security Act shall be preserved.

32 **SECTION 16.** ORS 414.740 is amended to read:

33 414.740. (1) Notwithstanding ORS 414.738 (1), the Oregon Health Authority shall contract under
 34 ORS 414.651 with a prepaid group practice health plan that serves at least 200,000 members in this
 35 state and that has been issued a certificate of authority by the Department of Consumer and Busi-
 36 ness Services as a health care service contractor to provide health services as described in ORS
 37 [*414.705 (1)(b)*] **414.025 (8)(b)**, (c), (d), (e), (g) and (j). A health plan may also contract with the au-
 38 thority on a prepaid capitated basis to provide the health services described in ORS [*414.705 (1)(k)*]
 39 **414.025 (8)(k)** and (L). The authority may accept financial contributions from any public or private
 40 entity to help implement and administer the contract. The authority shall seek federal matching
 41 funds for any financial contributions received under this section.

42 (2) In a designated area, in addition to the contract described in subsection (1) of this section,
 43 the authority shall contract with prepaid managed care health services organizations to provide
 44 health services under ORS 414.631, 414.651 and 414.688 to 414.750.

45 **SECTION 17.** ORS 416.540 is amended to read:

1 416.540. (1) Except as provided in subsection (2) of this section and in ORS 416.590, the De-
2 partment of Human Services and the Oregon Health Authority shall have a lien upon the amount
3 of any judgment in favor of a recipient or amount payable to the recipient under a settlement or
4 compromise for all assistance received by such recipient from the date of the injury of the recipient
5 to the date of satisfaction of such judgment or payment under such settlement or compromise.

6 (2) The lien does not attach to the amount of any judgment, settlement or compromise to the
7 extent of attorney’s fees, costs and expenses incurred by a recipient in securing such judgment,
8 settlement or compromise and to the extent of medical, surgical and hospital expenses incurred by
9 the recipient on account of the personal injuries for which the recipient had a claim.

10 (3) The authority may assign the lien described in subsection (1) of this section to a prepaid
11 managed care health services organization or a coordinated care organization for medical costs in-
12 curred by a recipient:

13 (a) During a period for which the authority paid a capitation or enrollment fee or a payment
14 using [*an alternative*] a **global** payment methodology; and

15 (b) On account of the personal injury for which the recipient had a claim.

16 (4) A prepaid managed care health services organization or a coordinated care organization to
17 which the authority has assigned a lien shall notify the authority no later than 10 days after filing
18 notice of a lien.

19 (5) For the purposes of ORS 416.510 to 416.610, the authority may designate the prepaid managed
20 care health services organization or the coordinated care organization to which a lien is assigned
21 as its designee.

22 (6) If the authority and a prepaid managed care health services organization or a coordinated
23 care organization both have filed a lien, the authority’s lien shall be satisfied first.

24 **SECTION 18. ORS 414.631, 414.651 and 414.688 to 414.750 are added to and made a part of**
25 **ORS chapter 414.**

26
27 **CAPTIONS**

28
29 **SECTION 19. The unit captions used in this 2012 Act are provided only for the conven-**
30 **ience of the reader and do not become part of the statutory law of this state or express any**
31 **legislative intent in the enactment of this 2012 Act.**

32
33 **EMERGENCY CLAUSE**

34
35 **SECTION 20. This 2012 Act being necessary for the immediate preservation of the public**
36 **peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect**
37 **on its passage.**

38 _____

AOC Governance Steering Committee Draft 2012 Work Plan

1. Committee Jurisdiction

Public policy issues, legislation and administrative rulemaking related to the operation and management of county government. Including, but not limited to:

- Labor and Personnel issues
- County finance and revenue
- Public Purchasing and Contracting
- Elections and Recording
- Public Meetings, Public Records and Ethics
- Local Budget law
- Other issues related to the Governing process

2. Committee Structure

Committee co-chairs. Members of the committee include elected judges and commissioners as well as other elected officials, including members of recognized affiliate and associate groups.

3. Committee Mission Statement

“Exploring and advancing ideas that promote the most efficient delivery of services and activities, while providing the necessary resources, governance processes, management activities and accountability to ensure the effective operation of government.”

4. Committee Meetings

The committee will generally meet monthly on the second Monday from 10:00 a.m. to 11:45 a.m. at the Local Government Center in Salem.

5. Focus of Committee’s 2012 Work

- Defend and advocate for county interests during the February 2012 legislative session. Specific issues include:
 - i. Resist Employment Relations Board budget cost-shift to local government
 - ii. Keep central assessment discussions narrowed to data-center issue, support administrative solution as first option.
 - iii. Defend county interests against cost-prohibitive public contracting legislation.
- Develop policy issues and priorities in preparation for the 2013 legislative session. Focus on proposals to remove barriers in state law that impede counties from efficiently providing services and ideas to put counties on more stable financial ground.
- Coordinate with City-County Insurance Services, Local Government Personnel Institute and other local government entities on activities that fit within AOC Governance committee principles.
- Continue to maintain active involvement and communication with state and federal agencies on emerging and ongoing issues.
- Work to enhance the abilities of counties to continue to provide the services necessary to the citizens of the state.