OREGON MEDICAL ASSOCIATION

MEMORANDUM

To: Rep. Greenlick, Chair, House Committee on Health Care
Rep. Hayden, Vice-Chair, House Committee on Health Care
Rep. Nosse, Vice-Chair, House Committee on Health Care
Members of the House Committee on Health Care

From: Mark Bonanno, OMA General Counsel

Date: May 8, 2017

Re: Support for SB 275 A

SB 275 A, clarifies a law enacted in 2015, that was intended to assist patients in accessing one free copy of their medical record for the purposes of appealing a social security disability denial. The OMA continues to support the law's intent, in that it was intended to ensure our member's patient or their personal representative, could obtain one free copy of their record for their appeal hearing.

SB 275 A, as written, succinctly defines the period of time that covers the one free copy of records to alleviate the ambiguity in the original bill; ambiguity that allowed third party individuals to take advantage of the records process and brought unintended consequences to bear on our member's administrative staff.

When a patient is seeking disability benefits, the initial records request is generally made by the Department of Disability Services (DDS, the local agency of Social Security Administration). The DDS examiner, at this stage in the process, requests medical records relevant to the patient's "alleged onset date", which may be 12 or more months prior to the alleged onset date. Medical clinics are reimbursed by DDS for the provision of these records (OAR 411-200-0030). If the patient's application is denied after the initial medical record review, the patient has the right to appeal and provide additional medical evidence. Based on testimony provided during the hearings for SB 710 in 2015, our understanding was that these are the medical records generated after the initial application up to the appeals hearing date, which may be up to two years of records:

> "And I'll explain- at this stage, the patient must provide the names of every facility they have been to. Its social security's obligation to get the medical evidence during the first two stages; if the patient doesn't win during this stage (and most don't), then they go to [an appeals] hearing. It becomes the obligation of the patient to now get the additional records needed for the hearing, which can be up to two years of records. (Applicant must update)." -transcribed from hearing on March 19, 2015 before the Senate Committee on Human Services and Early Childhood

In the two years since the passage of SB 710, our members have experienced a huge upswing in the number of records requested under the authority of SB 710. OMA members are fully supportive of

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their patient's right to access their records and generally provide those records, *to the patient*, at no cost. However, the upswing in requests has largely come from attorneys requesting *ALL* records for the patient they claim to represent. HIPAA obligates our members to verify all record requests, usually through the provision of a signed authorization form. Our member clinics have reported patterns of abusive conduct to us in the wake of SB 710 that clearly overstepped the intent of the bill, including some attorneys refusing to provide proper authorizations from patient clients, harassing and threatening intimidation of clinic staff using language such as the clinic will be "fined" or "reported" to authorities. Due to the unintended ambiguity in the language of SB 710, member clinics have had little recourse to limit the breadth of these requests and instead, have seen an increase in the FTE needed to cover these record requests, exacerbated only by the fact that these requests are duplicative (as all records includes the initial set previously provided to DDS).

The language in SB 275 A captures the intent of SB 710 by clearly stating "created after the date of the individual's initial application for Social Security disability benefits and before the date of the administrative hearing". DDS will have obtained the medical record for the period up to the patient's "alleged onset date" in the initial application stage; patients who wish to appeal the DDS examiner's initial denial have the opportunity to provide *additional* records and per SB 710/SB275 A, may get these *additional* records free of charge. Records that may not have been obtained by the DDS examiner (because of oversight, patient error etc.) may be obtained per the clinic's usual policies (including usual and customary charges). A patient's legal contract with their disability attorney may include a provision that allows the attorney to either collect an upfront fee or be reimbursed after the case, to cover expected expenses, such as record fees.

The OMA urges your support for SB 275 A, as written. Ensuring patients have everything they need to pursue social security disability benefits is in the best interest of all parties; SB 275 A ensures patients are not burdened with the cost of obtaining the *additional* records needed to make their case upon appeal and clearly identifies the medical record set clinics and personal representatives may obtain at no cost for this purpose.

The Oregon Medical Association serves and supports over 8,200 physicians, physician assistants and student members in their efforts to improve the health of all Oregonians. Additional information can be found at www.theOMA.org.

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