



Oregon

Theodore R. Kulongoski, Governor

December 14, 2009

Department of Human Services

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The Honorable Peter Courtney, Co-Chair
The Honorable Peter Buckley, Co-Chair
Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048



Re: Request to Apply – Competitive Grant – Non-ARRA Funded
Medical Liability Reform and Patient Safety Planning Grants
(DHS-OHPR-51)

Dear Co-Chairpersons:

The Office for Oregon Health Policy and Research (OHPR), Department of Human Services (DHS), is submitting this letter to request legislative approval for Oregon to apply for a Medical Liability Reform and Patient Safety Planning Grant from the federal Agency for Healthcare Research and Quality (AHRQ). The Office for Oregon Health Policy and Research in DHS, will be the applicant for the project and will provide the project director. OHPR is in discussion with the semi-independent Oregon Patient Safety Commission on opportunities for partnering in the execution of some of the components of the grant work.

General Grant Information: OHPR will apply for the maximum allowable planning grant of \$300,000 for a one-year project period.

The grant announcement was released October 20, 2009, and the application is due on or before January 20, 2010. OHPR will send in the application as soon as we receive legislative approval. This funding opportunity is separate from those available under the American Recovery and Reinvestment Act (ARRA).

The planning grant will support state planning to implement and evaluate an innovative approach to simultaneously improving patient safety and



reducing medical malpractice costs—both direct costs and the costs of defensive medicine.

State Match Requirement and Impact: Applicants are not required to provide matching funds; however, funds cannot be used to match any other Federal funds. The grant will likely require two additional limited duration FTE. Any new positions will be fully funded through grant dollars and will be requested at an Emergency Board should the grant be approved. Existing OHPR staff will oversee the grant project.

Description of the Grant: This grant will fund planning activities that would allow the Legislative Assembly, if it chooses, to test a policy innovation that takes a coordinated approach to improving the safety of patients of Oregon health care providers and facilities by reducing the number of preventable adverse events related to health care services and reducing malpractice costs in the state.

The concept is to reduce the incidence of medical errors and related harm to patients and lower medical malpractice payments and premiums in Oregon by adopting evidence-based practice guidelines, adherence to which would establish that the provider satisfied the standard of care required by law. The expectations are that (1) physicians will be more likely to follow evidence-based guidelines if following the guidelines may reduce their exposure to malpractice judgments and (2) greater adherence to evidence-based guidelines will reduce both medical and financial harm to patients and the community from inappropriate and excessive (or insufficient) diagnostic procedures and treatment and will reduce cost of malpractice litigation.

The concept complements work the 2009 Legislative Assembly directed various state bodies to undertake to develop evidence-based guidelines and encourage their use throughout the state. The bill directed the Health Services Commission to include practice guidelines in the prioritized list of health services that will be the basis for the essential benefits package for all health plans offered in connection with Oregon's comprehensive health care coverage plan. See Enrolled HB 2009, section 9(10(j) and 16(5). Perhaps more importantly, the bill directed the Health Resources Commission (HRC) "to develop or identify and disseminate evidence-based health care

guidelines for use by providers, consumers and purchasers of health care in Oregon” and required PEBB, OEBC, the Department of Corrections, the Oregon Health Authority and public bodies more generally to adopt the guidelines for use in purchasing health care. See Enrolled HB 2009, section 1179.

This grant will fund activities that directly support the mission and goals of DHS and the Oregon Health Authority by producing better outcomes for enrollees in public health benefit plans and supporting activities outlined in HB 2009, including the establishment of evidence-based clinical standards and practice guidelines that may be used by providers. See HB 2009, section 9(1)(e).

By providing dollars for planning and evaluation of new methods for encouraging and incenting providers to use evidence-based practice guidelines, the grant will jump start an effort to enhance Oregon’s ongoing work to develop evidence-based practice guidelines by linking it to the state’s work to ensure that high malpractice premiums do not interfere with access to affordable health care in all areas of the state.

Funding Necessary to Sustain the Grant Activity: The grant guidance does not require activities conducted through this project to be sustained when the funding period is over. Indeed, the planning activities funded by the grant should be completed within the one-year grant period.

If the legislature chooses to authorize use of some publically vetted and adopted evidence-based guidelines as the standard of care for medical malpractice purposes either on a pilot basis or more broadly, no funding would be necessary to implement that policy decision.

Successful promotion of adherence to the guidelines and systematic evaluation of the effectiveness of the strategy for encouraging their use, improving patient safety, and reducing malpractice premiums would require additional funding, however. AHRQ is currently providing funding for implementation and evaluation of innovations like these. While there is no assurance that a similar grant opportunity will come available at the conclusion of the one-year planning grant period, the ongoing interest of policymakers and academic researchers in this kind of innovation means that

funding may be available either to Oregon or to independent researchers for evaluation of the impact of any change the legislature may choose to make in the malpractice law.

Community Involvement: There will be widespread public involvement in the process for development of the guidelines themselves. The HRC and HSC will rely on technical work of organizations such as the Oregon Evidence-Based Practice Center at Oregon Health & Sciences University. With respect to the planning grant activities, OHPR would bring together leaders of the Oregon Medical Association and the Oregon Trial Lawyers Association, perennial antagonists in the medical malpractice debate to help develop the legislative concept for linking evidence-based guidelines to the malpractice system. We have begun a dialogue with key individuals in these organizations about this project. In cooperation with organizations such as the Oregon Patient Safety Commission, the Health Care Acquired Infections Advisory Committee, and health care professional organizations, we will involve providers and consumers in developing a "change strategy" that supports providers to adopt the guidelines.

Thank you for your consideration of this request for approval to pursue this funding opportunity.

Sincerely,



Clyde Saiki
Deputy Director of Operations

CC: John Britton, Legislative Fiscal Office
Sheila Baker, Legislative Fiscal Office
Blake Johnson, Department of Administrative Service