

HOUSE COMMITTEE ON JUDICIARY

February 18, 2003 Hearing Room 357

1:00 P.M. Tapes 43 - 45

MEMBERS PRESENT: **Rep. Max Williams, Chair**
 Rep. Robert Ackerman, Vice-Chair
 Rep. Gordon Anderson, Vice-Chair
 Rep. Jeff Barker
 Rep. Jerry Krummel
 Rep. Greg Macpherson
 Rep. Floyd Prozanski
 Rep. Lane Shetterly

STAFF PRESENT: **Bill Joseph, Counsel**
 Danelle Romain, Extern, Acting Counsel
 Nancy Masee, Committee Assistant

MEASURE/ISSUES HEARD:
 HB 2305 Public Hearing
 HB 2306 Public Hearing
 HB 2307 Public Hearing
 HB 2308 Public Hearing
 HB 2309 Public Hearing

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
Tape 43, A		
006	Chair Williams	Opens meeting at 1:12 P.M. Opens public hearing on HB 2305.
<u>HB 2305 PUBLIC HEARING</u>		
006	Danelle Romain	Acting Counsel. Explains HB 2305 that relates to health information; creates new provisions, and amends ORS's.
034	Neil Bryant	Former Senator from Bend and Chair of the HIPAA work group. Submits testimony and explains the Health Insurance Portability and Accountability Act (HIPAA) bills (EXHIBIT A). Describes the work group that studied HB's 2305, 2306, 2307, 2308, and 2309. Says the HIPAA bills deal with privacy issues.
099	Chair Williams	Opens additional public hearings on HB's 2306, 2307, 2308 and 2309.
<u>HB 2306, HB 2307, HB 2308, HB 2309 PUBLIC HEARINGS</u>		
111	Bryant	Continues discussing the bills. Suggests continuing the work group to review how the implementation is working.
149	Rep. Krummel	Asks about the health records in school districts.
160	Bryant	Tries to explain the differences between education records and health records. School nurse programs and school clinics mentioned as health rather than education records. School districts need a HIPAA audit. Health records must comply with HIPAA disclosure requirements.
194	Rep. Krummel	Asks if Congress is considering implementation delay recognizing that some states and providers cannot meet the April

		14 deadline.
200	Bryant	Answers, they are asking for extended time which as yet has not been granted.
212	Chair Williams	Asks testimony to now focus on HB 2305.
223	Gwen Dayton	Oregon Association of Hospitals and Health Systems Counsel submits testimony (EXHIBIT B). Describes HIPAA pre-emption. Describes how the work group looked for Oregon laws that allow release of protected health information that was contrary to HIPAA. States the group declined writing HIPAA into state law. Cites <i>Humphers v First Interstate Bank</i> .
360	Ronald Marcum	Oregon Health Sciences University (OHSU). Chief Medical Information Officer Introduces -1 amendment (EXHIBIT C). Submits testimony and testifies in support of HB 2305 (EXHIBIT D).
380	Dayton	Refers to HB 2305 analysis. Discusses HIPAA pre-emption and Oregon laws that implement the release of protective information contrary to HIPAA. Gives examples of laws.
420	Dayton	Discusses ORS 192.25 and existing statute that does not comply with HIPAA. Explains the re-writing of 192.25 that implements HIPAA.
TAPE 44, A		
045	Marcum	Continues explaining sections of HB 2305. Emphasizes the tight timeframe. Says there will be no extension.
061	Rep. Krummel	Asks how written records would be handled.
064	Marcum	Answers that the privacy rules address health information in any form: oral, written, or recorded. Electronic records are handled from a technical perspective.
100	Dayton	Discusses the minimum requirements needed for treatment.
110	Paul Frisch	Lawyer for Oregon Medical Association and Vice Chair for the SB 104 committee. Describes the HIPAA forum of associations. States the major concern is that the commerce and medical information will not be ready by April 14 deadline. Supports HB 2306, 2307, and 2308. Emphasizes the April 14 deadline for the federal legislation.
155	Leonard Hagen	Legislative Affairs, Regence Blue Cross-Blue Shield. SB 104 Advisory committee member. Submits testimony and -1 amendments (EXHIBITS E and F).
180	Hagen	Explains the need for privacy standards across the state. Refers to key elements: covered entities and business associates, type of information, use and disclosure, minimum necessary rule, individual rights, and administrative requirements.
217	Hagen	Explains the diagram, Exhibit E. Explains privacy standards.
242	Hagen	Continues discussing the key elements and the diagram. Discusses authorization and disclosures. Summarizes a general synopsis of HIPAA. Summarizes the Graham, Leach, Briley Act, Financial Services or Institutional Modernization Act, of 1999.
310	Hagen	Refers to page 9 of Exhibit E, ORS Ch 743 and Ch 746. Discusses Oregon's privacy laws. Refers to p 10. Oregon has insurers and organizations that provide functions.
330	Hagen	Explains the difference between Oregon laws and HIPAA. Says the work group tried to make the law more consistent with HIPAA.
425	Jane Meyers	Oregon Dental Association. Testifies on HB 2305. Has a concern that it excludes the "dental only" plans. Has a concern

		with the authorization form.
435	Chair Williams	Announces meeting in Legislative Counsel to address HIPAA on Thursday.
TAPE 43, B		
051	Richard Lane	Oregon Trial Lawyers Association. Submits testimony and refers to HB 2305 thru 2309 (EXHIBIT G). Opposes some parts of each bill. Refers to SB 104 establishing the committee to address HIPAA. Highlights inconsistencies of these bills with the federal law.
100	Lane	Discusses how federal law works in relation to state law. Compares HB 2305 to HIPAA regulations. HB 2305 is narrower than the federal rule. Points out other drawbacks in HB 2305. Says the cost provision does not conform to the federal provisions. HB 2305 omits "notice" provisions.
241	Rep. Prozanski	Asks what the points of contention are.
245	Lane	Answers he has set out where HB 2305 does not comply with the federal law. It does not include "clearing houses." Proceeds with additional exclusions. Suggests adopting HIPAA as state law.
285	Bryant	States all amendments today were from the committee. Comments that the work group meetings were public and posted. The procedures and Practices sections of the Oregon State Bar attended the meetings. Refers to letter from Procedures and Practices Executive Committee (EXHIBIT H) that was concerned with disclosures being consistent with state and federal laws.
319	Dayton	Comments that some technical fixes are addressed in the amendments. Comments on the broader issue about number of protections in HIPAA, not in state law. Discusses patients' rights.
354	Rep. Shetterly	Requests that the finished product in ORS be compatible with federal law.
416	Chair Williams	Announces that these bills will not be passed today, but need to be passed soon. Closes public hearing on HB 2305.
TAPE 44, B		
018	Leonard Hagen	Legislative Representative. Regence Blue Cross-Blue Shield. Discusses definitions in HB 2306. Discusses how the bill moves towards consistencies in definitions with HIPAA. Explains subsections of the bill.
072	Richard Lane	Oregon Trial Lawyers Association. Addresses HB 2306 on page 1, line 9.
130	Rep. Shetterly	Comments that the challenge is knowing what is in federal law and state law.
149	Lane	States that these proposed bills create inconsistencies with the federal law.
155	Hagen	Says HIPAA deals with self-insured employers, providers, and health plans.
176	Chair Williams	Closes public hearing on HB 2306. Proceeds with public hearing on HB 2307.
178	Gwen Dayton	Oregon Association of Hospitals and Health Systems. States that HB 2307 looks at ORS 179.505. Explains -1 and -2 amendments (EXHIBITS K & L) Clarifies the definition of "provider." Explains further clarifications.
267	Scott Taylor	Assistant Director, Correctional Programs, Oregon Department of Corrections (DOC). Supports HB 2307 (EXHIBIT I).

284	Rep. Jenson	Refers to page 5 of HB 2307. Asks about protecting public safety.
301	Dayton	Responds that HIPAA does provide protection of records if harmful to the patient. Discusses psycho-therapy notes.
320	Rep. Jenson	States his concern is whether a psychotherapist's records are protected even if that information indicates there might be danger to the public.
330	Dayton	Replies that there is a provision that allows the release of protected health information as necessary to avert a serious threat to health or safety.
337	Chair Williams	Asks counsel to locate the bill that was addressed last session to provide public safety.
341	Dr. Kitchen	Medical Director, Department of Human Services, Seniors and People with Disabilities. Submits testimony and says he supports the HB 2307 -2 amendments (EXHIBIT J). Explains changes in Section 3, page 5, of HB 2307, which does not include certain representatives.
390	Rep. Shetterly	Understands that under HIPAA, privacy rights do not die with the person.
410	Chair Williams	Asks for a closer look at this.
420	Rep. Krummel	Asks about guardian or health care representative.
450	Dr. Kitchen	Discusses power of attorney for health care has been put into ORS 127, now called a health care representative.
467	Lane	Discusses psychotherapy records. Discusses how HB 2307 does not conform to federal regulations.
TAPE 45, A		
040	Rep. Krummel	Refers to the health and safety threat by patients under psychotherapy.
045	Lane	Responds that there are HIPAA emergency standards. HIPAA provides for protecting the health and safety of the public.
048	Chair Williams	Closes public hearing on HB 2307, HB 2308, and HB 2309. States that these hearings will be rescheduled. Reminds everyone that Thursday, February 20, there is a meeting on HIPAA issues in Legislative Counsel.
055	Chair Williams	Adjourns meeting at 3:05 P.M.

EXHIBIT SUMMARY

A – HB 2305, HB 2306, HB 2307, HB 2308, HB 2309, written testimony, N. Bryant, 9 pp

B – HB 2305, written testimony, G. Dayton, 2 pp

C – HB 2305-1 amendments, staff, 1 p

D – HB 2305, written testimony, R. Marcum, 4 pp

E – HB 2306, L. Hagen, written testimony, 13 pp

F – HB 2306-1, amendments, staff, 1 p

G – HB 2305 –HB 2309, written testimony, R. Lane, 11 pp

H – HB 2305 – HB 2309, letter, OSB, 1 p

I – HB 2307 – Written testimony, S. Taylor, 1 p

J – HB 2307 – Written testimony, T. Kitchen, 3 pp

K – HB 2307-1 amendments, 1 p

L – HB 2307-2, amendments, 2 pp