

HOUSE COMMITTEE ON JUDICIARY

March 04, 2003 Hearing Room 357
1:00 p.m. Tapes 64 - 65

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. Lane Shetterly

MEMBER EXCUSED: **Rep. Floyd Prozanski**

STAFF PRESENT: **Bill Joseph, Counsel**
 Nancy Masee, Committee Assistant

MEASURE/ISSUES HEARD:
 HB 2305 Work Session
 HB 2306 Work Session
 HB 2307 Work Session
 HB 2309 Public Hearing and Work Session

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 64, A		
129	Chair Williams	Opens meeting at 1:34 p.m. Opens work session on HB 2305.
<u>HB 2305 WORK SESSION</u>		
130	Holly Robinson	Legislative Counsel. Gives summary of HB 2305 that revises state policy and requirements for use and disclosure of certain health information. Describes the -1 and the -2 amendments (EXHIBITS A and B) .
180	Rep. Krummel	Asks about the definition "medical provider."
200	Robinson	Refers to the definition in the bill and to the amendments.
210	Vice Chair Anderson	Comments on dental insurance.
240	Robinson	Replies about "dental only" in the bill. Explains the challenge of how to make Health Insurance Portability and Accountability Act (HIPAA) work in Oregon.
160	Gwen Dayton	General Counsel, Oregon Association of Hospitals and Health Systems and member of the SB 104 Committee. Supports the -1 and -2 amendments to HB 2305. Says the SB 104 committee supports the amendments and submits written testimony (EXHIBIT C) .
300	Richard Lane	Oregon Trial Lawyers Association. Submits testimony and explains objections to the amendments (EXHIBIT D) .
320	Chair Williams	Wants the concerns expressed on these bills to be heard.
330	Rep. Macpherson	Comments that HB 2305, 2306, 2307, and 2309 are unclear to him. Remarks that these bills seem to run parallel to the federal Health Insurance Portability and Accountability Act (HIPAA) requirements. Asks why are we creating state law parallel to the federal structure.

359	Robinson	Replies that Oregon has ORS 192.525, policy on access to medical records. Explains the work group decided not to repeal that law and put HIPAA in its place. Explains the work group decided to create policy parallel to the federal level at the state level. Explains the similarities and differences between federal policy and state law.
TAPE 65, A		
009	Rep. Macpherson	Comments that diverting from the federal HIPAA statute causes departure in language which may cause substantive changes. Refers to the discrepancies brought up. Asks how satisfactorily the Oregon statutes reflect the federal laws.
016	Robinson	Answers, giving examples of how Medicaid, state laws, and administrative rules meld together in health areas and in other areas to reflect the state's needs. Confirms she is comfortable with the federal and state parallel in these bills.
082	Rep. Krummel	Asks if state and federal statutes conflict, does federal statute prevail.
092	Dayton	Replies, yes, generally.
104	Rep. Krummel	Asks about the "health care provider," page 2, line 38. States the athletic trainers in the U.S. have concerns with HIPAA.
160	Lane	Says there is nothing in HB 2305 to cover certain obligations.
180	Rep. Shetterly	Wants further discussion in the Senate regarding this issue.
190	Vice Chair Anderson	Describes the local practitioner concern. Asks if there is provision for a good faith mistake in these bills.
208	Dayton	Answers not for a good faith mistake, however, the federal government will provide a graduated level of fines. Says HIPAA will be enforced by complaints as opposed to investigation.
214	Rep. Jenson	Asks about Section 1 of the original bill. Asks about "individual" protection. Asks if "individual" is the same throughout.
238	Robinson	Answers the individuals are all the same under protection.
220	Chair Williams	MOTION: Moves to ADOPT HB 2305-2 amendments dated 03/04/03.
		VOTE: 8-0-1
		EXCUSED: 1 – Prozanski
222	Chair Williams	Hearing no objection, declares the motion CARRIED.
223	Chair Williams	MOTION: Moves HB 2305 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 8-0-1
		EXCUSED: 1 – Prozanski
225	Chair Williams	Hearing no objection, declares the motion CARRIED.
		REP. WILLIAMS will lead discussion on the floor.
228	Chair Williams	Closes work session on HB 2305. Opens work session on HB 2306.
<u>HB 2306 WORK SESSION</u>		
230	Holly Robinson	Legislative Counsel. Explains HB 2306 that revises state information privacy requirements for certain health insurers including the use and disclosure of certain health information. Describes the -1 and -2 amendments (EXHIBITS E & F).
360	Molly Burns	SB 104 work group. Comments on the intent under section 18-a of the -2 amendments.
369	Richard Lane	Oregon Trial Lawyers Association. Raises definitional objections to HB 2306. Supports the -2 amendments.
372	Rep. Shetterly	MOTION: Moves to ADOPT HB 2306-2 amendments dated 03/04/03.

		VOTE: 8-0-1
		EXCUSED: 1 – Prozanski
374	Chair Williams	Hearing no objection, declares the motion CARRIED.
375	Rep. Shetterly	MOTION: Moves HB 2306 to the floor with a DO PASS AS AMENDED recommendation.
		VOTE: 8-0-1
		EXCUSED: 1 – Prozanski
378	Chair Williams	Hearing no objection, declares the motion CARRIED.
		REP. BARKER will lead discussion on the floor.
379	Chair Williams	Closes work session on HB 2306. Opens work session on HB 2307.
<u>HB 2307 WORK SESSION</u>		
410	Holly Robinson	Legislative Counsel. Explains HB 2307 that revises requirements for disclosure of, or access to certain health information to conform to federal law relating to privacy of health information. Explains the 2307-1, 2307-2 and 2307-3 amendments. (EXHIBITS G - I)
TAPE 64, B		
004	Rep. Shetterly	Asks if school districts fall under this bill. Would HIPAA provide a broader definition to include school districts?
020	Robinson	Answers, no. Describes how the work group exchanged one list of public providers for another. Mentions FERPA, Federal Education Records Act.
036	Rep. Jenson	Asks if there will be distinctions between schools providing health clinics.
038	Robinson	Replies HB 2307 does not go into those programs.
041	Rep. Krummel	Asks where they go.
044	Robinson	Discusses programs not covered by HIPAA. School-provided health is a separate subject.
047	Neil Bryant	SB 104 Committee Chair. Refers to school providers who must pass a test to become a covered entity. If it is FERPA, an educational record, it is excluded from HIPAA.
067	Dayton	Explains how school clinics are affected by these bills.
076	Rep. Krummel	Gives example of students with disabilities and how physical education relates to health issues in these cases.
091	Dayton	Answers it is excluded from HIPAA because PE teachers are not a covered entity.
089	Rep. Krummel	Gives another example of how injury to a disabled student and subsequent treatment by a school nurse would be viewed as a health record.
100	Robinson	Answers that it depends on several things. Says school areas are the most unclear.
119	Rep. Krummel	Asks about legislative intent between school issues and health issues.
150	Richard Lane	Oregon Trial Lawyers Association. Says of HB 2307, there are definitional concerns about how HIPAA defines psycho-therapy notes. Asks for consistency.
155	Chair Williams	Asks that they continue work on definitional issues.
160	Chair Williams	MOTION: Moves to ADOPT HB 2307-3 amendments dated 03/04/03.
		VOTE: 7-0-2
		EXCUSED: 2 - Jenson, Prozanski
166	Chair Williams	Hearing no objection, declares the motion CARRIED.
175	Chair Williams	MOTION: Moves HB 2307 to the floor with a DO PASS AS

AMENDED recommendation.

VOTE: 7-0-2

EXCUSED: 2 - Jenson, Prozanski

Hearing no objection, declares the motion CARRIED.

REP. ACKERMAN will lead discussion on the floor.

177 Chair Williams

178 Chair Williams

Closes work session on HB 2307. Opens public hearing on HB 2309.

HB 2309 PUBLIC HEARING

242 Kelly Hagan

SB 104 Committee. Explains HB 2309 that requires physicians and psychologists to provide certain information to court visitors in protective proceeding (**EXHIBIT J**).

300 Jennifer Wright

Professor of Law, Willamette University. Refers to HB 2309 as it affects ORS Ch 125. Explains there was a major change to ORS 125 without discussions with parties. Explains the -1 amendments imply new authority of the court; supports the -2 amendments

(EXHIBITS K & L).

TAPE 65, B

007 Meredith Cotey

Director, Office of the Long-term Care Ombudsman, a health oversight agency under HIPAA. Works with guardianships and shares the concern that a respondent might lose medical privilege without protection. Supports HB 2309 with the -2 amendments.

015 Hagan

Recounts that most physicians, when approached by a court visitor, discuss patients' mental health issues in the best interest of the patients.

068 Rep. Macpherson

Asks if there is the same timeline for action to HB 2309 as the previous bills.

077 Hagan

Replies, yes, because of the way the statute is written.

090 Wright

Says the concern is with people affected by ORS 125 under the guardianship laws.

105 Rep. Macpherson

Reiterates that HIPAA will become active to these issues in April.

120 Wright

Answers there would be no conflict under state law because there is nothing that obligates doctors to speak to visitors under Oregon guardianship law.

130 Vice Chair
Ackerman

Asks if the primary concern is about the medical privilege the party would have if his mental state was at issue in a guardianship proceeding.

150 Wright

Answers that is correct. Privilege may have been waived.

153 Vice Chair
Ackerman

Refers to the 14-day advance notice to the patient and his attorney and medical provider to object.

167 Wright

Answers she does not oppose HB 2309 with the -2 amendments.

182 Barbara Jones Hayes

Citizen. Expresses concern about doctors misdiagnosing cases which can leave a patient without due process.

210 Richard Lane

Oregon Trial Lawyers Association. Supports HB 2309 with the -2 amendments.

215 Chair Williams

Closes public hearing on HB 2309. Opens work session on HB 2309.

HB 2309 WORK SESSION

216 Chair Williams

MOTION: Moves to ADOPT HB 2309-2 amendments dated 03/04/03.

VOTE: 6-0-3

EXCUSED: 3 - Barker, Jenson, Prozanski

218	Chair Williams	Hearing no objection, declares the motion CARRIED.
219	Chair Williams	MOTION: Moves HB 2309 to the floor with a DO PASS AS AMENDED recommendation. VOTE: 6-0-3 EXCUSED: 3 - Barker, Jenson, Prozanski
221	Chair Williams	Hearing no objection, declares the motion CARRIED. REP. MACPHERSON will lead discussion on the floor.
222	Neil Bryant	Chair of the SB 104 Committee. Submits response to committee members' questions (EXHIBIT M).
230	Chair Williams	Closes work session on HB 2309. Adjourns meeting at 3:10 P.M.

EXHIBIT SUMMARY

- A – HB 2305-1 amendments, staff, 1 p**
- B – HB 2305-2 amendments, staff, 3 pp**
- C – HB 2305 – HB 2309, written testimony, Gwen Dayton, 3 pp**
- D – HB 2305 – HB 2309, written testimony, Richard Lane, 3 pp**
- E – HB 2306-1 amendments, staff, 1 p**
- F – HB 2306-2 amendments, staff, 1 p**
- G – HB 2307-1 amendments, staff, 1 p**
- H – HB 2307-2 amendments, staff, 2 pp**
- I – HB 2307-3, amendments, staff, 2 pp**
- J – HB 2309, written testimony, Kelly Hagan, 3 pp**
- K – HB 2309-1 amendments, staff, 3 pp**
- L – HB 2309-2 amendments, staff, 3 pp**
- M –SB 104 Committee, written testimony, Neil Bryant, 4 pp**