SENATE COMMITTEE ON
HEALTH AND HUMAN SERVICES

March 15, 1995 3:00 P.M.

Hearing Room B
Tapes 37 - 38

MEMBERS PRESENT: Sen. Stan Bunn, Chair
Sen. William McCoy, Vice-Chair
Sen. Lenn Hannon
Sen. Bill Kennemer
Sen. Randy Leonard

MEMBERS EXCUSED:

STAFF PRESENT: Art Wilkinson, Committee Administrator
Mary Gallagher, Committee Assistant

MEASURES HEARD: SB 152 Work Session

These minutes contain materials which paraphrase and/or summarize statements made dur~ng this session. Oniv text enclosed in anotation marks renort a sueaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE 37, A

002 CHAIR BUNN: Convenes the meeting at 3:10 P.M.
Onens WORK SESSION on SB 152

Witnesses: Kerry Barnett
Joel Ario
Barney Speight

032 KERRY BARNETT, Director, Dept. of Consumer and Business Services: Begins testimony.
lEXHIBIT Al We're going to talk about insurance market reforms relating to groups, including larger groups, but primarily the small group market that was reformed several years ago. Secondly, we~re going to talk about the portability market--market reform that relates to individuals who are coming off of health insurance coverage; in other words, in the very recent past they have been insured, but now for some reason they are no longer insured. Thirdly, we're going to talk about individual coverage, separate from the portability market.

078 Our goal is measured, incremental reform--to remove barriers to coverage and thus increase equity in the market and access to the market. What we're trying to accomplish is limiting risk selection on the part of carriers in such a way that it doesn't cause new vulnerabilities to the industry.

096 Finishes testimony.

097 JOEL ARIO, Dept. of Consumer and Business Services: Begins testimony. No exhibit; refers to Exhibit A. Most of the reforms we're suggesting follow closely along the lines of those that were adopted by the Legislature in 1991.

145 Continuing testimony.

157 CHAIR BUNN: Addresses committee regarding proposed reforms for small group market.

171 ARIO: Continues his testimony.

187 We recommend four reforms that build on the process begun by SB 1076. We want to expand choices and reduce price disparities.

-Expanded coverage: We recommend that the small group market be expanded to include groups of 2. so instead of 3 to 25, it would be 2 to 25.

204 HANNON: Has any thought been given to repealing the prohibition on groups forming together to purchase insurance, thereby allowing the group to go down to one?

215 ARIO: Responds.

232 HANNON: They wouldn't have any power to underwrite. All they would be is a group to buy insurance from a legitimate carrier.

239 ARIO: We do not have a problem with those kinds of associations if they're required to play by the same rules as the insurance community. It's my understanding that in past discussions of this issue, it's broken down over the notion of whether the associations that would no longer be restricted by the fictitious group rule would also agree to play by the same rules and not to underwrite, and so forth.

247 HANNON: I'd like it lowered down to one because there are some self-employed individuals who that would help.

253 CHAIR BUNN: Addresses Hannon: As we look at each of these reforms, I want to encourage the committee members to feel free to come back in and suggest items that could be superimposed on the various things that are being considered here. We will note the issue that you've raised. My understanding is that there has been a consensus developed between you (DCBS), the carriers and the agents on the issue of lowering small groups from three to two. Is that correct? (Ario responds affirmatively.)

269 I'd like to recommend that the committee adopt this reform as one of our preliminary items of reform that the committee, by consensus, has selected in a preliminary way. If we do that, it is not a final vote. It helps Legislative Counsel begin crafting the package for us. I want us to have as much debate at this time as we can.

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305 KENNEMER: You're saying these four reforms pretty much have standard approval of your agency, insurance companies in general, and agents in general? Is that what you re saying?

310 ARIO: We've had a number of carriers and agents involved in this discussion. We've also had meetings with some of the consumer groups. This is a consensus of those groups. We can't represent a uniform, universal position on this.

321 CHAIR BUNN: I want to be very clear about this. I'm asking the committee to look at a package that carriers and agents have looked at and said in terms of our industry, this is something we can feel comfortable with and move forward with. That's critically different than having the agency here saying one

thing and either carriers or agents saying they can t go along with it.

331 KENNEMER: When we move from 3 to 2, how many more people do we think that brings in?

334 ARIO: We don't know that number exactly. We know that in the 1 to 4 market, there are about 75,000 employees.

375 MOTION: SEN. HANNON: Moves for inclusion of the 2 to 25 provision in the working draft.

399 VOTE: CHAIR BUNN: Hearing no objection, motion CARRIES. All members are present.

TAPE 38, A

001 LEONARD: Question to Hannon regarding lowering small groups from 2 to 1.

002 HANNON: Responds.

029 ARIO: (Continues testimony) The second recommendation concerns choice of plans in the small group market. We recommend that carriers be required to give all small groups a choice among all the plans that the carrier offers in the small group market. Carriers would not have to offer any plans beyond the basic health care plan, but any plans they did choose to offer would have to be equally available to all small groups. insurers would call this guaranteed-issue of all products.

034 KENNEMER: Is this the same price to all groups'?

035 ARIO: It would be within the 2-to-1 rate band, which is in the next recommended proposal.

037 CHAIR BUNN: I'll tag this particular reform Choice of Plans. (Committee agrees to consensus on this item.) We will include this in our working draft.

042 ARIO: Another reform under the heading Choice of Plans is to allow all carriers to offer different plans to different employees of the same small employer, as long as all employees are offered a qualified small group plan and any differences among employees are set by the employer based on an objective, employment-related criteria unrelated to health status. This would restore some flexibility to the small group market that is currently available to larger groups.

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048 HANNON: Say I have a group of 15 female employees doing off~ce work. Should I have the same rate band as a group of 12 employees that has both males and females?

054 ARIO: Yes, we would think that you should have the same rate band. For each of the six regions of the state, there would be the ability to set a different geographic average, so that the rate band in Portland might be different than the rate band in Medford.

063 HANNON: So they would vary by region, but they would not necessarily vary if they were in the same rate band region and they were different groups? They would have the same rate band?

065 ARIO: Yes, they would have the same rate band within the same geographical region.

079 KENNEMER: Is there any flexibility for people to change their plan?

081 ARIO: Yes, there is typically a process of open enrollment where employees can move from plan to plan, usually on an annual basis.

094 CHAIR BUNN: So what we're on now, is the second part of Choice of Plans.

096 HANNON: Question to Speight: If I'm employer "A"and I have 10 employees and I get your basic health care plan, do you also make the top of the line plan available to any of my employees who choose to pay a higher rate?

103 BARNEY SPEIGHT, representing Blue Cross/Blue Shield of Oregon: As 1 understand the reforms envisioned under guaranteed issue, the employer has the option to choose whatever plan the carrier has available for that group. If he wants one plan for the whole group, there's no distinction between classes of employment.

107 HANNON: So there is no discrimination?

108 SPEIGHT: The only discrimination that could occur under this proposal which changes the SB 1076 reforms, would allow a small employer to do what larger employers can do now in the insured market, and that is have one or more defined classes of employees, like management/nonmanagement and have one plan available for management and another plan available for nonmanagement.

115 CHAIR BUNN: Any objections to this third part? (No objections registered.) This will be included in our working draft.

119 ARIO: Our proposal in the area of pricing of plans is to maintain the current 2-to-1 rate band, plus or minus the 33% rule, but limit price variations within the band to differences in the age of group members. So, the only factor that could be used within that rate band would be age. It would also limit annual rate increases to changes in the geographic average rate, plus changes in the age of group members and we think this will have the effect of making prices more stable and predictable in the small group market.

131 KENNEMER: When we're talking age of group members as being the only criteria, we're weeding out the other most common ones, those being gender and what else?

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134 ARIO: The ones that are most commonly used are age, gender, size of employer, level of employer contribution, and the industry.

140 SPEIGHT: Augments Ario's response.

144 CHAIR BUNN: Any objection to inclusion of this particular provision on pricing?

167 HANNON: I'm not going to object, but my concern is, where do the ages break at?

168 ARIO: Typically, the age is dealt with in 5 year/10 year increments from age 18 to age 64. Under our proposal, the carrier would set those brackets but they'd have to be applied uniformly.

174 HANNON: If we adopt this concept of the pricing of plans, would that activity remain with thecarrier or would it remain with you to make the decision?

178 ARIO: What we've agreed on is that they'd have to be applied uniformly by each carrier; whether each carrier could set their own age brackets or whether there would be one uniform set of age brackets for all carriers across thc board is one of those issues still to be determined.

187 HANNON: l d like it on record that 1 have reservations about that particular provision.

190 CHAIR BUNN: We'll include the provision of pricing of plans in our working draft.

193 ARIO: Our last recommendation in the area of small group reforms is to prohibit the use of health statements entirely in the small group market. Once they're no longer a rating factor, we can eliminate their use and that will reduce administrative costs and eliminate a potential for discrimination against people based on their health status.

198 CHAIR BUNN: Could you tell us how health statements work mechanically and what impact they have, and what impact it will have to remove them?

202 SPEIGHT: DCBS has developed, with industry input, a standard small group health statementthat has questions regarding previous deviations from health by the applicant. That, along with the other demographics of the group, are used to place the price of that group somewhere between the ceiling and the floor that was established in the 1991 statute. In eliminating the health statement, the application is eliminated relative to even a standardized health statement, and there will be much more objective criteria that are used; primarily age.

221 HANNON: Could 1 offer a compromise? Could health statements be allowed, and anybody being declined could be put in OMIP for a set period of time; like a buffer?

244 SPEIGHT: I think in group coverage, the consensus that's generally been reached is the spreading of risk across the group market is the role of insurance. There is a perspective on health statements that health statements can perfect the rate level, so that if you have a pre-existing condition in a group, that the health statement will allow the rate to be higher to reflect that risk. However, the general trend in reform is to try to move to more objective measurements.

259 KENNEMER: This provision would leave in place the six-month exclusion on pre-existingconditions. so that would be some of the buffer?

264 ARIO: That is correct. That kind of pre-existing condition exclusion is workable for carriers without health statements.

270 CHAIR BUNN: Any objection to the preliminary inclusion of the prohibition of the use of health statements? (No objections registered.) We will include this in our working draD.

275 Calls 10-minute recess.

276 Re-convenes at 4: 15 P.M.

285 ARIO: We're now at the second section--proposed reforms for all group insurance.

290 KENNEMER: This would include small groups as well?

291 ARIO: That's correct. Continues testimony. We propose some minimal fair play rules for all group insurance, and there are four recommendations here.

303 KENNEMER: Do these have the consensus support that we were talking about?

305 ARIO: Everything we're discussing today has probably 95% consensus among the parties that we've been dealing with. The first reform is to prohibit the use of health statements for all group insurance.

319 CHAIR BUNN: Any objection to including this as part of our preliminary consensus? (No objections registered.) We'll include this in our working draft.

324 MCCOY: Regarding health statements--some companies require you to make a statement about your health'?

328 ARIO: The use of health statements is not prevalent in the large group market, but when it is used, a statement is taken from some or all of the employees as to their health history, and then potentially used to affect whether that group is insured and what rate that group is insured at, etc.

334 LEONARD: On the red-lining--does the proposed reform for all group insurance include the self insured?

337 ARIO: No, there is a federal law called ERISA, a pension law from the 1970's that prohibits usfrom regulating self-insured plans.

341 LEONARD: ls ERISA applicable only to the private sector ?

342 ARIO: It's applicable to self-insured plans.

343 LEONARD: Whether it's in the public sector or the private sector?

344 ARIO: I don't know for certain. I'd have to get back to you on that.

348 CHAIR BUNN: Would you make a note to check on that and let Mr. Wilkinson know?

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352 ARIO: Yes, I will get back to the committee on that. The second reform is a red-lining reform. This one is already applicable in the small group market, so it would simply extend to the rest of the market. It would prohibit carriers from singling out a member of a group for disparate treatment. When offering coverage to a group. carriers must offer coverage to all eligible members of the group and not exclude or limit coverage to any eligible member.

369 LEONARD: Does the prohibition against red-lining include charging different amounts
for different age groups within a group?

373 ARIO: No, it would not prohibit that.

381 KENNEMER: So this would prohibit discrimination on the basis of gender or occupation?

385 ARIO: No, it is related to discrimination based on health status.

387 KENNEMER: I don't understand what this is about.

389 ARIO: Say that a particular carrier wanted to offer a policy to a group but exclude coverage forcancer. That kind of discrimination is what would be prohibited.

397 SPEIGHT: Another example would be a group of 75 people, and there's one employee in the group that is under treatment for cancer. It is possible, without this reform, for a carrier to say that they'll offer a certain rate for all of the employees, except for the one being treated for cancer. This would prohibit that.

TAPE 37, B

479 HANNON: How would this apply to a group that's in 24-hour coverage, and they hired an
employee that had been injured in another job situation, and you prohibit red-lining in health care, but you allow discrimination in worker's compensation? How do you reconcile the two?

485 ARIO: I'm not sure I understand the kind of discrimination you're referring to in the
worker'scompensation program.

486 HANNON: Let me try to draw a clearer picture. ltm 42 years old. l m injured on the job
somewhere, and l ve been on total disability for the last eighteen months. My employer
terminates my contract. Everything s cleared up and I'm supposedly okay to go back to work. So, I apply forwork for another company that's in 24-hour health care coverage. They say that 1 don't meet their standards because I'm previously injured, but they can't discriminate against me. How will I be treated?

496 ARIO: We cannot reach employer conduct of the sort you're describing. That's not within our purview, so as far as insurance laws are concerned, an employer who chose not to hire someone because of their health status would not in any way be prohibited from doing that. We can only reach employer behavior indirectly, through the way in which we regulate the carriers of insurance.

503 HANNON: Unless I'm mistaken, you do regulate 24-hour health care coverage.

505 ARIO: We do regulate 24-hour coverage, but

507 HANNON: (Interrupts) I'd suggest you get us an answer and come back and let us know what the standing would be.

513 ARIO: I will get a more precise answer.

516 CHAIR BUNN: I'm going to suggest that we preliminary adopt the prohibition of red-lining, but that we also need an answer to Sen. Hannon's question, and it may require a re-visiting of the issue. Is there any objection to including the red-lining provision?

520 LEONARD: When you say that you must offer coverage to a group and not exclude any members out, does that include the premium that person within that group is charged as well? In other words, under this concept, would that one person be charged the same premium as the rest of the group, irrespective of a pre-existing condition?

528 ARIO: I don't think this language would apply directly to that situation, but I do think it would be considered red-lining to charge one person, for example, ten times more than the rest in the group, and the law would reach it.

534 LEONARD: What if it was two times, and not ten times?

535 ARIO: In general, that is not done in the insurance market. The premium that's quoted is applied uniformly to all employees.

540 CHAIR BUNN: It seems to me that if we prohibit red-lining and then there's attempt to change premiums, that's red-lining.

542 LEONARD: There's a difference between charging more for coverage' and not providing coverage at all.

544 CHAIR BUNN: Yes, but if you single out an individual and charge a higher premium, wouldn'tthat in effect be red-lining?

545 SPEIGHT: It's generally the standard in the group insurance industry, particularly in the large group industry, that there's one rate for everybody in the group regardless of their health status. There's always the possibility that an employer could discriminate by providing more benefits to one employee than to another.

559 LEONARD: There must currently be some allowance for not providing health insurance to someone with a pre-existing condition, or we wouldn't be discussing this. Is that correct?

565 ARIO: It is our understanding that the practice right now is to exclude the individual entirely, not to try to do differential premiums, but your point is very well taken and we should look into forms of red-lining that are a bit more subtle than simply excluding someone.

568 LEONARD: What I'm saying is, if we have to address the issue of people being excluded from coverage in this amendment, then it would seem to me that the next logical thing that the insurance company would do would be to charge more for that coverage, if they are required to provide the coverage. It seems to me that if we don't speak to that here as well, we re not closing the door all the way.

574 CHAIR BUNN: I think one of the things we'll do is ask our staff to address this in a way that deals with both sides of the issue.

597 CHAIR BUNN: ls there any objection to the inclusion of this provision? (No objections registered.) We will include this in our working draft.

601 ARIO: The next reform is to take the pre-existing conditions rules that currently apply in the small group market and extend them to all groups. That is, the six-month limitation and attendant rules.

604 CHAIR BUNN: What do we have now?

606 ARIO: We do not have a restriction on the pre-existing condition limitations in the large group market right now.

607 MCCOY: That's not an improvement, is it?

610 CHAIR BUNN: Yes, it extends it to larger groups, which is an improvement. Is there any objection to the inclusion of this provision? (No objections registered.) We will include it in our working draft.

616 ARIO: Talking about the recommendation on portability

621 HANNON: You keep referring to this as group carriers. How would this portability apply to selfinsurance?

627 ARIO: Responds.

640 HANNON: Could there be such a condition where a person would become totally uninsurable during that period of time?

642 ARIO: Yes, there could.

647 CHAIR BUNN: I'm going to hold off on committee action on this until we have an in-depth discussion.

649 ARIO: Right now, individuals leaving group coverage have short-term rights that continue their coverage at their own expense if the group has 20 or more in it. There is a federal law that gives them the right to stay under the group policy up to 18 months in most cases, and in some cases longer than that. If they're leaving a smaller group, 19 or less, there is a state form of COBRA that generally gives them the right to stay under group policy for up to six months. Individuals who exhaust these continuation rights or in some cases can't afford the cost of continuing in their group coverage, these folks have the option of purchasing a conversion policy under state law, but those are typically high-cost and low-banefit.

675 We recommend that we repeal the current conversion statutes in Oregon and replace them with portability reforms that give individuals leaving group coverage access to at least two standardized portability plans under the following basic rules: l) In terms of eligibilit . portability plans would be available to any individual who has at least 180 days of prior group coverage; that could be one group or a combination of groups, and it applies that portability coverage within 60 days of leaving

please refer to the tapes.

 their group coverage. 2) In terms of plan design, the plans would be designed by an advisory committee and approved by the DCBS Director in the same general manner as the basic health plan was designed under SB 1076. One plan would be designed for those seeking an average type plan, and the other would be designed for those seeking a floor-type plan with priority on affordability. 3) Pricing of plans: price variations on these portability plans would be limited to the same 2-to-1 rate band applicable in the small group market. Price differences could be based only on the age of the individual. 4) There would be no pre-existing condition exclusions allowed.

704 CHAIR BUNN: Is there objection to inclusion of this provision? (No objections registered.) We'll include it in our working draft.

712 We are scheduled to pick up our discussion on this bill again at 5:00 p.m. on 3/20 could we take your testimony first at that time (Speight)?

717 SPEIGHT: I won't be in Oregon on Monday.

726 CHAIR BUNN: We'll continue working on this bill on Monday, and work your testimony
(Speight) in at another time.

BARNEY SPEIGHT'S WRITTEN TESTIMONY: [EXHIBIT B

745 HANNON: Question to Ario: You said we can't regulate the self-insured, correct?

746 ARIO: That is correct.

747 HANNON: But if we were to enact a statute that required a self-insured employee to have access to a qualified health policy upon termination of an employer. that would be legal, is that correct?

754 ARIO: Our portability reform does cover the person leaving a self-insured plan.

766 CHAIR BUNN: Addresses audience re: keeping in touch with committee staff, putting comments in writing, etc. so that everyone who wants to be, can be a part of the process.

782 Adjourns the meeting at 4:45 P.M.

Submitted by,

Mary Ga agher
Committee Assistant

Reviewed by,

Art Wilkinson
Committee Administrator

EXHIBIT SUMMARY:
A - SB 152--Summary of Proposed Insurance Reforms--Kerry Barnett--4 pages
SB
B - 152--Written Testimony--Barney Speight--3 pages

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