

SENATE COMMITTEE ON HEALTH CARE & BIO-ETHICS

February 16, 1993 Hearing Room C 3:00 p.m. Tapes 9 - 11

MEMBERS PRESENT: Sen. Shoemaker, Chair Sen. G.H. Smith Sen. Cohen Sen. McCoy

MEMBER EXCUSED: Sen. Hamby, Vice-Chair

VISITING MEMBER:

STAFF PRESENT: Barbara Coombs, Committee Administrator Dick Shoemaker, Committee Administrator/Cord. Stasi Kitchen, Committee Assistant

MEASURES CONSIDERED: - Possible Bill Introduction SB 47 - Oregon Medical Insurance Pool, PPW SB 50 - Alternative Coordination of Benefits, PPW SB 286 - Establishes Oregon Health Care Decisions Act, WRK

WITNESSES: Rocky King, Administrator, Oregon Medical Insurance Pool (OMIP) Debbie Juul-Hartman, Benefit Specialist, State Employees Benefit Board (SEBB) Ted Falk, Lane, Powell, Spears & Lubersky Tina Kitchen, M.D., Development of Disability Services Janine Sarti, Oregon Health Bar

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These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. [--- Unable To Translate Graphic ---]

TAPE 9, SIDE A

BILL INTRODUCTION

001 CHAIR SHOEMAKER: Calls to order at 3:05 p.m.

MOTION: CHAIR: Moves for the adoption of LC 1818, LC 416, LC

263. Hearing no objection the MOTION is ADOPTED.

PUBLIC HEARING - SB 47

046 ROCKY KING, ADMINISTRATOR, OREGON MEDICAL INSURANCE POOL (OMIP): He refers to proposed amendments to SB 47. 1) Medicare supplement policy,

and 2) Unfair referral plan. Refers to SB 1076 from last session.

146 Chair: To what extent has SB 47 been discussed?

150 King: SB 47 has been discussed with the larger carriers, also adopted by the OMIP board.

153 Chair: When did that occur?

154 King: January 29, 1993.

156 SEN. COHEN: 1) Has the SB 47 been a problem, and 2) Is the language similar to SB 1076?

160 King: 1) Yes, and 2) Yes.

178 Chair: Is there a reason SB 47 cannot be identical?

180 King: Without having the document before me, I am unable to answer.

185 MOTION: CHAIR SHOEMAKER: Moves to ADOPT SB 47 Amendments, in principal.

VOTE: Hearing no objection the amendments are ADOPTED.

191 SEN. MC COY: Does the OMIP board consist of insurance carriers only?

196 King: No. There are two consumer representatives, one doctor, and one reinsurer. The Director of the Department of Insurance & Finance (DIF)

serves as the chair.

209 McCoy: How did they come to the point of taking out all the healthy people and leaving the others?

207 King: This has been occurring for a long time.

217 McCoy: Do you sign off on the Pool?

220 King: I am the Administrator, I report to a pool board. I do not put forth legislation without the boards approval.

256 MOTION: CHAIR SHOEMAKER: Moves to ADOPT SB 47 Amendments, Line 17, Line 28 (hand engrossed) and Point Two of the Unfair Referral Plan.

VOTE: Hearing no objection the amendments are ADOPTED.

PUBLIC HEARING - SB 50

289 DEBBIE JUUL-HARTMAN, BENEFIT SPECIALIST, STATE EMPLOYEES BENEFIT BOARD (SEBB): Referred to SEBB overview handed out last Thursday.

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007 SEN. SMITH: Are state employees able to choose either of the options?

009 Juul-Hartman: No.

012 Smith: In proposing the amendments are there any potential savings to the state?

014 Juul-Hartman: Yes.

015 Chair: The proposed amendment would cost the legislators 20% of the cost of the care.

037 Smith: The proposed amendment parallels what the private sector has.

045 McCoy: Who paid before?

049 Juul-Hartman: Currently, as the statute reads it is automatically paid up to 100%.

060 Chair: Are we finding the insurance industry moving to the non-duplication of benefits?

063 Juul-Hartman: Most large employers are self-insured and not subject to the statute.

068 Chair: What happens with a private insurer who is the secondary coverage?

070 Juul-Hartman: The insurance statute covers all insured plans, including the private insurers.

071 Chair: The proposed amendment effects everyone?

073 Juul-Hartman: Yes.

076 Chair: What are the coordination of benefit rules that apply?

077 Juul-Hartman: Full coordination, 100%.

083 MOTION: CHAIR SHOEMAKER: Moves that SB 50 be sent to the Floor with a DO PASS recommendation.

087 McCoy: 1) Why are we moving from 100% coverage to 80%? 2) why would the employees want to pay anything?

095 Chair: 1) will save state money, 2) SB 50 will leave us with a level of responsibility.

105 McCoy: Therefore, state employees would have to come forward now and pay. 115 Chair: Yes.

127 Cohen: It is my understanding that you may pay extra for full coordination.

154 Juul-Hartman: We currently have one coordination of benefits option available.

158 Cohen: I am not aware of any 100% coordination.

171 Chair: We will not move on this today, would be well to discuss SB 50 within a caucus.

175 Coombs: We have information from last session SB 53, would this aide the committee?

171 Smith: Yes.

WORK SESSION - SB 286 AMENDMENTS

201 Coombs: Begins with SB 286 - Alternate Section 21, Committee Spokesperson Approach. (EXHIBITS A & B).

233 Cohen: In subsection 2 how would a health care provider be deciding how somebody would be qualified to serve other than the list?

241 TED FALK: Refers to Subsection 7, which lists the qualifications.

261 Chair: Could a spouse who is emotionally undone by the situation and cannot conceive of his/her spouse dying be deemed unqualified to serve?

269 Falk: A person who is mentally capable of representing the spouses interest but has not really appreciated the significance of what is

going on. I would be more hesitant to put that into this category. If, however, the spouse were unwilling to make any decisions at all, that would make them not willing to serve, which would be grounds for them being not qualified. Goes into lengthy discussion.

342 Chair: Does consensus mean unanimity?

350 Falk: I would interpret the word consensus as meaning is no one who is against decision.

357 Chair: In that circumstance, the decision should be followed? What if there is dissent?

359 Falk: This does not provide any mechanism for resolving that.

360 Chair: Is it clear that the spokesperson does not have the authority if there is dissent to order this continuance of life support?

364 Falk: No. They would not have the authority under Subsection 1. This only applies to those who do not have advance directives.

368 Chair: We would not be changing what the current law is in that regard? 370 Falk: Yes, that is correct.

371 Cohen: How would a provider know that?

379 Falk: If they wanted to take advantage of the immunities provided by this version of subsection 21, then the spokesperson would have to

report to the provider. Clarifies that the subsection is applicable

only to those who do not have advance directives.

418 Smith: If there is a conflict between the committee would the presumption in favor of nutrition and hydration would be reinstated?

422 Falk: If the bill is enacted the presumption in favor of nutrition and hydration would be repealed.

428 Smith: I thought this is what the committee is trying to decide, whether to keep nutrition and hydration?

429 Falk: They would have the authority to make that decision, but they would not be starting from any presumption, one way or the other.

432 Smith: If there is a conflict among them then they cannot reinstate it?

435 Falk: Yes. They would not be starting from a presumption about nutrition and hydration.

445 Chair: Should we define consensus?

460 McCoy: In a case of consensus you would not have anyone objecting, correct?

462 Chair: Yes. Consensus, defined as a proposal to which there is no dissent, there may be some people who are emotionally not able to say I agree, but they are willing to let it happen.

479 Coombs: Should we amend it here?

489 Chair: Yes. Subsection 4 (b). We could say if no member of the committee dissents from the proposed health care decision, the

spokesperson shall report, etc.

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033 Falk: That would do it. Yet, someone still has to put it forward.

035 Chair: That is done by the spokesperson. Where do we have anything that says the spokesperson is making a proposed health care decision?

039 Falk: It is not mentioned.

043 Chair: Do you think this should be mentioned?

045 Falk: Not necessarily the spokespersons responsibility.

047 Chair: Then we could say on Page 2, Subsection (b), Line 1, If no member of a committee dissents from a proposed health care decision.

067 McCoy: I prefer the first language.

071 MOTION: CHAIR SHOEMAKER: Moves to ADOPT Subsection 4 (b) amended to read, if no member of the committee dissents from a proposed

health

care decision.

VOTE: Hearing no objection the amendment is ADOPTED.

107 Chair: In Subsection 7 (a), qualified to serve is defined as available, able and willing to serve as the health care representative, and is not disqualified by reason of...

117 Coombs: 127.520 would disqualify a person who's authority had been revoked by a court, or if the principal had disqualified that person.

120 Falk: If the principal had affirmatively said they did not want somebody to represent them.

122 Chair: My concern goes with the available, able and willing to serve. I think it is too constrictive.

127 Falk: It would be more precise if it said, the person was available, able and willing to serve as a member of the committee.

135 Chair: We could say then on Page 1, Line 2, Subsection 3, the spokesperson should make a reasonable effort to locate all other persons on the list in Subsection 1, who are available and are willing to serve on the committee and are not disqualified under ORS 127.520. Does that

cover it? Do we need to get into the willing represent in good faith?

141 Coombs: Do you want to delete that?

143 Chair: No.

146 Chair: We have two different criteria here. 1) For those who are qualified to serve as the spokesperson, and 2) For those who are to

serve on the committee.

161 Chair: Subsection 1, begins by asking the health care provider to locate a spokesperson by conducting a search, in the following order, of

persons, who are qualified to serve as a spokes spokesperson.

164 McCoy: And this defines who the people are that qualify.

166 Chair: And that person has to be available, able, and willing to serve not disqualified under 127.520 and is willing to represent the principal in good faith. It doesn't seem to me to be the appropriate criteria for the spokesperson, but may be too restrictive for members of the

committee.

171 McCoy: It is appropriate the way it stands. 172 Coombs: Do you want a higher standard for the spokesperson?

174 Chair: No.

176 Coombs: For Subsection 7, do you want to change these qualifications?, available, able, and willing?

178 Chair: No.

179 Coombs: You want to change it to say qualified to serve as spokesperson?

180 Chair: Yes.

182 Cohen: What is so important about the spokesperson that distinguishes that individual as different than any other member of the committee?

184 Falk: In this structure the spokesperson does not have any greater authority in making decisions. They are the ones singled out to be the

liaison with the provider.

186 Cohen: Why then should you have different qualifications for that person as opposed to any other person that is a member of the committee?

196 Coombs: You can delete in Subsection 7, and say a person is qualified to serve, but not as what.

198 Falk: Yes, that would make it clearer.

MOTION: CHAIR SHOEMAKER: Moves to ADOPT Alternate Section 21 as amended, in Line 1 of Subsection 4 and 7.

VOTE: Hearing no objections the amendments are ADOPTED.

249 Coombs: Explains proposed amendments to SB 286 (EXHIBIT C). This compiles four amendments that came to us. Page 16, Line 3-4, Page 1,

Line 15, Page 2, Line 45, Page 3, Lines 1-2, Page 15, Line 26, Page 15, Line 36, Page 16, Line 12, Page 20, Line 16, Page 22, Lines 35 and 42,

Page 21, Line 2, and Page 21, Line 1 and 34.

336 Chair: (Addresses III) are we using the word doctor on the form?

337 Coombs: Yes. Continues to explain IV.

361 Chair: Page 1, Line 15, would read artificially administered nutrition and hydration means a medical intervention to provide food and water by tube, mechanical devise, etc.?

368 Coombs: Yes.

370 Chair: Page 2, Line 45, after the word function which ends a sentence include a comma and the language including artificially administered

nutrition and hydration.

382 Cohen: Asks for clarifications on the amendments and their effect. Asks if anything can be done differently. Wants to make sure that

previous amendments will work with these amendments. Wants to ensure that when they get a bill back from Legislative Counsel it will include what the committee is adopting.

482 Coombs: Everything that is passed today will be reflected in the next draft from Legislative Counsel.

TAPE 10, SIDE B

041 MOTION: CHAIR SHOEMAKER: Moves to ADOPT proposed amendments to SB 286.

VOTE: Hearing no objection the amendments are ADOPTED.

046 Coombs: Next, consider a change on Page 2, Line 45. Regarding life sustaining procedures and its definition.

055 Chair: Does the life support term appear on all of the forms or just some?

057 Coombs: It will be on all forms, if committee adopts amendments.

MOTION: CHAIR SHOEMAKER: Moves to ADOPT proposed amendments to SB 286.

VOTE: Hearing no objection the amendments are ADOPTED.

062 Coombs: Made a change on the new advance directive form on Page 2, a notation, and on the same page made an adjustment to the definition of

life support systems.

106 MOTION: CHAIR SHOEMAKER: Moves to adopt amendments to SB 286.

VOTE: Hearing no objection the amendments are ADOPTED.

113 Coombs: Addresses Appendix B, (EXHIBIT D), asterisk sections apply. Page 3, Line 7, explains definition of permanently unconscious and

change being proposed.

155 Smith: What is the reason for the change?

161 Coombs: The amendments came from the Oregon State Bar Health Law Section.

167 JANINE SARTI, HEALTH LAW SECTION OF THE BAR: The change in question was made by others on the committee who, unfortunately, are not present.

197 Chair: Will you speak to the amendment on Page 3, Line 7.

199 Falk: The intention of the change is to eliminate any suggestion of subjectivity in the decision.

205 Sarti: Or that another decision maker may go through in determining whether the person would return to a conscious state. 210

Smith: Prefers previous language. Notices the change occurs several times throughout the document.

215 Chair: That same change appears elsewhere?

216 Smith: Yes.

223 Cohen: Would like to hear from a doctor on this change.

232 Chair: Suggests hearing from Tina Kitchen?

245 TINA KITCHEN, OFFICE OF DEVELOPMENTAL DISABILITY SERVICES:
Will not speak for the doctors, only for herself. Has concern with the term

"highly unlikely ever to", prefers "no reasonable possibility of".

262 Smith: Prefers no reasonable possibility of.

263 Chair: Let us remove the change on Page 3, Line 7 from the proposed amendments.

266 Coombs: Addresses Page 3, Line 26, the amendment would strike irrespective of treatment.

274 Chair: It is a significant change, would that change treatment could postpone death substantially, that would permit withdrawal of life

support.

285 Falk: Irrespective of treatment does not seem to add anything to the definition.

298 Chair: Feels irrespective of treatment adds to the definition.

302 Kitchen: Irrespective of treatment is an important phrase.

310 Chair: Agrees. Remove that amendment to Page 3, Line 26 from the proposed amendments.

317 Coombs: Addresses Page 4, Line 45.

356 Chair: At least one of the witnesses shall be a person who is not an owner or employee. On Line 40, remove the words at least.

383 Falk: There would be no confusion if the words at least were deleted.

389 Chair: Add to Appendix B, reference Page 4, Line 40 deleting the words at least.

393 Falk: Noticed that Barbara Coombs' hand engrossed copy does not line up with the bar text in one word. The copy here says that an owner or

employee of a health care facility where the patient is a patient or resident, I think it should have said where the principal is patient or resident.

396 Coombs: Correct, thank you. 398 Cohen: We are going to adopt amendments as long as we delete the words at least on Line 40?

402 Chair: Yes.

407 Coombs: Page 5, delete all of Subsection E.

425 Chair: Why are we deleting Subsection E?

430 Falk: As long as one of the witnesses is a disinterested person, it may be impractical to have an ombudsman person there.

444 Chair: Are we really sure that we have eliminated all possibly interested persons, we have not eliminated the casual witnesses.

453 Kitchen: Feels wording is an additional protection.

472 Chair: Agrees. Remove amendment from the proposed.

477 Coombs: Addresses Page 5, Line 12.

483 Sarti: This deals with advance directives from out of state.

494 Chair: Amendment is alright.

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030 Coombs: Page 6 delete Lines 5-10.

058 Chair: Leave Lines 5-10 in for now and will return to again later.

059 Smith: Wants to hear testimony on Page 6.

062 Coombs: Amendment is declined?

063 Chair: Yes.

064 Cohen: With the understanding that we need more information on it.

067 Coombs: Page 15, Line 31, regarding the training of the health care provider who does the confirmation.

083 Kitchen: Clinical privileges is a very broad term. As far as I know there is no clinical privileges in making determinations of capacity.

088 Sarti: Focus may apply to smaller community hospitals who may not

have anyone who is trained. It is a needed requirement.

095 Kitchen: Even in a smaller hospital, if there is somebody who does not have training, to me this is a needed requirement, people should have

these safeguards.

100 Chair: These are the safe harbor provisions which are different than the mandatory requirements. Let us remove that change from the proposed amendments.

111 Coombs: Page 16, Lines 5-7, would delete all of the text following permanently unconscious before the semi-colon.

120 Chair: Not willing to remove the language.

128 Coombs: Page 16, Line 14.

139 Chair: Agrees.

140 Coombs: Page 15, Line 18-19. Drafting changes.

150 Coombs: Page 16, Line 27, deletes (F) entirely.

159 Falk: It is simply removing the requirements back to Page 15, Line 27.

162 Cohen: It is technical.

163 Chair: That is okay.

167 Coombs: Page 17, Line 2.

186 Chair: Amendment is okay.

196 Coombs: Page 19, Lines 14, 15, and 41.

207 Chair: Good faith is just a redundancy. Then we are okay with this.

211 Chair: Page 23, Lines 12-19, is last amendment. Don't we want to keep this?

222 Falk: It would delete the ability for renewing an existing form by simply counter signing it. If it is in there it will allow an existing

badly drafted form to be perpetuated forever.

229 Chair: Okay.

231 MOTION: CHAIR SHOEMAKER: Moves to ADOPT SB 286, Appendix B, amendments as amended.

VOTE: Hearing no objection the amendments are ADOPTED.

255 Chair: Adjourns at 5:30 pm.

Submitted by:

Reviewed by:

Stasi Kitchen, Dick Shoemaker, Committee Assistant
Committee Administrator

EXHIBITS LOG:

A Oregon State Bar Health Law Section - 19 Pages B Oregon State Bar
Health Law Section - 3 Pages C Amendments to SB 286, Oregon State Bar,
Health Law Section - 2 Pages D Amendments to SB 286, Oregon State Bar,
Health Law Section - 7 Pages