

House Committee on Business and Consumer Affairs
Subcommittee No. 1
March 19, 1991 - Page

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.

HOUSE COMMITTEE ON
BUSINESS AND CONSUMER AFFAIRS
SUBCOMMITTEE NO. 1

March 19, 1991
1:00 P.M.

Hearing Room F
Tapes 1 - 2

MEMBERS PRESENT: Rep. Jerry Barnes, Chair
Rep. Lisa Naito

Rep. John Schoon
Rep. Beverly Stein

STAFF PRESENT: Terry Connolly, Committee Administrator
Annetta Mullins, Committee Assistant

MEASURES
CONSIDERED:

HB 2181 PH

HB 2696 PH

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TAPE 1, SIDE A

010 CHAIR BARNES calls the meeting to order at 1:07 p.m. Members present are Reps. Walden, Schoon and Barnes.

HB 2181 - EXEMPTS FROM CERTAIN DEPOSITORY REQUIREMENTS CERTAIN MORTGAGE LOANS FINANCED BY THE HOUSING AGENCY.

007 CHAIR BARNES opens the public hearing on HB 2181 and closes the public hearing on HB 218 1 because there were no witnesses present.

The Preliminary Staff Measure Summary on HB 2181 is hereby made a part of these minutes (EXHIBIT A). See page 8, (Tape 2, Side B).

009 CHAIR BARNES opens the public hearing on HB 2696.

HB 2696 - REQUIRES MEDICAID OR HEALTH INSURANCE PLANS TO ALLOW RECIPIENT OR BENEFICIARY TO CHOOSE OWN PHARMACY.
Witnesses: Chuck Gress, Executive Director, Oregon State Pharmacists Association

Mike Dewey, Lane County Pharmaceutical Association and Portland Retail
Druggist
Association
Marv Schlabs, President, Oregon State Pharmacists Association and pharmacy
owner
Darrel Purkerson, pharmacist
Barbara Humphries, Milwaukie
Bill Miller, Beaverton
Robin Richardson, Pharmacists' Service Group
Jean Thorne, Dept. of Human Resources, Office of Medical Assistance
Programs
John Powell, Blue Cross/Blue Shield of Oregon and Health Insurance
Association of
America
Bruce Bishop, Kaiser Permanente
John Jackimiec, Kaiser Permanente
Jeffery Johnson, Kaiser Permanente
Roger Martin, Rogue Valley Physicians Service, Klamath Medical Service
Bureau,
PACC, Select Care and Pacific Hospital Association
Art James, Executive Dept., Personnel Labor Relations Division
Peggy Anet, Administrator, League of Oregon Cities' Employee Benefits
Services
Trust
Kyle Elwood, pharmacist

011 TERRY CONNOLLY, Administrator, reviews the Preliminary Staff Measure
Summary
(EXHIBIT B).

025 CHUCK GRESS, Executive Director, Oregon State Pharmacists Association,
submits and
reviews a prepared statement in support of HB 2696 (EXHIBIT C). He reviews
their proposed
amendments (EXHIBIT D).

072 MIKE DEWEY, Lane County Pharmaceutical Association and the Portland
Retail Druggist
Association: This bill is brought to you because of what is happening to
the small community
pharmacies and their opportunities to participate in insurance programs.
The problem in many
cases is they don't have the opportunity to participate. The people are
usually signed with large
pharmacies across the state. I suspect one of the things you will need to
talk about is the effect
on the cost of health care. We hope we can address them in such a way that
you will act
favorably. The amendments are important because the glitch is that you
allow non-participating
providers in the amendment in (2) to participate and there is no way of
knowing who these people
are or how to deal with them. At the same time they don't know if an
individual patient is
enrolled in a particular plan. There are others who can speak to the
effect this has on them and
what history has done to them over time.

097 REP. WALDEN: Would the amendment still preserve the concept of managed
care
organizations and PPO's in terms of cost control?

107 MR. GRESS: Yes and no. It would preserve the cost control in managed
care organization but
it would permit pharmacies to participate in the managed care organizations
or the HMO's who

might be on the outside. However, the reimbursement level would be at the level of the HMO plan.

114 MR. DEWEY: In terms of the total cost, the reimbursement costs would be the same. There may be an additional charge to the patient, but that patient/customer would decide whether they want to pay that based on the relationship they have had with the pharmacy.

120 REP. SCHOON: The amendment would seem to require a subsequent billing from the HMO or the insurer to the patient where there was a difference in the cost and the reimbursement level. Is that correct?

126 MR. GRESS: No, it would require a billing from the participating pharmacy to the patient, but not from the insurer.

126 MR. DEWEY: The pharmacy would not be required to provide for the extra charge.

142 CHAIR BARNES: Would there have to be some type of written agreement or signed statement so that the patient would know they could be billed for the difference?

146 MR. GRESS: Most likely there would be a plan delineation where the pharmacy would 1) not bill an additional amount or 2) the pharmacy would bill the difference. That statement would be carefully articulated in writing to the patient.

146 REP. WALDEN: What benefit would there be to the pharmacy to participate in an HMO, PPO, etc.

158 MR. GRESS: The pharmacy could provide the drugs and information to the patients which many patients are striving for. The pharmacy could obtain reimbursement from the plan, plus a difference from the patient.

REP. WALDEN: With this language there would be no reason for the pharmacy to comply with anything else because they could continue to operate as they do today and bill two people.

225 REP. SCHOON: Do you mean, literally, that the participating provider would bill the patient for the difference?

225 MR. GRESS: We use the language "may."

227 MR. DEWEY: That is language that was crafted after we figured out that the non-participating aspect made this very bureaucratic. We wanted to turn it around and perhaps "charge" would be a better term. "Bill" seems like you are going to send a letter or statement out, as opposed to making the payment up front, so to speak.

228 REP. SCHOON: That was my concern. It will cost everybody more money because of the

paper, also the patient might not know there was a charge until he receives the bill.

247 MR. DEWEY: It should be up front. Information would be sent out listing the participating providers in the area and indicating that certain providers have a policy of not charging an additional amount.

278 MARV SCHLABS, President, Oregon State Pharmacists Association and owner of three small community pharmacies in east Washington County: There are two issues here. The first is access to pharmaceutical services. Insurance plans which contract fewer pharmacy outlets disadvantage the clients who have to travel. The elderly, physically handicapped and the mentally impaired are probably the most affected.

The first part of the bill has to do with access. My customers and friends complain to me that because of their employment or past employment they are forced to leave my store and go somewhere else where they don't feel comfortable. The second part has to do with enabling. When you ratchet down prices for services through the bid process of a contract, you lower the level of service. I, as a community pharmacist and friend to my patients and neighbors, do the right thing by counseling and caring for and doing the professional things pharmacists do even when we don't get paid. We ask not to be locked out. If the \$2.00 fee the plan offers to pay is not realistic, in the interest of taking care of people in the community, you ask they pay a nominal fee to do business with you. That is where Section 4 (2) comes into play. We are not talking about big dollars. We are talking about nominal fees. We are not talking about everybody paying anything, but it would have to be collected up front along with their co-pay so there isn't an encumbering billing system added to it.

332 CHAIR BARNES: How important do you think the pharmacist-client relationship is?

333 MR. SCHLABS: I think it is essential. I think it is what the profession of pharmacy has been built on. I am basically offended that the insurance industry would tell me how I have to practice my profession and how I have to treat my friends and neighbors.

341 DARREL PURKERSON, pharmacist and owner of a small prescription store in St. Helens: I have been locked out of participating in programs. I did not have the choice in some cases and when I did, I could either pick or choose the programs I wanted to participate in. Example: Sisters of Providence has contracted with Fred Meyer pharmacies in the Portland metropolitan area for some time. As they expanded their program they went to smaller communities asking stores to participate. I told Sisters of Providence that I would not participate unless the other stores in the area would be able to participate. They said they contract with one store only. A

couple of months later my competition called to ask if I would go into partnership and work with the Sisters of Providence. I said no because I didn't think it was fair because it takes the patients' choice away. Finally Sisters of Providence open it up to all the stores in town. Two decided to participate; I did not.

I also had the choice of participating in PACC. They would not reimburse me for my cost of doing business. I counsel patients, do some blood testing, provide pick up and delivery services, chase after senior citizens and try to talk them into going into another doctor if they are not getting the service locally. They wanted me to subsidize their program. I turned their program down.

Our hospital closed last year and they had a program called Select Care. I was told three months after the program began the bid had been let out to Payless. I met with two other stores and Select Care. Select Care they said they decided not to offer the opportunity to participate because Payless was chosen.

The last problem was with Capital Health Care. They came in and contracted with Chevron Chemical. After the program started in January, the patients said I could bill them. The claim was rejected. I called Capital Health Care and they said they contracted with High School Pharmacy and Payless. My patients had to go there. That doesn't set well with my patients or me.

If I have the opportunity to compete, I can compete with anybody. I cannot compete if I am not given the opportunity to do that.

TAPE 2, SIDE A

019 MR. PURKERSON: Capital Health Care told me my patients could get their prescriptions at my store, but they would only reimburse them one-half the cost of the prescription.

029 BARBARA HUMPHRIES, Milwaukie: I am very unhappy that I had to leave my pharmacist who has been our family pharmacists for eight or ten years because of my insurance. He has been very helpful to us in many ways and I trust him.

040 BILL MILLER, Beaverton: I had been with my pharmacist for 20 years through my employer. I am now retired. I have had an insurance program that had flexibility where I could either do business locally or I could send to a major distribution warehouse for drugs which would be sent to my home. I paid a co-pay to my pharmacist to continue to handle my prescriptions because of two things: I was sure I was getting the drugs I needed and I was sure the drugs I was prescribed would not conflict with something I might already be taking. At the present time I can only get my drugs, except on an emergency basis, from a pharmaceutical

house in
Pennsylvania. It takes anywhere from a week to two weeks to get these
drugs.

One of the first experiences I had with mail order drugs was I received a
box of pills I had never
seen before. I went to my local pharmacist and asked what it was. It all
comes down to service.
When three doctors give you prescriptions they try to make sure they know
what you are taking,
but my pharmacist knows what I am taking.

083 ROBIN RICHARDSON, Pharmacists' Service Group, submits a prepared
statement and a
study, "Prescribing Problems and Pharmacists Interventions in Community
Practice: A
Multicenter Study" prepared for the American Pharmaceutical Association
Foundation, February
11, 1991 (EXHIBIT E). He summarizes his prepared statement in support of
HB 2696.

192 MICHAEL JAMES, President, Lane County Pharmaceutical Association,
submits and reads
a prepared statement in support of HB 2696 (EXHIBIT F).

237 JEAN THORNE, Department of Human Resources, Office of Medical Assistance
Programs,
submits and paraphrases a prepared statement in opposition to HB 2696
(EXHIBIT G).

370 JOHN POWELL, Blue Cross/Blue Shield of Oregon and Health Insurance
Association of
America: We are strongly opposed to the provisions of HB 2696 for many of
the same reasons
as the previous speaker. SB 27 and programs like that are definitely a
movement toward
managed care. We administer programs on a regional basis as well as within
the state of Oregon.
Under the provisions of this bill we would have programs that would have us
deal with
pharmacies differently in Oregon than in other states. The important
aspect of a managed care
system is to save on the bottom line.

As more and more workers are starting to pay a share of their premium they
are a part of the
consideration in this bill. If, as this bill states, we are to allow any
pharmacy to become part of
a participator in the plan, even if they accept the cost, it damages the
plan significantly.

This bill could destroy the managed care concept that we think is important
to holding down
costs. While pharmaceuticals are not the major component of health care
costs today, they are
one of the most rapidly growing segments of health care costs. We would
hope you would not
look favorably upon HB 2696.

TAPE 1, SIDE B

016 BRUCE BISHOP, Kaiser Permanente, introduces John Jackimiec and Jeffrey
Johnson.

025 JOHN JACKIMIEC, Kaiser Permanente, submits and paraphrases a prepared
statement in

opposition to HB 2696 (EXHIBIT H).

105 JEFFREY JOHNSON, Director of Rates and Benefits, Kaiser Permanente, submits and reviews a prepared statement in opposition to HB 2696 (EXHIBIT I).

146 We have 18 pharmacies, 160 pharmacists and of our 375,000 members, 80 percent have insurance coverage for their outpatient prescription drugs. Each year we provide about 2.5 million prescriptions to these members.

If this were to be law, I would expect the 300,000 members who have prepaid drug coverage would start using non-Kaiser pharmacists for some portion of their drugs; instead of traveling an extra five miles they might go some place locally. It is hard to predict to what extent our capture rate would drop. The 75,000 members who don't have coverage with us get drugs from non-Kaiser pharmacies. If this bill were to become law, the 2.5 million might drop to as low as 1.5 million. There would be an enormous reduction in the number of drugs we would be providing. Financially we would be in a real bind. In the first few years, the financial consequences would be severe. It would cause higher prices and lower quality care to our patients. We would have to make arrangements to reimburse for the drugs outside. If there are one million prescriptions being filled outside, we would have to set up a claims department, which we don't have now.

Currently, we only spend six percent of our budget on administration. One of the reasons for that is we don't pay claims. Under this bill we would have to set up a claims department and act like an insurance company. I expect that would be expensive and those costs would have to be borne by our members. Right now our dues are \$8.75 per person per month for a drug plan that has a \$5 co-payment. If this bill were enacted, it would increase our costs substantially and we would never have a lean operation with that type of premium again.

219 REP. NAITO: Do you sell items other than prescriptions?

MR. JOHNSON: Yes, we have a lot of over-the-counter drugs.

230 ROGER MARTIN, representing Rogue Valley Physicians Service in Medford, Klamath Medical Service Bureau in Klamath Falls, PACC in metropolitan Portland, Select Care and Pacific Hospital Association in the Eugene area: I imagine some of the testimony you have heard is directed at one or more these clients. Before I talk about the bill which we uniformly oppose, I would like to talk about a bigger issue because you are seeing the first of a number of bills you will have to address this session to bring the Legislature on the horns of dilemma it has been facing for the last 10 years along with all of us who have participated and not very successfully solving. It is the issue of affordable medical insurance and high increases in medical insurance costs over the last 10 years, and mandates. This is a mandate.

There are 20 plus mandates that this committee will be reviewing. Are we going to try to find ways to cut down costs of medical insurance or are we going to take care of all the various providers that have historically done business in this state?

This same issue came up in the last several sessions and was directed to physicians of PACC and dealt with the issue of psychologists who wanted to be mandated in all health insurance programs. It is the same kind of thing. The concept of low-cost medical insurance and these mandates doesn't work.

One Senate Committee heard from people representing the Oregon Health Action Committee a new proposed plan, the Canadian style medical plan. In their testimony they talked about the high profit, greedy health insurance companies. The five I represent are non-profits and over the last 10 years they have struggled to break even.

It seems we are trying very hard to encourage all employers to provide health insurance for their employees. When an employer contracts with one of my clients, or another insurance entity, they may have an employee who says he doesn't like the program his employer has signed him up for. We can't please everybody, but you have to understand the HMO's, the PPO's and the others are all struggling to find a way to hold costs down. One of the ways you do this is to go to various providers and through contracts try to get the services and drugs at the lowest possible costs. Not every druggist is going to like that. But we have to face up to the fact that we are going to take care of all the providers that want to be covered by law or we will have some kind of affordable insurance, but you can't do both. I encourage you to vote no on HB 2696.

326 ART JAMES, Executive Department, Personnel Labor Relations Division: I am here to place on the record some concerns raised by the State Employees Benefit Board with regard to this bill. SEBB administers benefit programs for all state employees who are not covered under the bargaining unit, including members of the Legislative Assembly. As the largest employer in the state, the Executive Department is concerned with the potential cost increases in our health plans that may result as a passage of the bill. Fiscal impact statements were provided to the Legislative Fiscal Office by certain HMO's we contract with.

337 PEGGY ANET, Administrator, League of Oregon Cities' Employee Benefits Services Trust, submits and reads a prepared statement in opposition to HB 2696 (EXHIBIT J).

TAPE 2, SIDE B

008 Kyle Elwood, Pharmacist, Salem: I had a patient come in for over-the-counter counseling for an eye inflammation. In looking over the problem I suggested she go to a

physician. I am referring to triage. The pharmacist is easiest to access and they can often direct patients in the right direction. This patient went to a clinic and came back with a diagnosis and prescription. It was a misdiagnosis. On Sunday the condition was worse and she went to the emergency room at the hospital and received another prescription which she had filled at another pharmacy. On Monday she told me the situation and showed me the medication. It was diagnosed as a bacterial infection on Saturday and re-diagnosed as a viral infection on Sunday. I was reading some literature that day and found out that her prescription was written in an inappropriate dosage. It should have been five times the amount it was written. The ophthalmologist who had written the prescription conveyed to her that she should be appreciative because it could have resulted in some serious problems, blindness or deterioration of the eye. I mention that because it is very important. One of the main focuses of a lot of the insurance programs is the up-front cost. This prescription was filled by a pharmacy involved in an exclusive contract with a health care provider organization. If the proper guidelines for quality care are built into these programs, it wouldn't be such a concern. But a lot of these programs do not have the quality care built into the formula.

He describes another misdiagnosis and potential complications of incompatible medications.

The quality of care in the pharmaceutical end is very important in reducing hospitalizations. There are a lot of the health care systems that do not focus on quality, they focus on the price only. That is easy to do because you can show immediate health care costs, but you shift costs to the hospitals and other areas which are not taken into consideration. The overall health care costs climb because quality of care is not there. Some do have quality of care included, but the issues need to be addressed.

126 CHAIR BARNES closes the hearing on HB 2696 and reopens the public hearing on HB 2181.

(Tape 2, Side B)
HB 2181 - EXEMPTS FROM CERTAIN DEPOSITORY REQUIREMENTS CERTAIN MORTGAGE LOANS FINANCED BY THE HOUSING AGENCY.
Witness: Frank Brawner, Oregon Bankers Association

140 FRANK BRAWNER, Oregon Bankers Association: HB 2181 is an important bill. We had the same bill drafted and early in the session we withdrew that bill because this bill existed.

I will describe how the Housing Agency has for years dealt with lenders in Oregon and outside of Oregon. For its various programs bonds are issued to fund loans. Participating lenders are investigated and pre-approved by the Housing Agency and they make qualifying loans. The lender itself does all the underwriting and submits the loan package to the

Housing Agency who then approves or disapproves. With approval, the Housing Agency purchases that loan and the servicing remains with the lender. The lender, which can be in Oregon or anywhere in the United States, purchases and services a block of loans through their local offices. These lenders can be insured depositories or uninsured mortgage bankers or mortgage lenders from outside the state.

In 1987 and then in 1989, the Attorney General of the State of Oregon was requested to issue an opinion as to the status of the payments while they are in the possession of the lender. In my opinion, the request, both in 1987 and in 1989, was improperly phrased, but, in my opinion, the Attorney General gave an improper decision. He indicated that under current law those payments are public funds while they are in the possession of the lender. They are owned by a public entity, the Oregon Housing Agency. Up until that time we never had difficulty in addressing this situation because there are so many protections. The Housing Agency gets to investigate the lender on the front end and they are in control.

The Attorney General said while the payments are in the possession of an insured depository, they are public funds, but when they are in the possession of a non-insured lender, they are not public funds. That makes sense to me because that is not a depository. XYZ mortgage banking company doesn't have FDIC insurance. In that case they are not public funds.

We come to the situation where insured depositories are paying a penalty for participating with the Housing Agency. We already provide \$100,000 of insurance. If we have to treat them as public funds, we also have to pledge collateral up to 25 percent of anything in excess of \$100,000 if it is public funds of collateral. Collateral is usually U. S. Treasuries, municipal bonds, and there is an expense to pledging and monitoring the pool. An insured depository must monitor the payments as they come in to make sure you have pledged sufficient collateral. Meantime, XYZ mortgage banking company doesn't have to anything because the Attorney General opinion said they are not public funds because that is not a depository.

ORS 295.005 says these public funds, these idle tax dollars, must be invested under the prudent person rule. You must maximize the preservation of principle and maximize interest. Both parts of the formula are equally important. I submit that handling the mortgage payment doesn't meet the prudent person test. We are not paying interest on these; we are collecting payments for the Housing Agency. No interest is being paid to us while we hold those public funds. So, in fact, if they are public funds, the Housing Agency had better not do business with us. I would hate to see the day where an Oregon depository couldn't do business with the

Oregon Housing Agency

because most of these loans are for affordable housing or for the lower income scale.

We met several times with the Housing Council and the Housing Agency during the interim.

They didn't enforce this for the first three years of the AG opinion, they began to enforce it early last year. We suggested we had to make the playing field level one way or the other. We suggested for the non-depository institutions, they could open a deposit account with one of our banks and pledge collateral just like we do. But there is no way of making it equal when it comes to the \$100,000 insurance because they can't get that. In their case, you have to start with zero and pledge for everything up to \$125,000. None of the non-insured depository institutions wanted to do that; they refused. The only other way to make the playing field equal is to say they are not public funds. That is what HB 2181 does.

The Housing Agency indicated to me they thought this was a good bill and as recently as two weeks ago I thought all I would do this afternoon was come in and say "me, too." With the passage of this bill we wouldn't have to worry about the pooling, the accounting and the pledging of collateral. Is the Housing Agency protected? Yes, they are. When you consider that they have a lender where there is no protection other than the investigation they have made and then here is a bank that is providing \$100,000 protection. If a bank fails and the \$100,000 insurance was not sufficient to protect the payments, these payments are a priority creditor and are paid after depositors are paid.

276 I called the Housing Agency this afternoon to find out what had happened. I am advised they had a change of heart and they want to go back to try to pursue making the playing field level from the other side saying the uninsured depositories are going to have to pledge collateral. They will find the market place will not tolerate that. We should be encouraging lenders to participate in the Housing Agency activities rather than discouraging them.

In my opinion, after spending two years trying to deal with this issue, there is only one way to make the playing field level and that is HB 2181. If they don't choose to request this bill, we would be delighted to request it because we had the bill drafted and pulled it back. It is my opinion, and has been for 26 years, in this process that once a bill is introduced it belongs to you and not anyone else.

299 CHAIR BARNES closes the public hearing on HB 2181.

306 REP. SCHOON: We will check to see if it is appropriate to schedule the subcommittee for work sessions or to simply bring the recommendations to the full committee.

317 CHAIR BARNES declares the meeting adjourned at 2:53 p.m.

Respectfully submitted, Reviewed by,

Annetta Mullins Terry Connolly
Assistant Administrator

EXHIBIT SUMMARY

- A -HB 2181, Preliminary Staff Measure Summary, staff
- B - HB 2696, Preliminary Staff Measure Summary, staff
- C -HB 2696, prepared statement, Chuck Gress
- D -HB 2696, proposed amendments, Chuck Gress
- E -HB 2696, prepared statement, Robin Richardson
- F -HB 2696, prepared statement, Michael James
- G -HB 2696, prepared statement, Jean Thorne
- H -HB 2696, prepared statement, John Jackimiec
- I -HB 2696, prepared statement, Jeffrey Johnson
- J -HB 2696, prepared statement, Peggy Anet