

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 HUMAN RESOURCES

March 29, 1991 Hearing Room D 1:00 p.m. Tapes 96 - 99

MEMBERS PRESENT: Rep. Mary Alice Ford, Chair Rep. Beverly Stein, Vice-Chair Rep. Jerry Barnes Rep. Cedric Hayden Rep. John Meek (1:50) Rep. Hedy Rijken Rep. Jackie Taylor

STAFF PRESENT: Melanie Zermer, Committee Administrator Angela Muñiz, Committee Assistant

MEASURES CONSIDERED: HB 2396 - Reimbursements for Long-Term Care Facilities, PH

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TAPE 96, SIDE A

005 CHAIR FORD: Calls the meeting to order at 1:35 p.m. Committee is putting together a list of priority guidelines for Ways and Means in their budget cuts.

POLICY GUIDELINES - WORK SESSION:

MELANIE ZERMER, Committee Administrator: Presents policy guidelines which are a compilation of suggestions by the committee (EXHIBIT A). The order does not indicate a priority. Oregon Benchmarks for Exceptional People are incorporated in the guidelines (EXHIBIT B).

REP. HAYDEN: Have the benchmarks been officially adopted by the legislative body?

CHAIR FORD: No, the policy statements haven't been officially adopted. They are just being adopted by the committee for budget cut considerations.

REP. HAYDEN: Oregon Benchmarks is a new philosophical program. It has not been adopted by the Legislature. Is worried about the committee using this untested agenda as a guideline.

055 REP. STEIN: All these things are untested in some sense. The benchmarks is one of the most important things the state has embarked upon. It sets a 20-year goal to guide state policy. The Oregon

Progress Board has worked on the proposals for exceptional people for the last two years. It may not be official law, but they are good guidelines. They have no legal standing and we are free to disagree with them.

REP. BARNES: Supports the policies. May get into trouble if try to prioritize them.

077 MOTION: Rep. Barnes moves the committee adopt the policy guidelines and send them Ways and Means to use in their budget decisions on human resources, and that the committee use the guidelines in prioritizing programs for the committee's recommendations to Ways and Means.

REP. STEIN: Is willing to accept guidelines for committee, but is not sure the committee should send them to Ways and Means without a comment for the need for additional resources. The current budget that the subcommittee in Ways and Means is considering is not adequate. Doesn't want Ways and Means to use the guidelines to justify the cuts that are already there.

REP. BARNES: Could add to the motion that the guidelines be used to restore budget cuts. Agrees that Ways and Means needs to provide more money.

CHAIR FORD: Can do two things. Can amend the motion to include a statement from the committee that Ways and Means find more revenue to accomplish the policies. Can eliminate the request in the motion that Ways and Means follow the policies, and go with the half of the motion that shows Ways and Means the policy and directs the committee uses the policies.

123 REP. HAYDEN: This process of voting on policy guidelines is new. Thought we only voted on bills.

CHAIR FORD: If going to use policies in making cuts, need to show Ways and Means we are doing on sound public policy and principle. This is a guideline to show Ways and Means how we voted on issues.

REP. HAYDEN: Requests the vote be a voice vote rather than roll call.

MOTION: Rep. Stein moves a friendly amendment to the motion by Rep. Barnes that stating that the committee feels that not enough resources have been allocated to human resources and that additional resources are needed before the guidelines can be applied.

VOTE: Rep. Barnes accepts the amendment.

VOTE: In a voice vote there were no objections to the motion as amended.

#### INFORMATIONAL MEETING - NURSING HOME SETTLEMENT:

160 JIM WILSON, Senior and Disabled Services Division: Presents written testimony explaining two lawsuit settlements (EXHIBIT C). The suits were about the state's method of reimbursing nursing homes using Medicaid funds. The state pays nursing homes based on the 75th percentile of costs in several categories.

253 REP. HAYDEN: Is this the 75th percentile of the usual fee for the service or the actual, out-of-pocket expense.

WILSON: It is the 75th percentile of allowable costs. The state defines which costs are allowable and then figure 75% of those costs. It is more of a net than a gross cost.

REP. HAYDEN: For example, if the usual fee to the private sector is \$1,000 and the actual cost is \$900, are you paying 75% of the \$900?

WILSON: Yes, would pay about \$700.

REP. HAYDEN: So the institution is eating about \$300 -- \$200 in actual cost and \$100 in profit. Where do they get the \$200?

WILSON: Only 25% of them are eating that. The rest are paid the costs as long as the costs are lower than the 75th percentile. By definition 75% of them have costs below the 75th percentile.

REP. HAYDEN: The 75th percentile usually applies to a fee structure than covers all the costs plus the profit. You are paying the 75th percentile on actual expenses. Are you paying 75% of the cost or the 75th percentile?

WILSON: The 75th percentile.

REP. HAYDEN: So in some instances you would be paying 80% of the costs. So the institution may have to pay some of the actual costs.

305 WILSON: If you added all the costs of all the facilities, ranked the costs from highest to lowest, and go down to the 25th percentile. The facilities above that level get paid the 75th percentile rate. Everyone below that level gets paid up to actual costs. In theory 75% are getting their costs, but not profit, paid by the state. Explains what both parties agreed upon in the settlement. Department advocated for a new reimbursement system. Now will pay costs at the 80th percentile.

475 REP. HAYDEN: When you pay 80% of the cost at a nursing home, you're pay salaries and administrative costs as well. When the state pays an anesthesiologist it is at the 51st percentile. It covers cost but not salary. Why in one case does the state pay salaries and in the other case they do not?

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030 WILSON: Medicaid is somewhat better than we had before. Part of that provider's usual and customary fee is being met. Every state is different. Oregon's rates are extremely low. With physicians the basic philosophy is that it is better than nothing.

CHAIR FORD: You have some nursing homes that are all private paid and some that are almost all Medicaid. Is there a difference between those homes as far as what their costs are?

WILSON: Those that have a high portion of private pay patients have slightly higher costs. Has looked at costs and quality of care. Doesn't see a huge correlation of costs and measure of quality.

CHAIR FORD: Is concerned about the cost shift to recover expenses not covered by Medicaid is going to the private paying person. Are the rates based on the overall rates or on some kind of average rate for

Medicaid?

WILSON: They are based on cost. Doesn't try to tell nursing homes what they can charge the private person.

CHAIR FORD: Do you have a figure about how many dollars the 80th percentile will be in the next biennium budget?

WILSON: At the time calculated it would be \$13 million total funds, about \$4.7 million general funds. Are recalculating now with updated cost statements. Will know more in about a week.

089 REP. STEIN: You said the industry agreed to certain terms in the settlement. Have they complied with the terms?

WILSON: Yes, they have made a good faith effort to try and relocate people. Are dealing with an elderly population that will triple in the next decade. They will be going into nursing homes.

REP. HAYDEN: Currently only 5% of the aged population is in a nursing home. It is expected to rise to 15%. That is still a small percentage. How do you account for that?

WILSON: People don't see nursing homes as the ideal place to be. If knew why people are in nursing homes, could predict caseload better.

REP. BARNES: Do you know how many nursing homes are exclusively Medicaid?

WILSON: Thinks there are about 20 out of about 200 homes that don't take Medicaid. Will provide a more accurate number later.

HB 2693 - REIMBURSEMENTS FOR LONG-TERM CARE FACILITIES - PUBLIC HEARING:  
Witnesses: Susan Merrick, Citizen Rep. Ted Calouri, District 7 Pam Edens, Alzheimers Disease Association Jim McConnell, AAA Meredith Cote, Ombudsman Maurice Reece, OHCA Winnie Irwin, Ombudsman Bernie Thurber, Legal Aid Penny Davis, Legal Aid Al Mendlovitz, OAHA Cam Groner, OHCA Bruce Hunter, OHCA Jim Wilson, SDSD Mary Jane Woodcock, OHCA

135 SUSAN MERRICK, Citizen: Presents written testimony about treatment her mother received in a nursing home (EXHIBIT D). Her mother has Alzheimer's disease.

193 REP. HAYDEN: You were working full-time at the nursing home your mother was in and were able to monitor her care. You feel that the care she received under your supervision was inadequate?

MERRICK: Worked as an activity director. Complaints filed are for the medical care she received.

REP. HAYDEN: Did you see your mother on a daily basis? Finds the situation unusual.

MERRICK: Yes.

CHAIR FORD: HB 2693 deals with reimbursement guidelines.

MERRICK: The second half of the bill deals with nursing home investigation. Testimony relates to Sections 5-17 of the bill. Returns to written testimony.

350 CHAIR FORD: Will have Senior and Disabled Services Division (SDSD) look at case and explain to the committee why no action was taken.

REP. TED CALOURI, District 7: Presents amendments to HB 2693 (EXHIBIT E). Is interested in Section 14 dealing with reporting and investigating complaints. The details of the report doesn't say much or offer any conclusions. The original complainant should be able to respond to the final report. Wants something in the bill that will prevent reprisals against the complainant or the resident.

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030 CHAIR FORD: Trying to keep confidentiality so that people are not afraid to speak up. How do you address that question?

REP. CALOURI: There may be ways to shield the identity, but people have the right to face their accuser. If you make it harder for reprisal, then people will not be as reluctant to complain. If people are reluctant to complain, then nothing will happen. People should speak up and know something will happen.

CHAIR FORD: On the report that should be turned in you have added that there should be copies sent to the resident. That usually isn't done. Would you object to it being the resident or the resident's designated representative? If the resident has died, it could be the resident's heir or attorney.

REP. CALOURI: Including them all and having the resident's designee is fine. The attempt of the amendments is to make the report stronger so that something may happen.

082 CHAIR FORD: You are on Ways and Means. Have you seen the fiscal on HB 269 3? Would you let us know what you think?

REP. CALOURI: Hasn't seen the fiscal. Is trying to do the right thing for policy, but the impact is another matter.

REP. BARNES: Are there guidelines to nursing home care that says what is not permitted to happen and what constitutes abuse.

REP. CALOURI: The ombudsman will probably know.

118 PAM EDENS, Chair, Alzheimer's Public Policy Committee: Presents written testimony (EXHIBIT F).

180 JIM MCCONNELL, Chair, Oregon Association of Area Agencies on Aging: Presents written testimony explaining history of the bill (EXHIBIT G).

245 REP. MEEK: Do you have any comments on what we should do during the interim about the increasing elderly population and declining facilities?

MCCONNELL: Do not need more beds; need better long-term planning. Supports idea of looking at the issue during the interim.

REP. TAYLOR: Do you have any observations about the proposed amendments?

MCCONNELL: Supports them. Is frustrated with the lack of follow through

in sanctions in the current process.

REP. HAYDEN: Why aren't we setting away a trust fund out of our salaries to pay for our retirement needs. These people that need care now have paid taxes all their life, but the state has spent all their money.

MCCONNELL: Need to pursue that idea. The problem is getting the resources needed to set it up. It will go hand in hand with private long-term care insurance.

302 CHAIR FORD: Will reschedule HB 3084. Recesses the hearing at 2:55 p.m. Reconvenes the hearing at 3:10 p.m.

320 MEREDITH COTE, State Long-Term Care Ombudsman: Was part of the Governor's Conference on Aging. Explains changes the bill would make in staff to resident ratios. Have problems in that area. The bill modifies the existing regulation and changes the ratios in day and evening shifts. Currently there should be no more than 10 resident per assistant on the day shift, no more than 15 on the swing shift and no more than 25 on the evening shift. The bill would change it to maximum of 8 on the day shift, a maximum of 10 on the swing shift and a maximum of 25 on the evening shift. Some facilities already staff at these levels. Summarizes comments on Sections 8, 13, 15, 16 and 18.

386 CHAIR FORD: Is anyone going to comment on Section 3?

COTE: Yes, other more knowledgeable people will address that. Section 8: Currently the state is not entitled to invoke a prolonged trusteeship. This would give another entity the authority to question trusteeship. Section 13: If the investigator does not find abuse as the cause of an injury is not obligation to write a report. There is nothing for an ombudsman or complainant to base a further investigation on.

465 CHAIR FORD: Are we going to here from the agency about how much more that will cost? Thinks the committee will here how there is not the staff to deal with that added requirement.

COTE: Points are well taken, but the state has a perverse incentive system: how do you handle your workload, you don't find abuse.

REP. BARNES: Is there manual with a guideline of standards that tell what constitutes abuse.

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029 COTE: Do have many standards that say what nursing homes must abide by. The rules and regulations address what is not appropriate care. Does not have a cookbook of what constitutes abuse. There is variance across local units over what abuse may be.

REP. BARNES: You have in statute how many assistants you must have per patient, but there is nothing that cites what constitutes abuse. Before you can charge someone with abuse, should have a guideline for what people should not do.

COTE: The patient abuse law talks about neglect leading to physical harm and intentional harm. It has broad standards that can lead to

disagreements.

SUSAN DIETSCH, Seniors and Disabled Services Division: The state has a collection of standards in rules and regulations. Try to train people to understand the Resident Abuse Law which is a reporting law. There are specific definitions of abuse in that law. What is left out are psychological and financial abuse.

CHAIR FORD: Could you get a copy of that to Rep. Barnes. We need to know those definitions.

103 DIETSCH: Try to find the harm or outcome and find out why that happened. If there is neglect or an unexplained accident then classify it as abuse and investigate.

CHAIR FORD: Could you get the committee a copy of your manual and training for your caseworkers?

COTE: Sections 15 and 16: The problem with record falsification is that it happens too often. The potential for negative outcomes is enormous. Federal law has established fines for it. With new laws, there is an emphasis on documentation and the system could be undermined if records were falsified. Section 17: Raises the fines for falsification. Want fines larger. Section 18: The fine in the bill goes through the state treasury and is then credited back to training. Wants the funds dedicated to the protection to the health and property of the residents.

183 CHAIR FORD: Are your concerns listed? Will you have an amendment? Will that include the ombudsman program?

COTE: The ombudsman program wasn't designated in OBRA. It tried to designate those funds to residents' needs.

REP. STEIN: Do you have an estimate on how much money we get from these penalties?

COTE: In 1988, about \$40,000 was assessed; \$20,000 was collected. In 1989, about \$41,000 was assessed; \$19,000 was collected. Information is from last fall, someone else may have updated figures.

CHAIR FORD: Are there facilities still operating?

COTE: Yes.

CHAIR FORD: Soon, will ask why the fines haven't been collected and what the problem is.

212 MAURICE REECE, Oregon Health Care Association: Presents written testimony (EXHIBIT H). Corrects testimony to read 110 beds of his nursing home are Medicaid residents. Presents newspaper article about Medicaid proposals (EXHIBIT I).

285 CHAIR FORD: On Medicaid commitment from the General Fund: Oregon is low because it has been successful in its other programs to keep people out of nursing homes, correct?

REECE: Oregon has one of the most comprehensive systems for placing individuals. It is one of the factors that helps keep long-term care costs down. Returns to written testimony (EXHIBIT H).

CHAIR FORD: Is the medical director a physician in the community who is on call or does the person look at everyone in the facility?

REECE: Depends upon the arrangement with the facility. It can be on or off site, but each facility must have a physician.

CHAIR FORD: But is the position full time. Is the physician there all the time?

330 REECE: It depends upon the size of the facility. Returns to testimony (EXHIBIT H). The ombudsman position provides a great service.

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027 WINNIE IRWIN, Volunteer Certified Ombudsman: Presents written testimony (EXHIBIT J). Testifying specifically for Sections 12, 13 and 14.

CHAIR FORD: There is only one investigator for how many facilities in your county?

065 IRWIN: There are 13 long-term care nursing homes, more than 250 foster care homes, and residential care homes.

CHAIR FORD: How many people are on the staff in the agency now.

IRWIN: Not sure. The turnover is high. Returns to testimony and cites problems she sees as ombudsman (EXHIBIT J). Penalties take too long to implement and do not solve the problem. Fines often cost more to collect than what is received in end.

165 BERNIE THURBER, Legal Aid, Oregon Coalition for Better Nursing Home Care: Supports the bill, but support has modified because of Measure 5. The 90th percentile for reimbursement is a goal, but the 80th percentile funded in the governor's proposed budget is acceptable. The cuts to the long-term care ombudsman program should be restored.

CHAIR FORD: Is concerned about Section 3 and if we can do what the bill requires for quality of care with just a five percentile increase.

THURBER: Is it your concern that just going from the 75th percentile to the 80th percentile will not be sufficient? Some of the next few witnesses will explain that the old system on which the 75th percentile is based was not adequate. By changing the system and increasing the percentile is actually a bigger increase than five percentage points.

CHAIR FORD: Why was the bill written for the 90th percentile?

THURBER: The coalition and industry support the concept of trying to get to the 90th percentile.

CHAIR FORD: If the 80th is adequate, why the 90th?

THURBER: Didn't mean to say that everyone agreed the 80th percentile was adequate. It is just much better than the current level.

222 PENNY DAVIS, Multnomah County Legal Aid: Presents written testimony (EXHIBIT K). Presents amendments and copy of a report from the Coalition for Better Nursing Home Care in testimony.

329 CHAIR FORD: Do you have any determination about where you would like to see the penalty money go?

DAVIS: Supports recommendation that money go to help with resident care.

346 AL MENDLOVITZ, Oregon Association of Homes for the Aging: Addresses broader concept of adequate nursing care. On the issue of allowable costs: The state determines the costs, but they don't always reflect the actual market costs.

CHAIR FORD: Allowable costs are for certain services but not for particular equipment or upgrading. How does the market come into play?

MENDLOVITZ: For example, the state allows a certain amount for an administrator's salary regardless of the market rate. Rates for rooms also do not reflect outside rates. There are regulations, but the interpretation varies. Emotionally, we should be embarrassed by what we are paying for the service. The guidelines are a good way to deal with the issue.

TAPE 99, SIDE A

052 REP. BARNES: How much of a problem has the government created reimbursing owners the amount needed to hire more motivated nurses and assistants.

MENDLOVITZ: The inadequate reimbursement is a major contribution to the problem. Those workers are being paid the least. Need to find the resources to correct the problem.

086 CAM GRONER, Oregon Health Care Association: Presents written testimony explaining settlement and reimbursement system (EXHIBIT L). Presents amendments (EXHIBIT M).

204 CHAIR FORD: Where is the section about going penalty money going to OBRA?

GRONER: The amendments would be put into existing Section 18 of the bill. The original intent was not that it go to facilities but to SDS for training activities in facilities. OHCA has no objections to changing the bill to dedicate those funds to activities mandated under OBRA.

217 BRUCE HUNTER, Reimbursement Specialist, OHCA: Presents written comments (EXHIBIT N). Explains what happens when the state doesn't pay its clients' bills: 1) The nursing home doesn't pay its bills and goes under. 2) The nursing home gets money from other states which supplement Oregon funds. 3) The nursing home charges its private patients more.

315 CHAIR FORD: If the state pays \$64 a day, what does it cost a private person per day?

HUNTER: The average for the state is probably in the middle to high \$50s. A facility probably charges \$10 to \$15 more for a private patient.

CHAIR FORD: How can we be assured that the increased in reimbursed costs will go to staff pay?

HUNTER: The increase in costs will go only to the direct side. It will

go only to pay the costs of the staff. Those costs are measured by the state.

371 REP. BARNES: Are there incentives for facilities to provide better care?

HUNTER: Not under this system. It is one of the key problems in health care.

REP. BARNES: There's nothing in this bill, though.

HUNTER: There is nothing in the reimbursement section to base the reimbursement on the quality of care. It is based on what the facilities spend.

REP. BARNES: But if a facility does a good job of saving money, it has to give it back.

HUNTER: If a facility saves money in the indirect costs, it must pay it back. In this bill, the indirect costs are a flat rate and the facility keeps money it saves. It is an incentive in that sense. There are no nursing homes that are 100% Medicaid. It is impossible to stay in business.

411 CHAIR FORD: What percentage of the homes do not accept Medicaid patients?

HUNTER: About 20%. The more Medicaid patients you have, the harder it is to pay costs.

CHAIR FORD: Can you turn away a patient because he or she is Medicaid?

HUNTER: Economically, it is tough. Operators don't want an empty bed even if all costs aren't paid with a Medicaid patient.

GRONER: There are economic incentives to not have empty beds. Does not know of any law that says you have to take a Medicaid patient over a private pay patient.

CHAIR FORD: Is this bill reflective of what has been occurring with hospitals' nursing home wards? Are those hospitals having the same financial problems?

GRONER: Hospitals have more empty beds than nursing homes because they admit and discharge faster. The push by hospitals to have nursing home beds is a way to use some unused capacity.

TAPE 98, SIDE B

040 JIM WILSON, SDS: Refers to fiscal impact report (EXHIBIT O) and impact of suggested amendments. Explains changes in the agency that could change some of the numbers in the fiscal report. Does not have the staff to act on complaints as quickly as some would like.

141 CHAIR FORD: To put it all together with what we pay now for what we pay now for nursing home reimbursement and what it will be will total \$48 million in general fund money.

WILSON: \$15 million in addition to what is in the governor's proposed budget. \$11 million of that is a soft number. It could be anywhere in

between.

CHAIR FORD: But putting it all together with what we pay now is what?

WILSON: The total general fund budget would be about \$127 million. Hasn't figured the impact using 1990 cost statements. Is using data that is more than a year old. Will reprice that and have new numbers in a week.

MELANIE ZERMER: In terms of meeting the court settlement part: Sections 1 to 4 of the bill that deal with reimbursement meet the court settlements?

WILSON: Yes. The only reason the \$2.4 million is there is because the bill calls for the 90th percentile. If you accept the amendments, that will change.

176 MARY JANE WOODCOCK, Consumer Advisory Committee, OHCA: Is an Alzheimer's spouse. Asks Penny Davis to join her.

PENNY DAVIS: Responds to Mr. Wilson's interpretation of the fiscal impact report. Adding staff is not a requirement of the bill, it is a requirement of doing the job the agency is suppose to be doing. If the agency cannot do the job, it should be in their budget. It should not be attached to the bill as a way to sink the enforcement portion. CHAIR FORD: Ways and Means will address their budget.

WOODCOCK: Is an Alzheimer's spouse, mother was in nursing home and has worked in a nursing home. Relates experiences. Hands-on care gives the patient a sense of normalcy. Urges support of the bill and proposed amendments.

317 CHAIR FORD: Adjourns the meeting at 5:00 p.m.

Submitted by,

Reviewed by,

Angela Muñiz

Melanie Zermer

EXHIBIT LOG: A - Policy Guidelines - Staff - 2 pages B - Benchmarks for Exceptional People - Staff - 3 pages C - Settlement of the Volk and Francisco Lawsuits - Jim Wilson - 2 pages D - Testimony on HB 2693 - Susan Merrick - 4 pages E - Amendments to HB 2693 - Rep. Ted Calouri - 1 page F - Testimony on HB 2693 - Pam Edens - 3 pages G - Testimony on HB 2693 - Jim McConnell - 2 pages H - Testimony on HB 2693 - Maurice Reece - 6 pages I - News article: "Medicaid proposal angers families" - Maurice Reece - 2 pages J - Testimony on HB 2693 - Winnie Irwin - 3 pages K - Testimony and amendments to HB 2693 - Penny Davis - 9 pages L - Testimony on HB 2693 - Cam Groner - 1 page M - Amendments to HB 2693 - Cam Groner - 3 pages N - Testimony on HB 2693 - Bruce Hunter - 2 pages O - Fiscal report for HB 2693 - Staff - 2 pages