

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

May 15, 1991Hearing Room D 1:30 p.m.Tapes 150 - 153

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

STAFF PRESENT: Melanie Zermer, Committee Administrator Pamela Berger, Committee Assistant

MEASURES CONSIDERED:SB 833 - Allows hospitals, local boards of health, or nonprofit clinics providing perinatal care to create perinatal care access programs - Pub Parent Education - Inf.

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TAPE 150, SIDE A

010 CHAIR FORD: Calls the meeting to order at 1:32 p.m.

PUBLIC HEARING: SB 833 - Allows hospitals, local boards of health, or nonprofit clinics providing perinatal care to create perinatal care access programs Witnesses: Dr. Mary Ann Curry, Healthy Mothers, Healthy Babies Alice McCartor, Director, Washington County Department of Human Resources - Healthy Start Ian Timm, Oregon Primary Care Association Loyce Swayze, Patient at the Healthy Start Clinic Dr. Tom Griffith, American College of OB/GYN - Oregon Chapter Dr. Rick Wopat, Oregon Academy of Family Physicians Catherine Pelosi, R.N., M.S. John Ramig, Lindsay, Hart, Neil & Weigler (representing the Maternity Care Support Alliance Pat Shaw-Emery, RN, CNM, MSM Thomas Spenner, Klamath Co. Health Department Charlie Williamson, Oregon Trial Lawyers Association Richard Rogers, Oregon Trial Lawyers Association

MELANIE ZERMER: Submits and explains background information on problems and solutions to accessing maternity care (EXHIBIT B), SB 833-A proposed amendments from John Ramig (EXHIBIT C), a hand engrossed version of SB 833-A proposed amendments (EXHIBIT D), SB 833 fact sheet (EXHIBIT E), an

informational sheet on SB 833 (EXHIBIT F), a definition sheet (EXHIBIT G), proposed amendments from Charlie Williamson, Oregon Trial Lawyers Association (EXHIBIT H), and testimony from John Bussman, Oregon Health Care Cost Containment Advisory Committee (EXHIBIT I).

070 DR. MARY ANN CURRY, HEALTHY MOTHERS, HEALTHY BABIES: Submits and reads written testimony in favor of SB 833-A (EXHIBIT J).

129 REPRESENTATIVE STEIN: Is there any reason for this bill if you don't have the issue of liability insurance?

CURRY: It's meaningless without the liability issue.

IAN TIMM, OREGON PRIMARY CARE ASSOCIATION: Submits and summarizes written testimony and a report in favor of SB 833-A (EXHIBIT K). - Defines access to maternity, which varies from county to county. - The state of Washington had a similar problem so they defined distressed areas (included in testimony). - We reviewed that methodology and felt that it was too laborious in light of Measure 5. - Areas where there is no access available is currently being defined through the Health Division's administrative rules - this effected 3,000 women last

year.

REPRESENTATIVE MEEK: By rule, who would then would be included?

TIMM: Those who have enrolled in certified programs. This is not designed to cover everyone. - Continues with written testimony. 250 - Describes liability limit needs (included in testimony).

277 REPRESENTATIVE STEIN: How many women would be included (if this passes out) of those 3,000 not reaching prenatal care?

TIMM: Don't have the numbers at this time, but probably half. - Tells of providers having maximum amount of patients and not being able to provide services to low income women.

REPRESENTATIVE STEIN: How much will SB 274 help the access problem?

TIMM: Sees these as companion bills; SB 274 is currently sitting in committee.

CURRY: Seen some reductions in cases where no maternity services were provided, thinks SB 274 would substantially help.

354 REPRESENTATIVE MEEK: Discusses the effectiveness of Washington County's Health Start Program. Would like to see similar programs, statewide.

392 REPRESENTATIVE BARNES: Do you envision these programs carrying their own weight?

TIMM: The plan is to allow flexibility within each community and for them to work independently.

REPRESENTATIVE BARNES: In rural areas it is hard to get non-profit organizations set up. Those are the areas we are trying to serve. We may be creating more problems for ourselves by doing this.

TIMM: Non-profits are of corporate structure; many hospitals are

non-profit.

REPRESENTATIVE BARNES: Why did you limit this to only non-profit clinics? Why not profit clinics also?

TIMM: This was designed to provide incentive.

REPRESENTATIVE BARNES: Concerned that you are aiming this only at metropolitan areas.

TIMM: That is not the intention. Both areas are under-served - rural areas

have a greater problems because of the lack of physicians.

REPRESENTATIVE MEEK: Discusses 1 1/2 year delay in starting up Washington County's Health Start Program because of liability. How much of a handicap will it be for other counties because of liability issues and what other barriers do you see?

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045 TIMM: Washington County's program has not been able to get medical liability and are running it anyway. In a lot of areas, the problem of participation in a program. From a liability standpoint, the trail lawyers will be looking for anybody with a deep pocket. Physicians are unwilling to participate in county based programs because they have deep pockets, as do hospitals. All liability, capped at a county limit, gets shifted somewhere else. Therefore, there is no incentive for people to participate in coordinated programs. We have a situation set up to achieve one goal, and we see that as a barrier to access for care. Will hear testimony from the Oregon Trial

Lawyers about those experiencing problems or a loss and might have an opportunity to sue for an unlimited amount of money when something went wrong. We are proposing a trade off for two public policies.

076 CHAIR FORD: We are creating a two tier system where one group of women and babies would have the right, when a grave error was made, to be able to sue for damages and others, because of their impoverished condition, lose that legal right.

TIMM: Believe that now we have a system where there are thousands of women who don't have the right to adequate care to prevent those unfortunate occurrences. The question of getting a settlement or judgement to cover medical care that continues for the life of the child is a question that needs to be addressed by reforming the health system. People need health care and access to the health care system.

090 ALICE MCCARTOR, DIRECTOR, WASHINGTON COUNTY DEPARTMENT OF HUMAN RESOURCES, HEALTHY START: Submits and reads written testimony in favor of SB 833-A (EXHIBIT L). - Describes Tillamook County's access problem. - Describes Washington County's Healthy Start Clinic's Program. - Describes failure to secure malpractice insurance. - Wants to attract physicians, in light of their limited liability, and want to obtain malpractice insurance for programs like Healthy Start - this bill addresses both issues.

CHAIR FORD: How many hospitals are participating in Washington County?

McCARTOR: All that provide maternity care, except Kaiser Permanente because it is a closed HMO. At Tuality Hospital, every physician offering maternity care has signed up to back up Healthy Start's program.

CHAIR FORD: If this bill does not go through, have any physicians noted concerns about their own liability?

McCARTOR: When we opened our doors on August 1, the physicians on our board got very concerned whether or not they could be board members because of liability. Physicians in Washington County weighed providing delivery services to women coming to an emergency room, with no prenatal care. They decided to participate with us to find a way to end a very high

risk situation. They are concerned that one member of the consortium would

have limited liability, mainly Healthy Start, and other members of the consortium would not. This bill have all participants, in the certified program, falling under the TORT liability. To split any participant out, would split our coalition.

357 CHAIR FORD: Why is it that in Washington County physicians are willing to accept the chance of liability malpractice suits?

McCARTOR: Feels that physicians, all over the state, are interested in solving maternity care access problem. They are concerned of increasing their exposure to liability issues.

360 LOYCE SWAYZE, PATIENT AT THE HEALTHY START CLINIC: Testifies in favor of SB 833. Describes being pregnant without health insurance. - When I found out that I was pregnant, I called a few OB/GYNs and was told it would cost from \$5,000 to \$7,000 for prenatal services and that at least half of those costs would need to be supplied at the first visit. - One OB/GYN office told me about the Healthy Start Clinic. - Received wonderful care at Health Start. The quality of care was not reduced because of my inability to pay. Feel that I had better care there than some of my friends who received services elsewhere. - Was monitored carefully when high blood pressure problem occurred. - Now I have a beautiful healthy little girl. - If I had to choose between getting good prenatal care and the opportunity

to sue, I would choose the maternity care.

TAPE 150, SIDE B

010 DR. TOM GRIFFITH, AMERICAN COLLEGE OB/GYN: Submits and reads written testimony in favor of SB 833-A (EXHIBIT M). - There are several recent studies which show that the Medicaid patient is no more apt to sue than the paying patient. Medicaid low income women do bring special problems because of limited access. - Describes Medicaid/liability fears from OB/GYNs. - Quotes a letter from a physician involved in the Healthy Start program in

Deschutes County about the correlation between prenatal care and healthy babies. - Physicians are quitting OB/GYN practices.

REPRESENTATIVE STEIN: Women with money are more likely to sue because of ability to pay and access a lawyer. Wonders if we are attacking this problem in a way that will be effective.

GRIFFITH: Many physicians are afraid to take on one more high risk patient.

REPRESENTATIVE STEIN: Do you have studies that show that low income women are actually higher risk?

GRIFFITH: Not with me, but studies have been done.

REPRESENTATIVE STEIN: Hope that somebody will address that. Concerned about the low income/high risk perception.

GRIFFITH: Describes Benton County rotating basis approach to taking high risk, low income patients. - Middle size communities seem to have less problems. Larger cities have more problem because physicians are able to remain anonymous (i.e. nobody will know that they turned down a patient). - There is a tremendous fear of malpractice.

CHAIR FORD: If there is a malpractice suit, do your rates go up?

GRIFFITH: Not with my company, but could jeopardize my chance of renewing my policy insurance. Don't want to increase our exposure. If a lawsuit does occur, many companies won't re-insure. The other option is to practice without liability insurance.

305 DR. RICK WOPAT, OREGON ACADEMY OF FAMILY PHYSICIANS: Testifies in favor of SB 833, in its original form. - In Lebanon, 50% of deliveries are from family physicians, unlike the 25% average. In rural areas it's around 100%. - Describes obstetrical experiences in the Lebanon area. Some OBs have quit because of the high cost of malpractice insurance. The four obstetricians in Lebanon are dedicated to serving all patients, no matter of ability to pay.

- Currently, new obstetrical patients have to wait 4-6 weeks because of high demand. This is not favorable, but the way it is. - This bill only addresses one part of the problem. We must find ways to encourage physicians to serve the under-served. One way of doing this is by limiting of professional liability. Presently, the Linn County prenatal clinic provides care to the under-served population. It is staffed by a physician

from OHSU who comes to the clinic one day a week. He has liability protection through OHSU. - Lebanon community hospital is non-profit. Discussed this bill with them.

They, at this time, cannot become involved in a program plan because of liability. - Rural hospitals are willing to take the risk because they already are taking risks. If there were some TORT protection it would increase the number of physicians providing obstetrical care. - Am motivated in this issue because I need more help, I would not make money by the passage of this bill. - More patients would receive more and better care if passage of this bill occurred.

TAPE 151, SIDE B

010 REPRESENTATIVE STEIN: Would a physician need to buy additional liability insurance if they became involved in a maternity care public clinic?

WOPAT: If they were to deal with a clinic with limited liability, I'm not sure what their malpractice would state. For me, since I am in private practice, there would be no change in my malpractice premium. - There are three malpractice carriers in the state in which that is not the case. One increases rates as the number of deliveries increase.

REPRESENTATIVE STEIN: Would limiting the amount of liability be an incentive?

WOPAT: Difficult to answer.

REPRESENTATIVE STEIN: No matter what I sue you for, its not coming out of your pocket.

034 WOPAT: This is a complex issue. Part of reason people avoid obstetrics is the emotional concern about being sued. In terms of limiting the amount of

liability that one carries, don't see that having a great deal of effect.

GRIFFITH: Don't think that would be a major incentive. - Asked my insurance company if I could work at a publicly funded clinic and they said no. They did say that I could apply. They will allow you to work there, but won't provide liability coverage for those deliveries. Chances are they would provide coverage if the amount was limited.

065 REPRESENTATIVE BARNES: If we had a malpractice cap, across the board, are you referring to everybody, no matter what economic situation?

WOPAT: That was Rep. Stein's suggestion. - The issue is a two tier system, which we currently have.

ACTING CHAIR STEIN: Due to time constraints, we will have another hearing on this.

100 CATHERINE PELOSI, R.N., MS, OREGON CHAPTER OF THE AMERICA COLLEGE OF NURSE-MIDWIVES: Submits and reads written testimony in favor of SB 833-A (EXHIBIT N). - Addresses amendments proposed by the Oregon Trial Lawyers Association. Nurse midwives were not consulted on this and we do not support those. - Supports amendments from Ramig.

REPRESENTATIVE BARNES: Is the rate of increase in premiums for you similar to the increasing rates for physicians?

220 PAT SHAW-EMERY, RN, CNM, MSM: Yes, there is a dramatic increase. - Submits and reads written testimony in favor of SB 833-A (EXHIBIT O).

299 REPRESENTATIVE STEIN: Do you feel there is a risk status for low income women?

SHAW: Feels that many women who are high risk, are so because of access barriers. If many women, teenagers for example, received surrounding services, they would change from high risk to low risk.

PELOSI: Not all poor women have health risks.

360 THOMAS SPENNER, KLAMATH COUNTY HEALTH DEPARTMENT: Testifies in favor of SB 833-A. - Gives background. - Upon my arrival in the Klamath Falls area, nobody knew what the infant death rate was. Found out that it was 14 in 1,000, which is higher than some third world countries. We also have a high number of low weight babies. Many of those were because of inadequate prenatal care. - Discusses high number of teenage pregnancies. - We have a number of physicians and OB/GYNs giving up obstetrical practice because of high cost of malpractice insurance. - Those physicians are unwilling to take on additional low paying clients, which subject them to higher potential of risks and malpractice suits. - Discusses rural area concerns including unemployment, which effects economic barriers. - This bill would be helpful because it gives two avenues to solve problems - it gives incentive to create a program and a welcome beginning point. - Would like companion bill SB 274 to also pass. - Discusses nutritional care provided and decrease in infant deaths and low

birth weight babies.

TAPE 152, SIDE A

- Strongly support this bill for our community.

040 JOHN RAMIG, LINDSAY, HART, NEIL & WEIGLER (REPRESENTING THE MATERNITY CARE SUPPORT ALLIANCE: Submits and reads written testimony in favor of SB 833-A (EXHIBIT P). - Explains proposed amendments (See: Exhibits C & D) - Nine states have limited liability or have provided total liability exemptions (See: Exhibit P).

RAMIG and REPRESENTATIVE STEIN discuss limiting liability.

172 CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: Explains statute of limitations, which generally is two years from date of discovery.

RAMIG: Continues with written testimony. - Explains testimony from insurance companies (See: Exhibit P). - Without physician participation, these programs will not exist. - Discusses policy tradeoffs. - Discusses constitutionality. - To do nothing would only guarantee continuance of human suffering. 190 - Clarifies proposed amendments (See: Exhibit C & D).

250 RICHARD ROGERS, OREGON TRIAL LAWYERS ASSOCIATION: Submits and reads testimony in opposition SB 833-A (EXHIBIT Q). - Shows video tape of brain damaged child, Brittany, and on-going daily care she receives.

TAPE 153, SIDE A

- Describes situation of early labor, bad advice, and lack of treatment

when mother was pregnant with twins; Brittany survived. - Discusses mismanagement of pregnancy. - Describes itemization of caring for Brittany (See: Exhibit Q). - If there were no insurance coverage, the child would be provided services, at Providence, and would be covered under Medicaid.

CHAIR FORD: Or they would be cared for in group homes, Fairview, etc.

ROGERS: Continues describing itemization of caring for Brittany (See: Exhibit Q).

INFORMATIONAL: Parent Education (HB 2962) Witness: Rosemary Adamski, Citizen

180 ROSEMARY ADAMSKI, CITIZEN: Testifies in favor of HB 2962. - Refers to document about homelessness and neglect. - Parent education, through the school system, is important. - Tells of parent education that she received and the difference it made to her and her children. - Feels that it is an incentive, to the children, to see the parents strive to improve.

TAPE 152, SIDE B

140 - Concludes presentation.

CHAIR FORD: Adjourns the meeting at 4:36 p.m.

Submitted by,

Reviewed by,

Pamela Berger

Melanie Zermer

EXHIBIT LOG: B - SB 833-A - issue brief - staff - 18 pp. C - SB 833-A - proposed amendments - staff - 2 pp. D - SB 833-A - proposed amendments - staff - 4 pp. E - SB 833-A - fact sheet - staff - 1 p. F - SB 833-A - informational sheet - staff - 7 pp. G - SB 833-A - definitions - staff - 1 p. H - SB 833-A - proposed amendments from Williamson - staff - 10 pp. I - SB 833-A - testimony from Bussman - staff - 1 p. J - SB 833-A - testimony - Curry - 4 pp. K - SB 833-A - testimony/report - Timm - 67 pp. L - SB 833-A - testimony - McCartor - 3 pp. M - SB 833-A - testimony - Griffith - 4 pp. N - SB 833-A - testimony - Pelosi - 4 pp. O - SB 833-A - testimony - Shaw-Emery - 4 pp. P - SB 833-A - testimony - Ramig - 15 pp. Q - SB 833-A - testimony - Rogers - 5 pp.