

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 JUDICIARY FAMILY JUSTICE

June 26, 1991Hearing Room 357 8:30 p.m.Tapes 160 - 161

MEMBERS PRESENT:Rep. Kelly Clark, Chair Rep. Judy Bauman Rep. Marie Bell Rep. Jim Edmunson Rep. Kevin Mannix Rep. Tom Mason Rep. Del Parks Rep. Ron Sunseri

MEMBER EXCUSED: Rep. Mason

STAFF PRESENT: Holly Robinson, Committee Counsel Diane Bassett, Committee Assistant

MEASURES HEARD:SB 1076 - REQUIRES HEALTH SERVICES COMMISSION TO INCLUDE MENTAL HEALTH AND CHEMICAL DEPENDENCY SERVICES IN PRIORITIES. WORK SESSION.

SB 549 - REQUIRES APPROVED EDUCATION FOR CARE GIVERS WORKING IN ADULT FOSTER HOMES. WORK SESSION.

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TAPE 160, SIDE A

004 CHAIR CLARK: Opens Subcommittee on Family Justice at 8:55.

SB 1076 - WORK SESSION

005 CINDY ZIEL: Presented EXHIBIT A. Clarified testimony from June 25, 1991 per request from Chair Clark. Their concern is that SB 1076 does not put all carriers on the same playing field. They have asked that they not be discriminated against, but be treated fairly and have the same opportunities. There are two ways to do that: by mandatory reinsurance or assuring that the Department of Insurance and Finance does not arbitrarily or unfairly decide who can be a risk assumer.

043 CHAIR CLARK: There are several sets of amendments. Dash A-32 brought by Senator Kitzhaber. Unmarked amendments presented by Rep. Bauman. Amendment marked "Proposed Amendments to Senate Bill 1076" and is 22 lines long submitted by Mr. Holtai. There are amendments John Powell put his name on and amendments from Mr. Castagna. EXHIBIT B.

Referred to a letter from Senator Hannon. EXHIBIT C.

065 MOTION, REP. CLARK: Moved Dash 32 amendments.

067 HOLLY ROBINSON: Explained amendments.

080 CHAIR CLARK: Asked for objections. Hearing none, so ordered. The bill as currently written extends the mandate on small businesses. It does not extend the tax credit that current businesses offer. That was not an oversight on the part of the Senate. They did not want to address it. Wanted to bring it to the committee's attention.

085 MOTION, REP. MANNIX: Move to amend the bill to incorporate an extension of the credit in accord with the extension of the mandate, using the last step of the stair step.

098 HOLLY ROBINSON: There will have to be additional sections of the revenue code amended that does not come up in this bill in order to extend that credit for corporations.

105 CHAIR CLARK: Asked for objections.

107 REP. BAUMAN: This isn't going to have any revenue impact until we get to the extension period.

110 CHAIR CLARK: Adopted.

111 MOTION, REP. MANNIX: Move change of penalty period from 5 years to 3 years.

124 REP. BAUMAN: Her objection is that there seemed to be a good policy in requiring that the decision be made as a commitment with some appreciation of the fact that part of what they are looking at, in addition to pooling people, is getting the advantage of a time period that is going to be an extended time period. Otherwise it will never equal out. As the employee group ages, the insurer will leave and come back in and pick another young employee group. The object is to get into a chronological pool as well as a demographic pool.

150 REP. PARKS: Is going to offer an amendment to make this a mandatory participation. This is something that is going to have to be tried and come back later to see how it works.

159 REP. MANNIX: Clarified re-entry. Talking about a five year ban from the market for having refused to participate in the market itself, not the re-insurance pool.

167 CHAIR CLARK: Carriers opting out of the small group market must give 180 days cancellation notice to policy holders and must cease to write new business in this market for a period of five years.

171 REP. MANNIX: This has to do with whether or not there is participation in the small group market. Three years is still a long time to be kept out of the market. The whole point is to make it a very weighty decision to opt out of that market.

181 REP. PARKS: The way it is structured, if you don't go in you are not affected by that provision. Ought to encourage people to become involved initially to get the experience until we see what happens. The penalty is a discouragement to get in and get out.

189 REP. MANNIX: Make it a year or reduce the penalty to accomplish that.

190 CHAIR CLARK: The proposed amendment would take the penalty from five years to three years.

193 REP. EDMUNSON: This issue is going to come before the next assembly. Would rather have insurers going in initially with a stronger commitment to stay.

199 VOTE: Motion failed.

AYE: 2 NO: 5 EXCUSED: 1

215 MOTION, REP. PARKS: On page 11, line 16 the last word is "except" and through line 18, the first word that says "act". If we deleted that language, would everyone be in the re- insurance pool, period.

224 CHAIR CLARK: Why wouldn't you just use the Holtai amendments?

225 REP. PARKS: Hasn't had a chance to read all the amendments. The formula won't work if all insurers are in the pool.

229 CHAIR CLARK: Conceptual amendment to make the re-insurance pool comprehensive and mandatory.

VOTE: Motion passed.

AYE: 6 NO: 1 EXCUSED: 1

252 REP. PARKS: On page 6, line 7, it discusses ORS 143. It talks to alcohol, chemical and emotional treatment. Would like to send the bill out with the direction that they feel this is a very desirable feature and would prefer that it be included. However, if it makes the policies commercially unaffordable, then the committee can choose to delete it.

276 MOTION, REP. PARKS: Chemical and mental health would be part of the product unless the committee designing the product finds that inclusion of it is so expensive as to make the product unaffordable in a commercial sense.

288 CHAIR CLARK: Asked Mr. Banning and Mrs. Weeks to comment on this proposal.

292 GARY WEEKS, DIRECTOR DEPARTMENT OF INSURANCE AND FINANCE: Question is where is the break as to whether it is affordable or unaffordable?

314 REP. PARKS: If you leave it the way it is and it turns out to be unaffordable, we have done absolutely nothing.

319 REP. BAUMAN: If you think about the secondary problems that are the result of drug and alcohol dependency, requiring drug and alcohol treatment programs to be covered is really part of the risk prevention motivation we are trying to build into the bill.

346 CHAIR CLARK: To make that determination would put a tremendous amount of discretion at the feet of the committee without knowing what is affordable and what is not.

351 WEEKS: Can actuarially price this out for including or not including this type of coverage.

361 BANNING: Should note that AOI did a study on these mandates and there are studies out that indicate the effective cost of it. Thinks it was in the neighborhood of 8 percent for all of the mandates. Others feel it could cost as much as 20 percent. He is not sure whether the exclusion of that one mandate would make the plan any more affordable.

377 REP. BELL: Referred back to dash 32 amendments on page 3 where it talks about the Legislative Assembly determining whether the standard benefit plan shall be required to be offered by small employer. Feels that in 1993, this body will have a chance to look at the package. If at this point, the drug and alcohol is deleted, they won't come back with it factored in. If they factor it in now and it looks like it is too expensive, it would be easier to take it out then. Recommendation is to leave it as it is until they can assess.

399 REP. MANNIX: Called the question.

403 REP. PARKS: The issue is not whether or not we can make the insurance company put it in. The issue is will anyone buy it so there is information that indicates what kind of risk there will be and what type of charges to the re-insurance pool there will be. This is voluntary for small employers. If it is so expensive no one buys it, there won't be any information two years from now.

450 VOTE: Motion failed.

AYE: 2 NO: 5 EXCUSED: 1

TAPE 161, SIDE A

017 MOTION, REP. SUNSERI: Moved John Powell Amendments marked A-29.

022 CHAIR CLARK: Assume he is moving first portion. Page 1 of Powell amendments.

030 VOTE: Motion passed.

AYE: 5 NO: 2 EXCUSED: 1

036 MOTION, REP. BAUMAN: Page 3, labeled #1 on the packet of four pages of amendments, line 22 that is the definition of geographic average rate. Delete 2 letters in line 22 which changes "small" to "all". Explains reasons.

076 REP. BELL: What are we doing to small insurance companies who have to match rates that puts their businesses in jeopardy?

086 REP. BAUMAN: From a policy perspective, if we are interested in spreading risk as a policy board, this is the way to spread the risk between all employers and small employers. Would like to take down the barrier that says when health experience is looked at among Oregonians who are employed, look at small employers in one pool and all employers in a different pool.

118 CHAIR CLARK: Asked Mr. Weeks to come forward to comment for the record.

120 BANNING: This rating proposal does not compare apples with apples. The larger employer assumes more administration cost which is loaded into the premium. The premium charged to a large employer is reflective of a different component than is charged to the small employer.

138 VOTE: Motion fails.

AYE: 1 NO: 6 EXCUSED: 1

141 REP. BAUMAN: Page 8 of the bill, line 37, there is concern large insurer could come into state, offer very low premiums, occupy market and then raise premiums. Not clear with language in current bill from line 38 through 43 on how to adjust rate increases.

145 MOTION, REP. BAUMAN: Replace with 20 percent the maximum that appears on line 36 and 37.

VOTE: Motion failed.

AYE: 3 NO: 4 EXCUSED: 1

184 MOTION, REP. BAUMAN: Appears on page 4 of the packet provided by her. On page 9 after line 36, add: All health care plans offered to a small employer by a small employer carrier must have a loss ratio no less than 80%. (b) On an annual basis all small employer carriers must file a statement of loss ratio for their small employer business certified by an independent actuary with the Department of Insurance and Finance. (c) The Department of Insurance and Finance shall adopt rules to implement this section of this 1991 Act.

206 REP. MANNIX: No intention of putting loss ratios into bill.

219 CHAIR CLARK: Asked questions of Banning and Weeks. Under the bill as it is, are you going to get a statement of loss ratio?

221 BANNING: We are going to be getting reports from carriers that certifies the necessity of their rate increases. Those reports will tell what the loss ratios were.

230 VOTE: Motion failed.

AYE: 2 NO: 5 EXCUSED: 1

231 MOTION, REP. MANNIX: Move the bill as amended to the Full Committee with a do pass recommendation.

233 VOTE: Motion passed. Clark to carry.

AYE: 7 NO: 0 EXCUSED: 1

256 CHAIR CLARK: Recessed for five minutes. Recessed until 10:30 p.m. Reconvened 11:08.

SB 549 - WORK SESSION

266 MARK NELSON, OREGON CARE PROVIDERS: Referred to administrative rules that govern adult foster care. They believe many of the issues covered by this bill are also covered within administrative rules adopted by the Division. Walked the committee through the bill.

342 REP. PARKS: What is the harm in putting in the statute that you should feed the people?

350 NELSON: They believe that by doing it through administrative rule, there is greater flexibility to reflect the divergence of the types of homes and types of situations people are going through.

360 CHAIR CLARK: If there are problems in the industry that the rules are attempting to address, it makes him nervous when an agency which hasn't promulgated rules in the past to get at procedural problems simultaneously with legislation comes in and states the legislation is not necessary because it will be addressed through rules. If we were able to get at these issues through rules, why wasn't it done a long time ago?

389 NELSON: The agency's position on the bill is one of neutrality.

393 CHAIR CLARK: Doesn't know the relationship between SDS and the providers, but in other areas the regulatory agency itself is not always as objective or restrictive with the industry as one would like. Hope they don't feel they can get around some of these things in the rules or get things changed in the rules that wouldn't be changed in the statutes.

404 NELSON: Arguing for a process that would provide the greatest amount of flexibility. Arguing against the policy that is outlined in this particular bill.

405 REP. BELL: Feels the menu posting is important.

TAPE 160, SIDE B

013 NELSON: Understands menus are given to the residents, but maybe not in every 2,500 homes. Referred to submitted amendments. EXHIBIT D.

061 REP. BAUMAN: Critical typographical error. The word "charged" on third line from the bottom of the amendments should be "changed".

070 NELSON: That's correct. Spoke to the provisions for discharge of residents. There are times when for medical or disruptive reasons, the resident must be moved out immediately. The two sections of the bill that relate to this issue are in conflict. Suggest that on page 3, line 1 after the word "discharge", repeat the language from sub 9 that says "except for transfer or discharge for medical reasons for the welfare of the resident or for the welfare of other residents or due to non-payment".

095 CHAIR CLARK: You have really brought three amendments? The first is on page 2, lines 18 and 19. Second, page 3, line 1. Third, page 3 after line 2 inserting the new subsection 10.

100 NELSON: Two issues - the contract issue and ability to transfer in cases of medical emergency and non-payment, as well as endangering the welfare of others.

103 REP. PARKS: Was concerned about the educational requirements.

185 NELSON: Is not concerned.

109 REP. PARKS: Has known of instances where people were disruptive and

moving them was needed as they jeopardized the rights of others in the home.

119 CHAIR CLARK: Is your concern about the transfer amendment across the board or is your concern non-payment.

120 BERNIE THURBER, OREGON LEGAL SERVICES: Objects to amendments across the

board. If there is a bad situation where a provider wants to get rid of a resident for another reason, there should be the right of a hearing. To take these four categories of situation in which you would totally exempt a resident from a hearing right would invite those providers who are inclined rather readily, to always state one of those four reasons as the reason for the transfer, thereby depriving the residents the right of some redress.

140 REP. PARKS: Who will run the hearing?

141 THURBER: The hearing would be run by SDSO. They contract with A.F.S. hearings officer. These hearings are frequently held over the telephone when there is an emergency situation.

144 CHAIR CLARK: In the way of a compromise, what if you had the hearing prior to transfer if it were for reasons of non-payment. If the transfer were for medical reasons or welfare of the resident or other residents, you could make the transfer. You would still have the right of a hearing after the transfer, and the home would be required to freeze the place so if the transfer was decided to have been inappropriate, there would be a place to go back to?

153 THURBER: Fearful any amendments will be death knell due to the lateness of the hour. Many of the residents are frail and elderly. Spoke of transfer trauma of elderly. Can suffer death or serious consequences. This bill is trying to provide same protection as they would have been provided in a nursing home.

172 NELSON: Issue is not non-payment. Problem is when there is a medical emergency, the patient has to be moved out.

180 CHAIR CLARK: Comments on the other proposed amendments relating to the existing contract.

181 THURBER: SDSO tells them there is quite a large volume of complaints they get from residents and families for problems where people will pay money and have to leave the home and can't get their money back, even though the home was able to fill that space with another resident.

200 REP. BELL: What compromise is there so there's a possibility if they fill the bed, but also leaves it open when they can't.

216 THURBER: There is so much pressure throughout the state right now to find additional spaces in adult foster homes, it is extremely rare for there to be a vacancy.

238 DOROTHY CONNER, CLACKAMAS COUNTY: Main concern is right to move client from a home in certain circumstances.

300 CHAIR CLARK: Conceptual amendment page 2 line 18, delete 7 days after, suggesting using "15 days after, or the specified time delineated in the contract required by subsection 10 of this section, whichever is less".

312 REP. PARKS: Friendly amendment. "Impose upon the provider an affirmative duty to actively mitigate." Want to put a sentence in that it is the provider's duty to actively seek to fill the bed. If they don't do it, they are not entitled to take money beyond the amount of time.

321 ROBINSON: If the contract period of time has passed and the bed is not filled and one could show that nothing was done to attempt to fill the bed, they would not be entitled to that additional money?

352 CHAIR CLARK: Would be just basic contract law. The sentence after his proposed amendment would say the provider has an affirmative duty to make reasonable attempts to mitigate damages. Will consider that a friendly amendment.

MOTION, REP. CLARK: Conceptual amendment that the resident would have a right to a hearing prior to transfer if the reason was for non-payment or any other reason. That if the transfer or discharge is necessary for medical reasons, for the welfare of the resident or for the welfare of other residents, the transfer might happen immediately, but the resident would have a right to a hearing within 7 days and the provider would be required to hold the space pending the hearing.

350 REP. BAUMAN: Wants to make clear that what this amendment intends to do is to provide hearing availability for people who have been transferred or discharged for reasons other than..

365 CHAIR CLARK: Everyone gets a hearing. Question is, does the hearing come before or after your transfer. This is saying for the urgent reasons that you can make transfer first and there is a hearing within 7 days and the provider is required to hold the space. If it is for non-payment or other reasons, there is a hearing before the transfer.

371 REP. BELL: The way it is written "shall have the right of a hearing", does that mean it is provided for everyone or shall we say "upon request"?

376 HOLLY ROBINSON: The Committee should be clear that what this bill does is give someone the right to request a hearing. It is not "provided a hearing", it is the right to "request a hearing".

381 CHAIR CLARK: Asked for objections to the amendment. Hearing none, it is adopted.

385 MOTION, REP. BAUMAN: Moves SB 549 as amended to the Full Committee with a do pass recommendation.

406 VOTE: Motion passed. Rep. Ford to carry.

AYE: 6 NO:0 EXCUSED: 2

406 CHAIR CLARK: Adjourned 11:45 a.m.

Submitted by: Reviewed by:

Diane Bassett Pat Zwick Assistant Office Manager

EXHIBIT LOG:

A - Testimony on SB 1076 - Cindy Ziel - 2 pages
B - Amendments on SB 1076 - 11 pages C - Amendments to SB
1076 - 1 pages D-Amendments to SB 549 - Nelson - 1 page