

House Committee on Labor March 25, 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 LABOR

March 25, 1991Hearing Room D 8:30 a.m.Tapes 71 - 74

MEMBERS PRESENT:Rep. Gene Derfler, Chair Rep. Kevin Mannix, Vice-Chair Rep. Sam Dominy Rep. Jim Edmunson Rep. Rod Johnson Rep. Bob Repine Rep. John Watt

VISITING MEMBER:Liz VanLeeuwen

STAFF PRESENT: Victoria Dozler, Committee Administrator Johanna Klarin, Committee Assistant

MEASURES CONSIDERED: HB 2719 - Public Hearing HB 2643 - Work Session HB 2657 - Public Hearing HB 2658 - Public Hearing

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.

TAPE 71, SIDE A

003 CHAIR DERFLER: Calls the meeting to order at 8:30 a.m. as a subcommittee.

OREGON ASSOCIATION OF HOSPITALS - OVERVIEW (EXHIBIT A and B)

017 ED PATTERSON: Presents an overview of the Oregon Association of Hospitals.

-Provides a historical overview of managed care organizations.

-Describes the task force involved in shaping the proposal that eventually led to SB 1197.

-Our association was satisfied with the administrative rules that were adopted and felt that they would be workable.

-We have had very little time to effect major changes through managed care under the workers' compensation system.

-We are confident that managed care is the way with the future.

-It can reduce the overall cost of workers' compensation in the state.

121 CHAIR DERFLER: What percentage of hospitals' income comes from workers' compensation claims?

PATTERSON: About 4%.

126 ROBERT PALLARI, President/Chief Executive Officer, Managed Health Care Northwest: Presents background information as to the formation of managed health care management (Exhibit B).

-The basic objective is to provide affordable, high-quality health care.

-Discusses administrative rules. The process for certification took unusually long period of time.

-We expect that by July 1, 1991, there will be a number of employers using the MCO in the Portland metropolitan area.

192 REP. MANNIX: Have you had problems with the restriction on what I call "cooperative work efforts" with employers and insurers for fear of being said to be operated, owned, or created by an insurance company or an employer?

PALLARI: We have not run into any problems with that aspect of the administrative rule.

217 REP. MANNIX: I think you misunderstood my question. Lets say that I am an self-insured employer and I am also self-administered and have a claims processing system. If I turn to you and say that I don't need you to duplicate the documentation on these bill and simply want you to interface with that system, even link up with computers, I run into this rule that says that I cannot provide you with staff, administrative services, facilities or supplies or else you are deemed to be operated by me. Have you run into this kind of issues yet?

PALLARI: That particular aspect of the administrative rule does not limit us to providing service that we best do and interfacing with the employer or the insurer. There should not be duplication; the contract should lay out who is responsible for what.

REP. MANNIX: My impression is that you are saying don't worry about the rule, that as long as it looks OK to us we are not going to stick you with the rule."

PALLARI: The intention of the rules was not that the MCOs duplicate the services that were already being covered by either the employer or the insurers.

PUBLIC HEARING, HB 2719 (Exhibit C)

Witnesses: Jack Kalinoski, Oregon-Columbia Chapter of the Associated General Contractors.

267 CHAIR DERFLER: Opens public hearing on HB 2719.

270 JACK KALINOSKI, Executive Director of the Oregon-Columbia Chapter of the

Associated General Contractors: He is also on the board of directors of a non-profit corporation; Northwest Managed Care Organization. Testifies in favor of HB 271 9 (Exhibit C).

-Describes the group workers' compensation program the AGC has had for six years.

-Discusses safety programs and requirements.

-The results have been excellent. During our last policy year, these companies had an aggregate loss ratio of 45%.

-We need to be able to contract with an MCO that can provide services wherever construction work is being performed in Oregon.

-I want to see quality medical care provided at the least possible cost to injured workers in every part of our state. The existing state laws will not let us do that.

-Discusses the possible opposition to this bill and the "company doctor" syndrome.

-Suggests amending the bill that the "person" does not have the ability to have a single company as a client.

-Competition could and should be promoted to the advantage of all.

395 REP. REPINE: There is one MCO in Medford.

402 REP. MANNIX: We appreciate your willingness to come today.

409 CHAIR DERFLER: Closes the public hearing on HB 2719.

OREGON MEDICAL ASSOCIATION - OVERVIEW (EXHIBIT D)

427 SCOTT GALLANT, Director of Government Affairs, Oregon Medical Association: The intent of the legislation was to enable small physician groups to contract and provide services under the MCO concept, (Exhibit D).

-We feel that the administrative rules are extremely restrictive and prohibit the small groups of physicians from doing that.

-Discusses peer review.

TAPE 72, SIDE A

015 TOM CUNEY, Attorney in private practice representing the Oregon Medical Association: We feel there is too restrictive of an approach as to who can become a MCO.

-In an attempt to try to exclude the workers compensation carrier and the employer, the division has gone too far excluding unnecessarily others who do have the expertise that could come in and participate. Oregon Medical Association MCO throughout the state would be something that could be considered.

-Proposes language suggesting that anyone who is an employer could become an MCO. Provided that they do not require their own employees or the employees of those who operate, own or maintain it to have their health care provided by that MCO.

086 REP. MANNIX: I assume that you have seen this laundry list of

don't's for MCOs. Have you taken a look at these?

096 CUNEY: Yes I recognize that, the restrictions have gone too far. The Division has interpreted too strictly the intent of the Legislation.

REP. MANNIX: You are suggesting that any employer can form an MCO as long as the MCO does not require that the employer's employees participate.

-Suggests a minimum number of providers requirement.

CUNEY: Yes but you cannot get by the prohibition on the employer.

WORK SESSION, HB 2643

CHAIR DERFLER: Opens work session on HB 2643. We need to bring the bill back to the committee because it has a subsequent referral to the Committee on Ways and Means.

143 DOZLER: The fiscal impact was minimal by the time you had amended the bill.

146 MOTION: REP. MANNIX: Moves to suspend the rules so committee can further consider HB 2643.

The committee has no objections to the above motion.

MOTION: REP. MANNIX: Moves that the committee rescind the referral on HB 264 3 to the Committee on Ways and Means.

VOTE: The motion carries 5-0.

EXCUSED: Representative Edmunson and Dominy.

MOTION: REP.MANNIX: Moves that HB 2643 be referred to the House floor with a "do pass" recommendation.

VOTE: The motion carries 4-0.

EXCUSED: Representatives Repine, Edmunson and Dominy.

PUBLIC HEARING, HB 2657 (Exhibits E,F,G & H)

Witnesses:Irv Fletcher, Oregon AFL-CIO Thomas Malloy, Joint Council of Teamsters Robert Dusk, Teamsters Local Union No. 670 Michael Staten, Employment Division Sharon Kidder, Employment Division Greg Teeple, International Brotherhood of Electrical Workers, Local 48 and Oregon State Building Construction Trades Council

174 CHAIR DERFLER: Opens public hearing on HB 2657.

192 IRV FLETCHER, Oregon AFL-CIO: Refers to his written testimony submitted on March 8, 199 1 (Exhibit E).

-If you pass this bill to increase the qualification period from 18 to 26 weeks, in four years you would reduce benefits to Oregon's unemployed workers by \$106.9 million.

-Thirty percent of wood products workers would not qualify for unemployment insurance.

-Twenty percent of construction workers would not qualify.

217 THOMAS MALLOY, Joint Council of Teamsters: Testifies in opposition to the bill (Exhibit F).

-The proposed increase from 18 to 26 weeks discriminates against seasonal employees and workers laid off due to the economy.

-We do not oppose the increase in the base wages that are required.

277 REP. MANNIX: What is your position in going from \$1000 to \$2000 and leaving the 18 weeks requirement alone?

IRV FLETCHER: That would be another category of low-income workers that would be disqualified.

REP. MANNIX: Working minimum wage and half time--in eighteen weeks that would make \$1710. How about a formula approach instead of a dollar approach? Has this occurred to anybody?

FLETCHER: It is occurring to somebody now.

MALLOY: About 500 claimants a year would be disqualified.

318 REP. JOHNSON: If a person chooses to take a seasonal position, should that person receive unemployment benefits for the rest of the year?

320 ROBERT DUSK, Teamsters Local Union No. 670: The Employment Division should ask these people why they don't want to work. This should be policed better. I would not want to see cannery workers to be affected by this bill and not qualify for unemployment. This should be categorized (Exhibit G).

382 FLETCHER: The issue is work search. This applies to loggers too.

395 REP. MANNIX: Would you support a aggressive implementation of the seek work requirement?

FLETCHER: Discusses the issue of suitable work requirement.

REP. MANNIX: Refers to the above issue and discusses the time factor involved.

416 REP. DOMINY: What do the people do during the interim with regard to the cannery workers?

DUSK: They sit back. There is employment if they want to work.

TAPE 71, SIDE B

007 REP. DOMINY: My perception is that during the winter months the loggers are out there looking for work.

-I would suggest that as soon as the unemployment in the county reaches double digit, we should try to extend benefits and not find ways to cut out the timber workers.

020 FLETCHER: I am not advocating reducing benefits.

030 MICHAEL STATEN, Labor Market Information Programs, Employment Division: Presents information regarding the effects of inflation on minimum wage and also on the base year earnings (Exhibit H).

104 REP. MANNIX: If we wanted to index this, put in a cost of living adjustment on a \$1000 then we would head to this \$1,415 figure?

STATEN: That is correct.

108 CHAIR DERFLER: Could you address the question of the seasonal workers.

117 SHARON KIDDER, Employment Division: Seasonal workers are required to seek work. Describes how that is monitored.

134 REP. WATT: Is the job search information verified?

KIDDER: No it is not.

136 REP. MANNIX: Do you have a method of tracking people and their work pattern history?

KIDDER: We have three years worth of data we can readily pull out.

REP. MANNIX: Can you follow up on the seek work requirement?

KIDDER: The problem is basically the lack of staffing.

REP. MANNIX: That is why you need our help with the other creative financing bills?

KIDDER: Yes.

160 CHAIR DERFLER: Are you trying to address the problem?

KIDDER: We need to make our placement efforts better. The average number of weeks claimed is 13-14, so people are not drawing their full benefits before returning to work.

CHAIR DERFLER: We don't want to reduce benefits for deserving people.

183 REP. WATT: Could we find those people by using computer programs, that does not take additional FTEs?

KIDDER: The difficulty lies in providing services for those people.

REP. WATT: What service are you indicating?

KIDDER: The placement service.

REP. WATT: Would there be additional costs involved in letting the individual know that the unemployment checks will not be provided if he/she is not involved in work search?

KIDDER: No there would not be.

205 REP. MANNIX: Reiterates the present problematic situation with regard to lack of staff as it relates to work search requirement verification and placement services.

KIDDER: That is the situation. We are examining this internally right now.

REP. MANNIX: Discusses the Employment Division's budget proposal. One of your key proposals was to be pushing hard on the employment side.

KIDDER: That is correct.

REP. MANNIX: Does that apply also to the verification of the job search?

KIDDER: There was not anything specifically related to that.

REP. MANNIX: You might consider that as a way of enhancing the attractiveness of that package.

234 CHAIR DERFLER: Your department should be coming up with some suggestions to solve this problem.

246 GREG TEEPLE, International Brotherhood of Electrical Workers, Local 48 and Oregon State Building Construction Trades Council: Testifies in opposition to HB 265 7.

-Discusses the ups and downs of the construction industry.

-The construction workers would much rather be working than be on unemployment.

-The workers need the benefits between their jobs to carry them during their job search.

309 REP. REPINE: What is your feeling about the \$1,415?

TEEPLE: Of course we are opposed to raising the levels philosophically. That would not affect our membership.

325 CHAIR DERFLER: Do you have any ideas how we could correct the problem of people receiving unemployment benefits as an income in lieu of looking for work?

TEEPLE: Discusses their referral system, we help the Employment Division in that respect.

345 REP. WATT: Do you share that information with the Employment Division?

TEEPLE: Yes if requested.

REP. WATT: How often does this happen?

TEEPLE: Four to six times a year approximately.

355 REP. MANNIX: Why don't the employers share job lists and offer work for seasonal workers? Would this work in the construction companies?

TEEPLE: This does occur in the large construction firms and projects.

PUBLIC HEARING, HB 2658 (Exhibits I, J & L)

Witnesses: Irv Fletcher, Oregon AFL-CIO Gary Pierson, The Kibbens Company
Karl Frederick, Associated Oregon Industries Eileen Drake, Tektronix
Linda Wisher, Oregon Council of Communications Workers of America

390 CHAIR DERFLER: Opens public hearing on HB 2658.

378 VICTORIA DOZLER: Describes the bill.

390 IRV FLETCHER, Oregon AFL-CIO: Testifies in opposition of HB 2658
(Exhibit I).

-We sponsored the bill in 1983 which is the current law.

-People are not getting rich by receiving a couple of hundred dollars of
severance pay.

-There are very few people who receive separation or dismissal pay.

TAPE 72, SIDE B

008 REP. MANNIX: Is there a difference between disqualification and
consideration of this allowance as pay? Wouldn't that be calculated as
a type of income?

FLETCHER: Some kind of offset.

011 REP. JOHNSON: If a separation pay is equivalent, for example the
worth of three weeks of the person's ordinary pay, are you saying that
you would agree to offsetting three weeks of unemployment compensation?

FLETCHER: Would Rep. Mannix respond to this.

REP. MANNIX: I thought there was a distinction that is made between an
absolute disqualification and consideration of that as some sort of
income source.

024 FLETCHER: This bill would disqualify the individual in any week in
which he/she would receive dismissal or separation pay.

028 REP. JOHNSON: According to this bill the person who received three
weeks worth of separation pay would have to wait three weeks before
applying for unemployment benefits?

FLETCHER: Employment Division should give the technical interpretation
if this bill is to be amended.

041 GARY PIERSON, The Kibbens Co.: Testifies in favor of HB 2658.
These payments not now deductible for unemployment benefits result in
inequities. He gives an example of a recent case in the Oregon court of
appeals--Silver Eagle Manufacturing Company.

083 REP. DOMINY: Would you consider the Sixty Days Warn Act to be
severance pay?

PIERSON: I am not qualified to comment on that.

088 REP. JOHNSON: Are unemployment benefits subject to taxation?

PIERSON: Yes.

REP. JOHNSON: If a person got a lump sum payment at the end the employment period and that was subject to withholding, is there a consideration for that in this bill at all?

PIERSON: Not to my knowledge.

098 REP. WATT: If this amendment is made, is it your understanding that if a person receives money he/she is disqualified from receiving benefits?

103 KARL FREDERICK, Director of Legislation, Associated Oregon Industries: Yes.

103 REP. JOHNSON: Refers to line 6. If the person receives a payment worth of three weeks of his wages, does he have to wait three weeks before applying for benefits?

FREDERICK: The first week, being a waiting period, would not be taken into

consideration. One takes the total amount the individual would receive and average out the person's wages and what is comparable to that would be disqualified.

REP. JOHNSON: Is the total amount of weeks that the person is qualified for unemployment benefits reduced by the weeks that he has to wait before applying?

FREDERICK: No it is not.

129 REP. DOMINY: Inquires about the fourth week?

FREDERICK: You need to ask the Employment Division.

REP. DOMINY: If there is a dismissal pay for a period of two months, one cannot receive unemployment benefits for those 60 days. A person's qualification for unemployment benefits starts after that sixty days, is that correct?

144 EILEEN DRAKE, Director, Employee Relations, Tektronix: Testifies in favor of the bill (Exhibit J).

-One can receive severance pay and unemployment compensation at the same time.

-We have accepted the Employment Division's position on severance pay.

-Discusses the WARN act.

-Discusses job search services Tektronix provides to its employees.

-Discusses severance pay and the 60 day lay off notice period.

287 REP. DOMINY: During the period of time when this employee is in a layoff status, does he have all seniority rights, does he have all the due process of someone working?

DRAKE: The only difference is that that person most likely does not have to come in and do his/her regular job.

REP. DOMINY: Do they qualify for holiday pay?

DRAKE: Yes.

298 REP. MANNIX: Have you thought about a more narrowly drafted version of this bill?

DRAKE: I would be willing to participate in that kind of effort.

314 REP. JOHNSON: What have the changes been exactly in the way that the EAB and Court of Appeals have interpreted this law?

DRAKE: It is a bit difficult for me to understand too because it seems to be an illogical determination. The current law defines wages as remunerations for services. The EAB reads into that that services means regular work for the employer. We at Tektronix interpret the services to include the idea that our employees are out there looking for another job. We see that as a benefit to the company.

-We are not talking about the severance pay being subtracted from the individual's unemployment compensation. We are saying that the individual is going to have to wait until he or she has exhausted the wage replacement benefits paid voluntarily by the employer or pursuant to union contract before he/she is eligible to unemployment benefits.

REP. JOHNSON: Referring to the Tektronix scenario. The odds of receiving unemployment benefits would go up with this bill.

DRAKE: We create a lot of push for these people during the job search.

438 REP. DOMINY: This is one of the most attractive non-union severance packages. What is your philosophy?

DRAKE: These are our employees, we care about them.

REP. DOMINY: You want to give with one hand and take away with the other.

DRAKE: No we want to share the responsibility.

TAPE 73, SIDE A

010 -We are not taking away any benefits, we are just talking about postponing the eligibility for unemployment benefits.

017 REP. DOMINY: You put together these packages knowing what the employment laws were. You are giving something on one side to make yourself look good and on the other side you want the state to take it away to make the state look bad. What is your philosophy?

DRAKE: Our policy was already in practice when the determinations of EAB and Court of Appeals came into effect.

REP. DOMINY: Have the rules changed?

DRAKE: The interpretation of the law has changed since we put our policy into effect. We were blind-sided.

053 REP. MANNIX: This ought to be approached in the positive rather than the negative. This proposed bill uses very broad language and

would disqualify a lot of people.

DRAKE: This is not a Tektronix bill. We are interested only in one aspect of it.

074 FREDERICK: We will be willing to work with you to narrow it down. Refers to his testimony submitted March 8, 1991 (Exhibit K).

098 LINDA WISHER, Oregon Council of Communications Workers of America: Testifies in opposition to HB 2658 (Exhibit L).

-The separation pay is a compensation for the amount of time that an employee has devoted for the company.

-This is almost like excluding someone who has a savings account.

124 REP. MANNIX: How would you feel about a more limited disqualification that says that as long as your employer is keeping you on payroll and is assisting you on a job search effort that you would remain disqualified?

WISHER: I don't know if that would effect our people.

138 SHARON KIDDER, Employment Division: We would like to just answer questions; the bill is quite self-explanatory.

145 Rep. Mannix and Mr. Van Pelt discuss the possible case scenarios with regard to separation and vacation pay.

176 REP. EDMUNSON: Refers to Rep. Mannix's first hypothetical scenario. Is the person unemployed during those two weeks?

VAN PELT: That would be considered remuneration as earnings.

190 -Rep. Edmunson and Mr. Van Pelt discuss the sample scenario further.

207 REP. EDMUNSON: Refers to the Tektronix testimony. Which scenario doe that fall into?

VAN PELT: The initial determination by our local office was your scenario. The employer provided letters to the affected employees and said that to get this money you have to be willing to come in if we have work for you. There was some control of the use of the time so that money was treated as remuneration for service. The EAB said that that was a sham and that the separation occurred on the last day of the work, hence it was not remuneration for service. It was some form of separation pay which is not deductible under the law.

222 REP. MANNIX: If I am a smart employer I should say that all the employees must report to work daily and sign up with the unemployment compensation deferment office-- to do enough work activity to get beyond the sham level.

VAN PELT: If there is an employer-employee relationship in effect in the week the compensation is for, it is treated as earnings.

REP. MANNIX: Provides an extreme example.

PUBLIC HEARING, HB 2719 (Exhibit M)

Witnesses: Chuck Bennet, Oregon Chiropractic Physicians Association
Bruce Mylam, Chiropractor in Private Practice
Robert Wallheim, Attorney Rep.
Liz VanLeeuwen, District 37

255 REP. EDMUNSON: Opens public hearing on HB 2719.

256 VICTORIA DOZLER: Describes the bill.

265 CHUCK BENNET, Oregon Chiropractic Physicians Association and DR.
BRUCE MYLAM, Chiropractor in Private Practice: Testify in support of
HB 2719 (Exhibit M).

314 MYLAM: We are committed to become involved in the managed care
arena.

-Present law allows a very narrow scale of doctors to participate.

-We would like to see an open, competitive market.

-We are not in a position to contract with other MCOs.

377 ROBERT WALLHEIM, Attorney in Private Practice: Testifies in
opposition to the bill.

-It is a little bit too soon to make any changes.

-Discusses the fear that this will lead into the "company doctor
syndrome."

404 REP. MANNIX: Would a limited number of providers requirement take
care of the lack of choice situation, the company doctor syndrome?

WALLHEIM: The injured worker wants to make the choice. There is no
benefit for the worker to allow the employer to be in charge of this
program nor savings for the system.

TAPE 74, SIDE A

006 REP. MANNIX: Isn't the real benefit the quality assurance, the peer
review, the utilization review to make sure that the workers in the
system are receiving quality medical services?

009 WALLHEIM: The purpose of the MCOs is to contain costs. I would
disagree with you.

014 CHAIR DERFLER: Refers to Jack Kalinosky's testimony. Do you feel
that if the present law were left as it is that we would have a
competitive situation with MCOs?

WALLHEIM: A year ago we didn't know what an MCO was. We need more
time for the system to develop.

CHAIR DERFLER: Do you feel under the present situation that they will
form and develop?

WALLHEIM: Yes.

031 LIZ VANLEEUVEN, State Representative, District 37: Testifies in
support of HB 2719.

-There are only about three places in the state who can comply with the rules that were established.

-The intent of the legislation was to have these available locally so there would be more choice.

056 REP. EDMUNSON: Adjourns the meeting at 11:00 a.m.

Submitted by: Reviewed by:

Johanna Klarin Victoria Dozler Assistant Administrator

EXHIBIT LOG:

A - Oregon Association of Hospitals - Overview - Bob Pallari - 4
pages. B- Oregon Association of Hospitals - Overview - Bob
Pallari - 33 pages. C - Testimony on HB 2719 - Jack Kalinoski - 3
pages. D- Oregon Medical Association - Overview- Scott Gallant -
3 pages. E - Testimony on HB 2657 - Irv fletcher - 1 page.
F - Testimony on HB 2657 - Thomas Malloy - 3 pages.
G - Testimony on HB 2657 - Robert Dusk - 4 pages.
H - Testimony on HB 2657 - Michael Staten - 6 pages.
I - Testimony on HB 2658 - Irv Fletcher - 1 page.
J - Testimony on HB 2658 - Eileen Drake - 2 pages.
K - Testimony on HB 2658 - Karl Frederik - 3 pages.
L - Testimony on HB 2658 - Linda Wisher - 1 page.
M - Testimony on HB 2719 - Chuck Bennet - 76 pages.