

SENATE COMMITTEE ON HEALTH INSURANCE AND BIOETHICS

February 26, 1991                      Hearing Room C 3:00 p.m.                      Tapes 24 - 26  
MEMBERS PRESENT: Sen. Bob Shoemaker, Chair Sen. Joyce Cohen,  
Vice-Chair Sen. Jeannette Hamby Sen. Lenn Hannon Sen. Frank Roberts  
STAFF PRESENT: Barbara Coombs, Committee Administrator Mark Sigel,  
Committee Assistant MEASURES CONSIDERED: SB 29

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 24, SIDE A

Witnesses: Phil Yarnell and Steve Cloud, Adult and Family Services  
Hersch Crawford, Office of Medical Services Programs John Powell, Blue  
Cross Blue Shield of Oregon

003            CHAIR SHOEMAKER: Calls meeting to order at 3:15.

034    PHIL YARNELL AND STEVE CLOUD, ADULT AND FAMILY SERVICES RECOVERY  
SERVICES DIVISION: Submit (EXHIBIT A and B). Exhibit A explains that SB  
29 is necessary to make Medicaid the payor of last resort in order to  
prevent insurance companies from writing coverages which make  
governmental benefits primary to their coverage. Exhibit B is a proposed  
amendment which the Department of Insurance and Finance (DIF) wrote and  
which makes SB 29 applicable to health services contractors.

080            SENATOR HANNON: How did you determine the fiscal impact of \$4  
million in 1991-1993? 085            YARNELL: By estimating that as many as  
50% of private insurers would, in the next 2 years, begin to write  
policies making their benefits secondary to Medicaid benefits.

090            SENATOR HANNON: How many companies are writing those types of  
plans now? 091    YARNELL: Klamath Falls Services Medical Bureau is  
currently denying claims. There are companies in other states which have  
been writing these types of policies as well. SENATE COMMITTEE ON HEALTH  
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102    SENATOR HANNON: So your \$4 million figure is overstated unless  
other companies start doing this? Do you have any indication that any  
other companies are stepping up to do it?

103    YARNELL: We have heard that BCBSO has begun to write such policies.  
They have not yet denied any payments on that basis.

107    SENATOR HANNON: How many companies which cover personal injury are  
denying benefits?

103    YARNELL: I know that Farmer's is doing this.

117    STEVE CLOUD, ADULT AND FAMILY SERVICES: Most of the personal injury  
protection or (PIP) policies exclude coverage when public assistance is  
involved, particularly when a pedestrian is involved.

122    SENATOR HANNON: Have these companies which provide personal injury  
protection recently changed their policies or have they been denying  
benefits when public assistance was involved for some time now? 124  
CLOUD: I believe its been ongoing. We are looking into it now because  
federal HCFA workers have been investigating this in Hawaii and they may

start withholding matching Medicaid funds.

132 SENATOR HANNON: So this bill is coming to us because of HCFA's initiative and not because of an onslaught of restrictive insurance policies?

133 CLOUD: That's correct. But there is nothing in the law to prohibit every insurance company from writing such policies.

155 HERSCH CRAWFORD, OFFICE OF MEDICAL ASSISTANCE PROGRAMS: Submits (EXHIBIT C) which explains that federal Medicaid funds pay only for services when Medicaid is the payor of last resort. 160 CRAWFORD: In the current biennium we are going to cost avoid just under \$8 million by passing this bill. 161 CHAIR SHOEMAKER: Why \$8 million? Mr. Yarnell said \$4 to 6 million. 165 CRAWFORD: If every insurance company writes such policies then we could lose \$8 million. 263 JOHN POWELL, BCBSO: Has no problem with Medicaid being the last resort payor. I do have a problem subsection 3 of section 2 of AFS's amendments on the process of how the monies would be handled. "If payment had been made by the public agency to a provider then the insurer is to reimburse the public agency and our problem would come under a system if a physician would normally charge \$100 for a procedure and we had a contract with them to do it for \$80 and perhaps this agency paid \$40. . . if we're not) fied by the agency of this procedure that was paid for with public assistance for \$40 and we reimbursed them .. does that then mean the claim is paid in full or do we still owe the physician \$40?" SENATE COMMITTEE ON HEALTH INSURANCE AND BIOETHICS February 26, 1991 - Page 3

309 CHAIR SHOEMAKER: I don't know the answer to that. 310 POWELL: "Our suggestion is it would be best in a case where the agency discovered they paid and there is insurance for the provider then to send us a bill and we'd pay the provider according to our agreement and then the provider would reimburse the agency."

We'd pay a much higher rate than the provider would normally get. The agency would still get their reimbursement and we would still meet the intent of this bill by being the primary insurer.

330 CHAIR SHOEMAKER: How about if the agency bills you. You would then pay the provider what additional amount he or she is entitled to over the Medicaid payment and you would pay the agency of what it billed you for. Any problem with that?

343 POWELL: Well we still have to get something from the physician.

344 CHAIR SHOEMAKER: You notify the physician and he'll send you a bill. 351 POWELL: The question is there could be deductibles involved. That is why our suggestion is to have one bill come from us and the provider would reimburse. This way it would be clean from other considerations such as deductible charges. In the case of HMOs there may even be a greater problem for an outside practitioner. 368 CHAIR SHOEMAKER: There is no problem with the bill's concept - just questions involving how we can do it most expeditiously, correct. 370 POWELL: Correct. 392 CHAIR SHOEMAKER: Would it be possible to have OMAP develop regulations to deal with the payment process and to have the bill simply deal with the principle? 395 POWELL: That may work out the best.

TAPE 25, SIDE A

Witnesses: Mary Alice Bjork and Craig Urbani, Depart. of Insurance

and Finance Bruce Bishop, Kaiser Permanente Mary Anne Stowell, Portland Public Schools Sandra Peterson, Office of Medical Assistance Programs

046 MARY ALICE BJORK AND CRAIG URBANI, DEPARTMENT OF INSURANCE AND FINANCE: We are neutral on this bill. The bill as amended would impact  
095 COOMBS: Would it be within the authority of Adult and Family Services to [promulgate rules regarding the process of 105 YARNELL: We are investigating currently whether we have this authority.  
114 CHAIR SHOEMAKER: We will reconvene on this bill on March 14th. Before that time resolve

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your differences.

132 BRUCE BISHOP, KAISER PERMANENTE: Preferred the bill in its original form because it did not address health service contractors like Kaiser.

188 MARY ANNE STOWELL, PORTLAND PUBLIC SCHOOLS: Submits (EXHIBITS D AND E). Exhibit D is an amendment to SB 29 and background information on why the amendment is needed. Exhibit E gives an overview of Third Party Medical Reimbursement. 395 CHAIR SHOEMAKER: You are reimbursed by OMAP for services given to Medicaid patients. Insurers cover most of the rest of the care you provide. That leaves some people who we hope to extend coverage to under SB s 27 and 935 . These people will not be able to pay. This care could be classed as uncompensated care. Is this an appropriate analysis?

410 CAROL FOLEY, HEALTH CHOICE: We think about 26% of the students who are receiving a medically related service would have provided the consent and would have an indemnity style policy. We don't anticipate that the HMOs would pay on these claims because the school providers are not part of the panel or referral arrangements that are normal under the HMO.

425 CHAIR SHOEMAKER: Does an HMO normally provide this kind of service?

427 FOLEY: Yes. But the HMOs don't have the necessary volume of speech, physical and occupational therapists necessary to provide these services in the school setting.

441 CHAIR SHOEMAKER: What % would be covered by Medicaid?

442 SANDRA PETERSON, OMAP: We have counted 6,700 kids that are on Medicaid and are receiving IEP services. This is about 14 to 15% of the population. that would be Medicaid covered and is also receiving some service through the IEP. 495 CHAIR SHOEMAKER: Are the services that you are providing through this program more expensive or extensive than that child would receive if his parents were to seek it privately?

TAPE 24, SIDE B

Witnesses: Karen Hafner, Association of School Boards Peggy Anet, League of Oregon Cities Craig Urbani, Department of Insurance and Finance

038 PETERSON: The policy that the family carries may limit the number of units of service that the child could receive. We would only bill for

what the policy would cover.

The school district has an interest in providing cost-effective service to youngsters - our goal is to provide these services in the least costly manner. 050 KAREN HAFNER: ASSOCIATION OF SCHOOL BOARDS: Supports the School Board amendment (exhibit D).

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093 PEGGY ANET: Submits (EXHIBIT F) which summarizes her concern that the proposed amendment appears to represent a new health insurance mandate.

184 SENATOR ROBERTS: The language of the federal law says each state may use whatever state, local, federal or private sources that are available to meet the supplementary needs of handicapped children. Do you believe that the language of the federal law relieves insurers of their responsibilities to provide benefits to handicapped children?

210 ANET: If the insurer's policy excludes certain services to handicapped children then there is no obligation to provide those services.

219 CHAIR SHOEMAKER: Would you argue that the intent of the federal legislation is not that IEPs are to be paid for by insurance if the insurance would cover that kind of therapy?

225 ANET: The school board will interpret that it is the obligation of the insurers to reimburse for those services. I would like to look at more information before deciding whether this is the correct interpretation. 265 MARY ANNE STOWELL: The addition of the language: "Otherwise eligible for reimbursement," is perfectly reasonable to us. We want language to make it clear that we do not expect insurance companies to pay for what they would normally not pay for.

- Secondly, we are looking for assistance from insurance companies to pay for the care we provide to students such as the three accident victims who entered the Multnomah school district last month, who are quadriplegics, are respirator-dependent and whose care costs a great deal.

326 SENATOR ROBERTS: Do you agree with Peggy that a significant portion of the children covered by the Handicapped Act would be receiving services because of developmental disabilities and would not normally then be covered by an insurance policy?

335 STOWELL: In Portland public schools 5,000 students are eligible for special education and about 400 of them are mentally retarded. The largest proportion of the students that we serve have a speech impairment or have a more mildly handicapping condition and many of these services would be covered by the insurance company. It is true that there are a portion of students who are developmentally disabled and the insurance might exclude them but they are a small part of our population. 351 SENATOR ROBERTS: Do health insurance policies normally cover congenital conditions?

354 STOWELL: Some insurance companies do exclude congenital problems.

367 SENATOR ROBERTS: In those cases they would not be billable under the provisions of this act, correct?

368 STOWELL: Yes. 377 CRAIG URBANI, DEPARTMENT OF INSURANCE AND FINANCE: We are convinced that this amendment would constitute a mandated benefit. . . . These minutes contain materials which paraphrase and/or summarize SB er . . . made during this section. Only text enclosed in quotation marks report . . . speaker's exact words. For complete contents of the proceeding, please refer to the tapes. . .  
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387 CHAIR SHOEMAKER: How do you reason that?

388 URBANI: It expands payments that otherwise would not be made by insurers, particularly paragraph 2 which would expand almost every health care contract that I am aware of.

402 SENATOR HANNON: What is the federal law that leaves it up to the states to regulate insurance? Is that the McKerrin - Ferguson Act?

404 URBANI: Right.

406 SENATOR HANNON: The Portland School Board representatives asserted that federal law requires insurance companies pay for additional services for handicapped children. Is this a violation of the McKerrin - Ferguson Act?

420 URBANI: Not being an attorney I don't know.

435 SENATOR HAMBY: Did you take into consideration the federal EHA amendments, the early Handicapped Act and the Medicaid Catastrophic Act when deciding that this bill constitutes a mandate?

TAPE 25, SIDE B

. Witnesses: Mary Alice Bjork, Department of Insurance and Finance Bruce Bishop, Kaiser Permanente

004 URBANI: No. Those bills were not part of our consideration.

006 CHAIR SHOEMAKER: I'll expand on Senator Hamby's question. If insurance companies would pay for a certain service if it is provided by a normal provider under an insurance policy, you can't duck it because it's provided by a school. If that is what the federal law says, then does that affect your opinion regarding whether this is a mandate or not.

015 URBANI: I'm not sure about your question but I do know that the bill is placed in ORS 743.700 to 743.722 and that is the mandate section. 052 SENATOR ROBERTS: The federal law says these services cannot be excluded so I think it should not be considered a mandate.

075 MARY ALICE BJORK: McKerrin - Ferguson gives the states the right to regulate insurance as long as the states are doing their job. The feds can step in if they find that a state is not doing the job.

090 JOHN POWELL, BCBSO: We feel that the amendment is a mandated service. 140 CHAIR SHOEMAKER: Why shouldn't insurance cover the

medical therapy services that a child, who has become handicapped in an

accident, needs in order to learn in school? 161POWELL: Because if the student needs a nurse in the school in order to provide for the student \_ . SENATE COMMITTEE ON HEALTH INSURANCE AND BI013 TIIICS February 26, 1991 - P - e 7

to function in the school setting then the service is not medically necessary. Instead, it is educationally necessary.

177 CHAIR SHOEMAKER: So are you acknowledging that to the extent that this therapy is medically necessary that it would be appropriate for the insurer to cover such medically necessary services? 183 POWELL: If a service is medically necessary then it would be covered under the existing contract unless the service is specific to the educational needs of the student. 265 BRUCE BISHOP, KAISER PERMANENTE: We think it is a mandated service. 275 CHAIR SHOEMAKER: I feel we've reached some agreement that this is not a mandated service but a mandated provider. 304 SENATOR ROBERTS: Did you consider the original bill a mandate? 309 BISHOP: No. 315 SENATOR ROBERTS: Well, if the original bill is not a mandate and it is so similar to the amendment then the amendment is not a mandate. 420BISHOP: If the purpose of the bill is going to be to require that HMOs reimburse schools for services that they provide, than we will have problems with that proposal. 428 CHAIR SHOEMAKER: I think that I heard the schools say they are not pursuing that. So I encourage you to work with them to ensure that your purpose is accomplished in the language. 430 BISHOP: I think there may be ERISA problems in the school amendment.

TAPE 26, SIDE A

010 SENATOR ROBERTS: The Portland Public Schools have indicated that there are recent court cases which support their position and I'd like our committee staff to check on them.

022 CHAIR SHOEMAKER: The question is can we extend this bill to self-insureds and also should we do so.

027 COOMBS: The most recent amendment from the Association of Schools does not include selfinsureds.

052 CHAIR SHOEMAKER: Adjourns the meeting at 5:10.

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Submitted by        Reviewed by: Mark Sigel Barbara Coombs  
Assistant            Administrator

EXHIBITS A - Testimony on SB 29, Yarnell, 2 pages B - Amendement to SB 29, Yarnell, 4 pages C - Testimony on SB 29, Crawford, 1 pages D - Amendment to SB 29, Stowell, 4 pages E - Information on 3rd Party Medical Reimbursement, Stowell, 1 page F - Testimony on SB 29, Anet, 2 pages - Tbeae minubr contain mated~la which p~phr&se and/or aummarize rtatemerda made during tbia ae~ion. Only text enclosed in quotation

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