February 28, 1991 Hearing Room C 3:00 p.m. Tapes 27 - 28
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 62

These minutes contain materials which paraphrase and/or sun~nanze statements made during this session. Only text enclosed in guotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE 27, SIDE A Witnesses: George Ostertag, Office of Medical Assistance Programs

- O00 CHAIR SHOEMAKER: Calls meeting to order at 3:15. 009 GEORGE OSTERTAG, OFFICE OF MEDICAL ASSISTANCE PROGRAMS: Submits (EXHIBITS A) Explains that the bill's purpose is allow the Department of Human Resources to review and enforce the Medicaid billing requirement that the providers bill Medicaid their usual and customary fee. Submits (EXEIIBIT B) which is Washington's law requiring providers to show their books to demonstrate they haven't been overcharging or double billing Medicaid. 073 OSTERTAG: We recommend that line 8 be changed from ~inspectn to ~inspect and copy~. 099 SENATOR HANNON: Why weren't these amendments that you are proposing for the first time in this meeting integrated into the bill before it was printed?
- 100 OSTERTAG: We have no excuses.
- 112 SENATOR HAMBY: You mentioned that Washington state has a similar law. How long it has been in effect and how successful has it been? Are there other states that have similar laws?
- 115 OSTERTAG: The Washington law was passed in 1990 and there is probably no track record. The WA law reads: "In order to determine the provider's actual usual, customary or prevailing SENATE COMMITTEE ON HEALTH INSURANCE AND BIOETHICS lanuary 20, 1991 Page 2

charges, the secretary may examine such random representative records as necessary to show accounts billed and accounts received except that in the conduct of such examinations patient names, other than the public assistant applicants or recipients shall not be noted, copied or otherwise made available to the department. Of the 15 other states that we called none had such laws. 128 CHAIR SHOEMAKER: What is the current procedure when you request information?

- 132 OSTERTAG: We get a procedure code telling us what service was provided, a diagnosis code, a date of service and a charge amount. We do not get any of the actual records to verify that any of these services were done. 142 CHAIR SHOEMAKER: Is the charged amount represented to be the usual and customary charge? 143 OSTERTAG: We have a rule that says the charged amount is to be the usual and customary charge.
- 149 CHAIR SHOEMAKER: What after the fact verification do you undertake? 154 OSTERTAG: In order to verify that providers have actually delivered the services and charged the amounts that they claim we have 5 staff positions, 4 of which are filled, of individuals who do on-site audits. They go to a provider office, collect medical records, mane copies, bring them back to our office and analyze them. 160 CHAIR SHOEMAXER:

- How is that program working and do you have much resistance from the providers? How long have you been doing these audits?
- 164 OSTERTAG: I believe it works well. We don't have much resistance. We've been doing it since 1987.
- 177 CHAIR SHOEMAKER: Does your general authority include the power to look at the verification of the charge?
- 184 CHAIR SHOEMAKER: Don't doctors normally post their billing schedules listing their normal and customary charges?
- 187 OSIERTAG: Some do and some don't, and it's not always easily accessible if they do. 210 CHAIR SHOEMAKER: My understanding is that there is not truly a usual and customary charge because they have negotiated a host of different rates with different payors.
- 217 OSTERTAG: That may be true. But we can't root out fraud because we don't have access to what providers pay to the host of different payors.
- 225 CHAIR SHOEMAKER: Assume you have access and you find a host of different charges to different payors, how do you determine what usual and customary is?

rnese minutes contain materials which paraphrase and/or summerize tatements made during thi~ sesaion. Only text enclosed in quotation mArks report a speaker'. exact worde. For complete contents of the proceedulge, please refer to the tapea. SENATE COM - TTEE ON HEALTH INSURANCE AND BIOETHICS January 20, 1991 - Page 3

- 229 OSTERTAG: That's a good question. We're not sure how we would do that. We could define it as the lowest charge to anyone 254 CHAIR SHOEMAKER: Have you explored with the Workers' Compensation Division, which reimburses at 75%, why they reimburse at that rate? 258 OSTERTAG: No. We are looking at a provider specific issue while they are looking at an overall provider group to come up with the usual and customary charge. 279 CHAIR SHOEMAKER: Can you presume that the usual and customary charge for a certain service is X and then ask providers whose charges differ from X to justify why their rates are different? 287 OSTERTAG: We do that sometimes. But if a doctor's attorney disputes our estimation of what is normal and customary and furthermore doesn't give us access to the records then we don't have access to their records to prove that our estimate is appropriate. The burden to prove that is on us and we currently lack the means of doing so. That is what this bill would correct. 311 CHAIR SHOEMAKER: You said you don't need to do this very often - you do it only in cases when you think you're being cheated. Perhaps we should limit this bill to giving OMAP the right · to examine records only when OMAP can prove there's probable cause of overbilling or double billing going on. 340 OSTERTAG: That would be better than nothing. Of course, if you give us the bill in its present form you don't have to worry about us abusing the privilege because we don't have the staff time to review lots of records from lots of offices. 357 SENATOR HANNON: Do you assume that doctors should charge the same rate for the same procedures across cities? 368 OSTERTAG: No. We look at one physician in order to determine that the one physician charges all of his or her patients the same amount.
- 376 SENATOR HANNON: How many cases since 1987 have you dealt with overcharging?

- 378 OSTERTAG: We can't determine that. We've come across 3 or 4 by happenstance.
- 448 SENATOR HANNON: How many random samples do you do per month to check for fraud or abuse? 457 OSTERTAG: We check about 4 to 7 providers per month. We check about 30 to 70 line items or codes per provider. TAPE 28, SIDE A Witnesses: Scott Gallant, Oregon Medical Association SENATE COMMITTEE ON HEALTH INSURANCE AND BIOETHICS Janua~y 20, 1991- Page 4
- 031 SENATOR ROBERTS: Is the term usual and customary fee defined in the federal and state regulations?
- 036 OSTERTAG: It is defined simply as normal charge or the amount that is charged to the general public.
- 067 SENATOR ROBERTS: Do you think that doctors have a schedule of payments that they refer to?
- O71 OSTERTAG: Yes. I assume that is true. 073 SENATOR ROBERTS: So maybe it would be better for your agency to be empowered to look at provider's schedule of payments or fees rather than looking at individual records. You have indicated that you want to discover what an individual doctor's usual fee is rather than what the usual fee is in ascertain location. Yet, in line 9 you indicate that you want information on the usual fees according to locations. This is a discrepancy. 102CHAIR SHOEMAKER: Did you say that an agency cannot pay a provider more than the provider's customary charges? Is that what you said? 111 OSTERTAG: The regulations say for inpatient services the agency cannot pay more than the provider's charges to the general public... for outpatient services the agency must not pay more than the prevailing charges in the locality for comparable services under comparable circumstances.
- 119 CHAIR SHOEMAKER: Do you ever pay 100% of the customary charges to a provider?
- 120 OSTERTAG: In some cases.
- 210 SCOTT GALLANT, OREGON MEDICAL ASSOCIATION: Presents (EXHIBIT C) which explains that the OMA opposes SB 62 because they believe that the Department of Justice already has adequate power to investigate instances of fraud.
- 285 CHAIR SHOEMAKER: Under current law it is difficult for OMAP to make a strong enough case that a certain provider may be cheating in order to bring the Department of Justice in.
- 330 SENATOR HANNON: Have you heard from the Washington Medical Association how this bill may be working up there?

334 GALLANT: No.

TAPE 27, SIDE B

Witnesses: Robert Woolsey, Oregon Clinical Laboratory Association Jeff

Heatherington, Osteopathic Physicians and Surgeons of Oregon, FamilyCare and Evergreen Medical Systems Nan Dewey, Oregon Dental Association SENATE COMMI1~EE ON HEALTH INSURANCE AND BIOETHICS January 20, 1991- P - e S

Bruce Bishop, Kaiser Permanente

- 068 CHAIR SHOEMAKER: How do you think OMAP can police against fraud without overly intruding upon doctors' privacy?
- 072 GALLANT: Such investigation could be done by private survey.
- 086 ROBERT WOOLSEY, OREGON CLINICAL LABORATORY ASSOCIATION: Submits (EXHIBIT D) which explains that his association opposes SB 62 because it casts an unnecessarily broad net over providers whether they are part of the problem or not.
- 110 CHAIR SHOEMAKER: Assuming we can identify some area where abuse is occurring, do you have any suggestion for a fair way to investigate?
- 118 WOOLSEY: I think we should start by requesting fee schedules from the professional societies. 121 JEFF HEATHERINGTON, FAMILYCARE, EVERGREEN MEDICAL SYSTEMS AND OSTEOPATHIC PHYSICIANS AND SURGEONS OF OREGON: Submits (EXHIBIT E) which emphasizes his belief that there are adequate enforcement mechanisms available to OMAP and the Department of Justice to deal with fraud and abuse in the Medicaid program.
- 195 SENATOR ROBERTS: It seems to me that this bill wouldn't reach your organizations' providers.
- 220 HEATHERINGTON: No. I checked with my providers and they assured me that this bill would affect them.
- 231 NAN DEWEY, OREGON DENTAL ASSOCIATION: Submits (EXHIBIT F) in opposition to SB 62. Claims this would be redundant legislation.
- 266 BRUCE BISHOP, KAISER PERMANENTE: Opposes the bill.
- 274 CHAIR SHOEMAKER: Was Mr. Heatherington right that the only two groups that bill based on customer charges are anesthesiologists and hospital outpatient lab and X-ray services?
- 277 OSTERTAG: He is not totally right. A number of hospitals, for both their inpatient and outpatient services, will be paid directly based on their charges.
- 348 COHEN: Why can't you just change providers if you think some may be cheating the Medicaid program?
- 352 OSTERTAG: We have to go through protracted hearings to remove physicians from the Medicaid provider roles.
- 375 CHAIR SHOEMAKER: The bill isn't going anywhere in the present form. Confer with your colleagues and define the problem better.

These minutes contain rnatcrialr which paraphrase and/or ·urnmarizc ~tatementr made during thia aesaion Only text enclosed in quotation marlc~ report a apeaker'r exact word For complete content. of the proceedmgr, please refer to the tapea SENATE COMMITTEE ON HEALTH INSURANCE AND BIOETIIICS January 20, 1991- Page 6

410 CHAIR SHOEMAKER: Adjourns hearing 4:40.

Submitted by: Reviewed by: Mark Sigel Barbara Coombs

Assistant Administrator

## EXHTBITS

A - Testimony on SB 62, Ostertag, 2 pages B - Washington law on Medicaid fraud, Ostertag, 1 page C - Testimony on SB 62, Gallant, 2 pages D - Testimony on SB 62, Woolsey, 1 page E - Testimony on SB 62, Heatherington, 1 page F - Testimony on SB 62, 1 page

These minutes contain materials which paraphrase and/or summarize rtatemorph thade during dib acesion. Only text enclosed m quotation marks repoh a speaker's exact words. For complete contents of the proceedin8s, please refer to the tapea.