

SENATE COMMITTEE ON HEALTH INSURANCE AND BIOETHICS

April 4, 1991 Hearing Room C 3:00 p.m. Tapes 53 - 54
MEMBERS PRESENT: Sen. Bob Shoemaker, Chair Sen. Joyce Cohen,
Vice-Chair Sen. Jeannette Hamby Sen. Lenn Hannon Sen. Frank Roberts
MEMBER EXCUSED: Senator Cohen STAFF PRESENT: Barbara Coombs,
Committee Administrator Mark Sigel, Committee Assistant

MEASURES SB 53, SB 833 CONSIDERED:

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 53, SIDE A

Witnesses: Jim Macintosh, Executive Department Craig Urbani, Department of Insurance and Finance

000 Senator Shoemaker Calls meeting to order at 3:15. Starts hearing on SB 53. 010 JIM MACINTOSH, EXECUTIVE DEPARTMENT: NY, Kentucky, Wisconsin, New Hampshire and Tennessee all allow insurance purchasers to select this type of coordination of benefits option.

080 CHAIR SHOEMAKER: This bill will have the tendency to reduce employers' costs, correct?

086 MACINTOSH: That's correct.

088 SENATOR HANNON: What guarantee do you have for employees that lose their state employment and their insurance and have trouble getting insurance elsewhere?

091 MACINTOSH: Protection exists right now through the COBRA mechanism where a person in that situation could continue under our group on a self-pay basis.

123 MACINTOSH: We concur with the dash 2 amendments which were submitted by DIF. SENATE COMMITTEE ON HEALTH INSURANCE AND BIOETHICS April 4, 1991 - Page 2

230 MACINTOSH: Small employers have difficulty self-insuring. Larger employers may now use this coordination of benefits type of provision because they can self-insure. 252 CHAIR SHOEMAKER: If the bill passes we will be moving toward more copayments on the part of insureds which will lead to less utilization of medical services which will tend to bring the costs down. This has to be balanced against the occasional case when there may be some adverse selection of some sort.

268 MOTION: Cohen moves for the adoption of dash 2 amendments.

270 VOTE: Committee approves. 273 SENATOR HAMBY: Is it the case that every single policy has a provision capping the insured's maximum contribution for the 20% that many policies do not cover? 278 CRAIG URBANI, MARY ALICE BJORK, DEPARTMENT OF INSURANCE AND FINANCE: Most major medical policies do have these stop-loss provisions. They are not required to have them - I don't know of policies which don't have stop-loss provisions, however. 300 URBANI: We have given ourselves

very specific rulemaking authority with the dash 2 amendments. With the rulemaking authority we would adopt provisions from the NAIC model to institute such a cap. 309 SENATOR HAMBY: I would feel much more comfortable with the bill if we include that stop loss language in the bill now. 350 CHAIR SHOEMAKER: Are there many plans that don't have some kind of stop-loss feature in them? 360 URBANI: Most have such provisions. 430 BARBARA COOMBS: We can accomplish Senator Hamby's purpose by adding the language: "Maximum stop-loss amounts that a secondary plan may provide." TAPE 54, SIDE A Witnesses: Alice McCarter and John Ramig, Healthy Start 019 MOTION: Shoemaker moves to add a subsection 9 to the dash 2 amendments.

026 SENATOR HAMBY: I'd like to change the language from: "may provide" to "shall provide".

028 VOTE: Committee adopts. 060 MOTION: Cohen moves SB 53 as amended to the floor with a do pass recommendation. 062 VOTE: SENATE COMMITTEE ON HEALTH INSURANCE AND BIOETHICS April 4, 1991- P - e 3

AYES: Cohen, Hamby, Roberts, Shoemaker NAYS: Hannon

068 CHAIR SHOEMAKER: Starts works session on SB 833. 097 ALICE MCCARTER AND JOHN RAMIG, HEALTHY START: Experts estimate that 28 babies die every year for lack of maternity care in Oregon. The malpractice insurance costs are one of the barriers that keep more woman from getting served by doctors for maternity care. When this barrier is overcome successful clinics are developed.

159 CHAIR SHOEMAKER: Why is it necessary to limit the liability of doctors and hospitals when they already have liability insurance which covers claims up into the millions of dollars? Why do we need it?

168 RAMIG: Doctors feel they are providing care for low fees or no fees and they don't want to risk law suits as a result of providing this care which they see as a public benefit.

180 CHAIR SHOEMAKER: Even though their exposure is covered by insurance?

183 RAMIG: That's right.

230 RAMIG: One of the premises of the bill is that there is a tradeoff in it. Pregnant mothers will get prenatal care but in the event that something goes wrong with the maternity care they will have their recourse to liability recoveries limited. But this is a good tradeoff considering that without these sorts of programs 28 children will die according to experts' calculations.

244 SENATOR COHEN: They may die anyway because the mothers don't take advantage of the maternity access or because they may not take care of themselves or for some other reason. I might support this bill if there was a guarantee that no infants would die but there is no such guarantee.

290 RAMIG: By taking on additional patients a doctor's liability is increased. A Doctor is not getting compensated at anywhere near the market rate for this care plus they may get sued and they don't like that.

311 CHAIR SHOEMAKER: It doesn't seem fair that a woman wouldn't have

access to a full recovery if there is a problem with the infant child.

320 CHAIR SHOEMAKER: How would you feel about an amendment that would limit the liability limit to those cases where the provider was paid no more than would be paid under Medicaid. We'd have a liability cap available in those cases where the provider is essentially providing the service at cost or below cost.

330 RAMIG: We would support it.

TAPE 53, SIDE B

Witnesses: Dave White, Department of Insurance and Finance

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Chris Williamson, Oregon Trial Lawyers Association

008 SENATOR COHEN: You don't reinsure at all for your excess losses?

010 DAVE WHITE, RISK MANAGEMENT DIVISION: That's right.

019 SENATOR COHEN: What would a reinsurance policy for covering a maternity access program for liability up to \$2,000,000?

038 WHITE: I'm not sure. It's hard to get estimates on this because the claims are relatively few in number so the claims experience is relatively limited.

068 WHITE: It would be good to make participation in the pool mandatory in order to lower the rates. The more participants in a mandatory pool, the lower that pool's costs are going to be.

100 SENATOR ROBERTS: Several years ago municipalities were taking out extra liability insurance over and above the tort liability because they were informed that they had a risk and that tort liability would not protect them. If the advice they were given was valid, is it then likely that even if we passed this tort liability bill for doctors they would still face a risk of malpractice suits for amounts greater than the tort cap?

115 : White: Yes, they would.

126 SENATOR ROBERTS: I would guess that in the case of improper maternity care when a child suffered some serious harm, it would be very difficult to sustain the limitation on tort liability.

130 WHITE: I wouldn't cancel my coverage the year such a tort liability cap came out and I doubt any prudent practitioner would.

137 CHAIR SHOEMAKER: There is a constitutional question of whether we can provide this liability cap to those who are not agents of the state. Legislative counsel reports that it is a close question but in their opinion it would be constitutional both under the jury trial provisions and the equal protection provisions.

157 SENATOR ROBERTS: Mr. Ramig, your testimony was that it was not the presence of the insurance that deters doctors from providing maternity care but the likelihood they would get sued. Is that correct? 170
RAMIG: The chance of getting sued while providing this public service really scares the doctors off.

174 SENATOR ROBERTS: So, you are saying it's not really the question of insurance that scares doctors off - instead, it's the chance that they will get sued. How then would the presence of a tort liability limit affect the doctors' decision? You've acknowledged that people may still sue even if there is a tort cap, so enacting such a cap won't address the doctors' needs.

250 SENATOR ROBERTS: Will the insurers lower the rates as a result of this bill?

These minutes contain verbatim which paraphrase and/or summarize SB amendments 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. SENATE COMMITTEE ON HEALTH INSURANCE AND BIOETHICS April 4, 1991- Page 5

260 RAMIG: We want them to and we believe they will but we can't guarantee it.

290 SENATOR COHEN: It's difficult for us to believe that you'll be able to tell us within four years whether this bill has caused the rates to go down because you can't even tell us now what the rates would be for a \$200,000 capped liability policy. 328 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: Submits (EXHIBIT A) which explains that the insurers would get the benefits from this bill and DIE: should get them on the carpet to encourage them to suggest ways that necessary maternity care insurance can be made available.

390 CHAIR SHOEMAKER: The dash 3 amendment changes the definition of underserved populations of women so that protection provided by this bill is given to individual women who have barriers to care rather than providing protection to all women who live in certain areas.

430 SENATOR ROBERTS: What's a cultural barrier?

435 MCCARTER: In my community poor, women who speak Spanish only have almost no access to a provider who speaks Spanish.

TAPE 54, SIDE B

020 SENATOR ROBERTS: Are these women eligible under Medicaid?

022 MCCARTER: Some are but some have not gone through the entire legalization process?

043 MOTION: Shoemaker moves dash 3 amendment. 044 VOTE: Committee adopts them. 047 MOTION: Shoemaker moves dash 4 amendment.

055 VOTE: Committee adopts them.

064 CHAIR SHOEMAKER: The dash 2 amendment would restrict the limitation of liability to less than all of the providers. 073 CHAIR SHOEMAKER: I would like to amend the dash 2 version so that any limitation of liability would not extend to gross negligence and willful misconduct.

081 MOTION: Shoemaker moves to so amend the proposed amendment.
083 VOTE: Committee amends it.

096 CHAIR SHOEMAKER: The dash 2 version would limit the liability of hospitals, local boards of health and non-profit clinics. I would like to strike the reference to hospitals and local boards of health in section 5.

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108 MOTION: Shoemaker moves to so amend the proposed amendment.
109 VOTE: The committee amends it. 114 CHAIR SHOEMAKER: We have three choices now: to pass the bill as is to limit the liability of all who participate in the program. Second, we can pass the dash 2 amendment to limit the liability of the non-profit clinics in the program. The third option is to strike section 5 entirely so that the bill doesn't deal with limitation of liability and instead leaves participants fully liable. 187 MOTION: Moves an amendment to the dash 2 amendment to add the words: "to property" after the word: "damages" on line 5.
189 VOTE: Committee adopts it. 201 CHAIR SHOEMAKER: Adjourns hearing at 4:55.

Submitted by: Reviewed by: Mark Sigel Barbara Coombs
Assistant Administrator

EXHIBITS A - Testimony on SB 833, Williamson, 14 pages