

Measures Heard SB 92 (Public Hearing) SB 47 (Public Hearing) SB 48
(Public Hearing) SB 49 (Public Hearing) -

SENATE COMMITTEE ON HUMAN RESOURCES

Monday February 4, 1991 Hearing Room A 3 p.m. Tapes 17 -18
MEMBERS PRESENT: Sen. Bill McCoy, Chair Sen. Cliff Trow, Vice-Chair
Sen. Shirley Gold Sen. Bill Kennemer MEMBER EXCUSED: Sen. Paul
Phillips

STAFF PRESENT: Janice J. Fiegenger, Committee Administrator Mike
Meriwether, Research Assistant Michael Sims, Committee Assistant Nicole
Bales, Page WITNESSES: Lynnae Rutledge, Assistant Administrator,
Vocational Rehabilitation Division Dan Barker, Deputy Assistant
Administrator, Office of Mental Health Services Jeff Davis, Mental
Health Program Directors Association Ella Johnson, Executive Director,
Mental Health Association of Oregon Bruce Bishop, Kaiser Permanente
Sandra Millius, Oregon Community Menhl Health Providers Association
Charles Stull, Chief of Police, City of Keizer Joy McGavock, Polk County
Mental Health Richard Synowski, Polk County Mental Health

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 17, SIDE A 003 CHAIR
McCOY: Calls the meeting to order at 3:22 p.m. 010 JANICE J. FIEGENER,
COMMITTEE ADMINISTRATOR: Presents overview of bills scheduled for public
hearing - Senate bills 92, 47, 48 and 49.

PUBLIC HEARING ON SENATE BILL 92 052 LYNNAE RUTTLEDGE, ASSISTANT
ADMINISTRATOR, VOCATIONAL REHABILITATION DIVISION (EXHIBIT A): SB 92 was
proposed to make changes in language regarding what have been known as
sheltered workshops, but which would become known as rehabilitation
facilities. The bill effects moves in recent years to change language
and nomenclature toward dignity and equality, and several agencies
support it and the proposed amendment. -Details proposed amendments as
presented in Exhibit A. 080 SEN. KENNEMER: Is this strictly a
housekeeping measure?

081 RUTLEDGE: Yes.

084 CHAIR McCOY: Closes public hearing on SB 92. PUBLIC HEARING ON
SENATE BILL 47 100 DAN BARKER, DEPUTY ASSISTANT ADMINISTRATOR, OFFICE
OF MENTAL HEALTH SERVICES (EXHIBIT B): Details Exhibit B. 170 SEN.
KENNEMER: There are approximately 10 applicants to privately provide
mental-health services at this point? 171 BARKER: I think we have a
few more than that, but on a biennial basis so far, about 10 or 12.

172 SEN. KENNEMER: Have you already seen that growing number? 173
BARKER: Yes. And the projections we have for fee generation are based on
assumptions about the increasing numbers. And we lose some, we gain
some. Over time, some folks have decided it isn't worth the effort -
record-keeping issues, etc. - for the amount of money they generate. So
we get a certain number of applications, but not all result in
certifications. In some cases, some people drop out. 188 JEFF DAVIS,
MENTAL HEALTH PROGRAM DIRECTORS ASSOCIATION (MHPDA): The MHPDA supports
SB 47. In the early days, when this process first started, local
mentalhealth programs were asked to go out and do a review and write a

letter and send that information into the state, to certify that these applicants were meeting the basic requirements. As the workload increased, local communities have stopped doing that and now you see the state responsible for this particular activity. The Association feels that since what this activity does is permit private non-profit providers to actually bill for third-party fees under current state law, that indeed, like any other activity there should be some kind of reimbursement for the expenses involved. The only additional comment we would add - that should at some point in time the function be delegated to local mental-health authorities, certainly we'd expect that the ability to charge the fees would move from the state to the local mental-health authorities. Senate Committee on Human Resources February, 4, 1991 - P - e 3

209 SEN. KENNEMER: A question to staff: The way the bill is written, it doesn't allow that transfer to local authority, is that correct?

211 FIEGENER: I think so, but I need to confirm that.

218 CHAIR McCOY: Closes public hearing on SB 47.

PUBLIC HEARING ON SENATE BILL 48 227 BARKER (EXHIBIT C): Details Exhibit C and speaks in favor of SB 48.

288 SEN. KENNEMER: Who would this exclude as a provider? I guess if we're going to grant certain rights to providers regarding confidentiality, and as I read this anyone who touches this system in any way as a provider is going to be granted full confidentiality. Is that a correct reading? 299 BARKER: Publicly-funded mental-health services inclusively would be covered by this.

301 SEN. KENNEMER: Or any subcontractor; for example, any kind of private individual? 302 BARKER: A subcontractor of a community mental-health program, who is delivering a service with public funds, that's correct. It would not apply to a private practitioner providing private mental-health services, privately-practicing psychologists or social workers, something of that nature. That's the real distinction, I think. 310 SEN. KENNEMER: If they were not a subcontractor?

311 BARKER: Correct. 313 SEN. GOLD: I can't figure who that would be.

315 BARKER: We have a number of community mental-health programs that operate as private corporations; they're not county-operated. We have many subcontractors. 319 SEN. GOLD: The way the bill currently reads, would include subcontractors. I'm falling back to Senator Kennemer's question - it appears to be all-inclusive, and it's not. 326 BARKER: Are you asking about the new language we're putting in?

328 SEN. GOLD: No. I thought you were proposing something beyond the language in the bill. 331 BARKER: The existing statute establishes confidentiality for county mental-health programs. This bill would extend that coverage to all of these other groups that are delivering publiclyfunded services that now are not included. It would exclude privately-practicing mental-health professionals who are not part of the publicly-funded mental-health system. 341 SEN. GOLD: Like a psychiatrist who might be in private practice, publicly contracted? He wouldn't be considered a subcontractor? Senab Committee on Human Resourca February 4, 1991- Page 4

344 BARKER: If that person had a contract to deliver service in, say,

here in Marion County, yes. Usually, though, this is done not through individuals - a subcontractor is usually doing it; a nonprofit corporation.

353 SEN. GOLD: On the other hand, if psychiatrist A was asked by the county to go and see patient Y on a one-time basis, is that what you're concerned about? That wouldn't be a subcontract? 361 BARKER: I think in that situation, that position would be operating as a provider for the purpose of delivering publicly-funded mental-health services. S/he probably would be operating under some sort of personal-services contract with the county. So in that situation, yes, that person would be covered by this.

367 SEN. GOLD: If the outside agency that perhaps had the contract with the county decides to again, maybe on a one-time basis - employ someone for some certain service, is that the third party down the line that you're trying to cover by this confidentiality? 380 BARKER: In practice, essentially, all material coming into the agency's hands of a confidential nature remains that way. Basically, it's going to come in that way via the system so, essentially, everyone in the system is provided that confidentiality. 402 DAVIS: The MHPDA supports SB 48. We have operated within the local communities as if, in fact, this was the practice. What this does is do some housekeeping, as Dan Barker has indicated, and assures a standard coverage across all of our providers in the local community to assure that the information is handled in the same way. 419 ELLA JOHNSON, EXECUTIVE DIRECTOR, MENTAL HEALTH ASSOCIATION OF OREGON (EXHIBIT D): Speaks in favor of SB 48 and details Exhibit D.

TAPE 18, SIDE A

036 SEN. KENNEMER: Do you concur with Mr. Barker's suggestion that we eliminate the word non-profit?

037 JOHNSON: Yes. It is my understanding that it's not particularly a non-profit area. 044 BRUCE BISHOP, KAISER PERMANENTE: I wanted to follow up on a concern, expressed by Committee members, about the scope of this proposed amendment to ORS 179.505 (SB 48). One concern, in particular, deals with the term community mental-health provider (as that term is proposed to be used in SB 48). It's our understanding that that term has a specific legal meaning applying to contractors with the Mental Health Division.

It might be advisable for the Committee to limit the definition of community mental-health provider to the appropriate series in this statute, just to specify that's who you intend to afford these protections to, so there's no question about whether a program like Kaiser Permanente would be a mental-health program provider. I don't think it's the intent of the statute to confer upon us these protections as a community mental-health provider. You may just want to narrow the scope of that term to specify what it is. Seotde Comminee on Humoo Resourees Februar, 4,1991- Page S

060 SEN. KENNEMER: I guess I don't understand the scope of your comment. It seems to me that it's implicit that Kaiser or any other community mental-health provider would be included in this.

063 BISHOP: We are a provider of mental-health services. But I think in the way this is drafted, we are not a community mental-health provider, because those only are programs contracting with state or local entities

to provide those services. There might be some confusion as to what a community mental-health provider is, but I think it's intended not to be programs like ours. 070 CHAIR McCOY: You don't take referrals from the community mental-health clinics.

071 BISHOP: We do provide mental-health services.

072 CHAIR McCOY: Yes, but you don't receive referrals from community mental-health clinics, unless they are Kaiser Permanente members?

075 BISHOP: Yes. 076 CHAIR McCOY: I couldn't think of any circumstance where a person would be referred to you from community mental-health systems - or could they? It would be yours. 078 BISHOP: It could be, but I don't believe that referral would be intended to confer the protections of this statute by, in effect, malting it a Community mental-health provider. 082 SEN. KENNEMER: Doesn't this give your organization the status of provider in the event that you would, for some reason, provide confidential information to a community mental-health provider? 085 BISHOP: I guess that's our confusion. I'm not sure if that's what the measure is supposed to do. I thought it was intended to be focused on specific kinds of community mental-health providers. 093 BARKER: It seems to me that it's a rather long lead to get to a point where you would think this would apply to Kaiser. The term provider already is in statute; already is in use. As it says, as used in the section means a public agency or publicly-operated institution. All we're doing is being more precise about the definition in terms of our community mentalhealth programs. Certainly, it's not our intent to apply this beyond those boundaries. It goes on to say, or any contractor of the Mental Health Division and so forth. So it seems fairly explicit to me.

104 CHAIR McCOY: Closes public hearing on SB 48.

PUBLIC HEARING ON SENATE BILL 49 112 DAN BARKER (EXHIBIT E): Speaks in favor of SB 49 with proposed amendments and details Exhibit E. 179 CHAIR McCOY: Even if a nurse, or any other professional, was given the authority to give the rights-like warning to a person on psychiatric hold, that authority would have to come from the physician anyway, wouldn't it? Senate Co n nitbe on Hu_ Resources Februar, 4, 1991- Pye ~

183 BARKER: In tthis case, I think all we're really doing is providing them information. When a person goes into the hospital, we give them lots of information about billings, perhaps about confidentiality, etc. I'd tend to see this more as a housekeeping issue than as something of substance that would have to originate with a doctor's prescription. 188 SEN. KENNEMER: Who is a qualified mental-health professional? 189 BARKER: In am. division's Oregon Administrative Rules, it's defined a bit differently in more than one place. But, generally, - as an example, I'll use our Community Treatment Services rules. In that case, it would be a licensed psychiatrist or psychologist, a person with a master's, degree in mental health, a registered nurse with mental health experience, or other persons who have at least 3 years of documented comparable education or experience, approved by the community menial-health program director. Then there are some demonstrated competencies that follow that. Basically, what we're talking about are master's degree-level people. There are some built-in competencies or equivalences for people with the experience but no academic degree. 203 SEN. KENNEMER: Would it be better to look at licensed mental-health professionals? Because I see a situation in which there is no recourse against those other people, except as employees. The other people are

professionals in their own right, who hold responsibility. As of last session, we have licensed professional counselors and licensed professional marriage-family counselors, who have master's degrees. In addition, psychologists have a special Master of Arts program. It would be somewhat more restrictive than your rule, but would have the advantage of having the licensure as an additional hammer. 214 BARKER: It is more restrictive than we proposed. Our intent, I think, was to make it as easy on the hospitals as possible, even though in some cases we're dealing with a fair volume of these individuals. 219 FIEGENER: Is a qualified mental-health professional the definition that is used for community mental-health program? 222 BARKER: In a number of our administrative rules, we make use of this term; for example, in out-patient services for adults. There are community-support services directed at chronically mentally-ill individuals in which a similar term is used. Our Medicaid rule, which really is a financing rule defining what services can be billed to Medicaid, defines a qualified mentalhealth professional. So in some cases, there are minor differences in the term, but it's a fairly commonly-used designation in the mental-health system, because of its inclusion in our rules. There are individuals who do not have a professional license - they may be Ph.D psychologists, for example - they may not have the professional license, but they have the degree. This was a way to capture them, particularly for Medicaid purposes. 240 FIEGENER: So you're trying, basically, to be consistent in using the term. Is there any reason to think that when we're talking about emergency holds, we'd want a different definition?

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243 BARKER: I guess from my point of view, I would want to loosen this up as much as I could. I'm not persuaded by the logic that says someone with a certain license or degree even, has to be the individual who would be reading this sort of warning to an individual. I think that could be done by a nursing assistant or an aide, or someone else. If it needs to be done, we want to be confident it is done, and by a responsible person, and I'm assuming that in most cases the hospitals are going to be employing responsible people.

262 SANDRA MILLIUS, OREGON COMMUNITY MENTAL HEALTH PROVIDERS ASSOCIATION: Regarding SB 49, we feel you might want to devote a little more attention to some of the issues around this bill. We're not opposing it or necessarily supporting it, but there are a few comments that we want to make.

For instance, overall, what's being looked at here (for instance, in Section 1) would mean that if a physician were to consult not only with a similarly-qualified physician but also a qualified mental-health professional, that might cut down on some holds. Those would be holds that might not be necessary if the physician were to be in contact with a person providing mentalhealth services to the individual in question.

Secondly, the Division has suggested the part might be removed concerning a person who has agreed to remain in the hospital voluntarily. The Division certainly recognizes that it is a shift, obviously, to a situation where the person comes into a hospital and agrees to remain voluntarily. We just want to point out that someone voluntarily seeking treatment should be allowed to have that good patient care.

Finally, on Page 2 in Section 5, where it discusses an examination of an immediate nature by a physician, there is a move to have what are known

as local acute-care facilities around the state. These are not hospital facilities, but places where folks are brought under these circumstances for care, to require immediate care. These places would be required to have a physician on call and this would be fairly costly. We were considering an alternative; perhaps if there is a certain number of hours or such in which that could take place, so the person is certainly not suffering from any lack of care while they're there. 331 JEFF DAVIS (EXHIBIT F): Proposes amendments to SB 49 and details Exhibit E.

404 SEN. KENNEMER: Are the mental-health centers encouraging master's degree-level people to become licensed?

406 DAVIS: In most counties, there is encouragement for those individuals to seek licensing. In some instances, though, they choose not to do so.

422 CHARLES STULL, POLICE CHIEF, CITY OF KEIZER; REPRESENTING OREGON ASSOCIATION OF CHIEFS OF POLICE: I'm representing the Association in voicing concern over SB 49. A police-officer hold, for law enforcement, is an important alternative used when necessary to protect an individual who is a danger to himself or others, and who is in need of immediate care, custody or treatment for mental illness. Senate Committee on Human Resources February 4, 1991 - Page 8

We believe this decision, based on probable cause, should result in a court hearing to ensure that all available information is considered prior to the decision to release an individual. We are concerned that the suggested legislative change will increase the likelihood of repetitious contacts with individuals who qualify for police-officer holds, and thereby frustrate our efforts to protect our communities and those individuals who we have contacted.

Additionally, the chiefs' association feels that without uniform guidelines established throughout the state, physicians will have a very difficult time implementing the requirements as outlined in this bill. We feel that the physicians differ greatly, and this leaves the evaluation process open to a very large base of interpretation. Our concern is to protect the individual that has come in contact with law enforcement, and to ensure their dueprocess rights.

TAPE 17, SIDE B , 020 FIEGENER: We've heard a proposed amendment from Jeff Davis (Exhibit F) that would allow the physician to release with agreement from a local mental-health program. Would you comment? 021 STULL: Based on the information I received from the Association and its membership, we feel that it requires and should maintain a judicial hearing, so that all aspects of the person's background and information regarding his contact can be presented in a judicial setting.

034 JOY MCGAVOCK, THERAPIST, POLK COUNTY MENTAL HEALTH: I am opposed to SB 49 because when people are brought to the state hospital on a peace-officer hold, or a warrant of detention or a director's hold, they're considered to be a danger to themselves or to others, and considered to be mentally ill. During the past several years, it's been my experience as a pre commitment investigator that those of us who are sent out to do investigations in the community have a great deal of information and evidence to establish the fact that these people are or are not mentally ill, and may or may not be a danger. It's been my experience that the ward physicians do not have this wealth of information at their disposal. Often, when I've been advised by a doctor to release a patient, it's been very poor advice. As recently as last

week, I investigated a patient who had been a frequent visitor to the state hospital. He's chronically mentally ill and has a history of being dangerous. I disagreed with the doctor and requested a hearing, which was held just a few days ago. The judge in Polk County committed this patient to the state hospital on the basis of his mental illness and dangerousness. I've also had an experience in which I accepted a doctor's recommendation to release a patient. Three days later, the patient killed himself.

I don't feel the physician who sees a person once, twice or three times has the necessary information at their disposal to release a patient on his/her own recognizance. 064 RICHARD SYNOWSKI, PRE-COMMITMENT INVESTIGATOR, POLK COUNTY MENTAL HEALTH (EXHIBIT G): Speaks against SB 49 and details Exhibit G. Senate Committee on Human Resources~ February 4, 1991 - Page 9

098 SEN. KENNEMER: So with Mr. Davis' proposed amendment allowing the directors to be involved, creating the link to the community, you would not see the need for judicial review - is that what you were saying? 101 SYNOWSKI: Even so, there may not be judicial review if the pre-commitment investigator determines there is not probable cause to hold a hearing. So I would agree. 109 BARKER: The testimony you've been hearing puts us, I believe, in the same position we were in during the 1989 legislative session. I don't remember the bill number, but we had under consideration of a bill that would have done essentially the same as the effects you heard Jeff Davis and the others testify to. Part of the issue is, in whom do you vest the authority to terminate the hold? There are literally thousands of holds that do not go to civil commitment that are dropped. The question the Division is attempting to deal with is what is the best way to handle those? One example of a situation might be where an intoxicated person is picked up; a person who behaves bizarrely but when sober is no longer behaving oddly. But that person sits in the hospital for a day, or number of days, waiting for court action. In the hearing where the action is dropped, the court has not seen these folks and judicial review does not occur in a face-to-face fashion such as occurs with a civil commitment. It's a piece of paper, based on the court's belief that the advice it gets from the folks involved is credible. So I don't know how to proceed with this. We had a work group associated with this issue during the last session, but I don't think we'd be sitting here if that was a successful process. I think from the Division's point of view, if this could be approached incrementally, that would be a step up. The Division's position is that it has the authority to admit the person to the hospital and care for them; they're in the best position to know when the person is discharged.

141 FEGENER: What exactly do you mean when you say approach it incrementally? 142 SYNOWSKI: I guess I'm attempting to avoid the conflict that potentially could occur between the pre-commitment investigator and the physician, the mental-health director and physician, etc. What do you do if, in fact, these individuals don't agree? Does it then go to a judicial review at that point? This hasn't been addressed in the suggested amendments that have been proposed, and I guess the cleanest way is to approach it in the way the Division has proposed. If it wasn't satisfactory, there is the opportunity to change it and that's what I meant by that. 152 SEN. McCOY: It might be a good idea for those who were opposed, those who support the measure and those in the middle to get together and perhaps try to work it out.

-Closes hearing on SB 49. -Adjourns meeting at 4:30 p.m.

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Submitted by: Reviewed by: Michael Sims Janice J. Fiegener
Assistant Committee Administrator

EXHIBIT LOG: A - Testimony on SB 92 - Lynnae Rutledge - 1 page B - Testimony on SB 47 - Dan Barker - 2 pages C - Testimony on SB 48 - Dan Barker - 1 page D - Testimony on SB 48 - Ella Johnson - 2 pages E - Testimony on SB 49 - Dan Barker - 2 pages F - Testimony on SB 49 - Jeff Davis - 1 page G - Testimony on SB 49 - Richard Synowski - 2 pages H - Testimony on SB 92 - Tim Kral - 1 page I - Testimony on SB 49 - Nancy Terry - 1 page J - Testimony on SB 49 - Brian Riley - 1 page

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