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238 SEN. TROW: Suggests looking at each of them instead of grandfathering. There could be a time period when they could be terminated and new guardianships established.

242 COTE: Agrees with this point. Has pursued this issue in another state. The private Bar was concerned with existing guardianships and pushed for grandfathering. 247 JANICE FIEGENER: Does this include representative payee? 249 COTE: The bill does not go specifically to representative payee. Suggests explicitly putting this outside the purview of the bill because in a practical manner the check will come to the facility for payment of the bill. 256 SEN. TROW: Refers to civil penalty section. Basically, what kind of penalty is applied? 264 COTE: ORS 441.710 applies to health facilities. It gives Senior Disabled Services discretion on amount of penalty assessment. Current maximum penalty in statute is \$500 per incident. CHAIR McCOY: Closes public hearing on SB 682.

WORK SESSION ON SENATE BILL 549 287 JANICE FIEGENER: Gives background of the bill and amendments to SB 549. The bill originally had two subsequent referrals: - Judiciary can be rescinded because of the private right of action provision which was in original bill. Civil penalty provisions have already been cleared. - Ways and Means. Senior Disabled Services will be putting a no fiscal impact on the bill. Not the same situation with Mental Health & Developmental Disability Services. Committee needs to consider sending this to Ways & Means, or if it's possible that the Mental Health & Developmental Disability homes could be exempted. SDSA supports this bill. - There is no fiscal impact statement because the figures were not available before the meeting.

- Reviews Preliminary Staff Measure Summary (EXHIBIT C).

- Outlines the hand-engrossed SB 549 (EXHIBIT B) section by section. Page 4, line 19 (EXHIBIT C) states, "...or if the resident experiences a sudden increase in level of care needs, or behavior which poses an imminent danger to self or others."

TAPE 84, SIDE A

026 SEN. KENNEMER: Questions "imminent danger" language.

FIEGENER: Clarifies language. There is a question in this language change if the provider has the final say in terms of what is "behavior". That is subject to interpretation. There is an administrative hearing feature.

038 CHAIR McCOY: How long does it take to get such a hearing?

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040 SUSAN DIETCHE, SENIOR AND DISABLED SERVICES: If someone is being evicted and asks for a hearing in a nursing home, which would be similar to that, the resident remains in the facility until the transfer

hearing. We do it as quickly as possible from 10 to 30 days.

- The issue would be if someone can't take care of someone, you need to transfer the resident for more care.

063 SEN. TROW: Refers to page 4, line 19, (EXHIBIT B). Is this the best language we could come up with? DIETCHE: The working group felt it was the best. SEN. TROW: What is a sudden increase to the provider may not seem that way to someone else. 067 DIETCHE: Generally, anytime someone is going to be evicted or transferred, and there is either danger or a sudden onset of change of level, it means that person has to go somewhere also. A person has to consent to where they are going. These are occasions where if someone has to go someplace and they don't want to go, and we sometimes need to get an short term emergency guardian. It's a process. There must also be a place for that person to go that can provide the appropriate kind of service. As a last resort it might be a hospital or state hospital commitment or new admission to another care. 082 SEN. KENNEMER: Assumes the general attitude of transferring people would be if a foster care provider wanted someone transferred, that would be likely to occur because the person providing that care is staff. 094 DIETCHE: This issue arose from a conflict. Some people felt a personality difference should not be grounds for moving. On the other hand, the providers are expected to be professional and manage a variety of people. The compromise was the right of eviction of care cannot be provided or if the person changes. - The problem might be solved if enough information was available in the beginning to help people make good choices regarding foster homes. 106 JANICE FIEGENER: Continues outline of (EXHIBIT B) section by section through the bill. 166 CHAIR McCOY: How long does an investigation take? 170 MEREDITH COTE: From SDS information, investigations at the local unit level average 54 days. This is only part of issue. Nothing can be done on those investigations until sent to central office SDS. This can be six months to one year until action is taken. CHAIR McCOY: Six months to one year in addition to the 54 days? COTE: Yes. There is significant lag time between the time a complaint is posited and the time action is taken. Several complaints have been closed because of time length.

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197 CHAIR McCOY: Ideally, what would you suggest? 60 days is written into the bill, which is 244 days total. 203 COTE: Currently, SDS had indicated they have revised their complaint response system to the local units on a 42 day turn around. They are still working on a significant backlog. 213 SEN. TROW: When investigating a serious situation, can they speed up the action if it is significant? 220 COTE: Yes. It takes a significant situation with alot of people working together on the local unit. They do have the ability to respond. CHAIR McCOY: Does the group agree to 60 days? 234 FIEGENER: Yes. The outside limit is 60 days for the investigation to occur, and then another 60 days to take corrective action. Continues to review (EXHIBIT B) page 7, line 29 regarding notification language. CHAIR McCOY: Refers to page 9. Wants clarification of "capable." FIEGENER: That is in the judgement of the department. - Continues with page 10 regarding civil penalties. 318 SEN. KENNEMER: Who determines if a document is intentionally falsified? FIEGENER: That is in the judgement of the department. 327 SEN. PHILLIPS: Isn't it a criminal offense to intentionally

falsify records?

CHAIR McCOY: Staff will check into that.

363 SEN. KENNEMER: Refers to Section 11 regarding patients rights. Wants "Christian Science practitioner" added to language.

367 FIEGENER: Agrees. 371 MOTION: SEN. TROW moves proposed amendments to SB 549 dated 5/6/91.

VOTE: Hearing no objections, Chair McCoy so moves.

380 SEN. PHILLIPS: Refers to Section 3, page 2. Finds language awkward. Suggests conceptual amendment on line 6 and deletions on line 8. Reads suggested new language. They will go through a process to develop the best way to do this, and when to do it. 417 SEN. TROW: The purpose of the awkward wording was to say that there should be some training immediately before people are put on the job, and then more extensive training later. If

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you leave that language out it doesn't exactly say that.

- Asks if Sen. Phillips would envision that the rules could say that anyway, so this wouldn't be needed.

TAPE 83, SIDE B SEN. PHILLIPS: If you have a running competent department of rulemaking, that would be the process they would do rather than the legislature picking a 60 day and 2 month period. I'm not sure that's immediately enough. After hearing the comment regarding the video tape, maybe in 14 days they would have reviewed it and signed off. This arbitrariness bothers me.

- Agrees with Sen. Trow's concern that language should read, "... courses of study addressing immediate and long term needs.." Believes that's as far as a directive to be.

SEN. TROW: If our intent is clearly understood that in having the two tests we want something there so some training goes to those people initially on the job.

SEN. PHILLIPS: Suggests saying "course(s)" so you don't limit yourself to two. Gives situations when that might happen.

037 CHAIR McCOY: The problem is where people have come in to work and we have requested that kind of thing before and somehow it gets extended, then people get hurt because they don't know how to lift people, etc. Then it ends up that the owner or state has to pay for someone who gets hurt. Some of the administrators would like to have more stringent rules set by the legislature because when it is open it just never gets done.

047 SEN. PHILLIPS: Appreciates Sen. McCoy's comments. Agrees if he was an owner he would be concerned with trying to reduce costs and liabilities. Feels this is bad language and needs to be taken from bill. It could be written in a more effective fashion.

052 SEN. GOLD: In Section 3, we need to have what the intent is. We can achieve that. We can get the right wording without specifying exactly what the courses should be. We can also have the concern of immediate instruction in words.

068 SEN. KENNEMER: Suggests inserting language like "prompt and appropriate" courses. That suggests the urgency of immediateness, but there is judgement here that the department could use in formulating the language.

077 CHAIR McCOY: Suggests staff to work with Legislative Council on alternative language expressing the intent.

FIEGENER: Is the intent of the committee that every provider or substitute caregiver have some kind of training before providing care?
CHAIR McCOY: That is preferable, but practically not possible because of the great turnover. People are hired and start work the same day.

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FIEGENER: Clarifies the intent of the committee will not be changed.

089 SEN. PHILLIPS: Refers to amended version on page 4, (EXHIBIT B). Wants Legislative Council to explain the term "sudden increase." Is uncomfortable with that language. Is used again on page 11, line 18. Wants to hear from LC that that is a standard consistent with statute and is a judgement that both providers and users can understand and the agency can administer. Thinks it's a word picked from the sky.

112 SEN. KENNEMER: Agrees. Part of the burden that may be occurring is these people may be deteriorating over a period of time, and it may not be a sudden, dramatic thing. It can be accumulative and the caregiver may decide at some point that they cannot give adequate care. In some instances there may be a personal relationship where they give more care than they should and then suddenly realize they need help.

122 SEN. KENNEMER: Refers to page 11, line 2 (8). Wants to add "or Christian Science practitioners". SEN. PHILLIPS: Is there a reason we are adding that wording? CHAIR McCOY: Christian science practitioners have always been recognized in the statutes. SEN. KENNEMER: Is not comfortable with increases in the penalty provisions. Requests hearing from a representative regarding this. CHAIR McCOY: These amounts have been unchanged in the statutes for 22 years. The working groups have now suggested changes, so we won't take public testimony today. SEN.

KENNEMER: It is appropriate that we should hear Mr. Simmons because the proposed increases are substantial from \$400 to \$1,000. 150 GROVER SIMMONS, ADULT CARE PROVIDERS ASSOCIATION: Testifies his opposition to fine increases in the bill. - Indicated the history of the fine provision in March 13 testimony. Four years ago, a \$1,000 fine was requested. Negotiations were made with SSD and agreed to \$250 maximum. SEN. KENNEMER: So this is 4 years old rather than 22? SIMMONS: That is correct. There were no fines at all prior to that agreement. It was as agreement between Senior Services Divison and the industry four years ago. Urges committee to stay with the bargain. 180 SUSAN DIETCHE, SENIOR & DISABLED SERVICE DIVISION: Agreement made four years ago was tied to our willingness and encouragement to get providers to participate in training. We would lower the fines if they would

participate. The goal of both the fines and training was to improve quality of care. - Agreement was for two years. - SDSA has agreed to increased fines. Preference would read "up to" \$250, so discretion would

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be used in the seriousness of the problem. - Prefers falsification of the record read "up to" \$500, because if records are changed it is difficult to tell whether it is malicious, purposeful, or a corrected error. 204 SEN. TROW: What is your position on maximum fine of \$1,000 for violation of ORS 443 .705 - 443.825? 211 DIETCHE: Penalties are given for: 1. Violation of rules. 2. Violation of rules applying to abuse statutes. Supports \$1,000 fine here. . SEN. TROW: When you agreed four years ago to a fee level, for different reasons, you don't interpret that as "binding" you four years later to suggest another change? DIETCHE: That's correct. It was our proposal the first time, now it's somebody else's. 227 SEN. KENNEMER: What would constitute the lowest type of abuse subject to a fine? 236 DIETCHE: Someone left alone in the home who can't care for themselves would be called abandonment. Abuse statutes are reporting statutes. If a report is investigated and substantiated, it would be subject to a fine. 248 SEN. TROW: What is the record for giving out fines at SDSA? 250 DIETCHE: This bill is related to foster care complaints. Most of the civil penalties issued by SDSA apply to nursing facility complaints. If adult foster homes are subject to complaints that results in abuse, there is less opportunity for that home to correct it's problems and provide adequate care. It's more common for SDSA to either put conditions on the license, or to revoke the license. Adult foster care licenses are revoked rather quickly and more often than other programs. Other long term care programs have an opportunity to change staff and get new owners and correct problems by using other mechanisms. Adult foster homes, being small and dependent upon the operator, are more likely to have their license revoked if the operator can't do it. - The conditions are much more common than the penalties. SEN. TROW: The penalties used might be less harsh on the facility if they can pay a penalty and then reform themselves. DIETCHE: Correct. I prefer the "up to" language because that would be a sanction with the purpose of bringing to that persons attention the problems that need to be corrected. 277 SEN. PHILLIPS: Requests drafting language imposing a civil penalty up to \$500. Requests report on like fines from other agencies. Perhaps these penalties are inadequate. CHAIR MCCOY: Closes work session on SB 549. . 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. Senate Committee on Human Resources May 6, 1991- Page 9 WORK SESSION ON SENATE BILL 1186

311 JANICE FIEGENER: Explains bill and proposed amendments SB 1186-2 (EXHIBIT D). Outlines preliminary staff measure summary (EXHIBIT E). 354 MOTION: SEN. TROW moves SB 1186 -2 amendments dated 5-6-91.

VOTE: Hearing no objections, Chair McCoy so moves.

366 MOTION: SEN. TROW moves SB 1186, as amended, to the

floor with a do pass recommendation, and a provision to rescind, to send it to Ways & Means. VOTE: In a roll call vote, the motion carries unanimously. CHAIR McCOY: Will not have a public hearing on SB 795 today. 388 CHAIR McCOY: Adjourns the meeting at 4:40 p.m.

Submitted by, Reviewed by, Debbie Schieno Janice Fiegener
Committee Assistant Committee Administrator

Transcribed by, Margie Neukomm

EXHIBIT LOG:

A - Testimony SB 682, Basham, 3 pages B - Hand engrossed amendments SB 549, Staff, 11 pages C - Staff measure summary SB 549, 1 page D - Proposed amendments SB 1186, Staff, 2 pages E - Staffmeasure summary SB 1186, Staff, 1 page

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