

SENATE COMMITTEE ON HUMAN RESOURCES

May 29, 1991 Hearing Room A 3:15 p.m. Tapes 104- 106
MEMBERS PRESENT: Sen. Bill McCoy, Chair Sen. Cliff Trow, Vice Chair
Sen. Shirley Gold Sen. Bill Kennemer Sen. Paul Phillips VISITING
MEMBERS: Rep. Peter Courtney Sen. Eugene Timms STAFF
PRESENT: Janice J. Fiegenger, Committee Administrator Mike Meriwether,
Research Assistant Debbie Schieno, Committee Assistant Andra Woodrum,
Page MEASURES CONSIDERED: HB 2287 - Revises definitions of "disabled"
individuals - PH/VVS HB 2133 - Increases fee for licenses or permits to
practice radiologic technology - PH/WS HB 2398 - Permits DHR to obtain
check of criminal records - PH/WS HB 2053 - Requires adoption of
distinct rules for residential treatment homes and residential care
facilities - WS HB 3142 - Requires Workers' Compensation Division to
submit proposed rules for adoption to Office of Rural Health - PH/VVS HB
2956 - Allows nurse practitioner to make physical therapy referrals - PHA
IS

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 104, SLIDE A

002 CHAIRBILL MCCOY: Calls the meeting to order at 3:17 p.m.

PUBLIC HEARING ON HOUSE BILL 2287 Witnesses: Mike Bullis, Head Injury
Task Force

007 JANICE FIEGENER, COMMITTEE ADMINISTRATOR: Explains what the bill
does and refers to the Preliminary Staff Measure Summary (PSMS) (EXHIBIT
A).

018 MIKE BULLIS, vice-chair, Governor's Task Force on Head Injury: This
bill attempts to bring a focus to the services necessary for people with
head injuries. > Head injury is an invisible disability.

037 SEN. CLIFF TROW: Are there a significant number of people who have
traumatic brain injuries (TBI) who are not being served and will it be
more expensive serving them? Senate Committee on Human Resources May
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BULLIS: People found it difficult to get services. This bill should
increase the number of services we are now providing. This is more of a
highlighting bill.

062 SEN. BILL KENNEMER: How easy is it to define TBI?

BULLIS: The injuries are very measurable when you look at functional
abilities.

SEN. KENNEMER: There is a wide variation in what this is and it will
create a certain amount of subjectivity when determining when a person
is disabled.

WORK SESSION ON HB 2287 092 MOTION: SEN. TROW moves HB 2287 to the
Senate floor with a do pass recommendation.

VOTE: In a roll call vote, the motion carries with all members present
voting AYE. Excused: Sen. Gold

(Tape 104, Side A) PUBLIC HEARING ON HOUSE BILL 2133 Witnesses: Jayne Bailey, Board of Radiologic Technology Mike Mahsud, Oregon State University (OSU) Joyce Matthys, Board of Radiologic Technology

102 FIEGENER: Reviews what the bill does as outlined in the PSMS (EXHIBIT B).

120 JAYNE BAILEY, executive officer, BOARD OF RADIOLOGIC TECHNOLOGY: Reviews what the bill does and refers to her testimony in support of the bill (EXHIBIT C).

159 MIKE MAHSUD, college of health dean, OSU: The test is administered by academic staff at the university who have extensive experience with the technology.

167 SEN. PAUL PHILLIPS: What is this machine used for?

MAHSUD: It is used to look at bone density. Research in the area of osteoporosis is very significant and the machine is a research tool.

183 JOYCE MATTHYS, BOARD OF RADIOLOGIC TECHNICIANS: This machine is also being used in other hospitals and clinics where osteoporosis is suspected. It is essential we find a category for the machine operators.

SEN. TROW: Do you expect the Board to find a category for these people in their administrative rules.

MATTHYS: The Board would write up standards for a specific category addressing bone densitometry.

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WORK SESSION ON HOUSE BILL 2133

210 MOTION: SEN. TROW moves HB 2133 to the Senate floor with a do pass recommendation.

VOTE: In a roll call vote, the motion carries with all members present voting AYE. Excused: Sen. Gold

(Tape 104, Side A) PUBLIC HEARING ON HOUSE BILL 2398 Witnesses: Rep. Peter Courtney Mary Hoyt, Task Force on Sex Offenses Against Children Ken Otto, Department of Human Resources (DHR) Lee Erickson, Oregon State Police (OSP)

222 FIEGENER: Reviews her PSMS on the bill (EXHIBIT D).

244 REP. PETER COURTNEY, DISTRICT 33: Testifies in support of HB 2398. > Talks about serving on the Governor's Task Force on Sex Abuse Against Children and the astounding number of children who are sexually abused. > This bill would allow DHR to check the background on any person

who comes in contact with our children. > The actual cost will be minimal and much of the cost can be charged to the individual who is subject to the records check. 343 MARY HOYT, chair of Task Force on Sex Offenses Against Children: Talks about the task force and their report that came out in July, 1990. > Reviews her written testimony in support of the bill (EXHIBIT E). > Refers to the fiscal impact of the bill (EXHIBIT F). SEN. KENNEMER: How many of the task force's legislative proposals are moving forward? HOYT: There are seven on the House side. Two of the proposals do not need legislation. 428 KEN OTTO, director's office, DHR: Testifies in support of the bill. > This bill, over time, will be a valuable tool and help the us to do a better job in making decisions about the persons caring for the children, adults and families the Department serves. > Reviews what the bill does.

TAPE 105, SIDE A

018 LEE ERICKSON, director of identification services, OSP: Testifies in support of HB 2398 and has worked with DHR to help craft the necessary language. SEN. TROW: Is it going to be easy to do the things required by the bill? ERICKSON: Yes, and the OSP will help DHR write administrative rules to deal with the identification process. . 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 29, 1991- Page 4

(Tape 5, Side A) WORK SESSION ON HOUSE BILL 2398

058 MOTION: SEN. PHILLIPS moves HB 2398 to the Senate floor with a do pass recommendation.

VOTE: In a roll call vote, the motion carries with all members present voting AYE. Excused: Sen. Gold.

(Tape 5, Side A) WORK SESSION ON HOUSE BILL 2053

064 FIEGENER: Reviews her revised PSMS concerning HB 2053 (EXHIBIT G). > Refers to the HB 2053-A3 proposed amendment from the Oregon Conference of Private Child Caring Agencies (EXHIBIT H) which would permit residential facilities to be licensed by CSD. MOTION: SEN. TROW moves to adopt the HB 2053-A3 amendment. There are no objections.

106 MOTION: SEN. TROW moves HB 2053 as amended to the Senate floor with a do pass recommendation. VOTE: In a roll call vote, the motion carries, with Sen. Phillips voting NAY. Excused: Sen. Gold.

PUBLIC HEARING ON HOUSE BILL 3142 Witnesses: Sen. Eugene Timms Karen Whitaker, Oregon Health Sciences University (OHSU) Ed Patterson, Oregon Association of Hospitals (OAH) Larry Young, Workers' Compensation Division (WCD) Dave Fiscum, Sisters of Providence Hospital

133 SEN. EUGENE TIMMS, DISTRICT 30: This bill is to establish procedures for WCD proposed rules affecting type A and B hospitals in this state. It also requires a risk management formula to be established.

SEN. TROW: What does submitting a proposed rule affecting type A and B rural hospitals to the Office of Rural Health of OHSU have to do with the risk management formula? SEN. TIMMS: This would give them the parameters to look at those hospitals to see what kind of shape they are in.

SEN. TROW: There is nothing in the bill to require the WCD to accept the proposed rule. It is just a matter of advise or comment. How does the assessment tool relate to the proposed rule?

175 KAREN WHITAKER, director, Office of Rural Health, OSHU: The assessment tool would allow us to apply an objective measure to attempt to determine which hospitals are most fragile as related to that rule. . . 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 29, 1991 - Page 5

> Reviews her testimony in support of HB 3142 (EXHIBIT I). > There needs to be some special consideration given to rules that affect reimbursement of rural hospitals because they do operate on a narrow margin and serve a critical function to rural communities.

SEN. TROW: I feel you are obligated to give timely advise and comment.

285 ED PATTERSON, OAH: In its original form, HB 3142 did not attempt to address the issue of the WCD but was directed by its sponsors to the Oregon Health Division. > Talks about the administrative rules adopted because of an amendment to SB 1197 (1989 session) concerning a fee schedule developed by the WCD which means considerable discounts in the reimbursement rate for hospitals. > Our desire is to make it easier for the director to actually identify those hospitals that are at risk and apply the exemption that was permissive in SB 1197. > The Office of Rural Health is the only agency that has specific expertise in the problems being experienced in the rural health care delivery system. > Explains why the development of a risk assessment formula is precedent setting. 383 LARRY YOUNG, deputy administrator, WCD: Testifies in

opposition of the bill mainly because section 1 is already provided for under the Administrative Procedures Act, ORS 183 .335, subsections 1c, 3 and 7. SEN. TROW: As you are proposing to adopt rules effecting rural hospitals, you will submit those rules to the Office of Rural Health and ask for comment and advice on them. It is different than what you describe. YOUNG: Under the Administrative Procedures Act, in any proposed rule you have to identify the effected parties and mail the effected parties a copy of the proposal so they have the opportunity to present either written or oral testimony at the assigned public hearing. > Recommends that the Office of Rural Health request to be put on their mailing list and that would accomplish what section 1 calls for. SEN. TROW: Tell us how the bill would be a hardship on the division? There is just a difference in how it is going to be done.

TAPE 104, SIDE B

021 YOUNG: Our compliance with this law would be to put their name on the list so they would be notified and could give testimony or advise on a proposed rule.

SEN. TROW: Why is the bill here if it is working so well?

YOUNG: I can't answer that question.

054 SEN. KENNEMER: This is just a duplication of the process and there should not be any harm in doing that. Their name should be added to the list so compliance can start immediately.

YOUNG: Our objection is because there already is a process in place. . . . 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 29, 1991 - Page 6

WHITAKER: We have been on the list for more than a year for the WCD rules. The problem is that we have a small staff and it is difficult for us to go through all the division's proposed rules searching for a clause that applies to rural hospitals. If we could be consulted at the outset on issues that affect rural hospitals, that would be a much more helpful way for us to have some input. > Hopefully, the Division will take into account the relative economic disadvantages that many rural hospitals are experiencing and use the permission in their current statute to give them some relief.

SEN. TROW: Your intention with this legislation is that you are not tied only of those proposed rules that relate to rural hospitals.

YOUNG: If that is the intent, we have no problem with it.

098 DAVE FISCUM, Sisters of Providence Health Care System in Oregon: Testifies in support of HB 3142 because its passage sends a message about how you want to consider the risk faced by rural hospitals.

Tape 104, Side B) WORK SESSION ON HB 3142

124 MOTION: SEN. KENNEMER moves to adopt the -A2 amendments which include what was previously SB 635 (EXHIBIT J). > There are no objections.

MOTION: CHAIR McCOY moves on line 12, to delete the comma after "rural health" and delete "in consultation with the Oregon Association of Hospitals".

SEN. PHILLIPS: Is it your legislative intent that the Office of Rural Health would consult the OAH and other appropriate associations?

CHAIR McCOY: Yes. > There are no objections to the motion.

SEN. TROW: If we already passed SB 635 on the Senate floor, why does it need to be included as an amendment in this bill?

SEN. KENNEMER: There has been difficulty in achieving a work session on the House side. I think this will pass on the Senate floor and we will get concurrence in the House.

183 MOTION: SEN. KENNEMER moves HB 3142 as amended to the Senate floor with a do pass recommendation. VOTE: In a roll call vote, the motion carries with all members voting AYE.

PUBLIC HEARING ON HOUSE BILL 2956 Witnesses: Brian Delashmutt, Oregon Nurses Association (ONA) Susan King, Oregon Nurse Practitioners Association (ONPA)

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Steven Kafoury, Oregon Physical Therapists Association (OPTA) Dan Jones, physical therapist Daiva Banaitis, Pacific University Clem Isham, physical therapist Chuck Bennett, Oregon Chiropractic Physicians Assoc. (OCPA) Susan Strom-Ray, chiropractor from Newport Bonnie McDowell, chiropractor and physical therapist Jim Carlson, Oregon Medical Assoc. (OMA) Jeff Heatherington, Oregon Osteopathic Assoc. Dell Isham, Oregon Assoc. of Naturopathic Physicians (OANP)

185 BRIAN DeLASHMUTT, ONA: Testifies in support of SB 2956. > Reviews background on the bill that gives nurse practitioners authority to refer patients to physical therapists. > If a physical therapist cannot take a referral from a nurse practitioner, then the practitioner has to find a doctor to make the referral. This causes the patient an extra hurdle and some additional dollars. 260 SEN. PHILLIPS: Is this a rural versus urban issue? DeLASHMUTT: It is both. 275 SEN. PHILLIPS: Refers to preliminary staff measure analysis which indicates physical therapists plan to offer an amendment which would allow persons to see a physical therapist without a physician's referral (EXHIBIT K). Would you consider any amendments to this bill? DeLASHMUTT: My preference would be for the bill to go the way it is now. SEN. TROW: Do other people understand you would not be opposed to having an amendment? DeLASHMUTT: Our issue is that we have a bill that successfully goes through the process. We are not taking a position concerning an amendment. The battle that is going on is not our battle. 327 STEPHEN KAFOURY, OPTA: I have some amendments I would like to propose for this bill (EXHIBIT L). I have made every effort to ensure that should this bill be amended and come out of the committee, it will pass the Senate overwhelmingly. The outlook for this bill is less clear in the House. If this bill is not concurred with, I will be happy to pull the amendments out during a conference committee. > Requests the committee to consider his amendments on their merits. SEN. TROW: Why didn't you have a bill of your own? KAFOURY: We had a bill but could not get it out of a House committee. I have commitment from the House Human Resources Committee chair that she will move for concurrence.

TAPE 105, SIDE B

005 KAFOURY: The present law restricts physical therapists from seeing patients unless they have

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been referred. HB 2956 would extend the list of those medical practitioners who can refer to a physical therapist. > HB 2956-1 would allow consumers to see a physical therapist directly without a referral. > This is law in at least 23 other states. > Good for patients because it saves money and allows for earlier treatment. > Addresses the access problem. > Has support from both nursing home organizations and public schools. > Saves dollars to the health care system and assures the appropriate level of care. > Opposition to proposed amendment has been unsubstantiated. > Refers to copies of letters stating no increase in utilization of physical therapy as a result of this legislation (copies of letters not provided). > Quotes Peter McGoff, M.D., chair of the Washington Academy of Family Physicians concerning similar legislation

with no adverse outcomes.

109 SEN. PHILLIPS: Can you give me specific statistics on the referral and access problems?

KAFOURY: There are availability problems among the general public in both urban and rural areas and in institutions.

130 DAN JONES, physical therapist in Portland: Testifies in support of HB 295 6 and provides written testimony (EXHIBIT M). Addresses two issues: > Gives specific instances in schools, nursing homes and offices where physical therapists are bypassed because of the referral issue. > Explains why diagnosis is the big issue. Physical therapists do not make a definitive diagnosis. They evaluate the patient subjectively and objectively. > We do have a 30-day cut-off time when a patient is referred to a physician. 229 DAIWA A. BANAITAS, director of School of Physical Therapy, Pacific University: Testifies in support of HB 2956 and provides written testimony (EXHIBIT N). > We do not train our physical therapists to diagnose medically. We do train them to do physical therapy diagnosis or physical therapy evaluation. > Physical therapists are the only medical providers who cannot see a patient without a referral from a physician. > Reviews her testimony concerning their training. 282 CLEM ISHAM, a physical therapist in Portland: Talks about his experiences in the area of sports. > Frustrated he cannot treat patients unless they are referred. > No case of injury from seeing a physical therapist without a referral has been documented. 341 CHUCK BENNETT, Oregon Chiropractic Physicians Association: Testifies in opposition to HB 2956. > This is a scope of practice bill and there were not enough votes in the House to get it out of committee. > It is a hotly contested issue. > A physical therapy evaluation is distinctly different than a diagnosis. > We were not given the opportunity to review the amendments in advance of the hearing.

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SEN. PHILLIPS: Isn't this just a turf battle?

BENNETT: Medical necessity is the fundamental issue.

410 SUSAN STROM-RAY, chiropractic physician in Newport: My concern is primarily for the well being of my patients. > Concerned about individuals who lack training in differential diagnosis. Gives some examples of incorrect diagnosis.

TAPE 106, SIDE A

029 STROM-RAY: Talks about some of her patients and the importance of a thorough diagnostic workup. 070 BONNIE McDOWELL, chiropractor and physical therapist: Agrees that diagnosis is a necessary part of any treatment. > Explains why an x-ray is sometimes vital before treatment is started.

CHAIR McCOY: What is the difference in training between a chiropractor, who can treat patients without a medical referral, and a physical therapist who can not?

STROM-RAY: I was not trained in diagnosis as a physical therapist.

CHAIR McCOY: I remember when the Legislature helped chiropractors to get beyond having to have a referral from a medical doctor. You consented to not go beyond what you can do as a chiropractor. Now you are opposing a physical therapist for what they can do.

McDOWELL: Chiropractors are required by law to perform a diagnosis. We have to do that in order to provide treatment. The physical therapist has never been trained in diagnosis.

164 BENNETT: You license chiropractors as primary care physicians. They are required to have several thousands of hours of training in order to determine the condition of the patient. You have not made that requirement on physical therapists. The issue is the public's safety. If physical therapists are to be the portal of entry or access, make them take the same training.

226 JIM CARLSON, OMA: Testifies in opposition to the proposed HB 2956-1 amendment. This amendment puts the cart before the horse - providing treatment before knowing the physical problem, ailment or injury. > The physicians in Oregon have the utmost respect of the skills, capability and services provided by physical therapists. They are essential members of the health care team. > What we are talking about here is a team concept where somebody with the proper skill and training is going to determine what the problem is and prescribe treatment. > The proposal in this amendment is headed in the opposite direction. SEN. PHILLIPS: Do chiropractor's have the training to do these services? CARLSON: The chiropractors have more training in making a differential diagnosis than physical therapists. Within their scope of practice, they have the ability to order and interpret

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such diagnostic tests as x-rays.

286 JEFF HEATHERINGTON, Oregon Osteopathic Association: Testifies in opposition to the amendment. > Major concern is that the application of physical therapy or manipulation does a great deal to relieve pain but do not make the disease go away.

309 DELL ISHAM, OANP: Reviews his proposed amendment (EXHIBIT O) which adds naturopathic physicians to the list of health care providers who can refer patients to physical therapists. This amendment is just to correct an oversight.

SEN. PHILLIPS: Have you talked to Mr. Delashmutt regarding your amendment to his bill?

ISHAM: These amendments were offered in the House and they were not accepted. He is not in favor of this amendment or any amendment. This bill belongs in the public domain.

348 SEN. SHIRLEY GOLD: Did you have a bill on the House side? ISHAM: No, we did not. The House chair would be opposed to this amendment.

(Tape 106, Side A) WORK SESSION ON SB 986

400 MOTION: CHAIR McCOY moves to reconsider the vote on SB 986 because it has a fiscal impact. > There was no objection.

407 CHAIR McCOY: Adjourns the meeting at 5:35 p.m.

Transcribed and reviewed by:

Carolynn Gillson Assistant

EXHIBIT LOG: A - PSMS on HB 2287A - committee staff- 1 page B - PSMS on HB 2133A - committee staff- 1 page C - testimony on HB 2133 - Board of Radiologic Technology - 3 pages D - PSMS on HB 2398A - committee staff- 1 page E - testimony on HB 2398A - Task Force on Sex Offenses Against Children - 2 pages F - fiscal analysis on HB 2398 - Legislative Fiscal - 1 page G - PSMS on HB 2053A - committee staff- 1 page H - amendment on HB 2053A - Oregon Conference of Private Child Caring Agencies - 4 pages I - testimony on HB 3142 - OHSU - 4 pages J - HB 3142-A2 amendment - committee staff- 2 pages K - PSMS on HB 2956 - committee staff- 1 page

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L - HB 2956-1 amendment - OPTA - OPTA - 4 pages M - testimony on HB 2956 - Daniel Jones - 3 pages N - testimony on HB 2956 - Daiva Banaitis - 14 pages O - amendment on HB 2956 - OANP - 1 page

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