

ETHICS COMMITTEE MEETING

August 21, 2013

ITEM 10. DISCLOSURE WAIVER:

AS 24.60.105(d) Request for Waiver of Ethics Disclosure

This item is a continuation from the January 16 and February 26 committee meeting.

PREVIOUS ACTION TAKEN BY THE COMMITTEE – see attached

- Draft request form dated January 2013.
- Minutes from the January 16, 2013 committee meeting.
- Draft request form dated February 2013.
- Minutes from the February 26, 2013 committee meeting.

Changes to the REQUEST FORM approved at the February 26, 2013 meeting:

Chair Conner restated the consensus of changes to the form as follows:

- Remove “person’s status” and replace with the appropriate statutory language;
- Add “includes tribal law” after the term “federal law”;
- Move the “Explanation”, which contains language from the pertinent statutes, to the top of the form; and
- Add wording that states the form constitutes as the written request.

BACKGROUND INFORMATION

This section of the Legislative Ethics Act was added with the passage of SB 89 in 2012 and became effective on August 22, 2012. The provision allows a person subject to the Act to submit a written request to the committee to refrain from making the disclosure if it would violate:

- State law
- Federal law
- United States Constitution
- State of Alaska Constitution
- Rule adopted formally by a trade or profession that state or federal law required the person to follow

DISCUSSION

Two draft forms have been prepared for review by the committee. (See attached.)

- **Draft 1** incorporates all the recommended changes from the February 26, 2013 meeting.
- **Draft 2**, recommended by staff, changes the section, *Person’s Status with whom association exists*, to include two categories that could be checked off on the form. The reasoning is that both public official and lobbyist are not covered by the Legislative Ethics Act while a legislator and legislative employee are covered by the Act. By having two categories, the Ethics

Committee is able to determine, based on which category is checked, whether additional information may be needed.

- Category: Public Official or Lobbyist.
- Category: Legislator or Legislative Employee.

ACTION

Approve language for a new disclosure form titled, Request to Refrain from Making a Disclosure.

APPLICABLE STATUTES

AS 24.60.105 Deadlines for Filing Disclosures

(d) A person may submit a written request to refrain from making a disclosure that is required by this chapter if making the disclosure would violate state or federal law, including the United States Constitution and the Constitution of the State of Alaska, or a rule, adopted formally by a trade or profession, that state or federal law requires the person to follow. The committee shall approve or deny the request, or require further justification from the person making the request. At the request of the committee or a person authorized to act on behalf of the committee, a person who seeks to refrain from making a disclosure under this subsection shall provide the committee with justification in writing, and the committee may review the written justification to determine whether it is sufficient.

Sec. 24.60.070 Close Economic Association

- (a) A legislator or legislative employee shall disclose to the committee, which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal, the formation or maintenance of a close economic association involving a substantial financial matter with*
- (1) a supervisor who is not a member of the legislature who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions; this paragraph does not apply to a public member of the committee;*
 - (2) legislators;*
 - (3) a public official as that term is defined in AS 39.50;*
 - (4) a registered lobbyist; or*
 - (5) a legislative employee if the person required to make the disclosure is a legislator.*

(b) A legislator or legislative employee required to make a disclosure under this section shall make a disclosure by the date set under AS 24.60.105 of the legislator's or

legislative employee's close economic associations then in existence. A disclosure under this section must be sufficiently detailed that a reader of the disclosure can ascertain the nature of the association.

(c) When making a disclosure under (a) of this section concerning a relationship with a lobbyist to whom the legislative employee is married or who is the legislative employee's domestic partner, the legislative employee shall also disclose the name and address of each employer of the lobbyist and the total monetary value received by the lobbyist from the lobbyist's employer. The legislative employee shall report changes in the employer of the spouse or domestic partner within 48 hours after the change. In this subsection, "employer of the lobbyist" means the person from whom the lobbyist received amounts or things of value for engaging in lobbying on behalf of the person.

(d) In this section, "close economic association" means a financial relationship that exists between a person covered by this chapter and some other person or entity, including but not limited to relationships where the person covered by this chapter serves as a consultant or advisor to, is a member or representative of, or has a financial interest in, any association, partnership, business, or corporation.

CONFIDENTIAL (Updated Aug 2013) – Draft 1
This form constitutes as the
REQUEST TO REFRAIN FROM MAKING A DISCLOSURE
Information deemed “confidential by law” is not required. Do not provide.

EXPLANATION

AS 24.60.105(d). A person may submit a written request to refrain from making a disclosure if making the disclosure would violate state or federal law, including the U.S. Constitution, the Constitution of Alaska, or a rule adopted formally by a trade or profession that state or federal law requires the person to follow. The committee shall approve or deny the request, or require further justification before determining whether it is sufficient. AS 24.60.070. A “close economic association” means a financial relationship. Disclosure of “close economic associations” must be in sufficient detail.

NAME OF PERSON completing the disclosure _____

Please Print

Check one: PROVIDING THE SERVICE: _____ RECEIVING THE SERVICE: _____

WORK ADDRESS: _____

WORK PHONE NUMBER _____

NAME OF LEGISLATIVE EMPLOYER (if legislative employee) _____

in accordance with AS 24.60.105(d) and AS 24.60.070

Person's Status with whom association exists: **Sec. 24.60.070(a)** A legislator or legislative employee shall disclose to the committee, which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal, the formation or maintenance of a close economic association involving a substantial financial matter with

- (1) a supervisor who is not a member of the legislature who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions; this paragraph does not apply to a public member of the committee;
- (2) legislators;
- (3) a public official as that term is defined in AS 39.50;
- (4) a registered lobbyist; or
- (5) a legislative employee if the person required to make the disclosure is a legislator.

Reason for request to refrain from making a public disclosure, please be specific:

Violation of: State Law _____

Federal Law (including Tribal Law) _____

United States Constitution _____

State of Alaska Constitution _____

Rule adopted by a trade or profession that state or federal law requires the person
to follow _____

Date of association: _____ One-time association ___ On-going association ___

Nature of Services (general description) _____

If providing the service, please provide the following information:

Provider License #: _____

Provider License Type: _____

Provider License Expiration Date: _____

REQUEST TO REFRAIN FROM MAKING A DISCLOSURE

The above is a true and accurate representation of my request to refrain from making a disclosure in accordance with AS 24.60.105(d).

The work performed and/or the compensation received does not create an ethical conflict of interest with the person's work for the legislature.

Print Name

Signature

Date

REPORTING DEADLINES: See AS 24.60.105 and AS 24.60.115

Within 30 days of association and annually within the first 30 days of a regular session

CONFIDENTIAL (Updated Feb 2013) – Draft 2
REQUEST TO REFRAIN FROM MAKING A DISCLOSURE

Information deemed “confidential by law” is not required. Do not provide.

This form constitutes as the AS 24.60.105(d). A person may submit a written request to refrain from making a disclosure if making the disclosure would violate state or federal law, including the U.S. Constitution, the Constitution of Alaska, or a rule adopted formally by a trade or profession that state or federal law requires the person to follow. The committee shall approve or deny the request, or require further justification before determining whether it is sufficient. AS 24.60.070. A “close economic association” means a financial relationship. Disclosure of “close economic associations” must be in sufficient detail.

NAME OF PERSON completing the disclosure _____

Please Print

Check one: PROVIDING THE SERVICE: _____ RECEIVING THE SERVICE: _____

WORK ADDRESS: _____

WORK PHONE NUMBER _____

NAME OF LEGISLATIVE EMPLOYER (if legislative employee) _____

in accordance with AS 24.60.105(d) and AS 24.60.070

Person's Status with whom association exists:

☐ legislator ☐ legislative employee ☐ public official ☐ lobbyist

Reason for request to refrain from making a public disclosure, please be specific:

Violation of: State Law _____

Federal Law (including Tribal Law) _____

United States Constitution _____

State of Alaska Constitution _____

Rule adopted by a trade or profession that state or federal law requires the person
to follow _____

Date of association: _____ One-time association _____ On-going association _____

Nature of Services (general description) _____

If providing the service, please provide the following information:

Provider License #: _____

Provider License Type: _____

Provider License Expiration Date: _____

The above is a true and accurate representation of my request to refrain from
making a disclosure in accordance with AS 24.60.105(d).

**The work performed and/or the compensation received does not create an
ethical conflict of interest with the person's work for the legislature.**

Signature

Date

REPORTING DEADLINES: See AS 24.60.105 and AS 24.60.115
Within 30 days of association and annually within the first 30 days of a regular session

CONFIDENTIAL (Jan 2013)
REQUEST TO REFRAIN FROM MAKING A DISCLOSURE

NAME OF DISCLOSER: _____
Please Print

WORK ADDRESS: _____

PHONE NUMBER (Daytime) _____

EMPLOYER (if legislative employee) _____

in accordance with AS 24.60.105(d)

Person's Status with whom association exists: (public official, legislator, lobbyist, legislative employee under certain conditions) _____

Reason for request, please be specific:

Violation of: State Law _____

Federal Law

United States Constitution

State of Alaska Constitution

Rule adopted by a trade or profession that state or federal law requires the person to follow

Date of association: One-time association - _____

On-going association – from _____ to _____

License #: _____

License Type: _____

Expiration Date: _____

Nature of Services: _____

The above is a true and accurate representation of my request to refrain from making a disclosure in accordance with AS 24.60.105(d).

The work performed and/or the compensation received does not create an ethical conflict of interest with the person's work for the legislature.

Signature

Date _____

REPORTING DEADLINES: See AS 24.60.105 and AS 24.60.115

- Within 30 days of association.
- Annually within the first 30 days of a regular session.
- 90 days after final day of service.

EXPLANATION

A Close Economic Association means a financial relationship between a person covered by the Ethics Code and some other person or entity, including relationships where the legislator or legislative employee serves as a consultant or advisor to, is a member or representative of or has a financial interest in any association.

partnership, business or corporation. Those covered by the Ethics Code are required to disclose their close economic associations, in sufficient detail, with supervisors, legislators, public officials defined in AS 39.50, registered lobbyists and, if the discloser is a legislator, with legislative employees.

For legislative employees with a lobbyist spouse or domestic partner, additional requirements apply. See separate disclosure form.

MINUTES from January 16, 2013
FULL COMMITTEE MEETING
Butrovich Room
State Capitol

9. DISCLOSURE WAIVER:

Ethics Committee Administrator Joyce Anderson reported that with the passage of SB 89 last year, there is now a provision that allows a person who is subject to the Ethics Act to request a waiver if making a disclosure would violate either state law, federal law, the United States Constitution, the state of Alaska Constitution, or a rule adopted formally by a trade or profession that state or federal law required the person to follow.

Ms. Anderson also referred to Advisory Opinion 09-02, issued in 2009, on this very subject. Ms. Anderson stated that after reviewing Alaska Statute 24.60.105(d), Ethics Committee members determined that a form would be the best method of requesting a waiver to ensure the discloser would know what information was required. Ms. Anderson stated that the draft form in the packet was developed with input from Dan Wayne, Legislative Legal. Mr. Wayne also provided a legal opinion on the interpretation of the statute.

The Chair asked Mr. Wayne if he had anything to add to the opinion. Mr. Wayne stated no. He thanked Ms. Anderson for pointing out an error on the last page of the legal opinion which states that AS 24.60.060(a) would prohibit legislators or legislative employees from making unauthorized disclosure of confidential information but did not apply members of the Ethics Committee. Mr. Wayne explained that due to a statutory change, effective August of 2012, members of the Ethics Committee are now covered as well.

Representative Charisse Millett asked for verification that the drafted form was requiring the person's status or position with whom the association exists, and not requiring the person's name. Ms. Anderson stated that she would defer the question to Mr. Wayne as it involves HIPAA requirements, or to Senator Giessel who is in the medical field. Ms. Anderson stated that the form was drafted based on Mr. Wayne's legal memo. Ms. Anderson provided an example of the form's usage by referring to Sen Giessel who is a nurse. She stated that if Sen Giessel was providing services to a legislator or legislative employee, a financial relationship between the two would exist. The statute requires that financial relationships between a legislator and a legislative employee be disclosed. However, because Sen Giessel is required to follow HIPAA, which is a federal law, she could not disclose the name of her patient; only the status or position of the legislator or legislative employee.

Ms. Anderson further stated that the Name of Discloser should be changed to Name of Requestor. The form is provided with a list of applicable laws which may apply to the disclosure of certain information. The form also asks for the date that the association began, whether it was a one-time association, and his/her license number. The term "Requestor" should be added before license number and license type. Ms. Anderson suggested that Mr. Wayne provide some clarity on the reasons for inserting Nature of Services, and other additions that were recommended in his memo.

Chair Walker asked the members if there were any other suggested changes to the form before voting to adopt it. Member Cook motioned to approve the form with the recommended changes

that Ms. Anderson mentioned. Chair Walker stated that there was a concern that the words, "Person's Status" may not be specific enough and asked Mr. Wayne for comments. Mr. Wayne agreed that the "Person's Status" may be somewhat confusing; however, examples of the titles were provided only as a reference point. He further stated that, as mentioned in his memo, the reason for the form is to obtain enough information so that the committee can decide whether or not the request for the waiver is legitimate and whether it meets the requirements of the statute without putting the requestor (or discloser) in a position where they have to disclose confidential, protected information. Chair Walker asked Mr. Wayne if he thought the form was sufficient enough. Mr. Wayne stated that it would be difficult to determine to know, for example, should someone say the person's status was "legal client" or "court client", you can infer different things from that, unlike "public official", which may not be enough information thus requiring the committee to request additional information. He recommended that one approach might be keeping what is requested narrow, thereby limiting the risk of the person providing information that should not be made public.

Senator Gardner stated that the intent of the form is to obtain what it is about this relationship that requires disclosure. Under AS 24.60.070, the filer needs to disclose what the category or relationship is without disclosing the name.

Chair Walker invited Patty Krueger, legislative employee, to the floor. Ms. Krueger stated that she was a medical provider and has provided services to legislators and employees. Based on her interpretation of HIPAA, she stated that she could not provide any more information other than what she just stated. Her main concern is that the committee could easily know to whom she is providing services if both people are required to file the waiver. Ms. Krueger posed several questions to members: Is the committee asking practitioners to go outside the bounds of HIPAA confidentiality requirements? Does HIPAA supersede the Ethics Act within the state or vice versa? Is the committee going to restrict the free practice of medical care because of this disclosure? She commented that the disclosure almost appears to be an unfair restraint of trade.

Ms. Anderson pointed out to the committee that there are two questions before them today:

1. Who is required to file a request to refrain from making a disclosure?
2. What information should be supplied on the disclosure form?

Ms. Anderson stated that in reference to the first question, the committee needs to determine if the provider or the person receiving the services is required to file a disclosure or is it both? Normally, a close economic association between two individuals covered by the Ethics Act must be disclosed by both; however, it would appear that the person receiving the services would not be required to file a Request to Waive, but that it was the provider's responsibility. Ms. Anderson further stated that she agreed with Ms. Krueger that requiring both to file would reveal the identity of the person.

Member Thomas asked if recently passed legislation authorizes the committee to exclude the person who is receiving the services. He stated that he agreed with Ms. Anderson and Ms. Krueger. In response to Member Thomas' question, Mr. Wayne stated that the statute does not specifically say what information should be disclosed or withheld. However, the statute did say if the information is confidential, then the person does not have to provide it. Mr. Wayne offered that instead of stating on the form "person with whom association exists", perhaps the term "person's status" would suffice; and instead of "description of economic association", insert "if you are requesting a waiver for describing your close economic association under 24.60.105(d),

then please describe why"; describe the confidentiality. The person filling out the form could respond with, "nurse/ patient" and "I cannot provide any additional information because of HIPAA". The committee would decide whether it is enough information or request additional information.

Member Thomas responded that the form already states, "Nature of Services".

Member Thomas suggested that instead of disclosing the status of the person, a provision be inserted where all the categories (public official, etc.) are listed and the person answers yes or no. Then s/he is not identifying which one exactly, only that one of them applies.

Rep Millett stated that if only one person needs to disclose, then the form should state that, and which person is required to file. Member Cook responded that one person would say s/he is not providing this information on his/her patient and the other person would say s/he is not providing this information on his/her provider.

Mr. Wayne stated the statute is requiring both to disclose if both are covered by the Act; however, the committee could accept a disclosure by one as covering the other if that is the practice the committee wants to follow.

Member Turner suggested that the top line on the form be changed from Name of Discloser to Name of Requester or "Name of person providing the service". Sen Giessel stated that in viewing the form as a nurse practitioner, her interpretation is that the person providing the service is required to file because the person is not only a legislator, but a legislator who has the "trade or profession". The recipient of the services has neither a trade nor profession and would not be required to file. The professional, or the person with the trade who is providing the services, is the only person required to file.

Mr. Wayne pointed out to the committee to the language in (d) of AS 24.60.105 which addresses when it is appropriate for a person to submit a written request for a waiver. The statute is not adding to the burden of disclosure, rather it is saying that you already have a burden to disclose under the close economic association statute and if you want to refrain from disclosing because you think the information is protected, or that you are prohibited from providing the information, you can ask the committee for a waiver. The waiver is the option in this scenario versus not filing a disclosure at all and risking the chance someone were call you out on it. The request for a waiver would allow you to point out that you provided relevant information, but was constrained by the requirements of the nature of the service provided.

Chair Walker stated that it was his interpretation that a person is required to submit a request for a waiver but also has the duty not to disclose certain information because of confidentiality provisions. He did not believe the other person was required to make the disclosure.

Members of the committee decided to table the item, and in the meantime, consider the recommendations and suggestions presented before them today and come up with modifications to the form that satisfies all concerns.

CONFIDENTIAL (Updated Feb 2013)
REQUEST TO REFRAIN FROM MAKING A DISCLOSURE
Information deemed "confidential by law" is not required. Do not provide.

NAME OF PERSON completing the disclosure _____
Please Print
Check one: PROVIDING THE SERVICE: _____ RECEIVING THE SERVICE: _____
WORK ADDRESS: _____
WORK PHONE NUMBER _____
NAME OF LEGISLATIVE EMPLOYER (if legislative employee) _____

in accordance with AS 24.60.105(d) and AS 24.60.070

Person's Status with whom association exists: (public official, legislator, lobbyist, legislative employee under certain conditions) _____

Reason for request to refrain from making a public disclosure, please be specific:

Violation of: State Law _____
Federal Law _____
United States Constitution _____
State of Alaska Constitution _____
Rule adopted by a trade or profession that state or federal law requires the person to follow _____

Date of association: _____ One-time association _____ On-going association _____

Nature of Services (general description) _____

If providing the service, please provide the following information:

Provider License #: _____
Provider License Type: _____
Provider License Expiration Date: _____

The above is a true and accurate representation of my request to refrain from making a disclosure in accordance with AS 24.60.105(d).

The work performed and/or the compensation received does not create an ethical conflict of interest with the person's work for the legislature.

Signature

Date

REPORTING DEADLINES: See AS 24.60.105 and AS 24.60.115
Within 30 days of association and annually within the first 30 days of a regular session

EXPLANATION

AS 24.60.105(d). A person may submit a written request to refrain from making a disclosure if making the disclosure would violate state or federal law, including the U.S. Constitution, the Constitution of Alaska, or a rule adopted formally by a trade or profession that state or federal law requires the person to follow. The committee shall approve or deny the request, or require further justification before determining whether it is sufficient. AS 24.60.070. A "close economic association" means a financial relationship. Disclosure of "close economic associations" must be in sufficient detail.

MINUTES from February 26, 2013
FULL COMMITTEE MEETING
Beltz Room, Thomas Stewart Building
State Capitol, Juneau

8. DISCLOSURE WAIVER:

Chair Thomas brought the members to date on the status of the draft of the Waiver Form. It was the committee's responsibility to develop a procedure consistent with the requirements of AS 24.60.070, close economic associations.

Ms. Anderson stated that she met with Patty Krueger, staff to Representative Lynn, who is present for testimony today, and Sen Giessel, noting that she is a member of the committee and also present. Both are in the health field and were invited to discuss the draft form in relationship to HIPAA compliance. Ms. Anderson reviewed the overview of HIPAA Privacy Rule with Ms. Krueger and Sen Giessel. Ms. Krueger and Sen Giessel came up with a list of questions which are in today's packet. Ms. Anderson put together a draft of a new form which included revisions that were not considered in the previous draft and in which the committee had not made a decision on yet, which was whether or not both parties were required to file. There is a box to check if you are providing the service or receiving the service. She also added a suggestion made by Dan Wayne which was an addition at the top of the form, the third line down which states, "Information deemed "confidential by law" is not required. Do not provide." This was an important piece because the committee does not want information that is confidential by law. The committee only wants to comply with the requirements of the Ethics Act.

Chair Thomas reminded the committee that the Waiver Form will remain confidential. This point was not expressed at the last meeting. The Waiver Form will be treated the same as confidential Gifts of Travel/Hospitality forms. These disclosures are stored in a secured location and do not become public information.

Mr. Wayne stated that he reviewed the changes made to the form and felt that the questions were headed in the right direction. He commented on his recommended change in that the committee would not want to be burdened with the possession of information that was confidential by law. Depending on the law, there could be legal requirements on storing the information, with which the committee would not want to have to contend.

Member Mallott asked about tribal law and if the term "a rule or regulation adopted by trade or profession" applied. There are issues in tribal law where some villages run their own medical clinics and she was concerned about the adoption of Alaskan Native students.

Mr. Wayne stated that he had not considered tribal law in the context of the term, "confidential by law" that is used here and there in the statute. Even though it is not mentioned, it doesn't mean that the committee couldn't discuss adding it. He further stated that it would not be a rule adopted by trade or profession, as it would not fit in that category.

Member Walker stated that as a federal attorney, it would need to be there because in adoptions, what often happens in CINA cases, you can get a case removed from the state court system and moved to a tribal court and then those laws would apply and supersede our state laws under

certain conditions. Member Walker recommended adding it. Chair Thomas stated that he believed that the statute allows for a waiver if making a disclosure would violate state or federal law and most of the authority for tribal law comes through federal law; therefore, is covered under the statutory provision. It might be advisable to make that clearer on the form.

Representative Millett stated that a tribal medical facility is under a federal health care provision. Unless they are a federally recognized tribe, they do not receive Indian health care services or federal money. She did not know of any that ran a tribal clinic that did not receive federal money.

Senator Gardner stated that her concern was disclosure of the "status" of the person with whom the association exists. Ms. Krueger had previously suggested that in a small state or small body that if she discloses that the person is a lobbyist or a legislator that it might be enough to identify them given certain circumstances. Senator Gardner asked the committee if identification of the status was a requirement and if saying that with whom the association exists is in one of the following categories to check yes or no was sufficient.

Ms. Anderson offered to read the section of AS 24.60.070 which states what is required for a close economic association: "a legislator or legislative employee shall disclose to the committee the formation or maintenance of a close economic association involving a substantial financial matter with *a supervisor, legislator, or legislative employee...*" and the statute also reads, "when making a disclosure under (a) of this section concerning a relationship with a *lobbyist*". Ms. Anderson stated that the statute specifically points out the status of the person with whom the association exists if with a lobbyist. Senator Gardner asked if that meant the other categories could be unspecified. Ms. Anderson replied she did not know but that lobbyist was the only one she knew of that makes a distinction. She re-directed the question to Mr. Wayne.

Mr. Wayne responded that he agreed that the person's status as legislator or a registered lobbyist, and so forth, would need to be disclosed. Mr. Wayne stated that he wanted to point out something else in connection with AS 24.60.070 that is often overlooked. Under Section (a), the fourth sentence reads, "the formation or maintenance of a close economic association involving a substantial financial matter". When people read this, they think they have to disclose every little thing. There is a filter for associations that are trivial and not substantial. However, substantial is not defined in statute; and therefore, it is up to the committee to make that determination on a case-by-case basis. The first step in determining whether an association is a substantial matter rests with the person who has the reporting obligation. The person must weigh and consider whether or not the association is something that should be reported and whether or not it is something substantial enough to report.

Ms. Anderson added that during the discussion of a previous advisory opinion issued by the committee addressing a CEA (close economic association), the committee decided not to assign a dollar value to 'substantial financial matter' because they felt the value should be decided on a case-by-case basis. Chair Thomas clarified that this particular issue is not relevant only to this form. However, we are discussing a waiver form and there is no reason for the committee to address this issue specifically in relation to this particular form. Mr. Wayne confirmed Chair Thomas' statement and stated that he only brought it up because they were having a discussion about reporting or not reporting and it is something that is often overlooked.

Chair Thomas stated that the question before the committee is regarding the person's status on the form. He asked if the form should be modified to reflect that the association exists with a person who is a public official, legislator, or legislative employee without identifying which one. If so, would this change meet the statutory requirements for the disclosure? Mr. Wayne stated that the change might meet statutory requirements, keeping in mind there are special requirements in the case of a lobbyist as Ms. Anderson pointed out.

Senator Gardner asked if the form could ask if the person is a lobbyist, and be answered yes/no, and the provider would have to disclose that it was a person in the category or b) is the person a member of any of the following categories—listing lobbyist by itself, and lumping together the other three options as the other option.

Representative Millett suggested that if the person's status falls under the statute, then s/he doesn't have to disclose either way. Rep Millett further stated that even though these disclosures are confidential, she felt that it would make someone who was the provider or the patient of someone that works in the Legislature feel uncomfortable having both of those things disclosed. As long as s/he is complying with the law by saying that s/he falls under that category, s/he is still following that statute. She added that she did not see the benefit of disclosing whether the association was with a lobbyist or legislator as long as the association falls under that statute and s/he is following that statute.

Chair Thomas stated that the question is whether or not the statute is requiring identifying the person's status. Representative Millett responded that by completing the waiver form, s/he is stating the association falls under the definition of the statute; and therefore, eliminates the need to qualify the question.

Ms. Anderson stated that for clarification purposes, confidential disclosures are reviewed by the chair and her. They are not referred to the full committee unless there's a question. Ms. Anderson also stated that she understood Rep Millett's suggestion but that the committee also has to decide whether or not the person providing the service and/or the person receiving the service has to fill out the Request to Refrain from Making a Disclosure if either party is a legislator or legislative employee. Under current requirements, both parties must complete a disclosure. A public official or lobbyist is not covered under the Act; and therefore, is not required to complete an ethics disclosure. Chair Thomas stated that Rep Millett's point is to remove the categories and replace them with the statute.

A member asked why the license type, number, and expiration date were on the form. Ms. Anderson stated that they are on the form to satisfy the accountability concerns that arose at the last committee meeting. Members discussed whether or not the "reason" for requesting to refrain was sufficient enough to remove the licensing questions from the form. Ms. Anderson stated for the record that the licensing information is public information.

Chair Thomas invited the public for comment. Patty Krueger joined the discussion commenting that she agreed with Rep Millett's suggestion to leaving off the status of the person if they are a public official, legislator, lobbyist, or legislative employee, because a person would not be filling out the form if s/he weren't directed by the statute to do so. There does not seem to be a benefit by including who s/he is treating. It also opens the door to the possibility of revealing the identity of the person s/he is treating if that the person's status is a legislator. She believed that if the service was taking place in a small community such as Wrangell, revealing the status of the

person would be a violation of HIPAA. Ms. Krueger added that she agrees if the statute replaced the status, this would prevent the above example from occurring. Ms. Krueger added that she had no objection to providing the licensing information if it assists the committee and is required by statute.

Member Cook asked the members if someone were providing medical services to multiple people in the legislator if that person was required to file just one form or multiple ones for each person. Member Cook stated that he felt that only one form would be necessary. Ms. Krueger commented that she agreed that filing multiple disclosures is not going to provide any additional benefit to the committee and that she also felt that one filing would be adequate, but would comply with filing three separate forms if she were treating three different people who fall under the statute. Senator Fairclough stated that since there is no additional value in filing three separate forms if treating three people, she suggested adding a box to check that states treating one or more in the Legislature, unless there is a threshold limit.

Mr. Wayne commented that we need to comply with the requirements of .070 and .105(d). He stated that filing one form to cover multiple people was stretching the intent of .105(d). Mr. Wayne also stated that replacing the "person's status" with the statute may not work because lobbyist and public official do not fall under the Act. Ms. Anderson suggested providing three separate check boxes: one if treating a lobbyist, one if treating a public official, and one if treating either a legislator or legislative employee. Ms. Krueger responded that having three check off boxes would make the person's status too specific to disclose. Ms. Krueger quoted from page 17 of the Summary of the HIPAA Privacy Rule provided in the packet: "state laws that are contrary to the Privacy Rule are preempted by federal requirements." In other words, federal requirements will apply. "Contrary" means that it would be impossible for a covered entity to comply with both the state and federal requirements. Ms. Krueger also stated that she would not hire a HIPAA lawyer to advise her whether or not she may or may not disclose something, nor would she believe that the committee would. State agencies have received extremely large fines because of HIPAA violations--some in the range of \$1.7 million in fines.

Member Turner stated that he re-read the waiver language in statute, and suggested inserting at the top of the form in brackets for clarity purposes the words, "this form constitutes as the written request". Member Cook quoted both statutes and stated that he felt that the suggested changes, including filing one form to cover multiple associations, would meet the statutory requirements.

Chair Conner restated the consensus of changes to the form as follows: "person's status" be removed and replaced with the statute; tribal law be noted that it falls under federal law; and move the "Explanation", which contains language from the pertinent statutes, to the top of the form and add, in brackets, wording that states the form constitutes as the written request.

Member Turner motioned to adopt the form with the modifications as recapped by Chair Conner. A roll call vote was taken: YEAS: Sen Fairclough, Sen Gardner, Rep Millett, Rep Tuck, Toni Mallott, Herman Walker, Skip Cook, Gary Turner, Chair Thomas. Motion passes.