ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 10, 2002
1:18 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh

MEMBERS ABSENT

Representative Scott Ogan, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 197
"An Act relating to directives for personal health care services and for medical treatment."

- MOVED CSHB 197(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 37(FIN)
"An Act relating to collective negotiation by competing physicians with health benefit plans, to health benefit plan contracts, to the application of antitrust laws to agreements involving providers and groups of providers affected by collective negotiations, and to the effect of the collective negotiation provisions on health care providers."

- HEARD AND HELD

HOUSE BILL NO. 472
"An Act relating to persons who buy and sell secondhand articles and to certain persons who lend money on secondhand articles."

- HEARD AND HELD

HOUSE BILL NO. 319
"An Act relating to civil liability for commercial recreational activities; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 197
SHORT TITLE:HEALTH CARE SERVICES DIRECTIVES
SPONSOR(S): REPRESENTATIVE(S)HUDSON

Jrn-Date	Jrn-Page		Action
03/19/01	0649	(H)	READ THE FIRST TIME - REFERRALS
03/19/01	0649	(H)	HES, JUD
03/28/01	0762	(H)	COSPONSOR(S): KERTTULA
04/10/01		(H)	HES AT 3:00 PM CAPITOL 106
04/10/01		(H)	<Bill Postponed to 4/17>
04/17/01		(H)	HES AT 3:00 PM CAPITOL 106
04/17/01		(H)	Heard & Held
04/17/01		(H)	MINUTE(HES)
04/19/01		(H)	HES AT 3:00 PM CAPITOL 106
04/19/01		(H)	Heard & Held
04/19/01		(H)	MINUTE(HES)
04/19/01		(H)	MINUTE(HES)
04/24/01		(H)	HES AT 3:00 PM CAPITOL 106
04/24/01		(H)	Moved CSHB 197(HES) Out of Committee
04/24/01		(H)	MINUTE(HES)
04/25/01	1196	(H)	HES RPT CS(HES) NT 3DP 2NR 1AM
04/25/01	1197	(H)	DP: JOULE, CISSNA, DYSON; NR: COGHILL,
04/25/01	1197	(H)	STEVENS; AM: KOHRING
04/25/01	1197	(H)	FN1: ZERO(H.HES/HSS)
01/28/02	2086	(H)	COSPONSOR(S): CRAWFORD, LANCASTER
03/20/02		(H)	JUD AT 1:00 PM CAPITOL 120
03/20/02		(H)	Heard & Held MINUTE(JUD)
04/10/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 37
SHORT TITLE:PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE
SPONSOR(S): SENATOR(S) KELLY

Jrn-Date	Jrn-Page		Action
01/12/01	0073	(S)	READ THE FIRST TIME - REFERRALS
01/12/01	0073	(S)	JUD, FIN

01/22/01	0137	(S)	L&C REFERRAL ADDED AFTER JUD
01/22/01		(S)	JUD AT 1:30 PM BELTZ 211
01/22/01		(S)	Heard & Held
01/22/01		(S)	MINUTE(JUD)
02/21/01		(S)	JUD AT 1:30 PM BELTZ 211
02/21/01		(S)	Moved CS(JUD) Out of Committee
02/21/01		(S)	MINUTE(JUD)
02/22/01	0467	(S)	JUD RPT CS 2DNP 3NR NEW TITLE
02/22/01	0467	(S)	NR: TAYLOR, COWDERY, THERRIAULT;
02/22/01	0467	(S)	DNP: ELLIS, DONLEY
02/22/01	0467	(S)	FN1: (LAW)
02/22/01	0467	(S)	FN2: (CED)
02/22/01	0467	(S)	FN3: INDETERMINATE(ADM)
02/22/01	0467	(S)	FN4: ZERO(HSS)
03/01/01		(S)	L&C AT 1:30 PM BELTZ 211
03/01/01		(S)	Heard & Held
03/01/01		(S)	MINUTE(L&C)
03/08/01		(S)	L&C AT 1:30 PM BELTZ 211
03/08/01		(S)	Heard & Held
03/08/01		(S)	MINUTE(L&C)
03/13/01		(S)	L&C AT 1:30 PM BELTZ 211
03/13/01		(S)	Moved CS(L&C) Out of Committee
03/13/01		(S)	MINUTE(L&C)
03/14/01	0653	(S)	L&C RPT CS 2DP 3NR NEW TITLE
03/14/01	0653	(S)	NR: PHILLIPS, DAVIS, TORGERSON;
03/14/01	0653	(S)	DP: AUSTERMAN, LEMAN
03/14/01	0653	(S)	FN1: (LAW)
03/14/01	0653	(S)	FN2: (CED)
03/14/01	0653	(S)	FN3: INDETERMINATE(ADM)
03/14/01	0653	(S)	FN4: ZERO(HSS)
03/28/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/28/01		(S)	Heard & Held
03/28/01		(S)	MINUTE(FIN)
03/28/01		(S)	FIN AT 6:00 PM SENATE FINANCE 532
03/28/01		(S)	Moved CS(FIN) Out of Committee
03/28/01		(S)	MINUTE(FIN)
03/29/01	0853	(S)	FIN RPT CS 3DP 1DNP 4NR NEW TITLE
03/29/01	0853	(S)	DP: KELLY, WILKEN, LEMAN;
03/29/01	0853	(S)	NR: DONLEY, AUSTERMAN, OLSON,

			GREEN;
03/29/01	0853	(S)	DNP: HOFFMAN
03/29/01	0853	(S)	FN1: (LAW)
03/29/01	0854	(S)	FN2: (CED)
03/29/01	0854	(S)	FN4: ZERO(HSS)
03/29/01	0854	(S)	FN5: ZERO(S.FIN/ADM)
04/04/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
04/04/01		(S)	MINUTE(RLS)
04/04/01	0932	(S)	RULES TO CALENDAR 1OR 4/4/01
04/04/01	0933	(S)	READ THE SECOND TIME
04/04/01	0933	(S)	FIN CS ADOPTED UNAN CONSENT
04/04/01	0933	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/04/01	0933	(S)	READ THE THIRD TIME CSSB 37(FIN)
04/04/01	0933	(S)	PASSED Y13 N6 E1
04/04/01	0934	(S)	ELLIS NOTICE OF RECONSIDERATION
04/05/01	0961	(S)	RECONSIDERATION NOT TAKEN UP
04/05/01	0962	(S)	TRANSMITTED TO (H)
04/05/01	0962	(S)	VERSION: CSSB 37(FIN)
04/06/01	0875	(H)	READ THE FIRST TIME - REFERRALS
04/06/01	0875	(H)	L&C, JUD, FIN
04/23/01		(H)	L&C AT 3:15 PM CAPITOL 17
04/23/01		(H)	Heard & Held
04/23/01		(H)	MINUTE(L&C)
03/22/02		(H)	L&C AT 3:15 PM CAPITOL 17
03/22/02		(H)	Moved HCS CSSB 37(L&C) Out of Committee MINUTE(L&C)
03/26/02	2682	(H)	L&C RPT HCS(L&C) 1DNP 5NR
03/26/02	2682	(H)	DNP: CRAWFORD; NR: ROKEBERG, MEYER,
03/26/02	2682	(H)	HAYES, HALCRO, MURKOWSKI
03/26/02	2683	(H)	FN6: ZERO(ADM)
03/26/02	2683	(H)	FN7: (CED)
03/26/02	2683	(H)	FN8: (LAW)
03/26/02	2683	(H)	REFERRED TO JUDICIARY
04/10/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 472
SHORT TITLE:PAWNBROKERS/SECONDHAND DEALERS
SPONSOR(S): REPRESENTATIVE(S)GREEN

Jrn-Date Jrn-Page Action

02/19/02	2315	(H)	READ THE FIRST TIME - REFERRALS
02/19/02	2315	(H)	L&C, JUD
03/04/02		(H)	L&C AT 3:15 PM CAPITOL 17
03/04/02		(H)	Heard & Held MINUTE(L&C)
04/01/02		(H)	L&C AT 3:15 PM CAPITOL 17
04/01/02		(H)	Moved CSHB 472(L&C) Out of Committee MINUTE(L&C)
04/02/02	2752	(H)	L&C RPT CS(L&C) NT 5NR 1AM
04/02/02	2752	(H)	NR: MEYER, HAYES, KOTT, HALCRO,
04/02/02	2752	(H)	MURKOWSKI; AM: ROKEBERG
04/02/02	2753	(H)	FN1: ZERO(DPS)
04/02/02	2753	(H)	REFERRED TO JUDICIARY
04/03/02	2788	(H)	COSPONSOR(S): MCGUIRE
04/05/02		(H)	JUD AT 1:00 PM CAPITOL 120
04/05/02		(H)	Scheduled But Not Heard
04/08/02	2840	(H)	COSPONSOR(S): MEYER
04/10/02		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

MELANIE LESH, Staff
to Representative Bill Hudson
Alaska State Legislature
Capitol Building, Room 502
Juneau, Alaska 99801
POSITION STATEMENT: Presented Version P of HB 197 and Amendment 1 on behalf of the sponsor, Representative Hudson, and responded to questions.

SHELLY K. OWENS, Community Health & Emergency Medical Services
Division of Public Health
Department of Health & Social Services (DHSS)
PO Box 110616
Juneau, Alaska 99811-0616
POSITION STATEMENT: During discussion of HB 197 responded to questions.

SENATOR PETE KELLY
Alaska State Legislature
Capitol Building, Room 518
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of SB 37.

MIKE D. WIGGINS; Vice President
National Accounts
Aetna, Inc.
600 University Street, Suite 1400
Seattle, Washington 98101
POSITION STATEMENT: Testified in opposition to SB 37.

PATRICIA SENNER, M.S., R.N., A.N.P.; President
Alaska Nurses Association (AaNA)
2207 East Tudor Road, Suite 34
Anchorage, Alaska 99507-1069
POSITION STATEMENT: Testified in opposition to SB 37.

CATHY GIESSEL, M.S.N., R.N., F.N.P.-C.S.
Legislative Representative
Alaska Nurse Practitioner Association (ANPA)
12701 Ridgewood Road
Anchorage, Alaska 99516
POSITION STATEMENT: Testified in opposition to SB 37.

CYNTHIA EBELACKER
10251 Stewart Drive
Eagle River, Alaska 99577
POSITION STATEMENT: Testified in opposition to SB 37.

CAMILLE SOLEIL, J.D.; Executive Director
Alaska Nurses Association (AaNA)
2207 East Tudor Road, Suite 34
Anchorage, Alaska 99507
POSITION STATEMENT: Testified in opposition to SB 37.

BARBARA E. NORTON, C.N.M.
3730 Rhone Circle, Suite 101
Anchorage, Alaska 99508
POSITION STATEMENT: Testified in opposition to SB 37.

KAREN DECKER-BROWN
2200 Shore Drive
Anchorage, Alaska 99515
POSITION STATEMENT: Testified in opposition to SB 37.

STEVE CONN, Executive Director
Alaska Public Interest Research Group (AkPIRG)
PO Box 10-1093
Anchorage, Alaska 99510
POSITION STATEMENT: Testified in opposition to SB 37.

KATHLEEN T. MELICAN
3600 Minnesota Drive
Anchorage, Alaska 99503
POSITION STATEMENT: Testified in opposition to SB 37.

LEONARD SORRIN, Assistant General Counsel
Blue Cross Blue Shield of Alaska
(No address provided)
POSITION STATEMENT: Testified in opposition to SB 37 and responded to questions.

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General
Fair Business Practices Section
Civil Division (Anchorage)
Department of Law (DOL)
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994
POSITION STATEMENT: Provided comments indicating opposition to SB 37, and responded to questions.

BOB LOHR, Director
Division of Insurance
Department of Community & Economic Development (DCED)
3601 C Street, Suite 1324
Anchorage, Alaska 99503-5948
POSITION STATEMENT: Testified in opposition to SB 37, and responded to questions.

BECKY DEDURA (ph), Director
FTC Resource Center on State Legislation (ph)
American Medical Association (AMA)
(No address provided)
POSITION STATEMENT: Testified in support of SB 37.

MIKE HAUGEN, J.D., M.B.A.; Executive Director
Alaska Physicians & Surgeons, Inc. (APS)
4120 Laurel Street, Suite 206
Anchorage, Alaska 99508
POSITION STATEMENT: Testified in support of SB 37.

LAURA ACHEE, Staff
to Representative Joe Green
Alaska State Legislature
Capitol Building, Room 403
Juneau, Alaska 99801
POSITION STATEMENT: Presented HB 472 on behalf of the sponsor, Representative Green.

DAVID HUDSON, Captain
Administrative Services Unit
Central Office
Division of Alaska State Troopers (AST)
Department of Public Safety (DPS)
5700 East Tudor Road
Anchorage, Alaska 99507-1225
POSITION STATEMENT: Provided comments in support of HB 472 and responded to questions.

DAVE ADAMS
(No address provided)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 472.

JERRY CLEWORTH
907 Park Drive
Fairbanks, Alaska 99709
POSITION STATEMENT: Testified in opposition to HB 472.

MARGE THOMPSON, Co-owner
Alaskan Photographic Repair Service
PO Box 71127
Fairbanks, Alaska 99707
POSITION STATEMENT: Testified in opposition to HB 472.

BEN CARPENTER, Owner
Ben's Super Store
1402 Gilliam Way
Fairbanks, Alaska 99701
POSITION STATEMENT: Testified in opposition to HB 472.

DAN HOFFMAN, Lieutenant
Fairbanks Police Department (FPD)
City of Fairbanks
656 7th Avenue
Fairbanks, Alaska 99701
POSITION STATEMENT: Testified in support of the intent of HB 472.

NORM BLAKELEY
PO Box 537
Soldotna, Alaska 99669
POSITION STATEMENT: Provided comments during discussion of HB 472.

CYNTHIA BRIDGES, Detective
Anchorage Police Department (APD)
Municipality of Anchorage (MOA)
4501 South Bragaw Street
Anchorage, Alaska 99507
POSITION STATEMENT: Provided comments during discussion of HB 472.

ACTION NARRATIVE

TAPE 02-46, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:18 p.m. Representatives Rokeberg, James, Coghill, Meyer, and Berkowitz were present at the call to order. Representative Kookesh arrived as the meeting was in progress.

HB 197 - HEALTH CARE SERVICES DIRECTIVES

Number 0056

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 197, "An Act relating to directives for personal health care services and for medical treatment." [Before the committee was committee substitute (CS) for HB 197, version 22-LS0712\O, Bannister, 2/26/02, which was adopted as a work draft and amended on 3/20/02.]

Number 0103

REPRESENTATIVE JAMES moved to adopt committee substitute (CS) for HB 197, version 22-LS0712\P, Bannister, 3/20/02, as a work draft. There being no objection, Version P was before the committee.

Number 0124

MELANIE LESH, Staff to Representative Bill Hudson, Alaska State Legislature, sponsor, speaking on behalf of the sponsor, noted that Version P allows for the reenactment of the current statute regarding the protocol for responding to the "Comfort One Do-Not-Resuscitate (DNR) program." She also noted that a proposed amendment would provide the final touch, with one exception, for that provision. When HB 197 was first created, she explained, the intent was to take all of the current provisions related to

end-of-life healthcare decisions and place them in one chapter. These provisions include the Organ Donation program, the Living Will [program], the Comfort One Do-Not-Resuscitate (DNR) program, and an "expanded healthcare durable power of attorney." However, during the drafting process, the repeal and reenactment of the Comfort One Do-Not-Resuscitate (DNR) program did not occur as planned. Version P reenacts that program in full, although it still needs revision via [Amendment 1]

Number 0293

CHAIR ROKEBERG said that he would entertain a motion to adopt Amendment 1.

MS. LESH pointed out that Amendment 1 is also in need of revision. On page 3, line 3, of Amendment 1, the Department of Health & Social Services (DHSS) recommends changing the language so that it will read: "(c) An individual who is a qualified patient, including an individual for whom a physician".

Number 0391

CHAIR ROKEBERG made a motion to adopt the aforementioned language as an amendment to Amendment 1.

REPRESENTATIVE BERKOWITZ objected for the purpose of discussion. He opined that the amendment to Amendment 1 seems to "preclude an individual from having this kind of conversation with a doctor prior to becoming a qualified [patient]."

MS. LESH said that a qualified patient can only be determined by a doctor, so there is only a very small window of opportunity in which one [can become] that qualified patient; "You have to be in a terminal condition, which has to substantiated by a physician."

REPRESENTATIVE BERKOWITZ asked: "If I were to have a do-not-resuscitate order now, and I'm in relatively good health, that wouldn't seem to be permitted under this amendment [to Amendment 1], is that correct?"

Number 0487

SHELLY K. OWENS, Community Health & Emergency Medical Services, Division of Public Health, Department of Health & Social Services (DHSS), clarified that if one has a do-not-resuscitate order it is because he/she has already been determined by a

physician to be terminally ill. She said that [the DHSS's] concern with Amendment 2 as it is currently written is that it might provide an individual who is not terminally ill and does not have a DNR order to refuse lifesaving treatment; for example, if someone attempted suicide and failed, that person could refuse help.

REPRESENTATIVE BERKOWITZ asked whether he could [have a physician] make that determination now, if, for example, he were concerned about the possibility of getting in an accident that degrades his quality of life.

MS. OWENS pointed out that under current law, a physician could not prepare a DNR order for someone who is not terminally ill, and the same restrictions would apply under [version P].

CHAIR ROKEBERG asked why the language about a qualified patient should be added to Amendment 1 if it is already assumed that a physician only prepares a DNR order for someone who is already qualified.

MS. OWENS explained that the additional language is necessary because the inclusion of the clause offset by commas in the current language of Amendment 1 might leave that section to be interpreted to mean "an individual has the right to make a decision regarding the use of" life-sustaining procedures. She said that such an interpretation might allow a person to refuse life-sustaining treatment regardless of whether he/she is terminally ill.

REPRESENTATIVE BERKOWITZ said he could envision circumstances for which he would like to have a do-not-resuscitate order, even though he is currently in relatively good health. He asked whether there is any procedure by which that could happen.

MS. OWENS said no; if a physician were to write a do-not-resuscitate order for someone who is not terminally ill, it would be in contravention of exiting law and the proposed legislation. She pointed out that the purpose of the healthcare directive is to address the type of concerns posed by Representative Berkowitz. A person's wishes, in the event of a serious accident, could be provided for via the healthcare directive, but only a patient who is terminally ill can obtain a do-not-resuscitate order.

Number 0692

REPRESENTATIVE BERKOWITZ withdrew his objection to the amendment to Amendment 1. He added, however, that since passing legislation is an iterative process, he would hope that the next iteration of HB 197 would go further in addressing his concerns.

MS. LESH said that it is the sponsor's intent to allow people to broadly state their wishes regarding [end-of-life] treatment, but in the situation of a severe accident, for example, the Emergency Medical technicians' lifesaving protocol would take precedence. She noted that [Version P and Amendment 1] are merely reenacting current protocol.

Number 0800

CHAIR ROKEBERG, noting that there were no further objections, stated that the amendment to Amendment 1 was adopted.

Number 0813

CHAIR ROKEBERG asked whether there were any objections to adopting Amendment 1, as amended. There being no objection, Amendment 1, as amended, was adopted.

Number 0850

REPRESENTATIVE MEYERS moved to report committee substitute (CS) for HB 197, version 22-LS0712\P, Bannister, 3/20/02, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 197(JUD) was reported from the House Judiciary Standing Committee.

SB 37 - PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

Number 0858

CHAIR ROKEBERG announced that the next order of business would be CS FOR SENATE BILL NO. 37(FIN), "An Act relating to collective negotiation by competing physicians with health benefit plans, to health benefit plan contracts, to the application of antitrust laws to agreements involving providers and groups of providers affected by collective negotiations, and to the effect of the collective negotiation provisions on health care providers."

Number 0889

SENATOR PETE KELLY, Alaska State Legislature, sponsor, said that SB 37 is offered as a response to the changing nature of the health care industry in the United States. In the past ten years, the number of insurance companies has decreased from eighteen - nationwide - down to about six, and that number will probably continue to decrease, he suggested. He opined that the number is not decreasing because insurance companies are going out of business; rather, it is because companies are merging, and are consequently gaining more and more power in the market place. The problem with this phenomenon, he remarked, is that it leaves some of those who do business with [those insurance companies] in the unenviable position of being "an unprotected David against a Goliath that has federal protections as its armor."

SENATOR KELLY said that the federal antitrust provisions work to protect "these large [insurance] companies against these smaller doctors that do business with them." What SB 37 proposes is that under the watchful eye of the Department of Law (DOL), a "state action doctrine" can be put in place that will allow physicians to come together and discuss terms related to the health provider contracts that they have with these large insurance companies. Currently, he noted, physicians are in a "take it or leave it" position, adding that "it is arguable that the patient is the one who is suffering as a result of this."

SENATOR KELLY, to address concerns that had been raised as SB 37 went through the legislative process, said that the bill specifically prohibits boycotting or price-fixing by physicians, and that "it is completely voluntary" in that the attorney general can end negotiations or contracts at any time and neither physicians nor insurance companies are required to negotiate. He reiterated that SB 37 allows individual physicians to come together to discuss "these things as they face these huge companies," without getting in trouble with the Federal Trade Commission (FTC).

SENATOR KELLY noted that there had been a concern regarding nurses, but "the nurses have been removed." He also noted that he's heard that there is a proposed amendment [regarding nurses], and he's been told that it would not adversely affect SB 37 and would give [nurses] more protection. He surmised, however, that although he did not object to the adoption of this proposed amendment, rather than giving [nurses] more protection, it simply gives them "extra language," which, he opined, they didn't need. He mentioned that there is also a proposed

amendment regarding multiple employer welfare arrangements (MEWAs), which he did not object to either.

Number 1110

REPRESENTATIVE JAMES said that it seems to her as though the effects of SB 37 would be analogous to having a group of neighbors get together and tell a fire insurance company, from whom they all buy fire insurance, what to pay on any forthcoming claims. She asked for a description of what physicians are going to be negotiating.

SENATOR KELLY said:

> Well, for one thing, they can't come together and discuss any terms of the contract they may have with ... [an insurance company]. For instance, you might have a provision in the [contract] ... where the insurance company might say, "We've paid this, but we've decided not to after retrospective review," and then the physician would have to pay back the money to the insurance company. That isn't necessarily a thing that -- that may or may not be a bad thing, I don't know, the point is, they can't even discuss that among themselves without the FTC coming down on them, saying, "No, you're violating the antitrust provisions." The supreme court said that ... if we're going to have these blanket antitrust provisions out there, there are going to be cases where ..., through normal business practice, some people need protection that maybe goes a little bit in the other direction. The FTC is there to protect the people [that] are in business competing with each other, but the customers of those businesses aren't necessarily protected.
>
> And the supreme court said that you can create a state action doctrine where you have the Davids of the world who are trying to do business with the Goliaths, which would be these large insurance companies, and it would give them some protection that they don't have to follow quite to the absolute letter of the law the antitrust provisions that might apply to a General Motors [Corporation] or an Exxon [Mobil Corporation] or somebody like that. To put the physicians in that same situation doesn't always make sense, and the supreme court says there's times when it's not going to make sense, so they allow for this state action

doctrine, where you can create an oversight of these negotiations by a state agency - the Department of Law, in this case - and they can allow the physicians to come together to discuss these things, like I had just mentioned to you, without being in violation of Federal Trade Commission rules.

Number 1248

REPRESENTATIVE MEYER asked how SB 37 is going to benefit constituents: "Can we expect better health care; can we expect lower rates; what can we expect if this passes?"

SENATOR KELLY said:

The best example I can think of, and it's probably what motivates me on this bill the most: if you have an insurance company [that] comes in and ..., because they're so big they're going to have contracts with a major portion of the doctors in an area, they can require, on a "take it or leave it" basis, that the doctors can't even discuss with their patients higher-cost alternatives. So if someone comes in and they have a broken leg and it's handled by an x-ray, that would be pretty normal, but in some cases, maybe it needs an MRI [magnetic resonance imaging] or something -- believe me, I'm out of my league here as far as medical examples, but I'm just trying to give an example.

The insurance companies can say, "No, you can't even discuss that with the patient because we're only going to pay for that lower level," and the health care provider has to then choose between the terms of that contract, where they can't discuss these kinds of very important details with their patients without losing the contract. And because there are becoming so few of these insurance companies and because they're becoming so powerful, ... there again, they're on a "take it or leave it" basis; the physician's going to find himself in a bad situation between having to choose between business and maybe what's in the best interest of his client. They can also go as far as to have a gag rule; not only that they won't provide it, but, as I said, they could even require that there is a gag rule on them, where they can't even discuss these kinds of options with the patients.

Number 1334

SENATOR KELLY continued:

> That [the bill] allows the physicians to come together and say, "Look, there's a group of us here and ... we want to do business with you, but we want to be able to discuss whether those kinds of things should be in the contract or not." The FTC would slam them, before that, but what they do is they pick them off individually: you have all these physicians out there and they're saying ... to this guy, "We're one of the biggest corporations in the world; we're going to offer this contract; take it or leave it; here are the terms." It gives them some kind of market power - albeit voluntary because the insurance companies don't have to negotiate with them if they don't want to. It gives them at least the opportunity to enter into these discussions with each other, and as a group with the insurance company, to act in the best interest of their client. ...
>
> You've asked me [for] an example. The example is, under current rules, the insurance companies come in and they say, "Take it or leave it, here's the contract, you can't even discuss higher-level alternatives - higher-cost alternatives - with your patients." You're one physician against ... one of the largest corporations in the world, and they have such market power in your area that you pretty much got to play ball by their rules. This allows the physicians to at least come together and say, "We as a group want to talk to you about this provision, this higher cost alternative not being allowed, or even a gag rule where you can't even discuss it not being allowed." And they can talk, then, between themselves; the physicians can say, "This is what I was offered, and I want to know what you were offered," and they can discuss that amongst themselves and then discuss it with the insurance companies.

SENATOR KELLY said:

> Under current Federal Trade Commission rules, they're going to get a letter from the FTC and possibly get a fine for doing that. The Supreme Court said, "In

those cases, we're going to allow states to create this state action doctrine that allows the doctors to at least come together to discuss these things without getting slapped by the FTC." Ultimately, because of the way the bill is written, no one is forced to do anything. The insurance companies, if they say, "I don't want to deal with you," that's fine; or if the Department of Law says, "No, ... we don't like the way the negotiations are going," then it comes to an end; or the doctors can end it as well.

Number 1455

REPRESENTATIVE JAMES recounted an experience she had with her insurance company, Aetna Inc., and a dentist: "My husband had his teeth worked on and they were supposed to pay 50 percent. And of course they didn't pay 50 percent; they paid 50 percent of what was their recognized charge." When she questioned the insurance company about where that number came from, she was told, "Well, because this is the rate that everyone else is charging in this district - 99501." She noted that since she lives in the Fairbanks area, not the Anchorage area, she objected to this reasoning. "I didn't get anywhere at all," she explained, "and I'm the one that didn't get paid; it wasn't the ... dentist, it was me." "So, ... what's this do for our constituents?" she asked, "What's it do for me, as a patient, to allow the doctors to do this?"

SENATOR KELLY said he thought he had answered those questions.

REPRESENTATIVE JAMES said she did not believe the assertion that doctors are not allowed to recommend appropriate treatment to their patients.

SENATOR KELLY mentioned that such a case happened in Fairbanks, and that the physicians involved were threatened with a pretty serious fine.

CHAIR ROKEBERG asked for confirmation that "the fee or economic discussions have been removed" in the HCS CSSB 37(L&C) version.

SENATOR KELLY indicated that such had been removed.

CHAIR ROKEBERG said, "So, what we're talking about is other conditions rather than the fees themselves, is that right?" He also noted that the sponsor has asserted that the situation in Alaska is acute because there are only two insurance companies.

He pointed out, however, that there are three insurance companies that do business in the state that are present to testify or that have submitted comments on SB 37. In addition, Chair Rokeberg remarked, there are 160 insurance companies that are registered to do business in the state. He also mentioned that he did not agree with the sponsor's assertion that there were 18 insurance companies, nationwide, that have since merged into 6 companies. He suggested that before the bill progresses, the sponsor ought to review his statistical assertions.

Number 1615

MIKE D. WIGGINS; Vice President; National Accounts; Aetna, Inc.; said:

> In various capacities, I have been involved in the health insurance market in Alaska for the past 15 years, and have worked for Blue Cross, New York Life [Insurance Company], and, more recently, Aetna. Aetna has opposed [SB 37] and remains opposed to the latest draft of the bill. While the bill has been significantly narrowed from its original version, we still feel that it will neither benefit consumers nor competition in Alaska for health insurance.
>
> The major impact of the bill is to allow collective negotiations [by] physicians [with] health insurers on broad contractual terms, which are listed on page 2 of the bill. Aetna and the Health Insurance Association of America [HIAA], which represents most of the other insurers in the Alaska market, agree with the Federal Trade Commission that bargaining on contractual issues will likely have a significant impact on the cost of health care and therefore is likely to increase the cost of insurance in Alaska. Since the bill only applies to the privately insured market - mainly individuals and small groups - it will have an adverse effect on the part of the market that [already has] higher costs, in the market where the [insured members] are least able to afford increases. As you are aware, there are two other bills pending before the legislature this year which seek to find less expensive ways to provide health insurance to this sector of the market.
>
> During the 2000 legislative session, Aetna participated extensively in the House Judiciary

[Standing] Committee proceedings on the Alaska patient protection Act, which ultimately passed the legislature in 2000. The main focus of that bill was to address the same contractual terms for which physicians are now seeking the right of collective bargaining. [That] bill today provides safeguards in Alaska law and prohibits many of the practices such as "anti-gag clauses," ... that means talking to your [doctor] about higher cost alternatives, that physicians have testified should be dealt with through the mechanism of SB 37.

Number 1725

MR. WIGGINS continued:

Further, the Federal Trade Commission testified that physician groups are now permitted to bargain on "quality of care" issues within the federal constraints on antitrust. Passing a state law will not change the FTC's ultimate authority for evaluating and prosecuting. By adopting differing state and federal statutes for antitrust actions, the situation will become even more confusing, not less. With the exception of Blue Cross, in a relatively small geographical area of Alaska, we don't think that any insurer can be reasonably considered to have market power in the private insurance market within Alaska under the normal - and under any number of - definitions. If [SB 37] is intended to regulate Blue Cross in some fashion, as a nonprofit corporation, they are subject to different sections of the insurance statutes than the profit insurers, and your concerns can by addressed under their unique part of the Alaska insurance statutes.

To address the previous testimony by physicians on their inability to appeal claims that have been denied for "medical necessity," I have provided a summary of "State of Alaska - Aetna" information to the committee, illustrating the small number of these type of appeals and their disposition. Ultimately, within the Aetna organization, it is an independent physician and not a non-physician that decides the merits of these appeals. Thank you for the opportunity to [testify].

CHAIR ROKEBERG asked Mr. Wiggins to comment on Representative James's experience.

MR. WIGGINS explained that Aetna's rate of payment for dental claims is defined in its contract with the state, and that "they define the data source." "So, as the administrator, we are paying based upon the fee schedule [that] the state has set, and there are three geographical 'R [Reasonable Charge] and UCR [Usual, Customary, and Reasonable Fees]' areas in the state of Alaska," he added.

CHAIR ROKEBERG asked: "Under the third-party appeal and the UR - utilization review - procedures under the '[Alaska] Patients' Bill of Rights,' would an economic short payment or something be something that could be appealed?"

Number 1839

MR. WIGGINS said yes. He pointed out that one of the misconceptions is that non-medical people make decisions on medical appeals. He said that a handout he provided the committee illustrates that his company has both a second level and a third level of appeal; a second level appeal is reviewed by a physician, as is a third level appeal, either by a physician within Aetna with the same specialty, or by a physician at an external review agency.

CHAIR ROKEBERG asked whether this is also the process for appeals pertaining to the amount of reimbursement.

MR. WIGGINS said that it can be. Sometimes in Alaska, he noted, there are some "billing inconsistencies from the Lower 48," and there are some other things to take into consideration. He said that although he did not have the turnover rates in front of him, he could say that a significant number of [cases], once they are appealed and additional information is received, are ultimately resolved in favor of the person initiating the appeal.

Number 1908

PATRICIA SENNER, M.S., R.N., A.N.P.; President, Alaska Nurses Association (AaNA), said:

> We would like to voice today our continued serious concerns about [SB 37]. Our main concerns with this bill are twofold. First, we are concerned that

allowing large groups of physicians to band together to negotiate with insurance companies will lead to exclusion of direct reimbursement by insurance companies of non-physician health care providers such as nurse practitioners and nurse midwives. Our second major concern is that by effectively removing constraints on the side of physician-network joint ventures such as individual-practice associations - or IPAs - the Alaska health care consumer will be faced with seriously rising costs of care.

Health care in Alaska is provided by a diverse group of professionals, including advanced nurse practitioners, certified nurse-midwives, certified direct-entry midwives, certified registered nurse anesthetists, psychologists, social workers, optometrists, podiatrists, physical therapists, to name a few. These practitioners provide a broad spectrum of affordable, accessible, high-quality health care services to many thousands of Alaskans who want to choose the provider that best meets their needs. It is our concern that the physicians will negotiate the exclusion of direct reimbursement of these providers. If these health care providers cannot receive direct reimbursements from insurance companies, they will be put out of business, and insured Alaskans will not be able to choose their provider.

Current FTC regulations allow the formations of physician-network joint ventures, with certain safeguards. One of these is limiting the size of the network in given geographic locations; the other is that the network somehow has to lead to decreased costs by some form of economy of scale. In exchange for allowing physicians to negotiate together, the FTC states that the public has to receive some financial benefit. Senate Bill 37 would effectively remove these constraints. [Proposed Sec. 23.50.020(c)(6) states: "an authorized third party may not represent more than 30 percent of the market of practicing physicians for the provision of services in the geographic service area or proposed geographic service area, if the health benefit plan has less than a five percent market share".]

MS. SENNER continued:

> But [if] I'm reading this correctly, this means that if a health benefit plan has more than a 5 percent market share, there is no limit on the [size] of physician networks. Furthermore, ... current FTC guidelines state that joint ventures must ... share substantial risk and constitute 20 percent, or less, of the physicians in each physician specialty. Senate Bill 37 removes any reference to specialty, allowing all the physicians in a specialty to band together to negotiate with the insurance entity. We have complete sympathy with the physicians' desire to regain control of their practice and not have health insurance companies dictate how they practice - we deal with the same difficulties in our practices - however, we feel that [SB 37] tilts the balance too much in the favor of physician networks and does not protect the interests of health care consumers.
>
> In order [to] restore this balance we recommend the following changes to [SB 37]: Include language that would prohibit physicians from negotiating the exclusion of direct reimbursement by non-physician health care providers, and ... [prohibit] them from determining the settings other health care providers deliver services in. And that ... has to do with the nurse-midwives who want to be able to continue to [have] births in birthing centers and in homes. And the second [recommendation] is, maintain the exclusion of price from the list of items large physician networks can negotiate; by keeping this exclusion, smaller physician networks can still negotiate price under current FTC guidelines. We thank you for considering our concerns; ... Alaskan nurses are committed to providing quality, affordable health care.

Number 2090

CATHY GIESSEL, M.S.N., R.N., F.N.P.-C.S.; Legislative Representative, Alaska Nurse Practitioner Association (ANPA), testified via teleconference. She said:

> I know that most of [you] sought to serve in the legislature of this great state in order to make a

difference, a positive difference, for the people who live here. This legislation - SB 37 - will not make circumstances better for Alaskans. It will have the opposite effect for everyone who accesses health care. The only people who will benefit are physicians, and that will be to increase their income and control over health care delivery. I'm sure you've already reviewed opinions provided to you by the Federal Trade Commission, as well as the two January, 2001, letters from Attorney General Bruce Botelho. These documents clearly articulate the legal improprieties of SB 37.

How will SB 37 harm Alaskans? Legal opinions and experiential examples point to increased costs for all consumers - whether privately insured or Medicaid/Medicare - and limitations in the choice of health care providers. [Senate Bill 37] places physicians in a position to exclude the continued free-trade practice of non-physician providers such as nurse practitioners and certified nurse-midwives. There are many locations in our great state where health care is provided exclusively by nurse practitioners. But even in urban Alaska areas, nurse practitioners provide care for people who are declined care by physicians.

A case in point is Medicare patients. Many physicians decline to accept Medicare patients. My own father, who lived in Fairbanks since 1948, was "fired" by his physician of 25-plus years when my father became eligible for Medicare. Why? The reimbursement from Medicare was too low for physicians. Where should Medicare patients go? To emergency rooms? Now you're really talking high health care costs. Here in Anchorage there is a physician-owned clinic and a nurse practitioner-owned clinic located within one-half mile of each other. The cost for a new patient visit to the physician-owned clinic is twice the cost of the same visit at the nurse practitioner-owned clinic for the identical health needs.

CHAIR ROKEBERG interjected, saying that there were still numerous people who wished to testify, and inviting Ms. Giessel to fax any written testimony that she had to the committee.

MS. GIESSEL, to conclude, said:

What is more, the physician-owned clinic declines to accept Medicare patients and sends them to the nurse practitioner-owned clinic, who does accept Medicare. In this example, who is demonstrating - by action - a greater concern for health care sensibility, quality, and need? And who is demonstrating more concern with income and fee-related issues? Please make a difference, a positive difference, for Alaskans by rejecting SB 37. Thank you.

CHAIR ROKEBERG invited all the participants to fax written testimony to the committee.

Number 2218

CYNTHIA EBELACKER testified via teleconference. She noted that she is representing Alaska's 400-plus nurse practitioners that work across the state - many in private practice - that she is the immediate past president of the Alaska Nurse Practitioner Association (ANPA), and that she owns a family-practice clinic in Eagle River. She said:

At a time when your constituents are clamoring for sound fiscal management and all Alaskans would welcome more affordable health care, your committee is spending time and money considering an unnecessary bill that will do little to improve the so-called quality of medical care, but which would eventually raise the costs of such care. There is already an antitrust law that permits physicians to negotiate legitimate quality-of-care issues. It is a matter of public [record] that the American Medical Association [AMA] has equated quality of care with the elimination of independent non-physician practitioners. Powerful AMA lobbying and large AMA donations to government officials pave the way for bills like this one that come before you.

Make no mistake, this bill is not at all about improved health care quality or lower costs. It is about control by the powerful and the unfair restriction of trade for a large group of highly qualified, highly cost-effective, non-physician health care providers, specifically, nurse practitioners and nurse-midwives. The passage of this bill would allow physicians and insurance companies to restrict third-party reimbursement for independent nurse

practitioners. We are currently often reimbursed at a lower rate than are physicians in private practice; that cost savings would go away and insurance premiums and deductibles will eventually increase to compensate for that loss.

Number 2272

MS. EBELACKER concluded:

Many of our [businesses] will not survive, and tens of thousands of Alaskans will lose their primary care provider, especially ... in ... rural areas. Patients will be forced to see more expensive providers, often at a distance from where they live. Using the very gentle wording of this bill, physicians could negotiate contracts containing language about quality or safety which can be used to limit or eliminate consumers' ability to choose a non-physician health care provider or keep the ones they already have. I would ask that you don't become part of [the] current health care crisis; we all need to work on real solutions for improving access to health care and decreasing the rising cost of care in this state. This bill will not accomplish that. Vote no on this bill. Thank you.

REPRESENTATIVE JAMES said:

The last two people have indicated that they feared competition from the doctors charging more than nurse practitioners or others, and somehow or other I can't see that that wouldn't be already happening. ... Knowing full well what they go through to be a doctor - is not the same as a nurse practitioner - it seems to me like they would, naturally, charge more; I don't see that's where the competition is.

CHAIR ROKEBERG said: "Well, I think many times they're reimbursed the same amount as doctors if they do the same service. But maybe not; maybe that's what they fear."

MS. EBELACKER, in response, explained:

We are often reimbursed at about 15 percent less than physicians. That's Medicaid's rate, and many

insurance companies follow that same rate. We're not worried that we will be able to charge less. We are worried that we will be put out of business. If insurance companies are told that they cannot pay nurse practitioners unless they work out of a physician's practice, then independent practitioners will receive no reimbursement. And 45 percent of my population alone is Blue Cross or Aetna or other insurance companies, and I would have to fold up.

Number 2351

CAMILLE SOLEIL, J.D.; Executive Director, Alaska Nurses Association (AaNA), testified via teleconference and said that as Senator Kelly stated, SB 37 was created to address the instances where negotiations between physicians and [providers of] health care benefit plans were not equal. She remarked, however, that given the FTC concerns and the concerns of non-physician providers in Alaska, [the AaNA] was prompted to look at other alternatives to SB 37 that would benefit all health care providers - not just physicians - in their negotiations with health care benefit plans; would continue a competitive market, which benefits consumers; and would not add an additional layer of bureaucracy.

TAPE 02-46, SIDE B
Number 2376

MS. SOLEIL pointed out that AS 21.07.010, titled "Patient and health care provider protection", states what provisions can and can't be included in a contract between a health care provider and a managed care entity. One of the things that is protected, she explained, is the ability of a health care provider to openly communicate with patients about all appropriate treatment options. She suggested that it would be possible to expand this section of current statute to include language ensuring an equalized negotiation process between the provider and the managed care entity. Such an alternative to SB 37, she opined, would address concerns regarding inequitable bargaining power. She urged members to support modification of [AS 21.07.010], rather than adopting SB 37. If the committee does move SB 37 forward, however, she asked that it be modified significantly in order to eliminate the FTC's concerns and ensure protection of consumers and non-physician providers.

Number 2339

BARBARA E. NORTON, C.N.M.; testified via teleconference. She explained that she is a certified nurse-midwife with a private practice in Anchorage. She noted that she'd just recently negotiated a contract with both Blue Cross and Aetna to operate a preferred-provider birthing center; during those contract negotiations, contrary to the sponsor's assertions, she was able to negotiate every part of that contract, including price. She relayed that her practice has collaborative relationships with physicians, but none of those physicians supervise her practice. She explained that her main reason for opposing SB 37 is that physicians would be able to restrict her practice under the guise of "quality issues"; for example, physicians could demand that a physician be present at every birth, that every birth take place in a hospital, and that only midwives who are employed by a physician and bill through a physician's office can bill the insurance company.

MS. NORTON relayed that about six years ago, when [Providence Alaska Medical Center ("Providence")] changed its employees' health insurance coverage, it restricted Ms. Norton's practice for about a year by stating that employees seeking midwifery services could only use midwives who were employed by doctors. She added that because of this policy, her business lost a significant number of clients. Thus, she indicated, the fear that physicians will attempt to place restrictions on the way insurance companies treat non-physicians is justified: "it will happen, it has happened." With regard to what else physicians would be allowed to do under SB 37, Ms. Norton said:

> They can also address style-of-practice issues: they could say that only continuous monitoring has to take place. There are things that would definitely make it difficult for midwives to practice midwifery. The AMA, as [Ms. Ebelacker has] said, is actively trying to restrict the scope of practice of non-physicians; 70 percent of my clients are insurance clients, and I would definitely have to close my doors if [I] were not able to be paid by insurance companies. My clients, and your constituents, have a right to choose their care provider, and I strongly oppose this bill. Thank you.

Number 2260

KAREN DECKER-BROWN testified via teleconference. She indicated that she is enrolled in a "family nurse practitioner course of study," and said that there were three points which she wished

to address. For the first point, she noted that Senator Kelly spoke only of how physicians would be aided by SB 37; physicians, however, are not the only health care providers in Alaska. For the second point, because Senator Kelly's wife works in a doctor's office, Ms. Decker-Brown said she questions what his motives are in sponsoring SB 37. "I think SB 37 is a bill that's a wolf in sheep's clothing," she said, adding that according to her understanding, the group of physicians that brought this idea forward to Senator Kelly are the same physicians that employ his wife; thus he would be indirectly benefiting from passage of SB 37.

SENATOR KELLY pointed out that his wife is merely a receptionist at a clinic; "it's not like she's ... pulling in huge bucks - ... we do it mostly for the health care opportunities."

MS. DECKER-BROWN continued. For the third point, she explained that as a student, a group of physicians at a local Anchorage clinic [acted as her preceptors], and that at the time, "they" had in place an exclusive contract with a union. She said that one of the things that she noted while working at that clinic was that patients would express concerns about the fact that before that exclusive contract took effect, they were able to see a variety of health care providers such as nurse practitioners. She added that that clinic only employs physicians; has specifically stated that it will not employ any nurse practitioners; and, at the time that she was there, only employed male physicians. Such exclusionary practices, she noted, limit Alaskans in their choice of health care providers.

Number 2132

STEVE CONN, Executive Director, Alaska Public Interest Research Group (AkPIRG), testified via teleconference. He said that on behalf of consumers throughout the state, he was testifying in opposition to SB 37. He continued:

> I'd like to use my two minutes, however, to relay to you an event that [occurred] last month. I was attending Consumer Federation of America [CFA], and they had invited the head of the FTC. In the course of his various listings of concrete acts, he pointed out that he had sent a letter related to this bill to Alaska, and he had sent one to the state of Washington [which] hadn't responded to it concretely and positively. We would be deluding ourselves to think

that passage of this bill will not result in a Federal Trade Commission action.

So, in essence, the Department of Law, during this period of fiscal crisis, will not only be called upon to monitor the activities as laid out in the Act, but, of course, will also have to prepare major litigation, on behalf of the physicians, against the FTC. And I suggest you change the [fiscal] note so that the other members of the legislature have a sense of exactly how much this bill is going to cost initially. We see no cost advantage whatsoever to consumers, and we certainly see a shrinkage of available practitioners, both professional and lay, and we would ask you to oppose this bill. Thank you very much.

Number 2084

KATHLEEN T. MELICAN testified via teleconference. She noted that she owns and operates "a nurse practitioner group" that runs a family practice walk-in clinic in the Spenard area of Anchorage. She said:

I have grave concerns regarding how the passage of SB 37 would affect both the quality of health care and the economic impact of health care on our consumers. Many of my patients do have a primary M.D. provider, but for various reasons they are unable to get into see their M.D. provider when an unexpected illness occurs. Also, many times minor problems occur that M.D.s do not choose to deal with such as tourists who lose or forget their prescriptions while far away from home, or working parents who are unable to schedule far enough ahead for their children's day care or sports physicals or immunizations in order to meet deadlines at the school department - failure to meet these regulations results in lost school days.

If this bill passes and I need a collaborative physician in order to stay open, I don't know where I would find one who would work for the percentage of the salary that I and my fellow nurse practitioners work for. Our profit margin is very small. If we are unable to continue to provide the wide range of medical services that we do, at such affordable prices, I am sure that many health care needs, especially those that include routine health

screening, would be neglected. We all know that neglect of routine health care screening and lack of ... ongoing care only lead to more complicated health problems and increased costs for us all.

Number 2012

LEONARD SORRIN, Assistant General Counsel, Blue Cross Blue Shield of Alaska, testified via teleconference. After thanking the committee for this opportunity to testify, he said:

> As you know, we have testified in opposition to [SB 37] in the past, and continue to strongly oppose the bill. As [an] initial housekeeping matter, I would like to point out that the question of whether health plans can and do regulate the ... medical advice that doctors provide their patients has been long settled. I know of no health plan in the United States, ... including the state of Alaska, that limits the alternatives that physicians can freely discuss with their members - their patients. In fact, that issue was covered in the [Alaska Patients'] Bill of Rights ..., and prior to the [Alaska Patients'] Bill of Rights, our contracts in Alaska expressly encouraged providers to discuss the full range of options with each and every one of their patients.
>
> I would also point out that, initially, it seems to me - and this may have been corrected in a subsequent (indisc.) draft - there are still references to price in the legislative findings, at the beginning of the bill, that are, I trust, ... an inadvertent oversight, and I similarly trust that price is genuinely out of the bill. The list of items on which physicians can bargain collectively, in our view, are either very competitive in nature - so that if they don't expressly include price, they include very important terms on which physicians can and should compete with one another on and, therefore, have the same sort of negative effect on the market place, as would joint price negotiations - or, in the alternative, the items included in the laundry list on page 2 have already been addressed in the [Alaska Patients'] Bill of Rights legislation that we worked on collectively with the Alaska Medical Association and with members of the committee a year or two ago.

Number 1916

MR. SORRIN continued:

> In addition, we have some serious concerns about how the process might work, where a health plan ... would end up negotiating clinical practice guidelines - or coverage criteria - with certain providers in one area of the state, and that coverage criteria would be different than coverage criteria for your citizens and constituents in another area of the state, or how we would reasonably negotiate administrative procedures in one area of the state that might or might not be different than administrative procedures that we negotiate in another part of the state.
>
> I'm sure you can understand that ... if we are to manage our networks efficiently and provide low-cost health coverage to Alaska citizens, we need to economize wherever we can. And ... Balkanizing - or breaking up - these standards under which our network operates in Alaska would certainly increase our administrative costs and would increase, I think, costs and confusion to Alaska consumers. I would simply close by reiterating the fact that many of the most important things regarding patient welfare and the delivery of health care to your constituents is already addressed in the "[patients'] bill of rights," and the protections purportedly afforded by this legislation are therefore redundant.

MR. SORRIN concluded:

> I think in closing I would like to emphasize for the committee what I have emphasized in repeated discussions with the Alaska Medical Association and in meetings with members of the legislature, and that is that we regularly discuss the full range of issues included in this piece of legislation with network physicians. While it doesn't amount to collective bargaining with physicians, we regularly take into account physician concerns on a wide range of issues. In fact, our health plans in the state of Washington meet regularly with physicians collectively, and discuss issues including our "costs on fee" schedules and what fee schedules might look like in the future.

Nothing under state or federal law prevents those sorts of discussions from taking place as long as they're not a collective negotiation on price. And I would encourage the Alaska Medical Association and the proponents of the bill to consider responding more favorably to our offers to participate in those sorts of discussions than they have in the past.

Number 1807

REPRESENTATIVE JAMES asked: "When you're indicating that you want to have these negotiations on everything except price, ... isn't it really price, what you're talking about?"

MR. SORRIN, in response, said:

I hope I didn't misstate. We don't want to have collective negotiations with physicians on price or on any other topic. We are happy to have collective discussions with doctors and hospitals and other providers, including nurse practitioners and any other provider type in our network, on issues that concern them and are of joint concern to Blue Cross Blue Shield of Alaska and the providers in question. I think that's quite a bit different than a collective negotiation. But we have, I think, a long history of reaching results for our state of Washington plans, and in Alaska ... [of] reaching some degree of consensus on matters affecting the delivery of health care to your constituents. We're happy to engage in those discussions, and we do so regularly. The Alaska [State] Medical Association [ASMA] has indicated to us that they are reluctant to engage in any significant discussions along those lines, claiming they've been provided legal counsel that it violates the antitrust laws. It's simply not true.

REPRESENTATIVE JAMES asked: "Why are you having this discussion if it's not going to affect anything you're going to do?"

MR. SORRIN replied:

I'm not saying it won't affect anything we do, but what the antitrust laws require is that you can engage in these collective discussions. But what happens is, then, the health plan - or the party; whether it's a health plan or a automobile manufacturer, the law is

the same - ... needs to go back and exercise its own independent judgment whether the, here's an example, fee schedule would go up, would go down, how much it might increase, and then offer it to the physicians.

That's very different than a collective negotiation. It's not to say that it can't be a result, or that you can't change a particular policy or procedure that governs a certain part of your relationship with the doctor, but it simply means that it's not a collective negotiation. The health plan goes back, takes the provider's concerns into account, and makes its own business decision about whatever results it believes is in the best interests of the Alaskan consumers of health care.

Number 1687

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law (DOL), mentioned that he wanted to first start out by explaining a little more about the country's fundamental policy on competition and why it's so important for our nation's economic health. He said:

It exists primarily through the nation's antitrust laws. And there are exceptions to antitrust laws, which favor competition, but they allow exceptions under certain circumstances where there are sufficient safeguards, through regulation, to allow another entity to control those kinds of things. So, if you start with the premise that competition is good, if you're going to take competition away, you can do so only if you have sufficient government oversight.

And in this particular case, the state action doctrine is a doctrine that can apply to a whole number of different kinds of businesses and entities; it's not limited only to these particular kinds of facts. The state, if it wants, can enact a state action doctrine to allow negotiations on just about anything; it has to be clearly articulated and it has to be [a] substitute for competition. In this particular case, the FTC and our office have provided extensive written testimony that this particular bill will not satisfy the state action doctrine because it doesn't provide the level of oversight required to satisfy the

niceties of that doctrine. And we have that spelled out in letters and other things that we've submitted to the committee.

Having said that, though, I want to say that with the removal of price terms from this bill, there certainly is ... less of an impact on competition, especially the impact that the antitrust laws are concerned about. And FTC director of [the Office of Policy Planning, R. Ted Cruz], testified before the [House Labor and Commerce Standing Committee] that without the price provisions in this bill, really, this bill is not necessary. Physicians can already negotiate quality-of-care issues with health care insurers; you've heard testimony from the [Blue Cross Blue Shield of Alaska] representative who explained how that already continues.

MR. SNIFFEN concluded:

So without these kinds of terms, we really do question the need for this kind of legislation. It would just create another layer bureaucracy that physicians would have to go through in order to engage in the kinds of activities that they can already engage in without that level of bureaucracy. And if this is intended to create a sort of safeguard of some kind for the physicians in the event these negotiations might include some price-related quality-of-care terms, it's already been established, at least by the FTC and by our office, that this structure would not protect the physicians from that. So there really isn't a safeguard aspect of this bill that has any purpose, and if it's simply to allow quality-of-care issues, we also submit that it has no purpose.

Number 1546

REPRESENTATIVE JAMES indicated that Mr. Sniffen's comments reflect her understanding of how things are supposed to happen. She suggested that in actuality, however, what is supposed to happen doesn't happen. She asked: What are patients to do when they can't get the doctor to do what they want them to do because the insurance company won't cooperate? Where are the patients' rights then?

CHAIR ROKEBERG opined that those rights are already there; "We already have them in the bill I passed two years ago.

REPRESENTATIVE JAMES said she understood that concept, but added that she didn't think "they're" doing their job.

CHAIR ROKEBERG noted that there has also been legislation adopted that allows the director of [the Division of Insurance] to follow up on complaints made by individual insureds.

REPRESENTATIVE JAMES said: "I don't want to be argumentative here, but there is something that's not working." She said that as a member of the general public, "we are being led down a path of no choice for us to even affect the charges of the price of the insurance and/or what they cover, and the prices go up on the insurance and what they pay goes down, and there is something wrong with that picture."

MR. SNIFFEN replied that he understood and appreciated that concern. He opined, however, that SB 37 won't necessarily be able to affect that situation. "If physicians are able to collaborate and negotiate on certain things that might impact price, I think the end result would only be that your health care premiums might go up, but there's certainly debate on that," he added. He observed that Chair Rokeberg's Alaska Patients' Bill of Rights was an attempt to address some of those issues, and noted that there are folks from the Division of Insurance present who could possibly provide additional answers.

SENATOR KELLY asked Mr. Sniffen: "Have you ever gone through a health care provider contract."

Number 1452

MR. SNIFFEN said he has been provided with samples of various contracts from the state medical association; "I can't say that I've gone through them in any detail, but I've seen them."

SENATOR KELLY noted that during the three years that this legislation of his has been going through the process, it has been altered "over and over and over again" to address Mr. Sniffen's concerns. He added:

> You said there were problems with the bill, but you wouldn't provide any solutions; well, you tried to early on, but then your bosses shut you down - I'll give you credit for that. But the fact is, ... we've

changed the bill for you ..., and now you say it's doesn't ... do anything.

The fact is, I think if you had read some of these health care provider contracts, you'd see that there are plenty of things in there that deal with non-price issues that are very important to our constituents, that allow the physicians to discuss these things in negotiating with an insurance company, that have nothing to do with price. But if this bill wasn't in place, they would be slapped by the FTC.

SENATOR KELLY concluded:

It does do something; it still does something even after all the considerations for your department. And those are the things that really deal directly with our [constituents], and that is ...: What are the things that the doctor can stand up to these large insurance companies [on] and say, "I need to negotiate in favor of ... my patient." Those things are still in here; they're valuable, and they allow the doctors to negotiate and to just discuss these things between themselves, before they negotiate with these companies, without getting slapped by the FTC.

Number 1366

MR. SNIFFEN responded:

I don't know if there's a question in there, Senator Kelly, but I thank you for your comments. I have just some brief responses, and I appreciate everything you say. I don't know that physicians, currently, could not negotiate on some of those quality-of-care issues that you find in those contracts now. You are speculating that the FTC would come down on them, and we've heard testimony from the FTC before the [House Labor and Commerce Standing Committee] that they could, in fact, negotiate on some of those issues. So it would be up to them, I suppose, to determine whether or not the kinds of things they were negotiating on were, in fact, allowable or not.

CHAIR ROKEBERG asked whether Mr. Sniffen could comment on:

The market share percentages: the 30 percent of market for practicing physicians, for the authorized party; the less than 5 percent market share [to] determine number of covered lives; and then ... the geographic service area consisting of 40 or fewer individuals.

MR. SNIFFEN replied:

I can, and let me say I think in other legislation that has been passed in Texas, there are some restrictions on the geographic market areas that providers can negotiate in, and they have restrictions on specialties, [and] they have restrictions on percentage. I think in this bill it says essentially up to 30 percent of the physicians can negotiate with a health benefit plan if they have more than 5 percent of the market share; if the health benefit plan has less than 5 percent, then 100 percent of the physicians in an area can negotiate; and the attorney general has some discretion under this version to restrict those sizes under certain circumstances.

That might allow, for example, an area where there are limited specialties -- and maybe [in] Juneau there are only three allergists; those allergists may comprise 100 percent of the allergy specialty market for those services in Juneau, but they might not ... comprise ... 30 percent of the market of physicians here. And those are issues that were raised by someone else earlier, as well, that are problematic. But I have to say that if we're talking [about] just negotiations about quality of care, these geographic market issues are really not as important simply because those things can already be discussed anyway. So, I don't know that under this scheme, if we're not worried about whether or not this is an antitrust violation, if it really makes that much difference.

CHAIR ROKEBERG remarked that the attorney general's office has provided a "pretty big fiscal note on this." He asked, "Is this bill going to take an assistant attorney general to bird-dog this thing all the time?"

Number 1219

MR. SNIFFEN replied: "Just a half of one, and we have 'half of ones' around that are certified." In response to a question, he remarked that in response to amendments made to the bill, the fiscal note has been reduced to $113,000.

CHAIR ROKEBERG said there seems to be some question about "transparency" in SB 37; he indicated that it says a written decision is required from the attorney general's office if "it's disapproved" but not if "it" is approved. Therefore, he opined, anybody that disputes whatever the decision was wouldn't have "grounds" in terms of a legal report, and so would not "know how to approach any disputation of the findings." He asked, "Do you think that's an appropriate situation?"

MR. SNIFFEN said: "If I understand your question, ... you're saying that in the event that a contract is disapproved, there is no mechanism in the bill to provide an opportunity for interested persons to appeal that decision...?"

CHAIR ROKEBERG said: "No; as I understand it, if you disapprove it, doesn't the attorney general have to ... issue a report with the findings on the basis of disapproval?"

MR. SNIFFEN offered that that is his understanding of the bill.

CHAIR ROKEBERG said: "But shouldn't it, conversely, also be that way?"

MR. SNIFFEN replied:

> I've read those comments by the FTC as well, and the suggestion there is that if it was approved, there should be some basis for the approval as well, to give the consumers an opportunity to understand why it was [that] these competitive forces were being adjusted, according to the negotiated contract. Yes, I do think that makes some sense.

Number 1089

BOB LOHR, Director, Division of Insurance, Department of Community & Economic Development (DCED), said that the primary mission of the Division of Insurance is to protect Alaska insurance consumers, indicating that to this end, the division opposes SB 37. He elaborated:

> We oppose this legislation because, number one, the bill is simply unnecessary, since the [Alaska Patients'] Bill of Rights already addresses the issues raised by the physicians regarding the quality of care. Second, it will increase the cost of health insurance and thereby the number of uninsured Alaskans. Third, it will discourage insurers from entering or remaining in the Alaska market. And fourth, specific problems regarding health insurance [benefits] should be addressed by the legislature, not health care providers, for the protection of insured Alaskans.
>
> This bill would apply to less than 20 percent - actually it's less than one in four, about 23 percent - of Alaskans: 115,000 out of a total of more than 500,000. [This] means that the remaining 70-plus percent are either uninsured or covered by a health plan that is not subject to [SB 37]. This bill also does not apply to federal employee programs, State of Alaska, Medicaid, Medicare, Indian Health Service, or other government payors, as well as the largest private employer in the state, which are self-funded. This bill would harm those Alaskans that are most vulnerable, specifically, small Alaskan employers and individual families that purchase health insurance through a health care insurer.

MR. LOHR, noting that the proponents of the bill have made a number of statements regarding why SB 37 is needed, pointed out that written testimony provided by the division rebuts, in detail, each of those claims. With regard to the issue of quality of care, he emphasized that quality-of-care issues were addressed in the Alaska Patients' Bill of Rights, which became effective July 1, 2001. Under that legislation, the provider contract must protect the ability of the provider to communicate openly regarding treatment options. There is clear-cut language, he noted, that prohibits insurers from imposing gag orders or discouraging a provider from discussing all appropriate options, including potentially higher-cost options.

Number 0921

MR. LOHR posed the question: Why do insurers contract with providers? He answered that they do it primarily to get lower cost health care services for their insureds and to protect their insureds by assuring that a provider they contract with is

properly licensed, has the proper credentials, and maintains medical malpractice insurance. He noted that currently, there are no health maintenance organizations (HMOs) in Alaska and only limited health managed care. Health insurers in Alaska do not provide care, he explained, unlike those in the Lower 48; they are simply payors, they are not medical care providers, and they do not make medical decisions. Health insurers merely decide what services will be covered under an insurance contract with an Alaskan insured. Mr. Lohr indicated that the division's written testimony also covers a number of other points that rebut proponents' claims.

CHAIR ROKEBERG asked Mr. Lohr to comment on Representative James's experience and address her concerns. He posited that Representative James has voiced concerns held by every consumer in the state, adding that perhaps those concerns stem in part from the fact that the Alaska Patients' Bill of Rights did not go into effect until just July of 2001.

REPRESENTATIVE JAMES, at the request of Mr. Lohr, relayed again the experience she had regarding dental services her husband received. She added that she objects strongly to Aetna's practice of using information pertaining to Anchorage to determine the UCR for Fairbanks, since the cost of living is not the same for those two areas.

MR. LOHR noted that UCR is the fancy term for Usual, Customary, and Reasonable [Fees], that this term refers to an actuarial technique used for determining how insurance companies set their reimbursement levels, and that it is one of the areas of concern about which the division receives the most consumer complaints. He explained:

> Our regulations in that regard are largely procedural in nature, that is they deal with, "Has the update been done within every six months, as required," and that sort of thing. But the basic notion of UCR is somewhat like credit insurance in that it is perceived by costumers as an unfair system of reimbursement. But the purpose of it, as I understand it, is to contain the highest cost providers from getting full reimbursement for their services, otherwise there is no incentive whatsoever to control the fee set when it is being reimbursed by an insurance company. And what this does is use an averaging mechanism to establish the basis for reimbursement.

REPRESENTATIVE JAMES pointed out, however, that service providers merely turn to their patients for any amounts owed beyond the UCR calculation, indicating that this system of reimbursement does nothing to contain providers - there is no incentive for providers to control their fees. She added that in her situation, she would not have let the dentist go unpaid, and that it was a reasonable charge for the services rendered.

Number 0610

CHAIR ROKEBERG referred to the amendment regarding multiple employer welfare arrangements (MEWAs), and asked Mr. Lohr to comment.

MR. LOHR explained:

> A MEWA is an acronym for a multiple employer welfare arrangement. ... Basically, it's an entity designed to provide insurance coverage to more than one employer. And it is substantially similar to some of the arrangements that are being discussed in the Fairbanks area at this time. And the question that came up ... from staff was, "Well, if Fairbanks physicians are promoting the bill, why wouldn't it make sense once the bill takes effect, if it does, for it to be applicable to MEWAs - to these organizations? Why would they want to be excluded from the provisions of the bill?" And I believe you raised a question, and the division responded to you by letter, outlining the legal rationale for retaining coverage of MEWAs under this legislation.

CHAIR ROKEBERG added: "In a nutshell, it's because they're actually acting as insurance companies. And there's issues that relate to solvency, and other issues that demand [a] certain modicum of regulation."

MR. LOHR said that is correct. He pointed out that currently, MEWAs are treated exactly like insurance companies under Title 21; the Alaska insurance code requires "substantial capital and surplus requirements," the same as is required when forming an insurance company. "That, to us, appears to be excessive," he remarked, noting that there is legislation pending that would address the requirements regarding the formation of MEWAs and which would set a more realistic capital reserve level.

CHAIR ROKEBERG asked: "So you would agree that we need to maintain the regulatory control of your division over any of these particular amalgams of businesses or other groups?"

MR. LOHR said he would agree. He said he believes the amendment regarding MEWAs is an appropriate one.

CHAIR ROKEBERG said he strongly believes that a MEWA is a very positive thing for the state of Alaska; he asked Mr. Lohr to comment

MR. LOHR said he agreed completely, "provided it is a proper MEWA." He noted that there are some entities "outside" that have caused havoc because they have sought to use the term MEWA as a way to try to escape state insurance authority and claim exemptions.

Number 0351

BECKY DEDURA (ph), Director, FTC Resource Center on State Legislation (ph), American Medical Association (AMA), testified via teleconference in support of SB 37. She said:

> I basically just wanted to counter some of the objections to the bill that you've heard about from both the FTC and your Department of Law there in Alaska. I know one of the key arguments against this bill at this time of course is that there's insufficient active state oversight; I know that in support of that proposition, the FTC and the [DOL] both have cited ... the [Federal Trade Commission v. Ticor Title Insurance Co.] case, which is founded on the presumption here that there be inactive state oversight - inappropriate active state supervision - simply by agreement among private parties. And I do want to point out a distinction in the Ticor case, which is that it involved four title insurance companies, in four different states, that basically agreed to some sort of illegal price fixing.
>
> And I do want to distinguish that from the construct you have in front of you in your bill, in that we're talking about two different parties here, not four common (indisc.) insurance companies, that want to agree. In other words, ... two different groups of physicians that would want to come together and agree to terminology. Also, the key proposition that came

out of Ticor, as well, was one of the negative option, which allows for an approval - a deemed approval - of a particular proposition, in this case the rates, if they didn't hear back from the oversight entity.

In the construct that you have before you in [SB 37], it's very clear that there must be specific approval by the attorney general after a proposed contract is agreed to by both parties. And of course that proposed contract won't be finalized until final attorney general review and approval. So, I do want to distinguish that. Certainly, in our opinion, we ... strongly believe that there is sufficient active state oversight, ... [but] I know in the FTC's letter there's ... reference to ... insufficient attorney general authority to approve and disapprove the negotiations.

Number 0172

MS. DEDURA continued:

I do want to point out that before negotiations can be entered into, approval must be sought from the attorney general, and there's a final signoff at the very end, which will alleviate a number of the concerns that we've heard today, both from the nurses and other concerns as well; if there are any inappropriate terms that come out of those negotiations, that is something that the attorney general will be looking for, and that final contract will not be approved.

I also want to address the issue and concern of this legislation leading to price fixing. As Senator Kelly pointed out very early in this hearing today, that remains illegal under this construct; there's nothing in this bill that will permit price fixing. It remains (indisc.) illegal, and, quite frankly, we need to recognize that this is a construct that's voluntary in nature. There will be no price fixing absent any agreement by the insurance companies, they have to volunteer to come to the table, and whatever final contract they want to negotiate, again, there must be agreement, and, again, there must be signoff by the attorney general. ... I think it's quite clear that that's not a scenario that can come about under [SB

37], and there are numerous layers of (indisc.) processes in place here.

I also want to address the arguments we have heard that in terms of the quality-of-care issues, there is already a sufficient construct in place for physicians to address these issues with their insurance companies. That is something we have heard about over the years: ... [that] physicians currently can negotiate with insurers over quality-of-care issues. There has to be such a high level of integration - such a high threshold that's met - that this makes it virtually impossible for the physicians to do. And that of course is why you have this bill before you today; the level of integration required currently under federal law requires significant financial and legal integration.... It also requires physicians to integrate; in other words, you don't have autonomous practice by physicians any more. And I think that those are not risks that we wanted to take.

TAPE 02-47, SIDE A
Number 0001

MS. DEDURA continued:

I know that physicians are able to basically seek letters [inquiring whether or not] the level of integration that they are currently going through would meet with the [U.S.] Department of Justice standards; they can receive some sort of opinion letter back at some point in the process. But, again, that is not a blessing for the Department of Justice; the level of integration that they are seeking for purposes of negotiating will be sufficient when they reach the endpoint process. So after going though all of that - the significant expenditure of funds, of course - they may still not be able to negotiate. And again, that is something that they're trying to address within this bill.

I'd be happy to answer any questions any of you have, but I was very concerned with a number of the arguments I saw in ... FTC and Department of Law letters. These are arguments we saw both ... down in Texas and in New Jersey just prior to both of their bills passing. And I know [that] three years after

> Texas's law [passed], ... we have seen a couple of groups go through the approval process and we haven't seen further objections from the Federal Trade Commission. I don't know if that means that the process has now been found to be sufficient, but the actual processes in terms of pre- and post-approval of contracts do not differ significantly. So, I want to point that out, and let you know [that] in our opinion, this is a very sound bill, and certainly one that needs to be a construct of [a] state action doctrine. Thank you.

Number 0122

CHAIR ROKEBERG remarked that he'd raised the issue of "transparency." He asked Ms. Dedura whether she sees anything wrong with asking the attorney general to write a report if he's approved the negotiations.

MS. DEDURA said that although she did not see that as problematic, if something that both parties have agreed to is approved, she would hate to waste the attorney general's time by requiring a report to accompany that approval.

CHAIR ROKEBERG said that it seems to him that the public ought to know what the grounds are, both for approval and for disapproval.

MS. DEDURA commented that according to her understanding of SB 37, the report detailing reasons for disapproval would be given to the parties involved in case either party objected to that decision; if a contract is approved, however, it means that both parties are satisfied with the outcome and so a detailed report would not be necessary.

REPRESENTATIVE JAMES posed the situation in which consumers objected to a contract reached through this type of negotiation; she asked whether the consumer oughtn't to be able to learn what the grounds for approval were.

MS. DEDURA said she was not aware of any mechanism in the bill by which members of the public - consumers - could object to the outcomes of this negotiation process.

REPRESENTATIVE JAMES pointed out that the purported purpose of the SB 37 is to protect the public.

Number 0317

CHAIR ROKEBERG agreed. He asked, "Is there no transparency at all, even on disapproval?"

MS. DEDURA said:

> I'm sorry, I must be misunderstanding your question. ... Your concern is whether there should be something on record for the public to observe? Should there be objections by the public, even though the other two parties have agreed to it?

CHAIR ROKEBERG said: "I can't think of this being proprietary. Could it be?"

MS. DEDURA replied:

> I couldn't think of a good reason why that would be the case. I do know that there are standards; my understanding is that there is a standard by which the attorney general will review the proposed contract in terms of looking at ... whether the anticompetitive benefits outweigh the others. And if that's the case, I'm assuming that approval means that it did meet that standard. If there seems to be a need for more specifics in drawing those conclusions, I personally wouldn't find that objectionable if that meets with your environment there.

REPRESENTATIVE COGHILL noted that page 5 of SB 37 contains the criteria regarding approval; they are set out in subsections (f)(g) and (h). He posited that if there was a deficiency in any of those criteria, it would be noted in the disapproval report. "We could ask for report on [the approval], but the fact is, they've got go through this filter before they can get an approval, so I think that it's understood that those would be scrutinized," he added. He said that he is satisfied that the criteria will be used to filter through requests.

Number 0469

MIKE HAUGEN, J.D., M.B.A.; Executive Director, Alaska Physicians & Surgeons, Inc. (APS); said that his organization, which is an individual practice association (IPA) representing about 160 doctors - a multi-specialty group - strongly supports SB 37. Commenting on points raised by opponents of SB 37, he said:

The nurses had, in their view, a valid concern that physicians may be trying to cut them out of contracts if this bill were to go forward. Senator Kelly put an amendment into the bill on page 6, line 9, several committees ago, to address the concern. And basically what this amendment said was that if the physicians or the health plans tried to cut any other provider group out, that would be, per se, against the law, and it continues to be. And I know you've got another amendment in front of you today ... - a two or three line amendment - that basically reiterates the same point. The physicians have no desire cut other health provider groups out of a contract, and effectively, if an insurer and a doctor try to do that, that's a conspiracy - it's against state law and it would be against federal law. That's the first point. So we've tried to address the nurses concerns.

The second point is that I firmly believe that there's great utility in allowing physicians to negotiate these non-fee- or non-price-related items. The Alaska [Patients'] Bill of Rights was a great document and it was a great start; it contained a limited list of contractual prohibitions that insurers could no longer insert in contracts, like gag clauses, for example. But there are literally dozens, and potentially hundreds, of other examples of non-price-related terms that are very important for physicians to be able to negotiate, on behalf of not only themselves - I'm going to be upfront and say there is a component of this bill that addresses physicians' anger at the current state of affairs - but there are also many non-fee-related issues that will help patients.

For example, contracts are routinely written that require no mutual written consent to change the terms of the contract. So if a doctor did not read the fine print of a contract and signed it, what has he really got? Two months down the road, the terms of the contract could be changed unilaterally. That has happened with great regularity across the country. Another example is unilateral compensation rate changes without notice. This is an area where non-fee-related issues start to blend into fee discussions. And this is one of the reasons why physicians need this kind of protection. We're not

talking about a rate schedule when we're talking about unilateral changing of what they're going to get paid, but the doctors are often not even notified, ... and they have no ability to say no, other than to try to cancel the contract. There are credentialing issues, quality-of-care issues, utilization review issues, that directly affect patients.

Number 0673

MR. HAUGEN continued:

One of the things that was left out of the "[patients'] bill of rights" was something called the definition of medical necessity. Now, that is a term of art that basically means who gets to decide - is it a physician or some clerk in [an] insurance company - whether or not a service is covered.... Under this bill, we could actually negotiate a definition of that, and advocate for patients. Doctors simply will not negotiate these non-fee-related and non-price-related terms without some sort of protection like this, because the slope is too slippery between what may be construed as [a] non-fee-related issue blending into something that might affect price.

An example would be medical necessity. If the physicians were to advocate for a very strong patient oriented medical necessity definition, that may in fact cost more for an insurance company, but in the collective physicians' opinion, it may be a much better thing for patients. And if an insurance company didn't like the way the negotiations were going, all they would have to do is pick up the phone, dial an 800 number, and call the FTC and basically anonymously tell the FTC, "The doctors are trying to affect price - they've gone too far."

Now, that's the reason the doctors won't negotiate these terms; unless you carve out, under the state action doctrine - and that's a state's rights issue - the ability to protect the physicians in this area of discussions, the status quo will remain. And ultimately it's the physicians who advocate for patients, not the insurance companies. It's a one on one relationship in that office, and when you're sick, that's the one you go to. And right now, they are

basically gagged, not in the sense of treatment options but on a whole host of other issues, because the fear level is just too high.

Number 0790

CHAIR ROKEBERG asked Mr. Haugen if he thinks the ability of a group of physicians in a community to bargain for the definition of medical necessity is what SB 37 is all about.

MR. HAUGEN replied that that is not the only purpose of SB 37; the definition of medical necessity would merely be one of the issues that could be discussed. Whether an insurance company would actually sit down with a group of physicians and discuss that issue or any other is a debatable and open question, he added, since SB 37 merely establishes a voluntary process.

REPRESENTATIVE JAMES surmised, then, that:

> Because of the trap ... that ... doctors would be in by even wanting to discuss these issues, ... they're chilled from doing anything at all. And this, as long as we have it in statute, ... we've established what they can do, so that gives them protection.

MR. HAUGEN said: Exactly; it gives physicians a lot more protection than they have now, which is effectively none.

REPRESENTATIVE JAMES also surmised, then, that although people have testified that doctors "can do these things now," because it's not written in statute, doctors are under the impression that they cannot do "these things." Further, that doctors think that "if they did do that, they could be dumped over the side then, into the Federal Trade Commission challenges."

MR. HAUGEN said that is correct.

SENATOR KELLY said: "It happened."

CHAIR ROKEBERG clarified that the FTC has already investigated a group of Fairbanks physicians. After noting that no one else wished to testify on SB 37, he closed public testimony.

Number 0944

CHAIR ROKEBERG moved to adopt Amendment 1, which read [original punctuation provided]:

Page 7, Line 15, after "include,"

Delete: "a multiple employer welfare arrangement or"

CHAIR ROKEBERG, noting that there were no objections, announced that Amendment 1 was adopted.

Number 0950

CHAIR ROKEBERG moved to adopt Amendment 2, which read:

Page 2, line 13, following "subsection":
Insert ", but may not negotiate the exclusion of providers who are not physicians from direct reimbursement by a health benefit plan, and may not negotiate the setting in which providers who are not physicians deliver services"

CHAIR ROKEBERG, noting that there were no objections, announced that Amendment 2 was adopted.

CHAIR ROKEBERG announced that SB 37 [as amended] would be held over so that he could look at the "transparency issue."

HB 472 - PAWNBROKERS/SECONDHAND DEALERS

Number 0991

CHAIR ROKEBERG announced that the last order of business would be HOUSE BILL NO. 472, "An Act relating to persons who buy and sell secondhand articles and to certain persons who lend money on secondhand articles." [Before the committee was CSHB 472(L&C).]

Number 1021

LAURA ACHEE, Staff to Representative Joe Green, Alaska State Legislature, sponsor, on behalf of Representative Green, said that under current statute, all secondhand dealers - which is defined as anyone in the business of buying and selling secondhand articles or lending money on secondhand articles - are required to keep a record of every item that they purchase or take in pawn, and as part of that record, they are required to obtain the name, age, address, and signature of the person selling the item. She explained that HB 472 requires that

businesses regulated under this proposed statute provide weekly reports of those records to their local police departments. She said the reason Representative Green sponsored HB 472 is that items stolen in a particular community don't always stay there - sometimes items go to other communities; therefore, it is necessary to institute a statewide law.

Number 1100

DAVID HUDSON, Captain, Administrative Services Unit, Central Office, Division of Alaska State Troopers (AST), Department of Public Safety (DPS), testified via teleconference in support of HB 472. He said that HB 472 will benefit law enforcement: "It will allow us to increase our ability to track stolen property and ultimately identify a person last in possession of those items." He briefly mentioned that an amendment discussed in a prior committee pertained to defining secondhand brokers, adding that he has not yet seen that language.

CHAIR ROKEBERG relayed that a few years ago he had an item stolen from his home. He said that he had difficulties: at that time there was only a "half a person" at the Anchorage Police Department (APD). He asked Captain Hudson what level of manpower he intends to devote to "a detail" to handle this type of crime in the future, and what level is available now.

CAPTAIN HUDSON said that currently there is no detail that tracks [stolen property]; there is not a specific person assigned to this task, and the AST does not anticipate assigning anyone to it in the future. What the AST is expecting out of passage of this legislation, he added, is that the information gathered will at least be forwarded to law enforcement so that they can use it when the need arises.

CHAIR ROKEBERG asked whether the AST has sufficient hardware and software to "be able to track this if it is not on a diskette or DVD."

CAPTAIN HUDSON said that according to his understanding, it has not yet been determined what specific format will be used in forwarding the information to local law enforcement; therefore, he is unable to say at this time whether the AST has the sufficient hardware/software.

CHAIR ROKEBERG explained his biggest concern:

We're throwing the net out and including a lot of secondhand stores that really haven't had to have [reporting] requirements before, ... whereas pawnshops, usually under municipal ordinance, have them. But secondhand stores like antique shops, secondhand books, although they're excluded, I believe, under the bill -- there's a litany of other types of secondhand shops. ... Are secondhand or used automobiles in any way tracked, currently?

CAPTAIN HUDSON said that secondhand vehicles will be exempt from the provisions of HB 472, and are not currently tracked specifically for the purpose of determining whether they are stolen goods. He noted, however, that all vehicles, including secondhand vehicles, are tracked through the Division of Motor Vehicles' registration process, which allows law enforcement to determine whether a vehicle is stolen.

Number 1318

DAVE ADAMS testified via teleconference in support of HB 472. He posited that an experience he had ties into the genesis of the bill. He elaborated:

My office was burglarized in August of 2000. And I believe that if the bill was in effect at that time, that we may have solved a crime - the theft of some property from my office which is irreplaceable. The appraised value of the theft was about $14,000. I've been talking off and on with ... Anchorage Detective Balega ever since that theft, and one of the problems that he noted was he'd felt like the merchandise had left the city of Anchorage and the pawn records that would work in Anchorage for them to trace the property were not in effect statewide; [the property] probably went to the peninsula or to Palmer/Wasilla area. If the reporting was in effect, we could have traced the material down.

... This is the first time anybody's heard this out loud, what I'm going to say now: Two very personal and valuable items were stolen that are irreplaceable, they cannot be replaced, no amount of money or an act of God could replace these items. However, the criminals saw fit to take some other item with them - and I will not describe it anywhere outside of talking to the police - [that] is highly traceable. And we

> had hoped over the intervening months that that item would have been taken to a pawnshop. We could've, by finding that item, found our way back to the irreplaceable items that I'll probably never see again.

MR. ADAMS concluded:

> So the scope of a bill like this is much greater than meets the eye. So, I would encourage you to support it. Yes, there may be some cost. If it costs the business people something, well, how many thefts, how [much cost] must the public, like myself - $14,000 - have to bear; if you tracked all of the lost value in un-recovered property, I believe this bill would pay for itself to the public in recovered property. Secondly, it may provide a deterrent effect; these criminals are smart enough to leave Anchorage with the things that they steal here. Well, that's because of the ... [ordinance]. If the ... [concept of the ordinance] goes statewide, there's a good possibility that ... [it'll] have a deterrent effect on the professional criminal that we believe struck my office and property.

Number 1487

CHAIR ROKEBERG thanked Mr. Adams for his testimony, and said to him:

> I'd also like to share with you the fact that a few years back, my wife's engagement ring and her mother's wedding ring and engagement rings were stolen from my household, we think by domestic help. And even though we knew who stole it, and I hired a private detective to run them down, ... I had a great deal of frustration with the Anchorage Police Department because they had a half person assigned.... ... We verified later that my suspicions were correct, but the rings and the jewelry - ... worth in excess of $20,000 - was not recoverable because they dealt them right away for drugs. ... So, those, too, were irreplaceable because of sentimental value....

CHAIR ROKEBERG said that he did not share Mr. Adams's faith that enacting HB 472, only to have the records just sit in a corner of someone's office, will be that helpful, adding that if the

proposed reporting requirements could be incorporated into an automated system, he might feel a lot more comfortable with the bill.

MR. ADAMS remarked that if Chair Rokeberg were to talk to Detective Balega, he would share that Mr. Adams has a high degree of perseverance regarding this [issue]. "I would go myself and look at those records, as I'm sure at the time you would have also gone to look at the records, even if the department's weren't staffed to do it; the problem is, there's no place for this information to come into one point," he said. Even today, he added, he would gladly go sit down and look at all the records if they'd be brought together.

CHAIR ROKEBERG said that is a good point, particularly if "they" could be automated and entered into a database that could be sorted.

Number 1574

JERRY CLEWORTH testified via teleconference. He said

> Word of this bill is just starting to circulate in Fairbanks, and for a lot of us that ... come under this new definition of secondhand dealer, there's a lot of concern. I'll just give you my case. I own a coin shop here in Fairbanks; a lot of the business that I do is bullion-related. This bill in front of you calls for a mandatory 30-day holding period. I think you can imagine what would happen ..., on a day that I buy tens of thousands' worth of bullion. If I can't liquidate it or trade it ... [on] the same day, then there is no point in me buying it, because if I have to hold it for 30 days, one, I'll go broke [and], two, I'm gambling on the price of gold or any other precious metal that's out there. It just can't be done. Buying (indisc.) many of you, I'm scared of the bill because that's about half of my business; I can't operate under such strict restrictions....
>
> Too, if I buy an estate, and a lot of estates are very large, it states in here that if it has a $75 value or more, that I have to itemize each item. I literally can't do that; I don't have the time to do that - run a shop and sell, and then turn that in weekly [to the] local police departments. That presents very severe problems for small businesses. The sponsor statement

that you folks have received from Representative Green talks only about pawnbrokers, which I found interesting; it doesn't refer to secondhand dealers at all.

MR. CLEWORTH concluded:

I've been in business 22 years, and [in] all those years I have only had two instances where I have known of stolen property; both those situations [were] between a child and a parent, [and] ... we interceded for them and recovered [the item]. That is it, [in] 22 years. And we're the only coin shop here in town. This is not a chronic problem that I [can] see. If the idea here is to get pawnbrokers to submit information that could be put on some kind of a computer format that [the] police department can draw up so they can see what was stolen in various parts of Alaska, then I think that's a noble [effort]. But to drag a lot of us into this thing, [there's] some repercussions that I hope that the sponsor of this did not intend.

CHAIR ROKEBERG said he shared Mr. Cleworth's concerns regarding the 30-day holding period. To any businessperson, he said, it's like holding and putting your inventory in cold storage for 30 days." It just doesn't work, he added; business owners can't afford to do that. He mentioned that the sponsor [is willing] to create some exemptions, but added that he has concerns should "somebody" be missed.

Number 1729

MARGE THOMPSON, Co-owner, Alaskan Photographic Repair Service, testified via teleconference. She said that HB 427 will have a severe impact on her life. Although the aim of HB 427 is to stem the illegal purchase of stolen goods, the broad scope the bill will affect a variety of secondhand shops reselling items such as firearms, watches, cameras, sporting goods, antiques, paintings, boats, and computer equipment. The list will be virtually endless, she warned. If the police and the AST are having trouble shutting down those businesses that buy stolen goods, why then, she asked, are secondhand dealers of all commodities with a $75 retail value also being targeted?

MS. THOMPSON said that she did not believe that the paperwork required of the purchaser of secondhand goods is at all

reasonable. To have to keep these records on hand for a year and be subject to inspection by law enforcement at any time, she opined, is akin to being treated like a criminal. She posited that the vast majority of secondhand dealers are honest and above reproach. The requirement that she keep goods on hand for a period of 30 days before selling them, she added, will eat up her income substantially; her business is based on turning inventory around quickly. She pointed out that there are many folks who buy merchandise on the Internet; those folks would have no way to gather the information required by HB 472, and no way of verifying past ownership or identity. Internet secondhand businesses would have an unfair advantage over her business, she noted.

MS. THOMPSON, in closing, said that she didn't think that the state can afford the process of attempting to enforce this legislation, reiterating that her business cannot afford it either. "Please don't tie our hands behind our back," she asked; stiffer penalties or requirements should apply to those convicted of trafficking in stolen goods, not the honest business owners. "Don't take the honest folks [in] society and make policemen of us all," she added.

Number 1832

BEN CARPENTER, Owner, Ben's Super Store, testified via teleconference. He said:

> I own a large secondhand store in Fairbanks known as Ben's Super Store. I recently learned of [HB 472] and I am extremely disturbed about one section of the bill. I would like to address the 30-day holding period for purchased secondhand merchandise. The 30 days that I would be required to hold this merchandise would cause undue financial hardships and excessive [recordkeeping] and storage problems for my store and all other [secondhand] businesses.
>
> I have contacted several fellow business owners here in Fairbanks to discuss our views and concerns. I have spoken to a coin shop operator ...; a used sporting-good storeowner; several jewelry stores; a gold dealer; ... a stamp collectible shop; an antique dealer; a clock and watch repair shop; and numerous recreational [vehicle] dealers including sellers of snow machines, "four wheelers," boat dealers, and jet ski dealers. After talking with my fellow business

owners, I would like to explain the financial hardships we would be facing with the 30-day holding period.

When dealers acquire [secondhand] items such as snow machines, off-road vehicles, and all boats and watercraft ... midseason, for example, July or early August, and [the items] are held for 30 days - to about the first part of September - the season is over. The items have to be carried over to the next season, approximately mid-May. The season for these vehicles is about four and a half months here in Fairbanks. Taking 30 days out of [that] timeframe to sell an item is a crippling financial disadvantage. The depreciation factor on these items is high, resulting in several hundreds of dollars in lost depreciation.

Number 1925

MR. CARPENTER continued:

The 30-day holding period has the same disadvantage to coin dealers, as Mr. [Cleworth] has explained; when they are locked into a 30-day period, they cannot sell and the fluctuation of gold prices [puts] them at high risk and can result in a monetary loss. The storage and extra bookkeeping will be a major problem for most stores. [In] my store, the storage space will be a huge problem. We do not have the space to store 30-days worth of merchandise. We deal in many bulky items such as furniture, exercise equipment, and appliances. We may [be] forced to stop handling these items, which are a good portion of our business, if we [have] to hold them for more than 30 days, ... due to the lack of storage. We feel that the 30-day holding period is [unnecessary].

The [secondhand] storeowners are members of this community. As property owners, we are very concerned about stolen property, and we have always cooperated [with] law enforcement's attempts to recover stolen property [and] prosecute (indisc.) Fairbanks. We are very vigilant in our efforts to not deal in stolen property. We business owners haven't had enough time and opportunity to express our concerns pertaining to [HB 472]. We strongly urge you to seek more input

from all concerned citizens. Please do not rush this bill until you have fully heard our side of the story and have all the facts.

As for our present business practices, my store has been complying with present Alaska law regulating [secondhand] stores, and have no problem with it. We have been getting full names, addresses, phone numbers, Alaska driver's license or state ID [identification] numbers, plus [a] full description of the merchandise purchased with serial numbers, as well as signature of the seller. We have purchase invoices filed for the past ten years; they have always been available for inspection. Including a 30-day holding period is overkill and unjustified.

Number 2018

MR. CARPENTER concluded:

Over the past ten years [we've] owned this [secondhand store], Ben's Super Store, I can recall only one incident when stolen property was sold before it was deemed stolen. It was a bicycle, and it was recovered and the purchaser received [a] refund. The incident rate of stolen property received by [secondhand] stores is not as high as perceived by some people. The national rate of stolen property that is sold at [secondhand] stores is about one-half of 1 percent. The Fairbanks percentage rate is lower than the national average, at approximately [one-quarter] of 1 percent, based on my [store's] experience. We strongly urge you to take your time to get the facts and statistics before you [act] on [HB 472]. We urge you to seek more input from secondhand [storeowners]; we will be affected by the 30-day holding period. We are very [concerned] about the future of our [companies] if this holding period becomes law.

Number 2072

DAN HOFFMAN, Lieutenant, Fairbanks Police Department (FPD), City of Fairbanks, testified via teleconference in support of the intent of HB 472. He said that it will better allow the FPD to track stolen property. He noted, however, that he can certainly appreciate the concerns of the secondhand storeowners that "seem to be getting drug into this." He opined that the state needs

to take a close look at who to include into the bill. He offered that from his original discussions with the APD and other law enforcement, HB 472 was being looked at primarily as a way to assist in regulating pawnbrokers. Mr. Hoffman remarked that Chair Rokeberg makes a valid point in that it would be ridiculous if the information gathered merely sat in corner collecting dust. He suggested that HB 472 ought to be considered the forerunner of a way for law enforcement across the state to be able to access, perhaps through a single web page, all the information, which ought to be collected in a uniform manner, provided by every pawnshop. He noted that such a system will never be realized until statewide legislation regulating pawnshops is implemented.

CHAIR ROKEBERG asked Mr. Hoffman whether he would be disturbed if secondhand dealers were "deleted" from HB 472.

MR. HOFFMAN said that personally, he would not be too disturbed, noting that if the bill initially focuses on pawnshops and it is later found that some types of secondhand venues need to be regulated in the same fashion, they could be added as appropriate. He said that he hopes that the "secondhand issue" doesn't bog the bill down entirely.

CHAIR ROKEBERG said that the committee fully supports a "criminal justice MIS (management information system) system that would be statewide." He asked whether the City of Fairbanks currently has a "pawnbroker reporting requirement."

MR. HOFFMAN said yes, adding that one of the major problems is that it currently relies on 19th century technology, with all of the pawnbrokers filling out paper tickets. He explained:

> We don't have the manpower resources to go around, physically pick up shoeboxes full of paper tickets, and have people go through and hand-sort those things. But if we were to try and change our city ordinance and force our local pawnbrokers to go to a computerized system, it would be too easy for those folks to argue that, "Well, the people in North Pole don't have to do that," or, "The people down in the valley don't have to do that." As I said, that's why we need a statewide standard, so that if you want to make a local change, it will come up to that standard.

Number 2202

NORM BLAKELEY testified via teleconference, noting that he owns a pawnshop/secondhand store in Soldotna and has owned it for approximately 20 years. He said:

> About two or three years ago, a police officer from the [Alaska State] Troopers met with the police chief in Soldotna with a bunch of the local brokers, and we all sat down and discussed the issues that you're talking about at the present time: ... about doing weekly [reports] and having them turned in. Most of the pawn dealers, excluding me, didn't want to do it and refused to do it. And I told them that I would ... try to comply with what they wanted - see how it worked and what went on with it. So, my shop - I only had myself and one other employee - did do this. We did it for about three or four months, and finally Officer Donnelly (ph) said that it was too cumbersome, [and] that they didn't have time to pick up the reports. I think they looked at it once in the four-month period; we did a lot of work - nothing ever happened with it. And so he suggested that we just do away with it.
>
> ... I don't believe he's in this area now; he was with the [Alaska State] Troopers. And so the idea of doing this [was] tried at our place. The [Alaska State] Troopers didn't have the manpower to do it, and couldn't do it. Our records are open, continuously, to anyone that has the authority, meaning the [Alaska State] Troopers or law enforcement officers, that want to look at our records. ... Actually, in our area, I think [we] have a great reputation. We have helped Kmart [Corporation] ... [catch] people that worked for them that were taking merchandise, that they never knew, the [Alaska State] Troopers never knew, or anyone else never knew about. One of the incidences ... [involved merchandise] in excess of [$80,000 or $90,000] that we notified them about, and they told us it couldn't be happening, and they looked into it and it was happening, and they did bring that to a conclusion, and some people went to jail for that.

Number 2289

MR. BLAKELEY continued:

Part of the problem that I see you having is ... [that] people don't only go from our location to Anchorage or other places; they are fencing the stuff at yard sales now, all types of places. I think they think secondhand dealers and pawnshops are watched a lot closer than they used to be. I think the dealers have become more reputable; ... we would not intentionally, in anyway, take anything [stolen]. And, in fact, we try to help the community: ... anything that we think is suspicious is ... [turned] in. A lot of the articles that you're talking about are unidentifiable - ... rings, jewelry, things like that - and the fact [is] that there's a lot of them that are manufactured [that] look a lot alike, [though] I understand a lot of them aren't.

The gentleman that talked ... from Anchorage that said that he had his business broke into, I think if Anchorage maybe could have notified us, as dealers separately, that we would have been more than happy to try to help him, and to try to help recover his property. Myself I have had merchandise stolen out of my shop; I had [a] snow machine stolen from the shop - the chain cut and driven off when we were there. So I can empathize with how he's feeling. As far as him being able to go [through] the records if they were complied in a place where he could do that, I think there's a lot of people that do business with me that would not want the everyday public going through their records and seeing their names. I have dealt with attorneys, doctors, all kinds of people in my business, because, I feel, I have a great reputation: they trust and understand me. So I think that's an issue that if you would even [think] about, that wouldn't be acceptable.

A lot of the problems we have with stolen merchandise are related to relatives: children - thieves - stealing things from their folks and bringing them in. And we try to work with the parents, and we don't take any merchandise ... from anybody that isn't 18 years of age. They have to have a positive identification - pictured ID - such as a driver's license or state ID; we don't accept anything other than that. [In] our area we have a hard time even getting the City of Soldotna, [City of] Kenai, and the [Alaska State] Troopers to help us try to figure out what's going on

with stolen merchandise. So, to try to put this on [a] statewide basis and have the state do it, I think is really more cumbersome than what you would think it would [be]. If the cities want to pass their own ordinances to do this, I think that's a better way to look at it than to probably put it in a state perspective.

TAPE 02-47, SIDE B
Number 2363

CYNTHIA BRIDGES, Detective, Anchorage Police Department (APD), Municipality of Anchorage (MOA), testified via teleconference, noting that Anchorage has been monitoring its pawnshops for several years. She said:

It works out really well. But those records are not public records. ... We don't give out that doctors pawn their property, or anything like that. That's not public record. ... The purpose of having that record is, when we are looking for stolen property, we can identify who has pawned stolen property, or, if someone has an article stolen and they may have a suspect, we can run that name and determine ... whether or not that person pawned something. But ... that's not information that goes out to the general public.

There are a couple of things that I specifically wanted to address. We had a burglary ... last summer, and the guys involved in this burglary pawned some of the property. And we caught them doing a burglary, and when we ran ... their names through our pawn system, [we] were able to tie them to several burglaries and were able to subsequently return a lot of stolen property that we would not have necessarily been able to return had we not known the name of a potential burglar.

Also, as far ... secondhand shops ... [having] a problem with this bill, I had a case where a lady stole some property from an elderly couple that she was [caretaker] for. She stole their property, she pawned some of it at a pawnshop; some of the property that she pawned at a pawnshop she retrieved from the pawnshop and then took to a coin dealer and sold it to the coin dealer. I found out from the pawnshop that

this is what she had done; by the time I contacted [this company], ... within a week or two, ... they'd already disposed of the property.

Number 2265

MS. BRIDGES said:

So, ... if they're going to take in secondhand property ... - I'm not saying that they know that it's stolen, and they have no expectation that it's stolen - ... there is potential that it could be stolen. And with jewelry it's very difficult to distinguish items; [with] jewelry specifically, what the problem is, is [that] it is not always going to the pawnshop. And if our criminals find out that the jewelry stores will take this jewelry, and there's virtually no way that they can get caught, they're going to start doing it. And there is nothing to say that they haven't already.

It will create a lot more work for me and the [people] that work with me who enter this information if we do start collecting this information from secondhand stores like jewelry shops and computer stores, but in the situation where they're taking this kind of stuff, there's got to be some kind of monitoring, because that's where the stuff's going to be going.

Number 2228

MS. BRIDGES addressed a couple of concerns about the bill:

One of the biggest concerns is ... there's a line in there that says if items are sold in [lots of] ten or more, ... like DVD movies or CDs [compact discs] or video games and things like this, you only have to report them if they're sold in a bunch of that many or more. Well, if our criminals find out that they're not being reported unless there's ten or more, they're going to start going from pawnshop to pawnshop. ... I had a case where a gentleman, in the span of six months, pawned 2,700 DVDs - the movies. Now, if you do the math, and you buy each one for $15 from a store, that's ... [$40,500] worth of DVDs in six months.

Now, he didn't get that much for them from the pawnshop; ... he didn't always pawn ten or more at a time, he would pawn three or four here, go to another pawnshop [and pawn] five or six. And if we have no way of tracking something like that, then we have a big problem with that also. So, I kind of have a problem with that. But if [removing] that particular line hinders the bill, then I would say leave it in; if it doesn't hinder the bill, then I would say take it out.

CHAIR ROKEBERG asked whether it is the MOA's ordinance that dictates what information pawnbrokers have to report.

MS. BRIDGES said that it is the MOA's ordinance that dictates that pawnbrokers must report everything. For anything that pawnbrokers take in, whether they buy it outright or loan on it, they have to report; there is no stipulation pertaining to serial numbers, value, or quantity. If they fail to report, they are in violation, she added.

CHAIR ROKEBERG asked how pawnbrokers report.

Number 2141

MS. BRIDGES explained:

The majority of our pawnshops e-mail us; we have [an] e-mail address, and they e-mail it to us. And then we download it to our system, and it's rewritten in a form that our computers can read. And I have two clerks that work for me, and they download the information and modify it slightly to go into our system, and then it's downloaded to the state for [an] APSIN [Alaska Public Safety Information Network] check for stolen property - serialized property. I do have two pawnshops that still report with tickets; we have hand tickets that we provide to the pawnshops, and they fill them out, and I pick them up once a week, and my clerks enter them into our system. And then some of the pawnshops ... report via disk; they download the information to a disk, I pick it up on a weekly basis, and it's downloaded to our system.

So ... there are several different ways to report. And a lot of it has to do with what the pawnshops' ability to report is. One of the reasons why we would

like to see this go on and get the whole state to report is because what we're seeing is a lot of our stolen stuff is going either out to the valley or down to the Kenai. And we don't have the ability to access that information. Our jurisdiction is Anchorage and ... we can't just hop in our car and run down to Kenai to see if any of our stolen stuff shows up in the pawnshop down there.

So there's no way for us to track the outside agencies' jurisdictions to see if our stuff is showing up down there. Now, if they were online, similar to us, ... it's possible in the future that we would be able to communicate with each other via computer, and they would be able to download our information (indisc.) and us theirs. And that's kind of what we're hoping for but in order to do that, we have to have a bill where the state, or different municipalities other than Anchorage, actually have their pawnshops reporting to them.

CHAIR ROKEBERG announced that HB 472 would be held over.

ADJOURNMENT

Number 2045

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:50 p.m.