

ALASKA STATE LEGISLATURE  
**SENATE HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE**

April 9, 2001  
1:35 p.m.

**MEMBERS PRESENT**

Senator Lyda Green, Chair  
Senator Gary Wilken  
Senator Jerry Ward  
Senator Bettye Davis

**MEMBERS ABSENT**

Senator Loren Leman, Vice Chair

**COMMITTEE CALENDAR**

SENATE BILL NO. 86

"An Act relating to employment of teachers who have subject-matter expertise; and providing for an effective date."

MOVED CSSB 86(HES) OUT OF COMMITTEE

SENATE BILL NO. 155

"An Act relating to the Alaska Commission on Postsecondary Education and the Alaska Student Loan Corporation; relating to student financial aid programs and the financing of those programs; establishing the Alaska Advantage Loan Program and the Alaska Supplemental Education Loan Program; increasing the bonding authorization of the Alaska Student Loan Corporation; providing for liens resulting from a default under AS 14.43 or AS 14.44; relating to the duties of the recorder regarding those liens; relating to defaults under the Western Regional Higher Education Compact; relating to the prohibition on discrimination regarding programs under AS 14.43; relating to fees for the review of certain postsecondary institutions; making conforming amendments; and providing for an effective date."

MOVED SB 155 OUT OF COMMITTEE

SENATE BILL NO. 135

"An Act relating to mental health information and records; and providing for an effective date."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 116

"An Act relating to the Alaska temporary assistance program; and providing for an effective date."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

SB 86 - See HESS minutes dated 3/16/01 and 3/19/01.

SB 116 - No previous Senate committee action.

SB 155 - See HESS minutes dated 4/2/01.

**WITNESS REGISTER**

Mr. Bob Labbe, Director  
Division of Medical Assistance  
Department of Health & Social Services  
PO Box 110660  
Juneau AK 99811-0660

**POSITION STATEMENT:** Participated in Medicaid presentation.

Mr. John Sherwood  
Division of Medical Assistance  
Department of Health & Social Services  
PO Box 110660  
Juneau AK 99811-0660

**POSITION STATEMENT:** Participated in Medicaid presentation.

Ms. Nancy Weller  
Division of Medical Assistance  
Department of Health & Social Services  
PO Box 110660  
Juneau AK 99811-0660

**POSITION STATEMENT:** Participated in Medicaid presentation.

Senator Pete Kelly  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Sponsor of SB 86.

Dr. Bruce Johnson  
Deputy Commissioner  
Department of Education &  
Early Development  
801 W 10<sup>th</sup> St.  
Juneau, AK 99801-1894

**POSITION STATEMENT:** Supports the concept of SB 86 but prefers that new teachers be required to partake in a teacher certification program when employed.

Mr. Jim Nordlund, Director  
Division of Public Assistance  
Department of Health and Social Services

PO Box 110640  
Juneau AK 99811-0640

**POSITION STATEMENT:** Testified in support of SB 116.

Kristen Bomengen  
Assistant Attorney General  
Department of Law  
PO Box 110300  
Juneau AK 99811-0300

**POSITION STATEMENT:** Answered questions about SB 116.

**ACTION NARRATIVE**

**TAPE 01-30, SIDE A**

Number 001

**CHAIRWOMAN LYDA GREEN** called the Senate Health, Education & Social Services Committee meeting to order at 1:35 p.m. Present were Senators Davis and Green. Senator Wilken arrived shortly afterward. Chairwoman Green informed the committee that representatives from the Department of Health and Social Services (DHSS) would give a presentation about the Medicaid program; a very complex program that is a driver in the cost of doing business for DHSS.

MR. BOB LABBE, Director of the Division of Medical Assistance, introduced John Sherwood and Nancy Weller from the division. He referred to a handout entitled, "Medicaid Directions," which his presentation would be based on. He explained the Medicaid program is part of the Social Security Act (Title 19), created in 1965. The Medicare program was established at the same time. The state administers Medicaid and shares in the funding while Medicare is administered by the federal government. States were given some flexibility with the Medicaid program and can choose options; therefore each state's program is a little bit different. The Medicaid regulations are contained in 42 CFR.

CHAIRWOMAN GREEN asked if 42 CFR contains the regulations for both Medicaid and Medicare.

MR. LABBE said it contains the regulations for both.

MR. LABBE continued.

The state plan is Alaska's contract. It is a preprinted document of several volumes. The federal government requires that a single state agency be designated to run the program; in Alaska that is DHSS. The Division of Medical Assistance coordinates and manages the program but a number of other agencies participate in it.

Clients apply through the Division of Public Assistance. The program was traditionally linked to welfare payments. Historically, the old age, blind and disabled cash payments were also administered by the state until 1974.

CHAIRWOMAN GREEN asked if eligibility could be moved.

MR. LABBE said the eligibility determination has to be administered either by the agency that does the cash assistance or the Medicaid agency, but the state has a choice.

MR. LABBE continued. The federal government requires there be an advisory committee. The Alaska committee meets quarterly and is comprised equally of a broad array of providers, consumers, and public members.

SENATOR WILKEN asked the name of the pediatric dentist from Fairbanks.

MR. LABBE said that is Greg Johnson and that he was the former Chair.

SENATOR WILKEN asked who the disability advocate is.

MR. LABBE said that is Sam Bush.

MR. LABBE continued. The federal government has a number of requirements that must be followed: the program must be operated statewide; it must cover certain groups of people; it must cover certain services; benefits must be comparable among groups; the program must provide enough of a service to meet the purpose of the service; and it must offer a freedom of choice of providers. Medicaid is considered the payer of last resort with a few exceptions. The program must be operated with certain due process considerations for the client. The division may request waivers of some of the rules; the typical one is freedom of choice of providers. That type of a waiver often occurs with managed care arrangements. The state joined the program in 1972 after enabling legislation was enacted and services were expanded in 1976. A rate advisory commission was established in 1983 and, in 1988, the program began covering pregnant women and children under age 5 with household income not exceeding 100 percent of the federal poverty level and added case management for nutrition services. Between 1990 and 1998, the following services were added:

- home and community based waiver services;
- rehabilitation services for mental illness, alcoholism and drug abuse;

- children in subsidized adoptions;
- TEFRA;
- coverage for pregnant women up to 200 percent of the poverty level;
- continuous eligibility for children beyond five years of age.

Number 720

MR. LABBE explained the Tax Equity and Fiscal Responsibility Act (TEFRA) option is for children who would be institutionalized but instead stay at home with the parents. Usually income is a factor in eligibility, but under the TEFRA program, the parents' income is not considered. This option came about during President Reagan's era and was based on an individual case situation where the parents wanted to bring their child home who was on a ventilator. If they did so, they would lose coverage and could not provide the needed support on their own. From that case, Congress enacted the TEFRA option in 1984, which the state picked up in 1993.

MR. LABBE informed the committee that there are many categories of eligibility under the federal rules; Alaska covers 32, many of which are mandatory.

CHAIRWOMAN GREEN asked if there are 18 other optional programs offered through Medicaid that the state could choose to participate in.

MR. LABBE said that is a rough estimate and that number changes every year.

SENATOR WILKEN asked if Mr. Labbe has a grid of the 50 eligible categories and which categories each state covers.

MR. LABBE said he does not have one but could put one together. He noted he has seen a grid that the federal government has produced on optional services by state but he is not aware of a comprehensive chart on eligibility. He offered to provide Senator Wilken with the available material.

MR. LABBE continued with his presentation. The mandated groups of eligible persons include:

- families and children;
- children in foster care;
- pregnant women and children under age 6 up to 133 percent of the federal poverty level;
- infants born to women on Medicaid;

- children up to age 18 with family incomes up to 100 percent of the federal poverty level; and
- certain aliens for emergency services only.

SENATOR WILKEN asked if the federal poverty level rate of \$1,475 per month for a family of three is based on net or gross income.

MR. LABBE said it is based on gross income.

MR. JOHN SHERWOOD, Division of Medical Assistance, explained that it is applied as a gross income test.

SENATOR WILKEN asked whether that number is adjusted for different areas of the state.

MR. LABBE said it is statewide but there is a difference between Alaska and the Lower 48.

CHAIRWOMAN GREEN asked if 250 percent of the poverty level in Alaska equals 275 percent elsewhere.

MR. LABBE said he is not sure. He continued. Two other mandatory groups, the aged and disabled, are tied to those who receive supplemental security income (SSI). Some people continue to be eligible for Medicaid who would have lost their coverage because of an increase in their social security benefits. That group was "grandfathered" in by Congress.

CHAIRWOMAN GREEN asked if that eligibility applies for life.

MR. LABBE said it does unless something else happens, such as additional income from another source.

MR. LABBE said one of the bigger categories of qualified individuals is qualified Medicare beneficiaries. Some of those clients are eligible for both Medicaid and Medicare, but of those clients who only have Medicare, the Medicaid program pays their premiums, co-insurance, and deductibles, depending on certain factors. DHSS gets a federal match toward the premiums.

Regarding the optional services, Alaska has elected to cover pregnant women and children at a higher income level of up to 200 percent of the poverty level. Alaska also covers services for children who are not receiving cash assistance. Alaska does not cover the people who would fall in the medically needy category. That category is for people whose income is above the level for the cash programs but who have medical expenses. Those people pay up to a certain level, above which Medicaid pays. All of the other

groups are considered to be categorically needy. The medically needy category would cover people who have catastrophic costs due to illness and prescription costs for seniors and disabled clients.

CHAIRWOMAN GREEN asked if the state ever opted to cover that category.

MR. LABBE said not to his knowledge but he thinks it was analyzed in the past.

CHAIRWOMAN GREEN asked Mr. Labbe to elaborate on the higher income level for that category.

MR. LABBE explained the income of people in that category could not be more than 133 percent of the cash standard for a welfare recipient. If their income, minus medical expenses, brings them below the 133 percent level, they would be eligible. Recently, the Health Care Financing Administration reinterpreted its policy and decided to allow a higher income for the medically needy. The income level was liberalized so that those people would not have to "spend down" so far. One of the problems with the program is that people have to almost impoverish themselves to be eligible.

CHAIRWOMAN GREEN asked if that is true of all categories.

MR. LABBE said he was referring to the medically needy as that is the group where a big "spend down" occurs. He pointed out that the medically needy category was created by Congress in 1965.

MR. LABBE said Alaska has an option to use 300 percent of the SSI payment level, which is about \$1500 per month, as the eligibility level for individuals in need of an institutional level of care. That category of people does not receive SSI cash payments but has a higher income. A few years ago the Legislature opted to participate in coverage for persons who are disabled but work.

CHAIRWOMAN GREEN asked if that option was done through a waiver.

MR. LABBE said no, it was a new option established by Congress that states could elect to participate in.

CHAIRWOMAN GREEN said DHSS pays a premium for some of its clients covered under Medicare and asked if there is a similar opportunity to pay a premium under CHIA - comprehensive health insurance.

MR. LABBE said he was not sure. Under Medicaid, DHSS has an option to pay health insurance premiums if payment is cost effective.

CHAIRWOMAN GREEN asked Mr. Labbe to look into that and report back to the committee. She commented it may be a way to get insurance for people who would participate in the cost.

MR. LABBE described the income levels for the different categories of eligible groups. He pointed out there is not much comparability between the groups regarding eligibility, with the exception of children, because they receive full coverage because of federal directives. He stated that persons ages 12-64 with no children, who do not meet the disability test, are not eligible for any services.

CHAIRWOMAN GREEN asked if a woman who needs prescreening for early detection for breast or cervical cancer in that group would qualify for that service.

MR. LABBE said not unless she was in another category. Historically, there has been no coverage for the middle aged, single person but under some of the new programs there are new groups of eligible people.

CHAIRWOMAN GREEN asked if that is a Medicaid program.

MS. NANCY WELLER, Division of Medical Assistance, said it is.

CHAIRWOMAN GREEN asked if the Center for Disease Control (CDC) is morphing into a Medicaid program regarding treatment of breast and cervical cancer.

MS. WELLER said the CDC program covers screening only. The new eligibility option under Medicaid is for people who are screened by the CDC program and diagnosed with cancer. Eligibility is tied to screening by the CDC program.

MR. LABBE continued his presentation by reviewing federally-mandated services and the optional services.

CHAIRWOMAN GREEN asked if the state receives a federal match for the optional services it provides.

MR. LABBE said it does. He finds it interesting that prescription drug coverage is an optional service that states can choose. The Medical Rate Advisory Commission (MRAC) sets a fair rate for reasonable costs. DHSS recently changed its system to simplify it. Over the years it became very complicated and numerous appeals over rates were filed. He hopes the simplified system reduces that workload.

CHAIRWOMAN GREEN asked if the appeal process was recently changed.

MR. LABBE said a bill was introduced to change the appeal process but he does not believe it passed. The changes made to the rate setting system were a result of that legislation. DHSS worked well with the Alaska Hospital and Nursing Home Association on that issue. Regarding the Disproportionate Share Hospital program, a federal allotment does require a state match but it can be used to pay certain hospitals. It was designed for those teaching and public hospitals in the Lower 48 that provide a lot of charity care. Most states with state institutions directed those additional allotments as their financing mechanism. The Alaska Psychiatric Institute was funded in this way until the federal government restricted the amount of the allotment that could be used for API. DHSS is now looking for other things to use the allotment for.

CHAIRWOMAN GREEN asked Mr. Labbe to describe the Medicaid cost report.

MR. LABBE said it is a cost report that facilities are required to submit to the Medicaid program. DHSS also requires that it receive a copy. The report lists the facility's cost for various procedures, charges for patient days and other costs.

CHAIRWOMAN GREEN asked if the figures contained in those reports are the published rate for the general public.

MR. LABBE said he thought it contains total annual costs for the different aspect of hospital operations and revenue. When the rates are set, the MRAC looks at the costs and conducts audits.

CHAIRWOMAN GREEN said she is trying to find out whether the report is based on what the hospital charges everyone or a Medicaid rate.

MR. LABBE said it should be based on the hospital's general rates and costs. He informed the committee that DHSS implemented a Resource Based Relative Value Scale (RBVS) that contains a conversion factor for each unit. Therefore, if a procedure is worth two units, the reimbursement amount can easily be determined. This scale is relatively easy to adjust across the 10,000 physician codes. The initial implementation was difficult but it has been well accepted. It also allows DHSS to easily compare Alaska's rates with other states' rates.

MR. LABBE explained the calculation used to reimburse providers for prescription drugs. Reimbursement for laboratory services, ambulatory surgery and rural health clinics are based on rates set

by Medicaid. A function named Surveillance and Utilization Review (SURS) is used to review program accountability. User services and claim patterns of providers are reviewed and random letters are sent to recipients to determine if services billed were actually received. In addition, DHSS uses a software program to audit claims, evaluate billing information and coding accuracy, and review for compliance. He noted that DHSS has a contractor who works on identifying other payers and to make sure that third party coverage is identified for billing.

TAPE 01-30, SIDE B

DHSS also has prior approval records for certain services and it refers cases to the provider fraud unit in the Department of Law, which is federally funded. DHSS started a pilot project a few years ago in which high cost cases are identified and individual case management takes place to provide for more efficient management of complex medical cases. DHSS would like to expand that program.

CHAIRWOMAN GREEN announced that the committee would recess to a call of the Chair so that members could return to the Senate floor session. The committee would reconvene after session to take up the bills on its agenda. She thanked Mr. Labbe and asked him to complete his presentation on Wednesday.

TAPE 01-31, SIDE A

CHAIRWOMAN GREEN called the Senate Health, Education and Social Services Committee back to order at 4:37 p.m. Present were Senators Leman, Davis, Wilken and Green. The first order of business to come before the committee was SB 155.

#SB 155

**SB 155-STUDENT LOANS/ COMN. ON POSTSECONDARY ED.**

CHAIRWOMAN GREEN reminded committee members that SB 155 was heard in committee for the purpose of providing committee members with time to prepare amendments, if desired. No amendments have been proposed and no further concerns have been expressed about the legislation.

SENATOR LEMAN moved SB 155 from committee with individual recommendations and its accompanying fiscal notes. There being no objection, the motion carried.

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#SB 86

**SB 86-TEACHER EMPLOYMENT & SUBJECT EXPERTISE**

CHAIRWOMAN GREEN asked Senator Pete Kelly, sponsor of SB 86, if the amendment before the committee has been incorporated into the proposed committee substitute.

SENATOR KELLY said it was not.

CHAIRWOMAN GREEN asked if, regarding the provision that allows the substitution of five years of work experience in the subject matter, any type of experience in that subject that is not work related would apply.

SENATOR KELLY said he would not object to deleting the word "work" on page 2, line 19, so that five years of any experience in the subject matter is required.

CHAIRWOMAN GREEN referred to Sec. 3(d) and asked if Senator Kelly would object to using the term "experienced educator" instead of a "tenured teacher" (page 3, line 10).

SENATOR KELLY said the idea of the mentor, although he agrees with it, did not come from him. The idea of a tenured teacher may have been used because it assumes a certain level of experience.

CHAIRWOMAN GREEN pointed out that an experienced teacher may not be tenured in a certain district. She said the sectional analysis says that Section 5 pertains to teachers coming off retirement and lay off status and requires them to have practiced within the prior five years. She asked for an explanation.

SENATOR KELLY said he thought that provision is in existing law.

DR. BRUCE JOHNSON, Deputy Commissioner of the Department of Education and Early Development (DOEED), said the only thing he can think of is that teachers are required, when renewing certificates, to have six additional credit hours over a five-year period. He said he is not sure whether that provision refers to the mentor.

CHAIRWOMAN GREEN indicated that an explanation of that provision was included in the sectional analysis, even though that provision is in current law. She moved to remove the word "work" from page 2, line 19 (Amendment 1), and to substitute on page 3, line 9, the word "tenured" with the word "experienced" (Amendment 2). There being no objection, the motion to adopt Amendments 1 and 2 carried.

SENATOR LEMAN stated that he has two minor amendments to propose. The first (Amendment 3) is on page 2, line 16, and is to insert the words "or national" after "regional". He informed the committee that while most colleges are accredited by a regional association, some are accredited by a national association and the Alaska Commission on Postsecondary Education (ACPE) considers both associations to be comparable.

CHAIRWOMAN GREEN asked if there was objection to Amendment 3.

SENATOR DAVIS asked Senator Leman to explain his intent.

SENATOR LEMAN said that inserting that language will make sure that all qualified institutions are covered and that both associations have comparable standards.

There being no further objection, Amendment 3 was adopted.

SENATOR LEMAN moved to adopt Amendment 4, in which the word "or minored" would be inserted after the word "majored" on page 2, line 18. He said that a person could minor in a subject and have considerably more expertise in an area than he or she may have under a typical education degree.

CHAIRWOMAN GREEN asked if a minor requires 18 hours of coursework.

Number 178

DR. JOHNSON said that a minor usually consists of a minimum of 18 hours of coursework.

SENATOR DAVIS asked Dr. Johnson his opinion of Amendment 4. She noted that many teachers already teach in their minor area but the focus was toward teaching in the area they majored in.

DR. JOHNSON said DOEED has concerns about this bill regarding having individuals in the classroom who are not making a general commitment to teacher education. DOEED would prefer that the individual be enrolled in a teacher education program at the same time the individual is teaching for many reasons, not the least of which is that evidence in other states strongly suggests that teacher education preparation programs really help support a subject matter specialist capacity to be successful over the long term. Those teachers tend to stay in their assignments longer. Knowing content is an important ingredient of teaching but knowing how to work with students is also important. DOEED does not object to allowing these people to enter as teachers but it would prefer that they immediately be enrolled in a teacher education program

that is similar to the Masters in Art of Teaching so that they can receive a teaching credential in a one year period of time. Regarding the question of whether teachers should be able to teach in a field they minored in, he doesn't think that would be a big problem for DOEED. Again, DOEED would rather have the focus be on supporting the credential aspect. He pointed out the district would be making the decision on whether a person with a minor is qualified.

CHAIRWOMAN GREEN noted that a person might have a major in chemistry and a minor in physics, in which case teaching physics would not be foreign.

There being no further objection to Amendment 4, CHAIRWOMAN GREEN announced it was adopted.

SENATOR WILKEN moved Amendment 5, by Senator Kelly, which reads as follows.

**A M E N D M E N T 5**

OFFERED IN THE SENATE

BY SENATOR KELLY

TO: CSSB 86( ), Draft Version "L"

Page 2, line 23:  
Delete "and"

Page 2, line 26, following "certificate":  
Insert "; and"

(4) completed, within the two years before beginning to teach as a subject-matter expert teacher, the six-week introductory course to prepare subject-matter expert teachers for the classroom"

Page 2, following line 30:  
Insert a new subsection to read:

"(c) The department shall establish the requirements for a six-week introduction to teaching course for persons interested in becoming subject-matter expert teachers. A school district or regional educational attendance area may not employ a person as a subject-matter expert teacher under this section unless the person has successfully completed the course within the two years immediately preceding the person's initial hire by the school district or regional educational attendance area or unless the person has been employed as a subject-matter expert teacher in another school district or regional educational attendance area immediately preceding employment in the school district or regional educational attendance area."

Reletter the following subsections accordingly.

Page 3, line 11, following ".":

Insert "At the end of the subject-matter expert teacher's first year of teaching, the mentor, the teacher, and the principal of the school in which the subject-matter expert teacher is teaching shall meet for an evaluation of the strengths and weaknesses of the teacher's performance as a teacher during the past year."

SENATOR KELLY explained that Amendment 5 incorporates, into the qualifications for a subject matter teacher, a six-week pre-course.

CHAIRWOMAN GREEN asked if the pre-course would be required before the person begins.

SENATOR KELLY said it would take place before the person begins teaching.

SENATOR LEMAN asked if the name "six-week introduction" is something that has already been developed by the University and is known or whether that is the expected length of the class.

SENATOR KELLY said it is not something that has been developed.

SENATOR LEMAN asked if a person could compress that course and take it in half the time if need be.

SENATOR KELLY said he had the same thought. He asked, because four of the members are also on the Senate Finance Committee, whether this amendment could be addressed by the Senate Finance Committee to give him more time to work on it.

SENATOR WILKEN asked for unanimous consent to withdraw Amendment 5. There being no objection, Amendment 5 was withdrawn.

There being no further discussion or questions, SENATOR LEMAN moved CSSB 86(HES) from committee with individual recommendations and its accompanying fiscal note. There being no objection, the motion carried.

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#SB 116

**SB 116-AK TEMP. ASSISTANCE PROGRAM AMENDMENTS**

CHAIRWOMAN GREEN noted that a proposed committee substitute to SB 116 was before the committee.

SENATOR LEMAN moved to adopt Version F as the working draft of the committee. There being no objection, the motion carried.

MR. JIM NORDLUND, Director of the Division of Public Assistance, said SB 116 makes amendments to the Alaska Temporary Assistance Program (ATAP), which was created when Alaska's welfare reform act was enacted in 1996 [SB 98 by Senator Green]. SB 98 is a very robust law that has enabled the division to reform Alaska's welfare system and to successfully move welfare recipients from welfare into the workforce. SB 116 is the first attempt to make any amendments to that law. One section of SB 116 is important; the others are minor modifications.

MR. NORDLUND said the section that was in SB 116 that was removed from Version F dealt with the 60 month lifetime limit on benefits. Both the federal and state laws allow 20 percent of the caseload to be exempt from the five-year limit. Congress and the Legislature recognized that, inevitably, some welfare recipients will have to receive benefits beyond 60 months because certain conditions prevent them from working and providing for their families. He pointed out the 20 percent waiver applied to the original caseload, which amounted to about 12,000 families at the time, before welfare reform was instituted. The division has projected that when the 60 month limit hits in July of 2002, the caseload will be below 6,000 so the 20 percent waiver will only apply to about 1200 clients. He explained that if 20 percent originally applied to the 12,000, one can assume those families have severe problems that will not go away. The division predicts that in future years (2003 and 2004) it will have to cut people off of the caseload who all would agree should continue to receive assistance.

MR. NORDLUND said the bill as introduced by the Governor simply repeals the 20 percent cap. Instead of using that arbitrary figure, the division suggested establishing objective, strict criteria by which families would be allowed to receive assistance beyond 60 months. The families that fit the criteria would receive an extension rather than a lifelong exemption. He explained that section 2 would have repealed that cap [AS 47.27.015(f)].

MR. NORDLUND said he discussed alternative solutions with Senator Green and Representative Dyson. Senator Green was concerned that putting the criteria in regulation was too loose of an approach. One proposal was to put the criteria in statute. Representative Dyson suggested applying the 20 percent waiver to the original number of recipients, which would give the division enough room to cover the number of families that need continual assistance. After further discussions with Senator Green, she decided to pursue a solution to that problem next year so Section 2 was removed

altogether. Because that section was the heart of the bill, it will have to be dealt with at some point.

CHAIRWOMAN GREEN asked Mr. Nordlund to review the provisions of Version F.

MR. NORDLUND said that Section 1 of Version F deals with the conformity issue with federal law. Under federal law, families that live in Native villages with unemployment rates over 50 percent, as determined by state data, are exempt from the 60 month limit. Alaska law does not contain a similar provision so Section 1 will bring Alaska's statute into conformity with the federal law. It was not in the original version of SB 116 because removing the 20 percent cap would have taken care of the problem.

SENATOR WARD asked what qualifies as a Native village.

MR. NORDLUND said that definition comes from the list of federally recognized villages.

SENATOR WARD asked if this applies to the 226 villages recognized by the Ada Deere case.

MR. NORDLUND said he believes so.

SENATOR WARD asked if it applies to the federally recognized tribes or whether it applies to a place like Egegik.

MR. NORDLUND offered to get an answer for the committee.

CHAIRWOMAN GREEN said she did not realize this bill applied to the federally recognized tribes.

Number 428

MS. KRISTEN BOMENGEN, assistant attorney general, Department of Law, said she does not believe the federal welfare reform law referred to the federally recognized tribes. She offered to provide the definition to the committee at a later date.

CHAIRWOMAN GREEN asked if that originally applied to a Native village or a rural village.

MR. NORDLUND said the federal law uses the word "reservations" so it was trying to replicate that in Alaska. He again offered to get the specific language for the committee.

CHAIRWOMAN GREEN commented that the economy of the village was

supposed to trigger the waiver.

MS. BOMENGEN said she believes Alaska's statutory language simply refers to that provision in the federal law.

CHAIRWOMAN GREEN asked if Section 1, as written, addresses that concern.

MS. BOMENGEN said it does.

MR. NORDLUND said Section 2 is in response to a lawsuit that DHSS lost.

MS. BOMENGEN explained the case was a challenge to DHSS regulations that were generated under the statute as it formerly read. Under those regulations, the basis for the 50 percent reduction was an evaluation of the employment of the family's principal wage earner. That language was borrowed from the Aid to Families with Dependent Children (AFDC) statute in effect at the time. That program had three different categories based on deprivation. The third category was created for two-parent families that had an attachment to the workforce. If the wage earner was unemployed, the family could qualify for the AFDC benefit. That terminology was borrowed because the AFDC statute was in effect when this law was being written. DHSS then made, in regulation, an attempt to distinguish two-parent families in which one of the parents was incapacitated. The court determined that the plain language of this statute indicated a different kind of evaluation than the one used by DHSS and overruled the regulation.

MR. NORDLUND said when he researched why this provision was originally chosen, he found that language was chosen before federal welfare reform was on the horizon. DHSS took two approaches: Senator Green's waiver approach, which assumed that law would not pass and the Governor's approach, which assumed that it would. The language had to be consistent with AFDC if it was to be in effect, assuming federal welfare reform didn't occur. Borrowing that language made sense at the time, but the problem now is that the court interpreted that language literally when the law intended it to apply to two-parent families despite the unemployment status or who was the principal wage earner. The danger is, if this part of the law is not changed, DHSS might have to go back and pay benefits to two-parent families in the summer, which he does not think was the Legislature's intent.

CHAIRWOMAN GREEN asked if the language in Section 2 addresses the crux of the problem.

MR. NORDLUND said the language does address the court case but the language in the committee substitute does not contain language from the original bill that exempts a two-parent family from the benefit cut if one parent is incapacitated. ATAP has exempted such families for the last four years so the committee substitute would make a policy change. He was not sure that was the Legislature's intent.

CHAIRWOMAN GREEN asked if the committee substitute would treat the two-parent family of which one parent is incapacitated the same as a "whole" two-parent family.

MR. NORDLUND said that is correct.

CHAIRWOMAN GREEN asked Mr. Nordlund what the court directed DHSS to do and whether the original bill contains the minimum language.

MS. BOMENGEN said the language proposed in the original bill would maintain the status quo. It provides for the fourth category of eligibility that is provided for in ATAP with one exception for the incapacitated parent. The language in the committee substitute sets a clear line that establishes that all two-parent families are subject to the reduction and DHSS could not change that.

CHAIRWOMAN GREEN asked if DHSS prefers the language in the original bill regarding the provision.

MS. BOMENGEN said it does.

CHAIRWOMAN GREEN asked if anything in that language is superfluous and is not required for DHSS's needs.

MS. BOMENGEN said no.

CHAIRWOMAN GREEN asked what has been added to address the lawsuit.

MS. BOMENGEN explained the question is what has been subtracted.

CHAIRWOMAN GREEN asked if she was speaking of the phrase, "the unemployment of the family's principal wage earner."

MS. BOMENGEN said that term is no longer examined by the department and is no longer useful because it doesn't really give the public fair notice of what is being established. She thought the court felt that the law contained plain language while DHSS was telling the court it did not have to look at unemployment because it does not use that as an eligibility factor any longer.

Number 599

SENATOR WARD asked if the committee substitute as is would not satisfy the court.

MS. BOMENGEN said, "This language is beside the fact. The court didn't address this. What the court addressed was that we had language that didn't clearly state what we were doing in the language that we've extracted. It's good to extract it. The language here is a policy change. It does not keep the program at the status quo, it instead changes so that more families will receive the two-parent - the 50 percent reduction during those summer months because it ...

TAPE 01-31, SIDE B

[MS BOMENGEN continued.] ... the exception that the division was able to recognize because it was borrowed from the AFDC concept. The court doesn't have an opinion about what the policy is that is adopted here. If that is the policy that this committee chooses, that's beside the point for the court."

SENATOR WARD asked what, in Ms. Bomengen's opinion, the court has asked the legislature to do, if anything.

MS. BOMENGEN said the court has asked DHSS, as long as the statute contains the language "unemployment of the family's principal wage earner" to make an evaluation of the employment status of the principal wage earner. The court has not asked the legislature to change the law, it has only said this is what DHSS must do under the existing law.

SENATOR WARD commented that DHSS must write new regulations then.

MS. BOMENGEN said it will and it will have to analyze each family's relative unemployment status.

CHAIRWOMAN GREEN asked Mr. Nordlund and Ms. Bomengen to provide the committee with a definition of Native villages and she asked for a side-by-side comparison of the two versions of the bill. She commented that the less language that must be added to create additional exceptions the better, and that it is her intent to perfect that language.

SENATOR WARD asked, regarding the people who will never be able to get off of public assistance, at what point in time they should be transferred to another program. He asked if there has been any discussion about other possible programs that might be addressed in

this bill.

MR. NORDLUND said a number of states have done that. Some ATAP clients have disabilities or incapacities that are not severe enough to qualify for social security income but they are severe enough to prevent those clients from holding a job. He agrees that finding a way to transfer those clients to a different program is a good idea that needs to be explored as DHSS learns more about how many clients will fall in this category. For now, they can continue to be served under ATAP as long as there is room under the cap but as more people hit the 60 month limit, that cap will be reached.

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There being no further business to come before the committee, CHAIRWOMAN GREEN adjourned the meeting at 5:32 p.m.