

ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE

February 13, 2002
1:37 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. 256

"An Act relating to the certificate of need program; and providing for an effective date."

HEARD AND HELD

PRESENTATION ON THE ASSESSMENT OF ALASKA'S WELFARE REFORM PROGRAM
BY SANDRA HOBACK FOR THE AMERICAN INSTITUTE FOR FULL EMPLOYMENT

PREVIOUS COMMITTEE ACTION

SB 256 - See Senate HESS minutes dated 2/4/02.

WITNESS REGISTER

David Pierce
CON Coordinator
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Answered questions about the CON program.

Janet Clarke
Division of Administrative Services
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Answered questions about the CON program.

Elmer Lindstrom

Deputy Commissioner
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Answered questions about the CON program.

Kathy Cronen
North Star Behavioral Health Systems
Anchorage, AK

POSITION STATEMENT: Supports SB 256

John Duffy
Matanuska-Susitna Borough
350 E. Dahlia Ave.
Palmer, AK 00645

POSITION STATEMENT: Supports SB 256

Charles Franz
South Peninsula Hospital
4300 Bartlett St.
Homer, AK

POSITION STATEMENT: Opposed to SB 256

Steve Foster
Providence -Kodiak Island Medical Center
Kodiak, AK 99615

POSITION STATEMENT: Opposed to SB 256

John Vowel
Cordova, AK

POSITION STATEMENT: The CON process needs to be changed

Dan Kelly
Matanuska-Susitna Borough
581 Briar Dr.
Wasilla, AK 99654

POSITION STATEMENT: Supports SB 256

Michael Janechek
Meadow Lakes Community Council
Wasilla, AK 99687

POSITION STATEMENT: Alaska needs a residential treatment facility

Linda Smith
Denali Center
1293 Rangeview Rd.
North Pole, AK 99705

POSITION STATEMENT: Opposed to SB 256

David Hopson
Fairbanks Memorial Hospital
Fairbanks, AK

POSITION STATEMENT: Opposes changes to the CON process

Jim Murphy
Good Samaritan Counseling Center
Anchorage, AK

POSITION STATEMENT: Supports moratorium in SB 256

John Burns, Attorney
Fairbanks, AK

POSITION STATEMENT: Supports SB 256

Brian Slocum
Tanana Valley Clinic
Fairbanks, AK

POSITION STATEMENT: Supports SB 256

ACTION NARRATIVE

TAPE 02-8, SIDE A

Number 001

CHAIRWOMAN LYDA GREEN called the Senate Health, Education & Social Services Committee meeting to order at 1:37 p.m. Senators Ward, Wilken and Green were present. Chairwoman Green announced the committee would discuss and take testimony on SB 256 until 2:30 and then hear a presentation by Sandy Hoback on Welfare Reform in Alaska. She stated that a proposed committee substitute on SB 256 is before the committee but, because the discussion on the Certificate of Need (CON) is still generic, she did not plan to take action on that legislation today.

#SB 256

SB 256-CERTIFICATE OF NEED PROGRAM

MR. DAVID PIERCE, CON Coordinator with the Department of Health and Social Services (DHSS), gave the following explanation of the CON application process. An applicant first submits a letter of intent to DHSS that contains: the name of the applicant; when and where the facility will be, the estimated cost, and the estimated start and completion dates. A CON is required if the facility is determined to be a health care facility and the project will cost \$1 million or more. If the project meets the criteria, applicants are sent a letter notifying them that they must go through the CON process.

CHAIRWOMAN GREEN asked for the definition of a health care facility.

MR. PIERCE said a hospital, nursing home, ambulatory surgery, kidney dialysis and a free standing hospital of some other type meet the definition.

CHAIRWOMAN GREEN asked if the nursing home moved into that category in 1996.

MR. PIERCE said nursing homes have always been reviewed but the threshold was changed in 1996.

CHAIRWOMAN GREEN announced the presence of Senator Davis.

MR. PIERCE explained that CON regulations require a 60-day waiting period between receipt of the letter of intent and receipt of the application. That gives him time to complete other applications and prepare.

CHAIRWOMAN GREEN asked if those who are planning the facility can expend any money during that time.

MR. PIERCE said they can expend up to \$1 million in the planning process but cannot cross the \$1 million threshold.

CHAIRWOMAN GREEN asked if that applies before they come to him.

MR. PIERCE said it does because the only trigger is a \$1 million threshold.

CHAIRWOMAN GREEN asked Mr. Pierce what is done with the letter of intent.

MR. PIERCE said it is a one or two page document. He has 20 days to review it but he can usually make a determination in two or three days. If the project is a health care facility and will cost over \$1 million, he sends a letter saying a CON will be required.

CHAIRWOMAN GREEN asked if he speaks with anyone other than the applicant at that point.

MR. PIERCE said he does not. He explained that if a CON is required, he sends an application packet and offers the applicant a pre-application conference so that he can explain the process. He recommends to all applicants that they send in the letter of

intent early as it can be submitted up to one year early. Once the CON is submitted, he has 20 days to review it. If it is declared complete, he has 90 days to finish the review.

CHAIRWOMAN GREEN asked if the information on the CON application is confidential.

MR. PIERCE said it is public knowledge. The review is announced in newspapers and published on the DHSS web page.

CHAIRWOMAN GREEN asked Mr. Pierce to direct her to the statutes that govern the process.

1:45 p.m.

MR. PIERCE cited AS 18.07.010 - .111 but explained that the regulations are more specific to the application process. He reviewed the regulations as follows:

- 7 AAC 07.030 refers to the letter of intent;
- 7 AAC 07.040 says the application must be submitted in writing.

CHAIRWOMAN GREEN asked how the applicant knows what is required in the submission.

MR. PIERCE said the information is in the application packet.

CHAIRWOMAN GREEN read, "An applicant shall submit four copies of the application to the state agency and two copies to the appropriate health systems agency," and asked what the health systems agency would be.

MR. PIERCE replied, "The health systems agencies? They are agencies that no longer exist. They were phased out in '98."

CHAIRWOMAN GREEN asked how an applicant would know that the regulations have not been corrected.

MR. PIERCE said that is the purpose of the pre-application conference.

CHAIRWOMAN GREEN asked if the only way to correct the text is to amend the regulations.

MR. PIERCE said that is correct and that legislative authority is not required.

CHAIRWOMAN GREEN asked if the applicant must send a copy to the

Alaska State Library.

MR. PIERCE said he actually does that for the applicant.

CHAIRWOMAN GREEN asked if the applicant is still required to submit four copies.

MR. PIERCE said he often gets requests for more than four copies from people who are interested in the project.

CHAIRWOMAN GREEN asked if an applicant could be required to share proprietary information about future plans with the public.

MR. PIERCE said whatever is submitted to him is available to the public.

CHAIRWOMAN GREEN asked if that is the point at which someone could request a copy of the application and express opposition to the project.

MR. PIERCE said it is not. DHSS has a set time period during which public comments are accepted. As soon as the application is declared complete, he is required by regulation to send a notice to one statewide newspaper and a local newspaper. The notice contains a public comment period, which starts shortly after the application is declared complete and runs for 30 days.

MR. PIERCE explained that he has 90 days to review the application and a 30-day extension is allowed if necessary. The review and recommendations are then sent to the commissioner's office. The commissioner's decision is published in two newspapers and the applicant and other interested parties are notified, along with the right to appeal the decision.

CHAIRWOMAN GREEN asked about the timeframe in which the commissioner operates.

MR. PIERCE said in his experience, the commissioner tries to make the decision within a few weeks but has no set time limit.

CHAIRWOMAN GREEN asked Mr. Pierce to describe the timeframe of the ideal application process.

MR. PIERCE said the entire process has been completed in 45 days. He explained that one area of the process that is problematic occurs when applications are incomplete and the applicant does not respond until the end of the submittal period (60 days). If the applicant sends back information that is still incomplete,

the 60-day submittal period begins again. He has seen circumstances in which it has taken applicants 180 days to submit all information. He stated that when applicants submit a letter of intent early, the 60-day waiting period from receipt of the letter of intent to the application period does not create a delay.

CHAIRWOMAN GREEN asked what the expedited review applies to.

MR. PIERCE said it applies to modifications to the CON, which occur during construction when cost overruns occur or plans have to be modified.

MR. PIERCE said during the 60-day public comment period, he is required to hold a public meeting in the community where the project is located if a meeting is requested.

CHAIRWOMAN GREEN asked why an applicant would request a public meeting.

MR. PIERCE explained that a meeting can be requested by DHSS, the applicant, or a member of the public. He noted the applicant may want to promote the project to local people. Sometimes several applicants are applying for similar projects and they want to show the public how their project stacks up against others.

CHAIRWOMAN GREEN indicated there can be competing CON applications. She asked Mr. Pierce to describe his job.

MR. PIERCE said his job is to outline the process in law and regulation and to meet the deadlines. He stated that he has co-workers but he is primarily responsible for this program. He processes between three and 10 applications per year. About 60 percent of his activities include dealing with letters of intent that do not require CONs.

2:00 p.m.

SENATOR WILKEN asked Mr. Pierce if he makes an actual recommendation to the Commissioner.

MR. PIERCE said he makes findings and recommendations.

CHAIRWOMAN GREEN asked for a description of the evaluation process and whether applicants are given that information in advance.

MR. PIERCE explained that the criteria for review are contained

in the application packet. He noted that the first criterion: "(1) the relationship of the health services being reviewed to the applicable health systems plan" is quite important. He explained that there is no current State of Alaska health systems plan but he does look at the plans of other agencies, such as the Division of Senior Services and the Division of Mental Health and any local plans.

CHAIRWOMAN GREEN asked for clarification of an applicable health system plan.

MR. PIERCE said the applicable plan for a CON application for psychiatric beds would be the mental health plan; for nursing home plans, DHSS would look at the Division of Senior Services' plan. He noted DHSS does not have plans for every area so sometimes it looks at the applicant's long-range plan.

CHAIRWOMAN GREEN asked how that criterion ties to the statute or regulations.

MR. PIERCE said that criterion has been in the application as long as he has been with the program, which is nine years.

CHAIRWOMAN GREEN noted the CON program has undergone major changes since its inception. At one time it had several employees. She asked how the federal appeal impacted the state's CON program.

MR. PIERCE replied that an annual health fiscal plan used to be published until the federal money went away.

CHAIRWOMAN GREEN asked if the application packet could contain references to activities that no longer occur or are required.

MR. PIERCE said that is correct, i.e., any reference to a health systems agency in the regulations is no longer applicable.

CHAIRWOMAN GREEN asked if it is possible that an applicant would not know that.

MR. PIERCE answered that is the reason for the pre-application conference.

CHAIRWOMAN GREEN asked if a conference is held so that Mr. Pierce can tell the applicant what in the packet can be ignored.

MR. PIERCE replied there is not a lot in the book to ignore.

CHAIRWOMAN GREEN asked if any HMOs exist in Alaska.

MR. PIERCE said no and that is something he would tell an applicant to ignore.

SENATOR WILKEN asked if a component of Mr. Pierce's recommendation to the commissioner is a fiscal analysis of the project on the state budget.

MR. PIERCE said he tries to estimate what it will cost but the decision for acute care cannot be based on that information.

SENATOR WILKEN referred to item 5 in the "Certificate of Need Review Criteria," which reads,

(5) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health services.

He asked Mr. Pierce what (5) means in his recommendation to the Commissioner vis-à-vis the state budget.

MR. PIERCE replied that if the applicant does not have a plan to find financial funding for the project, he would note that but it would not be a factor in denying the project because of the way the statute is written for acute care. It can be a factor for denial for long term care with the new law. He referred members to AS 18.07.041 and .043 for the standards he can use.

CHAIRWOMAN GREEN maintained that .041 pertains to need.

MR. PIERCE agreed and said that .043 includes costs and pertains to nursing home costs.

CHAIRWOMAN GREEN asked if (5) speaks to whether or not the applicant has obtained financial backing for the construction of the project - not to whether the applicant will make a profit.

MR. PIERCE said that is correct.

SENATOR WILKEN said he is struggling with the fact that a private business is willing to gamble, for example, \$5 million to build a facility but by law, that business must get permission from the state. He maintained that the purpose of DHSS is not to look at that company's business plan because it is the business's risk, talent and money that will determine whether it will be

successful. He then asked, if it is DHSS's purpose to protect the public interest and the public monies involved, the question should be what is the impact on the people's money - the general fund. However, it does not sound like DHSS does that. He noted it sounds like Mr. Pierce organizes, distills, and makes a recommendation but that process has nothing to do with validating the impact on the state budget.

MR. PIERCE said his hands are tied because he is prohibited from doing so by law.

MS. JANET CLARKE, Director of Administrative Services, DHSS, clarified that as part of the application review, Mr. Pierce provides information to the commissioner on the impact on the Medicaid budget. To determine the impact on the Medicaid budget, the information on cost is considered from the perspective that Medicaid clients may compromise 20 percent of their business. For long-term care, the Medicaid amount may be 90 percent. That information is provided to the commissioner even though the overriding determination criteria for a CON is whether a need exists.

CHAIRWOMAN GREEN stated that Ms. Clarke's response does not comport with information received from DHSS at the last meeting.

SENATOR WILKEN asked, in the case of the Fairbanks application, the recommendation to the commissioner would have included the impact to the general fund.

MS. CLARKE said that is correct. She stated it is a little more complex than that but that the review demonstrated there was no need for additional beds.

CHAIRWOMAN GREEN asked what regulation contains the authority to use cost in the recommendation to the commissioner.

MS. CLARKE replied,

Senator Green, I hope I didn't confuse you. Cost cannot be a factor in the determination of whether a Certificate of Need will be granted. But I'm just - I wanted to clarify that we do provide that information because everyone is interested if the Medicaid budget is going to go up because of Certificate of Need. It cannot be used as a determination of whether a Certificate of Need is granted.

CHAIRWOMAN GREEN repeated that explanation is very inconsistent

with a previous explanation given by DHSS.

MR. ELMER LINDSTROM, Deputy Commissioner of DHSS, said he recalled the confusion on this point when he testified at the last hearing. He said he would try to explain again and stated:

If you're the commissioner of Health and Social Services, you are responsible for the entire agency and in that agency is a variety of divisions, including the Division of Medical Assistance. When you are making a decision about the Certificate of Need, it does not allow you to base your decision on the impact to the Medicaid budget or to the department. However, you are the commissioner of the Department of Health and Social Services, you oversee the Division of Medical Assistance and you certainly want to know that information and see it in front of you. Perhaps it is not a satisfactory explanation but that's the reality of the commissioner wearing these multiple hats and circumstance and, not infrequently, the legislature, too, is very much interested in what new facilities are coming on line - is there any cost in that and so forth? So, the information is provided but, again, the statute does not allow for the determination on the granting or not granting of the Certificate of Need to be made on the basis of that information, although the information is there.

SENATOR WILKEN asked, referring to the Fairbanks example, if the private firm is willing to gamble its resources and the state doesn't really care about the impact on the budget, why a CON is needed if the private firm has established de facto a need? He repeated that he is struggling with the question of why DHSS does not care about the state budget.

DEPUTY COMMISSIONER LINDSTROM indicated that the draft committee substitute contains language that is an effort to put explicitly in statute that cost to the budget be considered when reviewing an acute care Certificate of Need. DHSS supports that language.

CHAIRWOMAN GREEN asked how an applicant would know that is a factor if it is not listed in the criteria. She expressed frustration that DHSS has not recommended that this program be reviewed and cleaned up and that the committee has had to initiate action. She asked how much of the other information provided to applicants in the application packet is inappropriate and inapplicable, and what the applicant should consider that is not included in the packet.

2:20 p.m.

DEPUTY COMMISSIONER LINDSTROM responded that proposed regulations that would clean up a lot of the outdated language were out for public comment last spring. Those regulations have not yet been adopted by the commissioner due to the fact that DHSS has a one-person CON program and those regulations are also his responsibility. He commented that he is not proud of the fact that the regulations are out-of-date.

SENATOR WILKEN said it would be helpful to see an example of a page that suggests to the commissioner the range of impact on the state budget.

DEPUTY COMMISSIONER LINDSTROM agreed to provide that.

CHAIRWOMAN GREEN stated that she finds it very unsatisfactory that the applicant may not be told about the requirements in the application packet that are not longer applicable or that an applicant may not know to ask and do a lot of extra work.

DEPUTY COMMISSIONER LINDSTROM said as a practical matter, the pre-conference tends to satisfy most of those concerns.

MR. PIERCE added that he also meets with any hospital or facility administrator interested in the process for the purpose of providing education.

CHAIRWOMAN GREEN asked for a side-by-side comparison of the requirements in state law and/or regulations and what Mr. Pierce does.

DEPUTY COMMISSIONER LINDSTROM asked if she is looking for an analysis of how the criteria are derived from the statute and regulations.

CHAIRWOMAN GREEN said she wants to find out how an application is evaluated and whether a point system is used. She said she does not understand how a completed application gets approved or disapproved and what questions are asked. She stated:

Are those questions that the board of a large multi-million corporation have already asked themselves and determined and the Washington methodology - how does that equate to what happens in Alaska? Where is the line item and the answer, the position and the answer and how it's evaluated or devaluated? So that - I

think that there are those who want to know that this is a fair system and if we're going to have it that it's thorough but that it's fair and that people know going in - I mean it's like anything else you do on an application - you go get your packet, you get your instruction booklet and you don't say, oh, but you ignore line 3, line 7 and you don't have to worry about page 2. That doesn't make sense.

TAPE 02-8, SIDE B

SENATOR DAVIS commented that she does not believe the businesses that were denied a CON are present because they believe the regulations are faulty; they are here because they were denied the certificate they need to go forward. She asked if it is the purpose of the CON coordinator to establish whether the need for another facility exists.

MR. PIERCE said that is what he does.

SENATOR DAVIS asked Mr. Pierce to provide her with the exact information and process he uses when an application is denied. She noted when an application is denied, the process is cut off because no need has been found. The private firm can come back within the confines of the \$1 million figure, it can drop the project or it can continue to test the water to find out if there truly is a need.

MR. PIERCE said that is correct. He explained the applicant can resubmit an application at any time and an appeal process is available.

SENATOR DAVIS said that Mr. Pierce is the person who determines whether the application can go forward because a need exists and, if so, it is the commissioner who decides whether to grant a CON. She asked Mr. Pierce to describe how he determines how the need exists and to provide the committee with information on how many applicants have appealed and why.

DEPUTY COMMISSIONER LINDSTROM stated that in the case that members are familiar with, the applicant did appeal but withdrew it so a hearing officer never made a determination.

SENATOR DAVIS asked about the track record of appeals.

MR. PIERCE said three or four decisions were appealed over the last nine years.

CHAIRWOMAN GREEN asked for the record of the applications, appeals and final decisions and noted that the review process must be clarified otherwise it can change from one application to the next. She then took public testimony.

2:29 p.m.

MS. KATHY CRONEN, CEO of North Star Behavioral Health System, stated support for SB 256, regarding the moratorium on psychiatric beds. She informed members that she recently testified in support of SCR 21, which would bring home the 400 children currently in residential treatment centers outside of Alaska. SCR 21 passed the Senate with unanimous support: testimony on the Senate floor emphasized the need to examine the entire problem of in-state care and that this needs to be a major project - administratively, legislatively, programmatically, with a focus on the budget impact. SB 256 provides the two critical elements needed in order to reach the goal articulated by the Senate to bring these children home for treatment. First, it provides an avenue for adequate planning. Second, it provides the statutory language necessary to consider the fiscal impact of adding more psychiatric beds. The moratorium on in-patient psychiatric beds will provide a period of time for DHSS and others to examine the existing continuum of mental health services - both inpatient, outpatient, community based services, foster care and residential care. SB 256 is similar to legislation enacted in 1996, which created a moratorium on new nursing home beds and established a work group to study the long-term care problem. The recommendations made by the workgroup were adopted and changed the way DHSS reviewed and approved new nursing homes beds: DHSS was allowed to consider the fiscal impact.

CHAIRWOMAN GREEN noted the language in the draft committee substitute is very similar to the 1996 legislation.

MS. CRONEN continued. SB 256 provides a brief period of time for a work group to analyze whether more inpatient psychiatric beds are needed in Alaska. It is her belief that the state does not need more acute care beds. It needs more long-term residential treatment beds to take care of those children who are being treated outside of Alaska. She stated her belief is based on both the clinical needs of the patients and the fiscal impact to the state. The fiscal impact of adding more inpatient psychiatric beds is staggering and makes no sense as it is much more intensive and costly than residential treatment. She pointed out that Medicaid pays for 85 percent of inpatient psychiatric stays.

The cost of inpatient psychiatric care ranges from \$562 per day at North Star Hospital to \$1,584 at other facilities. The cost of residential treatment is \$325 per day. She noted the draft CS before the committee does not impact the replacement beds at Alaska Psychiatric Institute (API).

The committee took a brief at-ease.

CHAIRWOMAN GREEN took teleconference testimony.

MR. JOHN DUFFY, Mat-Su Borough manager, stated support of the committee's effort to look at the CON process and support of SB 256, which places a temporary moratorium on psychiatric beds. He suggested that a moratorium is necessary to facilitate discussion, better planning, more appropriate patient placement, additional placement choice and encourage less intensive residential treatment. He also supports consideration of the fiscal impact in the CON process.

MR. CHARLES FRANZ stated opposition to the proposed CS to SB 256. Raising the CON threshold to \$10 million effectively guts the CON process. Regarding Senator Wilken's question about why a private firm that is willing to gamble its money should not be allowed to go forward, he responded that under the current CON process, a private firm, in most cases, would not be considered to be a health care facility and would not be required to have a CON. Those in the health care business need a level playing field. DHSS must make sure that Alaska has a sustainable health care infrastructure in small communities around the state. He believes the CON process is very important, just as the limited entry permit system is for the fishing industry in order to maintain the resource and infrastructure. The CON process ensures that rapid overbuilding does not occur and that unneeded services are not created. He maintained that the current CON process could be significantly improved by clearly defining the evaluation criteria.

2:47 p.m.

MR. STEVE FOSTER, Financial Services Administrator at Providence-Kodiak Island Medical Center, stated opposition to SB 256. Increasing the threshold to \$10 million would have an adverse impact on a community such as Kodiak where an outside entity could come in and build a small facility for that amount. Also, health care providers are experiencing a staffing shortage. Finally, SB 256 could also increase the state's health care budget. He agreed that some type of change should be made to the CON process but that change should be done to level the playing

field.

MR. JOHN VOWEL (ph) of Cordova stated that most of his concerns have been addressed in previous testimony. He believes the CON process is what needs to be changed. The existing process contains a lot of room for arbitrary decisions that can be made. The only opportunity to address arbitrary decisions is through the appeal process, which is costly and time consuming. He expressed concern about the lack of a process once a recommendation is sent to the commissioner's office. He commented that competition can have an adversarial effect on operations in small communities.

MR. DAN KELLY, Mat-Su Borough, informed members the Borough would like to have a residential treatment center located within it. The Borough's population has increased 3.5 percent per annum - the fastest increase in the state. The Borough would like to improve psychiatric care for its growing number of residents. Recognizing the importance of a CON with a limited amount of state Medicaid dollars, the actions taken by the legislature are likely to have a direct bearing on the number of children that can be treated and where. The Borough believes the state should review the mental health system in total. It believes that a moratorium on the addition of psychiatric beds will facilitate actions to provide a more balanced system of care, better placement of children and avoid acute inpatient costs. The Borough believes the \$10 million threshold is a reasonable cap for the CON program since the \$1 million threshold was set 19 years ago. He stated support for SB 256.

MR. MICHAEL JANECEK, Meadow Lakes Community Council President, stated support for SB 256. Meadow Lakes residents are very supportive of the residential youth psychiatric care facility, currently planned and negotiated. Keeping youth within Alaska would benefit treatment by enabling family members to be nearby. Medical treatment in Alaska would also save considerable funds and generate economic development. If an imbalance between acute care and other psychiatric care exists, the Meadow Lakes Community Council would support a moratorium on the establishment of acute care beds.

MS. LINDA SMITH, a registered nurse and assistant administrator for the Denali Center in Fairbanks, stated opposition to SB 256, in particular to the threshold increase to \$10 million. SB 256 would seriously impact the ability of Fairbanks Memorial Hospital to meet its mission, which is to provide health care to all, regardless of ability to pay. The hospital has worked hard to provide services in the community that do not pay for themselves.

Increasing the threshold to \$10 million will allow a few, for-profit entrepreneurial businesses to provide services and take away the hospital's "bread and butter."

MR. DAVID HOPSON, senior financial analyst at Fairbanks Memorial Hospital, stated opposition to SB 256 based on the premise that the CON program works. He stated the existing threshold of \$1 million keeps redundant facilities out of a location, it does not stop competition. He stated, regarding a new ambulatory-surgi center in Fairbanks, Fairbanks has plenty of capacity already. He pointed out that Medicaid only pays Fairbanks Memorial Hospital 55 cents on the dollar.

MR. JIM MURPHY, Executive Director of the Good Samaritan Counseling Center, testified in support of the moratorium in SB 256. Good Samaritan is the largest outpatient counseling practice in Alaska; it serves several hundred clients per week. He expressed concern about the future of mental health care in Alaska. All reports he has read indicate that Alaska is facing a serious financial shortage, therefore it is only reasonable to carefully evaluate and plan the best mental health services for residents. He is quite disturbed that DHSS is presently considering a CON for additional acute psychiatric care beds. An additional 30 beds will cost the state \$16 million of Medicaid funds. He questioned how the general fund can absorb that cost. He is further concerned with how that expense will impact Alaska's financial ability to serve clients with other services.

2:58 p.m.

MR. JOHN BURNS informed members that he is an attorney from Fairbanks who represented the Tanana Valley Clinic during the CON appeal process. He stated there is no question that the CON process is flawed. Applicants have little criteria to follow regarding what is or is not included in the methodology by which the criteria are evaluated. Need is based on surgical minutes but there is no definition of what is involved in a surgery. He explained that, all things being equal, the same hernia procedure is counted if done in a surgery room but not counted if it is done in a procedure room. He stated the absurdity of that kind of analysis when determining need is obvious. He maintained that the law as currently exists is repressive, promotes inefficiency and is in no way aimed at promoting quality health care. The national trend, as recognized and admitted to by Mr. Pierce, the CON coordinator, is toward outpatient centers for the following reasons: patient choice, patient access, and patient cost. Ambulatory-surgi care has provided a 20 percent savings nationwide.

MR. BURNS said that DHSS has said a lot about the potential impact on the state via Medicaid if the CON is abolished or modified. He contended that argument is in large measure smoke in mirrors, particularly from the standpoint of a private provider. The simple economics are that no one will go into a market at \$5 or \$10 million without doing a serious market analysis. And, if they can't support it, that is their problem. To focus on Medicaid costs also ignores the savings to the private payers - Blue Cross, Blue Shield, etc. The nationwide trend that shows a 20 percent savings refers to real dollars, including savings to the State of Alaska on its employees. He said it is easy to say that opening up competition will have a negative impact. He asserted the national data shows that communities that have eliminated the CON have not shown increased expenses. The CON process is an example of inefficient, counterproductive regulations and, in a time when government is seeking to run more efficiently, it should be modified to at least raise the threshold. He stated support for SB 256.

MR. BRIAN SLOCUM, Administrator of the Tanana Valley Clinic, commented about the issue of services that subsidize money-losing services at existing hospitals. He cited a report entitled, The Effects of Certificate of Need and Its Possible Repeal, done for the State of Washington in 1999 by its Joint Legislative Audit and Review Committee, and read:

Proponents of CON argue that it provides financial stability to existing providers, allowing them to extend access to populations that are expensive to serve. While the arguments regarding such cost shifting seem plausible, no studies have been completed to show that CON or its absence has a direct effect on the ability of facilities to cross subsidize expensive or unreimbursed care...We found no studies that directly link CON with higher levels of charity care.

MR. SLOCUM said that as a person who has been through the CON process in recent years, he would not be before the committee if the law was applied evenly and fairly. The process was confusing, ambiguous and disorganized. He was given contradictory instructions and the rules changed on multiple occasions. Some of the instructions given had to be ignored. He followed other instructions believing the application would be judged on them but they were not. He was unaware that one of the items that would be judged was the profitability of another applicant for the same CON. Nor was he aware that the utilization measures to determine need would change throughout the process or that the definition of surgical services was being changed and differed

from the federally-mandated definition. Because there were no rules or standards, he had no way to challenge the process when it seemed to go awry. Mr. Slocum said that 30 years of academic research suggests that CON programs do not reduce cost and, in fact, in many cases increases costs. It also erects barriers to entry for new and more efficient providers of care. He recommended opening up health care to the forces of competition.

SENATOR DAVIS asked Mr. Slocum for a copy of that report.

SENATOR WARD asked that the committee find out if an audit has ever been done by the Division of Legislative Budget and Audit on Alaska's CON program.

CHAIRWOMAN GREEN agreed to do so and then announced that the hearing on SB 256 would terminate for the day. She asked Sandy Hoback to present the American Institute for Full Employment report.

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The committee took a brief recess.

AMERICAN INSTITUTE FOR FULL EMPLOYMENT REPORT

#SB 293

MS. SANDY HOBACK, an independent consultant under contract with the American Institute for Full Employment, informed committee members that the Institute is a non-profit research and education institute whose mission is to promote full employment and universal access to jobs with career potential for all who can work, especially those receiving public assistance as a substitute for opportunities and rewards for paid work. The Institute offers to assess state welfare reform efforts. In that vain, she visited Alaska last spring and made that offer to Chairwoman Green and Chairman Dyson. They requested the Institute do an assessment, which was completed last October.

MS. HOBACK said she would talk specifically about the legislative recommendations made in that report. She pointed out the Division of Public Assistance has contracted with her independently to operationalize many of the other recommendations. She listed the five recommendations as:

Recommendation 1

- Amend the statute to allow Alaska to use full flexibility allowed under federal law to extend benefits to some long-term recipients.

MS. HOBACK said the legislature discussed this issue last session but the committee felt further analysis was necessary before making that statutory change. She recommends that change be made and allowing the Division of Public Assistance to craft narrow

criteria by which to determine whether a family can extend beyond the 5-year time limit. She noted a family might reach the 5-year time limit yet have several justifiable reasons for an extension. She maintained that using criteria instead of an artificial cap level is a better way to go.

Recommendation 2

- Move toward a progressive sanction system for uncooperative clients.

MS. HOBACK explained that Alaska currently imposes a cash grant reduction to the family of about 40 percent for the first time it does not cooperate with immediate restoration upon cooperation; a mandatory six month penalty for a second offense; and a 12 month penalty for a third offense. She noted that system is a great disincentive to cooperation because even if the adult decides to start cooperating, he or she might still have a 6 or 12-month penalty. Also, while disqualified, the family's time clock continues to tick. She suggested using a system that progresses through a number of stages but can ultimately close a cash grant if people continue to be uncooperative. Such a system is more family-friendly for two reasons: it can be cured immediately upon cooperation and the time clock stops when the grant is closed. She noted that adding appropriate safeguards for the well-being of the children will create a better check and balance system than using the artificial cap with the existing sanction policy.

Recommendation 3

- Create an approach whereby full-time working clients, under a certain income level, continue to be eligible for some ATAP benefits even though they have reached the five-year limit.

MS. HOBACK stated that is addressed in the legislation [SB 293] under a self-sufficiency services provision. It would allow the state to continue to serve working clients and provide them with appropriate support to stay on the job.

Recommendation 4

- Strengthen Alaska's upfront diversion program.

MS. HOBACK explained that an upfront diversion program is a mechanism whereby the client is found employment so that he or she does not have to come on the assistance program. The current statute allows two months of benefits to be paid to the individual upfront, instead of opening a cash grant. The Institute recommends that be increased to three months of benefits because two months is often not enough given the cost of living in Alaska. She pointed out that recommendation dovetails with other management recommendations she has made to the

division to strengthen the entire upfront approach so that diversion becomes a much more viable option.

Recommendation 5

- Allow for a more complete wage subsidy program.

The State of Oregon developed a program that engages the private sector to provide training opportunities. In most states, the largest employer is the private sector so finding ways to include it is critically important. The legislation [SB 293] asks for authorization to take the value of the food stamp benefits. The state already has the ability to take the value of the cash benefit and turn it into a wage subsidy. This asks for state permission to approach the federal food stamp program to do the same thing with the food stamp benefit, couple those benefits together and use them to reimburse private sector employers for providing training opportunities for this clientele. The state of Oregon found that approach was not only a very good avenue to get clients with significant barriers to work, it also worked as an economic stimulus because many small employers would not have had the capital to expand.

CHAIRWOMAN GREEN asked if these changes are synchronized with what the federal government may do.

MS. HOBACK said that Congress is just beginning to discuss reauthorization so it is too early to tell. However, she believes the changes in SB 293 will conform very well to what she has heard discussed so far.

CHAIRWOMAN GREEN asked if the wage subsidy is designed for use by the private sector only.

MS. HOBACK said that is how it was designed in the state of Oregon but the bill only authorizes the division to use the value of the food stamps for a wage subsidy program. It does not speak to the private or public sector.

CHAIRWOMAN GREEN announced that SB 293 would be before the committee next Wednesday.

MR. JIM NORDLUND, Director of the Division of Public Assistance, said he will comment on the bill next week. He added that he has had a good working relationship with Ms. Hoback. The division had been considering some of the recommended changes for awhile. The division has reservations about some of the provisions in the bill but, overall it presents a good start.

SENATOR DAVIS thanked Chairwoman Green for contracting with the Institute for the report.

There being no further business to come before the committee,
CHAIRWOMAN GREEN adjourned the meeting.

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