

ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE

February 20, 2002
1:35 p.m.

MEMBERS PRESENT

Senator Lyda Green, Chair
Senator Loren Leman, Vice Chair
Senator Gary Wilken
Senator Jerry Ward
Senator Bettye Davis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 250

"An Act extending the dates for assignment of performance designations of public schools and the dates for reports and monitoring based on those designations; and providing for an effective date."

MOVED CSSB 250(HES) OUT OF COMMITTEE

SENATE BILL NO. 256

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

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 250 - See HESS minutes dated 1/30/02 and 2/11/02.

SB 256 - See HESS minutes dated 2/4/02 and 2/13/02.

WITNESS REGISTER

Mark Leal
Director of Assessment
Department of Education &
Early Development
801 W 10th St.
Juneau, AK 99801-1894

POSITION STATEMENT: Answered questions regarding SB 250

Jerome Selby
Providence Health System of Alaska
Anchorage, AK
POSITION STATEMENT: Supports SB 256

Dr. Chandler
No address provided
Anchorage, AK
POSITION STATEMENT: Discussed problems he has encountered with the CON program - supports competition in the health care marketplace

Charles Franz
South Peninsula Hospital
4300 Bartlett St.
Homer, AK
POSITION STATEMENT: Supports continuation of the CON program

Kim Pickerel
Health South
No address provided
POSITION STATEMENT: Supports SB 256

Kathy Cronen
CEO, North Star Behavioral Health Care
Anchorage, AK
POSITION STATEMENT: Supports SB 256

ACTION NARRATIVE

TAPE 02-10, 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 Leman, Wilken, Davis and Green. Chairwoman Green announced the committee would first take up SB 250 and that the Department of Education and Early Development (DOEED) sent committee members a written response to a request for information made by Senator Wilken at a previous meeting.

#SB 250

SB 250-SCHOOL PERFORMANCE REPORTS

MR. MARK LEAL, Director of Assessment at DOEED, informed committee members that the school report card has been a dynamic document over the years. In the late '80s and early '90s, the report card focused on providing information about each school

district in a fairly detailed format. In the mid to late '90s, the focus shifted to reporting statewide information; district information was included in a table in an appendix. Beginning with the 99-00 report card, the focus was on reporting school-by-school information. District information was provided in a table in the back of the report card.

When DOEED started to look at reporting information on a school-by-school basis, a few unique challenges arose. First, the small size of many of Alaska's schools made it difficult to report information without violating a requirement to not release personally identifiable information under the federal Family Education Rights and Privacy Act (FERPA). Second, when DOEED looked at publishing the report in a paper format, as it had in the past, the document had grown from 25 pages to 520 pages. Because of high printing costs, DOEED decided to post the report cards on its website and publish the last two years' report cards on CDs at the end of March. DOEED is also changing the web version of the school report card to be more user-friendly by organizing the schools into districts rather than alphabetically. In addition, the format will have a district-by-district file.

MR. LEAL said he is currently reviewing the school report card to identify areas that need to be improved to meet the intent of statute and provide the public with useful information. Alaska statute requires that district goal reports be collected and summarized by DOEED. That information fell by the wayside when DOEED moved to district spreadsheet profiles. In addition, the new federal Elementary and Secondary Education Act (ESEA) contains a variety of public reporting requirements.

MR. LEAL distributed a document he prepared for the committee entitled "Report Card to the Public," which contains current Alaska law, items currently reported by DOEED, and additional reporting requirements that must be incorporated into the existing report card. He noted that DOEED is figuring out how to manage this data at the department level because it is required to compile and warehouse data and verify its accuracy.

CHAIRWOMAN GREEN asked Senator Wilken if his concerns have been satisfied by the information provided.

1:43 p.m.

SENATOR WILKEN said he had a few more questions, the first being where DOEED is headed regarding comparability and whether the new report will contain a chart that compares districts, similar to one on the web last year.

MR. LEAL said it will contain a similar chart. DOEED is in the process of formatting it to put on the web.

SENATOR WILKEN indicated that DOEED used to publish the dollar expenditure per student each year. He said he would like to amend SB 250 to require that amount be reported and categorized by "total, federal, state, local and other" per student.

CHAIRWOMAN GREEN asked Senator Wilken about a start date for that requirement.

SENATOR WILKEN replied:

I would say next year but our office is certainly capable of publishing that for the '01 audited information and we could probably do '02 now that it's all set up. I guess I'll defer to the department whenever they'd be comfortable to do it. I don't think it's a big project.

SENATOR WILKEN then moved to insert on page 2, line 4, a new paragraph (4) that reads, conceptually, that dollars per student expenditures be reported and categorized by total, federal, state, local, and other (Amendment 1).

SENATOR WILKEN then moved to amend Amendment 1 to change the word "expenditures" to "revenues."

CHAIRWOMAN GREEN announced that with no objection, the amended amendment was adopted.

SENATOR WILKEN said his concern last week was that over the years, the report has changed from a detailed one to a very rudimentary one. He said he now feels comfortable that DOEED is creating a usable report that allows comparability and that it is something an interested parent can understand.

SENATOR WILKEN said he had a good discussion with Mr. Leal about federal reporting requirements for schools with fewer than 10 students. It is his understanding that the number 10 was passed on to DOEED through the federal government, but that the state may eventually decide that 5 or 15 students should be the limit. DOEED is trying to avoid problems with FERPA but is looking at reducing that number to 5.

MR. LEAL said that number came from guidance from the federal government, DOEED's testing contractor, and from information

based on what other states are doing.

2:50 p.m.

SENATOR DAVIS said she has no problem with the request of information from DOEED, but she does not understand why it should be included in this bill as it is about school designators, not school report cards. She asked if Amendment 1 will require a title change.

SENATOR WILKEN said the way he reads it, it all falls under AS 14.03.120, which this bill addresses. Language in .120(f) says, "The report must include" and the bill lists items that must be included. Amendment 1 adds another item that is not in statute today.

SENATOR DAVIS stated that all items required to be in the school report card are not listed in the statute.

SENATOR WILKEN said the intent of the motion was to make sure that dollars per student are in the report card. Today they are not.

With no further questions or testimony, SENATOR WILKEN moved CSSB 250(HES) from committee with individual recommendations and its attached fiscal note.

SENATOR DAVIS asked if Amendment 1 will change the fiscal note.

CHAIRWOMAN GREEN said the bill has a zero fiscal note and that it has a referral to the Senate Finance Committee, where the fiscal note can be addressed. She then announced that without objection, CSSB 250(HES) will move to the next committee of referral.

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#SB 256

SB 256-CERTIFICATE OF NEED PROGRAM

CHAIRWOMAN GREEN explained that in talking to various people, she is looking at legislation that will include some language similar to what the Alaska Hospital and Nursing Home Association has provided to change the parameters and to change how the Certificate of Need (CON) program is implemented. She has requested that a proposed committee substitute (CS) be drafted but it will not be ready until Friday. That CS has to do with the Coghill plan for the regional programs but requires a CON for all psychiatric and long term care beds, and it will change the threshold to \$2 or \$3 million, a figure close to the CPI

adjustment. She said that people who want to testify can address their comments to the proposed CS or the CON program in general. She commented that this issue is a very difficult one. She is trying to figure out how to improve a system that for some is the best thing that ever happened while for others creates a great disincentive to improvement.

1:58 p.m.

MR. JEROME SELBY, Providence Health Systems of Alaska, said that overall, the CON program provides a good service to the people of Alaska because it puts the state in a position to oversee and monitor what is happening with health care delivery in Alaska. For those in the health care business, submitting a CON application can be a bit of a nuisance to deal with, but Providence Health Systems believes the greater good is served by having a CON program. It assures that Alaskans get good quality of care by meeting their needs in terms of access to care without overbuilding and paying extra money for unnecessary facilities. Providence wrote off \$14 million in charity care and \$14 million in bad debt last year, and it is writing off \$116 million of the unfunded portion of the Medicaid and Medicare bill. That money will be diverted from taking care of services for folks who cannot pay to pay for new facilities that aren't even needed. That is why, in Providence's view, the \$1 million threshold has worked well.

MR. SELBY said that Providence agrees with the Alaska State Hospital Association that raising the \$1 million threshold to \$2 million makes good sense because of inflation. If one runs the consumer price index (CPI) on construction, the \$1 million amount when the bill was passed would now equate to about \$1.8 million. Providence believes a \$2 million threshold for facilities makes sense but it suggests that the committee split facilities and equipment and leave equipment at \$1 million because those costs are actually decreasing. When the CON program first came into existence, a CAT scan machine cost less than \$1 million; it is now available for about \$600,000.

MR. SELBY said the other issue that Providence has discussed in relation to the CON program is that it provides quality of care control in Alaska. A recently published study in Florida compared states with and without CON programs. One finding is that the risk-adjusted, in-hospital mortality was 21 percent higher in states without CON programs than in states with CON programs. Health care is a little different from other industries regarding competition. For example, no one cares if the 23rd auto sales shop opens up in town because consumers can go buy an

auto for the lowest possible price. However, when it comes to health care, finding the cheapest heart surgeon may not be the best criteria to use. Key questions asked during a CON application are whether there is enough need in the state for a second or third facility and will the number of patients being seen in any one of those facilities be below a level to keep the service providers competent. National standards have been set up to determine at what level providers are staying competent. In terms of neonatal care, Anchorage is barely above the threshold for one facility. Providence health care providers could not stay certified and competent in neonatal intensive care if a second facility opened. The CON program's role is to look at whether the proposed service is necessary and might dilute other providers below a quality of care level.

CHAIRWOMAN GREEN said she has not reviewed the entire list from the Association and Mr. Selby but she noted that Providence quickly spotted some things that can be modified to make the program more consistent and accurate. She commented that the standards for state management should be very high.

2:10 p.m.

SENATOR WILKEN maintained that Mr. Selby said the CON program protects the state from excessive medical charges. He asked Mr. Selby if by that he meant it has an effect on the budget.

MR. SELBY replied, "Absolutely."

SENATOR WILKEN said that last week, committee members had an interesting conversation and established the CON is essentially just that - a study of need without any consideration of the state budget, other than some sort of ballpark sense of what may happen if a request is accepted or denied. He then asked:

So enter then, the private clinic, as in my town, that says - hey, we know there's a need and we're willing to risk \$5 million to show that we can make it. We think that there's a need in our town and we're willing to gamble our money. What is the purpose then of the Certificate of Need program through the state if we let private industry do it. What problems does that create? You suggested quality of care, perhaps. Obviously in your case, and perhaps in my town, some sort of suggested or real damage to the existing facility - my hospital, your hospital - but to me that's balanced off, that may happen but that's balanced off - to the benefit of the consumer. Is it truly cheaper to do it

in the new facility than in the existing facility? That's something we have to develop at this table and I think that's our next step.

That's what I'm struggling with. I don't quite understand why we need a CON at all if private industry is willing to step up and validate the need, as long as we're not damaging our existing facility and that damage - if we are - is on balance, benefits the consumer. So that's what I'm struggling with in this whole issue. Would you maybe just wander a little like I have?

MR. SELBY said he would start with the budgetary impact. First of all, the new facility has to be paid for even though nothing has been added to health care that is not currently being delivered. What has changed is that a service is now being delivered in two different places without an increase in available funds. The costs of the new facility will have to come out of what is currently being spent for health care. That's where the damage to the existing facility comes into play because money is transferred from it to help pay for the new facility. The existing facility will be forced to reduce something. The amount of charity care and bad debt written off is what has to be stopped but that is unacceptable in our society so the existing facility will have to raise prices. The new facility will have nowhere near the overhead of the existing hospital because it doesn't have to be open 24 hours per day and it will not have to staff an emergency room. Hospitals have a lot of overhead costs that an 8 to 5 operation does not. The problem, from Providence's perspective, is that a little money may be saved by using specialty clinics - maybe 15 to 20 percent of the total health care expenditure - but hospitals that take care of the other 80 percent will have to raise prices. The state will have to pay more for Medicaid and Medicare and it will really "get hammered" on its health insurance bill for state employees because everyone's health care costs will increase.

MR. SELBY said he would wager that the total cost will increase by the amount that equates to the cost of the additional facilities that are allowed to come in.

SENATOR WILKEN replied,

But the new cost of the new facility - or the five as I have offered a month ago - the new cost of the new facility is only the fixed cost. There [aren't] people waiting out there for a new facility in order to come

get their knee operated on. We know the demand - there is no pent up demand - I mean that is flat. So, once we open it we know that some [will] go to the new and some will stay with the old because that's consumer choice. So the only additional cost is the fixed cost. Right? We have to cover the fixed cost.

MR. SELBY answered:

Not totally because again, at the hospital they're still going to have to staff regardless of how much comes through there because they've got this 24-hour day - the stuff I mentioned. So there's going to be some additional staff cost that you're going to absorb in addition to the fixed cost, in terms of delivery. That's why the hospital will have to raise its prices in order to cover those costs because while the new facility - you know, they're going to go hire nurses from the hospital to come over and go to work and do all those sorts of things and so their costs for the actual surgery itself should be less. Quite frankly, there's something wrong if it's not. But the hospital's cost does not come down equally to what the cost of the new staffing at the new center is because they still have other demands and 24-hour requirements...and you know if the nurse is now only taking care of two patients instead of the five she used to take care of, you still got to pay her the same wages.

SENATOR WILKEN asked if charity work is done by all medical facilities.

MR. SELBY said it is but they have the ability to shed it and send the no-pay clients back to the hospital.

SENATOR WILKEN said he is an employer of 20 blue-collar workers. Insurance premiums for those employees and their families have increased \$385 per month over the last 18 months. He wants to do something to help his insurance company drive down that cost so, if the quality of care is equal, he would encourage his employees to use the less expensive service. His dilemma is trying to balance that need with the needs of the existing hospital.

2:15 p.m.

SENATOR DAVIS said she is confused about what the committee is taking testimony on because she does not know what will be included in the new committee substitute since committee members

do not have a copy and the amendments and suggestions were not shared with her. She noted that five or six people testified in support of the proposed committee substitute that was discussed last week, because it would place a moratorium on psychiatric beds. She asked Mr. Selby to speak to that issue.

MR. SELBY said Providence has not taken a position on the moratorium on psychiatric beds because it believes if the CON law in effect is properly applied, it would render a moratorium a moot issue. The CON program coordinator would determine whether or not a need exists.

SENATOR DAVIS asked if the moratorium remains in the bill, and the bill passes, whether anyone who applied for psychiatric beds would not be able to move forward.

MR. SELBY said that would become an issue for Providence.

SENATOR DAVIS maintained that is the issue that needs to be addressed.

MR. SELBY said Providence has a CON application for additional psychiatric beds on the Commissioner's desk, awaiting approval. Providence has documented the need for those beds.

SENATOR DAVIS said she feels at a loss because the committee is discussing a proposal that it does not have, and Mr. Selby is saying that Providence has not taken a position but would have an issue with that provision if it comes up. She asked Mr. Selby if Providence supports the moratorium.

MR. SELBY replied that it is his understanding that the language of that provision says the moratorium would apply to any CON application filed after the effective date of the bill. Action will be taken on Providence's application before the effective date. He noted it will be of great concern to Providence if the date is made retroactive.

2:18 p.m.

SENATOR DAVIS said another issue discussed by committee members was the cost of the CON process and whether the program is necessary at all. She said if a new hospital was able to come on line, the same pool of staff in that locality would be split between the two facilities. She felt that lack of staff could raise a quality of care issue and asked Mr. Selby his opinion of that possibility.

MR. SELBY said he addressed that concern in testimony at a previous hearing and it is a huge concern. If additional facilities are built, they will hire nurses away from the existing facilities who already have a problem. He said that every hospital in Anchorage has been on "divert" many times during the last few months. Most divers are caused because the beds are full but occasionally hospitals have to divert because of a staff shortage. He said the staff shortage is a very real issue, which is why Providence has asked the Legislature to help fund training for 50 additional nurses per year and for loan forgiveness for nurses, pharmacists, x-ray and lab technicians.

SENATOR DAVIS asked Mr. Selby to share with her the compromise language he has offered to the committee regarding changes to the bill.

MR. SELBY agreed to do so.

2:22 p.m.

CHAIRWOMAN GREEN said:

One of the things we don't want to imply is that because we are a facility and have an existing facility there should be no others and that's not a good message to send. And if we're going to say that if someone else comes in and builds facilities then everything goes awry then I would suggest that some of the applications under review for over \$25 million, etcetera, are probably not valid, and then that those that have been reviewed over the last five or six years probably shouldn't have been approved and that's probably not a good way to be either but there is no reason to have limited entry hospitals in the state of Alaska.

She then took public testimony.

DR. CHANDLER, testifying via teleconference, informed the committee that he has had a bad experience with the CON program over the last 30 years, most recently with the Providence CON. He has been fighting Providence Hospital in court over a quality of care issue for five years and recently got a judgment against Providence for approximately \$2 million. His concern is that Providence Hospital, in his opinion, is a total monopoly that many areas of medicine have been unable to compete with. He built the first surgi-center in Anchorage in 1976, the second in 1985, and the third has just been completed. The second center was closed because of the CON. He has developed the competitive forces for outpatient surgery in Anchorage and has documentation of the profitability of Providence Hospital over the last 30

years. According to the DHSS Medicare Rate Advisory Commission, in 1998 Providence had approximately 80 percent of all of the beds in Anchorage. Providence's estimated net profit in 2001 was about \$55 million according to court documents. In those same documents, Providence's projected revenue for its hospital system nationwide is 1 to 3 percent of \$3 billion. When a small company tries to compete with a company such as Providence, the amount of money it must direct toward the CON application nearly eliminates all private health care companies. He has expended approximately \$400,000 of his own money to file a lawsuit against Providence and to get the issue of pain management on the forefront. Providence Hospital said that unless its lawsuit went above \$3 to \$5 million, it would not bring the issue of pain management to the board level for consideration of quality of care issues. He is concerned that the CON no longer serves the purpose of creating state oversight but instead allows monopolistic hospitals in both Anchorage and Fairbanks to control the entire market of hospital beds and outpatient surgery. He added that Providence Hospital brought in its "powers" to the Federal Trade Commission (FTC) to split a merger between Alaska Regional Hospital and the surgery center in the early 1990s. Since that time, Providence Hospital has gone ahead and built a \$45 million expansion for an ambulatory procedures department.

DR. CHANDLER said he has been in Alaska for 30 years, on the staff at Providence Hospital and he has been an active member of the voting staff of Providence since 1971 or 1972. He said he is not out to injure Providence; his goal is to bring competition in Anchorage to the highest level so that quality of care is provided. He is still in active pursuit of trying to create better health care in Anchorage through competitive forces but he continues to reach the same bottlenecks that he has for the last 10 years. He thanked members for their time.

2:29 p.m.

MR. CHARLES FRANZ, Administrator of the South Peninsula Hospital in Homer, said that as the administrator of a rural facility, his primary concern with the CON is that, "We need to preserve a program that limits the proliferation of facilities to only those necessary to adequately serve the needs of the people." He said, regarding an earlier comment that it is important to let market forces work, private organizations coming into the health care market are not going to offer 24 hour per day emergency room services and are not going to treat anyone who shows up at the door, regardless of ability to pay. The community suffers because it either loses access to those services or it must pay much more to have those services provided. It also suffers because the human resources to provide those services are limited.

KIM PICKEREL, Market Coordinator for Health South in Alaska,

explained that Health South is the largest health care provider in the United States, providing ambulatory services, such as outpatient surgery, diagnostic and physical therapy and rehabilitation. Health South's goal and mission is to provide quality care in a cost and time efficient manner. She stated support for SB 256. The Alaska Surgery Center is the recipient of Denali Kid Care and Medicaid patients daily and, in fact, approximately 12 percent of its revenues were for those recipients. SB 256 will allow corporations such as Health South to expand their businesses and offer Alaskans an alternative and choice in health care.

KATHY CRONEN, CEO of North Star Behavioral Health, said she would like to clarify some confusing information given in regard to the moratorium. The moratorium on psychiatric beds is critically important for two reasons: it provides a brief period of time to plan adequately for the provision of mental health care in Alaska. As she reads the legislation, it will impact the Providence CON and will hold the application in abeyance until the planning period is over. The second reason a moratorium is important is that, for the first time, DHSS will be allowed to consider the fiscal impact of its decision to approve more acute care beds. She stated there is a substantial difference between the acute care per day rate and the residential treatment rate. She believes, particularly with the state's budget crisis, DHSS needs to consider the fiscal impact of adding more beds.

CHAIRWOMAN GREEN commented that a precedent exists for the moratorium with the one placed on nursing home beds. She then explained to Senator Davis that this bill has been in a state of flux because she has been trying to listen to various people who have been unable to attend committee meetings. She said she will distribute a copy of the proposed committee substitute to members as soon as it is ready. She then drew members' attention to the statute for the CON program and read:

Application for a certificate of need shall be made to the department upon a form provided by the department and must contain the information the department requires to reach a decision under this chapter. Each application for a certificate of need must be accompanied by an application fee established by the department by regulation.

She said the program has a hole or a vacuum that is creating problems for a variety of people. The forces that be and already have interests in the state are going to oppose change. She stated the Nursing Home Association came up with some great suggestions to improve the CON process.

SENATOR DAVIS expressed concern about the committee process. She

said this issue is a complex and important one that cannot be addressed by taking testimony while all of the information is given to one person. Senator Davis suggested that this issue should have been studied by a subcommittee and noted she was not trying to imply that Chairwoman Green had done anything wrong.

CHAIRWOMAN GREEN thanked Senator Davis and announced that the committee would hear SB 293 on Monday, as well as SB 256 if the committee substitute is ready.

SENATOR WILKEN noted that he has found the meetings on SB 256 to be very beneficial. He added that the committee has spent six meetings discussing the effect of the CON program on the state and different entities. He believes the committee must also look at the benefit to the consumer. He said he would like to get information on the cost of procedures done at hospitals versus ambulatory-surgi facilities.

CHAIRWOMAN GREEN agreed and said Senator Wilken's earlier comment about how the cost of health care impacts the businessperson goes right back to how this discussion originally began, and that was with the impact on Medicaid. Yet, the people who evaluate CON applications are prohibited from considering the cost of doing business. There being nothing else to come before the committee, CHAIRWOMAN GREEN adjourned the meeting at 2:41 p.m.

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