

ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE

February 27, 2002
1:40 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Jerry Ward

COMMITTEE CALENDAR

PRESENTATION BY SUSAN SCLAFANI, COUNSELOR TO THE US SECRETARY OF EDUCATION

SENATE BILL NO. 283

"An Act relating to temporary permits and licenses by endorsement issued by the Board of Nursing; and relating to the delegation of nursing duties."

MOVED SB 283 OUT OF COMMITTEE

SENATE BILL NO. 325

"An Act relating to civil liability for use of an automated external defibrillator; and providing for an effective date."

MOVED SB 325 OUT OF COMMITTEE

SENATE BILL NO. 293

"An Act relating to diversion payments, wage subsidies, cash assistance, and self-sufficiency services provided under the Alaska temporary assistance program; relating to the food stamp program; relating to child support cases that include persons who receive cash assistance or self-sufficiency services under the Alaska temporary assistance program; and providing for an effective date."

SCHEDULED BUT NOT HEARD

PREVIOUS SENATE COMMITTEE ACTION

SB 283 - No previous action to record.

SB 325 - No previous action to record.

WITNESS REGISTER

Dr. Ed McLain
Deputy Commissioner
Department of Education &
Early Development
801 W 10th St.
Juneau, AK 99801-1894

POSITION STATEMENT: Responded to questions about the No Child Left Behind Act.

Senator Gary Wilken
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 283

Ms. Lynn Hartz
Board of Nursing
3104 Brookside Dr.
Anchorage, AK 99517

POSITION STATEMENT: Supports SB 283

Ms. Pat Senner
Alaska Nurses Association
PO Box 102264
Anchorage, AK 99510

POSITION STATEMENT: Supports SB 283

Ms. Nancy Sanders
Board of Nursing
4830 Kalenka Ct.
Anchorage, AK 99502

POSITION STATEMENT: Supports SB 283

Ms. Dorothy Fulton
Board of Nursing
3601 C St.
Anchorage, AK 99503

POSITION STATEMENT: Supports SB 283

Ms. Mary Weymiller
Board of Nursing
666 11th Ave.
Fairbanks, AK 99701

POSITION STATEMENT: Supports SB 283

Ms. Katherine Reardon, Director
Division of Occupational Licensing
Department of Community and Economic Development
PO Box 110800

Juneau, AK 99811-0800

POSITION STATEMENT: Supports SB 283

Ms. Wilda Rodman
Staff to Senator Therriault
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Testified for the sponsor of SB 325

Ms. Kathy McLaren
Emergency Medical Services
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Supports SB 325

Mr. Tim Begaine
FNSB Emergency Operations
PO Box 55274
North Pole, AK 99715

POSITION STATEMENT: Supports SB 325

Ms. Pam Beale
Alaska Hospital Association
6704 Notting Hill
Anchorage, AK 99504

POSITION STATEMENT: Supports SB 325

F.X. Nolan
Municipality of Anchorage
1833 Cindylee Lane
Anchorage, AK 99507

POSITION STATEMENT: Supports SB 325

ACTION NARRATIVE

TAPE 02-13, SIDE A

Number 001

CHAIRWOMAN LYDA GREEN called the Senate Health, Education & Social Services Committee meeting to order at 1:40 p.m. Senators Wilken, Davis and Green were present. Chairwoman Green asked Dr. Sclafani to present to the committee.

DR. SUSAN SCLAFANI, Counselor to the U.S. Secretary of Education, informed members that this visit to Alaska is her first, and she has realized that Alaska faces some similar and very different challenges to other states. However, she believes all involved

will find a consistent and coherent message in the "No Child Left Behind Act," organized around the following four major principles.

1. Accountability for results.

The new act goes beyond the 1994 reauthorization by requiring states to: set rigorous content standards; establish student achievement standards; and develop assessments aligned to those standards and available to students in grades 3-8 in reading, language arts, and mathematics. Beginning in 2005, states must create standards in science and have an assessment by 2007-2008 linked to those standards that would be given once in elementary school, once in middle school and once in high school. The goal is to address those areas critical to national security. The government and private sector are finding that K-12 students are not going into higher education or careers in the fields of math and science. That problem has been solved short term with H1B visas, but that is not a long term solution.

Accountability includes making public reports to communities and parents to inform them of the progress of students and schools, and enabling them to evaluate the quality of schools their children attend, as well as the qualifications of teachers. In addition, states will create a public report card that will evaluate schools and how students are doing in a disaggregated format. Categories have been established for all major ethnic and racial groups, by gender, by migrant status, by special needs, by children who are not yet proficient in English, as well as economically disadvantaged students. The purpose of establishing those categories is to ensure that no child is left behind. Schools will be accountable for the performance of all students and, within 12 years, all students who are tested should reach proficiency levels as defined by the state. It will be up to the state to create the accountability system that defines the levels at which students and schools need to achieve at each year along the way. While the initial level must be set for 2005, the bar must be raised again in two years and again in three years to get to the proficiency in 12 years.

2. State and local flexibility and local control.

The Bush Administration believes strongly that it is not the federal government's role to tell states how to achieve these standards and what programs they should put in place. The funding mechanism provides the area of greatest flexibility. States can take up to 50 percent of any one of the titles of the funding, except for Title 1, and apply that to any purpose for which ESEA

funds are allowed. That means if safe and drug free schools is not an issue in a community, that district can take up to 50 percent of those dollars and apply them to technology for distance learning or another program. In addition, some of the funding streams have been consolidated so that states don't get small amounts of money for specific programs but instead have a block grant to use as states see fit. The class-size reduction dollars were fine for states and districts that were able to find additional highly qualified teachers and had the facilities to reduce class size, but many districts were unable to use those funds.

The U.S. Department of Education wants to recognize that the improvement of the quality of education for students is primarily a factor of the quality of teachers. It is up to each state to determine how to improve that quality. The block grant included not just class size reduction funds but also the Eisenhower program funds, which was initially focused on mathematics and science exclusively. The Eisenhower fund program was later broadened to include other subject areas. Congress is hoping that school districts will continue to focus dollars on mathematics and science because Congress sees this as a national security issue, but no one will prescribe what proportion of those dollars must be spent on science and mathematics.

Additional funds were added to make a block grant of \$2.8 billion available to spread among states so that they could determine how to best improve the quality of their teachers. It is clear to the U.S. Department of Education, from the studies done by Bill Sanders in Tennessee, that teacher quality is the critical issue. Mr. Sanders' value-added studies have a very rich longitudinal database because he was able to look at the performance of students over time. He found that students with similar circumstances who had exemplary teachers over a three year time period were 50 to 70 percentile points ahead of students with mediocre teachers. Research on teacher quality concludes that teachers must be well prepared in their content area and able to work with resources that enable them to reach all of their students - a national problem that is exacerbated in remote or rural areas. Title 2 dollars can be used to create selection criteria, recruitment and retention programs, and to train teachers and principals. Title 2 funds require states to use a definition of "highly qualified teachers" that includes certification in their subject areas and to define "highly qualified paraprofessionals" as being those people with either a two-year associate degree or the equivalent as measured by an assessment. Congress has been very concerned over the last seven years about the use of paraprofessionals to deliver instruction,

particularly to Title 1 children who are already behind.

3. Do what works - focusing research on proven educational methodology.

A lot of research on the teaching of reading has shown what works and what does not, and has gotten away from the whole language versus phonics battle, where practice was based more on belief systems rather than research and evidence on how children learn. The U.S. Department of Education is declaring that war over as the research is clear. Congress has appropriated an additional \$900 million this year and \$1 billion each of the next four years for reading first, ensuring that K-3 teachers are well prepared to teach scientifically based methodology in reading. The U.S. Department of Education is looking for research based practice in all areas so that as teacher-training programs are developed, research on effective practices is built into the programs. She commended legislators for joining the state education and early learning programs because early childhood programs need to be linked to what children will learn when they arrive at school. The phrase "scientific research based practice" appears in the Act 111 times. That practice means that rather than picking ideas out of the hat as to how to move forward, movement should be based on research that shows what has worked before. If no research exists in a particular area, states should look at the evidence from successful schools in one's own state.

CHAIRWOMAN GREEN asked Dr. Sclafani if she is referring to curriculum selection.

DR. SCLAFANI said she is referring to curriculum selection, training and professional development, reading programs, and creating options for supplemental services for students. All of these programs should be based on scientific research based practices that show proven success.

SENATOR LEMAN said he hopes the U.S. Department of Education has more success with that term than some committee members did last year. They were loudly criticized for suggesting that some of the changes should be based on science and medicine. He added that last year the legislature passed legislation that allows people who are not certified but have subject matter expertise to teach in a school district if they work on certification at the same time. He asked if those people will fit within the new definition in the federal act.

DR. SCLAFANI said it does not. She said the Department of Education was arguing that "highly qualified" not include

certification, but Congress insisted. She said the state will have to define alternative certification programs that they can participate in. Some states have provided local permits, which are state approved permits for highly qualified uncertified individuals. The permit allows the individual to teach only in that district. She advised the state will have to come up with structures that enable those individuals to become certified.

SENATOR LEMAN asked if Alaska's law allows an 18 month time period to get certified.

DR. ED MCLAIN, Deputy Commissioner of the Department of Education and Early Development, said that those individuals receive a temporary certificate that is good for 18 months while they work to obtain a permanent certificate.

DR. SCLAFANI pointed out the federal law is very specific as it requires full certification. She noted it was influenced strongly by people who feel strongly that certification is the only way to go. She said there are no immediate consequences to employing a teacher who is not fully certified as long as the state has a plan to get them certified and Alaska's system does that.

CHAIRWOMAN GREEN asked Dr. McLain if he is making a list of the changes in the federal law that will require changes in Alaska's statutes.

DR. MCLAIN said DOEED is not only talking about what statutory changes may be necessary, but also what regulatory and record keeping changes might be necessary too.

CHAIRWOMAN GREEN asked if any statutory changes will have to be made during this session.

DR. MCLAIN said SB 250, which changes the date for the school designators, has already passed out of the Senate HESS Committee. That bill will allow DOEED to meld the two systems [federal and state] into one.

CHAIRWOMAN GREEN asked if the other changes can wait until next year.

DR. MCLAIN said that DOEED might need to take on some issues related to assessment systems. He noted he has raised those issues with the U.S. Department of Education and he does not believe they will require statutory changes.

DR. SCLAFANI said she believes most of the changes that need to

be done immediately are actions and decisions that must be made by DOEED by next fall. They will not require legislative changes.

DR. SCLAFANI continued her presentation.

4. Parental Choice.

"Parental choice" has been construed to mean that parents should have some say in the school their child attends if that school is low performing. Parents of children who attend Title 1 schools will be offered the option of public school choice within the district if the school has been low performing for two years, upon the parents' request. There are funding requirements to cover this cost that are taken out of federal funds, but 20 percent of the Title 1 allocation must be reserved for this purpose. Not only must a district provide parents with a choice, it must also provide transportation.

2:03 p.m.

CHAIRWOMAN GREEN expressed concern about the size of Alaska's districts and asked if that is a point of discussion Dr. Sclafani will address.

DR. SCLAFANI said she plans to take that issue to the legal staff of the U.S. Department of Education for an interpretation because although the act says transportation must be provided within a district, it doesn't make sense if a school is 172 miles away and each flight costs \$1,000. She confirmed that the U.S. Department of Education would provide Alaska with some guidance on that issue.

DR. SCLAFANI explained that if the low performing school is in year two of school improvement, the parent who leaves the child at that school is eligible for supplemental services for that child, which means they receive the Title 1 funds to get tutoring services. The tutoring services can be provided by community-based organizations, private entities, community institutions, on-line learning or by the school district if no other entity is available. It is up to the parent to say, "I'm willing to keep my child here but knowing the criticality of continuing to mount up deficiencies if the school is not doing what it needs to do for my child, I should have some opportunity to get my child that additional assistance."

DR. SCLAFANI asserted that it is clear to the U.S. Department of Education that the focus of the act is on the children. For the

first time, the nation is holding itself to the highest standard it has ever had. In the past, some children were written off. This time, the act requires that 95 percent of students in each subpopulation must be assessed. Each subpopulation will have some with cognitive disabilities that may not enable them to reach proficiency but that should not amount to more than 5 percent of any group. The rest have the capacity to succeed with the right strategies. She pointed out that the new act has an interesting mix of dollars. Some are simply categorical and will be distributed on a formula basis; and some are categorical but will be awarded on a competitive grant basis - states will have to present a viable proposal before funding is awarded. It will be up to states to distribute funds in a similar manner to districts, recognizing that the dollars need to be targeted. This act tries to focus the dollars on the children most in need.

CHAIRWOMAN GREEN asked about Reading First.

DR. SCLAFANI explained that Reading First is a separate component of the act that has set aside \$900 million this year and \$1 billion for the next four years for the training of K-3 teachers in scientifically based methodologies for teaching reading. The training will be done within school districts. States can keep a percentage of the dollars at the state level to develop a statewide program. School districts can then use some of the funding to pay teachers to attend the training. The bottom line is that all teachers are trained in good practice so they can help children succeed.

CHAIRWOMAN GREEN asked if districts with schools that need improvement would oversee training programs.

DR. MCLAIN said that is one of the issues for which a determination needs to be made. He and Dr. Sclafani have been discussing that exact question and are considering the most appropriate thing to do in that situation. Alaska could do a statewide model with specific conditions and parameters or a regional plan could be designed.

DR. SCLAFANI said the continuum of state intervention is another issue that the U.S. Department of Education is looking at: where does the state take a greater role in developing the plan and where does it stand back? The state must establish a bar within its accountability system to delineate at what level schools are not performing adequately. States can choose to identify further steps for schools that haven't made adequate progress for two years. If after two years no progress has been made, states can impose corrective action to develop a plan that changes practice.

Those changes could be to curriculum, staffing, and/or training. If that is still not effective after two years, which means the school has not been making adequate progress over six years, the state steps in to restructure and has a much greater say in how dollars are spent. She pointed out one question that comes up with the 2005 requirements is that DOEED is currently using a combination of norm referenced and criterion referenced testing. Psychometricians say it is difficult, if not impossible, to establish an alignment of norm-referenced tests to Alaska's state standards. By their very nature they are a consensus document of every states' standards so they do not measure enough of Alaska's standards to be a good alignment nor do they do it as well as they should. DOEED needs to decide whether to use some of the funds for test development to develop criterion referenced tests for those grades that are not using them.

CHAIRWOMAN GREEN noted the presence of Senator Wilken and then asked if the testing will also help identify deficient classrooms.

DR. SCLAFANI said they will and with a good student data information management system, DOEED will not only have the rich data from the assessments to look at districts, schools, and classrooms, but also to look at the progress of the individual child.

CHAIRWOMAN GREEN asked if areas that are not being taught could be identified.

DR. SCLAFANI said yes - it is a good way to measure teacher quality because if you find, longitudinally, children are missing certain objectives each and every year, it is probably not the children. She said the U.S. Department of Education will be looking at whether Alaska's current criterion referenced assessments are aligned to the curriculum. DOEED has done a study of that question, which is under review at this time. She added that Alaska will have to decide whether to continue with norm-referenced tests or move into criterion referenced tests for grades 3-8.

CHAIRWOMAN GREEN asked if the State of Alaska could use a criterion-referenced test used in another state.

DR. SCLAFANI said the U.S. Department of Education is recommending states look at other states' standards and find those that are similar. The U.S. Department of Education is concerned about the capacity of the assessment industry to come up with 50 unique tests. Alaska might be able to use another

state's test and add a supplement.

CHAIRWOMAN GREEN asked if there is a way to evaluate a norm-referenced test to determine which portions could be converted to a criterion referenced test.

DR. SCLAFANI said that can but done but that would essentially be building a criterion referenced test. She then informed members that one of the challenges facing Alaska is the requirement for assessment in Native languages because of the variety of languages. It is a requirement although where it is just not practicable, the U.S. Department of Education is asking states to come up with a plan to address the problem. One solution might be to start English language development earlier so that students can reasonably demonstrate their knowledge and skills on an assessment in English by third grade.

DR. SCLAFANI said the next issue that has already been resolved is that many states had laws that uniformly exempted limited English proficient (LEP) students from testing for two or three years. This act requires a tighter reign so that no blanket exemptions will be given. One issue with Alaska's current program is that the U.S. Department of Education needs accurate participation rate data for all students. If 95 percent of students are to be assessed, the U.S. Department of Education will need participation rates for all subpopulations. She stated that Alaska faces a challenge when reporting its data because of the number of small schools for two reasons: once data is disaggregated by subpopulation, the numbers will be too small to be statistically relevant or to meet the Family Education Privacy Act (FERPA), which prohibits publishing information that might identify a child or a group of children. The U.S. Department of Education has asked Alaska to come up with a plan for holding those schools accountable for student performance.

CHAIRWOMAN GREEN asked if the information, after it has been disaggregated, can be re-aggregated over a larger geographical area.

DR. SCLAFANI said the school district report does exactly that with information from individual schools.

CHAIRWOMAN GREEN noted that DOEED was unable to get that information from districts as well because of FERPA. She said she is trying to figure out whether data can be released on a regional basis because otherwise there will be no way to know where the problems are.

DR. SCLAFANI said it would be up to the state to create an additional intermediate level to aggregate the data. The plan will have to show how that data will be used to determine the quality of education.

2:25 p.m.

CHAIRWOMAN GREEN asked how legislators will realize whether or not a particular school needs help if it cannot have the information.

DR. SCLAFANI explained that DOEED can have the information but it cannot be published.

CHAIRWOMAN GREEN asked if the information can be furnished to legislators.

DR. SCLAFANI said a part of DOEED's plan will have to be how to identify to legislators the schools that need school improvement without publishing the data.

CHAIRWOMAN GREEN acknowledged the presence of Senator Ward.

DR. SCLAFANI indicated that Alaska did have an issue regarding not requiring all Title 1 students to take the exit exam but she understands that DOEED has new rules so that issue has been resolved. She pointed out that the federal act does not require states to have an exit exam with consequences for students; that is a state decision. She said in her opinion, putting off the test until 2004 to give schools more time to help students prepare is a good idea because if children have not been prepared with the skills they need, they will be accountable for the rest of their lives.

TAPE 02-13, SIDE B

DR. SCLAFANI said, regarding the school designators, the state will have to decide what the bar will be that all schools have to meet, as well as how to define what constitutes adequate yearly progress.

CHAIRWOMAN GREEN asked if that will also be determined through the designator process.

DR. MCLAIN said DOEED is currently trying to address the question of how to incorporate adequate yearly progress - whether that will be the sole measure for designation or whether to include other non-academic factors. He and Dr. Sclafani have been talking

about proposals to include factors such as parent and community involvement. The question then becomes whether a high parent involvement score could offset lower achievement. DOEED's current proposal is to report that type of data but to keep the adequate progress focused on student achievement.

DR. SCLAFANI said the act does, in fact, state that other factors cannot override the academic performance factor. She then offered to respond to any questions members might have.

SENATOR DAVIS asked, regarding the Reading First component, what has been decided in the debate about whole language versus phonics.

DR. SCLAFANI said that a national research panel has published the research on what strategies are effective for student learning. It includes phonemic awareness, alphabetic awareness, orthographic awareness, fluency and comprehension.

SENATOR DAVIS asked for the name of the study.

DR. SCLAFANI said it was a compilation of studies edited as the National Research Panel's Report on Reading.

SENATOR DAVIS asked about the teacher quality study she referred to.

DR. SCLAFANI stated she was referring to "The Value Added Studies of Teacher Performance" by William Sanders.

2:31 p.m.

SENATOR WILKEN asked if the "No Child Left Behind Act" is a major event in K-12 education.

DR. SCLAFANI said it is; it is the first time that our nation has said it will hold its schools responsible for the performance of all children. That has never been the case before. For the first time, Congress has said that in exchange for federal funds, states are to establish an accountability system for all schools. It is also the first time that accountability has been so clearly laid out in terms of establishing levels of student performance that are required for each state. The focus is, to a greater extent, on allowing for local control and flexibility in ways to meet them. Once those standards are set, the state is required to do what it takes to meet those standards. In addition, this bill contains more funds in recognition of the high costs of making changes in public schools, particularly the cost of training

teachers. She noted the states are on a continuum from some that had to enter compliance agreements because they had not begun to comply with the 1994 requirements to states that have already complied with 90 percent of the requirements of the new act. Only six to eight states have the robust data management systems that will enable them to use the data effectively. The U.S. Department of Education is trying to bring them together and elucidate what components states need. Many states are willing to share their data management systems. She commented that it is probably the first time that Congress and the department agree that there can be no more time line waivers because we are losing a generation of children.

DR. SCLAFANI said Alaska is one of the first states being visited because DOEED requested a visit. In the past, she has met with chief state school officers, the governors' education liaison, and superintendents of the 100 largest districts across the country to make clear that there will be no backing down and that the U.S. Department of Education is here to help.

SENATOR WILKEN asked Dr. Sclafani to supply committee members with a list of states that are doing the best job at implementing the new law.

DR. SCLAFANI agreed.

SENATOR WILKEN asked if the act contains a time to revisit the legislation to review the effects upon the states.

DR. SCLAFANI said a review will occur with reauthorization every five years.

CHAIRWOMAN GREEN stated that she is impressed with the direct language in the act.

2:36 p.m.

SENATOR LEMAN said, from his perspective, parts of the bill were made "less good" during the congressional process, in particular the sections that pertained to educational accountability.

DR. SCLAFANI commented that one of the challenges faced by every state with the downturn of the economy is funding. This act does contain significant funding. Congress and the U.S. Department of Education have been clear that the new act supplements and does not supplant funding requirements. States must maintain their efforts in education and cannot look to the federal funds to replace state funding. She applauded the Alaska legislature for

putting significant dollars into Alaska's reform efforts but noted that continuing that effort is necessary.

There being no other questions, CHAIRWOMAN GREEN thanked Dr. Sclafani and then announced a brief recess.

#SB283

SB 283-REGULATION OF NURSING

CHAIRWOMAN GREEN asked Senator Wilken to present SB 283.

SENATOR GARY WILKEN, sponsor of SB 283, read the following sponsor statement.

SB 283 is submitted at the request of the state board of nursing. It will reconcile current nursing industry standards with Alaska state law and maintain efficient management of licensed nurses in our state.

Specifically, it does three things: 1) it codifies the authority of licensed nurses to delegate certain basic tasks to unlicensed assisted personnel; 2) it extends the duration of a temporary nursing license from 4 to 6 months; and 3) it updates the statutory language authorizing the issuance of licenses by endorsement.

These statutory adjustments are the result of a diligent effort by the state board of nursing. They will serve to tighten, clarify and improve their ability to regulate and manage the delivery of safe and effective health care to the citizens of Alaska. There is no known opposition or negative impact of these adjustments. Please support the state board of nursing by enacting this beneficial legislation.

SENATOR WILKEN commented that he got involved in this issue through a friend but he faced this issue when he worked on long term care. He believes this bill will help to provide better service and broaden the reach of the nurses that benefit Alaska today.

CHAIRWOMAN GREEN acknowledged that she has one question that just arose, that pertains to a decision by the board of nursing or one of its subcommittees to not deliver over-the-counter supplements that are prescribed by medical doctors. She feels it is ironic to pass on nursing duties to other employees when nurses do not have to adhere to a physician's decision. She said she would like someone to provide her with the statute or regulation that provides that written authority before passing the bill out of

committee.

SENATOR WILKEN named several people who were available to testify and who may be able to answer that question.

MS. LYNN HARTZ, member of the Board of Nursing, stated support for SB 283. SB 283 is essentially a "clean up" bill that brings nursing statutes up to date with current nursing practice. It moves the licensing by endorsement provision from one section to another, which will correct a loophole that could allow a non-nurse to apply for licensure. SB 283 also increases the length of time for a temporary nursing license from four to six months to allow extra time to get the results of a criminal background check. It also gives licensed nurses the authority to delegate nursing duties to other personnel and the Board of Nursing the authority to write regulations outlining safe delegation practices. Last year, the Board of Nursing was told that nurses do not have statutory authority to delegate to unlicensed, assistive personnel (UAP), therefore the board could not write regulations about delegation. The board had always assumed that nurses had the authority to delegate to unlicensed assistants and even published a position statement on the subject in 1993. An example of a duty that a nurse might delegate to a nurse's aide is to run a urine test on a patient. Nurses' aides have no legal scope of practice since they have no license to practice. The legal source of the authority to do the task is the licensed nurse. Without this legislation, UAPs would have no legal basis to continue to perform nursing tasks for patients at hospitals.

2:55 p.m.

CHAIRWOMAN GREEN stated that about three years ago, nurses were being required to pass on certain authorities to assistants and some nurses chose not to. She asked if SB 283 could force a nurse to assign a duty to an assistant that he or she would not otherwise choose to do.

MS. HARTZ said it will not and, in fact, SB 283 will strengthen the nurses' ability to make those judgments and not force them to delegate an unsafe task.

CHAIRWOMAN GREEN asked what provision in SB 283 will give nurses that protection.

MS. HARTZ said that to delegate a task that a nurse felt was unsafe would be considered unprofessional conduct by statute.

CHAIRWOMAN GREEN said she just wanted to be sure that this bill cannot be construed to mean that an employer could require a nurse to delegate a task unwillingly.

MS. HARTZ said she does not believe it could. The bill also gives the Board of Nursing the authority to write regulations, which they want to do to prevent that from happening.

CHAIRWOMAN GREEN asked if it is an assumption that the Board of Nursing will be writing the regulations as she saw no mention of it in the bill.

MS. HARTZ referred Chairwoman Green to Section 5 of SB 283, specifically the phrase, "under regulations adopted by the board."

MS. PAT SENNER, President of the Alaska Nurses Association, stated full support for SB 283. She noted in the past 10 years, there has been an explosion of the types of UAPs that nurses are being asked to delegate tasks to. Because these people are unlicensed, no quality assurance exists to ensure that the education UAPs received is adequate for the task they are being asked to do. Employers often ask nurses to be the quality assurance component and to make sure that the people they are asked to supervise perform their tasks in an adequate manner and have been trained properly. She pointed out that often tasks would be assigned to UAPs on a case-by-case basis, only when the supervising nurse is sure the UAP is able to provide adequate care.

CHAIRWOMAN GREEN asked if a nurse might not dispense medicine prescribed by a doctor, including non-prescription drugs.

MS. SENNER said the nurse always has the responsibility to review medication orders given by a physician for safety reasons. Therefore, even when a doctor prescribes medication, nurses are responsible for making sure it is safe to give to that patient. Court cases have occurred around the nation in which a nurse administered an improper medication prescribed by a doctor and nurses have been charged with murder. In one case, six different errors were made but the nurse was held accountable for the one improper medication error. She said the issue is not really over-the-counter medicines, it is with medications that are not FDA approved, usually herbal medicines. She recently attended a urology conference where this topic and the following example were discussed. An herbal medicine containing estrogen was given to advanced cancer patients yet estrogen can lead to blood clots. The problem with this and similar scenarios is that the nursing profession is dealing with unregulated herbal medications that often contain more ingredients than those listed on the label, some of which could be harmful to the patient.

MS. NANCY SANDERS, a member of the Board of Nursing, agreed with Ms. Hartz's synopsis of the bill.

CHAIRWOMAN GREEN asked where the authority to not dispense something prescribed by a physician exists in statute or regulation.

MS. SANDERS cited 12 AAC 44.770, which relates to unprofessional conduct and added that some of the preparations being discussed are not covered in nursing education programs because they are not drugs.

MS. MARY WEYMILLER, a licensed practical nurse, said that while SB 283 is a cleanup bill, it is an important one for the Board of Nursing to develop regulations for state nursing practices. She urged members to support the measure.

MS. CATHERINE REARDON, Director of the Division of Occupational Licensing, Department of Community and Economic Development, stated support for SB 283.

SENATOR WARD asked for more information about the 4 to 6 month extension.

MS. REARDON said the Board has adopted regulations requiring criminal background checks for initial licensure for a nurse or a nurse aide. The background check includes state and FBI fingerprint checks. The turnaround time, particularly for fingerprint checks, is sometimes unpredictable so the Board wants to make sure that temporary licenses do not expire while waiting for results to come back. In about 7 percent of cases, fingerprints are not readable and must be redone.

SENATOR WARD said he thought the could be done faster with new technology.

MS. REARDON said it is an anticipated problem for nurses. The division does fingerprint checks for collection agents and has had experiences where people have had to send in fingerprints a third time. She noted that usually the FBI turnaround time is very quick but she suspects when they have other priorities, the process may be slower. Sometimes it takes several months for the FBI to send a response saying the fingerprints were unreadable. The board's intention is to avoid a situation in which a nurse can no longer go to work through no fault of the nurse. She hypothesized that the technology may be better but the volume of requests for fingerprint checks has grown.

There being no further questions or testimony, SENATOR WARD moved SB 283 from committee with individual recommendations and its zero fiscal note. There being no objection, the motion carried.

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The committee took up SB 325.

#SB 325

SB 325-CIVIL LIABILITY FOR DEFIBRILLATOR USE

MS. WILDA RODMAN, staff to Senator Therriault, sponsor of SB 325, read the following sponsor statement.

SB 325 is intended to save lives by increasing the availability of automated external defibrillators, devices designed to restore a normal heartbeat when a person's heart suddenly stops.

Each year, 250,000 people die in the U.S. because of sudden cardiac arrest. The most important treatment for more than half of these patients is defibrillation, an electrical shock intended to restore a more normal cardiac rhythm. For each minute a person remains in cardiac arrest, their chances of survival decrease by about 7 to 10 percent. The increased availability of automated external defibrillators, or AEDs, can help save lives by allowing shocks to be delivered prior to the arrival of the ambulance crew. AEDs have evolved significantly over the past few years, and the current generation is safer, easier to use and more maintenance free than ever.

Businesses and municipalities are interested in making AEDs more accessible in the workplace and where large groups gather so that trained staff and laypersons can access the device. Currently, AS 09.65.090 provides immunities from civil liability to individuals who use the device, but not to those who make the device accessible for use. This has limited the accessibility of AEDs because of the perception of excessive liability due largely to an unfamiliarity with the current ease and safety of the latest technology. It is literally impossible to shock a person who does not require shocking with the current device.

SB 325 extends immunity from civil liability to those who provide AEDs with important prerequisites to ensure their safe and effective use. It also amends the section of statute providing immunity to those who use AEDs in recognition of how much easier it is to safely use the newest generation.

MS. RODMAN offered to answer questions.

CHAIRWOMAN GREEN said the committee has heard similar legislation that pertained to emergency medical technicians. She then took public testimony.

MS. KATHY MCLAREN, the emergency medical services training coordinator for DHSS, stated support for SB 325 for many of the reasons presented already. She then gave the following testimony.

67 percent of sudden cardiac deaths in Alaska occur out of hospital or patients are pronounced dead at the emergency room. Increased availability of the automated external defibrillator is the only treatment for many of those patients. The American Heart Association has described the "chain of survival" as early access, early CPR, early defibrillation and early advanced care. Each link in this chain is critical to increasing survival from sudden cardiac events. Alaska has moved from manual defibrillation in hospital by advanced life support personnel to automated external defibrillation at the basic EMT level. Alaska was one of the first states to permit AED use at a level below that of an EMT.

Currently, lay people are trained in basic CPR and they can be trained to apply and operate the AED. The machine is applied - a microprocessor evaluates the rhythm, determines whether a shock is required. The operator can then administer the shock. This machine is only applied to and used on patients who are not breathing and who do not show signs of circulation. A patient without a pulse or who is not breathing is dead or dying. Access to AEDs may provide a chance of increased survival. SB 325, by reducing the liability for the people who purchase and make these devices available, will likely increase the number of AEDs available in this state. For that reason, the Department of Health and Social Services supports SB 325.

CHAIRWOMAN GREEN asked Ms. McLaren if she had a proposed amendment.

MS. MCLAREN said she did.

MS. RODMAN said she saw the proposed amendment right before the meeting and explained that when the bill was originally drafted, it applied to a "person or entity." The legal advisor recommended dropping the word "entity" because the definition of a person includes an entity. She said the intent of the amendment is to include state agencies and municipalities and that Senator Therriault is not opposed to the amendment.

CHAIRWOMAN GREEN asked if the DHSS legal advisor recommended the amendment.

MS. MCLAREN said her understanding is that some of the people who initially proposed the amendment are from municipalities and state agencies. They were concerned that language in AS 01.10.060, which defines "person," was not sufficiently clear to provide protections for municipalities and state agencies.

MS. RODMAN read the applicable part of the statute referred to by Ms. McLaren as follows:

In the laws of the state, unless the context otherwise requires, a person includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person.

SENATOR WARD said he believes the legislators' legal advisors were correct.

CHAIRWOMAN GREEN said the definition does not specifically mention a municipality and asked if it mentions a state agency.

MS. RODMAN said it does not. She pointed out that the legal drafter advised her that a person encompasses entity, and thus encompasses municipality or state agency.

CHAIRWOMAN GREEN suggested addressing the proposed amendment in the Senate Judiciary Committee.

MR. TIM BEGAINE, Director of Emergency Operations for the Fairbanks North Star Borough, stated full support of SB 325. The borough encountered businesses and municipalities late last summer that were interested in making automatic external defibrillators more accessible in the workplace and in places where recreational activities take place. The borough looked at applicable federal and state laws, and found that the borough would assume liability for providing public access to an AED. Existing Alaska statute provides immunities from civil liabilities to those who use the device, but not to those who install the device. SB 325 will correct that deficiency and will assist in the promotion of this life saving device in Alaska.

MS. PAM BEALE, Emergency Cardiovascular Care Manager for the American Heart Association, expressed the following concerns with SB 325. A provision requiring that EMS workers be notified of the number and locations of AEDs was removed but she believes notification would be a great service to the community. In addition, she would like to add municipalities and state agencies to the definition for the purpose of clarification.

MR. F.X. NOLAN, Chief of EMS Training for the Anchorage Fire Department and the Municipality of Anchorage AED, Public Access

Defibrillation Coordinator and the Anchorage Chair of the Northwest Region of the American Heart Association's Operation Heartbeat Initiative, informed members that Alaska's share of the 250,000 people who succumb to sudden cardiac death every year is slightly under 400. Some of those people die in medical facilities, but in Anchorage every year, between 90 and 100 sudden cardiac deaths occur outside of a hospital. Last year, of the 90+ people, 43 were defibrillated with AEDs prior to the arrival of paramedics - by firefighters, police officers, or others. Out of those 43, 12 went to a hospital with a pulse. He very much supports SB 325. He sees a proliferation of AEDs in the future; SB 325 will remove the perception of liability when used by a member of the public. He agrees with the amendments proposed by the previous speaker as he believes it is desirable for local EMS agencies to know where AEDs are located.

There being no further testimony or questions, SENATOR WILKEN moved SB 325 with its zero fiscal note and individual recommendations. There being no objection, the motion carried.
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There being no further business to come before the committee, CHAIRWOMAN GREEN adjourned the meeting at 3:25 p.m.