

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

April 24, 2002  
1:36 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**

CS FOR HOUSE BILL NO. 352(HES) am  
"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 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 209(HES)  
"An Act directing the Department of Health and Social Services to establish a foster care transition program; relating to that program; and providing for an effective date."

MOVED SCS CSHB 209(HES) OUT OF COMMITTEE

SENATE BILL NO. 306  
"An Act establishing the Prescription Drug Assistance Task Force; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 245(L&C) am  
"An Act relating to marital and family therapists."

HEARD AND HELD

HOUSE BILL NO. 348  
"An Act relating to violations of domestic violence protective orders."

MOVED OUT OF COMMITTEE

**PREVIOUS SENATE COMMITTEE ACTION**

HB 352 - No previous action to record.

HB 209 - See HESS minutes dated 4/15/02.

SB 306 - See State Affairs minutes dated 3/21/02.

HB 245 - See Labor and Commerce minutes dated 2/21/02.

**WITNESS REGISTER**

Dr. Mark Leal  
Department of Education &  
Early Development  
801 W 10<sup>th</sup> St.  
Juneau, AK 99801-1894

**POSITION STATEMENT:** Provided information about reporting requirements in HB 352

Mr. Richard Benavides  
Staff to Senator Davis  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Presented SB 306 for the sponsor

Ms. Rosalie Walker  
AARP - Juneau Chapter  
Juneau, AK

**POSITION STATEMENT:** Supports SB 306

Mr. Richard Cauchi  
National Council of State Legislatures  
No address provided

**POSITION STATEMENT:** Provided information on other state action taken to address prescription drug costs

Mr. Steve Ashland  
Division of Senior Services  
Department of Administration  
PO Box 110200  
Juneau, AK 99811-0200

**POSITION STATEMENT:** Supports SB 306

Representative Peg Wilson  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Sponsor of HB 245

Ms. Caren Robinson  
Alaska Mental Health Trust Authority  
Department of Revenue

550 W 7<sup>th</sup> Ave., Suite 1820  
Anchorage, AK 99501

**POSITION STATEMENT:** Supports HB 245

Ms. Katherine Reardon  
Department of Community & Economic Development  
PO Box 110800  
Juneau, AK 99811-0800

**POSITION STATEMENT:** Supports HB 245

**ACTION NARRATIVE**

**TAPE 02-32, SIDE A**  
Number 001

**CHAIRWOMAN LYDA GREEN** called the Senate Health, Education & Social Services Committee meeting to order at 1:36 p.m. Senators Ward, Leman, Davis and Green were present. The committee took up HB 352.

#HB 352

**HB 352-SCHOOL PERFORMANCE REPORTS**

DR. MARK LEAL, Department of Education and Early Development (DOEED), reminded members that Senator Wilken requested more information about reporting requirements at a prior meeting. Senator Wilken was concerned about the number of asterisks on the school report card because DOEED did not report student results if fewer than 10 students were tested. As a result, he worked with Dr. Nick Stayrook from Fairbanks and Gary Wiley (ph) from Kenai to resolve that problem and brought an example of a format for the committee's review. DOEED would, through department regulation, report the results of student testing at very small schools by the percent proficient for the entire school. Therefore, if a school had two or three students in each grade level, the total number of students of all grade levels would be added for each subject - reading, writing and math, and the percent proficient in that subject across all grade levels would be published.

CHAIRWOMAN GREEN informed members that their packets contain a list of Alaska schools and their student populations. The smaller schools range from 11 schools with 10 students to six schools with one student. DOEED will aggregate the scores of all students from the small schools and determine the percentage proficient in each subject so that no student can be identified. She asked Dr.

Leal if her understanding is correct.

DR. LEAL said it is and that this approach will get at the frustration that nothing is reported about particular schools. The information will not be as precise as the grade level information, but that information cannot be reported because of the a possible breach of confidentiality when dealing with a small number of students. One of DOEED's concerns about reporting the small numbers, even on an aggregate basis, is that very small numbers tend to fluctuate dramatically from year to year. One student's scores could skew the results and make it look like the school is improving while, in reality, the change is the result of one new student with high scores. He said DOEED will caution against making wild claims about improvements for very small groups of students tested.

CHAIRWOMAN GREEN asked if this method will be used until the full report card is published or whether this method will continue after the designator committee is in place.

DR. LEAL said this method will be the protocol for how DOEED reports data in the school report cards in the future.

CHAIRWOMAN GREEN asked Senator Wilken if he is satisfied that in the meantime the information provided to the legislature will be adequate.

SENATOR WILKEN said he is. He commented that he thought using the method would be a simple fix but he has since been shown it is much more complex. He is pleased with DOEED's attempt to make it understandable to most people. He feels the most important thing is to get as much detail as possible without violating privacy rules but that should be dealt with in regulation, not legislation. He said he appreciates the work that Dr. Leal has done.

CHAIRWOMAN GREEN announced that all members were present. She then noted the Senate version of this legislation already moved from this committee but she requested that it be returned. She feels this legislation is now something everyone can be proud of.

SENATOR WARD moved CSHB 352(HES)am from committee with individual recommendations and its accompanying fiscal note. There being no objection, the motion carried.

CHAIRWOMAN GREEN announced the committee would take up HB 209.

#HB 209

**HB 209-PROGRAM FOR FORMER FOSTER CHILDREN**

CHAIRWOMAN GREEN announced that a proposed committee substitute (Version 0) was before the committee.

SENATOR LEMAN moved to adopt Version 0 as the working document of the committee.

CHAIRWOMAN GREEN explained that the previous language on page 1, line 12, said, "reach or have reached the age of 18 while in state foster care." The new language reads, "reach or have reached the age of 16 or older while in state foster care and have not yet reached the age of 21." That change was made as a result of committee discussion at the last hearing. In addition, Version 0 includes the committee's amendment regarding public and private organization participation.

SENATOR WARD moved SCS CSHB 209(HES) and its accompanying fiscal notes from committee with individual recommendations.

CHAIRWOMAN GREEN announced that with no objection, the bill moved from committee. The committee took up SB 306.

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#SB 306

**SB 306-PRESCRIPTION DRUG ASSISTANCE TASK FORCE**

MR. RICHARD BENAVIDES, staff to Senator Davis, sponsor of SB 306, made the following statement about the bill.

While Congress debates proposals to add a prescription drug benefit to Medicare, many states are taking steps to better protect vulnerable residents from rising out-of-pocket costs and declining insurance coverage of prescription drugs. According to the National Conference of State Legislatures, over 40 states have considered legislation between 1999 and 2001 to address prescription drug issues ranging from creation and modification of pharmacy assistant programs to creation of purchasing pools and discount purchasing programs for seniors and persons with disabilities.

SB 306 would only involve Alaska's growing senior population. The AARP has reported that the annual growth rate for Medicaid spending on medications rose 23.4 percent in Alaska from 1996 to 1998 with fully a third of Alaskan seniors having no prescription drug coverage whatsoever. Between October 31, 1999 and

October 31, 2000, 5,546 Alaskans aged 65 or above who were eligible for the state's Medicaid program received 263,633 prescriptions at a cost to the state of over \$10 million. Alaska has a number of options for expanding access to prescription drugs and or reducing the cost of prescription drugs for our senior population. Although this is not the traditional role for states, many states are moving into this void created by delays at the federal level at adopting a prescription drug supplement to Medicare.

SB 306 creates a method to look for ways to provide meaningful relief for seniors in this critical area without creating large new expenditure programs.

SENATOR LEMAN commented that the Governor would appoint all but one member of the task force. Recent task forces have had a larger legislative membership so that the people's branch has more representation. He said he can understand the make-up based on the fact that the task force is Administration driven. He then noted that one of the governor's appointees is to be a person affiliated with AARP over the age of 55. He questioned that age.

MS. ROSALIE WALKER, President of the local chapter of AARP and a board member of the Older Persons Action Group, said she sent members written testimony and will not repeat that but she will address Senator Lemman's question about the appointee over age 55. AARP used to be the acronym for the American Association for Retired Persons but, as of this year, the name was changed entirely because the membership age dropped from 55 to 50. The Association has found that many baby boomers are taking care of their parents and need AARP's services just as much as older people do. Consequently, the name American Association of Retired People no longer applied. Because the acronym AARP is world renowned, it was adopted as the official name of the new organization. She noted AARP and the Older Persons Action Group support SB 306; prescription drug coverage is a priority of both groups. She hopes Alaska gets ahead of the national debate and that the task force can provide the new legislature with information so that it can hit the ground running. She offered to answer questions.

CHAIRWOMAN GREEN asked Ms. Walker where the gap exists in coverage and whether it happens when one transitions from independent insurance coverage to Medicare.

MS. WALKER said the very poor are taken care of but those on the borderline and middle-income people fall through the cracks because of the restrictions of Medicaid.

CHAIRWOMAN GREEN asked if, at age 60, one has coverage for prescriptions at what point that coverage stops.

MS. WALKER said, "It's across the ages. It's not really the age that's the problem it's the prescription folks."

SENATOR DAVIS said it also has to do with the fact that when a person turns 65, the first payer is Medicare, which does not cover prescription drugs. Therefore if a person has no other insurance to pick up that cost, no prescriptions are covered.

MS. WALKER informed members that she has state insurance coverage so her prescription bills go to Medicare, which then sends them to Aetna, which often sends them to her, depending on the medication, so she ends up paying anyway.

CHAIRWOMAN GREEN commented that this is not just an insurance issue.

MS. WALKER said insurance is an integral part of this issue and the task force will have to examine the insurance activities in addition to what states are doing in regard to prescription drugs.

SENATOR LEMAN referred to the \$5,000 cost under the contractual category in the fiscal note and asked if the department will be required to place a certain number of ads in newspapers. He said he is assuming that would account for a significant portion of the \$5,000.

MS. NANCY WELLER, Division of Medical Assistance, DHSS, informed members that the Department of Administration prepared the fiscal note and that DHSS did not submit one.

MR. RICHARD CAUCHI, National Council of State Legislatures (NCSL), then gave the following testimony.

For the record, NCSL is a bipartisan research organization that works directly for the 50 states and as such we take no position on legislation. I'm here to just pass on information regarding activities across the country on the state level and if you have any questions.

Just briefly, as you've already covered some of the details here, there's no question that prescription drugs have been on legislative agendas as well as in the headlines and the evening news across the country for a couple of years, at least, now. What we've observed, is that state legislators and policymakers

are quite concerned about that issue and see it as a high priority but at the same time they face potentially conflicting goals and this speaks to the idea of a task force, or similar effort, looking at [indisc.].

On the one hand, generally, the initial interest comes from a desire to either increase access or increase coverage to those lacking [while] at the same time legislators are aware that the states are purchasers, and that they are looking at - to save state funds in that capacity. A variation of that is that states very often are looking to avoid entitlements while they are sympathetic or, actually, to establish new programs they often do not let those programs become a permanent or [indisc.] obligation. That's the distinction between the state programs and federal programs, which are permanent and entitlement forms.

The discussion of prescription drugs also on the state level also is substantially distinct from the federal debate. Certainly the idea and the discussion about the Medicare benefit has been uniform across the country and has attracted attention that would have impact on states. But much of what states have done so far has really been state-specific, including ideas and programs that have been in place for quite a number of years. As you are probably aware, as of this moment Congress has not acted on this but as was referred to, a number of states have taken specific actions. 28 states have statutes on this and bills and it was already [indisc.] 40 states.

In general, there have been three areas where states have taken action but, in fact, within those areas there are a lot of variations that speak to the idea of a task force rather than a simple solution. Numerically most states have created subsidy programs with pharmaceutical assistance programs but even in that area there's no single model. Some states have taken this action because they were able to use tobacco settlement funds so you have states like Indiana, Kansas, Florida, and South Carolina, which created programs just in the last year. Because of that money being available, Nevada became the first state to try to subsidize a private insurance policy rather than actually subsidize the transaction for the purchase of pharmaceuticals. Illinois, just this January, became

the first state to successfully negotiate and get approval for a federal matching program that will enable the state to pay 50 percent and the federal government to pay 50 percent for a subsidy program. Again this is a brand new idea. It's within the Medicaid program but it's serving a population that hasn't yet been - that otherwise has not been covered under Medicaid and many states are looking again and it's early to say where that fits.

At the same time, subsidy payments are not a consensus across the country. Just in the last year bills have been rejected in states like Colorado, Arkansas, Iowa, South Dakota, West Virginia. The current budget situation in the state is certainly one of the factors about a certain hesitancy to just jump in and create brand new programs. On a [indisc.], states have been looking at experiments with discounts and prices. Generally these are not subsidies but are trying to utilize either bulk purchasing or existing discount structures to pass those on to some parts of the population. A few states have tried to use the Medicaid price and make that available to larger populations, specifically Medicare. California and Florida and, to some extent, Maine are trying that approach. The idea of discount cards is one that has spread among several states - Iowa, New Hampshire, West Virginia have programs of that sort up and running and, as you probably know, President Bush has proposed a national program but that's still not in operation.

The word Medicaid has been said several times but there are slightly separate [indisc.] a number of initiatives - many discussions about cost containment within the Medicaid program and those talks are often pretty directly tied to the rest of the discussion in Medicaid - there's discussion - it actually moves toward preferred drug lists or formularies that would be in part based on the cost of the product. [There are] also plans for expanded and prior authorization, initiatives that would move toward generic substitutions and on a separate tax and somewhat beyond just Medicaid the idea of bulk purchasing via the state agencies buying their purchasing so that you don't have the prison agency doing one thing and the mental health agency doing another but rather requiring that those be joined and, finally, in this [indisc.] the idea of multi-state purchasing. There are now three different groupings -

northern New England. The Northeast has a legislative association and has a sort of a pharmacy working group among southern states of the eastern states that are all looking to do buying-purchasing with cost savings in mind. For some reason there are a lot of diverse solutions but no single pattern out of that.

As for task forces, several states did establish task forces or special interim committees in this area and NCSL and myself followed several of those. A few, by example, Maryland, at the end of the year 2000, established a very formal process, which was cooperative both among the legislative branch and executive branch. Out of that came a major piece of legislation that either created or overhauled three different pharmaceutical programs - both were subsidies and discounts. In Nebraska and in Oklahoma there were special interim committees that were established with members of both branches and legislative staff doing detailed analysis. Those two states have not passed legislation as of this point. In Hawaii they did a major study throughout much of the year 2001. They produced a comprehensive report in February of this year and in the last eight weeks the legislature has passed - both the House and Senate in Hawaii has passed two major bills that are now in conference committee. In California, they also did a 2001 legislative study and produced a fairly formal report that covered all of their options. In their case they have not passed a plan and reflected the content of that.

Finally, on the example of Wyoming, similarly in 2001 did a formal interim committee for nine months and based on that they did, in fact, propose legislation, which was signed into law about a month ago. So there's a good deal happening - again no single pattern and no single solution that people would put forward but a study is one approach. If there are questions I'd be happy to...

CHAIRWOMAN GREEN asked Mr. Cauchi if he knows the status of this issue in Congress.

MR. CAUCHI said he is not ideally situated to comment on Congress but there are a number of proposals by the U.S. House and Senate and the Executive Branch. He would guess that at the moment there is no single plan. The differences surround at what income levels people should be covered or whether to cover everyone on Medicare, and what kind of cost sharing or co-payments might be

established. That seems to be one of the contrasts between federal proposals and state plans. Some states pay 95 per cent or more of the cost of purchases.

MR. STEVE ASHLAND, Division of Senior Services, Department of Administration (DOA), said his agency would provide administrative support for the task force. The Department of Administration supports SB 306; it has seen and heard about the problems seniors have with access to prescription drugs. A task force may come up with some viable solutions for the legislature to consider next year. In response to Senator Leman's question about the fiscal note, the contractual money is for publication purposes. One publication typically used by the division is the Senior Voice. The division tries to minimize costs as much as possible; that publication reaches about 20,000 senior citizens. He offered to answer questions.

SENATOR LEMAN said he wants the notice to get out to the right people and it sounds like the division will do so by using the Senior Voice but he is concerned that the state is imposing requirements that are not useful that increase the cost.

MR. ASHLAND said he is relatively new to the state system so he is not sure what the publication process entails, but the division will try to be as prudent as it can to keep the costs down. He pointed out the cost of publication was calculated based on the amount used by the Long Term Care Task Force.

SENATOR LEMAN encouraged Mr. Ashland to make use of electronic notification wherever possible and to target the publications that will be most useful. He acknowledged the division is already doing that.

CHAIRWOMAN GREEN asked Senator Wilken if the Long Term Care Task Force discussed access to prescription drugs.

SENATOR WILKEN didn't recall.

MR. ASHLAND said the division made a presentation last week on the accomplishments of the Long Term Care Task Force and what remains to be accomplished. The task force made 31 recommendations but prescription drug coverage was not among them. He believes the issue was discussed but was not considered to be urgent at that time.

CHAIRWOMAN GREEN asked members to hold questions about the make-up of the task force and its goals until the bill is rescheduled.

SENATOR LEMAN suggested adding a few legislators to the list of members because the task force may generate ongoing legislative issues. He also suggested changing the reference to "American

Association of Retired Persons" to "AARP."

SENATOR DAVIS asked if those changes could be made readily so that the legislation can move along.

CHAIRWOMAN GREEN took note and then announced the committee would take up HB 245.

#HB 245

**HB 245-MARITAL & FAMILY THERAPISTS**

REPRESENTATIVE PEGGY WILSON, sponsor of HB 245, explained that the measure adds the Board of Marital and Family Therapists to the list of professionals that the Department of Community and Economic Develop (DCED) can contract with to provide assistance and treatment to persons who abuse alcohol, drugs or other substances. It also increases consumer protection for Alaskans who are seeking professional counseling. Section 2 gives the board the authority to order a licensed marital and family therapist to submit to a reasonable physical and mental examination if the board has credible evidence sufficient to conclude that the therapist's physical and mental capacity to practice safely is at issue. Section 3 allows individual client contact to be counted as hours toward licensing. Section 4 requires a therapist to communicate to law enforcement officers if a victim has identified that the victim intends to do serious harm.

CHAIRWOMAN GREEN asked where it says "must."

REPRESENTATIVE WILSON referred to Section 4 on page 3. Subsection (a) requires confidentiality between the client and therapist except when a threat of imminent serious physical harm to an identified victim has been made.

CHAIRWOMAN GREEN asked if that is a requirement.

REPRESENTATIVE WILSON replied, "No, it is not a requirement. It is just a consumer protection because without this, they wouldn't be able to do that and yet the therapist feels that if it's a true risk, they need to be able to have that authority."

REPRESENTATIVE WILSON went on to explain that the new language in Section 5 (page 4, line 26) complies with the national board language and imposes disciplinary sanctions for sexual misconduct.

SENATOR WARD asked if Alaska statute contains sanctions for a case in which a medical professional and a client want to marry one year after the client/patient relationship is over.

REPRESENTATIVE WILSON did not know the answer.

SENATOR WARD said someone brought to his attention that this bill will prevent two consenting adults from marrying for two years. He asked if medical doctors are similarly restricted by statute.

REPRESENTATIVE WILSON said that is not the case with medical doctors and that this only applies to family and marital therapists.

SENATOR WARD asked where the prohibition against marrying after the client/patient relationship is over exists in statute.

TAPE 02-32, SIDE B

MS. CAREN ROBINSON, representing the Marriage and Family Therapists Association, said to her understanding, a similar provision is in statute for social workers and psychologists, and it is a national standard set out by the Marital and Family Therapists' Association. The reasoning behind the restriction is that a therapist has a power relationship with a client so should wait two years after the therapist/client relationship is terminated before having a sexual relationship.

CHAIRWOMAN GREEN asked who that applies to now.

MS. ROBINSON repeated it applies to psychologists and social workers, and it might apply to professional counselors.

SENATOR WARD asked if a provision is in law that prohibits a psychologist from marrying a client for two years after the professional relationship has been terminated.

MS. ROBINSON said to her understanding yes, but she informed members that Larry Holman, President of the Marital and Family Therapists' Association, was available to answer questions.

SENATOR LEMAN said he reads it as a ban on sexual misconduct but not a ban on marriage. He said he cannot imagine that the regulations would define sexual activity within marriage as being sexual misconduct.

SENATOR WARD said the person who contacted him said such a provision exists.

CHAIRWOMAN GREEN said she believes it refers to the establishment of a relationship between the time one is a patient and marries.

SENATOR LEMAN said his point is that the language in the bill before the committee does not say that but he acknowledged that

such a ban could exist in regulation.

CHAIRWOMAN GREEN asked Representative Wilson to finish her review of the bill while the regulations are checked.

REPRESENTATIVE WILSON explained that Section 7 requires that before therapy begins, a client be informed of all of the facts, including the credentials of the therapist, fee schedules and exceptions to the confidentiality rule.

CHAIRWOMAN GREEN asked what happens if that information is not furnished.

MS. ROBINSON replied that a client could report such a violation to the board who would decide whether to sanction the therapist.

CHAIRWOMAN GREEN said, according to Sec. 087.63.230 on page 5, line 9, the client may not be charged a fee for those services unless the client was furnished a copy of a professional disclosure statement. She said she has never received that information from a medical professional prior to "starting a conversation with them."

MS. ROBINSON said that provision is in the professional counselors' statute and is the direction being taken on a national level to provide for consumer understanding. She noted the information could be described in a small brochure. She believes that providing that information will protect consumers who are often in crisis and vulnerable.

REPRESENTATIVE WILSON added that another reason for disclosure is that marriage and family therapists are being placed under the umbrella of many boards.

MS. CATHERINE REARDON, Director of the Division of Occupational Licensing in the Department of Community and Economic Development (DCED), informed members that the provisions of this bill are identical to provisions in other occupational licensing statutes, although not in all mental health provider statutes. This particular disclosure statement is identical to a requirement in the professional counselors' statute. She noted that the profession itself believes it is a good idea to require a disclosure statement, which is the reason it was included in the bill. The public is, in general, less familiar with the different types of mental health professionals, what they are buying and how the billing systems work, therefore she believes there is a higher need to educate patients.

SENATOR WARD asked Ms. Reardon if she could answer his question about marriage being a violation of a professional's license.

MS. REARDON explained that several professions that are licensed by DCED, physicians, professional counselors and marriage and family therapists, have the right to adopt codes of ethics by regulation. Those codes of ethics include prohibitions against sexual contact with clients for a certain time period after therapy is terminated. The medical statute (AS 08.64.326) does not specify two years but it gives the board the authority to define a time limit. The physicians' statute prohibits and defines what sexual misconduct and it explains the conditions for terminating a professional relationship so that a sexual relationship would be acceptable. She felt the idea of sexual contact after a patient is no longer seeing a physician is not as big of a concern because the patient's psychological reliance on the physician is not as great as it can be with mental health professionals. Mental health professionals believe there should be a period of time in which the "influence can wear off and they are standing on their own two feet before the romantic relationship begins." She repeated that although the statutes may not specify a two year waiting period, they allow boards to adopt codes of ethics that specify conditions.

SENATOR WARD noted the person who contacted him said there was nothing in law that prohibits any licensed professional from getting married to a client after the therapist/client relationship is terminated. He asked if that is true.

MS. REARDON said she does not think that statement is not correct for all of the mental health professions. The codes of ethics for professional counselors and marital and family therapists that were adopted by regulation require "cooling off" periods.

MR. LARRY HOMAN (ph), President of the Association for Marriage and Family Therapy, told members that the ethical guidelines written by the psychological association, professional counselors, marriage and family therapists and social workers require a two-year waiting period. Most likely, those professionals would not go to jail for a violation but would lose their licenses if they engaged in sexual conduct while in the therapist/client relationship. However, after that relationship is terminated, the guidelines are gray. He noted the guidelines were designed to protect the client. He agreed that the therapist/client relationship is quite different than a physician/client relationship.

2:40 p.m.

CHAIRWOMAN GREEN asked what professions Mr. Homan was referring to.

MR. HOMAN replied psychologists, clinical social workers, professional counselors, and marriage and family therapists.

SENATOR WARD asked if the first three have a two-year waiting period and whether that includes a ban on marriage.

MR. HOMAN said they do have a two-year waiting period, but the guidelines do not specify a ban on marriage. He said the intent of the guidelines is to prevent a dual relationship, meaning personal and professional, so he does not believe, "you could get around the marriage thing because obviously that is a personal relationship so it would be interpreted as a personal, romantic kind of relationship which obviously would include marriage."

SENATOR WARD asked if, by regulation, the first three professions cannot marry a patient for two years without being in violation.

MR. HOMAN said the regulation does not specifically say they cannot marry but he believes that is how the boards would interpret the regulation because of the personal nature of the relationship.

SENATOR WARD asked if the national professional boards allow marriage.

MR. HOMAN said they [the codes of ethics] do not address marriage specifically in those words. They address the personal, romantic relationship that comes with a dual relationship, and he guesses that would include marriage. He noted the marriage and family therapist guidelines put forth by the American Association of Marriage and Family Therapy, do not specifically prohibit marriage but they do prohibit sexual relationship for two years after the professional relationship has been terminated.

CHAIRWOMAN GREEN asked Ms. Reardon if the language she referred to was in regulation.

MS. REARDON explained that the statute gives the boards the authority to adopt codes of professional conduct. She believes the boards adopted those codes by regulation.

CHAIRWOMAN GREEN asked Ms. Reardon to describe what she means by a code of ethics.

MS. REARDON said a code of ethics is a written set of rules on professional behavior. They are actually incorporated into the regulations by reference, so although the code might not be printed in the regulations, a document can be provided.

SENATOR WARD asked for a copy of the codes of ethics of the three professions.

MS. REARDON offered to provide them.

SENATOR LEMAN commented that he believes marriage should terminate the ban on sexual activity and that would be consistent with the intent of regulating the profession. He asked Representative Wilson for feedback on that position in the future.

MR. HOMAN said the intent is to limit a romantic relationship between a therapist and a client and sex is just one part. He said one has to look at what kind of relationship is acceptable. It has been argued that the professional should honor the power difference in the relationship and that the rule was designed so that a client would not be taken advantage of while psychologically fragile and unable to use good judgment.

CHAIRWOMAN GREEN referred to lines 24 and 25 on page 4 and asked what "engaged in unethical conduct in connection with the delivery of professional services to clients" encompasses.

MR. HOMAN said that itemizing misconduct in the bill spells it out more clearly, although it is also contained in the ethical guidelines. He noted sexual misconduct is considered a very serious breach of ethics.

MS. REARDON said professional misconduct is not limited to the seven grounds for disciplinary sanctions listed in the bill. AS 08.63.050 says the board shall adopt a code of ethical practice for marital and family therapy. That is most likely the statutory authority the board would have used to adopt a code of ethics. If a member violated the code of ethics, he or she would be disciplined under subsection (5) on page 4, line 18 of the bill.

SENATOR WARD said he agrees that a person is vulnerable when under a therapist's care and should not be taken advantage of. However, he did not know there was a law prohibiting marriage after the professional relationship was terminated and is surprised to find such an interpretation because he does not consider sexual activity within marriage to be sexual misconduct. He repeated his request for copies of the codes of ethics of the three boards.

CHAIRWOMAN GREEN asked Ms. Reardon to supply the committee with a rundown of the wording in statute regarding what the authority is for the comparable professions. She said she does not see such language in statute.

SENATOR WARD asked if the sponsor researched the question about marriage or whether it has been asked by anyone else.

REPRESENTATIVE WILSON said that question was never raised to her.

She said the intent of the bill is to protect the consumer and that the only time a charge would be filed is if the consumer was hurt or violated in some way. She assumed if the relationship led to marriage, no charge would be filed with the board.

SENATOR WARD said anyone could bring the charge to the board. He said he does not want to sanction an improper relationship but he is amazed to find that marriage would be illegal.

SENATOR WILKEN said he has three questions. The first relates to Section 2 (page 2, line 6), which allows the board to order a therapist to submit to a physical or mental examination with cause and, according to page 5, line 2, if the therapist does not submit, his or her license can be pulled. He said his concern is that the words "reasonable" and "credible" invite litigation. He asked if that is new language or similar to other statutes.

MS. REARDON said that language exists in several statutes, although not all. She believes those words are important to act as checks on the board. If the division was investigating a therapist, it would ask the board to order an examination. If the therapist objected, he or she could be summarily suspended. The summary suspension statute says the division must provide a hearing within 7 days because the person loses his or her license immediately and cannot wait for a decision. At that hearing, the division must provide credible evidence upon which the examination was requested. She said she understands Senator Wilken's concern but, on the other hand, when a practitioner has developed a serious substance abuse problem or has a relapse, the division cannot wait several months to stop the practice. Another problem that could occur is mental illness or dementia, in which the practitioner does not believe he or she has a problem but outside observers believe a problem exists. A professional assessment needs to be done to get an answer to protect the public. She noted that provision has rarely been invoked.

SENATOR WILKEN said his second question relates to the qualifications on page 3, line 4, and asked why the word "individuals" was added.

MS. ROBINSON said it was added because in family situations, it might be in the best interest of the family to have individual sessions with each member. Those hours would be counted toward the required 1500 hours for certification.

SENATOR WILKEN asked if therapists were able to counsel individuals before.

MS. ROBINSON said they could not count those hours toward licensure.

SENATOR WILKEN referred to the new language on the bottom of page 3 and asked if a therapist would be liable if he or she does not communicate with a law enforcement officer when there is a threat. He asked if that paragraph obligates the practitioner to report.

MS. ROBINSON said she assumes it does not and that the idea is to encourage the therapist when they have knowledge of a danger to report it. That provision grants immunity from liability for reporting. She then asked members to keep in mind, regarding Senator Leman's position, that the job of family and marital therapists is to work with married couples so she believes it is in everyone's best interest that the therapist not get involved in a sexual relationship with a family member. The goal should be to keep the family intact and help members work through a crisis. She said she is aware of situations where a couple got a divorce during therapy because of sexual misconduct by the therapist. She added that people who go to a therapist are usually in some kind of a vulnerable situation. The therapist is in a position of power as the family expects to get good advice.

SENATOR WARD said no one disagrees with that position but the scenario brought to him flies in the face of common sense as it is between two adults who were not married and who want to marry two years after the professional relationship terminated.

MS. REARDON said the time the professional relationship no longer exists is not black and white. Although a person may have terminated sessions, the professional relationship may persist for some time.

CHAIRWOMAN GREEN said looking at comparable language in the social worker statutes regarding the reporting of a potential danger in relationship to children says "shall." She asked Ms. Reardon to provide her with information about whether family and marriage therapists are required to report child or elder abuse or threats of abuse.

SENATOR LEMAN said, in response to Ms. Robinson's comment, that he agrees with the restriction for the reasons she stated but that his earlier comment was an attempt to get to the issue of whether or not marriage should terminate that ban. He said he understands that marriage does not happen without courtship and that could be interpreted to be in violation of that professional standard.

CHAIRWOMAN GREEN asked members to get any additional questions to her or the sponsor.

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#HB 348

**HB 348-VIOLATION OF A DOMESTIC VIOLENCE ORDER**

REPRESENTATIVE ERIC CROFT, sponsor of HB 348, said the measure corrects a judicial decision made in 2001 regarding what standard of proof is necessary to prosecute a violation of a restraining order. The court decision has made it very difficult to prosecute those cases as the prosecutor has to prove what "is in somebody's head." He said the standard being asserted in HB 348, reckless disregard for the violation standard, is the proper mental state and one that allows these prosecutions to continue without asking the prosecutors to do an impossible task.

CHAIRWOMAN GREEN reminded members that HB 348 has a Senate Judiciary Committee referral where that issue can be addressed.

MS. ANNE CARPENETI, Assistant Attorney General, informed the committee that the Department of Law supports HB 348 as it will help the department prosecute cases of violations of protective orders.

SENATOR WARD moved HB 348 from committee with 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 3:10 p.m.