ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE
January 22, 2001
1:30 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator John Cowdery
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

Senator Dave Donley, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 37
"An Act relating to collective negotiation by physicians with health benefit plans; and to health benefit plan contracts with individual competing physicians."
HEARD AND HELD

SENATE BILL NO. 21
"An Act increasing the maximum civil fine that may be imposed by the State Medical Board as a disciplinary sanction."
MOVED SB 21 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

No previous committee action.

WITNESS REGISTER

Mr. Kristopher Knauss
Staff to Senator Pete Kelly
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Read Sponsor Statement for SB 37

Mr. Michael Haugen, Executive Director
Alaska Physicians and Surgeons, Inc.
4120 Laurel Street, Suite 206
Anchorage, AK 99508
POSITION STATEMENT: Supports SB 37

Mr. Ed Sniffen, Assistant Attorney General

Department of Law
1031 W 4th Avenue, Suite 200
Anchorage, AK 99501-1994
POSITION STATEMENT: Testified on SB 37

Mr. Dave Williams, Director
Division of Medical Assistance
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Testified on SB 37

Ms. Katie Campbell
Division of Insurance
Department of Community &
Economic Development
PO Box 110800
Juneau, AK 99811-0800
POSITION STATEMENT: Testified on SB 37

Ms. Laura Sarcone
Alaska Chapter of American Nurse Practitioners
1444 Hillcrest
Anchorage, AK 99503
POSITION STATEMENT: Opposed to SB 37

Mr. Jim Jordan, Executive Director
Alaska State Medical Association
4107 Laurel Street
Anchorage, AK 99508
POSITION STATEMENT: Testified on SB 37

Senator Donald Olson
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 21

Ms. Catherine Reardon, Director
Division of Occupational Licensing
Department of Community & Economic Development
PO Box 110800
Juneau, AK 99811-0800
POSITION STATEMENT: Supports SB 21

ACTION NARRATIVE

TAPE 01-1, SIDE A
Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 1:30 p.m. Present were Senator Cowdery, Senator Ellis and Chairman Taylor.

#SB 37

SB 37-PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

MR. KRISTOPHER KNAUSS, legislative aide to Senator Pete Kelly, read the following sponsor statement.

> Senate Bill 37 levels the playing field for Alaska's patients and the physicians who care for them. It allows independent, competing physicians to jointly negotiate contract provisions with insurance companies without violating federal anti-trust laws. However, it includes a clearly established process to be followed for these joint negotiations to occur and involves active state oversight as required for a state action doctrine. By allowing joint negotiations to occur, a more fair and equitable negotiation process between doctors and insurance companies is created and doctors are given the ability to better protect their patients.
>
> SB 37 is not a union-creating device. It is not mandatory for either the doctor or an insurance company to engage in these negotiations.
>
> SB 37 is needed because health management organizations (HMOs) do not yet exist in Alaska, it is likely that they will be established here in the future. Currently there are preferred provider organization (PPO) plans that, while not as restrictive as HMOs, can limit which specialists a doctor may refer a patient to, or the treatments a doctor may prescribe. SB 37 would allow doctors to negotiate with insurers on these limitations.
>
> Currently patients have no advocates other than their doctors. By allowing doctors to discuss and jointly negotiate definitions such as "medical necessity," patients can receive better care. Physicians could use their own judgment in determining medical emergencies and would not be required to rely on the insurance company's interpretation of undefined contract terms.
>
> For example, if a patient visits the doctor to have an injured knee examined, the doctor may recommend an MRI. Next the doctor must contact the insurance company for approval. If the insurance company does not approve this

> treatment, but instead recommends physical therapy for two weeks, the doctor must relay that to the patient. In order for the insurance company to pay for the patient's care, the doctor must follow the insurance company's idea of good medicine, one that is based on the bottom line. If doctors could negotiate contractual terms, that patient could receive the MRI and the course of treatment could follow the doctor's recommendations, not costs to the insurer.

MR. KNAUSS introduced Mr. Mike Haugen, Executive Director for the Alaska Physicians and Surgeons, and said that Mr. Haugen will be able to answer any technical questions the committee members may have. Mr. Knauss commented that SB 37 was originally SB 256 from last year's session. SB 256 passed the Senate and ran out of time in the House.

Number 249

SENATOR COWDERY asked if other states have implemented this type of program.

MR. KNAUSS responded that the states of Texas and Washington have implemented this type of program.

SENATOR COWDERY asked if there have been any major problems in Texas and Washington.

MR. KNAUSS responded that there have been no major problems.

Number 307

SENATOR THERRIAULT asked if SB 37 was drafted from model legislation.

MR. KNAUSS responded that it was drafted after the Texas statute, but SB 37 is more detailed than the Texas version.

SENATOR THERRIAULT said that he has talked with Darren Whitehurst who is staff to Texas Senator Harris. Mr. Whitehurst has been working with the Texas attorney general (AG) on implementation of their statute. Mr. Whitehurst indicated there have been a lot of problems with the proposed "reg" packages. One problem is that groups that have been formed have the right to negotiate, but in getting together groups of doctors to put the groups together, they still ran afoul of either the Texas or the federal antitrust statutes. Senator Therriault asked if this potential problem has been dealt with in the language of SB 37.

Number 422

MR. MIKE HAUGEN, Alaska Physicians and Surgeons (APS), responded by saying that this is a new issue that he has not heard of before and he will look into the problem. He said he finds the question interesting because at what point does a protection under a bill like this engage if you are simply trying to get a group of doctors to decide whether or not they are going to negotiate.

MR. HAUGEN indicated he has submitted written testimony to the committee.

Number 472

CHAIRMAN TAYLOR asked if Alaska could amend or change federal anti-trust requirements if Alaska law states that it is no longer within the area of control of antitrust.

MR. HAUGEN responded that under the state action doctrine the Supreme Court set out an exemption from the federal antitrust laws that effectively gave states the authority to create an exemption. This is what APS is asking the State of Alaska to do.

CHAIRMAN TAYLOR asked if the primary purpose of SB 37 was to bargain for or gather together plans, as opposed to fixing the price for any given service.

MR. HAUGEN said it could be for both, depending on whether or not the carrier has what is deemed substantial market power. Alaska has two large carriers, Aetna and Blue Cross. The percentage rules would deem both carriers to have substantial market power. Under these guidelines, a group of physicians would be allowed to negotiate fees, provided that the carrier and physicians wanted to negotiate and the AG approved the negotiations. In other words, it is completely voluntary, even the fee component.

CHAIRMAN TAYLOR said he thought fees were not authorized in SB 37.

MR. HAUGEN said that fees are authorized provided that certain requirements are met.

CHAIRMAN TAYLOR requested a copy of the federal law that provides for the exemption, because Mr. Haugen has indicated that the federal government has modified the definition of antitrust so that doctors can negotiate for price.

MR. HAUGEN commented that this is a question that the committee may

want to raise with Mr. Jordan of the state medical association. To Mr. Haugen's knowledge, lawyers for the American Medical Association have reviewed this and their conclusion is that Texas does comply.

CHAIRMAN TAYLOR said that he would like to be well briefed on the antitrust aspects, both state and federal, of this amendment before moving forward with the bill.

Number 823

MR. HAUGEN continued by saying that he represents 165 physicians from Anchorage in an independent practice association (IPA) called Alaska Physicians and Surgeons (APS). APS is one of the groups that will potentially do contracting.

MR. HAUGEN said APS strongly disagrees with some of the issues brought up by the AG's office. APS feels that a bill like SB 37 will promote competition. It is prohibitively expensive for most small carriers to put much effort into Alaska given the dominance of Aetna and Blue Cross. If small carriers had the assurance they would be dealing with a large group of doctors when negotiating a contract, they would be much more likely to invest the money required to market a new plan in Alaska. This will give consumers additional choices and promote competition.

MR. HAUGEN said SB 37 is a voluntary bill. Physicians, carriers and the AG have to agree not only on the contractual terms but also on the fees that are negotiated. The AG can simply say no if it were felt that the doctors have gotten out of line or the fees negotiated would harm consumers. This is a mechanism that allows physicians to discuss contract issues and patient advocacy issues with carriers without the threat of the Federal Trade Commission (FTC) coming in and investigating them.

MR. HAUGEN stated that APS is strongly in favor of SB 37, even though it is not a perfect bill.

Number 952

SENATOR THERRIAULT referred to a letter submitted by the AG's office which says SB 37 needs to clarify whether negotiations are voluntary or not. The letter points to sections C and D, saying that the language implies that all health benefit plans are required to negotiate with the authorized third party unless it can prove that it does not have substantial market power. Senator Therriault asked if there is somewhere in SB 37 that clearly states negotiations are voluntary on both sides.

Number 1001

MR. HAUGEN responded that this is clearly stated on page 5, line 12, section 2:

(2) within 14 days after receiving a health benefit plan's decision to decline to negotiate or to terminate negotiations, or within 14 days after requesting negotiations with a health benefit plan that fails to respond within that time, report to the attorney general that negotiations have ended or have been declined;

SENATOR THERRIAULT read from SB 37, page 3, subsection (e):

(e) In exercising the collective rights granted by (a) and (c) of this section,

(1) physicians may communicate with each other with respect to the contractual terms and conditions to be negotiated with a health benefit plan;

(2) physicians may communicate with an authorized third party regarding the terms and conditions of contracts allowed under this section;

SENATOR THERRIAULT then asked if this is the section where language would be added to clearly state that physicians could get together to form groups.

MR. HAUGEN thought this would be the correct section.

Number 1071

SENATOR ELLIS asked about the earlier reference to "model legislation" and whether this was modeled after the Texas statute or a national organization recommending model legislation to states all across the country.

SENATOR THERRIAULT said that this is what he was alluding to [indisc.].

SENATOR ELLIS commented that right now he is not in the frame of mind for Texas to be a model for Alaska.

Number 1024

SENATOR THERRIAULT wondered if a doctor thought her patient needed an MRI would she be able to pursue whatever course she thought necessary or would she have to go through an insurance company for approval.

MR. HAUGEN said this would be considered preauthorization for a procedure and preauthorization can be negotiated. Preauthorization may make a lot of sense for an expensive procedure but a routine procedure could have a different standard.

Number 1184

CHAIRMAN TAYLOR asked how doctors set fees.

MR. HAUGEN said this is a very big question. Setting fees in medicine is different from setting fees in other businesses - it is not what the market will bear. A given price can be charged for a procedure but ultimately what is paid is what the insurance carrier is willing to pay. This is a case-by-case proposition for a physician.

CHAIRMAN TAYLOR commented that he does not necessarily want big insurance companies negotiating with APS for the level of coverage a patient will receive.

Number 1558

MR. DAVE WILLIAMS, Division of Medical Assistance (DMA), Department of Health and Social Services, said he would be happy to answer any questions.

SENATOR THERRIAULT asked if DMA has taken a position on SB 37.

MR. WILLIAMS replied that he had only read the bill an hour ago and DMA does not yet have a position.

Number 1581

CHAIRMAN TAYLOR asked if he had any concerns with SB 37.

MR. WILLIAMS responded that he did have a question regarding the definition of a health benefit plan: Is Medicaid a part of this plan? Medical Assistance would also want to negotiate - they have that ability now.

Number 1651

SENATOR THERRIAULT asked during a negotiation, which is the group negotiating?

MR. WILLIAMS answered that rates are set during public meetings; negotiations are not with any group in particular. DMA listens to

the group concerns, thinks about what is right, what covers the Medicaid population, and what insures access to the services.

Number 1799

MS. KATIE CAMPBELL, life and health actuary for the Division of Insurance (DI), Department of Community and Economic Development, commented that SB 37 is geared toward a managed care market where HMOs are actually negotiating fees. In Alaska fees are not negotiated. Insurance companies collect bill data from physicians and statistics are run on that data. It is then determined what percentile of billed charges will cover most of the charges. For example, if the price range is $1,000 to $4,000, at some point most of the physicians are covered 100 percent. Alaska regulations say that databases have to be updated every six months for the most recent charges. Fees for a service are not negotiated; fees are paid based on what most physicians are charging for a service.

CHAIRMAN TAYLOR asked what happens if physician A charges $1,000 for a certain procedure, the overall state average is $1,500, and another physician charges $2,000.

MS. CAMPBELL replied the insurer would pay up to what ever the reimbursement level is set at. For example, if there are 20 MRIs ranging from $1,000 to $3,000 and the fee for 15 of the procedures is under $1,800 and the reimbursement level is set at $1,800, "they will pay up to the $1,800 or the $1,500." The insurer will pay up to the average. Therefore, 80 or 90 percent of the billed charges will be covered 100 percent.

CHAIRMAN TAYLOR asked what happens to the remainder.

MS. CAMPBELL answered it will be "balanced billed" - charged to the insured - or it will be written off because it is under contract with the insurance company that they agree not to bill beyond that charge if they are under contract with the provider.

Number 2003

SENATOR THERRIAULT clarified that under contract they will agree not to charge what they normally would have, they will reduce the charge or they will preserve their right to bill the patient for the extra amount.

Number 1950

MS. CAMPBELL said it is common under contract with the providers that they will not bill their patients beyond what is determined to

be usual, customary and reasonable. If there is a contract with the provider, the provider will not charge the excess to the insured. Otherwise, the provider has the option to bill the insured directly. This is how the insured market works in Alaska because Alaska does not have HMOs or an organization that sets fees. This legislation is based on national legislation where there is more managed care.

Number 2003

SENATOR THERRIAULT asked for Ms. Campbell's comments on limited providers and whether this proposal will give Alaska the ability to attract competition for insurance coverage.

MS. CAMPBELL responded that it is questionable as to whether or not this legislation will draw competition to Alaska. The market in Alaska is vulnerable because there is a large federal and state population that is not insured, high fixed costs for operating, and a small population.

Number 2071

MS. CAMPBELL commented that DI's primary concern with SB 37 is the potential impact on the consumer. Negotiations will result in higher fees. All studies on antitrust have projected some level of increase for health care. Even small increases in cost result in more uninsured. Small employers are already struggling with large costs of health care and many have been dropping coverage and reducing benefits.

Number 2176

MR. ED SNIFFEN, Fair Business Practices Division (FBP) for the Department of Law, said he is responsible for a lot of the state's antitrust review and enforcement, and he has submitted detailed comments to the committee.

MR. SNIFFEN said FBP has some legal and policy concerns about SB 37. The policy concerns are whether or not there has been a demonstrated need for this type of legislation. The legal concerns deal with the potential antitrust impact the bill might have.

MR. SNIFFEN added that there is a national policy favoring competition and disfavoring negotiated agreements among competitors in a market place. The exception comes in the form of the state action immunity doctrine. The doctrine says that competition can be replaced with a well regulated and thought out plan to supplant what competition otherwise takes care of. In this particular case,

FBP does not believe that SB 37, in its current form, addresses these concerns because there is no provision that allows for this type of detailed and interactive state participation in the negotiations with physicians. FBP does not believe the FTC will agree that SB 37 meets the state action immunity doctrine.

MR. SNIFFEN said there is no provision that allows the AG's office to review and approve the proposed negotiations in determining whether negotiations are within the authority of SB 37. SB 37 does not require a third party representative to provide the AG with detailed information for making any type of determination on the price or cost that is being negotiated. SB 37 imposes substantial responsibility on the AG to review and approve negotiated contracts only after a third party representative has submitted them within 30 days.

MR. SNIFFEN said there are other provisions of the bill that do not implicate the level of state involvement that will be required to get around the state action immunity defense.

Number 2320

CHAIRMAN TAYLOR asked if FBP has prepared amendments to overcome these difficulties.

MR. SNIFFEN replied he did not know what amendments could be made to overcome these concerns. It has been suggested that if there were no price related provisions, SB 37 could be structured so that nonprice terms could be negotiated without antitrust infractions. Nonprice terms can have a significant impact on price terms, depending on what the terms are, what they require, and how specific they get. Even if price terms were removed there would still be significant antitrust concerns.

CHAIRMAN TAYLOR asked if he has reviewed the Texas law.

SIDE B

MR. SNIFFEN answered that he has not reviewed it in any detail, but he understands that the Texas law deals with HMOs that are not in Alaska. Texas is having some difficulty implementing regulations to carry out the law but he does not have any information on the details.

MR. SNIFFEN said Washington law is limited to nonprice terms without the ability to negotiate for price terms. Washington regulations allow for significant involvement with the Department of Health. The regulations require certain protest procedures to

occur for submission of detailed information. There is an appeal process where hearing officers take testimony. The state has a detailed and active involvement in the process.

CHAIRMAN TAYLOR asked if it was true that insurance companies do not have to adhere to antitrust laws.

MR. SNIFFEN said that he does not know if that is true as a general statement. He does know that there are some exceptions in the antitrust law for certain insurance entities that are regulated by the state. Under certain provisions of the Employment Retirement Income Security Act of 1974 (ERISA), any state law dealing with employee benefits are preempted by ERISA. He does not know if SB 37 would have some of these problems as well. But there have been some judicial decisions that have narrowed the scope of those limitations.

SENATOR COWDREY asked about the problems other states have had.

MR. SNIFFEN responded that his understanding from the Texas Assistant Attorney General is that there have been problems in drafting the regulations and they were not able to finish them as soon as they wanted. He does not know if these problems were insurmountable but they were more than anticipated. He will find out more details on this and submit his findings to the committee.

SENATOR COWDERY asked if the antitrust issue would not be the same in all states that have similar laws.

MR. SNIFFEN replied yes, because this is a federal issue. Washington dealt with their law by excluding some price terms and provided for significant state involvement. The jury is still out on whether or not the Texas law will pass FTC muster.

SENATOR COWDERY asked how long the Texas and Washington laws have been in effect.

MR. SNIFFEN said the Texas law passed in late 1999 or early 2000 and Washington's law has been in effect since 1996.

SENATOR COWDERY commented that he would like to know how other states have solved their antitrust problems.

CHAIRMAN TAYLOR read from the State Action Doctrine and asked if this is the definition FBP is working with:

> In general, the state action doctrine states that the antitrust actions do not apply to actions by a state

operating its sovereign capacity, or to private conduct compelled or approved by the state.

MR. SNIFFEN said that was the start of the definition but it has been refined through a number of cases. The letter he sent to the committee contains a number of these cases. The U. S. Supreme Court has defined and refined what the test is, which means that Alaska needs to undertake a level of involvement that is very active before it can supplant this type of competition to get around the antitrust law.

CHAIRMAN TAYLOR said he would like it if Alaska's physicians and care providers had at least some opportunity to negotiate with large carriers. The committee needs to know the level of state intervention or action that must be in the legislation to get within the Parker Doctrine of acting within sovereign capacity or approving the private conduct of others so that state or federal antitrust laws are not violated.

MS. LAURA SARCONE, Alaska Chapter of the American College of Nurse Midwives (ACACNM), said she is testifying in opposition to SB 37. She read the following statement:

SB 37 will give broad antitrust immunity to negotiations between individuals, competing physicians, and health benefit plans. This bill will protect price fixing, drive up health care costs, and let physicians obstruct opportunities for advanced nurse practitioners and nurse midwives to participate as providers in health benefit plans.

Advanced nurse practitioners are health care providers who increase access, improve outcomes, lower costs, and increase satisfaction rates. Their scope of practice under Alaska law recognizes the value of the services they provide to the citizens of our vast and diverse state.

SB 37 gives physicians leverage to legally establish some of the more onerous anticompetitive practices such as price fixing. While at the same time eliminating options for the public or individual providers to challenge such conduct and practice. Consumers, employers, and the state and federal government as purchasers of health care will be stripped of any remedy for higher prices. State and federal antitrust law enforcement will be barred. Physicians can already form physician only individual practice associations or IPAs and negotiate as a group

with health benefit plans.

SB 37 will allow physicians to form cartels and negotiate with health benefit plans. The special antitrust protections afforded physicians by this bill are not available to any other self-employed professionals.

ACACNM believes the immunity proposed in this bill is unnecessary. Antitrust law already provides a remedy against anticompetitive abuses by health benefit plans in their dealings with health care providers. State and federal laws and initiatives can address the practices of health benefit plans. Permitting provider cartels will not solve problems it will only create new ones. This bill will be particularly harmful to advanced nurse practitioners and certified nurse midwives whose expanded role in health care has often been opposed by physicians. Advanced nurse practitioners and certified nurse midwives are health care providers who increase access, improve outcomes, lower costs, and increase satisfaction rates.

In 1998 over 1400 Alaskan mothers chose a certified nurse midwife to attend the birth of their baby. That represents 16.7 percent of all vaginal births that occurred in the state that year. It has been said that this bill does not and cannot impact other contractual relationships such as one between an advanced nurse practitioner and a health benefit plan. But I would like to outline one scenario of what could happen. For instance, after negotiating a behind closed door contract with a group of physicians, a health benefit plan may elect not to renew or not to enter into a contract with an advanced nurse practitioner. The advanced nurse practitioner may believe that some aspect of the physician contract has influenced this decision, effectively serving as a restraint of trade. But under SB 37, the advanced nurse practitioner has no recourse. Alaskans insured by that health plan have lost the option to choose nurse practitioner or nurse midwifery care.

SB 37 legislates away important trade and practice protections that advanced nurse practitioners and other nonphysician providers currently enjoy. Some have suggested that advanced nurse practitioners could create their own bill, allowing them to also negotiate collectively with health benefit plans. The reality of the health care market place is that health benefit plans

must negotiate with physicians. They need physicians in order to conduct their business and offer a full range of medical services. They do not need advanced nurse practitioners in the same way. Advanced nurse practitioners will never have the market share or bargaining power of physicians. We want to care for patients and do business in the marketplace with the anti-trust laws protection. We do not need or want to be protected from antitrust laws.

In conclusion, advanced nurse practitioners and certified nurse midwives are health care providers who increase access, improve outcomes, lower costs, and increase satisfaction rates. Consumers in Alaska want to choose the health care provider who best meets their needs. SB 37 will both limit choice and increase costs and Alaskans deserve better than this.

CHAIRMAN TAYLOR asked if it is Ms. Sarcone's belief that insurance companies are constrained by antitrust law.

MS. SARCONE replied that she said physicians can already form independent practice associations. They can negotiate through this system. Ms. Sarcone deferred to Mr. Sniffen on this question.

MR. SNIFFEN responded by saying that insurance companies are constrained by some antitrust concerns but there are exemptions for certain insurance companies that are regulated by the state. He will furnish the committee with a more detailed answer at a later date.

CHAIRMAN TAYLOR commented that he thought insurance companies were exempt under state and federal law. If they are constrained by antitrust, what is to prevent Aetna and Blue Cross from agreeing to make their plans the same. Is there anything that would constrain them from doing this?

MR. SNIFFEN replied that the McCarren-Ferguson Act says there is a statutory exemption for certain types of insurance entities from the Sherman, Clayton and FTC Acts, which are the primary acts that comprise the antitrust laws. The activity that would otherwise violate the antitrust law has to be part of the business of insurance, authorized and regulated by the state. It will then be immune from attack. What might prevent insurance companies from doing this could be state regulation, which has supplanted this type of antitrust behavior.

MR. JIM JORDAN, Executive Director for the Alaska State Medical

Association (ASMA), said that ASMA has provided the committee with written testimony. MR. JORDAN said he would like to respond to some of the earlier testimony and questions.

MR. JORDAN said the language in SB 37 is modeled after the American Medical Association's (AMA) model language, as is the Texas language. This language has been "Alaskanized." SB 37 also includes provisions that are not in the AMA model. These provisions have to do with definitive areas the AG will review in making a decision as to whether or not a particular negotiation falls within the parameters of the law.

CHAIRMAN TAYLOR asked if ASMA has gone to the AG's office for agreement.

MR. JORDAN replied that the issue with the AG's office is what constitutes sufficient state oversight in order to qualify for the state action exception. The language dealing with the parameters in establishing what the levels of review are in regards to what they should contain are taken from Pennsylvania's act, which is in process. It was attempting to provide a checklist of the items that will satisfy that standard. This will not preclude the FTC from looking at any negotiations that will take place in the future.

CHAIRMAN TAYLOR asked him to comment on the testimony given by Ms. Sarcone.

MR. JORDAN said the AG has the act of oversight that will look at these questions. "In 25.30.20, sub I," one of the concerns was dealing with access - dealing with protections for access to quality patient care. There are protections in the oversight the AG can give. There is a prohibition from the physicians, in their activity involving negotiations, from involving themselves in any activity that will involve a boycott.

CHAIRMAN TAYLOR reflected that a boycott would not be needed to actually draw up a plan that favors physician deliveries over midwife deliveries. It would not take a boycott, just an amendment to the plan.

CHAIRMAN TAYLOR announced that SB 37 would be discussed again at a later date.
#

#SB 21

SB 21-FINES BY THE STATE MEDICAL BOARD

SENATOR DONALD OLSON, sponsor of SB 21, read the following statement:

> I introduced SB 21 to increase the monetary sanction that the state medical board may impose on a licensee upon a finding of a professional or ethical misconduct. The bill increases the maximum penalty from the $10,000 limit that is currently in statute to $25,000.
>
> I feel the justification for SB 21 is twofold. First of all, the maximum sanction of $10,000 does not provide a sufficient monetary deterrent, given the economic status of many licensees. Most often, the severity of the penalty is in no manner equivalent to the damage caused in extreme cases of misconduct. Furthermore, the $10,000 limit has not been changed since it was first enacted 14 years ago.
>
> A second reason for SB 21 is the increasing costs that the board is experiencing in its caseload management of misconduct litigation and allegations. It is not unusual for the costs of a misconduct determination to exceed the $10,000 penalty limit. Since the activities of the board are wholly supported by licensure fees and fines, increased costs of operation usually translate into license fee increases. SB 21 offers a second way to meet increasing caseload costs. It expands the board's cost recovery ability through increased fines. In practice then, the financial burden for this regulatory activity may be shifted from the general membership to the wrongdoers themselves.
>
> Currently, the board has 188 cases that are open for potential investigation and adjudication by the Division of Occupational Licensing. During calendar year 2000, 130 new cases were opened and 133 closed. This effort resulted in 35 disciplinary actions against medical board licensees. In fiscal year 2000, the costs of pursuing misconduct charges exceeded $160,000.

MS. CATHERINE REARDON, Director for the Division of Occupational Licensing, Department of Community and Economic Development (DCED), said DCED and the medical board support SB 21. SB 21 will give the medical board options for appropriate sanctions and effective deterrents for certain types of misconduct.

SENATOR THERRIAULT asked what type of notice was put out to individual licensed physicians that this was being considered.

MS. REARDON answered that a notice was not mailed to licensed holders. The medical board met January 18th and 19th. It would have been generally noticed that the meeting was going to take place. The meeting was scheduled a month ago and SB 21 was not on the list of topics at that time.

SENATOR THERRIAULT asked for a list of all licensed physicians in the Fairbanks area.

MS. REARDON agreed to furnish the list.

SENATOR THERRIAULT moved to pass SB 21 with individual recommendations. There were no objections and it was so ordered. #

CHAIRMAN TAYLOR adjourned the meeting at 2:55 p.m.