

HOUSE FINANCE COMMITTEE
April 24, 2003
2:18 P.M.

TAPE HFC 03 - 63, Side A

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 2:18 P.M.

MEMBERS PRESENT

Representative John Harris, Co-Chair
Representative Bill Williams, Co-Chair
Representative Kevin Meyer, Vice-Chair
Representative Mike Chenault
Representative Eric Croft
Representative Richard Foster
Representative Mike Hawker
Representative Carl Moses
Representative Bill Stoltze
Representative Jim Whitaker

MEMBERS ABSENT

Representative Reggie Joule

ALSO PRESENT

Joel Gilbertson, Commissioner, Department of Health & Social Services; Bob Labbe, Deputy Commissioner, Department of Health and Social Services; Kevin Jardell, Assistant Commissioner, Department of Administration; Susan Cox, Assistant Attorney General, Department of Law; Brad Thompson, Director, Risk Management, Department of Administration; Paul Grossi, Director, Division of Workers' Compensation, Department of Labor & Workforce Development

PRESENT VIA TELECONFERENCE

None

SUMMARY

SB 108 An Act relating to payment rates under the Medicaid program for health facilities and to budgeting, accounting, and reporting requirements for those facilities; abolishing the Medicaid Rate Advisory Commission; and providing for an effective date.

HCS CS SB 108 (FIN) was reported out of Committee with a "do pass" recommendation and with fiscal

note #1 by the Department of Health and Social Services.

SB 109 An Act repealing the statute that sets priorities for the Department of Health and Social Services to apply to administration of the medical assistance program when there are insufficient funds allocated in the state budget for that program; authorizing the department to make cost containment decisions that may include decisions about eligibility of persons and availability of services under the medical assistance program; and providing for an effective date.

SB 109 was HEARD and HELD in Committee for further consideration.

#SB115

SB 115 An Act allowing expenses of the correctional industries program that may be financed from the correctional industries fund to include the salaries and benefits of state employees.

SB 115 was SCHEDULED but not heard. The bill was POSTPONED until April 25, 2003, 9:00 A.M. meeting.

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SB 120 An Act relating to the state's sovereign immunity for certain actions regarding injury, illness, or death of state-employed seamen and to workers' compensation coverage for those seamen; and providing for an effective date.

SB 120 was HEARD and HELD in Committee for further consideration.

#SB108

SENATE BILL NO. 108

An Act relating to payment rates under the Medicaid program for health facilities and to budgeting, accounting, and reporting requirements for those facilities; abolishing the Medicaid Rate Advisory Commission; and providing for an effective date.

Co-Chair Harris MOVED to adopt work draft #23-GS1125\I, Lauterbach, 4/23/03, as the version of the bill before the Committee. There being NO OBJECTION, it was adopted.

JOEL GILBERTSON, COMMISSIONER, DEPARTMENT OF HEALTH & SOCIAL SERVICES, commented on the changes made to the committee substitute. He stated that the bill would eliminate the Medicaid Rate Advisory Commission and place the responsibility for calculating and setting Medicaid payment

rates for health care facilities under the general authority of the Department of Health & Social Services. The bill would modify the Alaska Statutes to parallel federal statutory requirements for setting facility-based rates under Medicaid. Originally, the structure was modified in 1997 to remove the Medicaid facility payment standards and place them in the public process requirements of federal law. The Alaska Statutes have not changed to reflect that modification.

Commissioner Gilbertson continued, the legislation would provide for the Alaska Statutes to mirror the federal statutory requirement for rate setting. He noted that the Department had worked with the Alaska State Hospital and Nursing Home Association (ASHNHA) to provide compromise language as adopted in the committee substitute. The language clarifies that the State will continue to have rates based on reasonable costs. The Administration agrees that there should not be "unreasonable" costs or rates. The Department does have an interest in grouping rates for facilities. The current structure allows for the Department to only adopt one rate setting structure and does not allow differentiating between a ten-bed facility and a two hundred-bed facility. The legislation is an effort to provide a unique methodology in grouping facilities.

Commissioner Gilbertson pointed out that Section 5 references audits and are optional and would not be required. Those audits would not happen every year. The Department would retain their ability to have reasonable access to medical assistance for auditing records.

Representative Croft referenced the committee substitute and asked if the section regarding the reasonable costs for the facility managers were listed on Page 2. Commissioner Gilbertson replied that was correct.

Representative Croft asked if there had been any other changes between the committee substitute and the prior version of the legislation. Commissioner Gilbertson responded that there were a number of small changes to accommodate some concerns voiced by Legislative Legal Services. The substantive changes were the ones concerning the language on legal costs related to patient care.

Representative Croft asked if Section 5 would be changed. Commissioner Gilbertson responded it would not.

Representative Foster MOVED to report HCS CS SB 108 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note.

There being NO OBJECTION, it was so ordered.

HCS CS SB 108 (FIN) was reported out of Committee with a "do pass" recommendation and with fiscal note #1 by the Department of Health and Social Services.

#SB109

SENATE BILL NO. 109

Department of Health and Social Services to apply to administration of the medical assistance program when there are insufficient funds allocated in the state budget for that program; authorizing the department to make cost containment decisions that may include decisions about eligibility of persons and availability of services under the medical assistance program; and providing for an effective date.

JOEL GILBERTSON, COMMISSIONER, DEPARTMENT OF HEALTH & SOCIAL SERVICES, explained that under current law, if funds appropriated to the Medicaid program are insufficient for a given fiscal year, the Department is directed to eliminate optional Medicaid services based on a priority list that is out-of-date. He maintained that the existing list is not an effective management tool and if used, would result in the denial of necessary and cost-effective services to Alaskans.

Commissioner Gilbertson advised that the bill would repeal the options list and replaces it with a singular direction for the Department to engage in cost containment measures to achieve the same level savings to operate the Medicaid Program within the amount appropriated by the Legislature.

The proposed bill would replace the obsolescent language with broad general authority for the Department to undertake cost containment based on three key principles:

- The Department must pursue all other reasonable cost containment measures before eliminating any eligibility groups or services;
- The Department should aggressively pursue strategies to maximize federal financial participation in the Medicaid program; and
- Cost containment decisions should be made in a manner that best reflects the needs and interests of eligible Medicaid recipients.

Commissioner Gilbertson noted that the current list in statute establishes a very rigid structure. The Administration believes that the Department can engage in similar cost containment measures within the Medicaid Program and conduct cost containment in a manner that is responsive to the Legislature's intent and responsive to the needs of the beneficiary population.

He spoke to the fiscal note. Commissioner Gilbertson stated that next year there would be a savings. At this point, the Administration is not proposing any additional cost containment in the Medicaid Program that is not currently in the Governor's budget mission.

Co-Chair Harris asked about a deferred drug list.

Commissioner Gilbertson advised that included in the Governor's budget submission this year was a proposal for adopting a deferred drug list for the Alaska Medical Assistance Program. A preferred drug list is not a formulary. That drug list is a peer reviewed, professionally designed list that establishes preferred drugs within a drug class. These drugs would be purchased at a similar or lower cost. Some other states use these drug lists. He added that at this stage, the Department has not formulated their preferred drug list and are not in the process of developing one. Commissioner Gilbertson did not believe that the Department would develop their own list. There are a number of other lists adopted by other states that have withstood litigation. It is foreseeable that Alaska would take one from another state. That decision has not yet been made. He acknowledged that the preferred drug list is contentious.

Co-Chair Harris inquired the success rate that other states have had in saving money using this system.

Commissioner Gilbertson offered to provide that information to the Committee at a later date. He added that some states have shown large savings. There is disagreement regarding the net effect of Medicaid expenditures. Most of the Medicaid growth now is within the seniors and disabled individual population area. Seniors have a high drug utilization cost. The preferred drug list would not prevent access to pharmaceutical products that perform certain benefits. The Commission would decide which there might be two drugs that serve the same purpose, which one should be clinically approved for dispensing.

Co-Chair Harris requested that Commissioner Gilbertson work with Representative Hawker and other interested parties who have concerns regarding this legislation.

Co-Chair Williams recommended that Commissioner Gilbertson also work with Representative Croft, the maker of the proposed amendments.

Co-Chair Williams noted that SB 109 would be HELD in Committee for further consideration.

#SB120
SENATE BILL NO. 120

An Act relating to the state's sovereign immunity for certain actions regarding injury, illness, or death of state-employed seamen and to workers' compensation coverage for those seamen; and providing for an effective date.

KEVIN JARDELL, ASSISTANT COMMISSIONER, DEPARTMENT OF ADMINISTRATION, explained that SB 120 consists of two issues:

- The policy question of whether or not State employed seamen should be under a worker's compensation model or allowed to continue to pursue the Jones Act remedy through litigation;
- The legal issue. (He noted that the Department of Law would discuss that concern.)

Mr. Jardell stated that the policy call of the Administration has been around for approximately eight years. During the 1980's, the Alaska Marine Highway System (AMHS) union labor agreements stipulated the State to pay Alaska Workers' Compensation Act (AWCA) benefits in lieu of the traditional Jones Act and other maritime remedies. Many employees preferred the AWCA as a more complete and immediate no-fault payment (non-taxable wage indemnification rather than a modest daily maintenance stipend) - avoiding controversy, delays, and the extra costs inherent in protracted civil litigation. A single employee's constitutional challenge resulted in the Alaska Supreme Court System decision, which precludes the practice under current law.

Mr. Jardell pointed out that the issue has been around for the past eight years and has finally "come to the table". The Administration has determined that placing State employees under workmen's compensation for injuries would be the best policy. There are several benefits to that, most of which center around the benefit to the employee not needing to litigate before receiving compensation. There would be an additional benefit of a cost savings to the State.

SUSAN COX, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, reiterated that the legislation would take the State employees that are seamen and put them into the State compensation system. It would remove the State from the business of providing traditional maritime remedies under the Jones Act. The legal vehicle by which the State can do that is the amendment of State statute that waives sovereign immunity. The State can withdraw the consent to be sued and

assert our sovereign immunity. Or instead, the State can provide worker's compensation for the State seamen employees.

Ms. Cox pointed out that the employees affected would include the workers on the Alaska Marine Highway vessels, additional seamen employed by State agencies who work on research vessels and law enforcement vessels. The objective would be to provide a uniform system of compensation for on the job injuries for all State employees.

The Alaska Supreme Alaska Court System, in a decision in 1990, approved the approach that the bill takes. That decision involved a public safety seaman, the State of Alaska, Department of Public Safety versus Robert Brown. The Alaska Supreme Court stated that the State could take this approach if it was the Legislature's desire. Ms. Cox stated that case should not be confused with the disapproved collective bargaining which involved Dale Brown.

Ms. Cox noted that this approach has been taken by other jurisdictions in other states. She emphasized that this will not affect the rights of seaman in the private sector.

Ms. Cox pointed out that the idea has been a remedy that was in effect for an eight-year period until 1991. There was legal disagreement some years ago whether the bill would work as a matter of federal law that could override the State sovereign immunity even if the State choose to amend the statute. Given the Alaska Supreme Court System decisions of the last five years, the proposed approach is legally viable.

Ms. Cox advised that it is expected that this approach will save the State money in litigation costs. Additionally, there would not be the same types of damages available in a worker's compensation remedy that is available in a lawsuit. Another significant savings would be in the area of illness. Currently, an employee that becomes ill on the vessel can leave work and be paid their unearned wages until the end of the voyage without docking their sick leave. Under the worker's compensation plan, unless they suffer from an occupational disease, they would not be receiving a similar amount of maintenance payments. Those expenses would be transferred into their sick leave account. She acknowledged that the system handling illness claims would be changed dramatically.

Ms. Cox added that the effective date provision states that the change in the law would go into affect July 1st, 2003 and would address new injuries and illnesses arriving after that date. There is a three-year statute of limitation for maritime lawsuits. The Department will continue to handle litigation for a couple years into the future for those

injuries which occurred prior to the effective date of the legislation.

BRAD THOMPSON, DIRECTOR, DIVISION OF RISK MANAGEMENT, DEPARTMENT OF ADMINISTRATION, stated that Risk Management acted as the insurance agency for State agencies including maritime claims. He pointed out a zero fiscal note in the packet, however, anticipated fiscal savings.

Risk Management is funded uniquely on a cash flow basis for the anticipated costs on claims due to be paid back on a fiscal period. That appropriation is collected on assessments from State agencies based on experience in claims, loss or exposure. The amount is calculated on the actual costs incurred on a claim. The costs are anticipated to decrease with the change of remedy. In time, the cost to the Department of Transportation & Public Facilities, Department of Public Safety and Department of Fish & Game will decrease with a cost savings and will reflect in future assessments. At this time, Risk Management is funded each year on the anticipated State claims and a negative amount is not indicated. It is a reflection of a type and method of funding of the Risk Management program.

Mr. Thompson pointed out the analysis of the Alaska Marine Highway claims as compared to the other State employee claims. He reiterated that there would be a savings.

At-Ease: 2:55 P.M.

SB 108 was HELD in Committee for further consideration.
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ADJOURNMENT

The meeting was adjourned at 3:58 P.M.