

**ALASKA STATE LEGISLATURE  
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES  
STANDING COMMITTEE**

March 4, 2004  
3:08 p.m.

**MEMBERS PRESENT**

Representative Peggy Wilson, Chair  
Representative Carl Gatto, Vice Chair  
Representative John Coghill  
Representative Paul Seaton  
Representative Kelly Wolf  
Representative Sharon Cissna

**MEMBERS ABSENT**

Representative Mary Kapsner

**COMMITTEE CALENDAR**

HOUSE BILL NO. 511

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

- HEARD AND HELD

HOUSE BILL NO. 178

"An Act requiring that the cost of contraceptives be included in certain health care insurance coverage."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 353

"An Act relating to jury duty; and amending Rule 15(k), Alaska Rules of Administration."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 511

SHORT TITLE: CERTIFICATE OF NEED PROGRAM

SPONSOR(S): REPRESENTATIVE(S) SAMUELS

02/16/04	(H)	READ THE FIRST TIME - REFERRALS
02/16/04	(H)	HES, FIN

03/02/04 (H) HES AT 3:00 PM CAPITOL 106  
03/02/04 (H) Heard & Held  
03/02/04 (H) MINUTE(HES)  
03/04/04 (H) HES AT 3:00 PM CAPITOL 106

**WITNESS REGISTER**

JANET CLARKE, Director  
Division of Administrative Services  
Department of Health and Social Services  
Juneau, Alaska  
POSITION STATEMENT: Testified in support of HB 511 and answered questions from the committee members.

DENNIS MURRAY, Administrator  
Heritage Place  
Soldotna, Alaska  
POSITION STATEMENT: Testified in support of HB 511.

AARON KOTZIN, Support Services Director  
Central Peninsula General Hospital  
Soldotna, Alaska  
POSITION STATEMENT: Testified in support of HB 511.

JANET OWEN-DENTON, Director  
Outpatient Surgery and Special Procedures  
Fairbanks Memorial Hospital  
Fairbanks, Alaska  
POSITION STATEMENT: Testified in support of HB 511.

GRETCHEN O'MAHONEY  
Fairbanks, Alaska  
POSITION STATEMENT: Testified in support of HB 511.

ROBERT GOULD  
Fairbanks, Alaska  
POSITION STATEMENT: Testified in support of HB 511.

BRIAN SLOCUM, Administrator  
Tanana Valley Clinic  
POSITION STATEMENT: Testified in support of an amendment to HB 511 which would increase the CON threshold to \$2.5 million.

ROBERT BAKER, President-Elect  
Executive Committee Member  
Wasilla Chamber of Commerce  
Wasilla, Alaska

POSITION STATEMENT: Testified on HB 511.

GEORGE LARSON, Chief Executive Officer  
Valley Hospital  
Wasilla, Alaska

POSITION STATEMENT: Testified in support of HB 511 and answered questions from the members.

SAM KORSMO, Chief Operating Officer  
Alaska Open Imaging Center  
Wasilla, Alaska

POSITION STATEMENT: Testified in opposition to HB 511 and answered questions from the members.

LISA WOLF, Director of Planning  
Providence Hospital Health System  
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 511 and answered questions from the members.

RICK DAVIS, Assistant Administrator  
Alaska Regional Hospital  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 511.

JEFF KINION, Chief Executive Officer  
Alaska Open Imaging Center  
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 511.

ROD BETIT, President  
Alaska State Hospital and Nursing Home Association  
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 511.

#### **ACTION NARRATIVE**

**TAPE 04-18, SIDE A**  
Number 0001

**CHAIR PEGGY WILSON** called the House Health, Education and Social Services Standing Committee meeting to order at 3:08 p.m. Representatives Wilson, Gatto, Coghill, and Seaton were present at the call to order. Representatives Wolf and Cissna arrived as the meeting was in progress. Representative Kapsner was excused.

HB 511-CERTIFICATE OF NEED PROGRAM

Number 0050

CHAIR WILSON announced that the first order of business would be HOUSE BILL NO. 511, "An Act relating to the certificate of need program for health care facilities; and providing for an effective date." Chair Wilson told the members that the Department of Health and Social Services has an amendment it would like proposed to the bill.

Number 0090

REPRESENTATIVE GATTO moved Amendment 1 which reads as follows [original punctuation provided, however some formatting changes were made]:

Page 2, line[s] 8, 12, 16, 19, 21, 27, 29, and 31, delete [SECURE]

Page 3, line[s] 3,7, and 15, delete [SECURE]

Page 3, line 26, after "of" delete [ADMINISTRATION] and insert **Health and Social Services**

Page 3, line[s] 30 and 31, delete all material and insert

(1) Residential psychiatric treatment center (RPTC) means therapeutically appropriate and medically necessary diagnostic, evaluation and treatment services provided by a secure or semi-secure psychiatric facility, or inpatient program in a psychiatric facility, which are

1. under the direction of a physician;
2. include active treatment of a professionally developed and supervised individual plan of care designed to achieve the recipient's discharge from inpatient status at the earliest possible time that must be intensively and collaboratively delivered by an interdisciplinary team involving medical, mental health, educational, and social service component.
3. are provided 24 hour days for children with severe emotional or behavioral disorders; and,
4. licensed by the Department of Health and Social Services.

Number 0106

REPRESENTATIVE COGHILL objected to the amendment for purposes of discussion.

Number 0132

JANET CLARKE, Director, Division of Administrative Services, Department of Health and Social Services, testified in support of HB 511 and answered questions from the committee members. She told the members that the department has proposed Amendment 1 because Section 3 which deals with residential psychiatric treatment centers (RPTC) is a subject that is a high cost area where Medicaid is a primary payer. Ms. Clarke noted that some of the members who sit on this committee are also on the House Finance Budget Subcommittee and are aware of this. She explained that the department wishes for the CON process to apply to RPTCs; however, in the bill that was introduced there is a limitation to only include secure residential psychiatric treatment centers. This amendment would allow semi-secure RPTCs to also be included. Ms. Clarke summarized that the amendment is a technical one and allows the CON process to extend to all types of RPTCs.

Number 0203

REPRESENTATIVE COGHILL asked Ms. Clarke to provide the committee with the difference in bed capacities in the secure and non-secure facilities. He commented that he understands that because of the need there could be several bidders coming forward.

MS. CLARKE responded that she does not have the information about the secure and non-secure bed capacities. However, she said she does know that within Alaska there are 101 RPTC beds. Currently there are up to 600 children who are out of state. Ms. Clarke told the members the department's goal is to bring the kids home from out of state RPTCs in such a way that it does not disadvantage the state Medicaid budget. She added that she will provide Representative Coghill with the information on the secure and non-secure beds in Alaska.

REPRESENTATIVE COGHILL explained that he is asking for this information so that it is clear what Alaska is dealing with.

CHAIR WILSON agreed that it would be good to have that information and to ensure that it is included with the bill packet information.

Number 0335

REPRESENTATIVE SEATON asked what the department sees as the effect of including the RPTCs in the CON process.

MS. CLARKE responded that the CON is a health-planning tool. The state is a primary payer in RPTCs for children who have mental illness. By regulating the RPTC bed size it would ensure that increases are done in a planned manner which does not disadvantage the state's Medicaid program in terms of state general fund growth, Ms. Clarke reiterated. She explained that by increasing the RPTC beds with Native tribal partners it will be possible to generate a 100 percent federal match in funds. The department will match the need with the state Medicaid program. Ms. Clarke added that the department's primary interest is in terms of cost containment.

REPRESENTATIVE SEATON asked if he understands correctly that the effect of requiring CON on these beds is to eliminate private development in bringing the kids home unless it is done through a mechanism such as Native health corporations which would generate 100 percent federal funding. He asked if that is the purpose of this amendment.

Number 0481

MS. CLARKE agreed that is one portion of it. However, there are 600 Alaskan kids in RPTCs out of state right now and there are only 101 beds in Alaska. She stated that there clearly is a need for in-state RPTCs. There will be some beds developed privately whether it is done with Native health corporations or not. The department wants to ensure that it is done in the right place, that the need is justified, and that all the partnering possible has been done, before tapping into the state's general fund as part of the Medicaid program, Ms. Clarke explained. She emphasized that CON does not stop development, but it requires a business or entity go through a planning process.

REPRESENTATIVE SEATON commented that with 600 Alaska children in out of state facilities it is clear that there is a need. He said he believes this would be a bill that would stop beds from being provided in Alaska. For example, he does not know if this

bill would prevent beds from being built in Wrangell, Homer, or Anchorage, or if the bill would promote beds being built in more remote areas. Representative Seaton restated his concern that he does not understand the context of this bill.

MS. CLARKE responded that the state is not trying to stop anything. She explained that as the department looks at the kids that are going out of state, it has been determined that some of them could be served in a less intensive environment. There may be therapeutic foster homes that could be developed. It may not be necessary to provide the high-cost \$300 per day bed, she said. Ms. Clarke went on to say that when discussing planning in a cohesive manner, what is being looked at is the need for development of less intensive services that will meet the needs of the children who are returning from out of state, as well as, the needs of high-intensive RPTCs. She said that this is really an effort to reengineer the internal system within Alaska as it is being regulated. She summarized that this process is more than just preventing beds from being provided, but how the rest of the alternatives are developed.

Number 0643

REPRESENTATIVE SEATON asked if there were beds developed that were not favorable to the state Medicaid budget, would the state be obligated to send kids to those beds.

Number 0664

MS. CLARKE explained that of the children out of state, 25 percent of them are children in state custody, the other 75 percent are being sent out of state by another entity. It could be the parents or physician, without the review in place or prior approval by the Medicaid program, but these kids are still Medicaid eligible, she added. If a child is eligible, he/she receives services. The plan that has been discussed is the development of the continuum of care, preauthorization reviews before children are placed in these high-intensive beds, and an emphasis to do it in a thoughtful manner. Ms. Clarke summarized that this is a very complex issue.

REPRESENTATIVE SEATON asked if for example, expensive beds were developed because they were not matched in the right way for Medicaid, would the department then be obligated to fill those beds before using other facilities that are cheaper.

MS. CLARKE replied that with Medicaid there is a freedom of choice issue. If it is not regulated or the state's practices are not changed or there are not other less intensive services available, and a child needs that service, then Medicaid would be obligated to pay.

Number 0743

REPRESENTATIVE COGHILL explained that the CON would ensure that there is not an over capacity situation which then drives the cost beyond the state's ability to pay.

CHAIR WILSON asked Ms. Clarke to clarify that permission would have to be obtained through the CON process before a building project could occur.

MS. CLARKE replied that if a capital expenditure were to be made of over \$1 million a CON would be required; however, a project for less than \$1 million would not. She noted that typically a RPTC would cost over \$1 million.

CHAIR WILSON commented that she sees the importance of the CON process with respect to RPTCs. Currently without CON oversight there could be more facilities built than are needed. For example, 15 different companies could see the need and each build 100 bed facilities. Far more than is needed, she added.

Number 0882

REPRESENTATIVE SEATON pointed out that if more beds were available the law of supply and demand may provide the state with more affordable beds. Instead of paying \$300 per night, it may be possible for the state to get those beds for \$200 per night. He asked Ms. Clarke if the state could negotiate the price or if there is a price set by Medicaid.

MS. CLARKE responded that Medicaid rates are highly regulated. The rate paid is \$300 per night.

REPRESENTATIVE SEATON asked for clarification and some examples of secure versus non-secure residential treatment centers.

MS. CLARKE replied that a secure residential treatment facility is a locked facility. A semi-secure facility would be one that has 24-hour staffing for monitoring of beds, but not necessarily a locked facility. She commented that there are not many secure facilities. For example, Alaska Psychiatric Institute (API) is

a secure inpatient treatment hospital. There are various levels of security including day-treatment facilities or 24-hour treatment facilities. Much of this is determined by staffing, she explained.

REPRESENTATIVE SEATON asked if these are long-term facilities. He commented that the committee had a presentation from a group from Wrangell [See overview dated January 29, 2004, Crossing Wilderness Expeditions for Youth] where kids who were covered by Medicaid went through a six-week wilderness program. Representative Seaton asked if it would be necessary to go through a CON process before this kind of facility could operate.

MS. CLARKE responded that a CON would be necessary for that kind of program to operate. She commented that the average length of stay for children who are in out of state facilities is about 180 days. In Alaska the average length of stay for children is 90 days. Ms. Clarke told the members that out-of-state beds cost an average of \$250 per day, while in-state beds cost an average \$300 per day. She pointed out that children who remain in Alaska are closer to family and the length of stay is considerably less.

Number 1154

REPRESENTATIVE COGHILL told the members that he does not object to the amendment because he believes it provides a mechanism to control costs. The anecdotal testimony has reflected that the vast majority of funding for the children's treatment has been paid with public funds. He asked for clarification on the percentage of funding for children admitted to RPTCs.

Number 1184

MS. CLARKE replied that she does not have that particular information in front of her. She said that she does know that the Medicaid budget for RPTCs has grown from \$4 million in FY 98 TO \$42 million in FY 03. This is a fast-growing area in the Medicaid budget that the department has identified as one which needs careful control, she commented.

CHAIR WILSON said she understands that it is very difficult to track the number of children who are sent out of state by families who pay themselves or who have insurance which covers these costs.

MS. CLARKE agreed with Chair Wilson. Out-of-state facilities are not regulated by Alaska and information is not readily available for those who pay privately.

CHAIR WILSON commented that she recently heard of a family who was considering sending their son out-of-state and reconsidered when hearing of the option offered in Wrangell. She said she believes Alaskan kids will benefit as more options are available within Alaska.

Number 1281

REPRESENTATIVE COGHILL told the members he believes this legislation is necessary and removed his objection to Amendment 1. There being no objection, Amendment 1 was adopted.

REPRESENTATIVE GATTO commented that "secure residential psychiatric treatment center" has the meaning given in AS 47.35.900. The word secure was not given in that definition; however, Amendment 1 deleted the word secure without deleting [residential psychiatric treatment center]. He said he does not know where to find the definition of the word secure.

MS. CLARKE responded that AS 47.35.900 does define the word secure.

Number 1342

REPRESENTATIVE GATTO asked what it means. He questioned that by removing the word secure the state is opting for insecure.

MS. CLARKE replied that by removing the word secure it provides the state with more options. She clarified that it just means that there will be some locked or secure beds and some that have close supervision or semi-secure. She explained that there are varying degrees of supervision depending on the program that is being provided. She commented that if the word secure were to remain, it would limit the state by allowing it to only look at locked facilities.

Number 1402

DENNIS MURRAY, Administrator, Heritage Place, testified in support of HB 511. He told the members that he supports the CON process and Amendment 1 which was adopted. Mr. Murray said the threshold of \$1 million makes sense to ensure that community

projects are considered in a thoughtful planned way. He urged the committee to support HB 511 as amended.

Number 1461

AARON KOTZIN, Support Services Director, Central Peninsula General Hospital, testified in support of HB 511. He told the members that he believes HB 511 will insure that CON will be applied more equally. This will also help to close loopholes that some companies use to circumvent the CON process. Specifically, freestanding diagnostic centers should be considered health care facilities. Inclusion of the cost of lease space as part of a project is also an important loophole to be addressed. He reiterated his support of HB 511.

Number 1529

JANET OWEN-DENTON, Director, Outpatient Surgery and Special Procedures, Fairbanks Memorial Hospital, testified in support of HB 511. She told the members that the CON process ensures that only new services that are needed by the community that have not been met by existing health care facilities are filled. Community hospitals carefully plan for the needs of the residents of its community. She explained that if some of the procedures and surgeries are carved out, it reduces the available funding to provide needy patients with care. It is important that the loopholes in the CON process are closed. HB 511 would ensure that the CON rules are applied more equally, she added. This is a fair bill and one that is fair to the community, the consumer, and the provider, Ms. Owen-Denton said.

Number 1589

GRETCHEN O'MAHONEY testified in support of HB 511. She told the members that she has seen the dramatic effect on communities of redundancy in medical specialty services. One effect is that it divides the community and the medical professionals, she said. It is a no win situation, Ms. O'Mahoney added.

Number 1619

ROBERT GOULD testified in support of HB 511. He told the members that this legislation closes some rather large loopholes in current law. He pointed out that imaging services are not included in the CON process, nor is the cost of leasing space. Mr. Gould said he believes the CON process is in place to ensure that there is a public process to determine community needs. He

said that by limiting excess capacity and redundancy, costs will remain low. There is some thought that larger capacity would allow for the price to go down, however, once the capital is spent, it must be paid for. Mr. Gould commented that the \$1 million threshold is an appropriate level for a CON application. He urged the committee's support of HB 511.

Number 1718

REPRESENTATIVE GATTO asked Mr. Gould if he believes a \$750,000 threshold might be more appropriate for the CON.

MR. GOULD replied that right now a refurbished MRI could be purchased for under \$1 million. He said he believes the \$1 million threshold seems reasonable.

REPRESENTATIVE SEATON commented that Mr. Gould is talking about the cost of a single machine; however, the bill will include the cost of leased space for the length of the lease, which could be up to 10 or 20 years, he said. He pointed out that the machine is just a piece of the puzzle.

MR. GOULD agreed that individual pieces of equipment are just a part of the cost.

Number 1885

BRIAN SLOCUM, Administrator, Tanana Valley Clinic, testified in support of HB 511. He told the members that he supports an amendment to HB 511 to change the CON threshold to \$2.5 million because he believes it is a far more realistic figure. Mr. Slocum pointed out that the \$1 million threshold was established more than 20 years ago. It took quite a lot of expenditures to spend \$1 million then. However, today that \$1 million threshold could be reached in purchasing a single piece of equipment. This adjustment could be applicable out over the next 20 years, he said.

MR. SLOCUM shared a bit of irony that has occurred where the United Way of the North Star Borough area put out a report of the big issues facing the community over the next few years. The study gathered input from non-profits and business organizations. He explained that some of the recommendations that were included were how to approach the problems relating to substance and drug abuse, violence and spousal abuse, crime, and things of that nature. Mr. Slocum told the members that two of the top items identified as critical community issues were

access to affordable health care services and physician services. He said he finds it strange that another community non-profit organization that is supplying some of those services is here asking the members to reduce access to the number of providers who offer those kinds of community services. Mr. Slocum urged the members to look for a balance and address increasing the threshold limits on CON.

Number 1943

CHAIR WILSON announced that Representative Cissna has joined the meeting.

Number 2003

ROBERT BAKER, President-Elect, Executive Committee Member, Wasilla Chamber of Commerce, testified on HB 511. He read the following letter on behalf of the Wasilla Chamber of Commerce [original punctuation provided, although some formatting changes have been made]:

The Greater Wasilla Chamber of Commerce is opposed to HB 511. Our opposition is predicated on first-hand knowledge of and interaction with one of our member businesses, Alaska Open Imaging Center (AOIC). AOIC is an independent diagnostic testing facility that is providing radiology health care services to the residents of the State of Alaska. It is providing critical early detection of serious ailments for many Alaskans.

HB 511 would amend the present Certificate of Need (CON) process by adding independent diagnostic testing facilities, like AOIC, into the definition of health care facilities that would require a CON.

We believe HB 511 would inadvertently create a monopoly on services for CON holders by adding these new and costly layer of additional regulation for private or independent facilities. By requiring them to provide justification of their services and methods of operation, with the probable benchmark being that services which hospitals are providing. This bill discourages competition, which is always to the benefit of the consumer. It also would discourage quality improvements, similar to those in which AOIC introduced to Alaska residents several years ago.

Alaskans wishing to avail themselves to state-of-the-art diagnostic testing would find their options severely limited.

We also believe that stifling existing or new business ventures is the exact opposite of what should be occurring in Alaska. Alaska is faced with a significant fiscal challenge, and possibly the most positive approach is to create a climate that is conducive to the expansion of existing and introduction of new businesses in our State. It appears that HB 511 would have the complete opposite effect. Thank you for the opportunity to present our views.

Number 2054

GEORGE LARSON, Chief Executive Officer, Valley Hospital, testified in support of HB 511 and answered questions from the committee. He told the members that this change in the CON law is important not only for Valley Hospital but for other organizations such as independent diagnostic centers where leases can be used to by-pass the \$1 million threshold. Mr. Larson said when the hospital tried to obtain better computed tomography (CT) scanner the independent diagnostic center sent a letter to Madeline Pierce (ph?) indicating that the hospital was duplicating services and under the CON process should not be allowed to do it. He said he believes there should be a level playing field. In summary, Mr. Larson told the committee that he supports HB 511 and the changes that would close the loopholes in the law.

CHAIR WILSON asked if she understands correctly that when the hospital wanted to acquire imaging equipment a CON was required, but when an independent testing facility wanted to obtain this equipment no CON was necessary.

MR. LARSON agreed with Chair Wilson's statement.

Number 2139

REPRESENTATIVE GATTO asked Mr. Larson if this bill actually levels the playing field or provides an advantage to hospitals over independent testing facilities.

MR. LARSON responded that by passing HB 511 it would level the playing field by removing the loopholes.

Number 2160

SAM KORSMO, Chief Operating Officer, Alaska Open Imaging Center, testified in opposition to HB 511 and answered questions from the members. He reiterated his statement from an earlier hearing in opposition to this bill.

MR. KORSMO commented that George Larson's statement concerning the Valley Hospital's effort to replace its existing CT scanner, met with concern by AOIC. He clarified that at that time AOIC had introduced a CT scanner in Wasilla. He pointed out that Valley Hospital is in Palmer and it wanted to provide a duplicative service in Wasilla to compete against AOIC's CT scanner. The issue here is that Valley Hospital was introducing a new service which costs over \$1 million and was required to go through the CON process. As to Fairbanks Memorial Hospital's proposal to open an imaging center in its facility it should also be subject to the CON process. Providence Hospital has just completed a \$5 million addition for an outpatient imaging facility that was purchased as Providence Imaging Center. Why would Providence Hospital buy that imaging center, he questioned.

Number 2225

MR. KORSMO told the members that AOIC is instituting new technology and advances. He explained that outpatient-imaging services are increasing nationwide and in some instances the need has increased six to ten percent every year. Most hospitals cannot even keep up with the demand, he said.

Number 2248

REPRESENTATIVE GATTO commented that while Valley Hospital is in Palmer, it also serves West Valley Medical Center which is part of Valley Hospital.

MR. KORSMO responded that is correct. He pointed out that within six months Valley Hospital installed a brand new scanner in Wasilla.

REPRESENTATIVE GATTO commented that West Valley Medical Center, which is part of Valley Hospital was already in existence.

MR. KORSMO clarified that Valley Hospital replaced its old scanner at the hospital in Palmer. However, when AOIC

introduced the CT scanner in Wasilla, West Valley then went out and purchased a second scanner to put in the West Valley Medical facility in Wasilla.

Number 2294

CHAIR WILSON asked Mr. Larson how long it takes a hospital to plan and make a purchase such as the CT scanner.

MR. LARSON responded that it often takes as long as one year.

CHAIR WILSON asked if Valley Hospital had planned to put in the new CT scanner long before AOIC installed its new scanner.

MR. LARSON commented that what he believes Mr. Korsmo is saying is that Valley Hospital put in two units. There was an archaic unit over in Palmer that needed to be replaced, which was done. A CT scanner was also needed in the outpatient clinic in Wasilla which was leased through an operating lease. This is one of the loopholes being discussed. He pointed out that it is interesting that the diagnostic imaging center was saying that even though it does not go through the CON process, West Valley Medical facility should have to go through it. Mr. Larson said he believes there should be a level playing field.

CHAIR WILSON asked if having two CT scanners in the same area has created a financial hardship.

MR. LARSON responded that it has not seen any negative effect.

**TAPE 04-18, SIDE B**

Number 2351

MR. KORSMO told the members that Valley Hospital's installation of a CT scanner after AOIC had install one, was out of the strategic plan. He told the members that he has evidence which he can provide to the committee to prove it.

Number 2299

LISA WOLF, Director of Planning, Providence Hospital Health System, testified on HB 511 and answered questions from the members. She commented that the \$1 million threshold for the CON has not been in effect for 20 years. Originally it was \$150,000 and then it became burdensome for the Department of Health and Social services because of the high number of

applications. This was due to the low threshold on the CON. Ms. Wolf explained that in one year Providence Hospital Health System did seven CON applications which was what triggered the effort to increase the threshold to \$1 million. She told the members that she understands there is discussion about raising or lowering the threshold, but her experience is that the \$1 million threshold is still okay. Providence Hospital Health System is doing a CON every other year. She said she would want to ask the department of it believes there is a burden. In summary Ms. Wolf warned that by increasing the threshold there will be many new facilities that will open without any public review.

Number 2213

MS. WOLF corrected a comment that was made by AOIC that it is the only independent diagnostic testing facility (IDTF) in the state. She said that is not true. Providence Imaging Center is an IDTF and has been exempt from the CON process. As a point of clarification, she said that Providence Imaging Center is a completely separate entity from Providence Medical Center. It is a joint venture organization that has three owners. She pointed out that the \$5 million project that was mentioned was done by the Providence Imaging Center and was not required to do a CON. A lease arrangement was included in part of that center.

MS. WOLF responded to an earlier question she heard concerning the length of time required to complete the CON process. She told the members that it typically takes six months to complete that process. It could be a shorter time period for the CON process if what is being reviewed is a lease option.

MS. WOLF told the members there have been great advances in the technology offered today. At one time only eight to ten CT were done per day, but with the new CT scanner the volume is significantly higher.

Number 2093

MS. WOLF commented that someone mentioned that hospitals would have an advantage over other facilities with respect to the CON process. She reminded the members that when a letter of intent is sent in it must be done two months in advance of the application, so all the health care providers in the area are notified. Another facility can also apply which would mean that the department would then have to review all the applications

together. There have been two or three times when Providence has competed in this kind of situation.

Number 2028

REPRESENTATIVE SEATON posed a hypothetical question where a facility submits a letter of intent. A hospital is notified of that intent and then also decides to apply. Has the department ever decided against a hospital's application and for the independent facility or doctor, he asked.

Number 1997

MS. WOLF responded that the only instance she can recall is when Providence Hospital put in an application to add beds. At that time, Humana Hospital, now Alaska Regional Hospital, submitted a competing application to add beds. The commissioner decided to divide the beds between the two hospitals, so both hospitals only go to open a portion of the beds requested. She said that she could not comment on the circumstances Representative Seaton posed. Ms. Wolf told the members she believes there was a similar circumstance in Fairbanks and perhaps someone from there could respond.

Number 1923

RICK DAVIS, Assistant Administrator, Alaska Regional Hospital, testified in support of HB 511. He explained that he is testifying on behalf of Ed Lamb, President and Chief Executive Officer of Alaska Regional Hospital. It is important to address the loopholes which are being used to circumvent the CON process, he said. Clarification of the law to ensure that ambulatory surgery centers, and outpatient-imaging centers are included in this bill.

MR. DAVIS commented that these independent centers have said its presence will increase access and keep costs down; however, its hours will likely be from 8 a.m. to 5 p.m. The community hospital are providing access 24 hours per day, 7 days per week to indigent patients. Mr. Davis told the members that these independent centers will cherry pick the paying patients and leave the community hospitals struggling to keep its costs equal with incoming revenue.

CHAIR WILSON asked Mr. Davis to comment on maintaining the threshold of CON at \$1 million.

MR. DAVIS replied that raising the threshold to \$2.5 million will mean that most projects will fall below the threshold.

Number 1780

JEFF KINION, Chief Executive Officer, Alaska Open Imaging Center, testified in opposition to HB 511. He told the member that he has over 25 years experience in the hospital and health care field. That experience ranges from staff positions into management and administration. He said that there have been claims that AOIC cherry picks or skims the cream off the top and does not provide care to Medicare or Medicaid patients. In 2003 Medicare and Medicaid patients accounted for 22 percent of AOIC's gross receipts and hopes to increase that base in 2004. From this false statement a case has been built that AOIC as an IDTF has taken advantage of a gaping hole, operates from an unlevel playing field, and that a change in the law is needed. This claim is not only wrong, but is unwarranted. Mr. Kinion told the members that AOIC is no different than the local hospitals regarding its imaging acquisition methods. None of Providence Imaging Center's installed equipment have been CON applied for and permitted capital expenditures. He pointed out that it has worked within the law and has navigated around the CON process on a routine basis, thus using the same loophole that has been described.

Number 1693

MR. KINION pointed out that Valley Hospital also used the same legal method to navigate around the state CON process in the acquisition of two CT scanners. He said that one of the scanners was placed only a few blocks from an existing CT service in the community. This was a competitive move, he commented.

MR. KINION explained that the CON law has many components including the cost threshold and the leasing versus capital expenditure, for example. He pointed out that when Valley Hospital provided a CT scanner in Wasilla it was initiating a new service which is a separate component in the CON process. Mr. Kinion told the members that Valley Hospital is the community hospital and AOIC supports it. As the community hospital it makes us responsible for it, he added.

Number 1673

CHAIR WILSON asked why AOIC cared how Valley Hospital proceeded.

MR. KINION responded that the only difference it made to AOIC is that Valley Hospital comply with the law if necessary.

CHAIR WILSON asked if Valley Hospital's expansion of services impacted AOIC's business.

MR. KINION said no. He commented that AOIC's success is based on the high performance and cost saving capabilities. The playing field is already level and does not require a change, Mr. Kinion added. The CON program was established in the 1970s to control health care costs and it has not worked. Mr. Kinion told the members that Representative Samuels is proposing that the process of the state of Alaska managing growth and capital expenditures will ensure high quality services in a cost effective manner. Alaska Open Imaging Center is already providing high quality services in a cost effective manner without the state of Alaska managing its capital expenditures, he said. Mr. Kinion stated that he believes no change is needed. He said he believes cooperation and competition work to control health care costs, not increased legislation.

MR. KINION told the members that AOIC is a for-profit organization, and that makes us different. He told the members that AOIC is a facility with specialist and experts in medical imaging. Patients and doctors choose AOIC because of the services that are received. Mr. Kinion summarized that Alaska does not want a socialized medical system. He said this bill is based on hospital protection and it should be on hospital correction. He said this should be addressed by an independent and extensive balanced evaluation, not slipped into the end of a bill that largely addresses psychiatric treatment facilities. He requested that the bill be amended by removing the request to change the definition of medical facilities to include IDTFs.

Number 1545

ROD BETIT, President, Alaska State Hospital and Nursing Home Association, testified in support of HB 511. He told the members that prior to returning to Alaska, he was the commissioner of health for the state of Utah for the last 12 years, and the deputy commissioner for the prior five years. Mr. Betit told the members that from his personal experience he has found that CON programs do work. It helps to stabilize the market, keep costs from escalating, and prevent unintended consequences from occurring. He said he believes the issues to

be addressed in HB 511 are not what has happened in the past, but what is needed for the future.

MR. BETIT shared that when he arrived in Utah in 1987, the CON law had been repealed in 1984. In the three years that CON had been repealed there had been an explosion of psychiatric and nursing home beds. Eight psychiatric hospitals had come and gone, he said, and none are left today. The nursing home industry saw a doubling of the nursing home beds, far more than could be supported, he added. The state pays for most of those beds and indirectly the price is effected by the number of vacant beds in the system. He told the members that it got so bad by 1989 that one out of every four beds in the system were vacant. Mr. Betit explained that there had been a 300 percent increase in the number of documented patient care programs in nursing homes around Utah.

Number 1450

MR. BETIT told the members that in January of 1989 he issued a moratorium, which is one step beyond a CON. What this meant is that there was no construction permitted for any beds where there was any expectation of Medicaid funding without the approval of the department. He added that that approval would not be given because the door was slammed shut. He told the members that he opened that door one time in the last 12 years.

MR. BETIT explained that yesterday the Utah State Legislature adopted [the CON law] in statute, because it has been proven to be necessary in order to stop that kind of growth in the state. He said he does not see CON as a barrier to competition. All CON does is provide a public process for review. It places that public trust with the head of the department who then looks at all the information relative to the particular service someone wants to expand and gets to the question of whether someone is already providing that or not. A judgment call is then made as to whether that area can support additional infrastructure, he said.

Number 1393

MR. BETIT pointed out that an infrastructure in health care is expensive and the consequences if over capitalization occurs is serious. He explained that CON is a data driven process, not one where the commissioner hears the arguments of two parties and then arbitrarily decide on one or the other based on how well the parties are known or how well they presented arguments.

He reiterated that there is a lot of data that is provided that has to prove that CON is documented adequately. If multiple proposals are presented in a CON process, the commissioner can pick the best proposal, shape the proposal, and compete against different proposals until one comes forward that best suits the needs of the state, he said. In summary, Mr. Betit stated that the Alaska State Hospital and Nursing Home Association supports HB 511 as amended.

Number 1327

REPRESENTATIVE CISSNA commented that only one person works on CON in the state and there is no large database that reflects what is happening in communities around Alaska. She asked Mr. Betit to compare the workforce and market between Utah and Alaska. She asked if he would also comment on the tools Utah had [to accomplish the CON process when he was commissioner].

Number 1241

MR. BETIT replied that Utah had a population of 2.4 million people over a much smaller area than Alaska. However, there were a lot of remote or frontier parts of the state with very large distances between different kinds of health care. He said when the CON process was going strong there were four to five full-time positions. He explained that included people looking at the data collected by people proposing any kind of expansion, and it was then validated by the data the department had. The state of Utah had a geographic information system that was immature in those days, but could get at some of the population and distance issues, he said. Mr. Betit commented that he believes Alaska has this information too. There is also national data available as well, he added.

Number 1208

MR. BETIT told the members that in his experience, more often than not a CON application is approved. It is not a process that is trying to disprove a need, but to assure that the information put on the table is accurate. If there are holes in the application, then it is important to talk about those holes, and figure out what that data means, he said. Mr. Betit told the members that while he does not know what the department's data is, he believes that they are still doing a credible job of looking at that information. He commented that if someone presents a CON that is denied, that does not have to be the end

of it. There is the right to appeal an administrative decision by the commissioner.

Number 1167

REPRESENTATIVE SEATON commented that he believes there are three competitive interests that are being looked at; medical costs, quality, and supporting public facilities. In an effort to balance all of these interests the one point that keeps coming forward is that excess capacity and redundancy is bad. For example, if imaging equipment is only limited to hospitals it would seem that the costs will stay higher because there is no competition and there is the opportunity for the hospitals to do cost-shifting. He asked Mr. Betit if Utah tried to balance the same three competing interests.

Number 1100

MR. BETIT replied that he would phrase it differently. He would look at it as not supporting the community hospitals by not putting them at a disadvantage to other providers who might come in and take away business when there was not enough for both entities to exist. He underscored that statement by saying that there will be no more exceptional relief in the state, so a hospital has to stand on its own merits. When a hospital can't keep enough volume to fund the capacity that it already has, that creates the economic problem that exceptional relief has been trying to solve in Alaska.

MR. BETIT went on to say that in Utah everyone of those interests were looked at and the department tried to make a fair case in terms of how that would best represent the needs of that community. He emphasized that does not mean that an imaging center not be approved, there very well could be a need for an imaging center, but it may not be in the location the applicant wishes. Mr. Betit told the members that any applicant that takes the time to put together a CON, assembles a business plan, and documents data to show there is enough business in that area to support another provider, in most cases prevails. In summary he said CON has not blocked expansion, it has controlled it.

Number 1012

REPRESENTATIVE SEATON stated that he would like to focus on the question of imaging equipment since it is being addressed in the bill. He posed a hypothetical example where a hospital has had a CT scan for six years. It is the only one approved for a

particular community. Since the hospital has its capital investment and there is no competition, what would be the impetus to upgrade its equipment, he asked.

MR. BETIT commented that he has not experienced an instance where a community was falling being technology to meet the needs of a community. If that kind of circumstance were to exist, it would clearly be a place where CON should come in and make a case that there needs to be some imaging capacity beyond what the hospital provides. He added that it would be his belief that in this instance a CON applicant would prevail because there is a benefit to the community for improved equipment.

Number 0900

REPRESENTATIVE SEATON said that what he has heard of the process is that, for example, a party puts in a CON application to bring in new equipment, it is then noticed for 60 days, and then the current center or hospital who is providing imaging also applies to bring in the same equipment. He asked Mr. Betit if in these circumstances there will ever be an independent diagnostic treatment facility or will this process continually force existing facilities to upgrade its equipment.

Number 0859

MR. BETIT replied that [in the state of Utah] CON did not give current providers the opportunity to present an alternative plan when someone else came forward with a proposal. He explained that the community was looked at when the proposal came in to determine if there was a hole that needed to be filled and whether there was enough capacity to provide the revenue to support the new service that was being requested. If there was, then the CON was approved, he said.

REPRESENTATIVE SEATON agreed that kind of scenario makes sense. However, the testimony that has been heard in committee reflects that in Alaska when a CON application comes in it is noticed to all the other providers in a community, who then also put in their own CON on the same kind of facility. At that point the CONs are reviewed, he said.

MR. BETIT commented that he does not know that much detail on what is done on CON in the Alaska Department of Health and Social Services so he cannot speak to that point. He told the member that just the fact that a CON comes forward encourages discussion in a community. In one case he handled the

department wanted to add 60 nursing home beds to a community. There were three proposals for 100 beds. One facility had existing physical plant problems and which had received complaint after complaint. It was not an adequate building for fragile medical patients, he said. The facility came back to the department with a proposal to tear down the facility and build a 100-bed facility to replace it. He commented that is the kind of discussion that happens when a CON process occurs.

Number 0730

CHAIR WILSON asked Mr. Betit to comment on the ramifications across the community that can occur if there is no CON.

Number 0701

MR. BETIT responded that his experience has been that when there is an over supply of beds, an under supply of nurses or nurses aides to care for those patients, and inadequate revenue to provide the funding for the health care that is suppose to be provided, then operators start covering the leaking roof, paying the mortgage, and covering the administrative expenses, over the patient care expenses. That is what led to the 300 percent increase in patient care issues in Utah. He explained that this example could be correlated to any part of the health care system. People will do what is necessary to keep businesses running. In the process of doing that there can be some very serious patient care consequences, he stated.

CHAIR WILSON said the disagreement in the committee has to do with imaging centers. She asked Mr. Betit to comment.

MR. BETIT replied that each of these issues needs to be looked at differently. He said on imaging he could not speak to the patient care issue. One point he would look at is the profit line and the impact to a hospital in the community that is already in that business. Mr. Betit told the members that he understands the arguments that there should be an ability to compete, but does not agree that should come automatically without showing that the competition doesn't cause the community hospital, which has a lot of other burdens to carry, to not be able to meet its expenses.

Number 0582

CHAIR WILSON told the members that she would like to have someone from the Department of Health and Social Services to address the CON process and answer questions from the members.

The committee took an at-ease from 4:35 p.m. to 4:40 p.m.

Number 0544

CHAIR WILSON announced that HB 511 would be held in committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at 4:42 p.m.