

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

March 9, 2004
3:07 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative John Coghill
Representative Mary Kapsner

COMMITTEE CALENDAR

SENATE BILL NO. 285

"An Act relating to medical assistance coverage for targeted case management services and for rehabilitative services furnished or paid for by a school district on behalf of certain children; and providing for an effective date."

- MOVED SB 285 OUT OF COMMITTEE

HOUSE BILL NO. 175

"An Act relating to issuance of a limited driver's license; relating to driving while under the influence of an alcoholic beverage, inhalant, or controlled substance and refusal to take a chemical test for consumption of an alcoholic beverage, inhalant, or controlled substance; and providing for an effective date."

- MOVED CSHB 175(HES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 285

SHORT TITLE: MEDICAL ASSISTANCE COVERAGE

SPONSOR(S): SENATOR(S) GREEN

01/28/04	(S)	READ THE FIRST TIME - REFERRALS
01/28/04	(S)	HES, FIN

02/09/04 (S) HES AT 1:30 PM BUTROVICH 205
02/09/04 (S) Moved SB 285 Out of Committee
02/09/04 (S) MINUTE(HES)
02/11/04 (S) HES RPT 3DP
02/11/04 (S) DP: DYSON, GREEN, WILKEN
02/19/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/19/04 (S) Bill Postponed
02/23/04 (S) FIN RPT 4DP
02/23/04 (S) DP: GREEN, WILKEN, BUNDE, STEVENS B
02/23/04 (S) FIN AT 10:00 AM SENATE FINANCE 532
02/23/04 (S) Moved SB 285 Out of Committee
02/23/04 (S) MINUTE(FIN)
03/02/04 (S) TRANSMITTED TO (H)
03/02/04 (S) VERSION: SB 285
03/03/04 (H) READ THE FIRST TIME - REFERRALS
03/03/04 (H) HES, FIN
03/09/04 (H) HES AT 3:00 PM CAPITOL 106

BILL: HB 175

SHORT TITLE: PRIOR CONVICTIONS FOR DUI

SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

03/07/03 (H) READ THE FIRST TIME - REFERRALS
03/07/03 (H) HES, JUD
03/09/04 (H) HES AT 3:00 PM CAPITOL 106

WITNESS REGISTER

JACQUELINE TUPOU, Staff
to Senator Lyda Green
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of Senator Green,
sponsor of SB 285.

JOEL GILBERTSON, Commissioner
Office of the Commissioner
Department of Health and Social Services
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 285, and
answered questions from the members.

JOHN SHERWOOD, Medical Assistance Administrator
Program Review
Office of the Commissioner
Department of Health and Social Services
Anchorage, Alaska

POSITION STATEMENT: Testified on SB 285 and answered questions from the members.

AMANDA WILSON, Staff
to Representative Norman Rokeberg
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of Representative Rokeberg, sponsor of HB 175.

KERRY HENNINGS, Manager
Driver Licensing
Division of Motor Vehicles
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 175 and answered questions from the committee.

BARBARA BRINK, Director
Public Defender Agency
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Testified on SB 175 and answered questions from the members.

JANET McCABE, Chair
Partners for Progress
Anchorage, Alaska

POSITION STATEMENT: Testified on SB 175.

ACTION NARRATIVE

TAPE 04-19, SIDE A

Number 0001

CHAIR PEGGY WILSON called the House Health, Education and Social Services Standing Committee meeting to order at 3:07 p.m. Representatives Wilson, Gatto, Seaton, and Cissna were present at the call to order. Representative Wolf joined the committee as the meeting was in progress.

SB 285-MEDICAL ASSISTANCE COVERAGE

Number 0086

CHAIR WILSON announced that the first order of business would be SENATE BILL NO. 285, "An Act relating to medical assistance coverage for targeted case management services and for

rehabilitative services furnished or paid for by a school district on behalf of certain children; and providing for an effective date."

Number 0160

JACQUELINE TUPOU, Staff to Senator Lyda Green, Alaska State Legislature, testified on behalf of Senator Green, sponsor of SB 285. She explained that in Alaska statutes case management [definition] has been limited to three specific groups: substance abusers, chronically mentally ill, and severely emotionally disturbed children. Ms. Tupou told the members that federal Medicaid allows child in need of aid (CINA) case management for all groups that the state determines necessary. This bill would expand the authority to allow for Medicaid billing for expanded CINA case management services, she said.

MS. TUPOU told the members that the first of these services that will be [billed to Medicaid is] the family preservation service which has been recognized in numerous studies and surveys as a key tool in addressing these problems.

MS. TUPOU said that in 2002 legislation was passed which allowed schools to bill Medicaid for the school-based Medicaid services that are offered. It was discovered that the State of Alaska's definition and the federal definition of rehabilitated services does not align. She explained that there is a housekeeping provision in the bill which would make Alaska's definition as inclusive as the federal definition. Ms. Tupou summarized her comments by saying that it is estimated that this legislation will save approximately \$270,000 of general fund money in FY05.

Number 0281

JOEL GILBERTSON, Commissioner, Office of the Commissioner, Department of Health and Social Services, testified in support of SB 285, and answered questions from the members. He told the members that the administration strongly supports SB 285. There are two purposes for the bill, he said. First and foremost, it corrects some challenges currently experienced in implementing school-based Medicaid in Alaska. One challenge is that in previous statute the definition of rehabilitative services does not align with the federal definition. As a result the state is restricted to the portfolio of services that can be billed to Medicaid.

COMMISSIONER GILBERTSON explained that school-based Medicaid services really has to do with the services schools provide to deal with individual education programs (IEPs), such as transportation services, nursing services, some supplies, speech therapy, occupational therapy, and physical therapy. He added that these are services that the state has an obligation to provide. This change in law simply allows the state to access additional federal revenue to provide that service at a greater level.

COMMISSIONER GILBERTSON told the members that as regulations were being drafted to address the law which was passed in a previous session which implemented school-based Medicaid, the Department of Law pointed out that the state statutory definition was not linked to federal statute. This bill would make that correction. He said that a side benefit of this is that it reduces the burden placed on school districts. The legislation recommends that services by a physician or by a practitioner through the IEP be services that can be billed to Medicaid. The current requirement says that the services explicitly have to be at the prescription of the provider.

COMMISSIONER GILBERTSON explained that the legislation also addresses targeted case management services. Currently the targeted case management services are restricted by statute to substance abusers, chronically mentally ill adults, and severely emotionally disturbed children. A whole population of children that are served in the child protection system are excluded from targeted case management services as a direct result of their not fitting into these three eligibility categories, he explained. This bill would clear the way to expand these services, he added.

Number 0482

COMMISSIONER GILBERTSON told the members that under the new statute the department will be able to provide targeted case management services to children in the Office of Children Services, the Division of Juvenile Justice, the Infant Learning Program, some services provided by Public Health Nursing, and children who are in the education system who have IEPs. Some case management services may also target tribal groups. He added that inclusion of tribal groups also provides the department with the opportunity to work with Native health corporations in rural Alaska and to attract 100 percent federal financing to provide services.

COMMISSIONER GILBERTSON said the department firmly supports this bill. He told the members that John Sherwood can answer any technical questions the members might have.

Number 0526

CHAIR WILSON asked if she understands correctly that if this bill passes it will be possible for the school districts to be reimbursed for some of the services that are currently being provided.

COMMISSIONER GILBERTSON replied that the school districts are not reimbursed with federal dollars. He explained that SB 285 does not introduce any new services. This legislation would simply allow the state to gain additional reimbursement for obligations that state government or school districts are already bearing.

Number 0601

REPRESENTATIVE GATTO pointed to page 1, line 2, where it says "paid for by a school district" and asked Commissioner Gilbertson if school districts normally pay for rehabilitative services from districts' funds. He commented that he does not believe that is the case.

COMMISSIONER GILBERTSON responded that he would like John Sherwood to comment on that point. He told the members that school districts actually do provide funds and the local match requirement for the school-based Medicaid services. When Ms. Tupou mentioned the \$270,000 savings to the general fund, she was only referring to the targeted case management component. The additional federal revenue that will be coming in as a result of this legislation will go directly to the school districts, he explained. He summarized that the total additional revenue that will be coming in will be about \$3.5 million.

Number 0664

JOHN SHERWOOD, Medical Assistance Administrator, Program Review, Office of the Commissioner, Department of Health and Social Services, testified on SB 285 and answered questions from the members. He told the members that Commissioner Gilbertson is correct. Currently the services that school districts provide to children under an IEP are required by federal law. He commented that there are no funds appropriated to the school

districts to provide these services. School districts commonly refer to these IEP services as "unfunded federal mandates", Mr. Sherwood explained.

Number 0711

REPRESENTATIVE CISSNA said she supports this bill, but would like some clarification on how it works.

COMMISSIONER GILBERTSON explained that the Department of Health and Social Services operates the Medicaid program at the state level. The department pays the claims, but does not provide the bulk of the services through the department. The services are largely delivered by the school districts or by contractors who work for the school districts in providing the services required by the children's IEPs and special needs services, he said. Commissioner Gilbertson stated that the department is trying to assist districts by providing reimbursement for these federal mandates through a Medicaid financing mechanism.

Number 0809

REPRESENTATIVE GATTO asked for clarification of the language on page 1, line 2, where it says "paid for by a school district." He asked if that reflects a situation whereby a student has such needs that the school district has no personnel that can satisfy the requirements so the district must contract with someone to provide the services.

COMMISSIONER GILBERTSON replied that is correct. He pointed out that most transportation services for school districts are handled by contract. This legislation would allow for reimbursement for those services through Medicaid by correcting the definition to link with federal rehabilitation services definition, he reiterated. He noted that school-based Medicaid was established by a previous legislature and this bill would help the department to implement it.

Number 0888

CHAIR WILSON asked if a small school system that could not afford to hire a full time speech therapist or physical therapist entered into a contract to provide the services, would the school district be reimbursed.

COMMISSIONER GILBERTSON replied that if the service was Medicaid eligible, it would be reimbursed.

Number 0921

REPRESENTATIVE SEATON moved to report SB 285, 23-LS1530\D, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SB 285 was reported out of House Health, Education and Social Services Standing Committee.

HB 175-PRIOR CONVICTIONS FOR DUI

Number 0950

CHAIR WILSON announced that the final order of business would be HOUSE BILL NO. 175, "An Act relating to issuance of a limited driver's license; relating to driving while under the influence of an alcoholic beverage, inhalant, or controlled substance and refusal to take a chemical test for consumption of an alcoholic beverage, inhalant, or controlled substance; and providing for an effective date."

Number 0975

REPRESENTATIVE SEATON moved to adopt HB 175, version U, as the working document. There being no objection, HB 175, version U was before the committee as the working document.

Number 0997

AMANDA WILSON, Staff to Representative Norman Rokeberg, Alaska State Legislature, testified on behalf of Representative Rokeberg, sponsor of HB 175. She explained that HB 175 accomplishes three things. It allows limited driver's licenses for people who are in wellness and therapeutic courts. These courts agree that this would be a beneficial incentive to get DUI offenders to participate and comply with the provisions, she said. The bill also changes the look-back period on inclusion of prior driving under the influence (DUI) offenses to 15 years instead of the current lifetime look-back. Ms. Wilson commented that prior to current law there was a 10-year look-back. She said that this law also clarifies the legislature's intent that minimum fines be imposed unless the person is involved in the wellness and therapeutic courts.

MS. WILSON said that the limited driver's license provisions for people in wellness and therapeutic courts would provide that upon graduation they would receive a limited driver's license. She pointed to the copy of the statute [AS 28.35.030] in the members' packet which shows the statute by which the wellness

court operates. Subsection (p) has eight provisions of what is required of a wellness court. Ms. Wilson read the requirements are as follows:

- (1) requires participation for at least 18 consecutive months;
- (2) includes planning and treatment for alcohol or drug addiction;
- (3) includes emphasis on personal responsibility;
- (4) provides in-court recognition of progress and sanctions for relapses;
- (5) requires payment of restitution to victims and completion of community work service;
- (6) includes physician approved treatment of physical addiction and treatment of the psychological causes of addiction;
- (7) includes a monitoring program and physical placement or housing; and
- (8) requires adherence to conditions of probation.

Number 1148

MS. WILSON stated that the wellness court program is a very rigorous treatment program. There has been a lot of success with the people who are participating in it. The people are watched closely so there is greater likelihood that the court could see if something were going wrong, and the limited driver's license could be revoked. She emphasized that in order for an individual to get a limited driver's license upon graduation from the court treatment program he/she would have had to be in the program for at least 18 months. That is basically a guarantee that the person has been sober for at least 18 months.

MS. WILSON pointed to the Office of Justice Programs (OJP) [report dated April 1998] in the members' packet. She asked the members to look at page 4 where the OJP report states what is believed to be an important focus for therapeutic courts. She read one point from the report as follows:

Development of legal changes to amend current laws to allow for limited driving privileges of some convicted drunk drivers who have had their licenses suspended (i.e., to get to treatment or a job).

MS. WILSON reiterated that the courts are behind this legislation because it is believed that this law would be a

useful tool. She directed the members' attention to the National Conference of State Legislatures' report on the look back periods [Drunk Driving Sanctions, Time Fames Used by States for Inclusion of Prior Offenses], and pointed out that only the state of Massachusetts has a lifetime look back period; and only one other state has a 15 year look back period, so Alaska would be matching that state for some of the harshest statutes in the country. Ms. Wilson explained that is one reason for the change in the look back period. She pointed out that the purpose of the harsh consequences was to address the problem of repeat offenders. It is not intended to address individuals who had a DUI in their youth and then later in life have a second offense. This legislation is intended to deal with the individual who has had three DUIs in 15 years, she stated.

Number 1311

MS. WILSON told the members that for a second offense an individual would serve not less than 20 days in jail and receive a fine of not less than \$3,000. That fine could be reduced through wellness court, but the person who has had two DUIs 30 years apart really is not an appropriate candidate for wellness court. She summarized that this is a harsher consequence than was intended for that offender. It is very different than an individual who gets three DUIs within 15 years. Ms. Wilson mentioned that the bill packet has copies of letters from individuals who were caught in this net and asked the members to take the time to look at them.

MS. WILSON commented that the final portion of the bill states that the courts should be imposing the minimum fines. The court should not be suspending a portion of those fines unless the individual is in wellness or therapeutic court.

Number 1347

CHAIR WILSON announced that Representative Wolf joined the meeting about ten minutes ago.

CHAIR WILSON commented that one of her constituents was caught in the net Ms. Wilson described. This person is 56 years old, got a DUI, and the only other offense was 27 years earlier when he was 19 years old. The fine was \$3,000. She said she believes this is an appropriate change because there are some individuals who are not habitual offenders that will be inappropriately penalized.

Number 1404

REPRESENTATIVE WOLF asked if the permit for a limited driver's license would include a commercial driver's license (CDL) to work as a taxi cab driver or bus driver, or a chauffeur's license.

MS. WILSON replied that there are specific requirements in statutes for those types of licenses. She said she would look into the impact of this legislation and get back to him on it.

Number 1435

CHAIR WILSON remarked that the Division of Motor Vehicles is on line and could likely address that question.

Number 1455

KERRY HENNINGS, Manager, Driver Licensing, Division of Motor Vehicles, Department of Administration, testified on HB 175 and answered questions from the committee. She told the members that based on state and federal regulations individuals who receive DUI's cannot be issued a limited license for work purposes. However, the individual could surrender his/her CDL, get a non-commercial license, and obtain gainful employment.

REPRESENTATIVE WOLF posed a hypothetical question where a person has a DUI at the age of 19 years old and at 45 years old receives another DUI. In this case it is possible that the individual could lose his/her job as a truck driver.

MS. HENNINGS responded that is correct.

Number 1517

REPRESENTATIVE CISSNA commented that it is her view that a person who receives a DUI is living an extraordinarily dangerous lifestyle. She said she believes that driving is a privilege, not a right. Representative Cissna shared that when she was a young woman she had neighbors who were killed by a truck and did not get her license to drive until she was 22 years old because of the impact it had on her life.

REPRESENTATIVE CISSNA read from page 5, lines 17 through 20, of the bill which said:

... the court may grant limited license privileges to a defendant if the court determines that (1) the defendant's ability to earn a livelihood, attend school or provide for family health would be impaired without a limited license, and (2) there will not be excessive danger to the public.

REPRESENTATIVE CISSNA commented that she assumes an individual would not be going through this process unless there had been some damage done.

Number 1623

MS. WILSON agreed with Representative Cissna. She responded that in order to be in a therapeutic court an individual would have to have a criminal charge pending. It is likely that it is a DUI charge. She told the members that it is her understanding that there would not actually have to have been an accident to be in this court. Ms. Wilson added that she will verify that point for the committee.

REPRESENTATIVE CISSNA replied that she would like that confirmation, because her concern is that someone who has made the judgment to drive while drunk would have a limited license. She also pointed out the discrepancies between the determination on page 2, line 6, where "severely impaired" is used as the criteria in allowing a limited license and on page 5 the term "impaired" is used. This appears to be a lessening of the standard, she stated.

MS. WILSON agreed with that point. She told the members that it had been her intention to remove the word "severely" from both sections. She added that it was an oversight and would not be opposed to an amendment that would [remove] the term severely in the section that deals with therapeutic courts. She explained that during discussions with the Department of Law there were concerns that there could be litigation over what severely meant.

Number 1738

CHAIR WILSON commented that the terms severely impaired does leave an opening for a lot of litigation.

REPRESENTATIVE CISSNA asked for a court system representative to speak to this point.

BARBARA BRINK, Director, Public Defender Agency, Department of Administration, testified on SB 175 and answered questions from the members. She pointed out that she does not represent the court system. Expanding the pool of individuals eligible to receive a limited license is a good policy. There are many safe guards in place to ensure that concerns are addressed, she said. Ms. Brink explained that any person who is charged with an unclassified felony or a class A felony, which would include manslaughter or assault in the first degree, is statutorily excluded from participating in the therapeutic court. She added that anyone who has had his or her probation revoked or who has been convicted of criminally negligent homicide would also not be eligible to participate.

Number 1828

MS. BRINK explained that her experience with obtaining limited driver's licenses through the judiciary has been difficult because it is very cautious. The judiciary requires very specific information including whom the individual will be working for and the hours and locations the person will be driving. She added that this option is only eligible for people already involved in intensive treatment programs and the individuals are under close supervision where alcohol tests are given randomly three times per week. This close supervision does not resemble probation. For instance, the individuals must go to court once per week, meet with their case managers, and be tested. These are significant safe guards, she said.

MS. BRINK said that she appreciates section 4 of the bill which reduces the look back provision. The only sections she is not too fond of are sections 2 and 3 which does not allow the courts discretion in determining an appropriate fine. She explained that it is important to note whether the individual has any ability to pay the fine. For some individuals, every dollar that is paid in a fine is not available for restitution, payment for child support, or available for support of the individual's family. Huge fines may work as a deterrent for people who have money, she commented.

Number 2004

REPRESENTATIVE GATTO shared that there currently is other DUI legislation [HB 342] making its way through the legislative process that he and Representative Gruenberg are sponsoring. Representative Gruenberg discussed the concept of an interlock in the late 1990s. He explained that the interlock is a device

that allows an individual's car to be rigged in a way in which an individual would have to use a breathalyzer and show a zero reading in order for the vehicle to operate. He suggested that the two pieces of legislation may be combined and produce a more comprehensive approach. This legislation may really encourage individuals to get help. Representative Gatto said he believes that throwing people in jail only results in offenders finding more friends to drink with. He told the members that the interlock has been very successful in other states and it is the one thing that takes [drunk] people off the roadways. He summarized his comments by saying that drinkers have a 350 times higher rate of accidents than sober individuals.

Number 2182

JANET McCABE, Chair, Partners for Progress, testified on SB 175. She explained that Partners for Progress is an organization that has worked toward the development of therapeutic courts. She said she believes this is an important element in preventing repeated alcohol offenses. She said that Judge Wanamaker refers to this as getting the alcohol out of the alcoholic. Partners for Progress believes that limited license privileges could be granted to therapeutic court graduates and still ensure the protection of the public. The limited license would only be allowed for those individuals who had demonstrated 18 months of sobriety and have completed a very demanding program which integrates the individuals into a responsible community. She added that limited license privileges are permitted on a case-by-case basis by the judge. The judge could also insist on other condition in which the license privilege could be offered, such as the interlock device that was mentioned earlier.

MS. McCABE pointed to page 1, line 10, where it refers to limited license privileges for the final 60 days during which the license is revoked. She commented that she does not believe that is the intent of the courts.

CHAIR WILSON agreed with Ms. McCabe's point.

Number 2234

MS. WILSON commented that it was [the sponsor's] intent to remove the words "final 60 days" as an incentive, and would support an amendment to remove them.

Number 2254

REPRESENTATIVE GATTO moved Amendment 1 as follows:

Page 1, line 10, [after the word "privileges]"
Delete "for the final 60 days during"

Number 2273

REPRESENTATIVE CISSNA objected for purposes of discussion.

REPRESENTATIVE GATTO restated Amendment 1 as follows:

Page 1, line 10, [after the word "privileges]"
Delete "for the final 60 days"

REPRESENTATIVE CISSNA commented that she has enormous respect for Janet McCabe and her work, but would like to hear from the courts on this point.

CHAIR WILSON said if Amendment 1 was adopted it would read as follows:

...of the department when revoking a driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant limited license privileges during which the license is revoked if ...

Number 2339

MS. BRINK said that the mandatory license revocation periods are extensive. As was noted the final 60 days can be a very long time subsequent to when a person has been sentenced and has participated in a treatment program, so allowing it for the final 60 days is really not much of an incentive to these individuals.

TAPE 04-19, SIDE B

Number 2349

MS. HENNINGS explained that the 60 day language in AS 28.15.201(b) that covers limited licensing was inserted specifically for first offenders who are the only ones able to obtain a limited license. It is important that offenders serve the first 30 days of the 90 day revocation period. She suggested that the language could be changed to read as follows:

[Page 1, line 9 and 10, after the word "privileges"]

Insert "after the first 30 days of revocation"

MS. HENNINGS said she believes this language would solve the problem through out the statutes. She reiterated that everyone would serve at least 30 days.

Number 2309

MS. BRINK told the members that the Alaska statutes has the following mandatory minimums as follows:

Driver's license must be revoked for 30 days for the first DUI conviction, 1 year for the second conviction, and not less than 3 years for the third conviction.

MS. BRINK commented that those are lengthy periods of time.

CHAIR WILSON pointed out that the language says "may grant licensing privileges, not "shall grant licensing privileges. This change would provide the judge some discretion.

Number 2278

REPRESENTATIVE CISSNA said she is concerned about second and third offenders. She asked if this change would supercede the statutes.

MS. WILSON clarified that the statute reads "if the individual has not been previously convicted." The final 60 day language refers to those individual who have committed a first offense. These individuals could go through the DMV and get a limited driver's license. If the person has been previously convicted the individual must be participating in a therapeutic court program so that would be a minimum of 18 months before the court could grant a limited driver's license upon the completion of the program.

Number 2168

REPRESENTATIVE CISSNA removed her objection. There being no objection, Amendment 1 was adopted.

Number 2142

REPRESENTATIVE GATTO moved to report CSHB 175, Version U, out of committee with individual recommendations and the accompanying

fiscal notes. There being no objection, CSHB 175(HES) was reported out of the House Health, Education and Social Services Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at 4:00 p.m.