

**ALASKA STATE LEGISLATURE  
HOUSE RULES STANDING COMMITTEE**

April 29, 2004

9:10 a.m.

**MEMBERS PRESENT**

Representative Norman Rokeberg, Chair  
Representative Pete Kott  
Representative John Coghill  
Representative Lesil McGuire  
Representative Carl Morgan  
Representative Ethan Berkowitz  
Representative Beth Kerttula

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 381

"An Act relating to child endangerment."

- MOVED CSHB 381(RLS) OUT OF COMMITTEE

HOUSE BILL NO. 542

"An Act relating to specialty construction contractors and to construction contractor exemptions."

- MOVED CSHB 542(RLS) OUT OF COMMITTEE

HOUSE BILL NO. 551

"An Act relating to the issuance of teacher certificates to and revocation of teacher certificates of persons convicted of felony drug offenses and to the issuance of limited teacher certificates to persons convicted of certain crimes involving a minor and felony drug offenses."

- MOVED CSHB 551(JUD) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 48

Sending a message of goodwill to President Chen Shui-bian, and reaffirming the Alaska State Legislature's 2003 resolution urging the United States Congress to support the granting of official Observer Status to the Republic of China and to support

negotiation of a free trade agreement with the Republic of China.

- MOVED CSHJR 48(RLS) OUT OF COMMITTEE

HOUSE BILL NO. 543

"An Act relating to medical assistance coverage for prescription drugs; and providing for an effective date."

- MOVED CSHB 543(RLS) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 381

SHORT TITLE: CHILD ENDANGERMENT DRIVING OFFENSES

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE

01/20/04	(H)	READ THE FIRST TIME - REFERRALS
01/20/04	(H)	HES, JUD
04/06/04	(H)	HES AT 3:00 PM CAPITOL 106
04/06/04	(H)	Moved CSHB 381(HES) Out of Committee
04/06/04	(H)	MINUTE(HES)
04/08/04	(H)	HES RPT CS(HES) 1DP 1NR 3AM
04/08/04	(H)	DP: WILSON; NR: COGHILL; AM: SEATON,
04/08/04	(H)	WOLF, GATTO
04/13/04	(H)	FIN REFERRAL ADDED AFTER JUD
04/14/04	(H)	JUD AT 1:00 PM CAPITOL 120
04/14/04	(H)	Moved CSHB 381(JUD) Out of Committee
04/14/04	(H)	MINUTE(JUD)
04/19/04	(H)	JUD RPT CS(JUD) 4DP
04/19/04	(H)	DP: SAMUELS, HOLM, GRUENBERG, MCGUIRE
04/28/04	(H)	FIN REFERRAL WAIVED
04/29/04	(H)	RLS AT 9:00 AM FAHRENKAMP 203

BILL: HB 542

SHORT TITLE: CONSTRUCTION CONTRACTORS

SPONSOR(S): LABOR & COMMERCE

03/24/04	(H)	READ THE FIRST TIME - REFERRALS
03/24/04	(H)	L&C
04/02/04	(H)	L&C AT 3:15 PM CAPITOL 17
04/02/04	(H)	Scheduled But Not Heard
04/07/04	(H)	L&C AT 3:15 PM CAPITOL 17
04/07/04	(H)	Moved Out of Committee
04/07/04	(H)	MINUTE(L&C)
04/13/04	(H)	L&C RPT 7DP
04/13/04	(H)	DP: CRAWFORD, LYNN, GATTO, ROKEBERG,

04/13/04 (H) DAHLSTROM, GUTTENBERG, ANDERSON  
04/15/04 (H) RLS AT 9:00 AM FAHRENKAMP 203  
04/15/04 (H) Scheduled But Not Heard  
04/29/04 (H) RLS AT 9:00 AM FAHRENKAMP 203

BILL: HB 551

SHORT TITLE: DRUG FELONY DISQUALIFIES TEACHER

SPONSOR(s): JUDICIARY

04/05/04 (H) READ THE FIRST TIME - REFERRALS  
04/05/04 (H) EDU, JUD  
04/13/04 (H) EDU AT 11:00 AM CAPITOL 124  
04/13/04 (H) Scheduled But Not Heard  
04/15/04 (H) EDU AT 11:00 AM CAPITOL 124  
04/15/04 (H) Moved Out of Committee  
04/15/04 (H) MINUTE(EDU)  
04/19/04 (H) EDU RPT 1DP 1NR 2AM  
04/19/04 (H) DP: WOLF; NR: OGG; AM: SEATON, GATTO  
04/22/04 (H) FIN REFERRAL ADDED AFTER JUD  
04/23/04 (H) JUD AT 1:00 PM CAPITOL 120  
04/23/04 (H) Moved CSHB 551(JUD) Out of Committee  
04/23/04 (H) MINUTE(JUD)  
04/26/04 (H) JUD RPT CS(JUD) NT 3DP 2NR  
04/26/04 (H) DP: SAMUELS, OGG, MCGUIRE;  
04/26/04 (H) NR: GARA, GRUENBERG  
04/28/04 (H) FIN REFERRAL WAIVED  
04/29/04 (H) RLS AT 9:00 AM FAHRENKAMP 203

BILL: HJR 48

SHORT TITLE: TAIWAN STATUS AND PRESIDENT

SPONSOR(s): RULES BY REQUEST OF ECON DEV, INT TRADE & TOURISM

04/22/04 (H) READ THE FIRST TIME - REFERRALS  
04/22/04 (H) RLS  
04/29/04 (H) RLS AT 9:00 AM FAHRENKAMP 203

BILL: HB 543

SHORT TITLE: MEDICAID AND PRESCRIPTION DRUGS

SPONSOR(s): HEALTH, EDUCATION & SOCIAL SERVICES

03/25/04 (H) READ THE FIRST TIME - REFERRALS  
03/25/04 (H) HES  
04/01/04 (H) HES AT 3:00 PM CAPITOL 106  
04/01/04 (H) Scheduled But Not Heard  
04/06/04 (H) HES AT 3:00 PM CAPITOL 106  
04/06/04 (H) Scheduled But Not Heard  
04/13/04 (H) HES AT 2:00 PM CAPITOL 106

04/13/04 (H) Heard & Held  
 04/13/04 (H) MINUTE(HES)  
 04/20/04 (H) HES AT 2:00 PM CAPITOL 106  
 04/20/04 (H) Moved CSHB 543(HES) Out of Committee  
 04/20/04 (H) MINUTE(HES)  
 04/26/04 (H) HES RPT CS(HES) 1DP 1DNP 4NR  
 04/26/04 (H) DP: WILSON; DNP: CISSNA; NR: SEATON,  
 04/26/04 (H) COGHILL, GATTO, WOLF  
 04/29/04 (H) RLS AT 9:00 AM FAHRENKAMP 203

**WITNESS REGISTER**

SUE STANCLIFF

House Majority Office  
 Alaska State Legislature  
 Juneau, Alaska

POSITION STATEMENT: Explained the changes encompassed in Version D of HB 542.

RICK URION, Director

Division of Occupational Licensing  
 Department of Community & Economic Development  
 Juneau, Alaska

POSITION STATEMENT: Urged passage of HB 542 in its current form.

MIKE PAWLOWSKI, Staff

to Representative Cheryll Heinze  
 Alaska State Legislature  
 Juneau, Alaska

POSITION STATEMENT: Presented HJR 48 on behalf of the House Special Committee on Economic Development, International Trade and Tourism.

REPRESENTATIVE PEGGY WILSON

Alaska State Legislature  
 Juneau, Alaska

POSITION STATEMENT: As the chair of the House Health, Education and Social Services Standing Committee, sponsor of HB 543, presented HB 543.

PAT LUBY, Advocacy Director

AARP Alaska  
 Juneau, Alaska

POSITION STATEMENT: Testified that AARP is in total support of the preferred drug list (PDL) the way it's currently operating in Alaska, and therefore HB 543 isn't necessary.

CHIP WAGONER, Lobbyist  
for Alaska Association of Homes for Children  
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 543, testified that the Alaska Association of Homes for Children passed a resolution in support of the Department of Health and Social Services' cost containment effort with regard to the PDL.

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

POSITION STATEMENT: During discussion of HB 543, explained that Version Q would restrict the department's ability to adjust the authorization system for the PDL.

#### **ACTION NARRATIVE**

#### **TAPE 04-3, SIDE A**

Number 0001

**CHAIR NORMAN ROKEBERG** called the House Rules Standing Committee meeting to order at 9:10 a.m. Representatives Rokeberg, Kott, Coghill, McGuire, Morgan, Berkowitz, and Kerttula were present at the call to order.

#### HB 381-CHILD ENDANGERMENT DRIVING OFFENSES

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 381, "An Act relating to child endangerment."

Number 024

REPRESENTATIVE McGUIRE turned to [Amendment 1], which read [original punctuation provided]:

DELETE (Page 2, Lines 14-15)

(3) knowingly transports a child in a motor vehicle in violation of AS 28.05.095(b) and the child suffers physical injury or dies.

DELETE Sec. 4 (Page 2, Line 27 - Page 3, Line 1)  
Endangering the welfare of a child in the first degree under (a)(3) of this section is a

(1) class C felony if the child dies;

- (2) class A misdemeanor if the child suffers serious physical injury; or
- (3) class B misdemeanor if the child suffers physical injury.

Preceding sections are appropriately renumbered.

**Note:** This amendment will have the effect of removing all reference to the "failure to restrain" offense and all resulting criminal penalties.

REPRESENTATIVE McGUIRE explained that although the above language was left in HB 381 because a few members [of the House Judiciary Standing Committee] wanted it to remain, she has never really felt comfortable with it. She explained that [with the adoption of Amendment 1] the legislation will be limited to a situation in which a person transporting a child in a motor vehicle, aircraft, or watercraft while under the influence of an intoxicant. She informed the committee that of all the children injured or killed in an automobile accident in which the parent or the individual transporting the child was intoxicated, 71 percent of the children were not restrained in any way. The percentages increase as the amount of alcohol consumed increases.

REPRESENTATIVE McGUIRE clarified that Amendment 1 would eliminate the provision that would increase the penalties for transporting a child without proper seating restraints when a child suffers serious physical injury or dies. The aforementioned recognizes that there isn't a clear understanding of what these child restraints are at this time. The Department of Transportation & Public Facilities has put forth a definition of different weight and age requirements for children, but those aren't well understood. Therefore, it's not fair, she opined, to increase the penalty and criminalize people for provisions of the law that they may not understand.

Number 069

REPRESENTATIVE McGUIRE moved that the committee adopt Amendment 1 [text previously provided]. There being no objection, Amendment 1 was adopted.

CHAIR ROKEBERG informed the committee that as a result of Amendment 1, the committee will be adopting a zero fiscal note.

Number 077

REPRESENTATIVE KOTT moved to report CSHB 381(JUD), as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 381(RLS) was reported from the House Rules Standing Committee.

HB 542-CONSTRUCTION CONTRACTORS

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 542, "An Act relating to specialty construction contractors and to construction contractor exemptions."

Number 093

REPRESENTATIVE McGUIRE moved to adopt CSHB 542, Version 23-LS1874\D, Bannister, 4/9/04, as the working document.

REPRESENTATIVE BERKOWITZ objected for discussion purposes.

Number 098

SUE STANCLIFF, House Majority Office, Alaska State Legislature, explained that the only change in Version D is the title, which has been tightened.

REPRESENTATIVE BERKOWITZ withdrew his objection.

Therefore, Version D was before the committee.

CHAIR ROKEBERG asked if there has been any opposition to this legislation.

MS. STANCLIFF answered that those in the real estate industry have expressed concern that this would increase the costs for homeowners who are selling properties that need minor work to complete the sale. The aforementioned is one of the reasons the [title] wasn't made any tighter than it is. "We'd like to take a small bite of the apple, instead of a very big one that's going to bring huge opposition," she said.

Number 123

REPRESENTATIVE KOTT suggested that he has worked with the Division of Occupational Licensing to develop a very calculated way in which to address this issue. The issue is with regard to

handymen working beyond the scope of their authority. Representative Kott explained that as a contractor he has certain requirements to be in the business. However, there are handymen who don't meet the same requirements, although they are performing the job of a contractor, which is well beyond the scope of the statute. Representative Kott noted that he disagrees with the claim that this will increase the cost for homeowners. Beyond placing some enforcement in the law and placing these handymen out of business, this legislation offers a careful way to address the issue on a voluntary basis.

REPRESENTATIVE BERKOWITZ remarked that the \$5,000 [ceiling for a contract price] doesn't allow for much work. Therefore, he inquired as to why a limit is necessary.

Number 154

RICK URION, Director, Division of Occupational Licensing, Department of Community & Economic Development (DCED), informed the committee that the handyman category has caused more complaints than any other the division licenses. This legislation will help solve some of the problems, and therefore he urged the committee to pass the legislation in its current form.

CHAIR ROKEBERG suggested that the key issue is enforcement. Therefore, he asked if [the committee] should look at the home inspectors template and consider licensing handymen in order to obtain some revenue for enforcement.

MR. URION pointed out that the term "handyman" has been used for some time, although it doesn't appear in the statutes. He explained that handymen are no longer licensed under construction, rather an entire new category has been created. The problem is that some handymen are acting as contractors rather than performing small repairs.

REPRESENTATIVE BERKOWITZ returned to the \$5,000 ceiling. He posed a situation in which an individual performs two different projects on the same job site. In the aforementioned situation would the two projects be considered separately with each having the \$5,000 limit or does the aggregate cost of the two projects have to fall under \$5,000.

MR. URION answered that it would be the aggregate amount.

REPRESENTATIVE BERKOWITZ asked whether the ceiling would be the aggregate amount even if the two projects are done at different times.

MR. URION said that he was sure there are ways to skirt the law. However, there is a need for handymen to do small repairs and if a contractor is necessary, then a contractor should be hired. He stressed that the problem is that [some handymen] are performing [contractor] work for which they aren't insured and bonded.

Number 199

REPRESENTATIVE McGUIRE moved to report CSHB 542, Version 23-LS1874\D, Bannister, 4/9/04, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 542(RLS) was reported from the House Rules Standing Committee.

HB 551-DRUG FELONY DISQUALIFIES TEACHER

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 551, "An Act relating to the issuance of teacher certificates to and revocation of teacher certificates of persons convicted of felony drug offenses and to the issuance of limited teacher certificates to persons convicted of certain crimes involving a minor and felony drug offenses."

Number 208

REPRESENTATIVE McGUIRE, speaking as the chair of the House Judiciary Standing Committee, sponsor of HB 551, explained that HB 551 doesn't allow one to obtain a teaching certificate if he or she has a felony drug conviction. The legislation has been narrowed in CSHB 551(JUD) [such that it doesn't allow one to obtain a teaching certificate if he or she has] has felony drug convictions in the first degree. This [legislation is being taken up] to zero out the fiscal note, she explained. Although Teaching and Learning Support, Department of Education and Early Development (EED), offered a fiscal note, she recalled that testimony that licenses have been revoked for these types of convictions, even lower-level convictions, for moral [perpetuity]. Therefore, a zero fiscal note is being offered.

Number 225

REPRESENTATIVE McGUIRE moved that the committee adopt the zero fiscal [by the House Rules Committee]. [This motion was treated as adopted.]

REPRESENTATIVE BERKOWITZ inquired as to how many teachers currently employed in the state would be impacted by this statute.

CHAIR McGUIRE replied that she didn't know.

REPRESENTATIVE BERKOWITZ inquired as to what would happen to those holding licenses under this statute.

REPRESENTATIVE McGUIRE stated that the legislation allows for revocation or suspension. She related that the [Professional Teaching Practices] Commission assured [the House Judiciary Standing Committee] that there isn't a single teacher in the state who has a felony drug conviction, as it is narrowly defined in the legislation.

Number 242

REPRESENTATIVE KOTT moved to report CSHB 551(JUD) out of committee with individual recommendations and the adopted zero fiscal note. There being no objection, it was so ordered.

#### HJR 48-TAIWAN STATUS AND PRESIDENT

CHAIR ROKEBERG announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 48, Sending a message of goodwill to President Chen Shui-bian, and reaffirming the Alaska State Legislature's 2003 resolution urging the United States Congress to support the granting of official Observer Status to the Republic of China and to support negotiation of a free trade agreement with the Republic of China.

Number 250

MIKE PAWLOWSKI, Staff to Representative Cheryll Heinze, Alaska State Legislature, presented HJR 48 on behalf of the House Special Committee on Economic Development, International Trade and Tourism which requested the legislation of the House Rules Standing Committee. He explained that HJR 48 is a reaffirmation of Legislative Resolve 29, which passed both bodies unanimously last session. The resolution encourages the Republic of China on Taiwan to be granted Observer Status with the World Health Organization. The resolution also encourages the United States

Congress to negotiate a free trade agreement with the Republic of China on Taiwan. Moreover, the resolution sends a message of goodwill to President Chen Shui-bian on his reelection.

MR. PAWLOWSKI turned to the amendment in the committee packet. He explained that the amendment would provide clarification by shortening the technical name of the Republic of China on Taiwan to Taiwan where appropriate. In response to Chair Rokeberg, Mr. Pawlowski confirmed that he had checked this with the protocol officers of the U.S. State Department.

Number 269

REPRESENTATIVE BERKOWITZ inquired as to why a message of goodwill is being sent to President Chen Shui-bian rather than the people [of the Republic of China on Taiwan].

MR. PAWLOWSKI highlighted that President Chen Shui-bian has been and continues to be a very good friend of the State of Alaska, and therefore this resolution is specific to the president on his reelection.

REPRESENTATIVE MCGUIRE moved that the committee adopt Conceptual Amendment 1, as follows:

Page 1, line 1, after "President Chen Shui-bian";  
Insert "and the people of the Republic of China  
on Taiwan"

MR. PAWLOWSKI said he didn't believe [Representative Heinze would have any problem with Conceptual Amendment 1].

There being no objection, Conceptual Amendment 1 was adopted.

Number 295

REPRESENTATIVE MCGUIRE moved that the committee adopt Amendment 2, which read [original punctuation provided]:

Page 1 line 3: add on Taiwan following "China"  
Page 1 line 4: add on Taiwan following "China"  
Page 1 line 7: add on Taiwan following "China"  
Page 1 line 11: delete [the Republic of China, in]

Page 1 line 14: delete [the Republic of China] and  
insert Taiwan

Page 2 line 1: delete [the Republic of China] and  
insert Taiwan

Page 2 Line 4: delete [the Republic of China] and  
insert Taiwan

Page 2 line 9: delete [the Republic of China] and  
insert Taiwan

Page 2 line 12: delete [the Republic of China] and  
insert Taiwan

Page 2 line 13: delete [the Republic of China] and  
insert Taiwan

Page 2 line 16: delete [the Republic of China] and  
insert Taiwan

Page 2 line 25: add on Taiwan following "China"

Page 2 line 28: add on Taiwan following "China"

Page 2 line 31: add on Taiwan following "China"

There being no objection, Amendment 2 was adopted.

Number 299

REPRESENTATIVE KOTT moved to report HJR 48, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 48(RLS) was reported from the House Rules Standing Committee.

The committee took a brief at-ease.

HB 543-MEDICAID AND PRESCRIPTION DRUGS

CHAIR ROKEBERG announced that the final order of business would be HOUSE BILL NO. 543, "An Act relating to medical assistance coverage for prescription drugs; and providing for an effective date."

Number 306

REPRESENTATIVE KOTT moved to adopt CSHB 543, Version 23-LS1835\Q, Mischel, 4/27/04, as the working document.

REPRESENTATIVE BERKOWITZ objected for discussion purposes.

Number 313

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, chair of the House Health, Education and Social Services Standing Committee, sponsor of HB 543, explained that HB 543 was introduced because the Department of Health and Social Services is currently in the process of implementing a preferred drug list (PDL). This limitation on medical assistance coverage is being done as a cost containment measure. Representative Wilson related that she has received numerous complaints with regard to how the procedure is going and the [Pharmacy and Therapeutics] committee was accepting testimony. Therefore, this legislation establishes procedures with regard to how the committee should conduct its business. As the session has progressed, the department has reviewed and addressed many of the concerns.

CHAIR ROKEBERG asked if it would be a fair characterization to say that Version Q is the result of the effort and work done with the department. He also asked if Representative Wilson believes that the provisions [eliminated] from Version Q aren't particularly necessary.

REPRESENTATIVE WILSON commented that a lot of hard work and compromise has resulted in this legislation.

Number 340

CHAIR ROKEBERG asked if the committee provided for in CSHB 543(HES) is no longer necessary.

REPRESENTATIVE WILSON explained that changes made to the original legislation were conforming changes to provide structure and guidelines to the committee. There was no intention to slow the committee.

CHAIR ROKEBERG surmised that the committee to which Representative Wilson is referring is the Pharmacy and Therapeutic Committee of the Alaska Division of Health Care Services.

REPRESENTATIVE WILSON added that as part of the process of reviewing each classification of drug, there was concern that

most states wait until the end to do the drugs for mental health patients because those patients are a more fragile clientele. Therefore, the idea was to wait a year and allow the drug list to be used before implementing it with mental health patients.

REPRESENTATIVE McGUIRE asked if Representative Wilson was comfortable with the legislation before the committee now.

REPRESENTATIVE WILSON specified that she feels much better with regard to the mental health drugs because the commissioner has decided to suspend the committee until this fall in order to allow time for it to work. The mental health drugs will be put on the list in January, which is what she wanted. Representative Wilson said she feels comfortable with most of the legislation, save the cost containment aspect of this. Cost containment was the primary purpose of the PDL to begin with, and therefore she was concerned with regard to how tight to tie the commissioner's hands. At this point, much of this is in the hands of the physicians. She indicated that the physicians can determine that the more expensive drugs are necessary.

Number 402

REPRESENTATIVE McGUIRE asked if under the "medically necessary" provision, the physician would have the discretion to prescribe a brand name drug.

REPRESENTATIVE WILSON replied yes, specifying that as the bill stands the physician has the ability to do whatever he or she feels is necessary. However, she highlighted that the legislature will have to address this again next year because the current language doesn't provide any "wiggle room" for the commissioner.

REPRESENTATIVE McGUIRE recalled discussions last year regarding timelines that seemed to shift and change. One of the difficulties with a part-time legislature is that legislators aren't around for the bulk of the year. Therefore, she said she feels most comfortable with this method and readdressing it later. Representative McGuire highlighted that cost containment includes a variety of things. For instance, if someone isn't successfully treated, the noneconomic and economic damages to communities are profound. Therefore, she expressed the need for that to be considered in regard to cost containment.

CHAIR ROKEBERG surmised that the tension is between the ability for a physician to prescribe what he or she feels is in the best interest of the patient and the cost containment measures.

REPRESENTATIVE WILSON agreed.

CHAIR ROKEBERG pointed out that the legislation only speaks to the ability of the physician [to prescribe] and doesn't really contain any cost containment measures.

Number 437

PAT LUBY, Advocacy Director, AARP Alaska, announced that AARP is in total support of the PDL the way it's currently operating in Alaska. "Alaska is doing everything right," he said. Physicians, pharmacists, and nurse practitioners are developing the PDL. Just last week Alaska became one of the first states to participate in bulk purchasing of pharmaceuticals, which will save some money. Mr. Luby emphasized that this isn't just about saving money, it's also about good pharmacology. Alaska has also signed on to participate in an evidence-based research project at the University of Oregon. There are three of these projects throughout the nation, and AARP is encouraging every state to sign on to them. In the [evidence-based research project], scientists, free of pharmaceutical company sales representatives and advertising, are reviewing what are the best drugs for people to use in particular categories of illness. Therefore, good scientific information can be used with regard to therapeutic effectiveness. Mr. Luby acknowledged that cost savings are great, but pointed out that therapeutic effectiveness is really what is being looked.

MR. LUBY said, "Alaska is doing this right, we don't need this bill. We should just continue with what we're doing. We will save more money if we don't have this bill, there's no doubt about that." Mr. Luby stated that the intent of HB 543 is to slow the PDL. He characterized HB 543 as a pharmacy bill, an industry bill, and related his belief that those in the pharmaceutical industry are calling Representative Wilson to complain. He guaranteed the committee that AARP members aren't calling and complaining. Mr. Luby encouraged the committee not to forward HB 543 to the House floor.

REPRESENTATIVE McGUIRE cautioned Mr. Luby with regard to relating motives of the sponsor, which she knew to be a person who wouldn't introduce legislation for one particular interest group. Furthermore, Representative McGuire indicated that

members of the legislature, the penal system, and the health care community share concerns [which led to the introduction of this legislation].

MR. LUBY acknowledged that everyone has his or her own view of this issue. However, those voicing concern in the House Health, Education and Social Services Standing Committee were the pharmaceutical companies. The pharmaceutical companies don't believe they have a fair shot at the Pharmacy and Therapeutic Committee, and AARP doesn't believe they should because an individual working for a pharmaceutical company tries to represent that company and get that company's drugs on the list. What [the state] needs is a Pharmacy and Therapeutic Committee that operates independently based on scientific research, not based on marketing strategies for pharmaceutical companies.

Number 473

CHAIR ROKEBERG posed an example in which an individual takes Lipitor. If the PDL formulary didn't provide for that and there were other less effective [drugs] available, he surmised that the individual would be restricted from taking Lipitor.

MR. LUBY clarified that physicians are still in the driver's seat. If a physician says that a particular medication is the best for a particular condition in a particular individual, it's permissible under the PDL.

CHAIR ROKEBERG interjected that the aforementioned is allowed in the legislation.

MR. LUBY reiterated that such is already allowed [under the current PDL].

Number 484

CHIP WAGONER, Lobbyist for Alaska Association of Homes for Children, informed the committee that the Alaska Association of Homes for Children passed a resolution in support of the Department of Health and Social Services' cost containment effort with regard to the PDL. The competing interests are the health of the patient and controlling state costs. Because Alaska has an aging population, Alaska has an escalating population that needs drugs. He related his belief that in terms of growth, the senior and/or disability population is the highest area of growth for Medicaid. Mr. Wagoner turned to the fiscal note, and expressed concern that if the fiscal note

remains the same with Version Q, what was intended to be a \$20 million savings will turn into a \$10 million savings for the state. To make up that \$10 million difference would result in cuts to the Department of Health and Social Services' budget. Those who would be impacted by such would be those served by the Alaska Association of Homes for Children, which serves children in state custody who are in residential homes.

MR. WAGONER said he didn't believe the solution is to give the physicians carte blanche because that would blow a hole in the concept of cost savings. The solution is in the provision, which address administrative procedures. If the administrative procedures are fair, that is provide adequate notice and an opportunity to be heard by the drug companies, businesses, and physicians, the proper cost containment could be achieved while being fair and taking into account the health of the patient.

Number 508

JOEL GILBERTSON, Commissioner, Department of Health and Social Services, explained that Version Q would restrict the department's ability to adjust the authorization system for the PDL. He noted that the committee packet should include information with regard to the growth trends. The current growth trend for fiscal year (FY) 2005 is \$134 million for prescription drug expenditures in the Medicaid program. The aforementioned is the uninterrupted, nonpreferred drug list growth rate. With the PDL, the growth rate for FY 05 would be about \$114 million.

COMMISSIONER GILBERTSON informed the committee that the department will begin implementing a PDL at the end of May, although the mental health drugs have been delayed until the beginning of next year. Version Q speaks to one portion of the PDL, the authorization system. The authorization system allows a prescriber to prescribe a nonpreferred drug, which is a drug that has been peer reviewed to be a drug that is not the most effective or the most safe in that drug class. Commissioner Gilbertson explained that currently, the department is requiring that physicians document that it's medically necessary for the nonpreferred drug to be prescribed. He noted that the authorization systems vary across the nation, with Alaska's being one of the least intrusive on a provider's practice. The higher the hurdle, the more likely the preferred drug will be prescribed versus the nonpreferred.

COMMISSIONER GILBERTSON pointed out that the savings lay in providing and prescribing more effective drugs that are more cost efficient. Savings also lay in supplemental rebates with the pharmacy manufacturers. As Mr. Luby testified, Alaska is joining the first ever multi-state prescription drug purchasing pool. Alaska will be joining Nevada, New Hampshire, Vermont, and Michigan in forming this Medicaid prescription drug purchasing pool. There will be about one million lives in that pool, and therefore the state will be able to negotiate better prices with the manufacturer. The authorization system in the CS would restrict the state and require, by statute, that the state must always maintain the lowest level of authorization, which is simply a documentation on the prescription that the drug is medically necessary. The state intends to begin the program with the aforementioned. Physicians and the Alaska State Medical Association have been notified that the PDL is beginning and the first 14 drug classes that will be included as well as the override system. Commissioner Gilbertson said but [the department] believes in working with the prescribing community that [the department] needs the ability to increase the authorization system going into the future if there is noncompliance with the PDL. The aforementioned ability provides [the department] the ability to work with the physicians and prescribers in order to ensure compliance. He pointed out that if [the physicians, prescribers, and department] don't work constructively together, the authorization system will have to be increased. Cost containment, he emphasized, is the money that will be used to continue care for the children, seniors, and disabled who receive services from the department. He noted that the department has submitted a fiscal note for Version Q.

Number 557

COMMISSIONER GILBERTSON turned to Representative McGuire's earlier comment and said [the department] agrees with reviewing other areas of cost containment rather than just one. Last year the legislature included language directing the department to analyze other cost containment measures before rushing to a PDL. In fact, the implementation of the program has been delayed to address concerns, such as those with regard to mental health drugs. Commissioner Gilbertson highlighted that the department is expanding provider "lock-in" to ensure that individual Medicaid beneficiaries go to one physician and one pharmacy rather than to multiple providers with the potential of receiving conflicting prescriptions. Furthermore, case management services have been expanded such that a much larger segment of the Medicaid population [is covered]. He specified

that the Medicaid population is comprised largely of those with chronic conditions and mental illness; these individuals use multiple services from the department and a high utilization of prescription drugs. Commissioner Gilbertson said, "Cost containment is going on across the department, this is one piece of it. And we think it's a responsible piece, and for that reason we do have concerns with the CS."

Number 570

REPRESENTATIVE COGHILL expressed his interest in cost containment while allowing the physician to prescribe the proper medication for the patient. He inquired as to how the "medically necessary" language requirement would impact the department. He further inquired as to the increased authorization anticipated if [Version Q] didn't pass.

COMMISSIONER GILBERTSON explained that [Version Q] would lock-in the initial authorization system [requiring that every prescription outside the PDL would simply specify] "medically necessary" as the sole override system. Noncompliance means a higher number of prescriptions of less effective and less cost efficient drugs. Commissioner Gilbertson noted that the department has reviewed the possibility of continuing "medically necessary" on the prescription while requiring the provider to document the reason the prescription is medically necessary. The department has provided suggestions of valid reasons, such as contra indications, allergies, failure of the preferred drug, or an already existing regime on a nonpreferred drug that is effective. Commissioner Gilbertson noted that if, in the future, the department sees continued prescribing of less therapeutically efficient drugs, physicians may be asked to specify the reason the drug is medically necessary on the drug. The aforementioned isn't very burdensome and there is no actual review done by the state. He mentioned that some states have been strong with regard to the authorization system. For example, Michigan has over 95 percent compliance with its PDL.

**TAPE 04-3, SIDE B**

COMMISSIONER GILBERTSON remarked that there are a broad range of authorization systems and Alaska is starting at the simple end. The desire is to work with the prescribers in good faith in order to have preferred drugs prescribed and work efficiently. However, [Version Q] doesn't provide the [department] the ability to increase "it" if there is noncompliance.

CHAIR ROKEBERG asked if, under Version Q, the department could provide the regulations to require the medical justifications.

COMMISSIONER GILBERTSON explained that the language "medically necessary" alone and undefined, without the cause of the medical necessity, is all that's required to override the PDL. He acknowledged that in regulation the terms "medical necessity" could be defined. However, the only way to review that would be to review patient files, which the department isn't proposing.

CHAIR ROKEBERG surmised that the department doesn't believe it has the authority under Version Q to [require] the justification [be written on the prescription].

COMMISSIONER GILBERTSON replied no, not on the prescription pad itself.

CHAIR ROKEBERG recalled that there is an issue with regard to what a "brand name" drug is. He asked if the language in [Version Q] would be harmful and disallow a prescription for a generic drug that isn't on the formulary.

COMMISSIONER GILBERTSON confirmed that as currently drafted the override system is restricted to brand name drugs, and therefore a physician couldn't override with a generic drug. There is statute which mandates that when a generic drug is available prescribers must prescribe it unless a medically necessary override is provided. The aforementioned was a cost containment measure. This legislation would continue that mandate, although not in the situation in which there is a generic override of the PDL. However, he noted that most generics will be on the PDL.

CHAIR ROKEBERG asked if additional language to address the [generic override of the PDL] would be appropriate.

COMMISSIONER GILBERTSON indicated that the language would need to clarify that an override for the PDL could be for a generic or a brand name drug.

Number 565

CHAIR ROKEBERG turned to the April 16, 2004, letter from Dr. Brodsky, which is in the committee packet. The letter specifies that effective May 19, 2004, prescribers will be required to provide the terms "medically necessary" or "allergic to the preferred drug" as medical justification. Chair Rokeberg

related his understanding that the department wants to start that way, but have the flexibility to change that.

COMMISSIONER GILBERTSON opined that the department has worked in good faith with the provider community and the drug industry. When concerns have been raised, the department has tried its best to accommodate those concerns. One concern raised by the physicians was having everyone well versed in the override system at the start of the program. He explained that the override system proposed by the department was such that the terms "medically necessary" would be written on the prescription itself as well as the reason, such as specifying "medically necessary, adverse reaction to X." However, some prescribers expressed concern that getting to that step now, which is different than the current override system for generic drugs, isn't something that the entire provider community can be educated on in day one, and furthermore it isn't something that the entire provider community supports up front. Therefore, the department agreed to accommodate the provider community and work with it in good faith to ensure compliance with the PDL. As dialogue continues with the physician and prescriber community, the department believes it should retain the authority to increase the authorization system if there is noncompliance. Otherwise, Alaska will experience what has been experienced when statutorily restricted to medically necessary language. For example, in Oregon the aforementioned statutory restriction resulted in a 75 percent decline in expected savings.

Number 546

REPRESENTATIVE McGUIRE inquired as to the percentage of physicians in Alaska who accept Medicaid patients.

COMMISSIONER GILBERTSON answered between 55-60 percent.

REPRESENTATIVE McGUIRE reminded committee members that the ["medically necessary" language] was what she offered to the senior care legislation that passed. She further reminded committee members that [prescribing a drug outside the PDL was allowed] if the medical reason fell into four categories. The physicians are concerned because they believe the ["medically necessary" language requiring the reason to fall within four categories] is overly onerous and puts their medical license on the line. Representative McGuire announced her support of the legislation as it is [Version Q], which she characterized as a good starting point. She highlighted that every legislature is free to change this.

REPRESENTATIVE McGUIRE returned to the issue of cost containment, and said that within the PDL, one has to review experiments in other states as well. She highlighted that those who take psychotropic drugs are the poorest in the community. Therefore, if such individuals are prescribed the wrong drug, it could result in an emergency room visit for which the hospital or other [insureds] pick up the tab. Furthermore, if such an individual commits a crime, many others are picking up the tab. Representative McGuire encouraged the committee to keep the language [in Version Q] as it is.

REPRESENTATIVE COGHILL noted that he will support the language [in Version Q], although he would also support the physicians providing an explanation or justification [for prescribing a drug not on the PDL].

CHAIR ROKEBERG remarked that he tended to agree with Representative Coghill. Chair Rokeberg requested that Commissioner Gilbertson review Version Q and perhaps bring forth some amendments in response to some of the issues brought forward by the committee.

Number 498

REPRESENTATIVE BERKOWITZ withdrew his objection.

There being no further objection, CSHB 543, Version 23-LS1835\Q, Mischel, 4/27/04, was before the committee.

Number 496

REPRESENTATIVE McGUIRE moved to report CSHB 543, Version 23-LS1835\Q, Mischel, 4/27/04, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 543(RLS) was reported from the House Rules Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Rules Standing Committee meeting was adjourned at 10:07 p.m.