

ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE

March 26, 2003

1:32 p.m.

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Lyda Green, Vice Chair
Senator Gary Wilken
Senator Bettye Davis
Senator Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 105

"An Act relating to eligibility requirements for medical assistance for certain children, pregnant women, and persons in a medical or intermediate care facility; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 108

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

MOVED SB 108 OUT OF COMMITTEE

SENATE BILL NO. 109

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

MOVED SB 109 OUT OF COMMITTEE

SENATE BILL NO. 30

"An Act relating to information and services available to pregnant women and other persons; and ensuring informed consent before an abortion may be performed, except in cases of medical emergency."

HEARD AND HELD

PREVIOUS ACTION

SB 105 - No previous action to consider.

SB 108 - No previous action to consider.

SB 109 - No previous action to consider.

SB 30 - See HESS minutes dated 3/17/03.

WITNESS REGISTER

Commissioner Joel Gilbertson
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Commented on SB 105, SB 108 and SB 109.

Mr. Bob Labbe, Deputy Commissioner
Department of Health &
Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Commented on SB 105 and SB 109.

Ms. Laraine Derr, President
Alaska State Hospital and Nursing Home Association
426 Main Street
Juneau AK 99801

POSITION STATEMENT: Supported SB 108.

Mr. Jack Nielson, Executive Director
Medicaid Rate Advisory Commission
4710 Business Park Boulevard, Suite 44
Anchorage, AK 99503-7100

POSITION STATEMENT: Commented on SB 108.

Mr. Chip Wagoner

Alaska Catholic Conference
No address provided
POSITION STATEMENT: Supported SB 105.

Mr. Curtis Kendall
Fairbanks AK
POSITION STATEMENT: Commented on SB 105.

Mr. Robert Briggs
Disability Law Center of Alaska
Juneau AK
POSITION STATEMENT: Commented on SB 109.

ACTION NARRATIVE

TAPE 03-13, SIDE A

SB 105-MEDICAID:CHILDREN/PREGNANT WOMEN/FACILITY

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at 1:32 p.m. Present were Senators Davis and Guess and Chair Dyson. He announced SB 105 to be up for consideration.

SENATOR LYDA GREEN arrived at 1:34 p.m.

COMMISSIONER JOEL GILBERTSON, Department of Health and Social Services (DHSS), reminded the committee that the department is undergoing a restructuring in an effort to stabilize the state's Medicaid program so that the state can continue to have a vibrant insurance product for low and middle income Alaskans. The Medicaid program has grown exponentially and its cost has threatened the viability of the program, the ability of the state to maintain high eligibility levels and to keep optional services funded through the program. The department has done a restructuring in which it will be administering the Medicaid program budgetarily, in addition to policy through all four divisions that have some dealings with the Medicaid program. Right now, some Medicaid services are being provided in four different divisions in two different departments and he wants responsible decision-making.

COMMISSIONER GILBERTSON provided members with a series of charts showing the total Medicaid budget for FY04 to be \$935 million and how the Medicaid program, which currently has all the funds in the Division of Medical Assistance (which will be replaced by

a new Division of Health Care Services), will be distributed and how the services will be administered in the department. The bulk, \$630 million, will remain in the remnants of the Division of Medical Assistance. The remainder will be broken up between the Division of Senior Disability Services, the Division of Behavioral Health and the Office of Children's Services. For the first time the waiver program will be administered within one division, which will administratively help the process.

SENATOR GUESS asked if this is what he is proposing to do or whether it is currently the case.

COMMISSIONER GILBERTSON replied that it is a combination of everything. The budget is proposed for FY04; some elements of the executive order, which will involve some aspects of the restructuring, will be effective on July 1; the administration retains the authority to move forward on a number of the restructuring items before July 1.

He said the federal government is the largest payer into the Medicaid program, but the state provides a sizeable amount of Medicaid match dollars. He explained that the cost of eligible adults is increasing and that is associated with the number of pregnant women coming on board with the Medicaid program. The total eligibility population has decreased because of the reduction in welfare rolls.

He said SB 105 would freeze income levels for the Denali Kid Care population and the Medicaid special income limits at FY03 levels. This would solidify eligibility levels for Denali Kid Care and for pregnant women at 200% of poverty for FY03. The special income standard for seniors in long term care and individuals receiving home and community based waivers will be locked in at 300%. This essentially eliminates the mandatory cost of living adjustment (COLA) that exists in the programs. The fiscal note shows modest savings to the department, but it is part of a larger effort to bring about cost containment. It is an acknowledgement by the administration that the Medicaid program has reached a level that the state can fund and maintain, but that we have reached that point where continued expansion of it threatens its viability for people who rely on the services. He said that unchecked expansion of the program could lead to more drastic reductions in the future and the administration does not support those types of reductions or a roll back on Medicaid eligibility levels. To maintain high eligibility levels, we have to lock in the current population.

SENATOR GUESS referred to the last column of the fiscal note, which shows a savings of \$3 million in general fund money but \$6 million of federal government funds the state wouldn't receive.

COMMISSIONER GILBERTSON said that is correct.

SENATOR GUESS said at the end of FY09, he estimates that 263 pregnant women would not receive Medicaid. She asked if DHSS knows the cost to the state of low birth weight babies that result from poor women who are not covered for medical services. She said that fiscal notes are financial analyses, not economic analyses, especially in the case of pregnant women. She asked if the state is cutting costs in one place only to pay for low birth weight babies who need services.

COMMISSIONER GILBERTSON replied that he didn't know if DHSS can come up with that data, but he would work together with her to get it.

SENATOR GUESS asked why, instead of using a percentage level, he is choosing to put a specific number in statute, which is very difficult and more costly to change in the future.

COMMISSIONER GILBERTSON replied that the administration's proposal is still needs based and the dollar amount will continue to be relatively high, about \$50,000 for a family of four. A decision to roll back the program and move to a lower percent would eliminate individuals who are currently eligible for the program.

SENATOR GUESS said it is an interesting way to set policy - in statute for \$3 million in savings but 800 people. She noted, "If you're poor today, you'll get coverage, but if you're poor in six years, then sorry, that's where we're going to cut it off."

She thought it would be interesting to have an economic analysis of the cost to the state of emergency room care as this continues.

SENATOR GREEN pointed out that at the time this was instituted in Alaska, there was no co-pay or financial participation requirement, or an asset test for people coming into the program. She opined:

If we wanted to do something to really change the face of Denali Kid Care, those are things we would do. This is a very soft approach and as people grow out of and

grow past the need for this, they should have the responsibility and ability to move on.

SENATOR GREEN said the program was originally predicted to attract around 11,000 participants and we're now at 26,000 and have over 200 children in out-of-state placement in psychiatric care, which no one was ever told about when this program was instituted. Preventative care is how it was sold originally.

SENATOR WILKEN said he found the totals on page 3 interesting and pointed out that the average monthly eligibles in '99 was \$62,000; in '04 it's projected to be about \$98,000. The eligibility headcount has increased by 58% and the average cost per month in six years has more than doubled. The same sort of analysis of eligible children and costs can be applied with a 70% increase.

COMMISSIONER GILBERTSON added that Alaska has high eligibility standards for the optional programs. The administration's position is that it does not want to see a roll back of Denali Kid Care from 200% of the poverty level to 150%, but it has to acknowledge that there has been exponential growth in the cost of the program and the cost of some of the optional services. The administration does not support allowing additional growth in high-income areas to the detriment of services provided to low income Alaskans.

SENATOR GUESS asked the amount of the average increase of the percent of poverty in the last five years.

COMMISSIONER GILBERTSON replied that DHSS assumed growth at 2.24% per year, between 185-190.

CHAIR DYSON said he identified with Senator Guess's concern about putting a set amount in statute. He also agreed with Senator Green that the numbers are bizarrely high. He asked what the commissioner's rationale was for the level at which people qualify to have their lifestyle supported by someone else - what used to be called charity.

COMMISSIONER GILBERTSON understood his concern and said the governor's position is: the state is at 200% of the poverty level; having an insurance product for individuals is beneficial; and that the Denali Kid Care program has grown at a far greater rate than what the state expected or can afford. The governor recognizes the figures are high, but locking them in now will protect those dollar amounts.

CHAIR DYSON asked if the state is precluded from using asset disqualifiers for this program.

COMMISSIONER GILBERTSON answered no, but that is under review right now.

MR. BOB LABBE, Deputy Commissioner, Department of Health and Social Services, reminded the committee that Denali Kid Care was an expansion of a prior program that was approved around 1990, which was the first federal expansion for kids and pregnant women based on the poverty level. In the past, you could receive Medicaid if you already received welfare. There were discussions about using an asset test at that time and it was decided not to. He didn't think it had been discussed with the expansion of the program to Denali Kid Care, but nothing precludes that.

COMMISSIONER GILBERTSON said they would make a decision about it in the near future.

SENATOR GUESS asked if pregnant women are counted as two people.

COMMISSIONER GILBERTSON replied pregnant women are considered as a family of two.

CHAIR DYSON questioned the language on page 4, lines 7 and 27.

SENATOR GREEN asked if that could apply to a situation in which a grandparent is caring for a child and only the child qualifies.

CHAIR DYSON said it looks like a 19-year old male is paid the same as a 35-year old pregnant woman and asked if that is DHSS's intention.

SENATOR GUESS replied that she thought the language on line 27 is superfluous because a pregnant woman would never be considered as a family of one.

CHAIR DYSON suspended the hearing on the bill momentarily. When he called the hearing back to order, he said he would probably suggest an amendment that progressively reduces the amounts as follows:

- line 9 from \$3,130 to \$3,000
- line 11, \$3,700 to \$3,400
- line 13, \$4,400 to \$3,900

- line 14, \$5,000 to \$4,000
- line 15, \$5,697 to \$4,900
- line 17, \$6,339 to \$5,500.

SENATOR GUESS said she would like an explanation of how he chose those numbers beforehand.

SB 108-HEALTH FACILITY MEDICAID RATES/ADV. COM'N

CHAIR FRED DYSON announced SB 108 to be up for consideration.

COMMISSIONER JOEL GILBERTSON, Department of Health and Social Services (DHSS), said SB 108 deals with rates for health facilities under the Medicaid program. It would eliminate the Medicaid Rate Advisory Commission (MRAC), the state's companion to the Bourne amendment, which deals with rate settings for facilities. Instead, it would codify rate setting in one office of rate review in the department.

The MRAC was created in 1984 and was largely responsible for establishing rate settings for the state's facilities. In 1989, by executive order, its function was changed to simply serve in an advisory role and the department retained the rate setting authority. In response to the Bourne amendment, Alaska put a fair-rate-for-reasonable-cost provision under Medicaid in statute. That federal law has been repealed and replaced with public process requirements dealing with how to go about rate setting.

SB 108 will bring Alaska statutes into alignment with current federal law and remove unnecessary provisions, namely that there are two separate public processes for rate setting. The department does a variety of rate setting and will do a larger variety after restructuring - with things like foster care payments, child care providers, physicians, dentists and facilities.

COMMISSIONER GILBERTSON said under the restructuring all the rate settings will be in one office under the commissioner. There will still be a public process and the methodologies will go through the regulatory process. The programmatic work that needs to occur to develop the rate setting will still be happening in the divisions that administer the programs. He said right now they don't have the flexibility to vary the methodologies for rate setting for facilities between a 10-bed facility and a 200-bed facility. This leads to over-payment for

some facilities and under-payment for others. The actual consolidation will result in a small savings if the other cost containment measures are adopted and these bills are passed.

SENATOR GRETCHEN GUESS asked if the two public processes are being reduced to one.

COMMISSIONER GILBERTSON replied yes, but there would still be the public process for rate setting in the regulation process.

MS. LARAINÉ DERR, President, Alaska State Hospital and Nursing Home Association (ASHNHA), said the Bourne amendment has been sacred because it creates a fair and reasonable rate. ASHNHA members are willing to go along with the governor's recommendation and would be involved in a partnership with the administration to develop regulations. A letter from one of her members said:

For my part, please convey to the legislators that we are very concerned about being able to maintain the level of access to critical services and recommend they carefully consider - this isn't in the priority list, but we need to be able to make decisions about what our citizens should have and have some sort of tool to make objective decisions. Therefore, we are concerned about the removal of the Bourne amendment.

She added that she hadn't had a meeting with ASHNHA members to talk about all three pieces of legislation, but they would be in town on [April] 9th and 10th.

SENATOR BETTYE DAVIS asked when the Medicaid Rate Advisory Commission's status was changed to advisory.

MR. JACK NIELSON, Executive Director, Medicaid Rate Advisory Commission, replied in 1989.

SENATOR DAVIS asked what the commission had been doing, since it had been on the books for all those years.

MR. NIELSON replied that current statute requires the commission to advise the department on payment rates for facilities. They have been participating in public hearings on facilities and providing advice to the department on staff proposals. The commission is also a central point where facilities can go to learn what is happening with payment rates and Medicaid policy.

SENATOR DAVIS asked if that role could be filled.

MR. NIELSON replied that they would continue to do the public hearings on the rates, but the commission wouldn't be involved.

TAPE 03-13, SIDE B

SENATOR GARY WILKEN moved to pass SB 108 from committee with individual recommendations and the attached fiscal note. There were no objections and it was so ordered.

SB 105-MEDICAID:CHILDREN/PREGNANT WOMEN/FACILITY

CHAIR FRED DYSON brought SB 105 before the committee again.

COMMISSIONER JOEL GILBERTSON, Department of Health and Social Services (DHSS), told members he had an amendment to remove language on page 4, line 27.

SENATOR LYDA GREEN moved to remove language on page 4, line 27 [Amendment 1]. There were no objections and it was so ordered.

SENATOR GARY WILKEN said he wanted to look further at the four graphs that the commissioner had.

MR. CHIP WAGONER, Alaska Catholic Conference, said the Conference is made up of the three Roman Catholic Bishops in Alaska. The conference is the vehicle used to allow the group to speak on public policy matters as they relate to moral values and Catholic social teaching. One of the main components of Catholic social teaching is a preferential option for the poor. He quoted:

A basic moral test of society is how its most vulnerable members are faring. Both Catholic teaching and tradition calls us to put the needs of the poor and vulnerable first and to give our greatest response to those with the greatest needs.

He said that Jim Wallace wrote a book called "The Soul of Politics" that went through the Bible verse by verse and looked at all the times the poor were mentioned. In the Old Testament, the subject of the poor is the second most prominent theme. In the New Testament, one out of every 16 verses talked about the poor. In the gospels, one out of every 10 verses talked about the poor. He opined, "So, the call of the Lord is to serve those in need."

MR. WAGONER asked them to consider SB 105 in this light and to consider Denali Kid Care in particular. The Conference believes the bill needs to be viewed in the context of the overall Department of Health and Social Services' budget, the other agency budgets, the state's current fiscal situation and the growth of the Denali Kid Care program since its inception. The governor was faced with a Herculean task to try to continue to provide direct services to the poor and vulnerable of this state. They commended the department for its commitment to the needs of the poor and vulnerable. He stated, "Overall, the budget protects those direct services that need to be protected."

When DHSS submitted its application to the federal government for Denali Kid Care using the 1997 population figures, it figured there were 201,713 (birth to 18 years of age) children in the state or 33% of the population. The department hired the Employee Benefits Research Institute (EBRI) to estimate the number of those children who did not have health insurance and EBRI determined that approximately 9% were uninsured. They figured that there would be 18,154 children in this program. In 2002, the population of children was 211,483 and was still 33% of the overall population. If DHSS used EBRI's formula, there should have been about 19,033 children in the program, but that is not what happened. Figures from October '02 indicate there are 39,854 children in the program or double what was anticipated.

The growth could be indicative of the value of the program. Possibly, the state should continue to pay the necessary amounts to take care of the caseload increase and the Conference would have no objection if the committee adopted that. A second option would be to cap the program, such as the governor is recommending, which is not an unreasonable approach. A third option would be to cut back the program from the 200% poverty level to 150%, which they do not recommend. Of the three options, they like the first one, but other factors have to be taken into account.

MR. WAGONER said that the program takes care of children and, before Denali Kid Care, Alaska placed 41st in the list of states in terms of health care service to children. It would be interesting to know where we stand now. The best option would be the first one. One of the reasons the department adopted this program was it felt it would help three years down the road in

obtaining a federal matching assistance percentage increase, also a goal of the current administration.

Denali Kid Care is also preventative. Over 40% of the children in the 150-200% poverty level that receive services are six years old or less. So, most of the care they are receiving is preventative. So, that would be saving money to keep them covered as opposed to not having them covered.

MR. WAGONER said at the 200% level, a family of four with an income of \$45,264 qualifies for Denali Kid Care. His family of four purchases health insurance for \$9,200 per year. That would equal 20% of that family's income for health insurance, leaving a little over \$36,000 per year for all of the family's other needs.

MR. WAGONER said one of the options is to not cut the program and look elsewhere to make the cuts. He has gone through the DHSS budget and didn't see any place to cut without hurting some other vulnerable population. He doesn't think the administration's position is unreasonable. He said if the committee wants to consider a cap, he has three recommendations. The first is to use the 2003 poverty guidelines; otherwise the bill will be two years behind as opposed to one year. Second, they should try to find out why they have unexpected growth since 1997. Third, he urged them to put in an automatic sunset clause for the figures that are used. So, after a certain amount of time, the figures would lapse and go back to the 200% of poverty level.

SENATOR WILKEN asked if there is a definition of household income on page 4 and if it is net or gross.

MR. LABBE replied that in general, gross income of the household is used for these kinds of calculations. The PFD is not counted as income. He said the [calculation] is governed by federal definitions of income, because it is about the Medicaid program.

SENATOR GUESS said she wanted to know DHSS's approach toward the eligibility of applicants who currently have other insurance. She suggested looking at places [to cut] where people are already covered and have dual coverage rather than ratcheting down the medical benefits for people based on their income.

MR. LABBE answered that for the regular Medicaid program, health insurance is not an eligibility factor, because eligibility is generally based on income and assets, not on an applicant's

health insurance status. He pointed out that the entire senior population that is on Medicaid also has Medicare, which is health insurance. Also, people have private coverage sometimes.

He explained that the Denali Kid Care program was expanded using funding from a block grant named the State Children Health Insurance Program. Congress appropriated the block grants for uninsured children. Children insured by another means are not supposed to be able to qualify for it. He noted:

We have constructed our policy for a variety of reasons for those who are above 150% of the poverty line and if they are insured, we deny their eligibility. We also deny their eligibility if they drop insurance within 12 months prior to application. This is to avoid this crowd-out provision. We have to have what is called a crowd-out provision and that was ours - the 12-month - in fact, it was probably more restrictive than the other states. Most of them, if they have one, is like six months, but we chose to do a year and enforced it with a few exceptions which were based on particular kinds of hardship and there's a list, a handful, basically - they're approved centrally and what not.

But what we haven't been able to get a handle on, which has been going on for some time in Alaska, has been the employers dropping health coverage for their employees. This was going on prior to the advent of this program and it's continued to go on and that's not anything that the individual applicant has control over. So, it could be that part of the increase is because the people don't actually have the access to insurance any more. Maybe there was more of it back in '97 or '98 when we were doing the analysis.

SENATOR DYSON announced an at-ease from 2:45 - 2:53 p.m.

MR. CURTIS KENDALL, Fairbanks, supported Chair Dyson's amendment and was in favor of the bill, but most of his comments were indiscernible on the tape.

SENATOR WILKEN moved to adopt Amendment 2.

SENATORS GUESS and DAVIS objected.

CHAIR DYSON explained that the reductions are \$130, \$272, \$414, \$655, \$797 and \$939.

SENATOR WILKEN said in looking at page 4, he tried to equate what \$3,772 per month is in his terms and thinking about his 20 employees. He interpreted that monthly income to equate to about a \$50,000 per year job, a touch under \$25 per hour. He wasn't sure that was an appropriate level, although he was supporting the amendment. He didn't think when this program was envisioned, it was meant to assist those who are making about \$50,000 per year for a family of four with medical assistance. A family of six with an income of about \$67,000 per year would also be eligible.

SENATOR GUESS said she thought it is important to realize that these numbers are pretax. She said she objects to Amendment 2, because it will create a policy change and she only received it today. Also, she truly believes it is shortsighted to not do all the committee can to cover pregnant women because, "We're just going to pay for it. We know that."

CHAIR DYSON said he was quite sympathetic to the pregnant women and asked if she could suggest different amounts.

SENATOR GUESS replied that she just got Amendment 2 and has philosophical problems with putting numbers in the bill because she doesn't believe that is good policy. She said she would flag the issue in general and added that when she did health care research she found that society pays when pregnant women do not have health care coverage.

CHAIR DYSON challenged her to come up with a better idea and said he would support her in trying to get it through the Finance Committee.

SENATOR GUESS responded that she was admonished by the Senate President who said that legislators are not supposed to do policy work in the Finance Committee.

SENATOR GREEN mentioned that not every state has a program such as this and she reminded them that it has no asset test for eligibility. She noted, "It's a very easy program to get into."

She said that brochures that solicit applicants are everywhere. She noted that the bill does not imply that pregnant women are not covered.

SENATOR WILKEN agreed that pregnant women are not being excluded from coverage.

SENATOR GUESS said that wasn't the purpose of her comment, but it is fact that if eligibility is reduced, there will be pregnant women that don't have other insurance. She wanted to at least keep coverage at the current standards.

COMMISSIONER GILBERTSON said the Governor wants to lock in the standard at 200% of the FY03 program, which is the '02 poverty standard. He advised members that there might be a problem because of the state's ability to implement standards [set] in an amendment, such as these.

MR. LABBE expressed concern that the standard of coverage is tied to the poverty level and family size for this particular program and, unless it all lines up to some translated poverty level, it might cause a technical problem with the federal government where coverage is scaled uniformly for family size. He thought conceptually the [department] could make it work, but it may need to adjust the numbers.

CHAIR DYSON suspended the hearing on SB 105 while they went out into the hall and figured it out.

SB 109-MEDICAID COST CONTAINMENT & PRIORITY LIST

CHAIR FRED DYSON announced SB 109 to be up for consideration.

COMMISSIONER JOEL GILBERTSON, Department of Health and Social Services (DHSS), said SB 109 is the third bill in the Medicaid package that is necessary to bring about fiscal stability to the Medicaid program for Alaska. He explained:

It would eliminate the Medicaid options list found in AS 47.07.035. This establishes a priority list of how the department will go about bringing cost savings in years in which the legislature does not appropriate sufficient funds to carry out Medicaid operations for an entire 12-month period. Under the options list, if the Legislature does not allocate funds to fully fund the Medicaid program for a year, the department is directed to work its way down the options list to achieve the cost savings necessary to effectively manage the program within the amount of money that is appropriated by the legislature. The administration's position is that while there must an effort to

administer the program within the confines of the amount of funds that are appropriated by the Legislature, the options list is not the most effective or the most beneficial way of going about cost containment. The options list itself is not reviewed annually and is not necessarily a list of the most beneficial ways of going about cost containment.

As an example, he noted DHSS would have to eliminate prescription drug coverage and wheel chairs before it could touch the eligibility standards for individuals with high incomes. He continued:

The Governor's bill will replace that language with broad direction to the department to engage in cost containment necessary to achieve the same level of savings and will provide instead, as guidance, that first the department must pursue all other reasonable cost containment measures before eliminating any eligibility group or service.

Second, that the department should aggressively pursue strategies to maximize federal financial participation in the Medicaid program and third, that the cost containment decision should be made in the manner that best reflects the needs and interests of eligible Medicaid populations. We believe with this guidance and direction, the department will have greater flexibility in achieving the same level of cost savings without going through an options list that it is the administration's position is not effectively managing the program. It doesn't really balance the relative benefits of cost containment tools and, in addition, takes things off the table until other things are removed first, which we believe further exacerbates the acute care costs, such as removing prescription drug coverage before you would eliminate an eligibility population who is at the top level of our Medicaid program. The intent of the options list is preserved in the Governor's legislation, which is directing the department to initiate cost containment measures to live within its means and what is appropriated to it....

SENATOR GRETCHEN GUESS asked if the cost containment measures have to be exhausted within the BRU or the department and what the burden of proof is before services are dropped.

COMMISSIONER GILBERTSON responded that the department has regulatory authority to enact a number of cost containment measures that bring about large savings to the Medicaid population without actually affecting eligibility or a service that's provided, for example pharmaceutical usage or reimbursement rates to providers. This would be done department-wide where Medicaid services are provided.

SENATOR GUESS asked how he would make those decisions. She was concerned that the department would decide who got what and when. She asked, "How are you going to decide dropping off a population versus dropping off a procedure and where is that in the bill? It makes me very nervous to turn over that authority...."

She also wanted to know if groups of people would be ineligible or individuals would be ineligible.

COMMISSIONER GILBERTSON said DHSS is including a fiscal note that shows no savings, because the department doesn't anticipate requiring any additional cost containment if the budget passes in the form submitted by the Governor. He understood her concern, but thought the department is in the best position to engage in that type of policy decision-making. He thought those decisions would be a burden for the Legislature. As they move forward, his strategy is to maintain cost savings within the program without going towards eligibility groups. He didn't think that is necessary. He remarked:

We can bring about tremendous savings by moving forward on a broad agenda to maximize federal resources to work with our travel partners to see ways we can capture a greater amount of federal revenues for carrying out the trust responsibility the federal government has for Alaska Native Medicaid beneficiaries and working with the Denali Commission to try and build up capacity within the tribal health care system. Also, we can have tremendous savings by looking at the way we provide services in doing case management and looking at using preferred drugs that stay away from eligibility populations. Naturally, if funds are not appropriated to allow us to run the Medicaid program even after these cost containment measures are moved forward, we'll have to do something....

SENATOR GUESS said she trusted that during any administration, the department would try to do everything it can before it removes people from the rolls or removes procedures, but he is asking the legislature to hand over that decision-making authority to the department. She questioned, "How would costs and benefits be weighed in the department?"

She also wanted clarification on whether DHSS would determine that individuals not receive a procedure or group of procedures or groups of individuals.

MR. LABBE responded:

The Medicaid program structure provides for coverage for groups of individuals that are either mandatory or optional in categories of service rather than individual procedures. For instance, we may not cover physical therapy for, in this case, adults. Children are mandatory for the services. I think one of the things I was concerned about is if we had a large budget reduction and we're starting to cut off all these services, we're only cutting off services for the adult population - senior, disabled adult. We're not touching the children. At the same time, the committee has been discussing reducing eligibility levels for kids. It may make more sense to do a balance and the way the list is constructed, you would never get to the other discussion of eligibility groups until you essentially have gone through all of the services. So, you would eliminate wheel chairs and prescription drugs for some of our more frail population and may still be covering higher income individual children, which is why I've not felt this is an effective tool for a long time.

TAPE 03-14, SIDE A

MR. LABBE said they can make decisions on groups, broad eligibility guidelines and on services, but the department doesn't have the ability to make discrete decisions on one individual's access to a single procedure.

SENATOR GUESS noted that the bill contains no requirement that the department submit a report to the legislature yet it makes a big change in policy in one year. She recommended that a report to the legislature be required.

CHAIR DYSON thought that might go into the "Measures" section.

MR. ROBERT BRIGGS, staff attorney, Disability Law Center of Alaska, Juneau, raised some important points. If the bill passes, the department's exercise of discretion will still be constrained by the Administrative Procedures Act and the department must comply with federal mandates to provide services that are sufficient in amount, duration, and scope to accomplish the purposes of the Act. However, this bill raises potential constitutional issues. The Alaska Supreme Court in the case of State v. Fairbanks North Star Borough, 1987, found the issues of delegation of legislative appropriation of authority and separation of powers unconstitutional.

There is also the potential argument that section 3 of the bill raises equal protection problems. It basically talks about how cost containment measures will be implemented and appears to grandfather-in the benefits of those people who were lucky enough to have their benefits approved and in place before the cost containment measures are implemented.

CHAIR DYSON asked if Mr. Briggs was suggesting that this approach would be dubious if scrutinized by the court if the department didn't do a fair job of looking after the interests of people.

MR. BRIGGS said he just wanted to raise the question and hedged that his research is dated and relates back to the pro rata reductions bill.

CHAIR DYSON pointed out that this bill is different.

MR. BRIGGS agreed.

SENATOR GREEN moved to pass SB 109 from committee with individual recommendations and the accompanying fiscal note. SENATOR DAVIS objected.

The motion to move SB 109 from committee carried with SENATORS GREEN, WILKEN and DYSON voting yea and SENATORS GUESS AND DAVIS voting nay.

SB 105-MEDICAID:CHILDREN/PREGNANT WOMEN/FACILITY

CHAIR FRED DYSON announced SB 105 to be up for consideration again.

MR. BOB LABBE, Deputy Commissioner, Department of Health and Social Services (DHSS), provided a chart, which he explained briefly.

CHAIR DYSON commented that it didn't look like what he was aiming at and said the committee would continue to work on the bill.

SB 30-ABORTION: INFORMED CONSENT; INFORMATION

CHAIR FRED DYSON announced SB 30 to be up before the committee and presented the version I, which does two things. It includes a waiting period and provides doctors' offices with the option of creating an informed consent publication for patients or providing them with the prepared pamphlet.

SENATOR GRETCHEN GUESS pointed out that the bill only makes one change.

CHAIR DYSON apologized and said it just puts in the 24-hour waiting period and added that there would be another version that would insert legislative findings that explain compelling state interest in informed consent. The Department of Law believes that elucidation will help make a case if it's challenged in court.

SENATOR GUESS asked if they would be looking for a J version next.

CHAIR DYSON replied yes and announced that he would hold SB 30 in committee.

CHAIR DYSON adjourned the meeting at 3:31 p.m.