

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

April 2, 2004

1:31 p.m.

TAPE (S) 04-18

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. 364

"An Act relating to liability for expenses of placement in certain mental health facilities; relating to the mental health treatment assistance program; and providing for an effective date."

MOVED CSSB 364(HES) OUT OF COMMITTEE with Letter of Intent

CS FOR HOUSE BILL NO. 25(JUD)

"An Act relating to health care decisions, including do not resuscitate orders, anatomical gifts, and mental health treatment decisions, and to powers of attorney relating to health care, including anatomical gifts and mental health treatment decisions; and providing for an effective date."

BILL POSTPONED TO April 7, 2004

PREVIOUS COMMITTEE ACTION

BILL: SB 364

SHORT TITLE: LIMIT STATE AID FOR MENTAL HEALTH CARE

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/08/04	(S)	READ THE FIRST TIME - REFERRALS
03/08/04	(S)	HES, FIN
03/19/04	(S)	HES AT 1:30 PM BUTROVICH 205

03/19/04 (S) -- Meeting Canceled --
03/22/04 (S) HES AT 1:30 PM BUTROVICH 205
03/22/04 (S) Heard & Held
03/22/04 (S) MINUTE(HES)
03/24/04 (S) HES AT 1:30 PM BUTROVICH 205
03/24/04 (S) Heard & Held
03/24/04 (S) MINUTE(HES)
04/02/04 (S) HES AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

MR. BILL HOGAN, Director
Division of Behavioral Health
Department of Health & Social Services
PO Box 110601
Juneau, AK 99801-0601

POSITION STATEMENT: Presented the proposed changes to SB 364.

MR. RICHARD RAINERY, Executive Director
Alaska Mental Health Board
431 N. Franklin
Juneau, Alaska 99801

POSITION STATEMENT: Spoke to SB 364, suggesting a possible contradiction between Sec. 2 and the Letter of Intent.

MR. ROD BETIT, President
Alaska State Hospital and Nursing Association (ASHNA)
426 Main Street
Juneau, Alaska 99801

POSITION STATEMENT: Answered questions pertaining to SB 364, and testified that Sec. 2 trumps everything.

ACTION NARRATIVE

TAPE 04-18, SIDE A

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Green, Wilken, Davis, Guess, and Chair Dyson.

SB 364-LIMIT STATE AID FOR MENTAL HEALTH CARE

The committee took up SB 364.

CHAIR DYSON moved to adopt Amendment 1, [and clarified version A was before the committee].

SENATOR GARY WILKEN objected for purposes of clarification.

MR. BILL HOGAN, Director, Division of Behavioral Health, Department of Health & Social Services (DHSS), addressed the changes made to SB 364. He said a Letter of Intent had been submitted for the committee's review and approval outlining DHSS intent to continue hospital-based care, inpatient evaluation, and treatment services pertaining to mental health care.

CHAIR DYSON asked Mr. Hogan if the Letter of Intent was to accompany SB 364 and he received confirmation this was correct.

CHAIR DYSON asked if there was any objection to the Letter of Intent.

SENATOR WILKEN referred to paragraph 2, line 1, noting that the word, "appropriations" was underlined, and asked if this was intentional.

MR. HOGAN responded he did not know why it was underlined, nor did he know the reason for the writing on the bottom of the page, but believed this had been faxed to/from the attorney general's office. He did not believe either should be there.

SENATOR WILKEN made note that the underline in paragraph 2, line 1, and the written notes at the bottom of the page would be removed.

SENATOR WILKEN removed his objection to adopt Amendment 1. [Because the Letter of Intent and Amendment 1 were before the committee simultaneously, the motion to adopt Amendment 1 was treated as withdrawn.]

SENATOR WILKEN then moved to adopt the Letter of Intent as amended.

CHAIR DYSON asked if there was any objection. Seeing and hearing none, the Letter of Intent [as amended] was adopted.

SENATOR WILKEN then moved to adopt Amendment 1.

CHAIR DYSON objected so that Mr. Hogan could explain Amendment 1.

MR. HOGAN noted the use of "shall" rather than "may" on page 2, line 28. He said Section 2 is retained, and the change on page

2, line 28, would not preclude or change the intent as outlined in Section 2. Page 4, lines 23 - 28 are deleted. In working with various stakeholders, particularly ASHNA, Mental Health Board, and Mental Health Trust, the department agreed that this could be deleted without impairing the intent of the bill. Page 5, lines 12 - 13, Sections 1 - 9, are deleted, and Sections 1 - 8 are inserted; this recommendation reflects a re-numbering. The other subsequent changes on page 5, line 20, and page 5, line 21 are related to the reduction in the overall number of sections.

CHAIR DYSON asked if there were questions on the amendment.

MR. RICHARD RAINERY, Executive Director of Alaska Mental Health Board, said the board is generally in support of the changes, but because there has been little time to discuss the changes with the division, he referred to the Letter of Intent, indicating in the event of a shortfall in the appropriation, the department will make every effort to identify additional financing sources, and noted a contradiction with Section 2 of the bill. It says, "Notwithstanding any contrary provision of this chapter, financial assistance under this chapter is subject to appropriation by the legislature." In talking with the division, he understands they do not believe there is a contradiction, but thought members might consider this.

SENATOR GRETCHEN GUESS asked the board's view on SB 364, given the amendment.

MR. RAINERY replied the board only had hesitation with a possible conflict in Section 2.

CHAIR DYSON said he understood from the commissioner that they were asking for more flexibility to transfer funds as needed.

MR. RAINERY said this was how it was described to him as well, and if that's the case, then "it's not an issue."

CHAIR DYSON said it was clear the last time SB 364 was heard, and the administration agreed, that there wouldn't be folks badly needing treatment who wouldn't get it.

SENATOR GUESS said she thought this was the intent, but in law there are multiple administrations, multiple commissioners and directors. This bill, with Section 2 in it, still leaves the possibility of funds not being available for these services, and therefore, that leaves either "the rest of us to pay, or that

person is on the street, or goes to API, and it still provides the uncertainty to the providers to ensure that we have this capacity in the state."

CHAIR DYSON asked if she wanted to suggest an amendment.

SENATOR GUESS moved to remove Section 2. [This was considered as conceptual Amendment 2.]

A roll call vote was taken. Senators Guess and Davis voted in favor of the motion; Senators Green, Wilken, and Dyson voted against it. Therefore the amendment failed.

1:45 p.m.

CHAIR DYSON noted the department had made significant efforts to answer questions that had come up; those answers were provided in the committee packets. He referred to his question of "How can we be sure when the state pays a provider, that they aren't cost-shifting, and aren't shifting costs from another function they provide to this one, where you all faithfully pay?"

MR. HOGAN said regulations were noticed and the public comment period closed Wednesday, March 31, and allowed the department to determine rates for distinct psychiatric units in acute care hospitals that would be different from how rates are established for other beds within the hospital. This moves toward assuring the cost of providing mental health care is reflected in the rate rather than including additional costs from throughout the hospital.

CHAIR DYSON asked if billing and accounting could be audited to ensure that "we weren't being taken advantage of?"

MR. HOGAN said he believes the department has that authority.

CHAIR DYSON asked, "Have you?"

MR. HOGAN said there are routine site reviews of all community and mental health providers, and medical records were reviewed at a recent site review of the psychiatric unit at Fairbanks Memorial Hospital. Also, it is a requirement for any community and mental health grantee to annually submit an independent audit to the department for review.

CHAIR DYSON said he knows "not to take anecdotes as data" but he keeps hearing horror stories, such as a man whose wife was in

the hospital who was billed \$1.50 for every q-tip she used. He asked, "What do we allow in terms of mark-up, that providers bill the state for?"

MR. HOGAN replied the hospital rate is determined, based on a Medicare cost report, and there are a number of different factors determining that particular rate. He said he would be glad to further research those factors, and to provide that information.

CHAIR DYSON indicated he'd ask that of somebody affiliated with the hospitals so Mr. Hogan shouldn't bother, and asked if the answer is the State doesn't get billed for the cost, but for the allowable rate.

MR. HOGAN said the allowable rate is based on cost, so they are linked.

CHAIR DYSON said, "So the answer to my question is yes?"

MR. HOGAN confirmed, yes.

SENATOR WILKEN referred to the committee packet [a table entitled "2003 Monthly Federal Poverty Guidelines for Alaska"] and asked for help with the acronyms.

MR. HOGAN said the table was generated because Representative Seaton had a question in House HES about the difference between Denali Kidcare's 175 percent of poverty rate, versus DET's 185 percent of poverty rate. He apologized for not knowing what all of the acronyms stand for, but said he could get that information to the committee.

SENATOR WILKEN noted the table was "effective 9/1/2002" and asked if there was information from September of 2004.

MR. HOGAN said he was not sure, but would be glad to get that information.

SENATOR GUESS read from the [committee packet, DET Bill Summary, 3/31/04], "clearly communicate that costs incurred will only be covered up to the amount appropriated by the Legislature." She reiterated [Mr. Rainery] previously expressed concern about a contradiction between the bill's intent and the Letter of Intent, commenting this is a little different message than, "we'll look high and low for any other money, and move money around."

MR. HOGAN responded he understands that interpretation and acknowledged that a better job of incorporating the intent language attached to the proposed statute could have been done as it is the department's intent to follow what is attached to the statute. He apologized and said they would do a better job of re-wording.

CHAIR DYSON recollected that since last week, the Letter of Intent has been attached, and other language wasn't similarly modified.

SENATOR GUESS commented there is still a contradiction because the statute has not been changed.

CHAIR DYSON noted the statute now says "shall."

SENATOR GUESS said she had two more questions. She asked if "shall" in Section 3 was nullified because of Section 2.

MR. HOGAN said he didn't see this as nullifying or contradictory. It clearly stipulates the department is required to pay for the service. Section 2 states the department is obligated to pay for the service up to the appropriation, with the understanding that we will look for dollars throughout the department to help pay for the service.

SENATOR GUESS mentioned, "Letter of Intents are nice, but that's all they are. The statute still says it's limited by the amount appropriated by the Legislature." She asked, "What happens when you run out of money, and you can't use any of these funding sources?"

MR. HOGAN said the department would go to great lengths to make sure this doesn't happen. If it does happen, unfortunately, the worse case scenario is the person would go to API. Capacity has previously been exceeded at API; it's not the best situation to be in and would create pressure to move people out of API. "We will do the best we can to manage the system with the resources we have available," he stated.

SENATOR GUESS expressed concern that priorities could change with persons other than Mr. Hogan or the commissioner, and "we're allowing that change by keeping this language. There is nothing ensuring that we either don't turn away someone, or put that cost to API, or on the DET facility."

MR. ROD BETIT, President, Alaska State Hospital and Nursing Association (ASHNA), commented the department has worked diligently to close the gaps on ASHNA's concerns, but they haven't been closed completely. The language in Section 2 trumps everything else in this legislation, he said. Finances for this program are down \$1 million for FY 05, and there's no assurance of having funds to fill that gap. In talking with the department, there is agreement that a lot of patient care days won't be saved when there's co-management between the facility and the department, whether they use their own clinicians or First Health's. In looking at Bartlett Regional Hospital's information, a lot of extended stays have been approved and are related to the difficulty in getting medications to work effectively with this population, and that isn't going to go away, he said.

1:59 p.m.

MR. BETIT continued that both Fairbanks and Bartlett - the facilities most affected by this - are committed to this program and have seen the good it's done in the community. Their intent is not to pull out if this legislation goes forward. There will be concern because notwithstanding the department's best efforts, if money runs out, something has to give. He said he suggested to the department that the Letter of Intent include an additional statement indicating that if everything else fails and the worse case develops, the department will work with these community hospitals to ensure these patients transfer to API as quickly and safely as possible. Care would be delivered there, rather than the community hospitals having to figure out what to do. This would avoid discharging a patient into the community, who is not safe to be there, or providing care without getting paid for it, thereby building up a significant problem for that community hospital. He suggested the Letter of Intent have that kind of commitment in it, and it wouldn't un-do Section 2, because if there's no money, they won't pay. It would assure hospital administrators that the department's intent is to not leave patients in community hospitals if they can't pay for it, but to move them to API. Earlier testimony on SB 364 indicated that there might be a need to go over the 72 beds, at times. A choice is being made whether this can be provided in the community or through API.

MR. BETIT addressed how hospitals are paid, and said ASHNA doesn't support paying psychiatric stays at a different rate. Alaska has chosen to pay hospitals on an average rate, meaning all diagnoses are lumped together. The department uses a very

sophisticated process to review each hospital's costs, and refers to Medicare, the federal principle of what's allowable, and negotiates with the hospital for an all-inclusive rate. By paying a diagnosis differently, this takes the costs - and this is one of the lower-cost procedures a hospital performs for care - and those costs then disappear in the equation in terms of reimbursement. Typically in hospital reimbursement, there is either an all-inclusive or a diagnoses rate. DRG refers to diagnoses-related-group, and if we want to move down that road, we can't pick and choose diagnoses to pay differently.

MR. BETIT added that the department could look at the books, under the provider agreement each facility signs with the state, as a condition of getting Medicaid payment. He explained that when Medicaid pays, once a rate is agreed upon with the department, that is payment in full, and "we can't go after the patient for anything more."

CHAIR DYSON asked what the reasonable mark-up is for hospital supplies over the wholesale cost.

MR. BETIT said there is a "firestorm of controversy across the country" as these costs are sometimes enormous, and result in the uninsured population having to pay possibly 10 times what others pay. Each hospital has a charity policy, whether it's 150 percent or 300 percent of poverty, and won't go after a patient unable to pay those bill charges. He said hospitals around the country have to devise a more rational way of dealing with this.

CHAIR DYSON mentioned a woman purchasing diapers and then being able to get reimbursed at 4.5 times that amount.

MR. BETIT responded this was a red herring because the bill doesn't necessarily correlate to what's paid; that distortion will get straightened out in the next few years because "Congress has had it as well."

SENATOR GREEN moved to report SB 364 as amended, with the Letter of Intent [as amended], out of committee with individual recommendations and accompanying fiscal note.

SENATOR DAVIS objected. She said it costs more to be at API than at community-based hospitals, and in winter, it is filled to capacity, and this probably just won't work. She said good intentions are good, but it's "what you do in the end" that counts. Lawmakers/policy makers should not go on intent without

having a plan in place. If Section 2 were removed, she would vote for the bill. She wanted the department to have the flexibility and accountability needed, but not the way it is currently.

CHAIR DYSON suggested that a report be requested in January.

SENATOR DAVIS commented this would be heard again.

CHAIR DYSON asked Mr. Hogan if there was an internal method of tracking monthly expenditures against the allotted budget, so projections of being short could be indicated prior to the next budget cycle.

MR. HOGAN replied this was correct.

CHAIR DYSON said in January (if he were here), he would appreciate Mr. Hogan reminding him about seeing that.

MR. HOGAN responded they'd be glad to do that.

A roll call vote was taken. Senators Wilken, Green, and Dyson voted in favor of the motion; Senators Guess and Davis voted against it. CSSB 364 (HES), with the Letter of Intent, as amended, moved out of committee.

There being no further business to come before the committee, he adjourned the meeting at 2:10 p.m.