

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

April 30, 2004

1:35 p.m.

**TAPE (S) 04-25&26**

**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**

CS FOR HOUSE BILL NO. 425(EDU)

"An Act relating to funding for school districts operating secondary school boarding programs and to funding for school districts from which boarding students come; and providing for an effective date."

MOVED CSHB 425(EDU) OUT OF COMMITTEE

HOUSE BILL NO. 500(title am)

"An Act including the Joint Commission on Accreditation of Healthcare Organizations under the definition of medical review organizations."

MOVED HB 500(title am) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 511(HES) am

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

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 425

SHORT TITLE: SCHOOL FUNDS RELATED TO BOARDING SCHOOLS

SPONSOR(S): REPRESENTATIVE(S) COGHILL

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

03/02/04 (H) EDU AT 11:00 AM CAPITOL 124  
 03/02/04 (H) Heard & Held  
 03/02/04 (H) MINUTE(EDU)  
 03/09/04 (H) EDU AT 11:00 AM CAPITOL 124  
 03/09/04 (H) Moved CSHB 425(EDU) Out of Committee  
 03/09/04 (H) MINUTE(EDU)  
 03/18/04 (H) EDU RPT CS(EDU) NT 1DP 2NR 3AM  
 03/18/04 (H) DP: GARA; NR: OGG, WOLF; AM: SEATON,  
 03/18/04 (H) WILSON, GATTO  
 04/01/04 (H) HES AT 3:00 PM CAPITOL 106  
 04/01/04 (H) Moved CSHB 425(EDU) Out of Committee  
 04/01/04 (H) MINUTE(HES)  
 04/05/04 (H) HES RPT CS(EDU) NT 6DP 1NR  
 04/05/04 (H) DP: GATTO, WOLF, COGHILL, SEATON,  
 04/05/04 (H) KAPSNER, WILSON; NR: CISSNA  
 04/14/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
 04/14/04 (H) Heard & Held  
 04/14/04 (H) MINUTE(FIN)  
 04/20/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
 04/20/04 (H) Moved CSHB 425(FIN) Out of Committee  
 04/20/04 (H) MINUTE(FIN)  
 04/21/04 (H) FIN RPT CS(EDU) NT 4DP 4NR  
 04/21/04 (H) DP: CROFT, MOSES, FATE, FOSTER;  
 04/21/04 (H) NR: HAWKER, STOLTZE, HARRIS, WILLIAMS  
 04/23/04 (H) TRANSMITTED TO (S)  
 04/23/04 (H) VERSION: CSHB 425(EDU)  
 04/26/04 (S) READ THE FIRST TIME - REFERRALS  
 04/26/04 (S) HES, FIN  
 04/30/04 (S) HES AT 1:30 PM BUTROVICH 205

BILL: HB 500

SHORT TITLE: DEFINITION OF MEDICAL REVIEW ORGANIZATION

SPONSOR(S): REPRESENTATIVE(S) SAMUELS

02/16/04 (H) READ THE FIRST TIME - REFERRALS  
 02/16/04 (H) HES  
 03/25/04 (H) HES AT 3:00 PM CAPITOL 106  
 03/25/04 (H) Moved Out of Committee  
 03/25/04 (H) MINUTE(HES)  
 03/29/04 (H) HES RPT 5DP 2NR  
 03/29/04 (H) DP: COGHILL, SEATON, CISSNA, KAPSNER,  
 03/29/04 (H) WILSON; NR: GATTO, WOLF  
 04/21/04 (H) TRANSMITTED TO (S)  
 04/21/04 (H) VERSION: HB 500(TITLE AM)  
 04/22/04 (S) READ THE FIRST TIME - REFERRALS  
 04/22/04 (S) HES  
 04/30/04 (S) HES AT 1:30 PM BUTROVICH 205

BILL: HB 511

SHORT TITLE: CERTIFICATE OF NEED PROGRAM

SPONSOR(S): REPRESENTATIVE(S) SAMUELS

02/16/04	(H)	READ THE FIRST TIME - REFERRALS
02/16/04	(H)	HES, FIN
03/02/04	(H)	HES AT 3:00 PM CAPITOL 106
03/02/04	(H)	Heard & Held
03/02/04	(H)	MINUTE(HES)
03/04/04	(H)	HES AT 3:00 PM CAPITOL 106
03/04/04	(H)	Heard & Held
03/04/04	(H)	MINUTE(HES)
03/18/04	(H)	HES AT 3:00 PM CAPITOL 106
03/18/04	(H)	Moved CSHB 511(HES) Out of Committee
03/18/04	(H)	MINUTE(HES)
03/24/04	(H)	HES RPT CS(HES) 3DP 1DNP 2NR
03/24/04	(H)	DP: KAPSNER, CISSNA, WILSON; DNP: WOLF;
03/24/04	(H)	NR: GATTO, COGHILL
03/29/04	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
03/29/04	(H)	Heard & Held
03/29/04	(H)	MINUTE(FIN)
03/31/04	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
03/31/04	(H)	Moved CSHB 511(HES) Out of Committee
03/31/04	(H)	MINUTE(FIN)
04/01/04	(H)	FIN RPT CS(HES) 4DP 2NR 2AM
04/01/04	(H)	DP: MEYER, HAWKER, HARRIS, WILLIAMS;
04/01/04	(H)	NR: FATE, FOSTER; AM: STOLTZE, CHENAULT
04/26/04	(H)	MOVED TO BOTTOM OF CALENDAR
04/26/04	(H)	NOT TAKEN UP 4/26 - ON 4/27 CALENDAR
04/27/04	(H)	NOT TAKEN UP 4/27 - ON 4/28 CALENDAR
04/28/04	(H)	TRANSMITTED TO (S)
04/28/04	(H)	VERSION: CSHB 511(HES) AM
04/29/04	(S)	READ THE FIRST TIME - REFERRALS
04/29/04	(S)	HES, FIN
04/30/04	(S)	HES AT 1:30 PM BUTROVICH 205

**WITNESS REGISTER**

Karen Lindster

Staff to Representative John Coghill

Alaska State Capitol

Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced CSHB 425(EDU) for the sponsor

Eddy Jeans

Manager Education Support Services

Department of Education & Early Development  
801 W 10<sup>th</sup> St.  
Juneau, AK 99801-1894

**POSITION STATEMENT:** Answered questions on CSHB 425(EDU)

Floyd Brooks  
No address provided

**POSITION STATEMENT:** Testified on HB 425

Lorry Yates  
No address provided

**POSITION STATEMENT:** Testified on CSHB 425(EDU)

Agnes David  
No address provided

**POSITION STATEMENT:** Testified on CSHB 425(EDU)

Sara Nielsen  
Staff to Representative Ralph Samuels  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced HB 500(TITLE AM) and CSHB  
511(HES) am for the sponsor

Janet Clarke  
Department of Health & Social Services  
PO Box 110601  
Juneau, AK 99801-0601

**POSITION STATEMENT:** Testified on HB 500(TITLE AM) and CSHB  
511(HES) am

Laurie Herman  
Regional Director of Government Affairs  
3200 Providence Drive  
P.O. Box 196604  
Anchorage, AK 99510-6604

**POSITION STATEMENT:** Testified on HB 500(TITLE AM)

Mayor John Williams  
City of Kenai Peninsula Borough  
144 North Binkley Street  
Soldotna, AK 99669  
210 Fidalgo Ave., St. 200  
Kenai, AK 99601

**POSITION STATEMENT:** Testified on CSHB 511(HES) am

Paul Fuhs

Alaska Open Imaging Center

**POSITION STATEMENT:** Testified on CSHB 511(HES) am

**ACTION NARRATIVE**

**TAPE 04-25, SIDE A**

**CHAIR FRED DYSON** called the Senate Health, Education and Social Services Standing Committee meeting to order at 1:35 p.m. Present were Senators Wilken, Davis, Guess and Chair Dyson. Senator Green arrived momentarily.

He announced his intention to take action on HB 425 and HB 500, but to take no action on HB 511 until the following meeting.

**CSHB 425(EDU)-SCHOOL FUNDS RELATED TO BOARDING SCHOOLS (EDU)**

CHAIR DYSON asked Ms. Lindster to present CSHB 425(EDU).

KAREN LINDSTER, staff to Representative John Coghill, introduced herself and advised that she would read the sponsor statement and some additional information into the record.

HB 425 puts into statute Department of Education's current practice. This legislation supports existing programs that are successful. Under this bill a student wouldn't have to pass the current entrance standards. The bill would give students a choice of going to a school that offers something different than may be available in their hometown.

This legislation by statute reimburses to full school year secondary boarding schools costs incurred by the district operating the program.

The legislation limits the program to schools already operating boarding schools on January 1, 2004.

There are five boarding schools that would qualify for reimbursement for a per-pupil stipend and one round trip between the student's community of residence and the school during the school year if the district expends money for the trip.

These schools will participate in a five-year pilot project that the Department of Education will evaluate for the legislature.

The hold harmless section of this bill allows a student's district of residence to count a student for the ADM count even though the student is attending a secondary boarding school. This avoids the possibility of paying the base allocation twice for the same student.

MS. LINDSTER explained the sectional for the committee substitute:

#### Section 1

(a) Provides that a school district that was operating a secondary boarding school prior to January 1, 2004 could be reimbursed for the cost of operating the boarding school providing they have a suitable student dormitory and provide daily access to a public school offering the grades 9-12 classes.

(b) The district may be reimbursed for a per-pupil stipend determined by the Department of Education and for one round trip per student that travels from their community.

(c) Defines district as "a city or borough school district or a regional educational attendance area.

Also defines district secondary school boarding program as "a public school operated for a full school year by a district in which the domiciliary services are provided for students in grades 9 through 12. The full school year was added to the language in the Special Committee on Education and this resulted in a reduction in the fiscal note of \$227,000.

#### Section 2.

Provides a hold harmless clause for school districts that have children move out of the district to attend a secondary boarding school. The students moving from the district would be counted in the average daily membership of the home district.

#### Section 3.

This is a sunset clause that repeals the substance of this bill on July 1, 2009.

Section 4.

Puts into place an effective date of July 1, 2004.

CHAIR DYSON asked Eddy Jeans to join Ms. Lindster at the table.

EDDY JEANS, finance manager for the Department of Education & Early Development, introduced himself.

SENATOR GRETCHEN GUESS asked what the stipends are used for and whether Mount Edgecombe gives a stipend and round trip ticket to its students.

MR. JEANS said the stipend is to pay for the students' monthly residential care, which includes meals and supervision 24/7. Mount Edgecombe does provide a stipend and one round-trip airfare from home for each student so this provision is consistent with the way that program is operated. Mount Edgecombe is not included in this bill because it's a state operated boarding school that's included in the Department of Education and Early Development budget.

SENATOR BETTYE DAVIS asked whether the round trip is to and from a student's home community or did they receive one more trip than that.

MR. JEANS said it's just one trip.

SENATOR LYDA GREEN stated that she wouldn't define stipend in the same way. She then asked whether the parents of students with an IEP would be given transportation to and from the school.

MR. JEANS replied it would be up to the parents to make arrangements and pay for their own trip to the school for an IEP meeting.

SENATOR GREEN asked what happens at Mount Edgecombe.

MR. JEANS said he wasn't sure. He thought that parents participated via teleconference, but the State didn't provide them with round trip airfare.

SENATOR GREEN disagreed saying that was an issue that came up when she was on the governor's council and she recalls that those parents were provided transportation to the site for IEP meetings.

MR. JEANS said he'd be happy to clarify that.

SENATOR GARY WILKEN referred to page 2, line 4 and said that if the Legislature accepts "a per-pupil stipend determined by the department on a regional basis" then they are giving up their appropriation power and placing it in the hands of the department. He said he didn't know that he could be talked into that. He asked Mr. Jeans whether he was reading that correctly.

MR. JEANS replied the reading is correct, but he wanted the committee to know that the legislation intentionally mirrors an existing program the Department of Education has for students that don't have daily access to a secondary program in their district or near their residence. Using St. George as an example, he pointed out that the school there is K through 10 so the students leave for grads 11 and 12. Then they go into another community and the state pays a stipend to help pay for the residential costs. The program has been in place for a number of years and the department has always set the stipends. He said he has a list of the stipends by region if that was helpful.

CHAIR DYSON asked him to distribute copies right then if he could.

MR. JEANS said he'd be happy to do so.

SENATOR WILKEN said, "That may well be, but the passage of this legislation is a seat change in the way we look at funding schools so we may do it that way today. If we allow this with boarding schools, I'd like to have the Legislature involved."

Referring to page 2, line 12 he said that agreeing to that would make it possible to have a school of one.

MR. JEANS agreed the example is correct, but it's extreme and they don't currently have any schools that have fallen into that category. The intent of the provision is to provide a safety net for the communities that have a very low student population and are right on the threshold of ten. Representative Coghill didn't want the community to be penalized if a secondary school student elected to take advantage of this program. "We do understand

your concern in having a minimum number and that was discussed on the House side although they never put a minimum number in this section."

SENATOR WILKEN asked if this wouldn't result in double counting the student this way.

MR. JEANS said the foundation formula has a base number of ten and from 10 to 20 students the funding level for the school remains the same. "So if you had, for example, 11 kids in a community and two of them elected to go to one of these boarding schools, that community would get the same funding that it would have gotten with 11 students. The school receiving the children is going to generate additional foundation funds, but they're generating these funds in these communities now. At Nenana and at Galena both of these programs are up and running and we're currently paying for these students in those regions."

SENATOR WILKEN read the last sentence of the sponsor statement then used the example of a student moving from a 200-student school to one with 400 and asked if that wouldn't result in a double count.

MR. JEANS said that example wouldn't work because if a student attended a school with 200 students and then moved to Nenana, the first school would no longer receive money for the child. Funding at the first school would be reduced by one child and Nenana would receive funding for an additional child. "It's only for those schools that are very small that may fall under that threshold of 10 students." Typically in those small schools there would only be one or two secondary students because the majority are elementary. He repeated it's just a safety net for the communities during this pilot program.

SENATOR WILKEN referred to the last sentence of Section 2 of the analysis and asked if the statement that "students moving from the district would be counted in the ADM of the home district" applies only to those schools that would be ten or less.

MR. JEANS said the last sentence of the sponsor statement is not correct when the school falls below ten students. The base is the same for 10 to 20 students. That community would continue to generate the base and Nenana would generate additional foundation funds for those students that fall into that category.

SENATOR WILKEN pressed, "So we're paying twice."

MR. JEANS said in that particular case you would, but once you exceed 20 students you wouldn't pay for the same student twice because the funding is then based on an individual student basis. "If you exceed 20 then you will no longer receive funding for that child if they move."

CHAIR DYSON asked if he was saying that the school with 19 kids gets the same total amount as the school with 11 kids.

MR. JEANS said that's correct, it's an economy of scale. You need a certain minimum to operate a school and when SB 36 was written it was decided that the minimum level would apply to schools with 10 to 20 students. Beyond 20 students, the per-student costs begin to decline.

SENATOR WILKEN asked if the fiscal note includes just airfare or airfare and the stipend.

MR. JEANS said it also includes the monthly stipend for the 180-day school year.

SENATOR WILKEN asked for the amount of the stipend.

MR. JEANS pointed out the information on page two of the fiscal note. The spreadsheet lists the school district, the community, capacity of the program, monthly stipend, yearly cost, estimated round trip, annual airfare and the estimated grant amount for the 180-day program. At the bottom of the spreadsheet they listed other communities that have boarding capacity but aren't currently operating for 180 days. He pointed that out because when they started with the bill they included all programs, but Representative Coghill only wanted to include the communities that operate a full 180-day program.

CHAIR DYSON asked about the asterisk.

MR. JEANS said that Galena has the capacity for 100 students, but eight of those students are currently being reimbursed under the Boarding Home program. The remaining 92 are the number for which they do not currently pay any stipend.

SENATOR WILKEN said he needed a little more time to evaluate the data, but:

To answer the question of what we save by doing this,  
he said they seem to indicate that we save

\$358,939.000. I think they're comparing that to the \$3,958.00 that's a bricks and mortar ADM and I think the number they should be comparing is \$9,667.00 so Eddy, if you could help me with taking this sheet and taking a different look at it to make sure we're comparing apples and apples. When we look at this, two things we should remember. When this was put in by the Department of Agriculture it was a grant from the Department of Agriculture to put in a boarding school and that's been funding this thing and we've been trying to help it along with offset grants and I remember the discussion well what if this doesn't work or what if it can't pay its own way. They're going to come to the general fund and we've now arrived at that day and we're now saying we want to fund boarding schools across the state and I'm not sure that's the best application of our education money. This amounts to a test case. The other thing is that back in 02 they had 1,567 correspondence students and we know correspondence students are, in my mind, a cash cow. In 04 they have half of that - 724. So they've lost a funding source just because their correspondence program has gone from zero to 1,900 and now it's dropped down on the other side to 700 so they may just be having a program problem - trying to attract the proper number of students to both their correspondence program and to the boarding school. I appreciate your patience and although I think this bill is well intentioned, it's much more expensive than what it shows and if this Legislature chooses to start funding boarding schools okay, but I would suggest that that money becomes competition for all the other schools that we have in the state and we want to make sure that investment is well spent.

SENATOR GUESS remarked that she heard that this is a pilot program yet she also heard that "this is what we do now." If it's a pilot program, she questioned what would they be evaluating and what outcome measures were they looking for.

MR. JEANS assured her it is a pilot program, but in terms of "what we do now" it models the current practice for those students that don't have daily access to a secondary program. "These are students that have elected to participate in these programs, maybe because they come from a small community, maybe because they have problems with things at home, ... but these

students have elected to go to this program because of the consistency that's made available to them."

SENATOR GUESS asked for an explanation of the outcome measures they were looking for in the evaluation.

MR. JEANS said they'd be looking at achievement rates. He pointed out that this expands program offerings for all the kids, but particularly for the ones in Nenana because there are more kids there so more state funding is generated and expanded programs may be offered.

SENATOR GUESS noted that the military youth academy wasn't included and asked if there was discussion about including them in the pilot program.

MR. JEANS reminded her that they have their own separate funding mechanism, which is why they weren't considered for participation.

SENATOR GUESS commented that the stipend language was worrisomely open and initially she assumed that stipend meant pocket money for the students. She asked whether there was a reason that they weren't specific.

MR. JEANS replied they didn't have that discussion, but the monthly stipend comes from regulation. School districts often are contracting with parents for the residential care so it's a stipend to the parents that house and feed the students.

CHAIR DYSON clarified the stipend would go to whatever home that's housing the student.

SENATOR GUESS asked whether there were regulations ensuring the safety of these kids that go into other people's homes.

MR. JEANS assured her there are regulations under the Department of Health & Social Services and they're also referenced under the Department of Education & Early Development boarding home program and he would provide her a copy of that.

SENATOR GREEN held up a piece of paper and asked if this was the Department of Education & Early Development regulation on boarding schools.

MR. JEANS said, "That's our current program that's limited to students that do not have daily access to a secondary program."

SENATOR GREEN held up a piece of paper and asked if this was a list of the students who qualified.

MR. JEANS told her that the students on that list have daily access to a secondary program so they would not qualify under existing regulations, which is the reason for the proposed legislation. It would expand the current program to provide funding for the kids on that list.

SENATOR GREEN said, "So these would be rewritten."

MR. JEANS said they'd be modified.

SENATOR GREEN questioned whether the language does that because the language talks about secondary students who do not have daily access to a school. She added, "I recognize many school districts and sites that we clearly pay a lot of money to for schools, which, to me, is inconsistent."

MR. JEANS said they modeled the language after the existing program just to keep it simple. "All we're trying to do is expand an existing program to the kids that do have daily access that are electing, by choice, to go to these boarding programs. To provide those boarding programs with some kind of state support to offset the residential cost."

CHAIR DYSON referred to line three of the sponsor statement and asked for an explanation of the statement, "...a student would not have to pass the current entrance standards."

MR. JEANS reiterated that under current regulations, for a student to qualify for the program, they cannot have daily access to a secondary program.

CHAIR DYSON turned to Ms. Lindster and said that with this significant expansion of the program, he would have expected that she and the sponsor would have limited qualification to just those students that come from communities that don't have a secondary school and/or where there was a school that was failing under the No Child Left Behind Act and an alternative was required. "Did you consider that?" he asked.

MR. JEANS pointed to Mountain Village to provide an explanation. The community does offer a K-12 program so, under current regulations, DEED can't provide Nenana with any state support to help with the residential costs for the Mountain Village kids

that are attending school in Nenana. That's what this legislation is trying to do, he said. The Mountain Village kids that have elected to attend secondary school in Nenana have done so because they believe the program in Nenana has something to offer them that they can't get in Mountain Village.

CHAIR DYSON commented that he covered that previously.

MR. JEANS continued saying that if they limited eligibility to those students that don't have daily access to a secondary program then there would be no need for this legislation because current regulation already covers that.

CHAIR DYSON asked if, under this bill or current legislation, the state is required to offer a boarding school alternative to students that attend a school that is failing to make progress under the No Child Left Behind Act.

MR. JEANS replied that within the capacity of the boarding school to accept the students, if the parents elected to go there during the pilot program, this legislation allows for the state to reimburse monthly boarding costs and one roundtrip airfare.

CHAIR DYSON questioned whether current legislation allowed that or not.

MR. JEANS replied, "Under our current regulations we cannot."

CHAIR DYSON encouraged the sponsor and Mr. Jeans to tighten the requirements to those schools that aren't making adequate yearly progress before the Finance Committee hearing. Another alternative would be to establish some criteria for schools that can't offer students very much because they're too small.

He questioned what happens when students decide to move to a boarding school after the school year begins and the ADM has been counted because the receiving school typically wouldn't be reimbursed for the additional student(s).

MR. JEANS agreed that would be the case under this program as well, but the programs are already operating at capacity so there probably wouldn't be room for a student that wasn't enrolled at the beginning of the year.

CHAIR DYSON called a brief at ease then reconvened the meeting.

SENATOR GREEN asked how the parents participate.

MR. JEANS said it varies with the program, but in Nenana some parents move to help with the student(s). He wasn't sure about parent participation in Galena.

SENATOR GREEN asked how much each parent is expected to pay.

MR. JEANS told her it varies by community and they don't track that information.

SENATOR GUESS suggested amending the stipend language to make it more clear because it really is specific in the regulations. She then pointed out that it doesn't say this is a pilot project and the program will be assessed in five years to look for certain broad outcomes.

CHAIR DYSON announced that the bill would likely move from the committee that day and he suspected that anyone that was interested in testifying would have an opportunity to do so in the Finance Committee. He asked whether there was anyone who specifically wanted or needed to testify that day.

FLOYD BROOKS testified via teleconference to say he is a single parent of three students that have the opportunity to attend school in Nenana. He spoke in strong support of the program. "In supporting HB 425 everyone wins," he said.

LOTTIE YATES testified via teleconference to say that small schools are limited in terms of what they are able to offer students. She said the quality of education in Nenana is high and she urged support for HB 425.

**TAPE 04-25, SIDE B**

AGNES DAVIS testified via teleconference to express support for HB 425.

SENATOR WILKEN asked Mr. Jeans if it is correct that a student from Mountain Village that is attending the school in Nenana is counted "in Nenana as just a normal student that is run through the formula."

MR. JEANS said that's correct.

SENATOR WILKEN then said, "We would be able to go to the ADM funding for the school district for Nenana to see what that child costs us in school - in the learning center in Nenana."

MR. JEANS started to reply.

SENATOR WILKEN added, "It's transparent as to whether it's a boarding school or not."

MR. JEANS said yes.

There were no further questions.

CHAIR DYSON asked for the will of the committee.

SENATOR WILKEN motioned to report CSHB 425(EDU) from committee with individual recommendations and the attached fiscal note. There being no objection, it was so ordered.

**2:30 pm**

**HB 500(title am)-DEFINITION OF MEDICAL REVIEW ORGANIZATION**

CHAIR DYSON announced the next order of business to be HB 500(title am).

SARA NIELSON, staff to Representative Ralph Samuels, described HB 500 as a simple bill. She paraphrased from the sponsor statement as follows:

House Bill 500 simply adds the Joint Commission on Accreditation of Health Care Organizations (JCAHO) to the narrow definition of a "review organization."

The Joint Commission on Accreditation of Health Care Organizations is the principle independent organization that performs accreditation of hospitals throughout the United States, including Alaska. JCAHO recently implemented a new program requiring hospitals to undergo a Periodic Performance Review (PPR) to achieve continuous standards compliance, and thus, continuous provision of safe, high-quality health care.

The current statute defines a "review organization" expressly and narrowly and is silent as to the major organization conducting hospital accreditation in our

state, [which is] JCAHO. Without the change in this legislation, a party in an unrelated civil action, could argue vigorously that JCAHO is well known within the health care community as the primary accreditation instrument for hospitals in the United States, and that it would have been a very easy matter for the legislature to have included it in the definition of a "review organization." It could be asserted that the courts have no business re-writing statutes to include provisions that it thinks the legislature would have included if it had thought of it at the time that provision was enacted. Thus, there is a very real danger that information provided to JCAHO as part of this process would not be treated as confidential.

This legislation is necessary so that hospitals will feel free to fully report all the information required by JCAHO in an open manner and promote quality health care in Alaska.

CHAIR DYSON asked whether the administration supported the bill.

MS. NIELSON said she didn't believe they had a position, but Janet Clarke could respond.

JANET CLARKE, Department of Health & Social Services representative, said they support quality health care and quality assurance for health care facilities, but she was unaware of any public position paper on the legislation. She continued to say, "We run a hospital that is covered by the Joint Commission Review. We have hospital certification and licensing and anything that could promote that we would support."

CHAIR DYSON asked if the organization is credible.

MS. CLARKE replied they are extremely credible.

CHAIR DYSON asked what the legislation would allow that can't be done now.

MS. CLARKE didn't know of anything, but right now it could be argued that confidentiality is in question because JCAHO isn't mentioned as a review organization.

CHAIR DYSON asked Laurie Herman to comment.

LAURIE HERMAN, Regional Director of Government Affairs for Providence Health System in Alaska, testified via teleconference. To demonstrate why they believe this legislation is necessary she explained:

Recently JCAHO redesigned their survey process from being a once-every-three-year survey to one that requires hospitals and other health care organizations to complete a mid-cycle performance review the purpose of which is to review and make certain that we are achieving continuous standards of compliance and continuous provision of safe, high quality health care.

In addition to the requirement of self-reporting of deficiencies, this performance review process requires that a hospital or health care organization complete an in-depth survey of their policies and procedures. If the hospital is found to be out of compliance with accepted standards in any area, an attended corrective plan has to be submitted to JCAHO. And JCAHO prefers implementation of both the review and the self-reporting deficiency to be in an electronic online communication.

To the extent that anyone would have deficiencies, as part of this process they must prepare and post the corrective action plans. Because of the concern that state statutes do not specifically include JCAHO as a quality review organization, which would thereby protect the reporting information from public accessibility, they may go to a less preferred option that would allow such organizations to simply certify that they made corrections on their own without providing any information to JCAHO. We believe that the quality of health care would improve if health care organizations feel free to fully report all the information required by JCAHO in an open manner.

CHAIR DYSON asked if she had any idea why JHACO wasn't included in the statutory language.

MS. HERMAN said there aren't any specific organizations that are mentioned in current statute. The language is quite vague, which makes it arguable that since they aren't mentioned then the information should be accessible to the public. That could certainly deter reporting and/or lead to self-analysis.

There was no further testimony, questions or comments.

CHAIR DYSON asked for a motion.

SENATOR GREEN motioned to report HB 500(title am) from committee with individual recommendations and accompanying fiscal notes. There being no objection, it was so ordered.

**2:40 pm**

**CSHB 511 (HES)am-CERTIFICATE OF NEED PROGRAM**

CHAIR DYSON announced the next order of business to be CSHB 511(HES)am.

SARA NIELSON, staff to Representative Ralph Samuels, explained that the bill modifies certain aspects of the Certificate of Need statute to level the playing field.

She said the following would provide an overview of the changes:

The bill modifies the section of statute that allows the relocation of an ambulatory surgical facility to only one time as long as they still would otherwise meet all the requirements of the original Certificate of Need.

It also clarifies that a Certificate of Need would not be needed in an emergency or a temporary case such an earthquake or some kind of a disaster.

It also adds independent diagnostic testing facility and residential psychiatric treatment center - would make them go through the CON process if they fall within the \$1 million expenditure limit.

The bill also reduces the amount of time the department has to review the application from 90 to 60 days.

On the House floor a letter of intent was adopted to address the Certificate of Need process by asking that a task force be assembled to go over the entire process.

JANET CLARKE, Department of Health & Social Services representative, identified herself and stated:

I am here to testify in support of HB 511 - Relating to certificates of need (CON). Certificate of need is a health planning process that reviews health facility construction projects that cost over \$1 million dollars to determine whether there is a need for the project.

This particular bill does not do away with CON; it keeps the underpinnings of the statute in place. There are nine sections in the bill and I'll quickly go over a sectional review.

As Sara stated, Section 1 corrects an inequity for ambulatory surgery centers related to relocation and whether a CON is needed for relocation.

Section 2 has two parts. It basically limits the relocation outlined in the first Section to one time. It also amends the statute to include equipment that is purchased through a lease provision that for CON purposed, the net present value of the lease space or equipment is used to calculate the cost. Currently, if you purchase equipment that costs over \$1 million, you go through the CON program. If you lease it, you do not. This would put those two purchase processes on the same level playing field.

Section 3 amends the provision for emergency or temporary CON that's currently in the bill.

Section 4 would add "residential psychiatric treatment centers" to fall within CON review. The department is particularly interested in this provision. As you know, Medicaid is a primary payer for residential psychiatric treatment centers (RPTC). We have several we're paying for. We're paying for children in out-of-state placement. At any one time there's over 500 children who are in these out-of-state residential psychiatric treatment centers. We have a program to bring these kids home to Alaska. We want to make sure that as we built these RPTCs in Alaska that it's done in a very thoughtful, planned process and that we do them close to hub communities in Alaska because these kids do better when they're closer to home. So we

believe that the CON program is the best mechanism to look at this planning process for RPTCs.

Section 5 adds a new section in law relating to time standards for review by the department. It shortens the time period that the department has to review CONS from 90 to 60 days internally.

Section 6 amends the definition of health care facilities to include independent diagnostic testing facilities as well as residential psychiatric treatment centers.

Section 7 goes along with Section 6. It adds the definition for what a residential psychiatric treatment center is.

Section 8 deals with the applicability issues of when this law is applicable to what.

Section 9 is the effective date clause of the legislation.

CHAIR DYSON said he appreciates the problem they're trying to solve in Fairbanks, but he didn't understand why an empty building should have a CON grandfathered in.

MS CLARKE pointed to Section 1 and said a few years ago the Legislature added language that was confusing and that is the language that would be deleted. She reminded members that CON covers capital construction and services. HB 511 gets rid of the provision where someone could construct a new ambulatory surgical center and take their certificate of need with them. That provision is counter to CON because it's actually a capital construction review that looks at whether you're spending \$1 million on construction or adding a new service.

CHAIR DYSON asked Ms. Nielson to further clarify.

MS. NIELSON reported that according to Legislative Legal Services, the language in Section 2 makes the last sentence in Section 1 (c) unnecessary, which is why it would be deleted. "Basically, you can't have a building - you can't have one person - have their services in one building and have the certificate of need and then move over to another one. And then that building that was left, they still have to go through the certificate of need process if somebody else wants to move in

there - assuming that those people didn't already have a certificate of need and are exercising their one time relocation."

CHAIR DYSON admitted that his blood pressure rises when he thinks about the issue. Furthermore, he said he's more confused because Ms. Clarke says this is just for construction and then the bill says it's okay to relocate. In addition to that, he heard it's also for the present worth value of leased equipment, which isn't construction either. Section 1 simply gets rid of the restrictive and stupid language, but then in Section 2 "you only eliminate stupid once and if we'd ever done anything else stupid like this, in law, that we can only [make a] fix once."

MS. NIELSON agreed that the final sentence in Section 1 (c) wasn't needed. The first part of Section 1, subsection (c) says a business may relocate an ambulatory surgical facility once without obtaining a certificate of need as long as bed capacity and the number of categories of health services remain unchanged. Any subsequent business or person moving into the site is no longer addressed, which is what the sponsor intended.

CHAIR DYSON opined it all has to do with capacity and a person should be able to move from site to site without jumping through hoops as long as capacity isn't changed.

SENATOR GUESS questioned why the language they propose removing is problematic except that it is redundant. "You can't use that site unless you get a certificate of need because they want to see, 'Is there the capacity for that site to go back up how it used to be?' so if you take this out, and someone moves from one site to the other and someone wants to use that previous site, they should have to go through the certificate of need to ensure that we're not overcapacity."

MS. NIELSON agreed that the language is redundant and that's why they propose removing it.

MS. CLARKE said it is a confusing section of law, but she needed to clarify her previous statement. Although she was focusing on the construction aspect, certificate of need applies to the expenditure of \$1 million or more for construction, renovation or the purchase of new equipment.

**2:55 pm**

CHAIR DYSON asked her to show the committee how, "with the help of government intervention, we've gotten into this bizarre situation where having more than adequate capacity drives prices up and how choices by consumers can drive prices up and then specifically this section here about mental health and how after 31 days or 30 days, government has to pay and how having choices there can drive costs up."

MS. CLARKE replied health care isn't as clean cut as other market forces that we're used to because the decision to go to one place or another for a particular procedure is divorced from the economics of that decision. "We might make that decision related to where our doctor refers us based on the proximity to a hospital," she said. Furthermore:

As government, and government plays a big part in the economics of the health care industry in Alaska whether it's Medicaid or Medicare - we're a big player in that so we, particularly for certain parts of the health care system, as the primary payer - you are - the Legislature appropriates - particularly for long term care, nursing homes, for mental health services - we are the primary payers so we have an interest in looking at this regulation to make sure that it's done in such a way that the primary payer is not stiffed with the bill in the end because the individual decision is not based on economics of the decision.

CHAIR DYSON said that after his discussion with the commissioner, he understands that if there are several providers, there's nothing keeping a patient whose costs are paid by Medicare from selecting the very highest cost treatment as long as the provider hasn't been disqualified for some reason.

MS. CLARKE replied there is a mandatory freedom of choice in both the Medicare and Medicaid programs.

CHAIR DYSON continued to say that he also understands that when someone is in a mental health residential program for more than 30 or 31 days then Medicaid picks up the entire cost for the rest of the time the person is in the program. He wasn't clear whether both adults and children were included or just children.

MS. CLARKE replied she'd have to check on that then clarified that this is about children and adolescents and just as with any insurance program, there are certain standards for when

insurance coverage would apply. For an acute care setting, which is psychiatric hospital treatment, she thought 30 days was the industry standard. After that, if no placement is available for the child then the general fund would likely have to cover 100 percent of the cost because Medicaid might decertify them.

CHAIR DYSON asked what decertify means.

MS. CLARKE explained that being decertified means that the 30 days is up and the child typically no longer needs the psychiatric hospital treatment, but they do need a continuum of care from mental health facilities. Through careful planning they are trying to ensure that there is in-home care, outpatient care, group homes, and residential psychiatric treatment centers so that the psychiatric hospital isn't the only alternative.

CHAIR DYSON asked if she said that decertify means going from acute hospital care to a lesser level of care.

MS. CLARKE said decertification means the insurance program won't pay any more.

SENATOR GUESS referred to Section 1 and asked whether she could continue operating an original facility without going through a new CON process if she had also constructed a new facility and was running it using the original certificate of need.

MS. CLARKE said she thought the answer was yes, one time, but she would need to verify that. She then asked whether the language didn't refer to a sale.

SENATOR GUESS said the language doesn't refer to a sale; it refers to moving. Furthermore, she said it seems that there could be over capacity if that were allowed.

MS. CLARKE read the existing law that says, "as long as neither the bed capacity nor the number of categories of health services provided at the new site is greater."

SENATOR GUESS agreed the new site couldn't have greater capacity, but she wondered whether she couldn't run both sites using just the one CON.

CHAIR DYSON opined that you couldn't do that because that would increase the capacity set in the original CON process.

SENATOR GUESS asked whether the CON controls the capacity.

CHAIR DYSON explained it's like a government license to provide X amount of service.

CHAIR DYSON announced that he wanted to use the balance of the time to take public testimony from anyone that wouldn't be available on Monday.

JOHN WILLIAMS, Mayor of the City of Kenai, testified via teleconference to say that they are interested because there are several groups that would like to build a psychiatric facility for children in Kenai. They applaud Senator Green's work to bring children home and place them in care units in the state.

Most recently the city has been involved with two capable companies each of which would like to build a 30-bed unit in Kenai. Both companies have expended considerable time and money to get started this year, but he sees many issues in the bill that would prolong and delay the process.

Pointing to the DHSS fiscal note dated 3/24/04 and prepared by Sherry Hill he noted it says that 728 children between the ages of 7 and 19 were served in FY 02 and that it's conceivable that up to 150 new RPTC beds could be built in Alaska. The 60 beds that might be built in Kenai would just scratch the surface of need for these types of facilities and he said he could see no reason to delay by tying the companies down with a great deal more paperwork.

In conclusion he said the City of Kenai recommends placing the effective date of the bill as of January 1, 2005 rather than making it effective immediately. Doing so would allow the two companies working in Kenai to begin building the facilities immediately. He added that he understands there might be 30 to 60 other beds that are in the planning stage that might also be expedited if the effective date were to be changed. This too is beneficial to the state since DHSS recognizes an immediate need for 150 beds.

PAUL FUHS, Alaska Open Imaging representative, said he'd like to frame some of the issues the first of which is why the bill is so confusing. The reason, he said, is because it's a bill that's designed to address a specific lawsuit.

Another point is that this is an effort to restrict what people can do. For the government to tell you whether or not you can go into business is the most extreme action that a government can

take, he said, so there'd better be solid justification for doing that.

He continued to say:

Mr. Chairman, you hit the nail on the head when you asked, 'Show us where the cost savings are going to be.' Because what's actually happened is when these independent testing facilities have resulted in lower prices - up to 30 percent lower. So then you get into the argument - well it's not really cost control. Now it's over to we want a level playing field. And the hospitals - we need to overcharge on imaging because we're making up for something else. And in all the hearings that were held, no one came forward and showed their economics to show why they needed this. They didn't come and show why when we went through this - one hospital, Providence, they made \$13.4 million in revenues over expenses last year. So why do they need that protection and what happened to that money? And then you get into the smaller hospitals and they say well it's to protect the smaller hospitals, but the smaller hospitals themselves said that new imaging would not develop in small communities where there are low patient volumes, but only in the largest markets of Anchorage, Fairbanks, Wasilla, Kenai and Juneau. So it's not the small hospital. That is a completely empty argument that the department itself dismisses. It's really the big hospitals trying to limit competition. That's what it comes down to.

Although some of these are listed as non-profits, I pulled off of Moody's or Dun and Bradstreet, some of the financials on some of these corporations. Providence - \$3.5 billion in revenues last year. This isn't some mom and pop non-profit. They're also showing profits of \$58 million a year - 38 percent increase over the previous year. Triad hospitals in the valley - a \$3.8 billion corporation - they're in the Fortune 500. That's who's managing that. Banner Corporation for Fairbanks Memorial - \$2.1 billion corporation - a private non-profit corporation. So before you believe the idea that these are poverty-stricken operations that need government protection, I hope that you'll take a look at some of these financials and maybe some other information will be brought out.

The other thing I want to mention - you can level the playing field two ways. You can either increase government regulation or you could decrease it and that's what we offered on the House side. We said well let's relieve the hospitals of this too especially for imaging. This technology driven sector - it's not a bed - you want the best technology available. But when that was offered, it was not even allowed to go to second reading on the House floor to even have the amendment considered. So that's how strong it's been to even try to restrict the discussion on this.

I hope your committee will look into all these issues. I think you'll hear a lot of testimony and hopefully we'll have a much clearer discussion on the issues than occurred in the other body.

**TAPE 04-26, SIDE A**

**3:05 pm**

SENATOR GUESS said she looked forward to a discussion with his client about policies for the uninsured and the underinsured and whether anyone from those populations gets served in these facilities. She then remarked that government does get involved with natural monopolies in situations such as this so it's an overstatement to say that there isn't a government role in this type of market. Whether it's appropriate or not is a separate question.

MR. FUHS reiterated if you restrict people's private activities then you must have strong justification.

CHAIR DYSON referenced the goal of bringing children with psychiatric needs home to Alaska and asked Ms. Clarke how long it would take the two companies already working on the peninsula to go through the CON process.

MS. CLARKE explained that they would first submit a letter of intent so that DHSS would send them an application.

CHAIR DYSON asked whether there was a review and culling process when the letter of intent is filed.

MS. CLARKE said that when the letter of intent is received then DHSS sends a letter back affirming or denying eligibility.

CHAIR DYSON asked how long that would take.

MS. CLARKE pointed to an example that took one day. The next step is for the company to submit a CON application for which DHSS provides some technical assistance. In the example referenced above, it took two months for the company to complete the application. At that point, DHSS goes through a process of declaring the application complete. That took several days in the example, but could take longer if the application was more extensive. Once the application is complete there is a noticed public hearing and in the example used that took about four weeks. After the public meeting the information is reviewed, which took four to five weeks in the example. Finally, the information is submitted to the commissioner's office for a decision.

According to current statute, 90 days is allowed for the entire process once an applicant submits a CON. This legislation would shorten the process to 60 days.

CHAIR DYSON asked if that was from the time the letter of intent is received to when a decision is issued.

MS. CLARKE clarified it's from when the completed CON application is received to the decision. She then added that there is a 30 day comment period included within that time period.

SENATOR GREEN asked whether the commissioner would issue a decision within that time.

MS. CLARKE said no, the 90 day period is the time up until the commissioner receives the information. The commissioner does not have a time period within which to make a decision and that time period varies from a day or two up to several months.

CHAIR DYSON asked how to avoid changing the rules in the middle of the game for the two companies already working in Kenai.

MS. CLARKE said that discussions related to the effective date came up in the House and she had information in her office to further that discussion and would bring it to the hearing on Monday. With regard to Mayor William's testimony she said the department is interested in having the residential psychiatric treatment centers covered by CONs so they can be located in many communities so the residents are able to be close to their support groups.

CHAIR DYSON asked if it is true that the companies would still have to go through a licensing process before they could receive children that are either in state custody or in state supported treatment programs in other states.

MS. CLARKE told him that is correct.

CHAIR DYSON questioned how long the licensing process takes.

MS. CLARKE said she would have to get back with that information.

CHAIR DYSON pressed for an estimate.

MS. CLARKE said she didn't have an answer.

CHAIR DYSON posited it was months, but he would enjoy receiving that information at the next hearing. He then asked if DHSS could combine the licensing and CON processes and announce that they would only license so many beds within a single region.

MS. CLARKE responded she would have to speak with the licensing staff.

CHAIR DYSON observed that even someone that was successful in the CON process would still have to go through the licensing process.

MS. CLARKE agreed then clarified that the licensing process looks at different things such as health and safety and the facility.

CHAIR DYSON continued to say, "In your efforts to provide facilities where they're needed, in the government's opinion, you can only restrict people you can't make anything happen in a new place."

MS. CLARKE told him they are working very hard to encourage private providers and others to look at a number of facilities across the state. "The government is doing what it can."

CHAIR DYSON remarked that the answer is still yes.

SENATOR GREEN asked how much longer the meeting would last.

CHAIR DYSON said he'd like to wrap up in five minutes, but he wanted the committee to make it clear what additional information they want and what they're struggling with. If any members were thinking about offering amendments then he would like them to let people know so they could be prepared on Monday.

SENATOR GREEN said she would like to review when the \$1 million cap was set.

MS. CLARKE advised that the original CON threshold was \$150,000 and that was changed to \$1 million in the mid 1980s

SENATOR GREEN said she though the equivalency today was \$2.5 or \$2.75 million so if the intent is the same then it's probably still reliable for most construction. Some new equipment costs have gone down though so that might be an issue worth talking about. She then asked about the timeline and asked at what point the department releases the information publicly.

MS. CLARKE said she thought it was when the review is complete, but she would get back with the information. There is an opportunity to publicly notice that someone has applied and this has been important in the past because there have been situations in which there were competing applications.

SENATOR GREEN said, "I think it's very inappropriate that there is any disclosure of information about a CON application until the application is deemed complete. And I do not think that information should be posted, that information should not come from the department that should be a confidential arrangement."

CHAIR DYSON asked whether she wanted to add language to the bill.

SENATOR GREEN replied that with regard to amending she had a question because when they last reviewed the CON there were regulations that were at odds with current statutes. She questioned whether the regulations had been cleaned up.

MS. CLARKE replied there were attempts to clean them up, but it wasn't done.

SENATOR GREEN suggested that the committee draft a letter of intent saying the regulations must comport to current statute because they are woefully out of date and very misleading. She announced that she would like the certificate of need director

to attend the next meeting. She then asked what the difference is between an approved adolescent treatment bed and a residential psychiatric treatment bed subject to the CON.

MS. CLARKE replied she was referring to the acute care bed, which is a hospital psychiatric bed. Hospitals and psychiatric hospitals are covered by CONs. Residential treatment centers are not acute hospital care and they are not currently covered by CONs.

SENATOR GREEN said she misunderstood and thought there was a current process for approving psychiatric treatment beds, but now she understands that she was talking about acute beds in a hospital setting.

MS. CLARKE said yes.

SENATOR GREEN asked what other acute psychiatric beds for adolescents are provided in Alaska.

MS. CLARKE replied she could get that information.

CHAIR DYSON asked Ms. Clarke to provide some discussion as to why the department can't say they would only license X number of beds in a community that they would pay for through Medicaid, Medicare, or general fund.

He announced he would hold the bill in committee for further discussion on Monday.

CHAIR DYSON adjourned the meeting at 3:30 pm.