ALASKA STATE LEGISLATURE
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE
February 10, 2005
3:18 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Tom Anderson
Representative Sharon Cissna
Representative Berta Gardner
Representative Vic Kohring

MEMBERS ABSENT

Representative Paul Seaton, Vice Chair
Representative Lesil McGuire

COMMITTEE CALENDAR

HOUSE BILL NO. 95
"An Act relating to public health and public health emergencies and disasters; relating to duties of the public defender and office of public advocacy regarding public health matters; relating to certain claims for public health matters; making conforming amendments; and providing for an effective date."

- MOVED CSHB 95(HES) OUT OF COMMITTEE

HOUSE BILL NO. 105
"An Act relating to coverage for adult dental services under Medicaid; and providing for an effective date."

- MOVED CSHB 105(HES) OUT OF COMMITTEE

HOUSE BILL NO. 106
"An Act establishing the senior care program and relating to that program; creating a fund for the provision of the senior care program; repealing ch. 3, SLA 2004; and providing for an effective date."

- MOVED CSHB 106(HES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 95
SHORT TITLE: PUBLIC HEALTH DISASTERS/EMERGENCIES
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/21/05	(H)	READ THE FIRST TIME - REFERRALS
01/21/05	(H)	HES, JUD
02/10/05	(H)	HES AT 3:00 PM CAPITOL 106

BILL: HB 105
SHORT TITLE: MEDICAID FOR ADULT DENTAL SERVICES
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/24/05	(H)	READ THE FIRST TIME - REFERRALS
01/24/05	(H)	HES, FIN
02/08/05	(H)	HES AT 3:00 PM CAPITOL 106
02/08/05	(H)	Heard & Held
02/08/05	(H)	MINUTE(HES)
02/10/05	(H)	HES AT 3:00 PM CAPITOL 106

BILL: HB 106
SHORT TITLE: SENIOR CARE PROGRAM
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/24/05	(H)	READ THE FIRST TIME - REFERRALS
01/24/05	(H)	HES, FIN
02/08/05	(H)	HES AT 3:00 PM CAPITOL 106
02/08/05	(H)	Heard & Held
02/08/05	(H)	MINUTE(HES)
02/10/05	(H)	HES AT 3:00 PM CAPITOL 106

WITNESS REGISTER

RICHARD MANDSAGER, M.D., Director
Division of Public Health
Alaska Department of Health and Social Services
Juneau, Alaska
POSITION STATEMENT: Presented HB 95 to the committee.

MICHAEL MACLEOD-BALL
American Civil Liberties Union
Anchorage, Alaska
POSITION STATEMENT: Presented concerns about HB 95.

NATHAN JOHNSON, Division Manager
Anchorage Municipal Department of Health and Human Services
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 95.

DAN BRANCH, Senior Assistant Attorney
Civil Division

Department of Law
Juneau, Alaska
POSITION STATEMENT: Answered questions regarding HB 95.

DELISA CULPEPPER, Chief Operating Officer
Alaska Mental Health Trust Authority
(Address not provided)
POSITION STATEMENT: Testified in support of HB 105.

PAMELA HAWEK
Anchorage Neighborhood Health Center
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 105.

DIANE DISANTO, Special Assistant
to Mayor Mark Begich
Municipality of Anchorage
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 105.

RICHARD GREEN, Major
Salvation Army
Fairbanks, Alaska
POSITION STATEMENT: Testified in support of HB 105.

GEORGE BIRD, M.D.
Tanana Chiefs Conference
Fairbanks, Alaska
POSITION STATEMENT: Testified in support of HB 105.

DENA SUMMER PEDEBONE
Tanana Chiefs Conference
Fairbanks, Alaska
POSITION STATEMENT: Testified in support of HB 105.

TOM BORENSTEIN, D.D.S., Director of Dental Services
Southeast Alaska Regional Health Consortium
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 105.

MARIE DARLIN
AARP Capital City Task Force
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 105 and 106.

SUSAN PHIPPS
National Alliance for the Mentally Ill

Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 105.

ACTION NARRATIVE

CHAIR PEGGY WILSON called the House Health, Education and Social Services Standing Committee meeting to order at 3:18:40 PM. Representatives Anderson, Cissna, Gardner, and Wilson were present at the call to order. Representative Kohring arrived as the meeting was in progress.

HB 95-PUBLIC HEALTH DISASTERS/EMERGENCIES

3:20:10 PM

CHAIR WILSON announced that the first order of business would be HOUSE BILL NO. 95, "An Act relating to public health and public health emergencies and disasters; relating to duties of the public defender and office of public advocacy regarding public health matters; relating to certain claims for public health matters; making conforming amendments; and providing for an effective date."

3:20:18 PM

RICHARD MANDSAGER, M.D., Director, Division of Public Health, Alaska Department of Health and Social Services presented HB 95 to the committee. He directed attention to "slides" printed in a handout available in the committee packet and read the quote from the Institute of Medicine on page 2: "Public Health is what we, as a society, do collectively to assure the conditions in which people can be healthy." He said:

> What we're going to be talking about today is the governmental part of the public health system. And I think it's important to just put it in context that public health system is a partnership of government, of individuals, of nonprofits and communities of municipal governments, and other levels of government too. ... As I think about the contributions of the governmental part of the public health system in our country over the last 150 years, as a physician, it seems to me the most significant undertaking in our country was the institution of sewage removal and treatment in cities that started in the 1800s. And then shortly thereafter, provision of safe water began being instituted throughout cities. In post-World War

II era, ... protection from vaccine-preventable diseases. ... In more recent decades, clean indoor air is a part of the governmental action, and ... taking lead out of gasoline to prevent lead poisoning.

DR. MANDSAGER turned to page 3 and continued:

It is important to remember that public health is not health care; we're talking today about the focus on populations, not individuals primarily. We're talking about prevention primarily, not treatment, and government's unique role in this; ... the legal obligations to prevent disease, disability, injury, and illness among populations. ... [For example:] immunizations to prevent vaccine-preventable diseases; PPDs [purified protein derivative, a method of testing for tuberculosis, or Tb] ...; [and] injury prevention.... [Public health personnel] train with small outbreaks; we're pretty invisible if the job is done right, but it's important to always be prepared and trained and in the background for when we're needed.

3:24:56 PM

DR. MANDSAGER continued:

We have much better laboratory testing capabilities since [the terrorist attacks of September 11, 2001] as a part of our preparedness mission. But there are weaknesses and that's really what we're talking about today. The inadequate legal authorities that are addressed in the proposal that's before you in HB 95; the inadequate laboratory facility for virology, HB 100, that'll be considered by another committee; our dependence on federal funds ...; and then [the stress on] staff to be able to both prepare and to deliver services every day....

DR. MANDSAGER turned attention to page 5 that showed photos of old public health enemies such as polio, influenza, and tuberculosis. He explained that the traditional disease controls included quarantine and isolation, and he pointed out that these controls are "buried in this bill ... as to what authorities government has, hopefully to use rarely, but needs to have available when needed." He then turned to page 7 regarding SARS (Severe Acute Respiratory Syndrome), and said

that in 2003 the legislature amended the current statute to give [the Department of Health and Social Services] the authority to quarantine or isolate if needed in case there was a SARS outbreak. He said:

> These days we worry a lot about something called avian flu. It's in Southeast Asia. It's now become endemic in the poultry and duck and other bird populations in Southeast Asia. It's very virulent and lethal; [it has] about a 70 percent mortality rate in Southeast Asia in the last couple of years. Thankfully it's not very transmissible, human to humans; it's mostly from birds to humans and people that live in close proximity. In the last three months, though, ... the World Health Organization [WHO] reported the first three cases of possible human-to-human transmission. If this mutates and becomes transmissible, it's a bad disease and we need to be prepared. So I would argue that it's both the right thing to do, that we need to update our statutes; and it's also the ethical thing to do, that we need to be prepared as a community.... It's about balance between the mission to protect public health and the ... obligation for individuals to have due process rights if government overreaches. And that's the balance we're trying to achieve in this statute.

DR. MANDSAGER then directed attention to page 8 and said:

> Our laws are old. The basic statutes date from territory days. They have been amended twice: in 1995 and 2003, once for Tb and once for SARS, but are generalizable in the current understanding of the courts. Now we might get lucky and the judge might construe that we have broad authorities and give us the right to quarantine or isolate if we need to. But it's not a good policy that we should go forward depending on different judicial interpretations in different courts for how to proceed. So this is a set of laws that is old; it's stood us pretty well but needs to be updated.

3:28:54 PM

DR. MANDSAGER turned to page 9 and explained HB 95 to the committee. He said:

> It's a framework that brings up to date the current understandings of public health missions, services, and role. It gives clear authority for the control for conditions of public health importance and defines that term, because that's really the essence of what the governmental part of the public health system does. And it provides modern due process provisions for the protection of individual rights. ... [HB 95] defines the essential public health services that's based on accepted definitions from U.S. Public Health Function Task Force. It's based on work from the Institute of Medicine.... This proposal describes the state's role in protection and promotion of the public's health, provides clear authority for control of conditions of public health importance through the tools of surveillance, epidemiologic investigation, treatment, quarantine, and isolation.

DR. MANDSAGER related a story in which the [Division of Public Health] worked in partnership with the Centers for Disease Control and Prevention (CDC) and the community of Kivilina to test the villagers for possible lead contamination last summer. He also shared a story about the town of Ambler. He explained that construction activities were halted in town last summer because asbestos was found in the gravel. Last fall the division asked for adult volunteers from Ambler to have x-rays so doctors could look for signs of asbestos-caused scarring in their lungs. Dr. Mandsager told the committee that these two stories are examples of noninfectious disease work that the governmental part of public health is involved in.

DR. MANDSAGER pointed out that the bill will strengthen the confidentiality and security of records. He said, "We feel strongly that we depend really on voluntary provision of data ... and we have a big responsibility to the public to protect that data, [to ensure] that it's kept in a confidential and secure manner. ... The current statutes are not very clear about what our responsibilities are about that."

3:33:14 PM

DR. MANDSAGER turned to page 11 and stated that the bill has five different parts: purpose and intent in Section 1; administration of public health laws by the department in Sections 4, 5, and 7; public health authority and powers in Section 8; legal representation and court powers in Sections 9, 10, and 11; and general provisions in Sections 2, 3, 6, 12, and

13. He moved to page 12 and explained three of the five parts in more depth:

> [The] purpose and intent [of HB 95] is really to protect and promote the health of the citizens of this state to the greatest extent possible. ... Administration of public health law ... [is to] modernize and clarify the public health powers, clarify the nature of regulations for reporting, ... definition of "conditions of public health importance." And the powers and authority is really around the infectious disease part, around quarantine, isolation, [and] treatment. ... The mission of public health is to protect the health of the community, so once somebody is found to have an infectious disease, the person really then has a choice: they can choose to stay isolated or they can choose to get treated.

DR, MANDSAGER emphasized that quarantine and isolation are used very rarely. He noted that in the last decade the division has only thought about using it twice. He then explained that page 13 refers to a memo from Legislative Legal and Research Services regarding HB 95. He said that there are seven different questions raised in the memo. The first question was whether sufficient notice is provided in due process provisions. He commented that from the department's view, there is a fair balance between individual rights and public protection. The second question was why refusal of medical treatment is allowed. He responded that an infected person may choose to be isolated rather than treated. The third question asked why there are no criminal penalties for non-compliance. He replied that he feels penalties will be required very infrequently, and that if people do not comply it will not be out of criminal intent but out of fear. The fourth question was whether access to medical records provision HIPPAA (Health Insurance Portability and Accountability Act of 1996) compliant, and Dr. Mandsager replied that it was. The fifth question was if an indirect court rule amendment was made by this bill. He responded that this may be an issue, and there is a proposed amendment to the bill to fix this.

3:40:01 PM

REPRESENTATIVE ANDERSON moved to adopt Amendment 1, labeled 24-GH1002\A.2, Mischel, 2/10/05, which read:

> Page 1, line 4, following "**amendments;**":

Insert "**amending Rules 4, 7, 8, 38, 40, 65, 72, and 77, Alaska Rules of Civil Procedure;**"

Page 24, following line 12:

Insert new bill sections to read:

"* **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENTS. (a) AS 18.15.375(c)(3), (d), and (e) and 18.15.385(d) - (k), as added by sec. 8 of this Act, have the effect of amending Rules 4, 7, 8, and 77, Alaska Rules of Civil Procedure, relating to the form and timing of service of process, pleadings, and motions by adding special proceedings, timing, and pleading requirements for matters involving public health.

(b) AS 18.15.375(c)(3), (d), and (e) and 18.15.385(d) - (k), as added by sec. 8 of this Act, have the effect of amending Rule 38, Alaska Rules of Civil Procedure, relating to a right to a trial by jury, by requiring a court trial in matters involving public health.

(c) AS 18.15.375(c)(3), (d), and (e) and 18.15.385(d) - (k), as added by sec. 8 of this Act, have the effect of amending Rule 40, Alaska Rules of Civil Procedure, relating to the trial calendar and continuances, by requiring expedited hearings and specific standards for and timing of granting of continuances in matters involving public health.

(d) AS 18.15.375(c)(3), (d), and (e) and 18.15.385(d) - (k), as added by sec. 8 of this Act, have the effect of amending Rule 65, Alaska Rules of Civil Procedure, relating to injunctions, by allowing temporary and ex parte injunctions to be issued and by expediting the procedures related to injunctive relief in matters involving public health.

(e) AS 18.15.387, as added by sec. 8 of this Act, has the effect of amending Rule 72, Alaska Rules of Civil Procedure, relating to eminent domain actions, by authorizing the Department of Health and Social Services to take immediate control over certain businesses and property in cases of public health disasters.

* **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TWO-THIRDS VOTE REQUIRED. AS 18.15.375(c)(3), (d), and (e), 18.15.385(d) - (k), and 18.15.387, as added by sec. 8 of this Act, take effect only if sec.

12 of this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska."

Renumber the following bill sections accordingly.

There being no objection, Amendment 1 was adopted.

3:40:26 PM

DR. MANDSAGER moved to the sixth question listed on page 13: "Why are parents deprived party status in quarantine/isolation hearings of unemancipated minors?" He replied that this was an error that should be corrected.

3:42:15 PM

REPRESENTATIVE ANDERSON moved to adopt Conceptual Amendment 2:

Page 15, line 16:

Delete "minor; however, parents or guardians of the minor do not have party status in the proceedings under this section"
Insert "minor"

[The committee members recognized that this was a conceptual amendment taken from an amendment labeled 24-GH1002\A.1, Mischel, 2/10/05, which Representative Anderson split into two separate amendments.]

There being no objection, Conceptual Amendment 2 was adopted.

3:43:36 PM

DR. MANDSAGER turned to the seventh question on page 13, "Is shared jurisdiction with DEC [Alaska Department of Environmental Conservation] in cases involving contaminated material in a public health disaster addressed?" He replied that HB 95 is the result of discussions between Department of Health and Social Services (DHSS) and Department of Military & Veterans' Affairs (DMVA). He said:

The authorities for a public health disaster ... would be clearly identified with DHSS and that's why it's written as it is with contaminated material or infectious waste put together under DHSS-

responsibility. Clearly we can't predict what kind of a public health disaster we'd have, and whatever the material is or whatever the disaster is, it would clearly be a partnership between DEC, DHSS, DMVA, in terms of dealing with that disaster scenario.

3:44:37 PM

DR. MANDSAGER directed attention to page 14 and pointed out that the Trust for America's Health considers Alaska to be the only state in the country that does not have adequate statutory authority to quarantine in response to a hypothetical bioterrorism attack scenario.

3:45:30 PM

DR. MANDSAGER presented Amendment 3 and explained that it addressed some of the concerns voiced by the Office of Public Advocacy to clarify their role in regards to guardian ad litems if minors are involved in a quarantine or isolation scenario.

3:46:11 PM

REPRESENTATIVE ANDERSON moved to adopt Amendment 3, labeled 24G-1, 1/26/05, (2:38 PM), which read:

Page 13, line 28, following "(g)," through page 13, line 31:
Delete all material.

Page 14, line 1:
Delete "the office of public advocacy to provide a guardian ad litem for the individual."

Page 17, following line 14:
Insert the following new material:
"**Sec. 18.15.389. Representation; guardian ad litem.** An individual who is the respondent in proceedings under AS 18.15.355 - 18.15.390 has the right to be represented by counsel in the proceedings. If the individual cannot afford an attorney, the court shall direct the public defender agency to provide an attorney. The court may, on its own motion or upon request of the individual's attorney or a party, direct the office of public advocacy to provide a guardian ad litem for the individual."

There being no objection, Amendment 3 was adopted.

3:46:41 PM

DR. MANDSAGER then presented Amendment 4, labeled 24-GH1002\A.1, Mischel, 2/10/05. [The committee had previously agreed to split this amendment into two separate amendments; the other half of the amendment was adopted as Conceptual Amendment 2.] He explained that Amendment 4 came out of Senate Health, Education and Social Services Standing Committee, who dealt with this bill and adopted this amendment yesterday. He said that senators wanted to clarify that dead bodies may be transported without being embalmed because some people may have religious reasons for not having a body embalmed.

3:47:39 PM

REPRESENTATIVE ANDERSON moved to adopt Amendment 4, which read:

> Page 1, line 4, following "**amendments;**":
> Insert "**relating to the treatment and transportation of dead bodies;**"
>
> Page 6, line 17, following "bodies;":
> Insert "**, except that the commissioner may not require that a dead body be embalmed unless the body is known to carry a communicable disease or embalmment is otherwise required for the protection of the public health or for compliance with federal law**"

[The committee members recognized that this was a conceptual amendment taken from an amendment labeled 24-GH1002\A.1, Mischel, 2/10/05, which Representative Anderson split into two separate amendments.]

DR. MANDSAGER pointed out that [the department] has not finished reviewing interstate statutes, however he said that he thought that the amendment was fine.

REPRESENTATIVE ANDERSON objected for discussions purposes. He remarked that many of the committee members are also on the House Judiciary Standing Committee as well, and can discuss the amendment further there. He removed his objection.

There being no objection, Amendment 4 was adopted.

3:49:45 PM

MICHAEL MACLEOD-BALL, American Civil Liberties Union (ACLU), commented on HB 95:

> By the very nature of this bill, it contemplates that individual Alaskans will give up some of their personal freedoms and permit the government to intrude on their privacy under certain circumstances. We agree that under some of the dire circumstances cited by the administration that such restrictions may be appropriate. Our concern with this bill, however, is that as drafted, it contemplates giving the government the right to quarantine and isolate individuals, and to inspect and retain private medical records in circumstances not nearly so dire as the examples cited. We do not oppose the intent of this bill; rather, we seek to limit the circumstances when the government can exercise those intrusions on our liberty and privacy solely to those dire emergencies that demand extraordinary government action to preserve our society. The Alaska Civil Liberties Union believes we can be both safe and free. We have not presented a section by section analysis of this bill so that we can meet with Dr. Mandsager and talk about our concerns. ... After that I would hope that we would be able to provide you with some specific suggestions to ... improve this bill and preserve some of those individual freedoms.

MR. MACLEOD-BALL continued:

> I would like to bring up four broad areas ... where our concerns exist. First, we believe the government's right to quarantine or isolate an individual against his or her will, or to access that individual's private medical records should only exist in the very narrowest set of limited circumstances. As written, we believe the right to access identifiable private medical records and to quarantine or isolate an individual against his or her will is too broad. The department's authority to access records or isolate derives from [Section 18.15.355, page 7, lines 21-23] of the bill. There it states that the department may use the power set out in the bill "to prevent, control, or ameliorate conditions of

public health importance or accomplish other essential public health services and functions."

3:52:33 PM

MR. MACLEOD-BALL explained:

By our reading, that will give the department the right to impose a quarantine or isolation order on an individual, or to access private medical records based on nothing more than routine administrative purposes. "Essential public health services and functions" is defined [in Section 18.15.390, page 18, lines 11-31] and includes a list of routine functions, and that list is not unreasonable in any sense. However that list of functions should not serve as the basis for the department's exercising its extraordinary authority to quarantine or isolate individuals against their will, or to access their private medical records. Instead that authority should not be triggered except in the most unusual circumstances. The other phrase "conditions of public health importance" ... is the key phrase here. If the definition of that phrase were to be very narrow so as to define extreme public health emergencies, then the department's right to use the quarantine and isolation authority would only be available in those extreme cases. Our concern, however, is that the definition of "conditions of public health importance" is rather broad [Section 18.15.390, page 17, lines 19-22].... A condition of public health importance arrives from "a threat to health that is identifiable on an individual or community level, and can reasonably be expected to lead to adverse health effects in the community." "Adverse health effects" is not defined anywhere in the bill.... By that standard, the department could trigger its ability to restrict individual liberty interests and to invade personal medical privacy in the event, for example, that a minor bug runs through a community, without endangering anyone's lives. We do not believe that it is the intent of the department to interpret this bill in this fashion, but the fact remains that the language of the bill as drafted can reasonably and fairly be interpreted in this way. We would strongly recommend that the definition of that term "condition of public health importance" be narrowed to reflect only far more serious public

health events, giving due consideration to the nature of the disease, the level of contagion, the means of transmission, and the seriousness of the impact on the individual patient.

MR. MACLEOD-BALL continued:

Our second broad area: the government should be required to affirmatively protect the privacy of identifiable medical records and to destroy such records when no longer needed to address the public health need. We're concerned that the language surrounding the government's right to access and retain identifiable medical records may go too far. [In Section 18.15.360, page 8, lines 23-25], the statute contemplates issuance of regulations to govern the department's access to such private information. The only standard to limit the regulatory scheme is set forth [in Section 18.15.365, page 8, line 26-29], which does mandate that such records be held in confidence. We would prefer a more rigorous set of standards to govern the rulemaking process, including, for example, a specific prohibition on the use of private medical records for any purpose other than those in connection with the disease outbreak or public health crisis; a specific prohibition on the disclosure of such information to anyone other than those public health officials involved in the public health event; the obligation to destroy copies of such records when they are no longer needed; and an affirmative statement that such records could not be used in any civil or criminal proceeding without that individual's consent.

MR. MACLEOD-BALL continued:

Our third broad area of concern: the bill should contain affirmative protections that the affected individuals will not suffer negative impacts in their civil transactions or criminal proceedings due solely to the government's action under its authority. We believe that the law can be improved by adding such affirmative protections as: that the quarantine, isolation, or medical records access will have no impact on their housing, employment rights, parental rights, or other civil rights; that the action would have no impact on any civil or criminal proceedings

involving that individual; that the individual be compensated for any property taken or lost through the government's exercise of its authority; and that the action does not act to waive the doctor-patient confidentiality, and imposes such a restriction on any medical professional that gains access to that information through this process.

3:56:40 PM

MR. MACLEOD-BALL continued:

Our fourth and final broad area of concern has more to do with the procedure side of this. The affected individual should have access to the legal system throughout the process and the restrictions imposed should be narrowly drawn. We appreciate the efforts of the department to provide a clear process, and though our concerns are significant, it is clear that there is a process available to individuals whose rights have been restricted under this bill. Most of our concerns in the procedural area could be resolved by the following three suggestions.

MR. MACLEOD-BALL continued:

First and foremost, remove the availability of an ex parte proceeding. [Section 18.15.375, page 9] contemplates a proceeding to which the affected individual would have no access, but under the statute that individual would already have been made aware of the department's concern, and therefore we don't see the need to bar that person from access to those legal proceedings and taking part in it actively. Secondly, the isolation or quarantine order should include a specific date of determination based upon the projected course of the public health event and that individual's contagiousness or disease. The statute allows an open-ended term, up to 30 days with the individual having the right to challenge. Instead, we believe that the burden should be on the state. The state should have to show how long the order should be in place at the outset, and then put the burden on the state to seek an extension if conditions warrant. And thirdly, under this procedural category, we would like to see that there be a change to and a heightening of the standard for issuing a quarantine or isolation

order. As written, the standard for the court is "substantial risk to public health." Again, I did not see a definition of that particular term. Instead we would prefer a defined term ... more closely aligned with the basis for the action. As before we would like due consideration given to the nature of the condition, the level of contagion, the means of transmission, and the impact on the individual. In short, because this law contemplates placing restrictions on individual liberty, and because it contemplates granting the government access to someone's most private records, the closest scrutiny is required. For each element of this bill we would ask a committee to ask the following four questions: Is there a compelling state interest? Is the state action targeted narrowly? Is the state action the least restrictive that it could be in both time and scope? And does the individual have an effective right to object before imposition of the restrictions? If each of these questions can be answered in the affirmative, then a bill will better than in its current form.

3:59:45 PM

CHAIR WILSON commented that those are common sense issues that the committee needs to be concerned about. However, she remarked, this committee is really looking at the policy and the House Judiciary Standing Committee will scrutinize the bill regarding Mr. Macleod-Ball's concerns.

4:00:34 PM

REPRESENTATIVE ANDERSON commented that he concurred with Mr. Macleod-Ball's first two points. He asked Mr. Macleod-Ball to submit his comments in writing. He also pointed out Section 18.15.360 on page 8, lines 9-10, which authorizes the department to collect any other data needed to accomplish or further the mission or goals of public health, or provide essential public health services or functions. He remarked that this is illustrative of how broad the bill is.

REPRESENTATIVE GARDNER also asked for written copies of the testimony.

4:02:27 PM

NATHAN JOHNSON, Division Manager, Anchorage Municipal Department of Health and Human Services, testified in support of [HB 95] on behalf of the Municipality of Anchorage and the department. He commented that most of Alaska's public health laws are antiquated and were created in response to conditions that existed 50 years ago. He said:

> In this age of global travel and increasing number of drug-resistant infectious diseases, it is imperative that we be prepared, whether it is for a bioterrorism event or the occurrence of a particularly virulent and potentially lethal disease, such as pandemic flu. If a public health disaster strikes, there won't be time for the lawyers and the risk assessors to sort out the extent and scope of the our public health authority and powers. ... In cases of a biological contagion [that is] potentially lethal, time is of the essence, so it's critical that both the state and local public health be able to act quickly and decisively to address it. This bill is very important to the Municipality of Anchorage, as it clarifies ahead of time the extent and scope of public health powers, and provides explicit due process to protect individual rights. It is important to tease out and clarify these issues before a public health disaster lands in our lab. The State of Alaska and the Municipality of Anchorage work in tandem on a nearly daily basis on infectious disease surveillance, investigation, prevention, and many other public health measures. And passing this legislation will only serve to improve this relationship and further both of our abilities to work together to protect the health and well being of the Alaskan public.

4:05:03 PM

REPRESENTATIVE KOHRING asked that the members of the House Judiciary Standing Committee closely scrutinize this bill. He voiced appreciation of the testimony from Mr. Macleod-Ball and concern that the bill was too general in scope.

CHAIR WILSON stated that the legislature will need to find a balance so that the state can move quickly before an epidemic can get out of control.

4:07:19 PM

REPRESENTATIVE KOHRING commented:

> I can't help but think back to the [USA Patriot Act] and how that seemed to be an overreaction to what happened with [the terrorist attacks of September 11, 2001], and I just wonder if perhaps we're going down that same road with this legislation here, where it's too comprehensive and it's opening the door too much, and we may not be realizing what we're getting into with this bill. I'd just as soon address some of these issues here at the HES committee level.... I certainly, at this point, do not support the legislation.

REPRESENTATIVE ANDERSON moved to [report HB 95 as amended from committee with individual recommendations and the accompanying zero fiscal note.]

4:08:26 PM

REPRESENTATIVE KOHRING objected for discussion purposes.

REPRESENTATIVE ANDERSON remarked:

> I think with the ACLU working with the public health division, and I think with more scrutiny occurring at that level, and by going to [House Judiciary Standing Committee], we have a pretty good timeframe where we can work on this over the next month, and analyze it, and go section to section to see if there are constitutional issues; to see if language is too broad and we can narrow it.

4:10:01 PM

REPRESENTATIVE CISSNA asked Dr. Mandsager:

> At the end of this bill are the ... repealing of the [AS] 18.15.149 and the [AS] 18.15.350, and I know that there's a good explanation for it, but it sure, on the face of it, looks scary. And I know that there's plans for how that gets filled in, but would you mind explaining that?

DR. MANDSAGER deferred to the Department of Law representative.

4:11:06 PM

DAN BRANCH, Senior Assistant Attorney, Civil Division, Department of Law asked Representative Cissna to restate the question.

REPRESENTATIVE CISSNA clarified that she was referring to page 24, line 15 of the bill. She explained that this would removed the tuberculosis and SARS control programs.

4:12:37 PM

MR. BRANCH explained that, except for the repeal of AS 18.05.044 and 18.05.046, all the other repealers would take away the current law that allows [the state] to quarantine people for tuberculosis or SARS. He added that AS 18.15.147 is regarding religious treatment of people with tuberculosis, which is not needed. He commented, "I just want to reassure the committee that, ... after working with this bill, I know that they're looking for the right answer when it comes to due process and the rights of individuals."

REPRESENTATIVE ANDERSON clarified that AS 18.15.143 refers to the religious treatment for tuberculosis. He also stated that AS 18.15.145, screening of school employees, will be removed as well. He commented on the other bills that would be repealed by the bill.

4:15:41 PM

REPRESENTATIVE CISSNA asked what will be put in the place of the repealed sections.

MR. BRANCH responded that the information is in the bill. He said:

> The bill adds an article for public health powers. [Included] in that is ... a section for quarantine and isolation, and one also for epidemiological investigation, which would give us the authority to test people to find out if they need to be isolated or quarantined. So the tools that the old law provided will be replaced with better ones. But the department will still have the authority, if this bill passes, to use the quarantine tool that it has now.

4:16:51 PM

REPRESENTATIVE CISSNA requested that Dr. Mandsager answer the question as well.

DR. MANDSAGER replied that the department has tried to take the same basic authorities that it has used for tuberculosis for decades, and generalized it. He said:

> As we went through the drafting process ... [with] the staff that deal with Tb on a weekly and monthly basis, the internal debate and critique was intense to make sure that the general provisions in this bill fit with what they do on a regular basis, with Tb as the most common condition that we need to use these tools for, and to make sure that they tested the language against what they do to make sure that we don't take anything away ... and that as we go to more generalizable language that we have all the tools and authorities we need for any condition. ... So you won't have Tb or SARS or any other disease identified specifically in statute anymore, but the tools are there for any disease.

4:18:19 PM

REPRESENTATIVE KOHRING removed his objection.

There being no further objection, CSHB 95(HES) was reported from the House Health, Education and Social Services Standing Committee.

HB 105-MEDICAID FOR ADULT DENTAL SERVICES

4:18:52 PM

CHAIR WILSON announced that the next order of business would be HOUSE BILL NO. 105, "An Act relating to coverage for adult dental services under Medicaid; and providing for an effective date."

REPRESENTATIVE ANDERSON moved to adopt CSHB 105, Version 24-GH1081\G, Mischel, 2/7/05, as the working document. There being no objection, Version G was before the committee.

4:19:20 PM

CHAIR WILSON asked if any of the committee members had comments or questions. There were none.

4:19:52 PM

DELISA CULPEPPER, Chief Operating Officer, Alaska Mental Health Trust Authority (AMHTA), testified in support of HB 105. She noted that the AMHTA is helping to fund the fiscal note for this. She commented:

> Dental services have been [an] issue for all four of our beneficiary groups for many years. We do fund some dental services through what we call mini-grants already, and we're noticing a trend over the years that the mini-grants are going more and more to provide basic dental services because there's no other funding for people who ... [are] Medicaid-eligible or lower income and aren't on Medicaid. But our funding for mini-grants isn't available in a timely manner the way people that have a dental emergency or are trying to prevent one would need. And so we've been very supportive of the department's proposal to invest in a more preventive action, realizing that it takes a little time up front to get people to a point where they aren't having these emergencies, but [in the] long term we think that it can eventually save us money and be a much more humane way to provide some of our beneficiaries with the treatment they need when they don't have access to other insurance for dental.

4:21:39 PM

PAMELA HAWEK, Anchorage Neighborhood Health Center, testified in support of HB 105. She pointed out that there are two health center clinics, and a large population of the patients are underserved and underinsured, many of who are Medicaid-eligible. There's a huge gap in the dental care of the adults that are Medicaid-eligible, she commented. Currently approximately 30 adults a week are seen at the clinic, and because they are only eligible for emergency care, she said, "we're pulling a lot of teeth. We're doing very little restorative treatment." HB 105 would allow these patients to make appointments, have exams, and work on restorative dental treatment as well as preventative care. She offered to collect more information for the committee if the members would like.

4:24:07 PM

DIANE DISANTO, Special Assistant to Mayor Mark Begich, Municipality of Anchorage, stated that the Municipality of Anchorage was in total support of this bill. She commented that this bill would expand Medicaid coverage to include preventative and restorative care. She noted that if dental care is not taken care of, it can lead to infection and chronic disease, so in the long run, this bill will save money. AMHTA has recognized access to dental service as a priority issue and are willing to commit funding, she said, and the Medicaid matching funds would apply as well, so the impact to the general fund wouldn't be too much. She said, "The city is working on other ways to look at helping the uninsured, and there's over 100 doctors that are now signed up to do pro bono work, and hopefully in the future we will have dentists."

4:26:13 PM

RICHARD GREEN, Major, Salvation Army, testified in support of HB 105. He pointed out that the Salvation Army has operated a free dental clinic for the last 15 years to the uninsured working poor. Last year the clinic saw about 1,300 clients and provided 450 in-chair appointments. He noted that about 90 percent of the clients have no insurance at all. The Salvation Army dental clinic does not bill Medicare or Medicaid, he said, so "we're probably not going to receive any funds from this, but we see the bill as [meeting] a tremendous need for people who are in need of medical care and yet have no ability to pay for that."

4:27:50 PM

GEORGE BIRD, M.D., Tanana Chiefs Conference (TCC), stated that TCC supports HB 105. He commented that the current Medicaid program has deficiencies in the way that it funds adult dental services; people need routine preventive dental care, not just emergency care.

DENA SUMMER PEDEBONE, Tanana Chiefs Conference (TCC) reiterated that HB 105 would provide a valuable service to those in need.

4:29:55 PM

TOM BORENSTEIN, D.D.S., Director of Dental Services, Southeast Alaska Regional Health Consortium (SEARHC), stated that access to dentistry in Southeast Alaska is limited for the underinsured and the uninsured. He pointed out that SEARHC currently delivers services through a federal grant to the uninsured in

Haines and on Prince of Wales Island; the demand for those services is pretty large, he noted. SEARHC opened a clinic in downtown Juneau last year that provides dental services to homeless people where "we were oversubscribed the day we opened and we've applied for an expansion to that grant that provides those services," he said. He remarked that about four years ago, SEARHC began a children's dental health program in conjunction with the Denali Kid Care program, which has been able to bring pediatric dental specialists to a numbers of Southeast Alaska communities. Expanding these services to adults, he said, would be of benefit.

4:33:05 PM

MARIE DARLIN, AARP Capital City Task Force, commented that the committee already had a letter from her in support of HB 105. She said, "[HB 105] is really definitely needed. It's a preventive aspect that we really need to look at, and saves money down the road."

SUSAN PHIPPS, National Alliance for the Mentally Ill (NAMI), stated that she serves on the NAMI statewide board. The NAMI supports HB 105, she said. She mentioned that anxiety disorders cause people to grind their teeth, which can be harmful particularly when combined with certain medications.

4:35:51 PM

CHAIR WILSON commented that, though this bill will add a lot to the Department of Health and Social Services budget, it will prevent other issues in the long run. She pointed out that there is a cap included in the bill.

4:37:15 PM

REPRESENTATIVE ANDERSON disclosed a possible conflict of interest; he is on the fundraising committee for the Anchorage Neighborhood Health Center.

REPRESENTATIVE ANDERSON moved to report CSHB 105, Version 24-GH1081\G, Mischel, 2/7/05, out of committee with individual recommendations and the accompanying fiscal note.

4:38:44 PM

There being no objection, CSHB 105(HES) was moved from the House Health, Education and Social Services Standing Committee.

HB 106-SENIOR CARE PROGRAM

4:39:12 PM

CHAIR WILSON announced that the final order of business would be HOUSE BILL NO. 106, "An Act establishing the senior care program and relating to that program; creating a fund for the provision of the senior care program; repealing ch. 3, SLA 2004; and providing for an effective date."

[Although there was no formal motion, CSHB 106, labeled 24-GH1090\G, Mischel, 2/8/05 was treated as adopted.]

4:39:57 PM

MARIE DARLIN, AARP Capital City Task Force, testified in support of HB 106 and highlighted the importance of the senior care program.

4:41:16 PM

REPRESENTATIVE ANDERSON moved to report CSHB 106, Version 24-GH1090\G, Mischel, 2/8/05, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 106(HES) was reported from the House Health, Education and Social Services Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at 4:42:40 PM.