ALASKA STATE LEGISLATURE
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE
March 8, 2005
3:07 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Paul Seaton
Representative Tom Anderson
Representative Lesil McGuire
Representative Sharon Cissna
Representative Berta Gardner

MEMBERS ABSENT

Representative Vic Kohring

COMMITTEE CALENDAR

HOUSE BILL NO. 151
"An Act relating to provider responsibility for ocular postoperative care; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 16
"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 HB 16 OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 20
"An Act relating to a separate appropriation bill for operating expenses for primary and secondary public education and establishing a date by which the bill must be transmitted to the governor each year; relating to notice of nonretention for tenured teachers; and providing for an effective date."

- MOVED CSSSHB 20(EDU) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 151
SHORT TITLE: RESPONSIBILITY FOR CARE AFTER EYE SURGERY

SPONSOR(S): LABOR & COMMERCE BY REQUEST

02/14/05	(H)	READ THE FIRST TIME - REFERRALS
02/14/05	(H)	HES, L&C
03/01/05	(H)	HES AT 3:00 PM CAPITOL 106
03/01/05	(H)	Scheduled But Not Heard
03/08/05	(H)	HES AT 3:00 PM CAPITOL 106

BILL: HB 16
SHORT TITLE: SCHOOL FUNDS RELATED TO BOARDING SCHOOLS
SPONSOR(S): REPRESENTATIVE COGHILL

01/10/05	(H)	PREFILE RELEASED 12/30/04
01/10/05	(H)	READ THE FIRST TIME - REFERRALS
01/10/05	(H)	EDU, HES, FIN
02/24/05	(H)	EDU AT 11:00 AM CAPITOL 106
02/24/05	(H)	-- Meeting Canceled --
03/01/05	(H)	EDU AT 11:00 AM CAPITOL 106
03/01/05	(H)	Moved Out of Committee
03/01/05	(H)	MINUTE(EDU)
03/03/05	(H)	EDU RPT 3DP 2NR
03/03/05	(H)	DP: SALMON, WILSON, NEUMAN;
03/03/05	(H)	NR: GATTO, THOMAS
03/08/05	(H)	HES AT 3:00 PM CAPITOL 106

BILL: HB 20
SHORT TITLE: EDUCATION FUNDING
SPONSOR(S): REPRESENTATIVE SEATON

01/10/05	(H)	PREFILE RELEASED 12/30/04
01/10/05	(H)	READ THE FIRST TIME - REFERRALS
01/10/05	(H)	EDU, HES, FIN
01/24/05	(H)	SPONSOR SUBSTITUTE INTRODUCED
01/24/05	(H)	READ THE FIRST TIME - REFERRALS
01/24/05	(H)	EDU, HES, FIN
01/25/05	(H)	EDU AT 11:00 AM CAPITOL 106
01/25/05	(H)	-- Meeting Canceled --
02/01/05	(H)	EDU AT 11:00 AM CAPITOL 106
02/01/05	(H)	Heard & Held
02/01/05	(H)	MINUTE(EDU)
02/22/05	(H)	EDU AT 11:00 AM CAPITOL 106
02/22/05	(H)	-- Meeting Canceled --
03/01/05	(H)	EDU AT 11:00 AM CAPITOL 106
03/01/05	(H)	Moved CSHB 20(EDU) Out of Committee
03/01/05	(H)	MINUTE(EDU)
03/03/05	(H)	EDU RPT CS(EDU) NT 2DP 3NR
03/03/05	(H)	DP: WILSON, NEUMAN;

03/03/05	(H)	NR: SALMON, GATTO, THOMAS
03/08/05	(H)	HES AT 3:00 PM CAPITOL 106

WITNESS REGISTER

JOHN BITTNER, Staff to Representative Anderson
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 151 on behalf of the sponsor, Representative Anderson.

CARL ROSEN, M.D., President
Alaska Academy of Ophthalmology
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 151.

CYNTHIA BRADFORD, Secretary of State Affairs
American Academy of Ophthalmology
Corvallis, Oregon
POSITION STATEMENT: Testified in support of HB 151.

BOYD WALKER, Optometrist
Homer Eye Care Center
Homer, Alaska
POSITION STATEMENT: Testified in opposition to HB 151.

MICHAEL BENNETT, President
Alaska Optometric Physicians Association
Juneau, Alaska
POSITION STATEMENT: Testified in opposition to HB 151.

MICHAEL COULTER, Ophthalmologist
Alaska Lasik Center
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 151.

REPRESENTATIVE JOHN COGHILL
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified as the sponsor of HB 16.

ACTION NARRATIVE

CHAIR PEGGY WILSON called the House Health, Education and Social Services Standing Committee meeting to order at 3:07:42 PM. Representatives Wilson, Seaton, Anderson, McGuire, Gardner, and Cissna were present at the call to order.

HB 151-RESPONSIBILITY FOR CARE AFTER EYE SURGERY

3:09:30 PM

CHAIR WILSON announced that the first order of business would be HOUSE BILL NO. 151 "An Act relating to provider responsibility for ocular postoperative care; and providing for an effective date."

3:10:10 PM

REPRESENTATIVE ANDERSON, speaking as the sponsor of HB 151, explained that he wants HB 151 to work for both optometrists and ophthalmologists, although at this point he said he agrees with the ophthalmologists.

3:11:29 PM

JOHN BITTNER, Staff to Representative Anderson, Alaska State Legislature, relayed that HB 151 outlines rules and restrictions regarding the delegation of postoperative care for eye surgery patients. Section 1 places limits on how and when a surgeon who performs eye surgery in the state may delegate responsibility for postoperative care of the patient to someone else. He explained that some of the restrictions include defining the provisions of the comanagement agreement, mandating that the surgeon who performs the surgery must remain physically available to the patient for 120 hours, and allowing the ophthalmologist to delegate the responsibility for after care if they arrange for another ophthalmologist to care for the patient for those 120 hours. Furthermore, the restrictions also outline when a comanagement agreement for postoperative care may be entered into, maintains that any fees incurred as a result of the agreement must reflect fair market value, and includes provisions for the disclosure of the comanagement agreement to the patient.

MR. BITTNER relayed that Sections 2-3 require compliance with Section 1, thus, maintaining consistency in the statutes. Section 4 specifies the definition of "knowingly," which is a term used in Sections 1 and 3. Sections 5 and 7 amend the uncodified law of the State of Alaska to add an effective date, which allows the Alaska State Medical Board (State Medical Board) to begin the regulations process before the rest of the bill takes effect. Section 6 amends the uncodified law allowing the application of the amendments made by the bill to eye

surgery occurring on or after the effective date of Sections 1-4. Mr. Bittner clarified that the intent of HB 151 is to provide standards of care regarding comanagement agreements for postoperative care of eye surgery patients. He added that the sponsor feels that there is a minimum standard of care each Alaskan should expect after receiving eye surgery, which HB 151 ensures. He specified that this bill in no way reflects poorly on the comanagement system. The sponsor is not against the collaboration of ophthalmologists and optometrists when it is in the best interest of the patient. The bill merely establishes limits to the comanagement system to ensure that the patient's needs come first.

3:13:54 PM

REPRESENTATIVE SEATON asked if the State Medical Board currently has the ability to regulate postoperative care.

REPRESENTATIVE ANDERSON deferred to the ophthalmologists.

3:15:13 PM

REPRESENTATIVE GARDNER asked if there are other surgical procedures for which the state mandates that the surgeon remain available for a specified amount of time.

MR. BITTNER replied that he was not aware of any, but he offered to research that and provide an answer.

3:16:04 PM

CARL ROSEN, M.D., President, Alaska Academy of Ophthalmology, in response to Representative Seaton's question, said that the State Medical Board has the jurisdiction to regulate postoperative care, although the issue has yet to arise. In response to Representative Gardner, Dr. Rosen said that the "lion's share" of comanagement occurs between ophthalmology and optometry.

DR. ROSEN, after relating his background in ophthalmology, related that the Alaska Academy of Ophthalmology favors HB 151, in order to protect patients and to avoid the abuses that have arisen from comanagement. Comanagement originally began with good intentions, although it has become distorted based on financial incentives, he said. He asked the committee to join together to raise the standard of medical care for Alaskans by keeping the "bar high or elevated." He related his belief that

ophthalmologists, despite that optometrists would have folks believe that ophthalmologists are nothing more than surgical technicians who are only capable of wielding a scalpel or laser, represent the best the American medical system has to offer. He said:

> There will be rare times when comanagement is necessary and legitimate: in rural areas with no other ophthalmologist or surgeon available, or when the surgeon has no other choice but [has] to leave shortly after an operation. However, we are asking to shut the door on the routine use of this arrangement, which unfortunately occurs here in our state. Patients simply do not understand what they are getting into until it is too late.

DR. ROSEN then provided an example of a comanagement case in which a patient, who was operated on by an ophthalmologist who routinely has an optometrist follow postoperative care, came to the emergency room for a corneal surgical complication. The optometrist, as is typical, was nowhere to be found because optometrists have never taken call for hospitals or emergency rooms at Providence Hospital or Alaska Regional Hospital. Since the emergency room physician isn't going to track down or refer to an optometrist for liability issues, an ophthalmologist is contacted and [the aforementioned patient] becomes that ophthalmologist's responsibility.

DR. ROSEN continued:

> In summary, comanagement can be a legitimate and useful tool for patients in rare circumstances, but should never be employed on a routine basis whereby the optometrist expects to be paid for every patient [who] gets referred to a particular ophthalmologist; this was never the intent of the Office of the Inspector General or Medicare. .... Please, join us in closing this loophole that will ensure that our constituents and our patients retain the highest quality of medical care available.

3:20:38 PM

REPRESENTATIVE GARDNER posed a situation in which a patient needs emergency services from another surgeon because the original surgeon is unavailable. She asked whether the services rendered would be billed separately.

DR. ROSEN said that may be true, however, it can be a battle with the insurance company. In further response to Representative Gardner, Dr. Rosen explained that although the insurance company may be responsible for the payment in certain instances, it's more complicated if the surgery is an elective procedure paid via cash.

3:22:08 PM

CYNTHIA BRADFORD, Secretary of State Affairs, American Academy of Ophthalmology, speaking on behalf the body's 27,000 members, related that HB 151 addresses a problem unique to surgical eye care, which is an issue that affects other states. She added that ocular care and surgery is one of the few situations in which non-physicians are inappropriately [allowed to provide] postoperative care on a sometimes-routine basis. Comanagement was intended for special situations only, although it has been abused for financial reasons. She characterized HB 151 as good health policy, which she supports.

3:24:21 PM

BOYD WALKER, Optometrist, noted his opposition to HB 151 because he feels it's not in the public's best interest. He related, "Representative Anderson has been given some misleading information, which unfortunately he is providing to [the committee] as factual." He relayed that testimony has alluded to "cataract mills," where optometrists refer patients to surgeons for comanagement fees. He said that he could assure the committee unequivocally that such an arrangement doesn't exist in Alaska. Furthermore, such a situation is unethical for both the surgeon and the referring optometrist. He said:

> There does exist in Anchorage a surgical center, which is the thinly veiled subject of this bill. And this center has established a reputation for quality patient care and surgery, and many optometrists in the state refer to this clinic - not for a comanagement fee as purported by the supporters of this bill - but rather because optometrists know that their patients will be given the best quality care available. And by far, the most outrageous assertion in Representative Anderson's statement is that optometrists are not qualified by training or experience to handle any serious complications resulting from cataract surgery. I have been comanaging patients in this state for

close to 20 years and many of these patients were comanaged with surgeons who apparently support this bill, including Dr. Rosen, whom I highly respect. They apparently had no concerns about my ability to either manage or identify the need to return that patient to them for surgical intervention for a postoperative complication. Comanagement has been effectively regulated in Alaska and all other states, for decades, by the guidelines established by the U.S. Department of Health and Human Services. Dr. Rosen states that this legislation would have no fiscal impact to consumers or to health care cost, where obviously the cost of the patient will be significantly greater if the patient has to travel to receive postoperative care [from] a surgeon that he could've received locally from an optometrist. In summary, this bill in no way improves the quality or safety of eye care for surgical eye patients in the state of Alaska. In fact, this bill is an ill-conceived attempt to limit competition and the freedom of choice of patients seeking eye surgery in our state.

The proponents of this bill have attempted to demean the optometric management of post surgical patients, citing that optometrists are non-medical. Alaska state law does entitle properly credentialed optometrists to diagnose and treat ocular conditions, despite Dr. Rosen's claim to the contrary. Practically all post surgical patients will return home one-day postoperatively and home in Alaska may be a long distance from the surgeon. So, being able to access a local optometrist for diagnoses and treatment of post surgical complications, in many cases, saves the patient expensive and possibly unnecessary travel. Due to the diverse geography of our state and the location of eye surgeons in the larger population centers, optometrists who are located in remote areas of our state are very important in assuring that patients have direct access to care. This bill would restrict that access. In my opinion, it would be a great disservice to Alaska residents. Please do not approve this unnecessary legislation.

3:28:19 PM

CHAIR WILSON asked for an approximate time range for which surgeons should be available for postoperative care to avoid complications.

DR. WALKER replied that surgeons are capable of that judgment. He said that much of this legislation seems to imply that the optometrist is dictating to the surgeon when the patient will be returned to the optometrist. Although the surgeon should have every right to determine how long the patient is kept under the surgeon's control, a law allocating the amount of time surgeons have to keep their patients "doesn't appear to be good medicine," he opined. In further response to Chair Wilson, Dr. Walker said he was not advocating a specified amount of time because that's not the optometrist's job rather the surgeon is responsible for the patient. Furthermore, the surgeon should have confidence in the optometrist, otherwise the surgeon shouldn't participate in a comanagement situation with the optometrist.

3:29:57 PM

MICHAEL BENNETT, President, Alaska Optometric Physicians Association, spoke in opposition to HB 151. He related that the practice of having optometrists and ophthalmologists work together to care for surgical patients is what comanagement is about. He offered that comanagement is not exclusive to eye care, for instance after oral surgery a patient returns to his/her dentist for follow-up care. He highlighted that optometrists outnumber ophthalmologists in Alaska about 5:1 and are accessible in most locals whereas ophthalmology isn't. He explained that optometrists diagnose the majority of surgical conditions, refer patients to the appropriate specialists, and prepare the patient for the necessary procedures. Since 1980, comanagement procedures have been codified by Medicare and have been ruled on more than once by the federal Office of the Inspector General. In 1999, the Office of the Inspector General issued the following guidelines for comanagement: it is not to be a foregone conclusion that the surgeon will return the patient for follow-up care to the referring practitioner, but it should be addressed on a case-by-case basis; the services should be medically necessary to the patient; the referral back should be a clinically appropriate amount of time as judged by the surgeon; and the services performed should be commensurate with the amount of fees split. Postoperative care does not result in an additional fee to the patient because a portion of the surgical fee is designated for the postoperative care, which is divided by 90 days and split by the amount of days the patient

is under the surgeon's care versus the other practitioner's care, he related. In response to Chair Wilson, Dr. Bennett explained that when the surgeon bills for the procedures, a modifying code at the end of the procedure code is used to indicate that the postoperative services will be split. If the optometrist bills for that postoperative care, he/she would also use a postoperative modifying code. In further response to Chair Wilson, Dr. Bennett answered that he sees postoperative patients almost daily. He related that many people choose to leave Juneau to have medical care so he accommodates those patients when they return from surgery. Dr. Bennett further related that most of [his] follow-up is for patients who opt to have surgery in Seattle or Anchorage because there are no surgeons who come into Juneau and leave.

3:35:57 PM

DR. BENNETT, in response to Representative Gardner, explained that if a patient opts to receive surgery out of town, the amount of time between the patient returning home and the surgery depends on the medical procedure. For instance, he related that he works with a glaucoma specialist, in Seattle, who occasionally performs cataract surgery and allows patients to return to Juneau one day after the procedure and thus the [optometrist with the comanagement agreement] would be in charge of that patient's care. However, there are certain types of glaucoma surgeries that are more complicated and often require adjustments and interventions by the surgeon, and thus the surgeon will require those patients to stay in Seattle for a longer duration of time. The notion that one timeframe is appropriate for all eye surgeries doesn't work, he opined. The timeframe should be left to the surgeon and isn't a judgment that optometrists, to his knowledge, are trying to make for the surgeons. He highlighted that the surgeon is responsible for the patient's 90-day postoperative period, and therefore the ophthalmologist needs to be available to the patient or vice versa if an issue arises within that 90-day postoperative period. The surgeons and optometrists must work together to provide the highest quality outcomes for their patients, he stated.

DR. BENNETT opined that postoperative optometric care is not only convenient and efficient for patients living in urban areas, but it's imperative for those living in rural areas. He alluded to the idea that the legislation would make it a misdemeanor for optometrists to treat people five days after surgery. He reiterated that comanagement has been effectively

federally regulated and the guidelines are "spelled out." If the policy is abused, it should be addressed by the appropriate State Medical Board. No other state has expanded upon the federal regulations regarding eye surgical comanagement, he added. Therefore, this legislation would limit the normal scope of the optometrist's practice. He noted that many studies have been conducted on comanaged ocular surgery and no difference in the quality of outcomes has been shown between postoperative care provided by optometrists versus the original surgeon. [This legislation], he opined, will certainly make this care more difficult to access and more expensive in regard to travel that may be required of patients. In conclusion, Dr. Bennett expressed the hope that the committee would agree that HB 151 is anticompetitive, unnecessary, and not in the best interest of patients.

3:42:19 PM

DR. BENNETT, in response to Representative Seaton, relayed that the legislation would negatively impact patients in Juneau who leave town for surgery because they would either be forced to stay in the community where the surgery was performed or to return to Juneau and place the optometrist in an "awkward legal position for rendering care." He commented that he does not know how this legislation would affect the comanagement relationships with those patients receiving surgery out of state.

REPRESENTATIVE SEATON said Dr. Bennett's question needs to be answered at some point.

3:43:59 PM

MICHAEL COULTER, Ophthalmologist, Alaska Lasik Center, began by saying that he was in favor of HB 151. He noted his agreement with earlier testimony regarding the fact that comanagement has existed for a long time as a result of ophthalmologic requirements in certain communities and is successful in many venues. However, he also noted his agreement with earlier testimony that comanagement has the potential for abuse, which "reek of collusion when referrals are made for monetary or revenue stream considerations." He opined that this legislation is an "inter-ophthalmologic effort to set certain standards for all surgeons practicing in the state of Alaska." Currently, there are six surgeons whom share call duties for Providence Alaska Medical Center and Anchorage Regional Hospital and they receive complex referrals from all over the state. He said:

> We feel that if the standard of care would require that all surgeons that would like to be a part of the community and on staff at the hospitals also share in that call, and certainly that if we are unable to take call or unable to see our own postoperative patients, that we are able to release our patient to a peer who is also an ophthalmologist, board certified, and able to do surgery. It's our feeling that, as the surgeon, the surgeon himself or herself is best prepared to identify potential complications in the immediate postoperative period .... I do not agree ... that this would somehow limit [an optometrist's] ability to care for patients, especially here in Juneau; there are two ophthalmologists here who are board certified and work currently in the community .... The fact is that nothing in the bill would restrict an optometrist from seeing their patients, especially in situations where it is a hardship, as deemed by the patient, to be able to see the original surgeon; so there should be no restriction in the flow of patient from their surgeon to the optometrist. They're not barred, for example, from providing care to the patient postoperatively during the first five days. Our requirement simply is that surgeons, that are doing ... surgery, remain available or can transfer the responsibility for postoperative care to another surgeon. And unfortunately, in the community of Anchorage there are situations in which some surgeons are operating, leaving immediately, leaving all postoperative care, in the first moments after surgery, to non-medically licensed professionals that with all their skill and training - in our opinion - are less capable of identifying potential complications in a manner that the surgeon who performed the procedure would be.

DR. COULTER offered that data from the American Academy of Ophthalmology states that the surgeon who provided the original care is in the best position to identify early postoperative complications. During the first 120 hours after surgery is when most complications occur, and he suggested that 48 hours is when most "catastrophic complications might occur." Therefore, he related his belief that surgeons should be held to the ethical standard by which the surgeon is available for the first couple of days of postoperative care.

DR. COULTER recalled testimony from optometrists stating that the ophthalmologist should be allowed to determine, rather than be legislated, when a patient can be released. Although Dr. Coulter agreed with the aforementioned, the American Academy of Ophthalmology has made it clear that ophthalmologists should be available for at least five days postoperative; the burden should not be left to ophthalmologists who have no association with the patient. Malpractice insurers require that the surgeon remain available to the patient or that the obligation be passed on to another surgeon of equal competence for a period of days after surgery. He said comanagement is "good" and the bill does not limit access to optometric care, especially for those who have limited access to ophthalmologists in their community. He said:

> The mandates through the American Academy of Ophthalmology and the American Society of Cataract and Refractive Surgeons have put through a joint policy that are essentially recommendations, but there is no ability to enforce those recommendations. And Alaska, being fairly far away from the Lower 48, is often seen ... as perhaps a place that in the past has not met standards of care .... I would suggest that Anchorage and the larger communities of Alaska have met and do meet the standards of medical care and all ophthalmologic specialties. We do not necessarily need to rely on outside professionals to render appropriate or standard of care medical procedures. And if those individuals wish to come and practice in the state, that's fine as long as they're willing to be here and take their share of call and take the burden of community care upon their shoulders .... So, for those reasons I support HB 151; I see it as an advantage to the patients of Alaska. I think it ensures that a surgeon is available for them for 48 hours and I'd urge your consideration for a favorable vote on it.

3:52:23 PM

DR. COULTER, in response to Representative Gardner, said that the American Academy of Ophthalmology is not an entity that enforces its policies. In further response to Representative Gardner, Dr. Coulter estimated that in excess of 90 percent of board-certified ophthalmologists are members of the American Academy of Ophthalmology.

3:53:12 PM

REPRESENTATIVE GARDNER asked whether the surgeons who come to Anchorage and have the comanagement practices that Dr. Coulter finds "objectionable" are members of the aforementioned body.

DR. COULTER answered he does not know, but added that most surgeons abide by the recommendations from the aforementioned body. He opined that HB 151 is about ensuring a standard is met in a community that perhaps used to benefit from traveling surgeons. Dr. Coulter indicated that HB 151 is about the entire medical profession, and therefore he didn't see how it would impact optometrists in their comanagement relationships.

3:54:11 PM

REPRESENTATIVE SEATON asked if an Anchorage surgeon were to receive a referral from an optometrist in Juneau, under the [proposed] provisions, would the surgeon only be able to refer the patient back to an ophthalmologist.

DR. COULTER replied "no," the surgeon would need to personally be available to the patient for 48 hours. A patient can choose whether to return to Juneau to be seen by the patient's own optometrist, which "is fine." He added that the spirit of the reformation is that the surgeon should be available to that patient to take responsibility for the postoperative care, although he noted that an ophthalmologist can't force a patient to see him/her for postoperative care. Dr. Coulter related his understanding that under HB 151 there should be no limit to optometric postoperative care.

3:56:02 PM

REPRESENTATIVE SEATON surmised then that an optometrist can provide postoperative care for free or for other fees, although it must be unrelated to the comanagement agreement.

DR. COULTER said the optometrist can charge what he/she desires for the postoperative care. He related that when one of his patients return to his/her community from which it's difficult to get in touch with him, he makes a copy of the patient's medical records and instructs the patient that "always without compromise [the surgeon] see them at least 24 hours after the procedure." However, when the patient lives in a rural area it's easier to see an optometrist, he noted. He reiterated that the point is that if a patient should change his/her mind or

have complications, the surgeon should be available during that postoperative period.

3:57:30 PM

REPRESENTATIVE SEATON reiterated his understanding that the optometrist can provide the postoperative care, as long as the optometrist doesn't have an agreement to provide postoperative care as part of the fee distribution under a comanagement agreement.

DR. COULTER said that as long as the [postoperative care] is outlined, [the bill] doesn't outlaw comanagement. He reiterated that the legislation won't limit access to care or to the surgeon who performed the surgery.

3:58:29 PM

REPRESENTATIVE MCGUIRE pointed out that ophthalmologists, as medical doctors, have higher costs than optometrists and it's less costly for them to enter into a comanagement agreement for postoperative care with an optometrist. Therefore, a comanagement agreement [for postoperative care] allows the ophthalmologist to build-in lower costs. However, the consumer is often unaware of the circumstances of the agreement and the details of the postoperative treatment, she said. Due to the aforementioned cost shifting mechanism, the patient "loses" because the surgeon [isn't required] to be available 48 hours postoperative if a complication arises. This legislation, she opined, specifies that a surgeon, through a comanagement agreement, can't shift the responsibility of postoperative care to someone who doesn't have the same training. However, the patient's choices are "preserved" in this legislation and it doesn't prohibit a medical doctor from contracting with an optometrist to provide care at some other point besides the immediate postoperative time.

4:00:52 PM

REPRESENTATIVE SEATON highlighted the language on page 2, lines 12-15, which restricts the comanagement agreement to only situations when the distance to the ophthalmologist is a hardship for the patient and when the surgeon's personal travel or illness is a factor. He surmised then that the comanagement agreements are not fully available to the ophthalmologist and optometrist, and can only be entered into under those circumstances specified in the bill.

DR. COULTER replied, "For example, if a patient feels it's a hardship to return and would prefer to see the optometrist ... that would be fine, by my understanding."

CHAIR WILSON added her understanding that the legislation doesn't prevent a surgeon from releasing the patient, 48 hours after postoperative care, to follow-up care with an optometrist.

DR. COULTER relayed that the goal of HB 151 is to provide the best quality patient care. If there weren't abuses of this process, this wouldn't be an issue, he opined. He clarified that the intent is to ensure that those surgeons who operate within the state feel obligated to remain for a portion of the postoperative period so that a disproportionate number of postoperative complications don't fall in the laps of the six ophthalmologists taking call for the state. Although optometrists are well trained, they cannot perform surgery for a problem that they identify, he noted. He related that surgeons have no problem with competition. Furthermore, surgeons want people to have choices, but patients should understand what they are getting into, he opined.

4:04:51 PM

DR. COULTER, in response to Chair Wilson, said that a surgeon can make agreements with another surgeon to [provide] care to a patient if the original surgeon is inaccessible. He reiterated that the goal of the legislation is to provide the best quality of care, which he opined is when the surgeon remains available to the patient for a few days postoperatively.

4:07:59 PM

REPRESENTATIVE SEATON pointed out that both "120 hours" and "48 hours" have been mentioned in reference to the surgeon's postoperative availability, although the legislation specifies "120 hours."

DR. COULTER said that according to the American Academy of Ophthalmology and the American Society of Cataract and Refractive Surgeons, 120 hours postoperative is the standard period of time during which the patient is most likely to have postoperative complications. If 120 hours seems excessive, 48 hours would be the minimum time in which a "catastrophic" postoperative complication might occur. Therefore, a surgeon should remain available for that time period or transfer the

patient to a peer, he added. In further response to Representative Seaton, Dr. Coulter related that he could make the studies relating to the postoperative timeframe available to the committee.

4:09:41 PM

REPRESENTATIVE GARDNER suggested that if the current procedures are placing patients at risk, this issue should be addressed by the State Medical Board rather than the legislature.

DR. COULTER said that he can't comment on the State Medical Association's ability to regulate how long a surgeon stays in state after performing an operation.

4:10:19 PM

REPRESENTATIVE GARDNER asked if the [aforementioned body] is "charged with sort of identifying and clarifying good medical practice."

DR. COULTER replied that, in part, the State Medical Board is responsible because surgeons have to meet rigorous standards to obtain a medical license for the state. Certainly, the body is effective at removing "poor surgeons or surgeons of excess complications, or mass public outcry." However, he reiterated that the extent of the body's power to regulate comanagement is another issue.

4:11:23 PM

REPRESENTATIVE ANDERSON said:

> To answer Representative Gardner's question, I think that the Alaska Medical Association is the professional regulatory body, but ... the ophthalmologists came to me ... because they wanted the foundation, the codification by statute. And, so often, we see associations and professions come to [the legislature] first ... and kind of by extrapolation their professional regulatory body handles it on a second level, but ... the strategy is important and then there would be no miscommunication ....

REPRESENTATIVE ANDERSON highlighted that the legislation mandates that doctors are available two days postoperatively,

and if not, the doctor must make arrangements with a peer. He related his belief that the optometrist's testimony that the legislation would prevent competition has been refuted by addressing the patient's rights. In regard to the postoperative timeframe, Representative Anderson said "I plan to make an amendment. I think five days is unreasonable, and I know [that was taken] from the federal language, but I think two days is fine ...."

4:14:05 PM

REPRESENTATIVE MCGUIRE said in Alaska surgeons are required to have a medical license and there is a "board that tracks that and makes sure that the surgeons [who] come into our state are competent." She related her belief that licensing encompasses not only the surgery but also the after care, the troubleshooting, and being there in critical moments. She alluded to the idea [that comanagement] transfers the medical licensee's credentials and the patient's fees to an [optometrist] who doesn't have the residency, experience in troubleshooting, and the additional higher sciences degree. Furthermore, in some instances, it's for monetary value. She said that regulating this through the State Medical Board is not enough when it effects consumers so broadly, and therefore the legislature needs to "spell it out in the statutes." She relayed that many patients go into the [comanagement agreement] because of the cost, although they are often [unaware] of the consequences, which can be severe, if something goes wrong. She noted that doctors ought to share the responsibility of call duty, which is a service to the community, although she acknowledged that doctors aren't profiting from it and are putting themselves on the line from a liability standpoint.

4:17:24 PM

CHAIR WILSON added that the House Health, Education and Social Services Standing Committee must keep in mind the best interest of the residents of the state. She noted that the first responders, people who attend to emergency situations and transfer patients to hospitals, abide by the rule that they never transfer a patient to a "lower level of care." She opined that the aforementioned example is similar to this legislation before the committee today because it assures the patient is in [competent] hands.

4:19:15 PM

REPRESENTATIVE SEATON expressed concern with legislatively saying "48 hours is right" when the committee does not have enough data to make that determination. Furthermore, under this legislation there is no distinction between very acute and very difficult eye surgeries versus the normal eye surgeries, but rather [HB 151] assumes that every eye surgery is the same and 48 hours is an appropriate time for all those surgeries.

REPRESENTATIVE MCGUIRE inquired as to an eye surgery that isn't acute.

REPRESENTATIVE SEATON reiterated that he didn't believe the committee has the data to specify the timeframe, especially when much of the testimony has related numerous situations in which patients have went to Seattle [for surgery] and are sent back to Juneau after 24 hours. Again, Representative Seaton expressed discomfort with "pulling that number out of the hat" without any [supporting] data.

DR. COULTER replied that if a patient opts to have surgery out of state that's his/her choice, however, the bill addresses in-state procedures. He related that a patient who leaves 24 hours postoperative is not necessarily "a bad thing" for himself/herself or the surgeon. He opined that the legislation is not suggesting that the "surgeon and patient be handcuffed" but rather that the surgeon is available to treat the patient or reassign that responsibility to a peer. Dr. Coulter reminded the committee that the norm for a postoperative period [during which the surgeon should be available] recommended by the largest national bodies of ophthalmologists is 120 hours while the 48-hour requirement is the suggested minimum. Moreover, the paid postoperative period can extend for three months, and nothing in HB 151 would stop optometry from being included in that.

4:23:51 PM

DR. COULTER, in response to Chair Wilson, specified that Dr. Garret Sitenga is the ophthalmologist in Homer.

4:24:44 PM

CHAIR WILSON opined that [comanagement situations] are more specific to the Anchorage area, but asked if it happens anywhere else in the state.

4:25:07 PM

DR. WALKER related his understanding that Dr. Coulter is asking the committee to support HB 151 in order to control surgeon's actions, however, he questioned how the terms "optometry and comanagement" facilitate that goal. Dr. Walker said that he didn't support limiting a requirement for a patient to remain under a surgeon's control for a specified amount of time. However, this legislation does impact the access to [after surgery] follow-up care by an optometric physician. Dr. Walker acknowledged the issues related to call, but pointed out that it's not an issue that involves optometry or comanagement. Therefore, he inquired as to why HB 151 would encompass comanagement and optometric care when [the intent] seems to be to limit surgeons.

4:26:51 PM

REPRESENTATIVE ANDERSON, in response to Representative Seaton, said the medical doctors testified that most complications arise two to five days postoperative, and the five days is reflected in the federal recommendations. Since the five days suggested at the federal level may be difficult for the surgeon's coming into state, two days has been suggested as the minimum.

4:28:13 PM

CHAIR WILSON announced HB 151 would be held for further consideration.

HB 16-SCHOOL FUNDS RELATED TO BOARDING SCHOOLS

4:29:18 PM

CHAIR WILSON announced that the next order of business would be HOUSE BILL NO. 16 "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."

4:29:35 PM

REPRESENTATIVE JOHN COGHILL, Alaska State Legislature, sponsor, explained that the main purpose of HB 16 is to help boarding schools in Alaska. House Bill 16 provides that under certain circumstances [the state] will give a stipend to some students to attend boarding schools. He related that he has a "sensitivity to how that might affect other schools so ...

[there are] some sideboards ...," which are as follows: the boarding school has to be operating on a 180-day school system calendar; if a student's absence from his/her [district school] places the school "under the number floor," and ends funding, then that student shall be held harmless. The five-year timeframe in the legislation would allow the legislature to evaluate the impacted boarding schools in Galena, Bethel, and Nenana. He added that the aforementioned school districts use the "student dollar count" towards schooling, similar to the state run boarding school of Mt. Edgecumbe, however, different cost factors are involved with Mt. Edgecumbe.

REPRESENTATIVE COGHILL relayed his personal experience regarding the positive influence of boarding schools in Nenana. He related that the House passed similar legislation last year, by a vote of 38:0, but questions in the Senate arose about the operations of one of the schools. Although he said he felt that the questions in the Senate were addressed, the question as to whether these boarding schools will take the "best and the brightest" from the smaller districts remains. Representative Coghill opined that would not be the case. He added that boarding schools have saved the state money, although "it's debatable how much." For example, a smaller district with a lower ratio of students means the dollar per student is high, but [if a student] came to the larger district, the student dollar reimbursement is lower based on the [school district's cost factors]. He opined that he is not "doing it for the savings" but rather he is interested in boarding schools because they are "one avenue where education really does excel" due to the combined interests from the parents, children, and community. He noted that many of the students are coming from "tough circumstances," and they are being offered the opportunity to change their lifestyle and excel.

REPRESENTATIVE COGHILL reiterated that the sideboards will allow [the legislature] to evaluate if this system will work, and if so, why it works so well. The earlier mentioned districts have applied their own "sweat equity capital" into these schools. For example, Galena has made creative usage out of its airbase and uses it for "absolutely fascinating" vocational technology, while Nenana focuses on a more college preparatory approach to learning. He highlighted that seven out of fifteen students from Nenana's 2004 graduating class went to universities.

REPRESENTATIVE COGHILL said the Department of Education and Early Development (EED) would determine the monthly stipend plus

the cost of travel to and from the boarding school one time, for each student.

4:40:12 PM

REPRESENTATIVE GARDNER said she loves HB 16 because it supports school choice and offers rural children more opportunities. She explained that the superintendent of Galena, Jim Smith, pointed out that its vocational technology program meets a need in the state, which should be expanded upon. Furthermore, the school also provides a socially comfortable environment for children that come from less than ideal situations. She related her belief that perhaps, if not the "best and the brightest," [the schools retain] the most motivated children. However, she asked whether the [boarding schools' obtaining] motivated children could adversely impact their home schools. Even if that's the case, Representative Gardner said that she wouldn't want to stand in the way of those students and would rather encourage it, even if there's a certain cost to their home schools.

REPRESENTATIVE COGHILL replied yes, adding that a student should be allowed to excel to the best of his/her ability. However, the home districts and parents are also looking for the best education for students, and the purpose of this legislation is not to hurt local home districts.

4:43:48 PM

REPRESENTATIVE COGHILL, in response to Representative Seaton, clarified that the school district [within which the boarding school is located] would receive a reimbursement or a stipend for the boarding of a student.

4:44:22 PM

REPRESENTATIVE CISSNA said she supports the concept of HB 16, but noted her frustration that other programs in the state desperately need the state's investment and support.

REPRESENTATIVE COGHILL highlighted that the sideboards on the legislation evaluate how it's working. He acknowledged that the legislation will benefit fewer students than he would like. However, there is also debate regarding how the rural communities are going to answer educational needs. Representative Coghill concluded by noting that the legislature "needs to work on all fronts."

4:46:00 PM

CHAIR WILSON inquired as to the amount of the stipend.

REPRESENTATIVE COGHILL replied that the attached fiscal notes highlight an annual round-trip airfare cost and the yearly costs, which amounts to a monthly stipend that ranges from $472 to $577. He pointed out that boarding school costs are much more than $500 a month [per student].

CHAIR WILSON related her belief that the children at Mt. Edgecumbe benefit greatly from the school. She highlighted the preparedness and knowledge she encountered when teaching those students a state government class.

REPRESENTATIVE MCGUIRE moved to report HB 16 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 16 was reported out of the House Health, Education and Social Services Standing Committee.

HB 20-EDUCATION FUNDING

CHAIR WILSON announced that the next order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 20 "An Act relating to a separate appropriation bill for operating expenses for primary and secondary public education and establishing a date by which the bill must be transmitted to the governor each year; relating to notice of nonretention for tenured teachers; and providing for an effective date." [Before the committee is CSSSHB 20(EDU).]

4:49:19 PM

REPRESENTATIVE SEATON, speaking as the sponsor of HB 20, stated that the purpose of this legislation is to provide early funding of education, and require a separate appropriation budget for the expenses of primary and secondary schools. He highlighted that the governor is required to submit the education budget by the fourth day of the legislative session, thereafter, the legislature completes and resubmits it to the governor by March 5. This legislation was amended from its previous incarnation, HB 19, to include all appropriations including "pupil [transportation and] special schools", but may not include appropriations for things such as "capital projects." The aforementioned separates the contentious issues within each school district.

REPRESENTATIVE SEATON specified that the main purpose of HB 20 is to end the disruptive practice of districts [being forced to] send layoff notices to many teachers on March 15 because of the uncertainty of the budget. The aforementioned practice results in the loss of qualified teachers and disrupts morale, he offered. He relayed that HB 20 establishes a process [to complete the budget to avoid the aforementioned consequences] and has the support of numerous school boards, teachers, the National Education Association (NEA), and the Alaska Federation of Teachers (AFT).

4:52:06 PM

CHAIR WILSON opined that the schools have been concerned with the aforementioned issues for some time and [hopefully] this will make a difference.

4:52:21 PM

REPRESENTATIVE GARDNER moved to report CSSSHB 20(EDU) out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE MCGUIRE objected, although she said she is willing to let the legislation move out of committee today. She related her belief that although the concept is great, there are also other parts of the budget that deserve equal focus. She expressed concern that HB 20 establishes hard-and-fast rules and dates for the legislature and the governor when it's difficult to know what types of issues the legislature will face.

REPRESENTATIVE SEATON related that there has been testimony from the administration stating that the submission of the education budget by the fourth day of the session is very "doable." He reiterated that the goal is to separate education from other issues, such as capital projects, which generally halt progress. He added that it won't interfere with any type of supplemental [budget appropriation].

4:55:23 PM

REPRESENTATIVE MCGUIRE again agreed that the notion behind HB 20 is great, but pointed out that often how things play out in reality are more complex.

4:56:12 PM

REPRESENTATIVE MCGUIRE withdrew her objection.

There being no further objection, CSSSHB 20(EDU) was reported from the House Health, Education and Social Services Standing Committee.

ADJOURNMENT

4:56:12 PM

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at 4:56 p.m.