ALASKA STATE LEGISLATURE
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES STANDING COMMITTEE
March 17, 2005
3:04 p.m.

MEMBERS PRESENT

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

COMMITTEE CALENDAR

HOUSE BILL NO. 193
"An Act relating to the licensing, regulation, enforcement, and appeal rights of ambulatory surgical centers, assisted living homes, child care facilities, child placement agencies, foster homes, free-standing birth centers, home health agencies, hospices or agencies providing hospice services, hospitals, intermediate care facilities for the mentally retarded, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, and rural health clinics; relating to criminal history requirements, and a registry, regarding certain licenses, certifications, approvals, and authorizations by the Department of Health and Social Services; making conforming amendments; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 185
"An Act relating to immunization of postsecondary students for meningitis; and providing for an effective date."

- MOVED HB 185 OUT OF COMMITTEE

HOUSE BILL NO. 156
"An Act relating to the membership of the Alaska Commission on Aging; and providing for an effective date."

- MOVED CSHB 156(HES) OUT OF COMMITTEE

HOUSE BILL NO. 151

"An Act relating to provider responsibility for ocular postoperative care; and providing for an effective date."

- MOVED CSHB 151(HES) OUT OF COMMITTEE

HOUSE BILL NO. 13
"An Act relating to reimbursement of municipal bonds for school construction; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 193
SHORT TITLE: LICENSING MEDICAL OR CARE FACILITIES
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/02/05	(H)	READ THE FIRST TIME - REFERRALS
03/02/05	(H)	HES, JUD, FIN
03/15/05	(H)	HES AT 3:00 PM CAPITOL 106
03/15/05	(H)	Scheduled But Not Heard
03/17/05	(H)	HES AT 3:00 PM CAPITOL 106

BILL: HB 185
SHORT TITLE: POSTSECONDARY STUDENT IMMUNIZATION
SPONSOR(S): REPRESENTATIVE(S) CHENAULT

02/28/05	(H)	READ THE FIRST TIME - REFERRALS
02/28/05	(H)	HES, FIN
03/17/05	(H)	HES AT 3:00 PM CAPITOL 106

BILL: HB 156
SHORT TITLE: COMMISSION ON AGING
SPONSOR(S): REPRESENTATIVE(S) HOLM

02/18/05	(H)	READ THE FIRST TIME - REFERRALS
02/18/05	(H)	HES, FIN
03/17/05	(H)	HES AT 3:00 PM CAPITOL 106

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
03/08/05	(H)	Heard & Held
03/08/05	(H)	MINUTE(HES)
03/17/05	(H)	HES AT 3:00 PM CAPITOL 106

WITNESS REGISTER

RICHARD MANDSAGER, M.D., Director
Division of Public Health
Department of Health and Social Services
Juneau, Alaska
POSITION STATEMENT: Provided information on HB 193 and testified in support of HB 193.

STACIE KRALY, Attorney
Senior Assistant Attorney General
Department of Law
Department of Labor & Workforce Development
Juneau, Alaska
POSITION STATEMENT: Provided information on HB 193 and testified in support of HB 193.

ERICH DELAND, Staff
to Representative Mike Chenault
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 185 on behalf of Representative Mike Chenault and answered questions.

BARBARA COTTING, Staff
to Representative Jim Holm
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 156 on behalf of Representative Jim Holm and answered questions; suggested changes to HB 156.

LINDA GOHL, Executive Director
Alaska Commission on Aging
Department of Health and Social Services
Juneau, Alaska
POSITION STATEMENT: Provided information on behalf of the Alaska Commission on Aging.

STEVE ASHMAN, Director
Division of Senior and Disability Services
Department of Health and Social Services

Juneau, Alaska
POSITION STATEMENT: Provided information on behalf of the Division of Senior and Disability Services.

WAYNE HAGERMAN, O.D.
Sitka, Alaska
POSITION STATEMENT: Testified in opposition to HB 151.

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

ERIK CHRISTIANSON, O.D.
Ketchikan, Alaska
POSITION STATEMENT: Testified in opposition to HB 151.

WILLIE SHIELDS, M.D.
Washington
POSITION STATEMENT: Provided his opinions regarding eye care and offered relevant information pertaining to HB 151.

BOB FORD, M.D.
Chehalis, WA
POSITION STATEMENT: Testified in opposition to HB 151.

SAM TRIVETTE
Juneau, Alaska
POSITION STATEMENT: Testified in opposition to HB 151.

FRANK BICKFORD
Alaska Society of Eye Physicians Surgery
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 151.

MICHAEL BENNETT, O.D.
Juneau, Alaska
POSITION STATEMENT: Testified in opposition to HB 151.

ACTION NARRATIVE

CHAIR PEGGY WILSON called the House Health, Education and Social Services Standing Committee meeting to order at 3:04:42 PM. Representatives Kohring, Anderson, and Gardner were present at the call to order. Representatives Seaton, Cissna, and McGuire arrived as the meeting was in progress.

HB 193-LICENSING MEDICAL OR CARE FACILITIES

CHAIR WILSON announced that the first order of business would be HOUSE BILL NO. 193 "An Act relating to the licensing, regulation, enforcement, and appeal rights of ambulatory surgical centers, assisted living homes, child care facilities, child placement agencies, foster homes, free-standing birth centers, home health agencies, hospices or agencies providing hospice services, hospitals, intermediate care facilities for the mentally retarded, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, and rural health clinics; relating to criminal history requirements, and a registry, regarding certain licenses, certifications, approvals, and authorizations by the Department of Health and Social Services; making conforming amendments; and providing for an effective date."

3:06:02 PM

RICHARD MANDSAGER, M.D., Director, Division of Public Health, Department of Health and Social Services, (Department), introduced the slide entitled, "PUBLIC HEALTH: Protecting and Promoting the Health of All Alaskans, HB 193, a Bill to Consolidate DHSS Licensing, Certification, and Background Check Functions." He showed slide number 2 and explained:

> The existing statutory and regulatory environment ... that the Department deals with all kinds of programs and facilities that range in size from major hospitals, like Providence, to small family owned assisted living homes, to hospice, to ambulatory ... surgery centers, to foster families - there's this whole range of licensing and certification activities that the Department does. And, two years ago the Governor with "administrative order 108" ... began the centralization process of bringing the certification and licensing activities together into one place and separating them from the parts of the Department that pay for services ... there is some degree of separation of the licensing and certifying from the paying part of the organization. As we've started down that journey, it has become very apparent that these programs have all grown up independently ... with their own sets of statutes ... regulations ... appeal processes and they are sometimes similar ... many times with different steps. So, the first real purpose here is an administrative simplification and cohesion question about what makes sense ... for the

> Department across all of these entities to make them as similar as possible ... in terms of cost of certification and licensing ... even though there's a theory that we can bring together and centralize this licensing function ... the training of staff to be able to interact with more than one type of program is really markedly decreased ... We're aiming for a day ... when one person could go prepared to do two or three activities rather than three separate people going in on three separate plane trips into that [rural] community. To get there, requires us ... to try to get to much more standardized and simplified rules on the state side ... on the provider side, many providers have multiple types of programs and for them to keep track of separate program rules ... is an administrative cost ...

DR. MANDSAGER described a past situation where a provider in a supported living home was misappropriating funds collected from a resident. He explained that the state does not demand a license or background check for [supported living homes] and there was little that the state could do in terms of recourse. He said that in Alaska there is a "nurse aid registry" and three nurse aids were found by investigative agencies to be mistreating residents in a nine month period and after the mandatory reporting period, two had not been entered into the registry; one case had involved physical violence. He pointed out that timeliness issues in the current process need to be improved. He added that many personal care attendants work for more than one agency and are required to have separate background checks with each agency. He offered that doing this once for all agencies could be more efficient. Dr. Mandsager reviewed which department divisions and service providers would be affected, and what would be standardized by HB 193.

3:18:20 PM

REPRESENTATIVE GARDNER stated that Representative Kohring and she have constituents that are involved in the health care field and provide services to people at home, and they have inquired as to the development of a database that would allow for the detection of people who have been accused of fraud with Medicare billing. She explained that there is no legal way to inform other agencies that this has occurred with a past employee. She asked if the registry [mentioned by Dr. Mandsager] would include fraud allegations.

STACIE KRALY, Senior Assistant to the Attorney General, Department of Law, said that she understood the theoretical concept behind the abuse registry to include a finding of fraud in that context if the individual had, in fact, been terminated for fraudulent billing activities. She explained that the idea [for the abuse registry] is to create a civil registry that would include all types of instances that a prospective employer would want to know about, before hiring.

REPRESENTATIVE GARDNER said that there are gray areas that would include there being no record of offensive behavior. She opined that many employees [in assisted living homes, or acting as care providers] are minimally skilled and move from agency to agency for a variety of reasons; it seems that there is the possibility for "low-grade" violations to escape prosecution in many instances, which would provide little or no information on the registry.

3:21:31 PM

MS. KRALY said that Representative Gardner brought up a good point and that ultimately, what is envisioned is a mechanism, to notify the state for the basis of the termination and provide them with some type of hearing. She highlighted that this is a process that benefits both parties so that one cannot be taken advantage of.

3:23:42 PM

DR. MANDSAGER said that the [Division of Public Health] is looking for ideas of how to make this [registry] have the best value at a reasonable cost and accomplish all of the things mentioned.

REPRESENTATIVE GARDNER inquired as to care providers participating in the process [of using the registry] and asked whom they should contact for more information.

DR. MANDSAGER offered himself as a contact.

3:24:31 PM

REPRESENTATIVE SEATON opined that there should be a hearing process that defines limitation on liability for the employer and provides information on past employees [that have committed offenses of some kind]. He said that there may be difficulty in

the creation of a registry if employers could face lawsuits from past employees.

3:26:22 PM

MS. KRALY referred to HB 193 and said:

> On page 13, section 47.32.170, there's an immunity section, subparagraph C, which addresses the liability and the criminal history check but we should probably look at that with respect to the abuse registries, as well ... We appreciate that comment, and we'll take a look at that.

REPRESENTATIVE KOHRING inquired as to the description of this legislation as an "efficiency measure."

DR. MANDSAGER said that he hopes that as the population grows and more providers come online, that the staff required to serve will remain the same and demonstrate efficiencies over time.

3:28:20 PM

REPRESENTATIVE KOHRING inquired as to Dr. Mandsager's perception of the medical industry in terms of streamlining regulatory processes.

DR. MANDSAGER said that he is also troubled by the aforementioned question which concerns regulatory simplifications in a heavily regulated industry.

REPRESENTATIVE MCGUIRE asked, "are there any new categories that did not previously require licensure?"

DR. MANDSAGER said that one of the amendments that is being worked on relates to the list on page 2, of HB 193. He explained:

> I have a concern ... as the medical industry ... evolves ... and develops more free standing services outside of hospitals, how do we have a list that includes some kind of a statement that there could be developed a checklist or criteria against which when the risks of a population is high enough, that they would then be brought into a licensed and regulated environment ... more and more services are leaving hospitals and going into stand alone types of service

delivery. At the other end of the extreme ... there's ... "supported living homes" that aren't regulated ... "assisted living home" starts at [page] 25 and there's a set of criteria that are listed ... if a person is ... providing housing and food services or assisting with activities of daily living, this would ... say that you need to be licensed as an assisted living home. Right now, there are ... places out there that are choosing not to be licensed ... this will try and make it more clear what the break point is at which you need licensure or don't ... the staff would need the background check, as minimum, as this bill were to go into place ...

3:32:26 PM

DR. MANDSAGER said that the Division of Public Health is working on a series of amendments [for HB 193].

REPRESENTATIVE GARDNER inquired as to the issue of employment and a record of termination [within the registry]. She then asked if [Alaskan Statute] "47.05.20" is part of HB 193.

MS. KRALY explained that the first statutory cite in subparagraph C should be "47.05.310" and then it should be "47.05.320" and those are the statutes of reference on page 27, of HB 193. Under "Article 3" of the bill, the new sections under "47.05", which creates the "Criminal History; Registry" process and how the background check can occur.

3:36:17 PM

REPRESENTATIVE SEATON mentioned the testimony from the Alaska State Hospital and Nursing Home Association, (ASHNHA), and its liability concerns. He inquired as to what has been done to prevent liability issues and if these concerns have been addressed, overall.

DR. MANDSAGER said, " ... as we envision this in statute, we need to make sure that there are steps in place either in statute or ... in regulation to make it clear that the Department is ready to do such an action ... you can't expose frail elderly ... to risk, before they're moved out to another facility ... or another provider is brought in to manage the facility."

MS. KRALY clarified that the bill was drafted in an effort to bring the 12 statutory provisions into one umbrella process, in an effort to serve a wide spectrum of entities. Currently, if there is a situation of immediate risk in a nursing home, a temporary manager must be contacted to go through a series of court processes, she related. When there is an assisted living home with an individual at risk, she said, the individual would be removed and the due-process hearing would occur later. She clarified that the instances that ASHNA had mentioned in their letter would be dealt with using the temporary manager, and court process, because from a legal and management standpoint, it would not be plausible to take over a large institution.

3:40:43 PM

REPRESENTATIVE SEATON inquired as to the "taking over" of smaller assisted living homes if they are found to be "at risk" situations.

MS. KRALY it would all be laid out through regulation, and more often than not, a resident would be removed before a "home" was "taken over."

CHAIR WILSON mentioned the "Position Paper on House Bill 193 Offered by Rod Betit, President of ASHNHA," and inquired as to the Department addressing the concerns that were listed.

DR. MANDSAGER said that the current regulations allow for gradation within the assisted living situations. The balance point between a nursing home and a "level 3" in a pioneer home, for example, is the discussion point. In light of the function pioneer homes have, he opined that in order to continue that level of home-based, social service, kind of care, rather than medical care, regulation opportunities will have to be created.

CHAIR WILSON commented on the slow physical deterioration of individuals within care facilities and the adaptation of different forms of care that evolve.

DR. MANDSAGER stated that one major issue concerns fire marshals. In a pioneer home, a fire marshal would require that people be able to readily get out and if someone had physically deteriorated to a certain level [where they could not readily get out], then that person would have to move to another facility.

3:45:19 PM

REPRESENTATIVE CISSNA commented that she would like to stay informed as Dr. Mandsager and others make more decisions and modifications on HB 193.

DR. MANDSAGER opined that in reality, HB 193 is unlikely to pass this legislative session. He advocated for moving through the process, making modifications, hearing concerns, and coming back next year with a clearer version of HB 193.

REPRESENTATIVE MCGUIRE opined that, in many instances, language within HB 193 is unqualified. She referred to page 14, line 22, and said that this section was a very broad "access to information" clause. She encouraged Dr. Mandsager to spend time looking at HB 193 and qualifying sections that are lacking specific information.

DR. MANDSAGER explained that the advantage of having introduced the bill is it is now public and can be inspected from many points of view. He said he hopes that there will be meeting over the summer and fall and then, HB 193 can be acted on next winter.

MS. KRALY clarified:

> The genesis of this section 1, which is a centralized licensing and related administrative procedures, 99 percent of that is current law. It's just been cut and pasted and cleaned up ... to create one, centralized licensing statute. If you look at most of it, it's not pulled out of the pie in the sky type thoughts, we're currently using these statutes - it just pulls it into one ... we took the best of the best, we felt and we cleaned up the problems that we see we've envisioned in enforcing and advising the department and created this centralized panel, there are questions and issues and we knew there would be - but just so that's clear, we tried to take what was good and make it a little bit better.

[HB 193 was held over.]

HB 185-POSTSECONDARY STUDENT IMMUNIZATION

3:52:53 PM

CHAIR WILSON announced that the next order of business would be HOUSE BILL NO. 185 "An Act relating to immunization of postsecondary students for meningitis; and providing for an effective date."

ERIC DELAND, Staff to Representative Mike Chenault, presented the sponsor statement for HB 185 on behalf of Representative Chenault. He described how a man in Alaska, age nineteen, was overcome with a meningococcal disease and became brain dead within several hours of the onset of symptoms. He informed that meningococcal disease has a 15 percent mortality rate. What this bill tries to do, he related, is remove the exemption so that post-secondary institutions shall provide information about viral and bacterial meningococcal diseases and their risk. He said that the students shall also sign a document stating that they have received this information and can have the option of immunization. He emphasized that there is no requirement for immunization in HB 185. He said that the Center for Disease Control, the American Academy of Physicians, and the American Academy of Pediatrics recommend immunizations for post-secondary students.

CHAIR WILSON commented that immunization requirements concerning meningococcal disease are required for some groups of people but that there are known exemptions. She offered religious beliefs as an example of an exemption.

MR. DELAND explained that the passage of HB 185 will enable post-secondary students to receive information about meningococcal disease. He said that post-secondary students live in high-risk environments for the spread of meningococcal disease

CHAIR WILSON clarified that this bill does not require immunization of students.

MR. DELAND stated that it requires post-secondary schools to provide information pertaining to meningococcal disease and information about immunization.

REPRESENTATIVE GARDNER asked if there are various types of meningococcal disease.

MR. DELAND said that meningococcal disease can be viral or bacterial. He informed that there are many different strains.

REPRESENTATIVE GARDNER inquired as to the effectiveness of the immunization for all of the types of meningococcal disease.

MR. DELAND stated that the immunization is effective, regardless of the strain of meningococcal disease.

REPRESENTATIVE KOHRING inquired as to the necessity of passing HB 185 and creating statute around this issue. He asked if schools are informed about meningococcal disease.

MR. DELAND said that most schools around the country are requiring immunizations but it is not required in Alaska.

REPRESENTATIVE KOHRING asked if schools in Alaska know that meningococcal disease is a problem.

MR. DELAND opined that schools should know [about meningococcal disease] and the purpose of HB 185 is to provide necessary information so that students can make a decision regarding immunization.

REPRESENTATIVE KOHRING inquired as to the distribution of letters to schools as an attempt to inform, as opposed to creating legislation.

MR. DELAND clarified that HB 185 is related to post-secondary schools.

REPRESENTATIVE KOHRING offered that the letters be distributed to post-secondary schools. He expressed his uncertainty of creating a bill to inform students of a disease.

MR. DELAND restated that not all institutions provide information on meningococcal disease.

REPRESENTATIVE KOHRING inquired as to the cost associated with the distribution of information.

MR. DELAND explained that there is a [health] packet handed out to new students at post-secondary schools and this information would be included in that packet.

3:59:05 PM

REPRESENTATIVE MCGUIRE said, "We're requiring that information be given but we're not requiring immunization?"

MR. DELAND said that is correct.

REPRESENTATIVE MCGUIRE asked why immunization is not required.

MR. DELAND said that the reasons are similar to those brought up by Chair Wilson. He described the issues concerning religious beliefs, and opined that each individual should make their own decisions [to immunize].

REPRESENTATIVE MCGUIRE related that, in her experience, immunizations were required when attending school.

CHAIR WILSON clarified that there are other exemptions. She commented that some people don't believe in immunizing their children, and that, based on her experience as a school nurse for many years, there are many reasons why people choose not to be immunized.

4:00:35 PM

REPRESENTATIVE MCGUIRE inquired as to the number of states that require immunization [of meningococcal disease].

RICHARD MANDSAGER, M.D., Director, Division of Public Health, Department of Health and Social Services, stated that there are two varieties of meningococcal vaccine for this organism, for Neiserria meningitidis. He explained that this is the kind of meningitis that makes people fearful. He said:

> somebody gets sick with flu symptoms and can be dead in a few hours. Thankfully, it's very rare. There is a small, increased risk if you are a freshman in a college dorm or in the military, and that's where the epidemics back ... during WWII, were first recognized. A couple things have changed this winter, the American Council on Infectious Practices has just changed its recommendations about the vaccine for Neiserria meningitidis ... and is now recommending, because there is a new vaccine available this winter, that all people ... get it ... within a few years, this is going to be common practice for most kids entering post-secondary institutions ... colleges already include it in their information ... we in the [Department of Health and Social Services] are fairly neutral on this bill for some of the reasons that Representative Kohring just stated ... there's a small number of post-graduate colleges in this state and

couldn't we persuade them to voluntarily include [a letter] rather than have a statute, given the fact that immunization practices over the next five years, most kids, by the time they go off to college, are going to be immunized already with a new vaccine. Your question is specifically how many states have requirements for either information or vaccination or nothing, most have moved to ... either requiring information or requiring immunization and there's a mixture across the country but it's going to change fairly quickly now with the change in immunization practices. We are a universal immunization state and we don't have to include this vaccine because of the vaccine for kids which is the federal program ... as long as we remain a universal vaccine state, all of our kids in this state will be offered, and the only kids that won't be immunized will be the families that choose not to get vaccinated, but it will get joined into the requirement for school attendance over this next year ... I recognize the ... interest in the bill, but the timing is interesting given the change in vaccine as to how necessary it is, given it's going to happen, anyhow.

4:04:06 PM

REPRESENTATIVE MCGUIRE expressed her belief that if [the legislature] makes a fundamental policy shift to require immunizations, then that should be the law created. She inquired as to the requirements of immunizations at the local level for students, before entering school.

DR. MANDSAGER said that over this next year, because Alaska is a "universal vaccine state", the Department will be putting up proposed regulations that [meningococcal disease vaccine] will get added to the schools for students in grades K-12. He opined that over the next six months the [meningococcal disease vaccine] will be added in; the [Department of Health and Social Services] will have to put out regulations proposing to amend the mandatory vaccine policies for schools and, if that happens, over the next few years all of the teenagers are going to get vaccinated.

REPRESENTATIVE MCGUIRE clarified that the [meningococcal disease vaccine] will be a requirement for students in grades K-12.

REPRESENTATIVE SEATON stated that HB 185 deals specifically with post-secondary students. He asked if regulations proposed by the state will apply for post-secondary schools.

DR. MANDSAGER said that the state has no authority to regulate immunization in post-secondary schools.

REPRESENTATIVE GARDNER inquired as to the document mentioned in HB 185 where the student's immunization status is recorded. She asked how long this document would be kept and by whom.

MR. DELAND said that the document would be kept while the student was attending that institution, by the institution.

4:07:18 PM

REPRESENTATIVE MCGUIRE moved to report HB 185 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GARDNER objected. She said that if this bill were to pass, she anticipates repealing it when regulations are revised. She said that she is not in favor of passing a bill that may not be needed.

CHAIR WILSON reminded Representative Gardner that the new regulations would apply to grades K-12, and HB 185 is dealing with post-secondary schools.

A roll call vote was taken. Representatives Anderson, McGuire, Seaton, Cissna, and Wilson voted in favor of reporting HB 185 out of committee. Representative Gardner voted against it. Representative Kohring was absent for the vote. Therefore, HB 185 was reported from the House Health, Education and Social Services Standing Committee by a vote of 5-1.

4:09:52 PM

HB 156-COMMISSION ON AGING

CHAIR WILSON announced that the next order of business would be HOUSE BILL NO. 156 "An Act relating to the membership of the Alaska Commission on Aging; and providing for an effective date."

BARBARA COTTING, Staff to Representative Jim Holm, presented HB 156 on behalf of Representative Holm. She explained that within

the committee packet, the sponsor statement, sectional analysis, and her comments are addressed to the committee substitute because the original bill had suggested changes.

4:11:04 PM

REPRESENTATIVE SEATON moved to adopt the proposed committee substitute (CS) for HB 156, Version 24-LS0615\F, Mischel, 3/2/05, as a work draft. There being no objection, Version F was adopted.

MS. COTTING explained that in 2003, Governor Murkowski issued an executive order that transferred the Alaska Commission on Aging, (ACoA), from the Department of Administration to the Department of Health and Social Services. In 2004, she related, Representative Holm sponsored HB 394 which put that change into statute; it also changed the "sunset" date from 2004 to 2008. She said that HB 156 makes a change in compliance with the wishes of the ACoA. She pointed out that at the ACoA February 2005 quarterly meeting, what was requested was that a vacancy be filled by a senior services provider, regardless of age, and that the provider be a recipient of a division of senior and disabilities grant under the senior grant program. She added that the ACoA felt strongly that the expertise that would be provided would be a good thing for the ACoA. She requested that the committee insert the phrase, "regardless of age" in HB 156, on page 1, line 11, after "senior services provider."

REPRESENTATIVE GARDNER inquired as to who would be included in the pool of "grant recipients" mentioned.

4:14:13 PM

LINDA GOHL, executive director, Alaska Commission on Aging, said there's a variety of services under the senior grant program, including nutrition, transportation support services, in-home services for home and community based care, chore respite, and Alzheimer's support services.

REPRESENTATIVE GARDNER asked if the people who administer the aforementioned programs obtain the grants.

MS. GOHL said grant recipients could be project coordinators or a board member for a non-profit organization; they are people providing direct services as part of an agency. She explained that the ACoA was asked, prior to the meeting, to consider this seat being a provider seat and they thought it would be

beneficial to the community, as well as to the providers, beneficiaries, and stakeholders.

4:15:53 PM

STEVE ASHMAN, Director, Division of Senior and Disability Services, said that under statute, the recipients of grants have to be a 501(c)3, a municipal government, or a "tribal government."

REPRESENTATIVE GARDNER inquired as to the "ethics act."

MS. GOHL said that the ACoA is no longer receiving grant proposals, reviewing grant proposals, making recommendations for grant awards, nor involved in any way in the grant award process.

REPRESENTATIVE GARDNER clarified that there aren't conflicts with grant recipients.

MS. GOHL said that is correct. She continued:

> The Department has essentially taken over that function, within the Division of Senior and Disability Services and the centralized grants and contracts administration unit, and then the Commissioner [of the Department] or his designee is the only individual who is actually signing grant awards ... there could be a potential conflict ... when the [ACoA] works on the state plan of services that has to be produced every two to three years and submitted to the federal government in order to receive continuing funds under the Older Americans Act, we have to do a formula allocation which is a geographic allocation for how the grant awards will be distributed throughout the state and there's different criteria and elements and factors that make up this chart of how the awards and the total funds will be allocated, and there could be a potential conflict if this provider were in an area that was going to see a loss, perhaps, or a gain in funding in their geographic area ... the commission discussed any potential ... conflicts of interest ... and they decided during the February meeting that they would ask the individual to refrain from voting.

4:19:15 PM

REPRESENTATIVE GARDNER moved to adopt Amendment 1, as follows:

Page 1, line 11, following "senior services provider"
Insert "regardless of age"

There being no objection, it was so ordered.

REPRESENTATIVE KOHRING moved to report CSHB 156, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 156(HES) was reported from the House Health, Education and Social Services Standing Committee.

HB 151-RESPONSIBILITY FOR CARE AFTER EYE SURGERY

CHAIR WILSON announced that the next 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."

4:21:38 PM

WAYNE HAGERMAN, O.D., explained that he has been practicing as a private optometrist in Sitka, Alaska since 1984. He stated his opposition to HB 151 and that it will have a detrimental effect to the community of Sitka. In Sitka, he described, there is a community hospital and a visiting ophthalmologist that has provided service since 1997 and provides cataract surgery to the community members. He said that the ophthalmologist, Dr. Tim Gard, is from the Hillsboro Eye clinic in Oregon. He pointed out that [Dr. Gard] has provided these services to the community hospital as a benefit to the community, especially the senior citizens who are unable to travel elsewhere to have these surgical procedures attended to. He emphasized that he has worked closely with Dr. Gard for seven years and co-managed these patients without difficulty. He opined that it would cause undue hardship for Dr. Gard to have to remain in Sitka for five days following eye surgery and wishes the committee would reconsider the passing of HB 151.

4:23:31 PM

REPRESENTATIVE ANDERSON inquired as to Dr. Hagerman's position if the bill were amended to require a two-day stay following post-operative surgery, as opposed to the original five-day stay.

DR. HAGERMAN stated that there is not a resident ophthalmologist in Sitka so there is no possibility to refer patients to another surgeon. He said that the 48-hour change is amenable.

REPRESENTATIVE ANDERSON asked if Dr. Hagerman preferred the two day amendment as opposed to the 5 day stay [following eye surgery].

DR. HAGERMAN said that he preferred a two-day requirement but that a 24-hour requirement would be more than adequate [for an ophthalmologist to stay in the area following eye surgery].

REPRESENTATIVE GARDNER inquired as to patients in Sitka needing the services of an ophthalmologist when one was not available.

DR. HAGERMAN said that there is an understanding between himself and the ophthalmologist that when there is some complication that goes beyond the level of expertise [of the optometrist], the visiting ophthalmologist would stay and deal with it.

REPRESENTATIVE GARDNER asked what would happen if the complication arose after the ophthalmologist left [Sitka].

DR. HAGERMAN stated that he and the ophthalmologist are in constant communication about the follow-up care of these patients and the situation described has not yet arisen.

REPRESENTATIVE SEATON inquired as to the practicality of setting the two-day [ophthalmologist] stay requirement after eye surgery. He asked Dr. Hagerman what his opinion was concerning this stay requirement.

DR. HAGERMAN said that generally, it is within a day or two days after the surgery.

4:26:17 PM

CHAIR WILSON stated that HB 151 has been difficult [for her] and that she has been indecisive. She explained that she called Dr. Gard [the ophthalmologist serving Sitka] and learned that many of his patients are residents of the pioneer home and would be unable to leave [Sitka] for surgical procedures. She related that Dr. Gard informs his patients that they will have to fly to Seattle if there are complications after he leaves Sitka. She reported that Dr. Gard said that he could deal with the two-day stay requirement after surgery, and that he would still serve Sitka's needs. She stated that Dr. Gard had a question

concerning the stay requirement and it extending to the patient. She said that he asked if the legislation would require the patient to stay two extra days after surgery, because many times they do not.

REPRESENTATIVE ANDERSON interjected that there are no requirements related to the patient staying in the area where the surgery occurred.

CHAIR WILSON explained that Dr. Gard had said that many times he has stayed to make sure that every patient was taken care of. She said that she had asked if there was any time when someone had to fly to Seattle [for emergency care] and [Dr. Gard] had said, "No, that has never happened." She opined that the 5-day requirement [for the ophthalmologist to stay in the area where surgery occurred] is too much. She mentioned a letter from the Medical Association which promoted the 5-day stay requirement for ophthalmologists, but acquiesced to the 2-day amendment.

REPRESENTATIVE ANDERSON stated that in the packet, the Alaska State Medical Association sent a letter on March 4, 2005 which stated that they represent physicians across the state and they support HB 151. He said that they didn't reference the 2 versus 5 days [stay requirement] and there may be a discrepancy about which association is being discussed.

The committee took an at-ease from 4:30:32 PM to 4:30:55 PM.

4:30:59 PM

REPRESENTATIVE ANDERSON clarified that a letter from the American Academy of Ophthalmology, dated March 15, 2005 stated support of HB 151. He explained that this letter was an attempt to indicate the areas of concern regarding common surgical complications and they reference that within the first 48 hours certain complications can occur.

CHAIR responded that Dr. Gard teaches future ophthalmologists and optometrists and he said that his concerns [for post-operative care] included increased pressure or infection.

REPRESENTATIVE SEATON stated that in the letter from the American Academy of Ophthalmology, the listed complications are those that can occur in the first 48 hours [after surgery] but it is not clear that they support the 48-hour stay requirement as opposed to the original 5-day stay requirement.

4:33:15 PM

CARL ROSEN, M.D., clarified that 48 hours will cover common complications and 5 days is preferred as it will cover all aspects of possible patient complications after cataract or interocular surgery. He stated that, "two days, if that's what it takes to get improved patient quality of care, then we can accept that."

CHAIR WILSON stated that if there is no amendment there could be the risk of ophthalmologists refraining from serving remote areas within Alaska.

REPRESENTATIVE ANDERSON noted that the letter from the American Academy of Ophthalmology states, "The enactment of HB 151 ... will insure that patients have access to a surgeon within the 48 hour window in which the complications from eye surgery could occur."

REPRESENTATIVE SEATON said that as he reads the letter, it does not say that they are revising their recommendation from 5 days to 48 hours. He pointed out that the letter is saying that certain complications can occur within 48 hours.

4:35:39 PM

REPRESENTATIVE ANDERSON stated that the American Academy of Ophthalmology encompasses all of the medical physicians who practice ophthalmology and they recommend [the ophthalmologist to remain after surgery] 5 days. He said that the House Health, Education and Social Services Standing Committee prefers the amended 2 day stay requirement.

CHAIR WILSON said that it is obvious that American Academy of Ophthalmology is aware of the amendment and that they endorse HB 151 with the 2-day amendment.

4:36:32 PM

ERIC CHRISTIANSON, O.D., said that he has been an optometrist in Ketchikan since 1990, and there is not a full time ophthalmologist. He explained that there is an ophthalmology group that rotates through Ketchikan one week a month and they perform surgeries. He mentioned that since 1990, he has been involved with 3 or 4 eye care emergencies and most occurred within a few days after surgery. He said that in Ketchikan,

older surgical techniques are used and the results aren't as good. He said that he refers his patients to Seattle. He said:

> When I refer to a surgeon, I am counting on the skill of the surgeon and the ability of his particular team that he has put together to take care of the patient ... the outcomes of surgery are much better when you have a team and that includes the surgeon, but it also includes the other staff members in the office, including optometrists to manage the patient and return them at an appropriate time. The opposition that I have to this bill is ... the legislature shouldn't be regulating comanagement. It should be regulated by the boards. I was a board member ... for eight years ... I have never heard one peep from the Medical Board regarding any problems with comanagement with optometrists ...

4:39:54 PM

CHAIR WILSON stated that she called the Medical Board and they don't meet until next month. She said that she considered holding this bill until next month to give the Medical Board a chance to respond to the issues related to HB 151.

DR. CHRISTIANSON stated that his concern is that passing HB 151 is opening a "huge can of worms." He said that passing this legislation would affect comanagement decisions of health care professionals in rural communities. He emphasized that when referring for surgery, health care providers are counting on the clinical judgment of the surgeon that is being referred to.

REPRESENTATIVE GARDNER asked how long patients stay in Seattle after their surgery is complete.

DR. CHRISTIANSON said that, typically, a patient will see the surgeon, have the surgery completed, and see the surgeon the following day. Depending on the procedure, if a patient is stable enough there is no reason for them to stay longer. He related that he then sees the patient for a follow up 7 days after the surgery. He pointed out that his responsibility for the patient occurs as soon as they are released from the surgical facility.

REPRESENTATIVE GARDNER asked if it was accurate to say, assuming there are no problems, that after a patient has surgery they are seen by the surgeon the following day and then can return home.

DR. CHRISTIANSON replied that is correct.

4:42:42 PM

REPRESENTATIVE SEATON stated that he has had a problem with HB 151 in that there is a "board process." He said that with [Dr. Christianson's] testimony, as the Chair of the State Medical Board, it is clear that this issue has not been addressed by ophthalmologists.

DR. CHRISTIANSON clarified that he is a part of the "Optometry Board."

REPRESENTATIVE SEATON said that the HESS committee is trying to get information from the State Medical Board because the issues surrounding HB 151 are within the Board's jurisdiction to regulate. He pointed out that there is no information on ophthalmologists appealing to the State Medical Board and asking for assistance with this issue. He added that he has real concern about legislating particular medical procedures in place of the State Medical Board.

4:44:39 PM

REPRESENTATIVE MCGUIRE referred to HB 151 and said:

> on page 2, line 13 ... my understanding is that if the distance the patient would have to travel to the regular office of the operating surgeon would result in an unreasonable hardship of the patient ... it is an exception.

DR. CHRISTIANSON pointed out that HB 151 states that co management agreements may occur only when the patient must endure an unreasonable hardship to travel to the operating surgeon.

REPRESENTATIVE MCGUIRE said that in many places in Alaska, the situation of "unreasonable hardship" would apply. She inquired as to medical malpractice insurance requirements.

DR. CHRISTIANSON replied that he carries $3 million in malpractice insurance.

REPRESENTATIVE MCGUIRE inquired as to the amount of malpractice insurance that the ophthalmologist that Dr. Christianson works with carries.

DR. CHRISTIANSON clarified that he does not work with the ophthalmologist; he refers patients to an ophthalmologist. He said that there is no financial connection.

4:47:04 PM

REPRESENTATIVE MCGUIRE said:

> please understand that the sponsor's intentions are not to be disrespectful to you, nor are mine ... I got a couple of emails that said ... I was saying that I didn't think optometrists were valuable, or important, or professionals and that's just the absolute opposite of how I feel. I think that ... your profession is extremely important, valuable, that the patient care is great - I have an optometrist, I need them, I have terrible eyes - so, I just want to get that on record, but back to the medical malpractice insurance, when you enter into these comanagement agreements, is there a direct shift in liability that occurs ... one of the things ... I have a concern about is, when things go well they go well, and then when they don't, with the eyes, it's a disaster ... the surgeon comes in, does the surgery, gets on a plane, leaves, and now you're there and you are dealing with ... a problem on your hands. In the co-management agreement ... is the liability for medical malpractice then shifted to you for the primary act of the surgeon ...

4:48:44 PM

DR. CHRISTIANSON stated that he is not well versed in medical malpractice.

DR. ROSEN said that malpractice is shared, but the primary responsibility ultimately falls on the surgeon's hands.

4:49:34 PM

CHAIR WILSON inquired as to when co management occurs.

DR. CHRISTIANSON said that he refers patients to a specific surgeon after he has diagnosed them. He said that patients like

to get back within a reasonable time frame to avoid high travel costs. He emphasized that he trusts the surgeon to return the patient at a time when they feel it is appropriate.

CHAIR WILSON clarified that patients usually return home, from Seattle, by the second day after surgery.

DR. CHRISTIANSON said that is correct except if they have other plans in Seattle, as well.

REPRESENTATIVE ANDERSON stated his belief that this bill isn't about comanagement as much as it is about the surgeon staying for two days after surgery is performed. He reiterated Representative McGuire's comment that the distance an Alaskan patient would have to travel for surgery would constitute "hardship" and asked for a comment regarding this.

DR. CHRISTIANSON stated that decisions related to patient care are for the surgeon to decide. He emphasized that the Alaska State Medical Board should decide if regulations are needed for specific situations regarding patient care and management. He opined that regulating patient care is not up to the legislature to mandate. He said that attempting to pass HB 151 is "precedent setting" legislation.

4:53:02 PM

DR. WILLY SHIELDS, ophthalmologist, informed that he has specialty training in retina care. He said that he has patients referred to him from optometrists and from ophthalmologists and that though the bulk of his patients are referred from the state of Washington, there are some patients who come from Alaska. He said that, as a result, he is affected by the co-management relationship. He continued:

> I certainly have my opinions about how co management can work ... when I think about the state of Alaska and how things are spread out ... I, personally, think that it's going to be very difficult to take care of patients in the larger sense without having a co-management system. The problem that I see that surfaces when there is an attempt to have rules or regulations about co management, obviously you want to make sure that there is a certain level of quality that is adhered to, and I think that that is fundamentally our responsibility whether ophthalmologists or optometrists, but the major

problem ... is ... it is difficult to set up co management ... rules that forgive ... co management relationships between rural settings ... and ... co management in a kind of urban ... setting. The challenge is , how do you say that it is okay to have co management in one setting and not the other. As Dr. Christianson has said ... if there is a good relationship and I know that kind of care that the optometrist can provide in their community then I am perfectly okay with the patient going back.

CHAIR WILSON inquired as to Dr. Shields' opinion on the two-day stay requirement issue related to HB 151.

DR. SHIELDS related that there are times when a patient will undergo surgery, and return home the following day. He said that, depending on the patient and the situation, the time frames change. He added that there are instances where patients would be advised to abstain from travel because of complications with healing process.

REPRESENTATIVE MCGUIRE reminded Dr. Shields that HB 151 pertains to surgeons performing eye surgery in Alaska. She explained that it is not uncommon for the legislature to make different rules pertaining to rural parts of the state than for urban [areas in Alaska].

DR. SHIELDS thanked the committee and all participants for the efforts involved in understanding HB 151. He responded to line 14, within HB 151, and inquired as to the definition of "hardship."

CHAIR WILSON stated that "hardship" can simply be that an individual would not be able to afford airfare [required for travel related to eye surgery].

REPRESENTATIVE GARDNER confirmed that Dr. Shields advocated for the practice of sending a patient home 24 hours after surgery.

DR. SHIELDS said that is appropriate in many circumstances. He emphasized that follow-up care would be involved after surgery.

REPRESENTATIVE ANDERSON asked Dr. Shields if he understood Representative McGuire's earlier clarification regarding HB 151 being applicable only within the state of Alaska; he asked if Dr. Shields had performed surgery in Alaska; he asked how Dr. Shields was contacted to testify before the committee.

DR. SHIELDS said that he understood the clarification regarding HB 151; he replied that he had never performed surgery within Alaska; he said that he was contacted by Paul Barney, an optometrist who works for the Pacific Cataract Group in Anchorage and has received phone calls from Dr. Michael Bennett.

REPRESENTATIVE GARDNER said, "Representative Seaton talked about a letter of support [for HB 151] from the "medical board" and ... in my packet I have a letter of support from the Alaska State Medical Association, which is an association of practitioners, not the board; am I missing something?" She said that she is hoping to clarify as there is a big distinction between the "medical board" and the "medical association."

REPRESENTATIVE ANDERSON stated that Representative Gardner is correct and the Alaska State Medical Association endorses HB 151, not the Alaska Medical Board.

5:05:41 PM

BOB FORD, M.D., ophthalmologist, said that he lives in Washington state but that he established an office [Pacific Cataract and Laser Institute] in Anchorage, seven years ago. He stated:

> I believe ... all of the ophthalmologists and the optometrists agree that the surgeon is the captain of the ship for post-operative care, and the surgeon feels that responsibility and he is going to be sure that it is done and there are two ways to do that: he can do it himself ... and that is good ... but it is also very legitimate to delegate things and if you have quality people that you trust, you can delegate. I come up typically on Monday and I'll typically operate for three days - Tuesday, Wednesday and Thursday and then I go home ... the only reason I'm comfortable doing that is because I have a very skillful optometrist that's the full-time doctor there ... my office is open 5 days a week ... for post-operative care. I've cared for, literally, thousands of patients with Dr. Barney and I know he's very quick ... to recognize ... [post-operative complications] ... I've done approximately 8,000 surgeries in the last 7 years, in Anchorage ... I have had three cases that have needed my attention post-operatively, none of them within the first 48 hours, interestingly

enough, and those 3 cases I took care of, one of them three weeks after surgery ... so this bill wouldn't have addressed that ... my thoughts and feelings on this are very colored by my experience with my father. My father was a family doctor and I watched him work with surgeons and I could tell that my dad's patients trusted my dad ... and the surgeons trusted my dad too, and they'd get the patients right back to my dad for post-operative care ... it was good for the patients because my dad knew them better than anybody else did ... I believe that patients nowadays want the same thing for their eye surgery. If their doctor is a surgeon, they'll want their doctor to do the surgery and care for them afterward, if their doctor isn't a surgeon, which is the case of 80 percent of the patients in Alaska because 80 percent of the eye doctors are not surgeons in Alaska ... they're going to ask their doctor ... who should do my surgery and their doctor will set that up and then they're going to want to be right back in the care of their doctor as soon as possible. I don't see that you can set a specific time that works ... I haven't had a single case, not one case, where the fact that I went home Thursday night caused any harm to any patients ... if you pass this legislation, then I will certainly cooperate with it, and I'll spend another two days up here at the end ... I don't think the legislation is needed and it would hamper the way I practice, which a lot of patients like and a lot of doctors like ... but ... I trust your judgment and ... I'll cooperate to the best of my ability.

5:11:01 PM

CHAIR WILSON inquired as to the costs associated [for patients] if HB 151 passes and Dr. Ford would be required to stay in Anchorage for an additional day; she asked if the passing of HB 151 would make Dr. Ford hesitate about coming to Alaska to perform surgery.

DR. FORD replied that if he were required to stay an additional day after surgery, he would not charge patients extra. He clarified that he does not pay optometrists for comanagement, and that they bill separately. In response to Chair Wilson's second question, Dr. Ford stated that he might hesitate but that he feels a strong commitment to serve with his colleagues at their practice.

REPRESENTATIVE GARDNER said that a surgeon that performs eye surgery in this state can delegate the responsibility of post-operative care to another ophthalmologist, according to HB 151. She pointed out that Dr. Ford could easily delegate and one of his partners could provide post-operative care, and that his practice would, in essence, not be affected by HB 151.

5:13:00 PM

DR. FORD stated:

> my partner, the one that sees all of my patients, "post-op" up here, Dr. Barney, he is an optometrist, not an ophthalmologist. And I feel that this bill ... is anti-optometry, it really is, because the spirit behind this bill is optometrist's are not capable of doing first quality, post-operative care ... I believe the way I do it is first rate ... I believe Dr. Barney is just as able to screen for problems, as anybody else. In fact, he's probably seen more cataract surgeries, "post-op" than the average ophthalmologist has.

5:13:39 PM

REPRESENTATIVE ANDERSON inquired as to Dr. Ford's opinion regarding the Academy of Ophthalmology's guidelines on post-operative surgical care.

DR. FORD said that the typical ophthalmologist is opposed to comanagement. He explained that there is a conflict between optometrists and ophthalmologists because optometry is a group of forward looking, ambitious people and they've moved forward in their ability to diagnose and treat disease, which is threatening to ophthalmologists. The American Academy of Ophthalmology is fundamentally not very supportive of comanagement, he related, and there's hard feelings between ophthalmology and optometry at the leadership levels because of the struggle of the expansion of practice. He added that he is more pro-comanagement than the leadership of the American Academy of Ophthalmology is and respectfully disagrees with the Academy on this subject of comanagement.

REPRESENTATIVE MCGUIRE inquired as to whether Dr. Ford takes "call."

DR. FORD replied that he does not take "call" [ability to be available for of-hours medical emergency calls] and it has created negative feelings between him and some of the other ophthalmologists. He explained that he has recently decided that it would be fair to take "call" and is in the process of setting the situation up so that he can rotate call with other ophthalmologists in his office.

REPRESENTATIVE MCGUIRE said:

> at the root of this bill I think there are some of us that are supportive of it for the reason that we want to attract ... retain ... more medical doctors, ophthalmologists, to our community that are going to live in our community and be here to service the needs of the people that live in our state ... I suspect ... that if I said "Would you be willing to fly your plane up here, on a moment's notice, to take care of somebody that had a very serious eye emergency that had not paid you for an eye treatment" ... you would probably say no and that's kind of the point I am getting at ... it's an opportunity to come in, I understand ... but that being said, you don't stick around and I appreciate what you said on the record today about the "call."

CHAIR WILSON interrupted and stated that Representative McGuire's comments are not related to HB 151.

REPRESENTATIVE MCGUIRE said:

> the point of this is that if we allow certain procedures to create a market, then we deter some people from entering the market ... the only other final analogy I have is, paralegals, ... I have met some paralegals that are some of the most competent people ... I have met paralegals that are smarter than a lot of the lawyers that I have met and so life experience, and working on the job can make you extremely competent. So, this is not about optometrists not being competent ... the choice that's made at the outset is your own, about whether you choose to get a medical degree or whether you choose to get an optometry degree ...

5:20:23 PM

REPRESENTATIVE SEATON inquired as to Dr. Ford participating in comanagement arrangements.

DR. FORD said that for the last 20 years, almost all of his patients have been comanaged.

SAM TRIVETTE said that he had eye surgery in Seattle and could have instead [had eye surgery] in Anchorage, and if he had, this bill would have had impact. He explained that he was referred [for surgery] to an ophthalmologist by his optometrist in Juneau and after the surgery, was seen by his local optometrist for follow-up post-operative care. He said that if the follow-up care had to have been done by an ophthalmologist, he would have had real difficulty as there is only one ophthalmology group in Juneau and he has had negative past experiences with them. He explained, "if I had to stay for 48 hours because an ophthalmologist would not do a comanagement, I would have to eat that money and that's expensive, hotels are not cheap anymore, and meals are not either. I feel this bill is unnecessary and I don't think the legislature should be forcing this on the medical system." He emphasized that this is an issue that is between him and his physician and he does not understand why statute is necessary.

5:24:58 PM

FRANK BICKFORD said that Dr. Ford spoke of a potential war between optometry and ophthalmology in his testimony and there is a need to clarify this. He informed that optometrists do a good job at what they do and what they are trained to do and that optometrists and ophthalmologists get along in Alaska. He said:

> The frustrating point that I heard today, was Dr. Ford stating, if he can't come back to Anchorage, he'll have his optometrist come from Outside. There are ophthalmologists in Anchorage, why not add those ophthalmologists as part of the comanagement agreement. It's very simple, there is no reason why the ophthalmologists in Anchorage can't be part of this ... after 48 hours the optometrists are back in the system under this bill, so they're not taking optometrists out of the whole picture, they are part of the picture but those first 48 hours are critical in eye care and that's why the American Academy of Ophthalmology endorses this bill with that change.

CHAIR WILSON inquired as to the insurance paying all involved, if in fact there were situations where two ophthalmologists and an optometrist treated one patient.

CARL ROSEN replied yes, and that there is a fee split that Medicare and the "OIG" (Office of the Inspector General) has deemed appropriate for appropriate comanagement that is in place and it is usually "80/20" for the typical relationship.

5:27:48 PM

CHAIR WILSON said that what she is hearing over and over is the fact that the patient is going to feel comfortable most with the person the patient knows the best. She questioned whether it really makes a difference in terms of who does the follow-up care after eye surgery.

DR. ROSEN argued that the patient usually does not understand what the comanagement relationship is and that's what the "OIG" and Medicare expect. He said:

> I would just say the litmus test for you people who are making these decisions ... would you prefer to have your physician take care of you, and to make decisions or would you prefer to have someone who does not do the cutting, someone who does not do the sewing, who does not make the difference in your visual system in the operating room ... I am not anti-optometrists. I think that we're going to improve eye care, we're going to set a precedent, we're going to say look, you operate, you need to take care of that patient, and after that , we can go about our business as usual.

REPRESENTATIVE ANDERSON added, "isn't it true that a patient after back surgery might feel more comfortable ... with their massage therapist, that doesn't mean that they're healthier with a massage therapist."

DR. ROSEN reiterated that the average person is unaware of the difference between optometrists and ophthalmologists. He opined that it is the job of the pathologists to make the best decisions because ophthalmologists know more [about eye care] than constituents and patients.

5:31:58 PM

DR. MICHAEL BENNETT, stated that throughout the course of the committee meeting, optometrists have been compared to paralegals, massage therapists, and other ancillary medical personnel. He emphasized that optometrists are not ancillary medical personnel. He explained that optometrists are doctorate level physicians and are trained in optometry school to do post-operative care. He said, "the whole gist seems to be ... are we willing to settle for this ... second standard of care in post-surgical care, as opposed to having the "real" doctor look at the patient, and ... I don't know that it's gotten across very well, it's the whole notion of that, that is offensive. I have spent a long time doing post-operative care; I feel equally qualified to recognize the problems that are being talked about here, through the general ophthalmologists. And, obviously the surgeons that I have referred patients to ... feel likewise, or they would not be sending the patients back to me."

REPRESENTATIVE MCGUIRE said that a medical degree, which takes about eight years to complete, is different than a degree in optometry.

DR. BENNETT clarified that an optometry degree takes eight years before it is completed.

REPRESENTATIVE MCGUIRE inquired as to the difference between optometrists and ophthalmologists. She said, "Why not just become a medical doctor?"

DR. BENNETT replied that he didn't want to become a medical doctor.

REPRESENTATIVE MCGUIRE opined that people make a choice about a degree they want, and then they come [to the legislature] and demand additional powers to be granted in their profession.

5:36:19 PM

DR. BENNETT informed that optometry has grown and changed considerably in the past few decades. He said that practitioners are continually expanding their capabilities and their level of knowledge. He explained that medical doctors can obtain training and determine their competency to utilize new techniques with patients, while optometrists cannot.

REPRESENTATIVE MCGUIRE said that people make a choice about a profession and that the legislature cannot grant additional "powers" to suit changing needs.

DR. BENNETT said that comanagement with optometry has been regulated by the federal government since 1980 and optometrists made the choice to have the capability to comanage [and have been comanaging] for 25 years. He clarified that [optometrists] are not asking for an expansion of authority in comanagement, but that [the legislature] does not rescind [optometrist's] authority in comanagement. He continued:

> to become the only state in the country, where optometrists, after 25 years of successful comanagement, are now prohibited from doing so, for whatever time period. This is not something new, you're actually trying to turn the tables back 25 years ... I'm not here asking you to give me something I don't already have, I'm asking you not to take something away I've been doing successfully for a long time. There have been a number of studies, two of the major ones, authored by ophthalmologists, looking at comanagement, looking at thousands and thousands of retrospective cases and looking for outcome differentials between optometry comanaged patients and patients who are followed by the surgeon, they can't find the problem, there's no difference in outcome.

5:40:52 PM

CHAIR WILSON asked Dr. Rosen if there is any other state has passed legislation similar to HB 151.

DR. ROSEN said that four states have looked at similar legislation. He opined that HB 151 will benefit people and optometrists will get a chance to participate [in eye care].

5:42:47 PM

REPRESENTATIVE ANDERSON moved to adopt a Conceptual Amendment, as follows:

> I move amendment number 1 which would change on page 1, line 12, 120 hours to 48 hours, and then on page 2, line 1, 120 hours to 48 hours. And have the legal services make it a conceptual amendment so it's conforming in case I've missed any applicable language that doesn't reference 48 hours that needs to be changed.

5:43:10 PM

REPRESENTATIVE SEATON objects. He stated his concern that the 48-hour amendment is arbitrary and that the testimony has shown that most complications [after eye surgery] do not occur within the 48-hour timeframe. He opined that, "we are just changing to 48 hours because maybe we can pass the bill with 48 hours and we can't pass it with what the ophthalmologists themselves recommend ... and so, I'll withdraw my objection for that, but I have a problem with doing ...".

REPRESENTATIVE ANDERSON said that the American Academy of Ophthalmology is stating that 48 hours is acceptable and the idea of the bill is that doctors stay an extra day after surgery.

CHAIR WILSON noted that Representative Seaton's objection was withdrawn. There being no further objection, [Conceptual] Amendment 1 was adopted.

5:45:03 PM

REPRESENTATIVE KOHRING offered that the committee hold this legislation over until the next meeting because there seems to be real hesitation among members and concerns from the community.

REPRESENTATIVE ANDERSON opined that HB 151 can move. He said:

> We've waited nine days ... we've had about 5 hours of testimony duplicative for the optometrists, duplicative of Dr. Rosen, and have another committee of referral. And, we also have the ability for people to allow it to pass, but vote do not pass or "no rec" on the file and report if they're worried about the record.

The committee took an at-ease from 5:46:21 PM to 5:47:02 PM.

5:47:08 PM

REPRESENTATIVE ANDERSON moved to report HB 151 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE SEATON made an objection and stated:

> I think that we've had a lot of testimony here, and I think the testimony has come down to ... surgeons should use their medical expertise and should determine when, within their medical expertise, a person should be able to leave and what we are trying to do is insert ourselves between the medical doctors and their decisions and say that the medical doctor that says that his patient is free to go in 24 hours is making a bad decision, an incorrect decision, and we are going to insert the legislature into a medical decision and say ... that we know better ... I think that that is a very big mistake. I also think that on page 2, line 12 where we say "this doesn't apply to rural Alaska", [we are saying] it doesn't matter about the care there, it only applies to Anchorage and Fairbanks, basically ... I have a real problem with aspects if the bill but, especially, that we're inserting ourselves ... in the state medical board's place.

5:48:49 PM

REPRESENTATIVE KOHRING said that he has concerns about the legislation but that he will not object to move the bill to the next committee. He explained that the bill will have more opportunities for those that oppose this legislation to convince members of other committees to prevent the bill from going forth. He shared that his concerns are similar to Representative Seaton's and he will vote to move the bill but mark a "do not pass" recommendation on the "sheet."

5:50:04 PM

REPRESENTATIVE GARDNER she said that it is clear that this bill addresses a problem that doesn't exist. She mentioned that she agreed with Representative Seaton's comments.

CHAIR WILSON noted that she agreed with Representatives Seaton and Gardner. She highlighted that this is not normal [legislation] for Alaska. She said, "We try to make sure that what we do doesn't have any ramifications in other areas and I ... am concerned that this is setting a precedent and the wishes of the committee is that we move this bill and so we have an objection, so I will go ahead and call the role."

5: 51:03 PM

A roll call vote was taken. Representatives Kohring, McGuire, Anderson, and Cissna voted in favor of HB 151. Representatives Seaton, Gardner, and Wilson voted against it. Therefore, CSHB 151(HES) passed and was reported out of the House Health, Education and Social Services Standing Committee by a vote of 4-3.

ADJOURNMENT

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned around 5:51:42 PM.