

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

April 19, 2005

3:35 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

MEMBERS ABSENT

All members present

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

OVERVIEW OF SCHOOL COST DIFFERENTIAL

- OVERVIEW CANCELED

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
03/17/05	(H)	Heard & Held
03/17/05	(H)	MINUTE(HES)
04/07/05	(H)	HES AT 3:30 PM CAPITOL 106
04/07/05	(H)	Heard & Held
04/07/05	(H)	MINUTE(HES)
04/19/05	(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: Testified on behalf of the department during the hearing on HB 193.

STACIE KRALY, Senior Assistant Attorney General
 Human Services Section
 Office of the Attorney General
 Department of Law
 Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 193, answered questions.

AMY ONEY, Owner/Operator
 Mama's Assisted Living Home
 Anchorage, Alaska

POSITION STATEMENT: Testified in support of amending HB 193.

JUDY JACHIM
 Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing on HB 193.

CANDY CARROLL
 Fairbanks, Alaska

POSITION STATEMENT: Testified in support of Amendment 1 to HB 193.

MONTA LANE
 Fairbanks, Alaska

POSITION STATEMENT: Testified in support of amending HB 193.

MARY RAYMOND, Coordinator

LVR

Homer, Alaska

POSITION STATEMENT: Testified on behalf of five assisted living homes during the hearing on HB 193.

SHERRY METTLER

Northern Lighthouse Assisted Living Home

Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of 38 assisted living home representatives in support of Amendment 1 to HB 193.

JON SHERWOOD, Medical Assistance Administrator

Office of the Commissioner

Department of Health and Social Services

Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the department during the hearing on HB 193.

MERRI BELLE DIAS

Matanuska-Susitna Valley, Alaska

POSITION STATEMENT: Testified in support of amendments to HB 193.

VIRGINIA STONKUS, Chief

Certifications and Licensing

Division of Public Health

Department of Health and Social Services

Juneau, Alaska

POSITION STATEMENT: Answered a question during the hearing on HB 193.

ACTION NARRATIVE

CHAIR PEGGY WILSON called the House Health, Education and Social Services Standing Committee meeting to order at [3:35:59 PM](#). Representatives Kohring, McGuire, Anderson, Cissna, and Gardner were present at the call to order. Representative Seaton arrived as the meeting was in progress.

HB 193-LICENSING MEDICAL OR CARE FACILITIES

CHAIR WILSON announced that the first order of business was 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."

3:37:06 PM

REPRESENTATIVE CISSNA moved to adopt the committee substitute (CS) for HB 193, Version 24-GH1016\F, Mischel, 4/19/05, as a work draft. There being no objection, Version F was before the committee.

RICHARD MANDSAGER, M.D., Director, Division of Public Health, Department of Health and Social Services, explained the added change on page 8 of CSHB 193, following line 16, where the Department of Health and Social Services is added as the administrative hearing entity for hearings related to the centralized registry. He explained that on page 14, line 21, the word "volunteer" is added; volunteers are subject to the registry when they have an ongoing, unsupervised relationship with a client. He pointed out that on page 14, line 23, the word "decisions" was added. On page 14, line 27, he related, there is the addition of defined medical assistant's fraud, so an entity, provider, or employee that commits medical assistance fraud is included in the registry.

REPRESENTATIVE CISSNA inquired as to how the registry will function with the high turnover rates that are associated with human service workers.

DR. MANDSAGER rephrased Representative Cissna's question, "I think what you are asking is: ...'If they change jobs ... annually, for a while, for some reason or another, how often does this whole process have to be gone through?'"

3:41:54 PM

STACIE KRALY, Senior Assistant Attorney, Human Services Section, Department of Law, said that she envisions a regulatory provision or waiver such that the same background check could be used when the timeframe between jobs is relatively short.

DR. MANDSAGER explained that on page 15, line 12, a new subsection was added to ensure that reporting occurs if there have been any episodes within the past 10 years.

CHAIR WILSON asked for an example.

MS. KRALY said:

the concept for this provision was ... for the centralized registry ... an individual who had been ... terminated from employment 20 years ago, we wanted ... a time sensitive period with respect to these findings that would allow for a good, current picture of an individual ... if we're going to go back further than 10 years we felt that, like, under the criminal registry ... there's a discretionary and a mandatory bar, depending on how old the offense is. We felt that 10 years was an appropriate time to look at these sort of civil abuse issues to determine whether or not they should be included on the registry.

MS. KRALY further explained :

The premise of the ["24 hours"] is that as soon as there is an allegation of harm or a termination ... the department [would] be advised of that. The name doesn't go on the registry until all of the adjudicatory due process provisions have been met, but that we would be provided immediate notice ... we just wanted things to get moving quickly to afford a due process as quickly as possible.

DR. MANDSAGER mentioned that page 15, line 23, establishes that information in the registry is confidential. He explained that there is the opportunity to create access to the registry through using a password, so that the process is electronic and does not require staff.

DR. MANDSAGER said that there is a clarification of immunity protections on page 15, line 28, following [Subsection (i)] such that one making a report is not subject to liability. He continued:

Page 16, line 18, defines the phrase "entity," which is used in this bill There's one other element in here that was suggested by the Municipality of

Anchorage, in the Senate hearing last week, and it's on page 23, line 19 ... this was a concern that the bill was not explicit as current law is that if a municipality with "home rule" powers wants to take on child care licensing authorities it would be clarified that they can do that This makes clear that the powers in current statute are continued into this.

DR. MANDSAGER said that Anchorage licenses approximately 50 percent of the child care entities in the state. He explained that the aforementioned amendment entitles municipalities to this power of licensing.

[3:47:01 PM](#)

REPRESENTATIVE KOHRING inquired as to the possibility of moving HB 193 out of the House Health, Education and Social Services Standing Committee.

CHAIR WILSON stated that she has not read the entire bill, and would like to do so before moving it out of committee.

REPRESENTATIVE CISSNA began discussion of Amendment 1, labeled 24-GH1016\G.2, Mischel, 4/19/05, which [she offered on behalf of herself and Representative Anderson]. Amendment 1 read [original punctuation provided]:

Page 1, line 9, following "**Services;**":

Insert "**relating to public assistance for health facilities and assisted living homes, to rates charged by an assisted living home, and to the liability of recipients of home or community-based services to pay for those services; relating to expansion of optional Medicaid coverage and to medical assistance coverage for companion services**"

Page 15, following line 29:

Insert new bill sections to read:

"* **Sec. 20.** AS 47.07.070(a) is amended to read:

(a) **Except as provided under (d) - (f) of this section, the** [THE] department shall, by regulation, set rates of payment for health facilities under this chapter and AS 47.25.120 - 47.25.300 in accordance with 42 U.S.C. 1396 (Title XIX, Social Security Act, Medical Assistance) and this section. A rate established under this section takes effect under AS 44.62 (Administrative Procedure Act) but not until

approved in writing by the commissioner. The commissioner may delegate the performance of these functions.

* **Sec. 21.** AS 47.07.070 is amended by adding new subsections to read:

(d) For residential support living services provided to an eligible recipient of medical assistance living in an assisted living home licensed under AS 47.33, the minimum daily reimbursement rate to the assisted living home for room and board expenses is \$28.

(e) The department may not establish a maximum daily rate for room and board expenses charged by an assisted living home.

(f) A calculation of the rate for administrative and general costs for a provider, including an assisted living home, shall be determined in the same way as a calculation of the administrative and general cost rate for a Pioneers' Home. In this subsection, "administrative and general costs" means those expenses that are common to the overall operation of a provider providing home and community-based waiver services and that are not directly assignable to or borne by a specific program or recipient of a home and community-based service.

* **Sec. 22.** AS 47.07.030(c) is amended to read:

(c) Notwithstanding (b) of this section, the department **shall** [MAY] offer a service for which the department has received a waiver from the federal government if the department was authorized, directed, or requested to apply for the waiver by law or by a concurrent or joint resolution of the legislature **and the service will result in cost savings to the department by allowing an eligible recipient who would otherwise require institutional care to live at home.**

* **Sec. 23.** AS 47.07.030 is amended by adding a new subsection to read:

(e) The department shall apply for a waiver under (c) of this section and offer companion services in a recipient's home to an eligible recipient to the extent that the companion services are necessary and will result in cost savings to the department over the provision of institutional care for the recipient. Companion services may be covered under this subsection for nighttime care. In this subsection, "companion services" means nonmedical care, supervision, and socialization provided to a

functionally impaired adult in accordance with a therapeutic goal in the recipient's plan of care."

Renumber the following bill sections accordingly.

Page 39, following line 31:

Insert a new bill section to read:

"* **Sec. 52.** AS 47.07.070(c) is repealed."

Renumber the following bill sections accordingly.

Page 40, following line 9:

Insert a new bill section to read:

"* **Sec. 56.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REGULATIONS ANNULLED. 7 AAC 43.1058(j) and 7 AAC 43.1058(k)(1)(B) are annulled."

Renumber the following bill sections accordingly.

Page 45, following line 3:

Insert a new bill section to read:

"* **Sec. 64.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY. Sections 20 and 21 of this Act are retroactive to June 26, 2004."

Renumber the following bill sections accordingly.

Page 45, line 4:

Delete "Sections 51, 54, and 56"

Insert "Sections 20, 21, 57, 60, 62, and 64"

Conform all internal bill section references on page 40, lines 13, 15, 16, 18, 19, 21, and 24; on page 41, lines 3, 14, and 21 - 23; on page 42, lines 3 - 15, 20, 26, and 29; on page 43, lines 8, 9, 11, 13, 14, 19, 22, 24, and 28; page 44, lines 24, 25, and 28; and on page 45, lines 3 - 10.

REPRESENTATIVE CISSNA explained that the Amendment 1 would apply to the rates charged and to the liability of the recipients of the home as well as providing community-based services, at-home health care, and companion services if it is a cost savings. She opined that this could provide an incentive for the department to look into cost savings related to keeping people in their homes.

3:50:52 PM

DR. MANDSAGER notified the committee of a change added on the companion bill to HB 193 in the Senate that allows, "a person that is coming to pick-up or visit a child-care facility to have an unloaded firearm in a locked or covered case Since we haven't provided amendment language, I am proposing that we would provide that to the next committee after it leaves here I suppose we could bring it here too, just so the bills stay the same, as much as possible on both sides."

CHAIR WILSON stated she would like to take Representative Cissna's amendment and divide it into sections, and adopt the amendment section by section.

3:53:56 PM

REPRESENTATIVE ANDERSON offered that Representative Cissna had moved Amendment 1, and thus with an objection Amendment 1 could be discussed section by section. He said this would eliminate the creation of multiple amendments.

CHAIR WILSON objected and stated that Amendment 1 will be dealt with as she originally suggested. She referred to page 15, following line 29 and highlighted the new sections, Sections 20-23.

The committee took an at-ease from 3:56:47 to 4:00:52.

4:01:07 PM

AMY ONEY, Co-Owner/Operator, Mama's Assisted Living Home, explained that last year, the Division of Senior Services put a cap on the room and board rates that the assisted living homes could collect from their residents. The cap was set at \$18.54 a day, she related. She emphasized that her program cannot provide service for that amount of money. She continued:

So, what this amendment has done: ... it's rolled the clock back to go back into those ... regulations that were passed last year, and it's given us \$28 a day, minimum - which is what we had before - and it has taken their ability to put a maximum rate on there. ... If they had more income than that, that still qualified for the Medicaid waiver, they kept the \$100,

and we were able to collect room and board above the \$28, if those people had those resources.

MS. ONEY, in response to a question from Chair Wilson, explained:

We actually provide the service, so what would happen is, every month when people get their ... entitlement checks, they are entitled to keep \$100 and, depending on the contract that the home created with that resident, they were allowed to keep a minimum of \$100. The home could charge whatever room and board rate they needed to survive, and that resident was guaranteed at least \$100 to live on for the room and board side.

... Our waiver reimbursements do not cover any of the food expense; they don't cover our rent. They delegate certain percentages out - ... I think it's 22 percent of our wages have to be paid by room and board money. Our utilities, our home maintenance - any kind of ... expenses that we didn't put into our budget that wouldn't have been covered by Medicaid reimbursement - we have to cover out of room and board monies. And by them putting on a cap for \$18.54 per day on what we're allowed to collect per resident, per day, if they have any more money than that, we have to pay it back to the state now. We have to short our Medicaid reimbursements by whatever amount they're above the minimum, so that every single person in assisted living right now is supposedly supposed to be paying ... a total of \$564 a month. And that's all we get per resident, per month to pay these room and board expenses.

MS. ONEY detailed the room and board expenses for her operation. In response to a question from Chair Wilson, she listed the amount of money each of the four homes she and her husband run are losing per month since the cap was incurred: \$2,400, \$2,000, \$1,670, and \$2,888.

[4:07:05 PM](#)

MS. ONEY, in response to a question from Representative Gardner, said the home that is losing \$2,888 has five residents in it. She said each home's expense requirements differ depending upon property values, expenses, utilities, and resident needs.

REPRESENTATIVE GARDNER proffered:

I think I have the number worked out, which is \$5584. And I think it probably is fair to say the difference in cost between you running your home and somebody running a private home for 5 people is that they have to provide staff for them, as well, and transportation. ... That's calculated: ... \$18.56 times 5 people, is \$92 a day for 5 people, times 30 days in the month, the cost would be \$2,784, and then she's losing \$2800. So, in round numbers, the cost, then, for running that home is \$5584, for 5 people, which is ... \$1100 a month. So, if you think, for those kinds of services, for \$1100 a month, that's not an outrageous amount of money.

MS. ONEY related that because of the budget, as a result of the Medicaid waiver, she has to pay her staff much less than the staff of the Pioneer Home is paid.

[4:09:55 PM](#)

REPRESENTATIVE MCGUIRE suggested that Ms. Oney could go through the costs associated with the operation of an assisted living home.

MS. ONEY explained that her homes serve a population including elderly with dementia and disabled adults. She pointed out that her homes provide 24-hour care, including three meals per day, plus snacks.

MS. ONEY stated that room and board expenses, with Medicaid waiver clients, are separated out from services. She explained that when she goes to the Medicaid waiver people with her budget, they tell her what they will cover for service - providing physical hands-on care, versus the time spent doing laundry, cleaning, rooms, and food preparation. She continued:

So, what they do is they take a random analysis and say, "Okay, we're going to pay ... 78 percent under the cost of care of your wages, or any of your wage expense" But since you get room and board money from the residents, you have to pay them out of this other coffer over here; you have to provide 22 percent of those employee wages out of the room and board expenses. And when you have a 24-hour staff ... [paid

at] \$11 an hour, you can imagine that, out of \$18.64 a day, it takes, I think, two clients just to pay your 22 percent [for] your staff just to be in the home - and that's only if you have one person on staff. But a couple homes, including two of mine, have two people on during the day, so that significantly increases that amount of that 22 percent of your employment costs.

MS. ONEY said Medicaid considers the layout of the home. They do not pay the percentage of rent for bedrooms, bathrooms, kitchens, or laundry facilities. She explained, "So, if ... you have a five-bedroom facility, you'll lose more of your reimbursement, because more of your floor plan is taken up by bedroom space." She indicated that the amount that Medicaid does not cover for those areas is 35 percent; therefore that money must come out of room and board monies. She noted that food expenses in the average home is \$1,000 a month. She said, "So, you can see, if you're spending two person's allowance on your food allowance and over two people on your wages, there's no money left over to make up these other expenses that we're supposed to cover." For those who have owner occupied homes, in which the owners live on the premises, Medicaid excludes the personal space before doing the allocations. For example, if there is a 1,000 square foot home and 200 square feet belong to the owner, then Medicaid's calculations would be on the remaining 800 feet.

CHAIR WILSON inquired as to Ms. Oney's opinion as to whether the aforementioned calculation is fair.

MS. ONEY related:

I don't think it's correct in basing it on the square foot ... because most of the care we do takes place in their own personal bedrooms. So, to exclude that from personal care space, just in order to shift the funds over and make us pay that, the allocation formula is off, because the care is being provided, the Medicaid portions of our contracts with those people are being provided in the bedroom. They're also being provided in the kitchen, when we do special diets based on their medical needs, and ... when we have to cater to each one - even if it's the littlest things as they have no teeth and they can't chew harder foods - the extra time preparation is actually caring for them, not necessarily just feeding them

MS. ONEY, after hearing Chair Wilson's question repeated, said she thinks it's fair to exclude personal space. She continued as follows:

What this actually addresses is the balance of our budget that's allocated by the personal space of the residents. And so, when we have, say, a \$10,000 budget a month ..., and they say half of that is personal space and room and board cost, we have to come up with - from the resident's contribution - \$5000 a month to meet our \$10,000 budget. And so, what this ... amendment does, is it prevents them from limiting that. Because even if you ... make the \$564 a month that they capped it at, [and] you round it off to \$500, you're looking at the maximum ... contribution to the homes on the room and board side of ... a 5 bed home, you're looking at \$2500. That's what they've limited us to collect. They prevent us from going to the homes. If we want to provide a better quality home and we wanted to ask the families for help, they have prevented us from doing that. We cannot go to the families to have them participate in increasing the level of care of ... the residents. They have maximized what we can do, and they've put a maximum on it at an amount that doesn't work. We're sustaining these losses that we've sustained since last year, just so that we could be here before you this year. We've been working with [Representatives McGuire, Anderson, and Cissna] ... on these issues ever since the regulations passed last year, and they [assured] us, "Hang on there" So, this is our hanging on, saying, "We've done it for a year, we can't do it for another year; we can't continue these losses." By having us operate at a home, we're personally supplementing the [Division of Senior and Disabilities Services] DSDS budget, because these people are still receiving the level of care that they would without it, because we're meeting our contract - but we're doing it at a loss. So, we're actually subsidizing the budget is what it's coming down to.

[4:20:12 PM](#)

CHAIR WILSON commented that she agrees with much of what Ms. Oney has said, but she asked what is to prevent abuse of the

system by personal care attendants. She mentioned an increase of \$70 million in two years.

MS. ONEY responded:

The state funds are being monitored when we put in our "cost of care" budgets. The room and board funds that we were meeting on our own through the contributions of each resident ... [are] limited, because a person can only qualify for the waiver program if they make under a certain amount each month. And the department will be the first to testify [that] it doesn't apply to everybody. Maybe 30 percent earn more than the minimums that they're talking about. But by preventing the homes from, say, taking two people that earn less each month - the minimums - and maybe they'll share a smaller room or maybe ... they'll receive the same level of care, but ... they'll have different aspects to their living arrangements than, say, someone who had \$1,400 a month coming in for room and board that might get a private room with a ... view, ... so that they're receiving something for the extra money they're contributing to us, but we're able to meet these expenses.

By not allowing us to take in those people that do come in with \$1,400 or even \$1,000 a month, and making us pay that difference now into the state - because say they made \$1,000 and, again for round number, the cap was at \$500 - we're paying \$500 back to the state now. Instead of letting us use that \$500 to feed them and meet these expenses, it's getting reimbursed for the amount of Medicaid waiver funds that we receive. So, they are reducing the state's expenses, but at the expense of our homes. Because we still have to feed these people. ... This new regulation set here comes in and tells us how to clean our homes and how many times we have to wash a towel. They're monitoring the things we do by room and board, and we have to regulate - we have to show and document the things we do - but they're making it impossible to meet the expenses of doing that. In fact, they're increasing our expenses ... in about five weeks with the new regulations they're putting on the table now. So, we're not asking for anything different than the way it was last year; ... we're just asking them to roll back that maximum amount. ... We're being forced to

compromise our level of care that we can give to anybody.

4:23:57 PM

CHAIR WILSON expressed concern that people could be taken advantage of as a result of what they are able to afford for living expenses. She added that it would be unfair to have people with more available money receive better care services.

MS. ONEY restated that the cap mandates \$18.54 per day, per resident, for room and board.

CHAIR WILSON recalled that Ms. Oney had previously said that if a resident had an extra \$1000 each month, that she would want to keep that money to use towards living expenses.

MS. ONEY explained that the previously mentioned \$1,000 would not be extra money. She said the home is on a cost reimbursement program and there is no room in the budget for a profit. She said, "If we don't match exactly what we put out, we write them a check back." She said the home needs to have the ability to have a buffer of money, so that it can take care of unexpected expenses, such as when the washing machine breaks down. She added that a person with extra money would not be taken advantage of because he/she always has the choice to go to another home.

[Although the chair called an at-ease for technical difficulties, the recording actually continued.]

REPRESENTATIVE ANDERSON offered information concerning the history of the issues in discussion related to regulations of assisted living homes. He related that assisted living home owners have been voicing their concerns about the new regulations of the department and the department has maintained its opinions and has not attempted to accommodate their needs. He stated that the legislature has the option to hear the needs of assisted living home owners and address their needs through legislation.

CHAIR WILSON stated that the House Health, Education and Social Services Standing Committee would hear public testimony.

4:32:23 PM

MS. ONEY, in response to a question from Representative Gardner, said that she knows of at least four assisted living homes that have closed as a result of the [\$18.54] cap, but surmised that the actual number is higher.

[4:34:56 PM](#)

JUDY JACHIM testified, "We cannot continue to operate at the way things have been." She related that she supports legislation that would make wages offered in assisted living homes comparable to wages offered in pioneers' homes. She said she has found it difficult to follow the administrative changes that have been made in the last year without anyone consulting [those running assisted living homes]. In response to a request for clarification from Chair Wilson, she emphasized that things are not better than they were.

CANDY CARROLL stated her support of Amendment 1, which she said would help very much. She opined that the cap is restrictive and needs to be removed; [assisted living homes] "need to be put on the same level as the pioneers' home[s]."

[4:37:18 PM](#)

MONTA LANE said that she had just barely taken a look at CSHB 193, Version G, and supports the changes that Representative Anderson has proposed. She said she doesn't agree with many of the past regulations. She stated, "If they're having problems in ... Alaska with [assisted living] homes that are not compliant and not doing their job, they have the prosecutorial authority to go in there and pull the license of those homes, without making all of these regulations and these amendments that ... [are impossible] to follow." Ms. Lane emphasized the number of regulations that the assisted living homes have been required to follow by various state boards and departments. She related that many of them have been impossible to follow. Nevertheless, she reiterated her support of "[Representative Anderson's bill]." She added:

I hope you guys do, too, because there's a lot of things in assisted living that you guys need to get it together and see to it that it's done. Because we do a great service for the State of Alaska. We are the cheapest rent in town and now you've got us down to rock bottom. Man, we can't go any lower, and I'd really like to see some of you down there in Juneau ... [pay for room and board] on \$18.65 a day.

MS. LANE noted that two assisted living homes in the Fairbanks area have closed and two more that may have to close. She indicated that she [runs] the oldest assisted living home in the Interior and if anyone comes to her for advice and recommendations, as they have for the past 15 years, "believe me, my attitude is going to change about assisted living," she opined.

CHAIR WILSON reminded those testifying that she would like to hear about the amendment, not the bill, itself.

MARY RAYMOND, Coordinator, LVR, explained that she was speaking on behalf of five different assisted living homes: Johnson's Assisted Living, Main Street Assisted Living, Fernridge TLC Assisted Living, the [Indisc.] Assisted Living, and the Majestic View Assisted Living. She stated:

We are all very concerned about how the regulations have come down on us and how the financing has gone. The amendments do look like they promise some, but for the last 20 years, the assisted living home has been promoted because it is more efficient, it is financially better, and people can stay where they wish. And ... the big issue is the assisted living home. So, please hear us.

MS. RAYMOND indicated that the Legislative Information Office (LIO) teleconference connection was down; therefore a good portion of the committee's comments was missed. However, she stated her appreciation that the committee is willing to consider the issue carefully. She concluded that if people are going to be able to get the care that they have asked for, "this needs to be looked into and it needs to be financed."

[4:44:49 PM](#)

SHERRY METTLER, Northern Lighthouse Assisted Living Home, testified on behalf of herself and "representatives of 38 different assisted living homes." She stated, "We're all in agreement on the same thing - that we stand behind this amendment because of what the cut in the room and board has done to the assisted living homes." She clarified that the amendment of which she spoke was Amendment 1. She said the support is a wholehearted one, because the amendment is necessary to allow the homes to stay in business and supply necessities, especially under the new regulations that are coming out that are mandating

"so many different things that are still allocated to that \$18.57 a day room and board." Ms. Mettler said that concludes the shared testimony, but indicated she could say more regarding the original bill version.

CHAIR WILSON said she would send Ms. Mettler Version F, and she assured her that she would have an opportunity to voice her opinions again on the following Thursday.

[4:48:41 PM](#)

DR. MANDSAGER stated that the intent of the administration was to "put licensing and regulation in one place and the payment elsewhere in the department." He said his area of expertise is not in regard to payments. He offered his understanding that "none of these organizations have talked to us about all of the issues we've heard about for the last hour," but rather the issues have been heard through the regulatory commission process and the appeals process. He said, "I would appeal to keep thinking about the intent of this bill, which is to keep licensing here and financing there. And it may be an appropriate bill, I don't know, but I would advocate that it not be in this bill."

[4:49:48 PM](#)

JON SHERWOOD, Medical Assistance Administrator, Office of the Commissioner, Department of Health and Social Services, related, on behalf of the Department, that the changes made to assisted living home reimbursement were on par with "cost containment measures" contained in the FY '05 budget. He explained that reversing those changes would have a budget impact on the general fund. He mentioned, "Only about 30 percent of the people living in assisted living who receive waiver services actually have more than their basic 'APA [Adult Public Assistance] payment' available, and a percentage of those live in facilities that don't charge differing room and board rates. So, we are talking about some subset of that 30 percent who I think the concerns that were raised would apply to."

CHAIR WILSON inquired as to the number of assisted living homes across the state.

DR. MANDSAGER said that there are about 480 presently, and they are growing at an annual rate of about 10 to 15 percent.

CHAIR WILSON clarified that of the 480, about one-third of those have clients that have extra income which can be used for additional or improved [assisted living home] services.

MR. SHERWOOD said that about 30 percent of the people for whom the department pays for care, through the Medicaid waiver, have the benefit of extra income. He explained that not every assisted living home serves Medicaid waiver clients.

CHAIR WILSON asked if wealthy people used Medicaid services.

MR. SHERWOOD explained:

There are income limits to the Medicaid program, and there are certain ways, through the use of trust devices, people can ... voluntarily impoverish themselves to qualify, but it's not someone who has ... unrestricted access to high levels of income or has a lot of assets.

CHAIR WILSON ruminated:

So, these people are on Medicaid but they've got more than the minimum to spend ..., and so, these are people that want more services than you are willing to pay for?

MR. SHERWOOD explained as follows:

Under Medicaid, if we pay for care in an assisted living home, federal law requires that we do not pay for room and board; individuals are supposed to provide for their room and board, either out of their personal income or any cash assistance they might ... qualify for. ... So, we have to make sure that a certain part of the cost of the assisted living home rate is allocated to room and board. There are virtually no federal requirements about how the state does that, but we do have to ensure that there's a room and board charge, we cannot pay for some portion of the care, it must be allocated to room and board.

CHAIR WILSON summarized that the bottom line is whether the assisted living home or the state gets any available extra money.

MR. SHERWOOD said that Chair Wilson's comment is a fair summation of the situation. He explained that there can be a standardized room and board charge and the excess money can go to reduce the costs of Medicaid or assisted living homeowners can charge varying amounts for room and board, and then additional monies would go to the providers.

CHAIR WILSON inquired as to additional payments in assisted living homes and what the possible benefits could be.

MR. SHERWOOD said that every assisted living home has a contract of care and most people would have standardized care according to the contract.

[4:55:22 PM](#)

REPRESENTATIVE MCGUIRE said that as a result of the new regulations, assisted living homes are closing. She asked Mr. Sherwood where these adults will be placed if regulation constraints continue and assisted living homes are not an option in the future.

MR. SHERWOOD related that the last statistics that the department presented to the Administrative Regulation Review Committee indicated that the number of licensed assisted living homes was still increasing in Alaska. In response to a follow-up question from Representative McGuire, he offered his understanding that those statistics were compiled in March.

REPRESENTATIVE MCGUIRE proffered:

What I really think is happening is ... you have certain types of people that operate these homes in a way that their whole family might live in the home and some of our folks that are in the homes might be kind of cramped into rooms and given meals that maybe aren't as good as they are in other places, but they can definitely meet your number. And ... those are probably going to be the homes that stay in business. And as a result, what you're going to see is the folks in places that are getting good meals and have a nice room and a nice place to go to the bathroom and live in dignity will be moving to some of these others, or alternatively, they're going to be in the Pioneer Home, which isn't taking anymore seniors.

[4:58:00 PM](#)

REPRESENTATIVE CISSNA referred to a legislative research report that was published in February of 2004. She noted that a chart on page 4 of the report shows a comparison of the assisted living beds available in Alaska as of 2002, and the number of assisted living beds that will be needed in 2025. The projected need shows a change from 1,500 to 5,000. Therefore, she surmised that there will be a need for [more assisted living homes] for which she expressed concern about the quality of those homes. She said if there are not enough assisted living homes, people will end up in a nursing home or "long-term beds" that are significantly more expensive.

[5:00:23 PM](#)

DR. MANDSAGER opined that if quality suffers, that will be seen on the licensing side. He said he thinks the commissioner's idea to separate the two functions is to create an internal tension within the department. Today the tension is out on the table with regard to the data available, how the financing can impact the quality, and how that can be measured. According to Mr. Sherwood's data, the number of assisted living units, as of "last March," is 14 percent more than it was last year at the same time. He concluded, "So, there clearly is a tension right now about the financing that we've heard about today and then other industry operators that are trying to get into the business."

[5:02:02 PM](#)

MERRI BELLE DIAS, testifying on behalf of herself, noted that she runs two homes in the Matanuska/Susitna (Mat-Su) Valley. She stated, "I'd like to express our support for these amendments." She confirmed that the choice of a resident in an assisted living home, should that home close, could be to go into a nursing home, the cost of which is \$10,000-\$12,000 a month. She said that would end up costing the State of Alaska lot more money. She said she knows of three homes that have recently closed in her area. She said the state just started a new certification process, which increased her paperwork from 3-4 pages to certify a home, up to approximately 150. She predicted that by next year there would not be more than a dozen homes in the Mat-Su Valley.

MS. DIAS, in response to a question from Chair Wilson, said there currently are about 30 homes in the Mat-Su Valley. She opined that they will not be able to meet the certification

requirements, paperwork, anti-harassment policies, internal monitoring systems, and consumer satisfaction surveys. She related that the administrative rate [currently] covers all the required orientation, blood borne pathogen training program, and the cardiopulmonary resuscitation (CPR) continuing education requirement. However, there is a possibility that it will be cut. Regarding previous comparisons of assisted living homes to the pioneers' homes, she said, "I think a lot of assisted living homes ... give better, more personalized care and as a larger facility, the pioneers' homes should be able to operate more efficiently and cheaper."

CHAIR WILSON asked how many committee members would be willing to be on a "work force" to continue working on the issues raised. She also requested that the Department of Health and Social Services provide a copy of the packet that assisted living homes fill out in order to get certified.

[5:06:09 PM](#)

DR. MANDSAGER offered to provide a copy of the current assisted living home regulations as well as the [assisted living home certification] proposal that has been made available for public comment.

[5:06:31 PM](#)

REPRESENTATIVE GARDNER requested copies of any monthly reports, annual reports, and anything else required for someone who would be opening an assisted living home.

MR. SHERWOOD clarified that there is a state-required Medicaid provider certification and an enrollment packet that testifiers have mentioned, and the department would provide a copy of it to the committee.

[5:08:10 PM](#)

VIRGINIA STONKUS, Acting Chief, Certification and Licensing, Division of Public Health, Department of Health and Social Services, in response to a question from Chair Wilson, said that the "behavioral health side" and the "senior side" have been consolidated and there is an orientation plan, training, and several technical assistance programs.

[5:10:36 PM](#)

CHAIR WILSON announced that a subcommittee will meet tomorrow to plan how to address the incorporation of the new amendments for HB 193 and any other relevant issues brought forth from interested parties.

[HB 193 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at [5:11:47 PM](#).