

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

March 14, 2005

1:32 p.m.

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Gary Wilken, Vice Chair
Senator Kim Elton
Senator Donny Olson

MEMBERS ABSENT

Senator Lyda Green

COMMITTEE CALENDAR

SENATE BILL NO. 4

"An Act requiring cardiopulmonary resuscitation and first aid certifications for issuance of a secondary school diploma."

HEARD AND HELD

SENATE BILL NO. 24

"An Act relating to reemployment of and benefits for retired teachers and public employees who participated in retirement incentive programs; providing for an effective date by amending the effective date of secs. 3, 5, 9, and 12, ch. 57, SLA 2001; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 125

"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, hospice 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

PREVIOUS COMMITTEE ACTION

BILL: SB 4

SHORT TITLE: REQUIRE CPR FOR HIGH SCHOOL GRADUATION

SPONSOR(s): SENATOR(s) COWDERY

01/11/05 (S) PREFILE RELEASED 12/30/04
01/11/05 (S) READ THE FIRST TIME - REFERRALS
01/11/05 (S) HES, FIN
03/07/05 (S) HES AT 1:30 PM BUTROVICH 205
03/07/05 (S) Heard & Held
03/07/05 (S) MINUTE(HES)
03/14/05 (S) HES AT 1:30 PM BUTROVICH 205

BILL: SB 24

SHORT TITLE: REEMPLOYMENT OF RETIREES

SPONSOR(s): SENATOR(s) STEVENS G

01/11/05 (S) PREFILE RELEASED 12/30/04
01/11/05 (S) READ THE FIRST TIME - REFERRALS
01/11/05 (S) HES, STA
01/26/05 (S) SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
01/26/05 (S) HES, STA
03/07/05 (S) HES AT 1:30 PM BUTROVICH 205
03/07/05 (S) Heard & Held
03/07/05 (S) MINUTE(HES)
03/08/05 (S) FIN REFERRAL ADDED AFTER STA
03/14/05 (S) HES AT 1:30 PM BUTROVICH 205

BILL: SB 125

SHORT TITLE: LICENSING MEDICAL OR CARE FACILITIES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/02/05 (S) READ THE FIRST TIME - REFERRALS
03/02/05 (S) HES, JUD, FIN
03/14/05 (S) HES AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

BRIAN WEBB

Anchorage, Alaska 99501

POSITION STATEMENT: Supports SB 4.

JOE MATHIS, CEO

The American Red Cross

Anchorage, Alaska 99501
POSITION STATEMENT: Supports SB 4.

RUTH KELLER
Staff for Senator Cowdery
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Presented SB 4.

UWE KALINKA
Anchorage, Alaska 99501
Juneau, AK 99801
POSITION STATEMENT: Supports SB 4.

MIKE TIBBLES, Deputy Commissioner
Department of Administration
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced SB 24.

ALEX VITTERIE
Juneau, Alaska 99801
POSITION STATEMENT: Opposes SB 24.

ROBERT MCHATTIE
Fairbanks, Alaska 99701
POSITION STATEMENT: Opposes SB 24.

JACK KAREN
No Address Provided
POSITION STATEMENT: Opposes SB 24.

SCOTT WALDREN
Kenai, Alaska 99611
POSITION STATEMENT: Supports SB 24.

KAREN DORCUS
Kenai, Alaska 99611
POSITION STATEMENT: Supports SB 24.

JOE BEEDLE, Vice President
The University of Alaska Fairbanks
Fairbanks, Alaska 99701
POSITION STATEMENT: Supports SB 24.

RICHARD ROBERTS
No Address Provided

POSITION STATEMENT: Supports SB 24.

DR. RICHARD MANDSAGER, Director
Department of Public Health and Social Services
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 125.

ROD BETIT, President
Alaska State Hospital Nursing Home Association (ASHNHA)
426 Main St.
Juneau AK

POSITION STATEMENT: Supported SB 125.

VIRGINIA STONKUS, Deputy Director
Division of Public Health and Social Services
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 125.

ACTION NARRATIVE

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at [1:32:01 PM](#). Present were Senators Donny Olson, Kim Elton, and Chair Fred Dyson.

SB 4-REQUIRE CPR FOR HIGH SCHOOL GRADUATION

CHAIR DYSON announced SB 4 to be up for consideration.

[1:36:18 PM](#)

BRIAN WEBB, fire-fighter paramedic, Anchorage, testified there were many instances, such as the one related by Mr. Kalinka, in which Alaskan's have died for want of rapid medical response and the knowledge of how to save themselves. There are many long-term benefits of the bill such as increasing the longevity, survivorship and volunteer spirit of Alaska's residents. The cost of training in cities would be low and many materials are already available in many school districts. Many rural communities have volunteer response services that could administer CPR and first aid training. He supported SB 4.

JOE MATHIS, CEO American Red Cross, State of Alaska, supported SB 4. He said passing SB 4 would make Alaska a better-prepared state. It would give high-school students valuable job skills

since preparedness for emergencies is important in many occupations. He respectfully requested the bill include language that requires the high standards of the American Red Cross or its equivalent.

The State of Alabama requires CPR training for all its students. Louisiana, North Carolina, and Rhode Island require both American Red Cross CPR and first aid for their students. There are 668 Red Cross instructors in the State of Alaska, approximately 200 of which live in approximately 50 rural communities.

[1:44:00 PM](#)

SENATOR OLSON asked Mr. Mathis how he expected schools in the Norton Sound Peninsula to train students.

MR. MATHIS said volunteers living in hub communities and also through local search and rescue organizations could train students in rural areas. The Red Cross also offers distance-learning courses, which could be administered to students in rural areas.

SENATOR OLSON asked whether the Red Cross would administer the programs.

MR. MATHIS responded they would only participate if asked to participate.

SENATOR ELTON asked whether the aforementioned states that have a CPR requirement make it a requirement for graduation.

MR. MATHIS did not know.

SENATOR ELTON asked how CPR training could be administered to children who are schooled at home.

MR. MATHIS had not considered that. He would like the Legislature to consult the Red Cross before passing legislation involving the standards of CPR and first aid training.

SENATOR WILKEN and SENATOR KOOKESH arrived at [1:47:06 PM](#).

JENNIFER APP, American Heart Association, said cardiovascular disease and stroke are the number one and number three killers in the United States respectively. One in twenty Americans die of cardiovascular diseases each year. Sudden cardiac arrest

claims the lives of 220,000 annually. Survivorship of cardiovascular disease is increased when victims are treated with CPR.

[1:49:41 PM](#)

RUTH KELLER, staff for Senator Cowdery, remarked with respect to Senator Elton's earlier question about home-school training, there are several correspondence charter schools such as the Alyeska School that require first aid in their curriculums. First aid programs are done through video teleconferencing.

UWE KALINKA informed his son was involved in an automobile accident in which an entire half hour elapsed before medical response. The various harms associated with slow response times could be partially alleviated by passage of SB 4.

CHAIR DYSON held SB 4 in committee.

SB 24-REEMPLOYMENT OF RETIREES

[1:54:25 PM](#).

CHAIR DYSON announced SB 24 to be up for consideration.

MIKE TIBBLES, Deputy Commissioner of the Department of Administration (DOA), addressed some concerns raised during the last meeting. While the concerns address issues that are very serious for the department, there are also serious recruitment problems in various organizations throughout the state. He was aware of cases in which organizations have had recruitment failure for as long as six months. SB 24 could be a valuable tool for assisting such organizations when other recruitment efforts have been exhausted.

MR. TIBBLES said he would like to walk through an administrative order signed by the Governor on March 8, 2005. The department believes the order addresses some of the issues raised. He said:

[1:57:00 PM](#)

This administrative order, signed by the Governor, will require all agencies to go through a thorough recruitment process before an employee is eligible to come back under a 242 waiver. A recruitment notice must be placed on Workplace Alaska for a minimum of 15 days. The agency must consider all applicants and if a

retiree is selected, that applicant must separate from service for a minimum of 30 days.

In addition, the recruitment must result in fewer than five qualified applicants. The hiring authority must demonstrate why no other individual has the knowledge, skills, and abilities to perform the duties. The Division of Personnel, Department of Administration, must sign off on the hire of the 242 to insure that all of these policies and procedures have been met.

MR. TIBBLES said even these requirements are not enough; they are simply some requirements that must be followed by the division and other agencies. Since 242 hires and waivers are, in the department's opinion, a short-term solution to a long term problem, the department wants to be very proactive in working with other state agencies to develop workforce plans to deal with these shortages so that the state is not in this situation in the future.

The department would like to require the hiring authorities utilizing 242 waivers to work with the Department of Administration to understand why recruitment efforts failed and to develop a plan to transfer the knowledge required in these positions to other employees. The administrative order clearly indicates that all of the personnel rules and statutes shall apply as far as advance step placements. The department also encourages agencies to develop a strategic view of human resource needs so they can anticipate and proactively address future shortages. His department is confident the procedures established in the administrative order will prevent abuses in the program and the original intention of the bill will be met.

[2:00:24 PM](#)

SENATOR ELTON asked whether the administrative order would apply only to state agencies.

MR. TIBBLES responded the administrative order would only apply to state agencies and not other PERS employees.

SENATOR ELTON asked whether the administrative order would allow municipalities to set their own standards.

MR. TIBBLES responded his department would encourage municipalities to adopt standards that are similar to those of

the state, but the main issue with PERS employers is to make sure they don't accrue additional liability to the system.

SENATOR ELTON asked whether the administrative order creates regulations or if it stands in the place of regulations.

MR. TIBBLES responded:

It would be in the place of regulation. We would have policies, I believe through the administration manual, to implement. I know that those are being developed and sent out to all departments. We will have policies that must be followed to implement this administrative order.

SENATOR ELTON remarked Section 2A of the administrative order says the recruitment must be conducted from an applicant pool of less than five qualified eligible and available applicants. He asked whether employers are having problems getting desirable applicants or if they are having problems simply getting applicants. Employers are reluctant to hire people who have graduated at the bottom ten percent of their class.

MR. TIBBLES responded the state government develops job class specifications for every position in state government. Within these job classifications there are minimum qualifications (MQs) that must be met before someone is eligible for consideration. The department, to ensure they meet the MQs for their prospective positions, reviews all of the applicants.

[2:04:39 PM](#)

SENATOR ELTON asked whether the administrative order would require an employer to give preference to a less qualified recent graduate over a more qualified retired applicant.

MR. TIBBLES responded:

We did not require, for the reason that you are pointing out, if one had a qualified non-retired applicant, one would have to hire that applicant. We required that one must demonstrate recruitment difficulty resulting in fewer than five qualified applicants. There still would be an applicant pool and the candidates would have to be considered prior to considering the retired employee.

SENATOR OLSON said 15 days might not be an adequate length of time for employers to post their positions on the Workplace Alaska Website. He asked the normal length of time for jobs to be posted for normal recruitment.

MR. TIBBLES responded the standard is a minimum of ten days and a maximum of 30 days.

CHAIR DYSON asked the liability the state has for retirees who have already been rehired and led to believe their participation in the program would not be terminated at the sunset of the program.

MR. TIBBLES could not answer the question at the present time.

CHAIR DYSON remarked he is open to the possibility of delaying an inquiry into the matter given the concern that lawsuits may be developing.

SENATOR ELTON remembered the last committee meeting where Mr. Tibbles mentioned he would prefer not to put the sideboards into state law. He asked how the administration felt about adopting the elements of the administrative order into law.

MR. TIBBLES responded:

Mr. Chairman, Senator Elton, I believe that we made our best effort to try and determine what the policy should be if this program were to continue. In fact, this was effective immediately March 8. It will be in place now and I want to point out that it has been effective. We had a department already request an individual to return for rehiring and we asked how many applicants that they had received in their recruitment and the number was 15, so we denied it. So it is in place now and will be until the sunset of the original program, if it is not extended.

Going forward, I believed that we developed what we thought would be the 'right recipe' as you termed it. We may find out that it is something different. We may find that the time requirement should be more or less. We may find out that we should consider all applicants, which may require recruiting out of state. So there may be modifications needed and I believe that it would be nice to have the flexibility to amend without having to come back to the legislature and

seek a statutory change for a small thing that might otherwise be more helpful and efficient to do administratively.

[2:09:57 PM](#)

ALEX VITTERIE, retired state employee, said he supports the concept that the most qualified, most productive people should be allowed to work for the state, but questioned whether it is possible given the administrative order's five applicant rule. He said the bill violates the principle of the retirement program in which one gets what one put into it. He would support the retire-rehire program provided that it doesn't cause the retirement system a greater deficit by allowing retirees to enter a higher retirement category than the one that they retired under. He suggested the state place a cap on the length of time that rehired-retirees should be allowed to work. He commended the state for its efforts to promote mentorship.

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SENATOR OLSON asked Mr. Vitterie whether or not he was in favor of SB 24.

MR. VITTERIE said he would favor the bill if it was modified, but he opposed SB 24 as is.

[2:15:20 PM](#)

ROBERT MCHATTIE, Fairbanks, said:

Rehiring will set the system right for abuse, in my opinion. Keep in mind that most of the rehires are brought back to their old jobs because of someone's determination that they simply couldn't be replaced. After returning to hold down their old position, rehires don't pay another red cent to help support PERS or TRS. They are draining, but they're not putting anything back in and they are often holding a high position. I want to give you a couple of examples of abuse that have come up lately.

In Fairbanks, eight Fairbanks police officers were involved in a just-failed lawsuit against the City of Fairbanks. The police rehires were collecting job paychecks plus retirement paychecks plus other retirement benefits plus additional city payment into

social security or whatever their equivalent system is. They were suing to make the city fund an additional retirement plan for when they re-retire. The police can try again in a higher court and if the police eventually prevail, it can set a precedent for all other PERS-TRS rehires to sue towards a second retirement.

Now, I will talk about a more subtle form of abuse. With all due respect to the DOA, I think this has to do with the DOA not really knowing the law and not setting rehiring rules until they sent the administrative order of March 8, four years after the program was initiated. They sat there with essentially no rules. The DOA expresses concerns about lawsuits from rehires, which are about 350 strong and growing, who claim the right to simultaneously collect a job paycheck plus a retirement paycheck plus other retirement benefits from government coffers forever.

The DOA concern harkens to the fact that all of the hiring agencies were darned well responsible for knowing and divulging to rehires that HB 242 sunsets in 2005 and there was no provision for grandfathering. That was obvious. The DOA has no business attempting to prevent the HB 242 sunset based on the premise that nobody could properly interpret the law. The DOA did not even bother to get an attorney general's opinion on the meaning of the 2005 sunset until about November 2004. The DOA knows that it has created a monster and now it is worried that the monster is hungry.

Does the state really do itself a favor by forming a cadre of older super-experienced employees? Well maybe, but consider that each year of reemployment means one less year of experience that could have been gained by a replacement. Even the most valuable rehire is finally gone after a few years; they just don't stay there forever.

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JACK KAREN opposed SB 24. He said HB 242 has not been administered in a fair equitable manner. The state has adopted no credible procedures to define when a workforce shortage exits and it is common for upper level managers to be hired by their peers while others are denied opportunities for advancement.

SCOTT WALDREN, former program member, testified in support of SB 24. He said by implementing the bill, the state could answer its concerns about employees that were lead to believe they would be able to remain in the program after its sunset date.

CHAIR DYSON asked Mr. Waldren whether he would have retired if he had known he would not be allowed to participate in the program after the sunset date.

MR. WALDEN advised he would have retired.

[2:23:47 PM](#)

KAREN DORCUS, program member, testified in support of SB 24. She said her decision to retire was based on her understanding that she would be allowed to remain in the program after the sunset.

[2:26:04 PM](#)

CHAIR DYSON asked Ms. Dorcus whether the university saved money by her retirement and subsequent rehire.

MS. DORCUS responded the university saved about \$25,000.

JOE BEEDLE, Vice President of the University of Alaska Fairbanks, supported SB 24. He said:

We find ourselves in the United States, and in Alaska, near full employment status, especially with regards to specific areas of employment and expertise. As far as the state in general, having a good benefit program, one that encourages retirement, we probably are a little less favorably perceived in terms of just salary alone. It is my observation that we probably over-incent people to retire. Looking forward to some of these new tiers, which are yet a new bill, I think they will probably provide some relief.

Having said that, we are stuck with the current program that encourages retirement and doesn't retain the expertise that otherwise cannot be replaced. I speak in favor of keeping this tool available for the university, for the departments and for employers in the state so that we have that expertise that is so precious for us. I would just ask for your consideration in doing so.

[2:28:59 PM](#)

SENATOR ELTON asked whether the program allows the university to rehire professors at a lower salary than they had at retirement.

MR. BEEDLE responded the university certainly enjoys the flexibility that the bill allows it in its hiring practices. The university is blessed with an outstanding adjunct faculty and unlike the K-12 school system; it has been quite successful at attracting people on an adjunct basis.

[2:31:09 PM](#)

RICHARD ROBERTS, resident, said the Alaska State Troopers in the Mat-Su Valley are so badly understaffed they are sending individual state troopers to respond to calls for which the Anchorage Police Department would send five or six police. The troopers have had several members participate in the retire-rehire program to enter positions for which there were no other applicants.

CHAIR DYSON held SB 24 in committee.

SB 125-LICENSING MEDICAL OR CARE FACILITIES

[2:34:39 PM](#)

DR. MANDSAGER, Director, Division of Public Health, Department of Health and Social Services (DHSS), introduced SB 125 with the following remarks:

Thank you for the opportunity for to introduce SB 125, a bill to consolidate The Department of Health and Social Services (DHSS) licensing, certification and background check functions. This bill has been introduced by the Governor and I am privileged to introduce it for discussion.

You have been provided with some slides that summarize some of the issues that are in this bill. I am going to speak from that for a few minutes and then I will be available to take questions. Why introduce this bill? It is complex; there are lots of issues involved with it. What is wrong with leaving things the way that they are? The answer is that the existing statutory and regulatory environment is a very complex

patchwork. There are some places where there are lots of details and there are others that have almost nothing. Agencies that deliver more than one type of care have different sets of regulations for the different parts of the work. The department regulates and licenses many types of facilities with different rules that have come on line over the decades at different times. Some have rules in statute, most have rules in regulation, and some have almost no rules.

It does not make sense to continue to maintain those differences. It is very difficult for the Department of Law (DOL) to handle appeals. It's hard for agencies that are applying for licenses to keep track of the different standards and regulations. In some of the places where we do have some background check rules, we can sometimes pass them when one probably should not. In other places we have programs that don't have any background check process in place to look at someone's experience when they are applying to work in a situation in which they are taking care of vulnerable people.

Because there are variable requirements there are lots of costs to the state and to providers. A quote at the bottom of slide two from Mathew Jones who is the Director of Assets, says 'Recruiting and hiring is an area where we can't afford even a single failure of the system.' We are taking care of vulnerable people and we should do the best job that we can.

On slide three there are some stories from both our state and in other states of where there are instances of abuse and neglect. The first bullet is a story from our state last summer where a supported-living home provider was misappropriating funds from a resident. There is no current requirement for those homes to be licensed; no background check process is required and in this case none had been performed.

In another case, an assisted living home attendant was fired from his treatment: the facts were presented to law enforcement; no charges were filled; the case was dropped and this person is currently available and eligible to work as a care provider. In another case, three Alaskan nurse aids were found to be mistreating

residences for a nine month period well after the mandatory reporting time period. That is one industry where reporting is required, but two of these findings have not yet been entered into any registry and one of those two involved physical violence.

2:38:36 PM

In another state a person was involved in a stabbing in a convenience store involving someone who was later identified as a long-term care provider. On the converse side, if someone is working as a personal care attendant, they are often working for multiple agencies and they have to go through a background check before they apply for any agency for which they work. So there is a multiplicity of requirements on that side.

There are lots of gaps in the oversight process. I was struck that we currently have 19 different programs administered under 12 different statutory schemes for licensure under the department. The goal of this bill is to simplify, standardize, make things as uniform as possible and make it as understandable as possible to the provider community, to us on the state side and to the clients themselves.

Care provider's work under a patchwork of regulations that sometimes conflict. They can sometimes have employees that can work in one program and not another. We on the licensing side have to learn all those rules and our staff must keep them straight. It makes it very difficult to cross-train employees to be able to move from licensing assisted living homes to evaluating other kinds of programs.

Over the last year, three licensing program units have been consolidated within Department of Public Health but the programs are stand-alone programs because the rules are still separate. So, our staff must maintain expertise in the different rules.

2:40:05 PM

Slide five shows the scope of the project. The blue ovals show the public health programs that have already come into a centralized certification and

licensing group. The purple rectangles are the ones that, over the next three years or so, would slowly come into a centralized certification and licensing unit on behalf of the department.

When I started last summer, I asked the question; how come in public health? Since we don't make any payments in public health to provide some point of independence within the department, rather than the divisions that both pay services and regulate. The regulation function is being centralized in public health to separate it from the payment side.

Slide six shows some of these different regulatory schemes. You can see several colors there that nominate the different kinds of programs that are licensed or certified within the department. When we use the word certified, it usually means certified by CMS, with Medicare as a payer.

[2:42:07 PM](#)

Supported living homes are currently not subject to either background checks or licensure and this statute envisions that they would become subject to background checks. There is an attempt to make the definition of 'assisted living home' more straight forward so that we don't have any facilities trying to skate by saying, 'We are a supported living home We are not an assisted living home, we do not have to be licensed.'

Slide seven gives one an idea of the complexity of this bill. It shows the various parts of the statutes that will be maintained, the parts that will be moved to regulation, the parts that will be repealed as they are moved to regulation and parts that are amended.

Slide eight discusses the content of the bill. There is an addition of a new chapter to centralize licensing and administration. It defines what entities must be licensed, the licensed conditions, appeals and complaints, our rights and responsibilities, confidentiality protection and criminal penalties for violations.

Section 17 is a new article to centralize background checks and registry functions. In some places there

are background checks, but in many places there are not. This will define who is required to have background checks. It provides for the regulatory definition of barrier conditions of those kinds of crimes that either permanently or for some time period, prevents someone from working in an institution or program that is providing services to vulnerable populations. It requires a centralized registry to be created and maintained that lists people that meet those definitions, individuals that have committed barrier crimes.

2:44:10 PM

Slide nine talks about the background check process. It defines the barrier conditions to employment in a consolidated regulation definition. It will include some differences between those programs that serve children as opposed to those that serve adults. All service providers, including volunteers, with direct patient contact will be background checked. Charges of a barrier crime are sufficient to bar employment. That is a high bar, a high standard that is proposed in this bill. An employee misconduct registry will be implemented, a standard waivers process will be defined and a standard appeals process will be implemented.

Finally, the last slide is just one of dozens of pages of comparisons of these differing programs and their differing rules. This is only to illustrate that our staff is currently dealing with multiplicity of rules for different types of programs. I am told that there are about a couple hundred pages of cross walk for trying to keep track of the variations in the different programs.

If this bill is to be acted upon by the Legislature, then the other part is what is the regulation process going to look like? We are trying to have the two parts move ahead. My thought about this is that there are two industries that have most of their rules in statute, which are the assisted living homes and the Hospice group. For most of the other groups that are listed here, their rules are mostly in regulation at present.

The final comment that I would like to make is that we are already working on amendments and I am assuming that there will be more questions and more amendments coming. They are not ready for introduction today; they are here just to give you some sense about issues that have already been raised since the bill has been introduced.

One is the implementation date of the bill; it calls for the background check to be implemented on July 1st of this year. There is no way that that can happen even if the Legislature was to act between now and May 10. There would still have to be a regulation process and time for public comment, so that needs to change.

Another question that has surfaced is how does one deal with an employee that has been terminated for neglect, abuse, or exploitation, but for whom there hasn't been legal system adjudication. How do we know about it other than self-reporting? Do we expect people to self-report when they go on to a registry or do they only self report when they apply to a job? That is an issue that I have been wrestling with and I expect that the Legislature will have questions and comments about it.

Another is the list of organizations subject to licensure. Should other organizations or programs providing invasive treatment or diagnostic services be subject to licensure in the future? I personally think that they probably should be and that we should have some flexibility to be able to allow for the evolution of services in the future. We are trying to think about some kind of language that could be proposed for that. With that, I will stop I am available for questions.

[2:48:46 PM](#)

CHAIR DYSON encouraged the committee to consider the barriers to employment that are listed on page 8. He said the requirement of public registry for people who fail to meet the barrier conditions will raise some very significant privacy and personal liberties issues.

CHAIR DYSON asked Dr. Mandsager to list the barriers to employment.

DR. MANDSAGER responded some examples would be adjudicated sexual abuse of a minor or an adult, felony assault and battery and some misdemeanor crimes.

CHAIR DYSON asked whether domestic violence would be a sufficient charge.

DR. MANDSAGER responded some types of domestic violence would be sufficient.

CHAIR DYSON asked whether a driving under the influence conviction would be sufficient.

DR. MANDSAGER responded it would, but remarked there are varying levels of exclusion. Some crimes cause a barrier for five years, some for ten years and some for fifteen years. It would depend on the severity of the crime.

CHAIR DYSON asked whether there were medical conditions that are barrier conditions.

DR. MANDSAGER said there are.

CHAIR DYSON asked whether HIV, Hepatitis C, and sexually transmitted diseases that do not require genital contact for transmission are barrier conditions.

DR. MANDSAGER was not prepared to answer the question, but would take it under advisement and answer it later.

SENATOR OLSON asked why there are different colors used in the outline of the Hospice system on slide six.

VIRGINIA STONKUS, Deputy Director, Division of Public Health and Social Services, said there are two types of Hospice organizations in the state, for-profit, which are licensed, and non-profit which are not.

SENATOR OLSON asked the effect the bill would have on private-sector institutions that are providing many of the services.

MS. STONKUS replied:

The driving factor for background checks has warranted the federal government to grant funding for which we are recipients. The department has, in this bill, made

a requirement that any organization that receives any funding to support these services will be subject to background checks. Of course, there is also the life, health and safety of those in our care. As Dr. Mandsager said, it is a high bar to set, but the concern again would be that these individuals are entrusted to our care, that we are paying and that is the extent that we are willing to go for them.

SENATOR OLSON said:

So if I am hearing you correctly, this bill is going to cause an extra financial burden on those private institutions that must comply with this statute.

DR. MANDSAGER said:

Most of the changes should make life easier on the regulation side. On the other hand, as we have noted, there are some programs that are not subject to background checks at present and this would create a new cost for them. The question of how much this new cost will be over time is really an unknown. The other balance point here is to make sure that we maintain providers in all parts of the state and we don't put such a barrier to either program integrity or employment that we can't keep programs viable. I am looking forward to working with the legislature as it works through this and find the balance point to protect the vulnerable populations on the regulatory side, but keep providers viable on the program side.

SENATOR OLSON remarked the fiscal note might be incorrect since it reports a zero cost despite the hundreds of hours of attorney time required to develop the bill.

DR. MANDSAGER said there are two parts to the fiscal note. One is a federally funded background check project, which would be used to initiate the whole process. It would not be a cost to the state. He said the department has not been able to estimate the cost of the new programs and of applying its regulations to employees that would be subjected to the bill if it is enacted.

MS. STONKUS said:

There is a set fee that agencies pay to have background checks done by the FBI then by in-state agencies. What we are hoping to be able to do, through the funding that we were successful in getting from CMS, is streamline our background check process even further. We have been working with several of the agencies that we have in-house. We want to be able to emulate the same efficiencies where they exist and hold any additional costs that may be incurred to an absolute minimum wherever we possibly can.

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DR. OLSON asked:

What effect is this going to have outside of the federally funded facilities for example, the 638 contractors?

DR. MANDSAGER replied:

I have been thinking about that question and I have asked Myra Munson to think about that question to. The federal government has a requirement for any providers that are providing care to women or children to be subject to a federal set of barrier crimes. In that system, there is a 100 percent lifetime ban for committing one of those crimes.

Having experienced that system during my federal career, my experience is that there are some crimes--say for example, a nineteen year old gets drunk and gets into a bar fight and an has assault and battery conviction and twenty years later, that person has been a responsible member of society, has had a job. I would argue that, at that point, that person has been rehabilitated and should be able to be employed.

The exact interplay of this with a 638 provider I am waiting for advice from the tribal attorneys as to what they think about this. I asked them to be watching for this when the bill was introduced.

CHAIR DYSON said he and his wife, as well as his two children are licensed foster homes. He said that might represent a conflict of interest. He did not believe it did and would not disqualify himself from the committee proceedings.

SENATOR ELTON asked whether there is a distinction between the terms "charged with and acquitted" and "charged with and pending" as they are used the analysis provided by the department.

DR. MANDSAGER said there are perhaps two questions embedded in that question: "What is a barrier to registry?" and "What is a barrier to employment?" He said the registry would only include information pertaining to people that had been adjudicated in a legal system. However, if a person were charged with certain crimes, it would be a barrier to employment, at least pending adjudication down the road.

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SENATOR ELTON asked whether fingerprinting was part of the registry process.

DR. MANDSAGER responded fingerprinting is part of a background check, but the fingerprints would not be on the registry itself. He asked his associate to confirm that this is correct.

MS. STONKUS said it is partially correct. The registry was originally envisioned to prevent individuals suspected of having committed specific crimes and who had resigned from their caretaker jobs from being hired to similar caretaker positions.

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She said the assumption is that any employer would be subject to finger printing as a background check; so ultimately, to answer the question, it would be part of that process.

SENATOR ELTON said the provision says on page 27, Section 17, that:

Information contained in the registry is a public record that is subject to public discussion and copying.

He said he would like to know the kind of information in the registry.

DAN BRANCH, Department of Law, said:

It is my understanding that the privacy information would be redacted before the entry would be entered into the registry. That being said, obviously the names of people who were adjudicated to have neglected, abused or exploited a child or vulnerable adult would be in there. I envision that the information would be the name and then what they were adjudicated to have done, but not the name of the victim or any other information. There would be no information for anyone other than the wrongdoer.

3:03:21 PM

SENATOR ELTON asked whether the name of an employee would be placed on the registry simply because he was suspected of wrongdoing and subsequently left his employment.

MR. BRANCH said the identifying information provided in the registry would only pertain to persons who have been judged by a court to have had committed acts of wrongdoing.

SENATOR ELTON asked whether he is correct in believing that identifying information would not be available in a centralized registry to future employees in all cases without adjudication.

MR. BENCH answered:

That has been a subject of intense internal debate. I think that it's fair to say that some of us are not in agreement at present, that we can't get anything into the registry that would accommodate that kind of information. I understand the DOL's view that somebody, like you and Virginia talked about, who has not been adjudicated, who has not had due process, should not be placed on the registry. On the other hand, if we are going to have a registry and don't include them, I am wondering what value it would have other than making it simpler to look at adjudicated cases. I am looking for advice about this subject as we get into this discussion.

3:05:43 PM

CHAIR DYSON asked whether it could be the case that some charges dropped as part of a bargain would not be listed in the registry if non-adjudicated charges are not listed in the registry.

[3:07:07 PM](#)

DAN BRENCH responded:

The registry that we are talking about doesn't talk about criminal law. But I understand your question I used to be a defense attorney and I know how that works. A lot of times you try to plead in order to avoid the impact of a statute. I don't have an answer for you now, but I think I understand the question. We can talk about it and see if there is something in the bill that meets your concerns. If not, we can look at putting something in there.

DR. MANDSAGER said if the bill were to be passed as written today, a person who falsely denies having committed certain crimes would be liable for falsification.

CHAIR DYSON said he would like to know the effect the bill would have on the CON process and on abortion facilities.

SENATOR OLSON remarked the bill would likely have an impact on private sector providers. He would like to see a balanced amount of input from the private and public sectors.

CHAIR DYSON encouraged the committee to provide notice to persons who may have an interest in the bill. He remarked that challenges the committee to weigh important civil rights issues with the importance of protecting vulnerable members of society.

[3:11:49 PM](#)

ROD BETIT, President, Alaska State Hospital Nursing Home Association (ASHNHA), presented a letter from his agency and said:

Nursing homes and hospitals have been under very strict laws and licensure for a long time, so this is a practice that we are very familiar with. It is very laborious, but it has been very important with improving patient care in those two settings. Now it will spill over into a number of other areas in the community and looking at the possible fiscal impact is a very wise thing to do.

Generally we support what this bill is trying to accomplish but I want to point out a few things that

you ought to take a serious look at. Page 6, Section 47.32.060, subparagraph C, lines 13 to 16, this is basically a technical issue in my mind. It deals with license renewal and the time frame that the department has to respond to that.

Early in that part of the chapter it says that you need to file within 90 days in order to have a timely review done. When you get to lines 13 to 16, it says that if you file and the department can't complete your review by the expiration date, you automatically get renewed for an additional period of time.

My question here is, what is the incentive for filing early? If you can file the day before your license expires or if you can file 90 days before your license expires, and you are treated the same, why wouldn't you wait, especially if you are coming out of a facility with problems, until the last minute so that you could come under the protection of the extension. I don't know what that incentive ought to be. I am not suggesting that people not be continued because there is important business to be conducted, but if you are going to have a time frame, it seems that there should be some sort of distinction.

Further, if you go to section 47.32.140, subparagraph A on page 8, lines 29 through line 3 on the next page, this talks about when the department would actually stop a provider from doing business by revoking or suspending his license. This is pretty heavy stuff and there is nothing in this area that talks about how that would be done. I would make the point that if that is ever going to be done, it should be done by the Commissioner, in writing, with clear findings to suggest that operating the service is a greater risk to the people being served than stopping it.

Once that decision is made, it must be clear who is responsible for the care of the patients. If you are talking about assisted living or children you are talking about certain settings. It must be clear that the provider no longer has legal authority to direct that care. The department must immediately designate somebody to assume that responsibility as well as responsibilities associated with daily operations, financial liabilities and liability for any care

problems that arise during that period of time. I have done this here and in Utah, so I know what it entails. It is pretty difficult country to be navigating without any kind of guidelines as to how you are going to do it.

3:16:04 PM

SENATOR OLSON asked whether there have been problems in the aforementioned area in the past year.

MR. BETIT replied it has not been a problem in the recent past. Creating a broader pool of licensed providers requires solid guidelines in the previously mentioned areas.

SENATOR OLSON asked what happens when an investigation vindicates the licensee.

MR. BETIT answered the state would only act in instances where it had a well-developed case, but he said the state should be liable for any economic damage that occurs to the provider as a result of its action.

SENATOR OLSON asked what would happen if a provider is driven out of business.

MR. BETIT responded that while it is difficult to restart a business, the managers of the business should still have recourse against the state.

SENATOR OLSON responded:

With all due respect, actions against the state have not been necessarily in the private sector's favor in the proceedings that I have seen, especially in the Legal Department. That is just a point that I want to make.

MR. BETIT said:

I agree with you. Later on I do speak to that and say that it would be our position that if it is determined that the state's action was too excessive, the provider should have recourse against the state. You can't write that out via this bill.

He continued the next point of his letter concerns how the state should take action against care providers while ensuring that no one is hurt in the process. He said the intent of the section was to help the state understand that it assumes a huge responsibility in giving the department that kind of power.

MR. BETIT said AS 47.32.170, on page 13, lines 16 to 18, talks about immunity for state agents and state employees. He said his agency would oppose the immunity provision of the bill if it allows the possibility that a vindicated provider could have no recourse against the state after it suffered great financial damages as a result of the state's action. The state should be liable for any injuries caused by its failure to properly supervise the transfer of care from a facility that it ordered to close.

MR. BETIT said:

With respect to protecting employees, one can be sued in one's personal capacity as well as in one's professional capacity. One cannot break those apart and bring one's personal component back into the professional job that one is doing. One is on one's own as far as the personal part because most state rules don't permit the state to defend an employee on the personal side of what they are doing. I have been there a few times and it is a hair-raising experience until things are sorted out.

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It might be advantageous, given that these are people that are making very difficult decisions, to provide some coverage for counsel to sort through that. It doesn't give them protection against damages if they are ultimately proven to be outside the professional realm and did something inappropriate. If that is the kind of immunity that you are looking for, I think that the best way to get there is to make it clear in the statute that in most cases you can have private counsel for them as well as the attorney general's office representing on the other side.

MR. BETIT urged the state to make a clear distinction between personal and medical care when regulating assisted living facilities.

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SENATOR OLSON asked whether the committee should tighten up the definition of 'assisted living home' as it is given on page 15, line 25.

MR. BETIT responded:

Yes, to say explicitly whether you want people in those facilities, which require medication management, to be able to get out of the building on their own, because you will find people who cannot get out of the building. If you don't make that clear and at some point someone will get hurt, something will happen, and the state will have some culpability there.

CHAIR DYSON held SB 125 in committee. There being no further business to come before the committee, he adjourned the meeting at [3:25:15 PM](#).

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