

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

April 6, 2005

1:36 p.m.

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Lyda Green
Senator Kim Elton
Senator Donny Olson

MEMBERS ABSENT

Senator Gary Wilken, Vice Chair

COMMITTEE CALENDAR

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, 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

SENATE BILL NO. 150

"An Act repealing the limits on grants awarded from the Alaska children's trust fund."

HEARD AND HELD

SENATE BILL NO. 10

"An Act relating to liability for destruction of property by unemancipated minors; and providing for an effective date."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

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
03/14/05 (S) Heard & Held
03/14/05 (S) MINUTE(HES)
04/06/05 (S) HES AT 1:30 PM BUTROVICH 205

BILL: SB 150

SHORT TITLE: ALASKA CHILDREN'S TRUST FUND GRANTS

SPONSOR(s): HEALTH, EDUCATION & SOCIAL SERVICES

03/21/05 (S) READ THE FIRST TIME - REFERRALS
03/21/05 (S) HES, FIN
04/06/05 (S) HES AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

Dr. Richard Mandsager, Director
Division of Public Health
Department of Health & Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Supported SB 125.

Virginia Stonkus
Certification and Licensing
Division of Public Health
Department of Health & Social Services
PO Box 110601
Juneau, AK 99801-0601
POSITION STATEMENT: Supported SB 125.

Stacie Kraly, Senior Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on SB 125.

Margo McCabe, Chair
Trustees for the Alaska Children's Trust
POSITION STATEMENT: Supported SB 150.

ACTION NARRATIVE

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at [1:36:40 PM](#). Present were Senators Kim Elton, Lyda Green, Donny Olson, and Chair Fred Dyson.

[1:37:00 PM](#)

SB 125-LICENSING MEDICAL OR CARE FACILITIES

CHAIR DYSON announced SB 125 to be up for consideration.

DR. RICHARD MANDSAGER, Director, Division of Public Health, said SB 125 would consolidate licensing background checks for certifications by the Department of Health and Social Services (DHSS).

[1:41:51 PM](#)

SENATOR OLSON asked whether there had been complaints or a problem with licensing some facilities.

DR. MANDSAGER answered that there had been no complaints, but the issue is that there is a myriad of different rules governing different care providers. Assisted living homes and for-profit hospices have most of their rules defined in statute and everything else has most of their rules defined in regulation. Since regulations are developed over time, the rules for appeals are all a little different. SB 125 simplifies and standardizes the processes.

SENATOR OLSON asked whether the burdens on care providers would be greater or lesser with the passage of the bill.

DR. MANDSAGER replied that care providers generally like the bill.

SENATOR OLSON asked whether the bill would put some entities out of business.

DR. MANDSAGER answered if the entities are competent, they would remain in business. If they end up going out of business, it would be for reasons other than this bill.

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CHAIR DYSON said he heard that due to a shortage of doctors licensed to perform abortions in Alaska, doctors not licensed in Alaska were flying in to perform those services. He asked if they were in compliance with the abortion statute, AS 18.16.010, that says:

Abortion may not be performed unless (1) the abortion is performed by a physician licensed by the State Medical Board; or (2) the abortion is performed in a hospital or a facility approved for the purpose by the Department of Health and Social Services.

VIRGINIA STONKUS, Certification and Licensing, Division of Public Health, Department of Health and Social Services (DHSS), responded that physicians are licensed by the Board of Medical Examiners and that the division does not license the services that are provided in hospitals. The decisions about what is performed or available in the institutions are determined by its Board of Governors.

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CHAIR DYSON noted that abortions performed outside of a hospital is the issue.

MS. STONKUS replied that the division does not license individual physicians or individual physician clinics.

DR. MANDSAGER said he didn't think the Board licensed for abortion specifically, but he would have to research whether doctors are asked what procedures they perform.

CHAIR DYSON said he has raised the issue numerous times and has never been satisfied that the DHSS is in compliance with state law. He asked if it was true that doctors not licensed in Alaska were flying up here to practice and who would investigate that.

MR. MANDSAGER replied that that issue would be investigated by the Board of Medical Examiners.

CHAIR DYSON asked whether their investigation would happen only because of a complaint rather than just being asked by him to do it.

DR. MANDSAGER responded that the board responds to complaints.

MS. STONKUS added that SB 125 was intended to provide a minimal framework, which would allow the agency to work with the number

of different of programs that would be subject to licensure so that facilities and programs are not accidentally excluded. An example is that they need to accommodate children differently than adults.

CHAIR DYSON asked if any of the waivers or exceptions would threaten the health of the patients.

MS. STONKUS replied no, accommodations would have to be made.

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CHAIR DYSON asked whether he could assume that none of the waivers or exceptions would affect the health of patients undergoing care.

MS. STONKUS replied that was correct.

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CHAIR DYSON asked why the criminal background check includes both charges and convictions.

DR. MANDSAGER replied that including the language "charged with a crime" has been discussed internally for a while and the issue is when someone is charged with a crime, often they will leave employment; it might not get prosecuted and it vanishes. In the interest of trying to get a full picture of an individual, the bill includes "charged with a crime" so the department can determine whether it should consider barring a suspect from employment. It doesn't necessary mean that they will be barred from employment if they were charged, but it might in some cases.

CHAIR DYSON asked who would have access to that information.

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STACIE KRALY, Senior Assistant Attorney General, Department of Law (DOL), said that criminal information is all public information if someone is an adult although juveniles have a different standard. However, the premise for information on the civil registry is that it would be restricted to the department and individuals who need it to determine whether it is pertinent to the application and should be entered onto the civil abuse registry. The department is still fleshing out the due process mechanism that would be available to people on the list for cases of a vindictive employer.

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CHAIR DYSON asked if an applicant would be informed that the results of a background check could be public and placed on a registry.

MS. KRALY replied that the results of the check would probably not be on the registry, but the information they relied upon would be in a repository. Applicants would be told about the background check process and the possibility that the information could be placed on a public registry.

CHAIR DYSON said for the record that it is his contention that it must be clear to an applicant that such information could be placed on a public registry.

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CHAIR DYSON noted that people in custody and divorce proceedings sometimes file abuse and other charges that are sometimes motivated by spite and asked how those would be considered.

MS. KRALY replied that the department wants to give applicants the ability to include information that may affect an employer's perception of culpability in a given circumstance such as divorce proceedings.

CHAIR DYSON asked if criminal information would be on the registry.

MS. KRALY replied that criminal information is already accessible to the public, but the board will have to make decisions about an applicant being terminated when no adjudicatory act took place and that information is more difficult to get because it is not necessarily on record anywhere.

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CHAIR DYSON remarked that there are lots of spurious cases these days against medical professionals and consequently medical costs are getting so expensive that many prefer to settle suits and the decision is never made whether they are guilty or not.

DR. MANDSAGER responded that the civil registry language on page 28, line 5, is limited to "the applicant or the employee committed abuse, neglect or exploitation under certain statutes." It's limited to things that are pertinent to these kinds of facilities.

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SENATOR ELTON said his concern was that the registry could be used by an employer to force an employee to leave.

The hammer would be if you don't do it, your name could end up on the abuse registry, but, if in fact, abuse happened, instead of going through a protracted personnel kind of battle, this person might decide to leave and go to work someplace else.

DR. MANDSAGER replied that cases needed to be captured where people leave employment before they are reported to the police. The question is how to get that information. He would like regulations requiring employers to report to the department if someone leaves in lieu of getting reported to the police because of some abusive act they had committed.

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MS. KRALY added that he thought that Dr. Mandsager's response was carefully crafted. They want to encourage employers to make good decisions about bad employees.

SENATOR ELTON commented that it is not unknown for employers to threaten their employees.

DR. MANDSAGER said that he would take the Senator's comments under advice.

[2:09:45 PM](#)

CHAIR DYSON asked DR. MANDSAGER if he read ASHNHA's position paper. His first question is why anyone would file on time if there weren't a penalty for not doing so.

DR. MANDSAGER replied yes, he had read the paper. With respect to the concern about timely filing, the intent is that the department receives an application, but if it doesn't get its work done on time, the entity remains licensed until it does.

CHAIR DYSON asked if his amendments fix that.

DR. MANDSAGER replied that he thought the statute already said that, but the lawyers didn't. Another amendment says that the commissioner would have to authorize the closure of a facility and accommodations would have to be made for its residents or patients.

[2:12:52 PM](#)

MS. KRALY said the ASHNHA letter said the state should not be immune from compensating for economic consequences of department actions ultimately found to be excessive in the courts. She said the immunity language on page 13 was drafted using the best of the 13 or 14 statutory frameworks for licensure. It does not expand nor diminish the immunities under current law. With respect to ASHNHA's comments, there is currently no such immunity for things like that and no statutes that would preclude the possibility of recovery.

[2:15:20 PM](#)

DR. MANDSAGER said that the current definition of 'assisted living home' resulted from issues emerging from the overlap between assisted living services and medical services. He disagreed that this overlap was problematic and felt that if a family and a doctor decide that an elder should have medical care in an assisted living home and is willing to be liable for that decision, they should have a right to do so.

[2:18:03 PM](#)

CHAIR DYSON asked if a federal law precludes a person being in possession of a firearm on the parking lot of a federally licensed childcare center.

MS. STONKUS replied no.

[2:20:04 PM](#)

SENATOR GREEN remarked that this seems to be an expansion of the prohibition of previous language regarding firearms in federally licensed childcare centers and she wanted assurance that this bill does not create a further expansion of the aforementioned prohibition.

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DR. MANDSAGER asked if she thought it would be appropriate to test this language.

SENATOR GREEN responded that she thought that would be appropriate.

MS. KRALY said that she would take Senator Green's concerns under advisement, but emphasized that the department had taken special care not to create an expansion.

CHAIR DYSON said he could not support this bill if any Alaskan who stops to pick up his child or visit a parent in a nursing home on the way to or from a hunting trip with a weapon is

guilty. That included people who had been assaulted or someone who delivered someone who had just been injured to a hospital.

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SENATOR ELTON said that an abuse registry creates the kinds of actions that could be heard by the Office of Administrative Hearings and therefore assumed there would be a fiscal impact and a fiscal note.

MS. KRALY responded that the due process mechanism for determining placement on the civil registry had not yet been developed, so a fiscal note couldn't be determined.

SENATOR ELTON asked how "volunteer of an entity" is defined on page 26. He used dog handlers for an example.

DR. MANDSAGER replied that "volunteer" is not defined in the statute at this point, but the larger facilities have lists of volunteers with special training and a small organization like an assisted living home doesn't have volunteer lists and that is a good question.

He said he had prepared two sets of amendments and had hoped that a CS version would have already incorporated them - most are conforming amendments. He said that conceptual Amendment 1 was written primarily because the initial draft of the law interpreted a starting date that won't happen. So, it renumbers everything to allow for a starting date after this bill would pass.

2:29:40 PM

SENATOR GREEN moved to adopt conceptual Amendment 1 and then objected for discussion purposes.

CONCEPTUAL AMENDMENT 1

1) Amend section 47.32.900(1)(B) [page 15, line 24] - before "services" insert "or other invasive diagnostic or therapeutic". (This would have allowed the department to license medical centers that conduct procedures that are intrusive and pose increased risk to the patient, such as cardiac catheterization.)

2) Add a new Section 47 - "Section 17 of this Act takes effect upon the effective date of the implementing regulations, or March 1, 2006, whichever occurs sooner."

MS. STONKUS explained that the whole concept was to implement the bill as of July 1, 2005 and then further construct the registry and the background check piece. That timeframe was ambitious and changing that date required eight pages of conforming language. The March date was set because of their federal grant timeframe.

DR. MANDSAGER explained that the second part of Amendment 1 allows flexibility in statute to accommodate improvements in technology that may allow certain procedures to be performed outside of a hospital.

SENATOR GREEN asked for an example of a therapeutic service.

DR. MANDSAGER replied a linear accelerator for radiation therapy or chemotherapy. In Alaska, those things exist within a hospital, a licensed entity. In other states, they have moved outside the hospital.

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CHAIR DYSON asked if invasive diagnostic is considered imaging.

DR. MANDSAGER replied that it could be imaging, but he didn't know if those words were exactly right yet.

CHAIR DYSON asked him if barium was invasive.

DR. MANDSAGER replied no and that's why he was not currently satisfied with the language of the Amendment 1. He didn't want to get into doctor's offices or ordinary X-ray units.

CHAIR DYSON announced that he would hold action on Amendment 1 pending modifications by the sponsor.

SENATOR ELTON moved to adopt conceptual Amendment 2.

CHAIR DYSON objected for the purpose of discussion.

DR. MANDSAGER explained that Amendment 2 adds a new section, (e), that requires the commissioner to be involved if the department has to take over a facility. Everything else is renumbering. The other part corrects a drafting error on the bottom of page 13, line 1.

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CHAIR DYSON thanked everyone for their comments and said he would hold the bill in committee.

SB 150-ALASKA CHILDREN'S TRUST FUND GRANTS

CHAIR DYSON announced SB 150 to be up for consideration.

MARGO McCABE, Chairman, Trustees for the Alaska Children's Trust, related that the Trust was created by the Legislature in 1988 to help fund programs across the state aimed at preventing child abuse and neglect. She said:

Under current law, the Trust may spend the net income earned by the trust on community-based prevention programs. Last year it awarded a total of \$217,000 in grants to 16 non-profit organizations across the state. Current statute limits the size of grants to \$50,000 and provides a specific funding formula for funding grants. SB 150 removes the \$50,000 cap and calls for the elimination of the funding formula.

The Alaska Children's Trust is seeking these changes for a couple of reasons. The changes would give trustees the possibility to set maximum grant awards and funding formulas based on need rather than a predetermined amount set in statute. The intent is not to eliminate caps of funding formulas completely, but rather the trust would outline maximum grant awards and funding formulas with the issuance of each new RFP. More importantly, the changes will allow the trust to be better positioned to receive larger grants from private foundations and charitable trusts. Large grants could then be more easily redistributed to [indisc.] programs around the state. In closing, the rate of child abuse and neglect in this state remains higher in Alaska than anywhere else in the nation...

She said the Alaska Children's Trust will continue to fund small community grants, but would like the opportunity to consider larger projects that may truly "move the needle."

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CHAIR DYSON said that he thought that the Alaskan Children's Trust was initially established to fund small community based programs to enable organizations that were serving children to get going and establish themselves and establish other funding streams.

MS. McCABE responded that is true and they still have that vision, but would like to be able to receive larger grants.

CHAIR DYSON asked if she intended to become a perennial funding stream for some organizations that can't get alternative funding.

MS. McCABE replied no, that there would still be funding limits and a rule that recipients would be self-sustaining after four years. Each new RFP would have that requirement. She explained:

Last year legislation proposed 75 percent of the program's total funding in the first year; in the second year 50 percent and in the third and fourth final year, 25 percent. I think the Board of Trustees still likes those numbers and if it has the flexibility if this statute was removed, it would implement that language in its RFP.

CHAIR DYSON asked if she is trying to delete all the statutory limitations on the length of funding and trust the board's judgment to carry forward the general gist of the legislative intent.

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CHAIR DYSON asked if her organization wants to follow the legislative intent of last year's bill, but without the oversight of the Legislature.

MS. McCABE replied, "Absolutely.... I think that is what we would be doing." She said the board unanimously supports the legislation as it is drafted today. She said they are trying to have more flexibility in being able to implement funding formulas that are more appropriate to perform their mission.

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CHAIR DYSON asked if this bill removes the restriction on spending the earnings of the trust.

MS. McCABE replied that the language just removes the \$50,000 cap and the funding formula.

CHAIR DYSON commented that he thought she answered yes. He asked if she has donors who don't want to contribute to the principle, but want their donation to flow through directly to a particular organization.

MS. McCABE acknowledged that was correct.

SENATOR GREEN asked why the donor could not just give their donation directly to their favorite organization as opposed to funneling it through the Children's Trust.

MS. MCCABE replied that a number of larger trusts exist that do larger grants - in the \$1 million to \$2 million range. It might be hard to find some of the smaller non-profits that would like some of those monies and it would also be easier to find a number of grantees at once that would benefit from a large grant.

CHAIR DYSON asked if all of her grants are non-profit organizations.

MS. McCABE replied that they are all non-profit organizations that would qualify as a charitable gift recipient under federal tax law.

SENATOR GREEN said that this bill seems to defeat the original intent of the Children's Trust, which was to amass donations and live off that endowment and it would become less effective without contributions to the endowment. She remembered creating the limitation to prevent a single organization from receiving an inappropriate proportion of the trust's fund.

MS. McCABE responded that the trust is committed to increasing principle, but it receives grants that prohibit it from increasing its principle and she wants to be able to receive those grants. The rate of child abandonment in this state is unbearably high and she wants to do as much as she can.

[2:54:45 PM](#)

CHAIR DYSON thanked everyone for their testimony and said that SB 150 would be held in committee.

There being no further business to come before the committee, Chair Dyson adjourned the meeting at [2:55:58 PM](#).