

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

April 13, 2005

2:17 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**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."

MOVED CSSB 125(HES) OUT OF COMMITTEE

**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

04/06/05 (S) Heard & Held  
04/06/05 (S) MINUTE(HES)  
04/13/05 (S) HES AT 2:00 PM BUTROVICH 205

#### **WITNESS REGISTER**

DR. MANDSAGER, Director  
Division of Public Health  
Department of Health and Social Services  
Juneau AK

**POSITION STATEMENT:** Commented on SB 125.

STACIE KRALY  
Assistant Attorney General  
Department of Law (DOL)

**POSITION STATEMENT:** Commented on SB 125.

MIKE FORD  
Alaska Native Health Board  
Juneau AK

**POSITION STATEMENT:** Supported CSSB 125(HES) with some changes.

MARTHA ANDERSON, Program Manager  
Child Development Program  
Municipality of Anchorage  
Anchorage AK

**POSITION STATEMENT:** Opposed CSSB 125(HES).

#### **ACTION NARRATIVE**

**CHAIR FRED DYSON** called the Senate Health, Education and Social Services Standing Committee meeting to order at [2:17:38 PM](#). Present were Senators Green, Elton and Chair Dyson.

#### **SB 125-LICENSING MEDICAL OR CARE FACILITIES**

CHAIR FRED DYSON announced SB 125 to be up for consideration at [2:18:08 PM](#). He recapped that two amendments were proposed last week, but were not adopted and the committee had prepared a substitute with them in it.

SENATOR GREEN moved to adopt CSSB 125, version G, and objected for the purposes of discussion.

[2:19:23 PM](#)

DR. MANDSAGER, Director, Division of Public Health, Department of Health and Social Services (DHSS), explained that most of the

amendments incorporated into the CS relate to renumbering. But he recommended withdrawing one of the substantive changes on page 33, lines 22 ["includes a facility that performs basic diagnostic and therapeutic services"] that he had proposed. It was too broad and would give doctors the impression the department would be regulating into their offices. Other entities could be added in the future if the Legislature decided they should be licensed. However, he recommended using the effective date of 2006.

The other element that was talked about last time was in response to the Alaska State Hospital and Nursing Home Association (ASHNHA) comments about if the department takes over operation of an entity that the department licenses because of an immediate risk to clients, that decision should be taken with the commissioner's involvement. New language on page 29, line 20, states:

The department may not take action unless the commissioner has reasonable cause to believe that continue management by the entity would be injurious to the health, safety or welfare of individuals receiving services from them.

[2:23:24 PM](#)

DR. MANDSAGER said one other change corrected an error in the hearing section, AS 47.32.160, on page 30, lines 30-31 by removing "not" and it now reads: "AS 44.64.060 applies to the hearing."

SENATORS WILKEN and OLSON arrived at [2:23:52 PM](#).

SENATOR GREEN removed her objection and CSSB 125(HES), version G, was adopted.

SENATOR GREEN moved to adopt Amendment 1 to CSSB 125(HES) that deleted lines 22 and 23 on page 33 as per Dr. Mandsager's suggestion and to renumber accordingly. There were no objections and Amendment 1 was adopted.

[2:25:49 PM](#)

CHAIR DYSON noted that he had received an Attorney General's opinion on background checks and registry in other databases stating that the state has no right to interfere with the practice of abortion by a licensed practitioner.

DR. MANDSAGER replied that this document addressed a number of questions asked by both the House and Senate on that issue.

STACIE KRALY, Assistant Attorney General, said the provision referenced AS 18.16.010(a)(2) that says an abortion must be performed in a hospital or an approved facility, but it is unenforceable with respect to first trimester abortions. The Attorney General's letter opines that is still his opinion after subsequent Alaska Supreme Court decisions.

CHAIR DYSON said there is no way to verify that the abortions performed in those facilities were done in the first trimester. "It's self reporting."

DR. MANDSAGER reported that abortions are being performed in licensed facilities, but he does license ambulatory surgery centers for abortions and he will continue to make sure that is done appropriately.

CHAIR DYSON asked if ambulatory service centers don't perform abortions unless they are licensed by his department to do that specifically.

DR. MANDSAGER replied that is the case.

SENATOR ELTON asked if other people who have direct access to clients in licensed facilities have to be fingerprinted if that access is unsupervised.

DR. MANDSAGER replied that he thought they should add that regulations should be developed stating that the only volunteers this should include would be those who have "regular" unsupervised direct access to clients.

SENATOR GREEN moved to adopt Amendment 1 to CSSB 125(HES) that would change the title and clarify possession language on page 4, line 1.

[2:32:57 PM](#)

CHAIR DYSON explained that the amendment would allow someone with an unloaded firearm locked in the trunk of his car to pick up a child at a care facility. He asked the commissioner of Department of Health and Social Services (DHSS) to comment on whether this amendment would jeopardize receiving any federal funding.

JOEL GILBERTSON, Commissioner, Department of Health and Social Services (DHSS), said that he would look check in to it.

2:34:26 PM

SENATOR ELTON objected saying that he believes the question of whether or not the amendment would jeopardize federal funding should be answered before the amendment is adopted.

SENATOR OLSON asked if the issue of federal funding would influence his decision.

CHAIR DYSON asked for a roll call vote. Senators Wilken, Green, Olson and Chair Dyson voted yea; Senator Elton voted nay; and Amendment 1 was adopted.

2:37:09 PM

MIKE FORD, Alaska Native Health Board, said he appreciated the efforts of the department and thought they would lead to some efficiencies. However, he was hoping to work with the department on some complexities the bill raises. His board has two primary concerns - that this bill does not diminish nor disrupt services provided in the bush.

CHAIR DYSON remarked that this director is particularly sensitive to these issues.

2:38:43 PM

MARTHA ANDERSON, Program Manager, Child Development Program, Municipality of Anchorage, strongly urged retaining existing language in AS 47.32.030 that allows municipalities to request the state to delegate municipalities the authority to license facilities. She also urged the committee to retain language that clarifies the process, which has been in place since 1998, of the delegation system. She also wanted section (c) of AS 47.35.010 retained, but moved to AS 47.32.030. It would say:

The department shall within 90 days after receiving your written request that it do so, delegate its powers relating to child care facilities under this chapter to a municipality that has adopted by ordinance providing for child care licensing under home rule powers under AS 29.10.010 or is authorized under AS 29.35.200 - 29.35.210.

And she strongly wanted the following language to be added:

A municipality to which these powers have been delegated may adopt by ordinance additional requirements for childcare facilities operating within its boundaries if the requirements meet or exceed the requirements adopted by the department.

[2:41:04 PM](#)

MS. ANDERSON explained that she is concerned that if the language is not retained, the department might exceed its powers by delegating licensing authority to municipalities. She explained that her division was first delegated full licensing responsibility for childcare centers in 1989 and has been operating under that system until when it was delegated full authority to license childcare homes in 2004. A huge rewrite of the division's code has just been finished to match state code.

[2:43:31 PM](#)

SENATOR ELTON commented that he was concerned that the registry could be used as a weapon by an employer in a licensed facility "to get that employee to go quietly."

DR. MANDSAGER responded that the only leveling activity he could think of is if the survey team finds evidence that employees have been performing abuse or neglect and the provider hasn't reported it and in that case, the employer would be liable. He said that the registry only contains incidents of abuse and so if there were no abuse, a threat to place someone on the registry would be an empty threat.

[2:49:16 PM](#)

SENATOR GREEN moved to pass CS SB 125(HES) from committee with individual recommendations and accompanying fiscal notes. There were no objections and it was so ordered.

CHAIR DYSON adjourned the meeting at [2:52:12 PM](#).