

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

May 1, 2006

1:33 p.m.

**MEMBERS PRESENT**

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

CS FOR HOUSE BILL NO. 426(FIN)(title am)

"An Act relating to cooperation of insurers with the Department of Health and Social Services; relating to subrogation, assignment, and lien rights and notices for medical assistance claims; relating to recovery of medical assistance overpayments; relating to asset transfers and income diversion by medical assistance applicants; relating to assets and Medicare enrollment as they affect medical assistance coverage; relating to home and community-based services; relating to medical assistance applications for persons under 21 years of age; requiring a report by the Department of Health and Social Services; and providing for an effective date."

MOVED SCS CSHB 426(HES) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 467(HES) am

"An Act relating to the administration of prescribed remedies and dietary supplements by a nurse."

HEARD AND HELD

CS FOR HOUSE BILL NO. 482(JUD)

"An Act relating to harassment, intimidation, and bullying in schools."

SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 426

SHORT TITLE: MEDICAL ASSISTANCE/INS COOPERATION

SPONSOR(s): REPRESENTATIVE(s) COGHILL

02/06/06 (H) READ THE FIRST TIME - REFERRALS  
02/06/06 (H) HES, FIN  
02/23/06 (H) HES AT 3:00 PM CAPITOL 106  
02/23/06 (H) <Bill Hearing Rescheduled to 2/28/06>  
02/28/06 (H) HES AT 3:00 PM CAPITOL 106  
02/28/06 (H) Scheduled But Not Heard  
03/16/06 (H) HES AT 3:00 PM CAPITOL 106  
03/16/06 (H) -- Meeting Canceled --  
03/21/06 (H) HES AT 3:00 PM CAPITOL 106  
03/21/06 (H) Heard & Held  
03/21/06 (H) MINUTE(HES)  
03/28/06 (H) HES AT 3:00 PM CAPITOL 106  
03/28/06 (H) <Bill Hearing Postponed to 03/30/06>  
03/30/06 (H) HES AT 3:00 PM CAPITOL 106  
03/30/06 (H) -- Meeting Canceled --  
04/04/06 (H) HES AT 3:00 PM CAPITOL 106  
04/04/06 (H) <Bill Hearing Postponed to 04/11/06>  
04/11/06 (H) HES AT 3:00 PM CAPITOL 106  
04/11/06 (H) Moved CSHB 426(HES) Out of Committee  
04/11/06 (H) MINUTE(HES)  
04/12/06 (H) HES RPT CS(HES) NT 3DP 1NR  
04/12/06 (H) DP: CISSNA, ANDERSON, WILSON;  
04/12/06 (H) NR: GARDNER  
04/18/06 (H) FIN AT 10:00 AM HOUSE FINANCE 519  
04/18/06 (H) Moved CSHB 426(FIN) Out of Committee  
04/18/06 (H) MINUTE(FIN)  
04/19/06 (H) FIN RPT CS(FIN) NT 4DP 4NR  
04/19/06 (H) DP: FOSTER, WEYHRAUCH, REPRESENTATIVE  
KELLY, MEYER;  
04/19/06 (H) NR: HOLM, STOLTZE, MOSES, CHENAULT  
04/21/06 (H) MOVED TO BOTTOM OF CALENDAR  
04/24/06 (H) TRANSMITTED TO (S)  
04/24/06 (H) VERSION: CSHB 426(FIN)(TITLE AM)  
04/25/06 (S) READ THE FIRST TIME - REFERRALS  
04/25/06 (S) HES, FIN  
05/01/06 (S) HES AT 1:30 PM BUTROVICH 205

BILL: HB 467

SHORT TITLE: ADMINISTRATION OF MEDICATION BY A NURSE

SPONSOR(s): REPRESENTATIVE(s) REPRESENTATIVE KELLY

02/13/06 (H) READ THE FIRST TIME - REFERRALS  
 02/13/06 (H) HES, FIN  
 03/28/06 (H) HES AT 3:00 PM CAPITOL 106  
 03/28/06 (H) <Bill Hearing Postponed to 03/30/06>  
 03/30/06 (H) HES AT 3:00 PM CAPITOL 106  
 03/30/06 (H) -- Meeting Canceled --  
 04/04/06 (H) HES AT 3:00 PM CAPITOL 106  
 04/04/06 (H) <Bill Hearing Postponed to 04/06/06>  
 04/06/06 (H) HES AT 3:00 PM CAPITOL 106  
 04/06/06 (H) -- Rescheduled from 04/04/06 --  
 04/11/06 (H) HES AT 3:00 PM CAPITOL 106  
 04/11/06 (H) Moved CSHB 467(HES) Out of Committee  
 04/11/06 (H) MINUTE(HES)  
 04/12/06 (H) HES RPT CS(HES) 1DP 2DNP 2AM  
 04/12/06 (H) DP: ANDERSON;  
 04/12/06 (H) DNP: GARDNER, GATTO;  
 04/12/06 (H) AM: CISSNA, WILSON  
 04/13/06 (H) FIN REFERRAL WAIVED  
 04/24/06 (H) BEFORE THE HOUSE  
 04/24/06 (H) TRANSMITTED TO (S)  
 04/24/06 (H) VERSION: CSHB 467(HES) AM  
 04/25/06 (S) READ THE FIRST TIME - REFERRALS  
 04/25/06 (S) HES  
 05/01/06 (S) HES AT 1:30 PM BUTROVICH 205

**WITNESS REGISTER**

RYNNIEVA MOSS

Staff to Representative John Coghill  
 Alaska State Legislature  
 Alaska State Capitol  
 Juneau AK 99801-1182

**POSITION STATEMENT:** Presented sponsor statement for CSHB 426.

DWAYNE PEEPLES, Director  
 Division of Health Care Services  
 Department of Health and Social Services  
 PO Box 110601  
 Juneau, AK 99801-0601

**POSITION STATEMENT:** Supported CSHB 426

STACIE KRALY, Attorney  
 Department of Law  
 PO Box 110300  
 Juneau, AK 99811-0300

**POSITION STATEMENT:** Supported CSHB 426

KEVIN D. HENDERSON, Medical Assistance Administrator  
Department of Health and Social Services  
PO Box 110601  
Juneau, AK 99801-0601  
**POSITION STATEMENT:** Supported HB 426

JIM DAVIS, Attorney at Law (via teleconference)  
Northern Justice Project  
Anchorage AK  
**POSITION STATEMENT:** Opposed CSHB 426

TOM JOHNSON, General Counsel  
Liberty Northwest Insurance Corporation  
650 NE Holladay Street  
Portland, Oregon 97232-2045  
**POSITION STATEMENT:** Supported CSHB 426

KENTON BRINE, Northwest Regional Manager  
Property Casualty Insurers Association of America  
Olympia WA 98501  
**POSITION STATEMENT:** Supported CSHB 426

Catherine Giessel, MSN, RN ANP, Chairperson  
Division of Occupational Licensing  
Alaska Board Of Nursing  
550 W. 7<sup>th</sup> Avenue, Suite 1270  
Anchorage AK 99501-3567  
**POSITION STATEMENT:** Opposed CSHB426

ROD BETIT, President  
Alaska State Hospital and Nursing Home Association  
426 Main Street  
Juneau AK 99801  
**POSITION STATEMENT:** Supported CSHB 426

**ACTION NARRATIVE**

**CHAIR FRED DYSON** called the Senate Health, Education and Social Services Standing Committee meeting to order at [1:33:25 PM](#). Present at the call to order were Senators Gary Wilken, Donny Olson and Chair Fred Dyson; Senators Kim Elton and Lyda Green joined the meeting in progress.

^#hb426

**CSHB 426(FIN)(title am)-MEDICAL ASSISTANCE/INS COOPERATION**

[1:33:47 PM](#)

CHAIR DYSON announced CSHB 426(FIN)(title am) to be up for consideration.

SENATOR ELTON arrived at 1:34:36 PM.

[1:34:44 PM](#)

RYNNIEVA MOSS, Legislative Aide to Representative John Coghill, presented the bill on behalf of the sponsor, noting that it started out very different from the current version. Its original purpose was to find ways to ensure that Medicaid dollars spent in Alaska are spent on people who really need medical services. She reported finding that, under state and federal law, if the income of a stepparent or unmarried parent would disqualify a child for Denali KidCare, it was excluded. Thus some families in Alaska have household incomes over \$100,000, yet have children who receive medical services through Medicaid. Ms. Moss said that, because of federal law, Representative Coghill has had difficulty ensuring that Medicaid goes only to those who really need it.

What remains of Representative Coghill's original bill on page 9, Section 11, is a request of the department to prepare a report to look at recommendations for statutory, regulatory and systematic changes that will help the department reduce medical assistance expenditures for both residential psychiatric treatment centers and community mental health facilities.

Under current practice, a child is sent outside for residential treatment. The child has private insurance for the first 30 days, but if he does not require Level 4 or higher treatment, the insurance company discontinues payment and he becomes eligible under Medicaid. Representative Coghill requested that Medicaid make the same assessment and use the same basic good-business practices that the private insurance companies use, and that they enhance and clarify parental financial responsibility for medical coverage.

This bill also requires Medicaid to maximize all third party resources available. Under current law, Medicaid can waive the right to subrogate on a third-party claim. This bill eliminates that legislation and requires the department to do everything possible to recover Medicaid expenditures under a subrogated issue.

SENATOR GREEN arrived at [1:36:23 PM](#).

MS. MOSS deferred to the Department of Health and Social Services to explain the bill section by section and said she would be happy to explain the amendments.

[1:38:47 PM](#)

CHAIR DYSON asked which families do not have to count both adults' incomes when deciding whether the children qualify for Medicaid.

MS. MOSS answered that if the couple is not married, the mother's income is counted, then the father or stepfather's income is counted, but if that income causes the household to be disqualified for Denali KidCare, it is subtracted from the equation.

CHAIR DYSON asked if that is under state or federal law.

MS. MOSS responded that it is true under both state and federal law.

CHAIR DYSON commented on the inconsistency of the practice.

MS. MOSS said they are trying to find a way around it.

CHAIR DYSON asked if there is anything in federal law to prevent Alaska from saying that the recognition of individuals as a "couple" for the purpose of obtaining any benefits must be consistent with regard to obligations as well.

MS. MOSS replied that is already the case in every other element of public assistance except for Denali KidCare, which has a special federal exemption.

[1:40:49 PM](#)

CHAIR DYSON asked whether this bill will fix the exemption.

MS. MOSS said no, that is one of the reasons it requires them to study the matter in depth and come back with recommendations for a statutory fix. She pointed out that this might require the state to enter into a new agreement with the federal government, but that Representative Coghill believes it can be done.

CHAIR DYSON commented that this is an inadvertent disincentive for people to formalize relationships.

[1:41:37 PM](#)

SENATOR OLSON asked how many other states have the same type of consideration for stepparent care.

MS. MOSS replied that Oregon and three or four other states have found a way around it.

[1:42:32 PM](#)

DWAYNE PEEPLES, Director, Division of Health Care Services, Department of Health and Social Services (DHSS), introduced himself.

STACIE KRALY, Department of Law (DOL), introduced herself.

MR. PEEPLES explained that HB 426 incorporates several elements that the department has been working on for cost containment. Section 1 delineates the responsibilities for health insurance companies and pharmacy benefit managers, to coordinate and cooperate with the department for cost recovery. It enables the department to go back three years from the date of service to claim reimbursement. The three years is mandated by federal legislation.

[1:44:06 PM](#)

SENATOR GREEN asked how the insurer becomes part of the loop, whether the department relies upon the insured to provide that information.

MR. PEEPLES answered that the department has several mechanisms to obtain insurance information. First, individuals are required to declare any existing coverages when applying for Medicaid. Second, the department contracts with Public Corporation Group (PCG) to perform third-party liability investigations, and third, it has databases available to research insurance and eligibility information.

[1:45:03 PM](#)

MR. PEEPLES continued to page 2, Section 2, which identifies the department's more aggressive stance on pursuing subjugated rights of individuals who were covered by Medicaid at the time of an injury. He said that the department developed a Reimbursable Services Agreement (RSA) with the Department of Law, which allows it to use Assistant Attorneys General to pursue the liabilities in court and through other actions.

[1:45:55 PM](#)

CHAIR DYSON expressed appreciation for the intent, and said that he is sure some people covered by Medicaid are not diligent about making repayment when another insurer pays.

[1:46:18 PM](#)

SENATOR GREEN asked whether Medicaid is the first payor.

MR. PEEPLES answered not necessarily. If the department identifies another company as the primary insurer, it picks up only the portion remaining after the primary insurer has paid.

[1:46:42 PM](#)

MR. PEEPLES explained that Section 3, at the bottom of page 2, further enhances the department's definition of the responsibility of Medicaid recipients to identify their other third-party payors, the rights of the department in subrogation lawsuits, and the responsibilities of attorneys representing Medicaid recipients in lawsuits and other subrogation cases.

[1:47:25 PM](#)

SENATOR ELTON noted that on page 5, line 7, it provides that "a judgment, award, or settlement that requires or results in compromise of a lien under AS 47.05.075 may not be entered into or granted by a court without the express written consent of the attorney general." He said it seems that the legislature is saying the court cannot do anything until the attorney general has "blessed it." He questioned whether there is a separation-of-powers issue and whether it would require a court rule change.

MS. KRALY replied that she hadn't thought of it in those terms, but the premise behind the section deals with the ability of the DOL to have information and to assure that their subrogation and lien rights have been adequately addressed in any settlement. The idea is to interfere with the court's ability to adjudicate a proceeding without DOL's involvement. She said that DOL looked at Texas, California and other states with similar provisions, to ensure that the state's subrogation and lien interests are adequately protected, but admitted that Senator Elton raised an interesting question, and said she would look into it and get back to the committee with an answer.

SENATOR ELTON also asked for clarification of the language beginning on line 15 that says "no payment can be placed in a trust for the purpose of maintaining public assistance or medical assistance eligibility". He asked how that affects the

Qualified Income Trust (QIT), or Miller Trust arrangements under the federal rules.

MS. KRALY replied that it is a condition precedent that allows the department to obtain its subrogation and lien interests prior to a Miller Trust being set up. It does not preclude or discourage the use of a Miller Trust for maintaining Medicaid eligibility, but would prevent an individual from turning a judgment into a trust immediately, without the state's knowledge, in an effort to avoid paying the state's third-party subrogation interests.

[1:51:17 PM](#)

MR. PEEPLES said that page 6, Section 4, defines the state's lien priority over settlements and other liens, except tax liens and those arising from legal fees.

CHAIR DYSON asked who other lienholders might be.

MS. KRALY responded that this section clarifies the state's lien priority over hospital, nurses', and physicians' liens, but she did not believe that it would have priority over child support enforcement or tax liens.

CHAIR DYSON asked if attorneys get their fees before the state does, based on a court order or decision.

MS. KRALY said that is correct.

[1:53:08 PM](#)

CHAIR DYSON asked whether there is a circumstance in which a claim might be paid by the state, yet leave doctors, nurses or hospitals unpaid.

MR. PEEPLES answered that in most cases, if Medicaid is paying and the state is in a subrogation lien position, those medical services have already been paid based on the state's Medicaid rates.

CHAIR DYSON asked whether the Medicaid rate paid could be less than is normally charged, leaving the patient responsible for the balance.

MR. PEEPLES said no, that Medicaid pays 80 to 85 percent of the normal rate, but our statutes and the rules laid down by the Centers for Medicare and Medicaid Services (CMS) stipulate that

hospitals and health-care practitioners cannot collect any amount above and beyond that.

CHAIR DYSON asked Mr. Peeples to confirm that this section refers to collecting money from the patient's insurance company and not the patient.

MR. PEEPLES answered yes, these liens are against other third-party payors.

[1:54:56 PM](#)

MR. PEEPLES said that Section 5 gives the Division of Health Care Services and medical assistance programs rights to go after a Permanent Fund Dividend (PFD) in lieu of other sources of income when there are issues revolving around waste, fraud, and abuse.

[1:55:40 PM](#)

KEVIN D. HENDERSON, Medical Assistance Administrator, Department of Health and Social Services, addressed Sections 6 and 7. He said that the department reviews the finances of any person eligible for long-term care services for three years prior to the application, and imposes penalties if it finds transfers made for the purpose of qualifying for the benefit. Section 6 brings the state in line with a recent federal initiative involving the Deficit Reduction Act of 2005, which precludes someone from using an annuity to hide assets from Medicaid for the purpose of eligibility for long-term care services.

[1:59:04 PM](#)

MR. HENDERSON said Section 7, subsections (j) and (k), requires that a person applying on behalf of an unemancipated child under 18 have a responsible relationship to that child.

CHAIR DYSON asked for an example of how someone other than the responsible individual could apply for a child.

MR. HENDERSON suggested that a teenager estranged from parents might enlist the aid of friends to help him apply.

CHAIR DYSON asked whether this might sometimes relate to pregnancy services.

MR. HENDERSON replied that pregnancy services are not specifically addressed, but could be a reason for seeking medical services.

Subsection (k) states that the department has a responsibility to make contact to ensure the involvement of parents or guardians. The primary reason for this is to find out whether the parents have insurance and whether they are financially eligible.

[2:01:46 PM](#)

MR. HENDERSON explained that subsection (l) provides the state with the new ability, due to recent changes in federal policy, to require an individual who is Medicare eligible to apply for that coverage as a condition of Medicaid eligibility. Medicare is 100 percent federally funded, so this is an important step for cost-containment.

CHAIR DYSON asked Mr. Henderson to repeat his explanation about section l.

MR. HENDERSON said that historically the state has not been allowed to require elderly or certain disabled individuals to apply for Medicare as a condition for Medicaid. This would allow the state to require that as a condition for eligibility for Medicaid.

[2:03:55 PM](#)

SENATOR OLSON asked why some people don't want to sign up for Medicare coverage.

MR. HENDERSON said that he has not spoken to anyone who refused to apply for Medicare, but surmised that some people might want to avoid government interference.

SENATOR OLSON asked whether the Medicare application process is long and complicated?

MR. HENDERSON said no.

[2:04:38 PM](#)

MR. HENDERSON explained that Section 7, subsection (m) falls in line with Representative Coghill's intent and with the Deficit Reduction Act of 2005 that became effective in February of 2006. It focuses on individuals eligible for long-term care, extending the length of time to research transfers from 36 to 60 months and starting the penalty period for hiding assets at the time the individual applies for Medicaid, making it more difficult for a person to avoid the transfer-of-asset penalty.

CHAIR DYSON asked Ms. Kraly under what circumstances the state could prosecute a person for criminal fraud.

MS. KRALY responded that the Alaska Medicaid Fraud Control Unit (MFCU) can seek criminal indictments for persons who improperly apply or fraudulently hide assets, but the penalties under these provisions are generally civil and result in ineligibility for a "look-back period" and a commensurate time forward.

[2:07:03 PM](#)

CHAIR DYSON asked if there is a prohibition against publishing cases in which individuals paid penalties for improper transfer of assets in order to enhance Medicaid eligibility.

MS. KRALY replied that she is not sure, but believes the state would run into privacy issues without due process prior to public notification.

CHAIR DYSON said that he wishes the department were tracking the number of cases of fraud and could publish a press release every few days with the number of people it had caught.

MR. HENDERSON added that these are not criminal activities and the department handles them by simply not approving Medicaid. He said people commonly transfer assets to their children, but the intent of Medicaid policy is to ensure that those who can pay, do pay for their health care.

[2:09:29 PM](#)

MR. HENDERSON explained that subsection (n) also addresses a provision in the Deficit Reduction Act that says an individual's primary residence generally is not counted as an asset when calculating eligibility, even though the home might be quite valuable. The Federal bill now allows the DHSS to place a cap of \$500,000 on equity in a home for the purpose of Medicaid eligibility. This bill goes further and applies that standard to all eligibility categories, not just long-term care.

[2:11:10 PM](#)

MR. HENDERSON then addressed Ms. Moss's earlier remarks about stepparents and eligibility. He said that when the department considers eligibility for a family unit, it includes the incomes of both parents in its determinations, regardless of whether the parents are married; but when determining eligibility for the child only (Denali KidCare) they are only allowed to include the income of the person who is financially responsible for the child. There is no legal provision that makes a stepparent

financially responsible for the stepchild, and the department would need that rule of general applicability in order for Medicaid to adopt a rule including both incomes.

CHAIR DYSON asked what happens if the stepparent adopts the child.

MR. HENDERSON replied that the individual is then considered a parent and both incomes are counted. He turned the floor over to Ms. Kraly to explain Section 8.

[2:13:36 PM](#)

MS. KRALY said that Section 8 is an amendment proposed to address some ongoing litigation related to the Home and Community Based Waiver (HCBW) programs. In two class-action lawsuits and one individual lawsuit under way in Anchorage, the plaintiffs allege that the state cannot terminate anyone from the waiver programs without a showing of material improvement, but "material improvement" is not defined in state or federal law, or in any case law that DOL could find. In an effort to expedite these cases, Section 8 identifies and defines what the state considers to be material improvement for each of the four waiver programs.

CHAIR DYSON asked for an explanation of the waiver programs.

MS. KRALY explained that a specific exemption from the federal government allows the state to provide long-term care services for disabled persons, specifically: children with complex medical conditions, persons with mental retardation and developmental disabilities, older Alaskans, and adults with a physical disability. This allows recipients to remain in a community setting, which costs less than a nursing home facility.

CHAIR DYSON asked under what circumstances the state would want to remove someone from eligibility for a waiver program.

MS. KRALY said that a person's need for health care might change. Under the older Alaskans waiver, for example, a person hospitalized for a broken hip might experience a significant recovery time and qualify for the waiver during that time; but a year later, when the individual has healed and is back at home, he would no longer qualify.

CHAIR DYSON asked for clarification that the court requires the state to prove, by some undefined criteria, that the individual

has improved to the point that he can live with less state support.

MS. KRALY said generally, yes. The court issued a preliminary injunction stating that the state cannot terminate anyone from the programs without showing material improvement.

[2:18:06 PM](#)

MS. KRALY said that the provisions set forth in Section 8 allow for different standards of improvement for each of the four waivers and specify that an independent, qualified, health care professional make the determination.

[2:19:00 PM](#)

SENATOR ELTON agreed that the definition of "material improvement" is important and questioned whether the change in equity in a home over time is considered material improvement for purposes of qualification.

MS. KRALY responded that eligibility for waiver services is different from regular eligibility for Medicaid, which is addressed in subsection (n). She explained that there has to be a qualifying diagnosis for eligibility for waiver services, and the determination of material improvement is likewise medically-based, more of a physical well-being analysis.

SENATOR ELTON asked Ms. Kraly to confirm that one is financial the other is physical.

MS. KRALY responded yes.

[2:20:36 PM](#)

MR. PEEPLES addressed page 9, Section 9, which repeals the DHSS ability to do waivers of subjugation in part or in full, and places the emphasis on settlement of medical claims in their entirety.

CHAIR DYSON asked if the department agrees with the change.

MR. PEEPLES said yes.

[2:22:09 PM](#)

MS. MOSS explained that Section 10 is just an applicability clause stating that Sections 2 through 4 will be applied to "causes of action related to subrogation on or after the effective date".

Section 11 is what remains of Representative Coghill's original bill.

Sections 12 and 13 relate to the fact that, if the bill passes, certain sections may require the department to go to the federal government and change its state plan. If the new state plan is not approved by the effective date, then the effective date reverts to the date that it is agreed to by the federal government.

[2:23:59 PM](#)

CHAIR DYSON called for questions, and remarked that this is an amazing piece of work.

MS. MOSS commended the department. She said that, with the amendments, they have tried to address the concerns of the insurance companies as well.

CHAIR DYSON asked in what order Ms. Moss would like to take the amendments.

[2:24:37 PM](#)

MS. MOSS suggested they deal with the simple ones first. She began with Amendment 1(24-LS1602\XA.4) page 9, line 16, which asks the department to look at community mental health facilities that provide services at Levels 2 through 4, as well as residential psychiatric treatment centers and substance abuse treatment centers that provide services at Level 5 and Level 6.

[2:25:28 PM](#)

CHAIR DYSON moved to adopt Amendment 1, and objected for discussion purposes.

24-LS1602\XA.4  
Mischel

**A M E N D M E N T 1**

OFFERED IN THE SENATE

TO: CSHB 426(FIN) (title am)

Page 9, line 16:

Following "in":

Insert "mental health treatment facilities located in the state and outside the state, including community mental health facilities,"

Following "centers":

Insert ", "

Page 9, line 18, following "receiving":

Insert "services provided by mental health treatment facilities located in the state and outside the state, including community mental health facilities,"

Page 9, line 19:

Delete "center"  
Insert "centers,"  
Delete "services"

Page 9, line 20, following "of":

Insert "services provided by mental health treatment facilities located in the state and outside the state, including community mental health facilities,"

Page 9, line 21:

Delete "center"  
Insert "centers,"  
Delete "services"  
Insert ", "

MS. MOSS reiterated that they are expanding the original language to include community mental health facilities as well as residential psychiatric treatment centers and substance abuse treatment centers.

[2:26:31 PM](#)

CHAIR DYSON observed that the rest of the amendment appears to be simply formatting.

SENATOR ELTON asked for the department's position on the amendment.

[2:26:56 PM](#)

MR. HENDERSON responded that the department does not have any problem with this provision of the bill. It just broadens the scope of the study required by Section 11.

SENATOR ELTON asked if they could complete the study within the scope of the fiscal notes already attached.

MR. HENDERSON said yes.

CHAIR DYSON noted for the record that Janet Clark was nodding.

[2:27:40 PM](#)

CHAIR DYSON removed his objection. Without objection, Amendment 1 was adopted.

[2:27:59 PM](#)

MS. KRALY explained that Amendment 2 comprises technical corrections for dealing with worker's compensation claims and the subrogation and lien provisions in Section 3 of the bill. She noted that these changes were drafted in conjunction with the Department of Labor and Workforce Development, Worker's Compensation Division.

[2:29:21 PM](#)

CHAIR DYSON moved to adopt Amendment 2, and objected for purposes of discussion.

24-LS1602\XA.3  
Mischel

**A M E N D M E N T 2**

OFFERED IN THE SENATE

BY SENATOR DYSON

TO: CSHB 426(FIN) (title am)

Page 3, lines 26 - 28:

Delete "Before pursuing an action or claim on behalf of a medical assistance recipient for care or services for an injury or illness for which medical assistance was received, an"

Insert "An"

Page 3, line 29, following "representing":

Delete "the"

Insert "a"

Page 4, line 17:

Delete "An"

Insert "Except for payments under AS 23.30, an"

Page 4, line 19:

Delete "all proceeds"

Insert "any lump sum settlement or judgment"

Page 4, lines 23 - 29:

Delete all material and insert:

"(e) An attorney who fails to comply with this section is not entitled to the pro rata reduction under AS 47.05.070(c). If the attorney has already received

payment for the attorney's services through the pro rata reduction as provided in AS 47.05.070(c), the attorney is civilly liable to the department for the amount of that payment."

Page 6, following line 1:

Insert a new subsection to read:

"(h) Notwithstanding (a) - (g) of this section, a third-party payor shall be held harmless if it settles or compromises a dispute in good faith and without knowledge that the individual is a recipient of medical assistance."

[2:29:35 PM](#)

MS. MOSS suggested amending Amendment 2 as follows: On page 2 of the amendment, after the words "notwithstanding (a) - (g) of this section, a third-party payor shall", delete the words "..be held harmless" and insert "..have no further liability".

[2:29:54 PM](#)

CHAIR DYSON moved to adopt the foregoing as an amendment to Amendment 2. Without objection, it was so ordered.

SENATOR ELTON said his interpretation of Amendment 2, line 18, is that an attorney representing the recipient, "who fails to comply with this section", loses out on his fee and asked if that is correct.

MS. KRALY answered yes, that it is a penalty provision to encourage the plaintiff's attorney to participate in the process. An attorney representing a Medicaid recipient must fulfill the obligations and duties under the statutory provision, to cooperate with the Department of Law, to provide notice, and to keep DOL involved in any negotiations once it has established a subrogation and lien interest. If he fails to do so, under this provision he loses his pro rata reduction, (his attorney's fees) in a lien situation.

SENATOR ELTON said he assumed it was the recipient's responsibility, rather than the attorney's, and asked if this shift in responsibility is common in law, and whether it has been done in other states.

MS. KRALY said that DOL looked at a number of different states when drafting this bill, and found that this is a prevailing theme. It also tracked the Deficit Reduction Act language, where there is increased responsibility on the part of insurance companies to participate and provide information to state

Medicaid agencies for third-party recovery. She said that in response to Senator Elton's specific question, she did not see it as a shift in the burden of responsibility.

[2:33:13 PM](#)

SENATOR ELTON commented that the attorney's responsibility is to his client, and the client's interest may be subverted because of an additional requirement placed on the attorney. It seems to put the attorney in the position of serving two clients, the fiduciary best interest of Alaska, as well as the best interests of the client.

MS. KRALY responded that it is not a bifurcation of the duty of the attorney, because the requirement of the attorney to represent and advocate for his client includes his requirements and his understanding of the subrogation and lien interests as set forth by statute. These provisions are additional clarifications of what are existing duties in state and federal law. She argued that the attorney would not be acting in his client's best interest if he did not engage with the state.

SENATOR ELTON asked Ms. Kraly whether it would be unusual for an attorney not to know about a lien placed by the state.

MS. KRALY responded that it would be highly unlikely that an attorney representing a Medicaid client would not have knowledge of the existence of a lien.

[2:36:37 PM](#)

CHAIR DYSON removed his objection to Amendment 2 as amended, and asked whether there was further objection. Without objection, Amendment 2 was adopted as amended.

SENATOR ELTON said he had no objection, but asked whether there would be a further referral.

MS. MOSS replied yes, to Senate Finance.

SENATOR ELTON said that another committee of referral would give him the opportunity to check with the legal community for additional clarification.

CHAIR DYSON asked if Ms. Moss would like the last amendment to go forward today.

[2:37:39 PM](#)

MS. MOSS said yes. She explained that Section 1 is federally mandated. Amendment 3 is more cooperative, and was worked out with the insurance industry, Department of Law, and Health and Social Services, as a compromise to the language in the original bill.

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**A M E N D M E N T 3**

OFFERED IN THE SENATE

BY SENATOR DYSON

TO: CSHB 426(FIN) (title am)

Page 1, line 10, through page 2, line 9:

Delete all material and insert:

"\* **Section 1.** AS 21.09 is amended by adding a new section to read:

**Sec. 21.09.240. Cooperation with the Department of Health and Social Services.** An insurer, including a pharmacy benefits manager, with respect to medical assistance programs under AS 47.07, shall cooperate with the Department of Health and Social Services to

(1) provide, with respect to an individual who is eligible for or is provided medical assistance under AS 47.07, on the request of the department, information to determine during what period the individual or the individual's spouse or dependents may be or may have been covered by the insurer and the nature of the coverage that is or was provided by the insurer, including the name and address of the insurer and the identifying number of the health care insurance plan;

(2) accept the department's right of recovery and the assignment to the department of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under AS 47.07;

(3) respond to any inquiry by the department regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of the health care item or service; and

(4) agree not to deny a claim submitted by the department solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim if

(A) the claim is submitted by the department within the three-year period beginning on the date on which the item or service was furnished; and

(B) any action by the department to enforce its rights with respect to the claim is commenced within six years after the department's submission of the claim."

Page 10, following line 6:

Insert a new bill section to read:

"\* **Sec. 15.** Section 1 of this Act takes effect July 1, 2007."

Renumber the following bill section accordingly.

Page 10, line 7:

Delete "sec. 14"

Insert "secs. 14 and 15"

MS. KRALY affirmed Ms. Moss's statements and said that the language in Section 1 is basically a recitation of the language from the Deficit Reduction Act, so the language, in and of itself, is not problematic. She said that there is a request to amend Section 13 to provide for an effective date of July 1, 2007. As she interprets the Deficit Reduction Act however, the effective date of this provision is actually January 1, 2006, so she doesn't know where the delayed effective date came from. DOL's position is that the state is 6 months past the effective date and to delay another year would put it out of compliance with the federal rules. She said she would continue to look for confirmation of the effective date in the Deficit Reduction Act.

MS. MOSS said that she asked the insurance industry to provide documentation of the effective date today.

CHAIR DYSON commented that if the insurance industry provides supporting documentation, they would leave the effective date at July 1, 2007 as in Section 15.

MS. MOSS said she would leave that to the call of committee.

CHAIR DYSON asked Ms. Kraly whether she recommends that they make the date January 1 or July 1, 2006, if the insurance industry cannot provide support for the delayed date.

MS. KRALY said that the effective date of the bill is July 1, 2006 but it is to the call of committee, as she could not find it in the federal legislation.

[2:41:06 PM](#)

SENATOR ELTON said that he has read the amendment and looked at the language in the bill, but still does not see what is being described as a compromise.

MS. MOSS presented an example: "prompt verification of an assignment and right to recovery" versus "accept the department's right of recovery and the assignment of the department of any right of an individual". The amended language is not so direct or intimidating.

SENATOR ELTON restated that the language is "softer", less of a mandate to the insurer to cooperate.

MS. MOSS said yes.

SENATOR ELTON commented that he finds it troubling that, on one hand the state is telling attorneys that if they don't cooperate, they stand to lose money; while on the other it is adopting an amendment to soften the language for another party.

[2:43:23 PM](#)

CHAIR DYSON asked if the DOL is OK with the softer language.

MS. KRALY replied yes.

SENATOR ELTON asked if DHSS is OK with it.

MR. PEEPLES replied yes.

[2:43:58 PM](#)

CHAIR DYSON announced that he was removing his objection to Amendment 3 and asked whether there was further objection.

SENATOR ELTON objected. He said that he wouldn't speak to the objection, but thinks they are going in two different directions.

The roll was called. Voting to adopt Amendment 3 were Senators Wilken, Green, Olson and Dyson; voting against it was Senator Elton. Amendment 3 was adopted 4-1.

CHAIR DYSON announced that they would take public testimony.

2:45:19 PM

JIM DAVIS, Attorney at Law, Northern Justice Project, Anchorage, testified via teleconference against Section 8 of CSHB 426, stating that it would be a bad policy for the state. He said that the waiver programs allow disabled senior Alaskans, for example, who would otherwise be institutionalized, to stay in their homes, and saves the state a lot of money.

Mr. Davis was representing a group of senior Alaskans who were notified that their services were terminated due to ineligibility after the state contracted the assessment process to a private firm in 2005. The lead plaintiff in the case was a 90-year-old Alaskan who had Alzheimer's for years, and whose doctors did not expect her to improve. A judge in Anchorage said the action was so unfair as to violate due process, and another judge said the same in a similar case. Mr. Davis said that Section 8 of this bill attempts to ratify that which two courts have already found to be manifestly unfair. He also said that it is not true that the state has no way to define material improvement, the issue has come up time and again in the social security system and the courts have had to articulate that definition. He recommended the state look at what other jurisdictions have done.

CHAIR DYSON thanked Mr. Davis for his testimony and called Tom Johnson from Liberty Northwest Insurance.

2:51:14 PM

TOM JOHNSON, General Counsel, Liberty Northwest Insurance Corporation (LNW) testified in favor of Amendment 2 and the amendment to Amendment 2. He said Section 3 of the bill goes beyond the federal requirements addressed in Section 1 and tries to give the department tools to deal with the "double-dipping" problem that was described earlier.

MR. JOHNSON said that the problem with Section 3 as written, is that it would make it illegal to settle a case with a Medicaid recipient without the Attorney General's involvement. The insurer has no way of knowing whether the insured is a Medicaid recipient, or whether he and his attorney have met the requirements of Section 3. To avoid paying money for an illegal and probably voidable settlement, the insurer would have to notify the Attorney General in every case, which would increase adjustment costs and delay claims. The Amendment is very important because it allows the insurer that is acting in good faith, to settle without further liability in the settlement.

CHAIR DYSON thanked Mr. Johnson for his testimony and called Kenton Brine of Property Casualty Insurers.

[2:53:57 PM](#)

KENTON BRINE, Northwest Regional Manager, Property Casualty Insurers Association of America, a trade association representing about 1,000 member companies across the United States, testified in favor of Amendment 2 as amended. He echoed the comments of Mr. Johnson, and said that they are also concerned about the impact of this legislation, and that the amendments adopted by the committee are a substantial improvement upon the original language. All of problems he saw with the bill centered on the previous version of Section 1, and the original versions of Sections 2 and 3. He had no objection to the remainder of the bill, and said that he would like the opportunity to send the amended version to the association's members.

[2:56:28 PM](#)

CHAIR DYSON said he believed the amended bill would be available at the sponsor's office later today, and that if the committee did act on it, it would come up next in Senate Finance, where the committee members would be happy to hear any additional comment.

[2:57:18 PM](#)

CHAIR DYSON asked whether anyone else in the room wanted to testify.

[2:57:29 PM](#)

SENATOR ELTON suggested that it was premature to move the bill forward.

CHAIR DYSON called an at-ease from [2:58:10 PM](#) to [2:58:42 PM](#).

CHAIR DYSON said that this is a significant piece of legislation, and that it appears to represent a great collaboration between several departments and the industry.

[2:59:05 PM](#)

SENATOR GREEN moved to report CSHB 426(FIN)(title am), as amended, from committee with individual recommendations and accompanying fiscal notes.

SENATOR ELTON objected. He said he understands the time constraints, but the sponsor did not explain everything

adequately, and the committee made substantial amendments. He felt that they should have a greater level of comfort with the bill before moving it on and pointed out that, although the rest of the committee members are on the next committee of referral, he is not.

SENATOR ELTON removed his objection.

[3:00:24 PM](#)

CHAIR DYSON committed to bring Senator Elton's concerns to the Senate Finance Committee.

SENATOR ELTON noted that Ms. Kraly agreed to check into the language that would preclude the court from entering into a judgment without the Attorney General's approval.

CHAIR DYSON added that they also expect guidance from Ms. Kraly on the effective date.

CHAIR DYSON announced SCS CSHB 426(HES) was reported from the Senate Health, Education and Social Services Standing Committee.

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^#hb467

**CSHB 467(HES) am -ADMINISTRATION OF MEDICATION BY A NURSE**

[3:01:13 PM](#)

CHAIR DYSON announced CSHB 467(HES) am to be up for consideration.

REPRESENTATIVE MIKE KELLY, sponsor, explained that this bill would work to improve patient health care and safety, while improving efficiency. The Board of Nursing determined that it is outside the scope of practice for a nurse to administer dietary supplements to a patient; so the only way they can get these supplements is through friends or family members.

[3:04:47 PM](#)

The passage of HB 467 would reduce the practice of friends or family bringing in supplements that are not coordinated with other medications and allow, but not require, the nurse to administer those supplements and add them to the patient record.

He stated that any dietary supplement or remedy would have to be prescribed by a physician, dentist, advanced nurse practitioner, podiatrist or physician's assistant, and that, if the nurse

believes the supplement should not be administered, he or she can refuse to do so.

He said that patients, doctors, nurses, pioneer homes and long-term care facilities support the bill.

[3:06:36 PM](#)

SENATOR ELTON said he received email from some pharmacists who are concerned, and asked Representative Kelly if he could address their concerns.

REPRESENTATIVE KELLY said that the current situation does not serve the needs of the patient and ignores the fact that the supplements are prescribed. It also ignores the fact that the supplements are already coming in, but in a manner that is not safe or wise.

[3:09:55 PM](#)

SENATOR ELTON asked why the pharmacists are not in favor of the bill.

REPRESENTATIVE KELLY said he would guess that they might consider the supplements, some of which are not FDA approved and are outside the scope of what the pharmacists deal with, inappropriate; but that supplements are a fact, and should be administered and monitored in the safest way for the patient.

[3:10:43 PM](#)

CHAIR DYSON introduced Catherine Giessel.

[3:10:53 PM](#)

CATHERINE GIESSEL, MSN, RN ANP, Chairperson of the Board Of Nursing, informed members that she had forwarded the board's position paper and a letter from the Board of Pharmacy to them. She said that the Board Of Nursing, the Alaska Nurse Practitioners Association, and the Board of Pharmacy oppose HB 467, on the grounds that it is outside the scope for a registered nurse because of safety issues. The National Association of School Nurses wrote a position statement that reflects the nursing board's position.

She stated that the bill is not "just about fish oil and glucosamine", but encompasses a broad range of unregulated substances. In addition, it was offered at the request of a single constituent.

In 1994 the Dietary Supplement and Health Education Act classified these substances as foods, so the Food and Drug Administration (FDA) has to determine only if they are *unsafe*, not to prove that they are safe; and because they are not regulated, the manufacturer is not required to disclose all of the contents on the label.

Studies conducted by ConsumerLab.com LLC found that they contain broad ranges of contents. She related the experience of a licensed nurse who had chemical dependency problems at one time, and who had entered into an agreement with the board that required her to submit to regular drug screening. During routine screening she was found to be positive for barbiturates. She was taking an unregulated compound prescribed by a naturopath, which was found to contain Phenobarbital. The licensee was unaware of the contents.

[3:15:34 PM](#)

CHAIR DYSON said he was led to believe the board or another nurses' group would be meeting further on this.

MS. GIESSEL responded that he was probably told about a meeting of the Alaska Nurses Association, which is not affiliated with the Board of Nursing.

CHAIR DYSON asked if it is the board's position that the prescribing physician or nurse practitioner should not be allowed to make the decision about what to administer.

MS. GIESSEL replied that the issue is not about who prescribes the supplement, but who is allowed to administer it. Court cases have found that a nurse can be held accountable for any negative outcome resulting from administration of supplements, and that accountability cannot be superseded by a prescription or the policy of the facility.

CHAIR DYSON countered that the bill is permissive, in that the nurse can decline to administer the supplement.

MS. GIESSEL agreed that is the language in the bill, but said that nurses place their jobs in jeopardy when they disagree or decline to administer something like this against the policy of the facility. She stressed that it is a safety issue and asked why the Pioneer Homes require a waiver for administration of these substances if they are so safe.

CHAIR DYSON thanked Ms. Giessel for her testimony.

[3:18:14 PM](#)

ROD BETIT, President, Alaska State Hospital and Nursing Home Association (ASHNHA), testified in support of the bill. He said that ASHNHA believes it will be safer to have all medications and supplements documented and controlled by the medical staff, and that no hospital or care facility would prosecute a nurse for declining to administer something that she is not comfortable with.

[3:20:26 PM](#)

SENATOR OLSON commented that the nursing board's concern is its scope of practice, and that hearing of concerns raised by licensees does not allay his own concerns.

MR. BETIT asked if he was referring to concerns of a licensed nurse.

SENATOR OLSON responded that he meant the pharmacists who were weighing in on the matter.

MR. BETIT said he had not seen the pharmacists' letter; but if a physician makes the determination that a product is appropriate based on other medications being prescribed and the patient's, condition, he thinks the decision should rest there.

SENATOR OLSON said that, as a physician, when he prescribes any kind of medication, he has full knowledge that the medication is held to a standard and he knows what it contains. That is not the case with a dietary supplement, which is a special concern when dealing with brittle elderly patients. He stated that his concerns were not put at ease by the assurance that a licensee would not place his or her license in jeopardy by refusing to administer the supplements.

MR. BETIT responded that he understood Senator Olson's point, but questioned where the greater risk lies, in including physicians in the decision about what supplements to administer, or letting others administer them without the physician's knowledge. In addition, the bill affords nurses the right to decline to administer supplements for any reason.

SENATOR OLSON said that he is concerned that a nurse could be caught in the middle and her license jeopardized for not following the physician's orders, even if she has information indicating that compliance is contrary to the best interest of the patient.

[3:23:45 PM](#)

SENATOR OLSON asked whether the sponsor had heard anything from Alaska State Medical Board.

REPRESENTATIVE KELLY said no, that he had one physician lined up to join them, but he could not make it due to a scheduling conflict.

SENATOR OLSON asked if he was referring to the medical board or the medical association.

REPRESENTATIVE KELLY replied that he did not have a letter from either of them.

[3:24:24 PM](#)

CHAIR DYSON said the committee was out of time and apologized to those who did not have an opportunity to testify. He mentioned that he had written messages from Rick Shakura (ph) and the Alaska State Hospital and Nursing Home Association.

Virginia Smiley was present on behalf of the Division of Pioneer Homes. She agreed to provide written testimony and be available to testify later in the week.

SENATOR WILKEN asked if there were further referrals for this bill.

Unidentified speakers: Just HES

CHAIR DYSON said that no one from the nurses association was signed up to testify. He also wanted to hear from the medical association and/or the state board between this meeting and the next.

[HB 467 was held over.]

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There being no further business to come before the committee, Chair Dyson adjourned the Senate Health, Education and Social Services Standing Committee meeting at [3:25:59 PM](#).