

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

February 19, 2008

3:04 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Bob Roses, Vice Chair
Representative Anna Fairclough
Representative Wes Keller
Representative Paul Seaton
Representative Sharon Cissna
Representative Berta Gardner

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Kurt Olson

COMMITTEE CALENDAR

HOUSE BILL NO. 337

"An Act establishing the Alaska Health Care Commission and the Alaska health care information office; relating to health care planning and information; repealing the certificate of need program for certain health care facilities and relating to the repeal; annulling certain regulations required for implementation of the certificate of need program for certain health care facilities; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 345

"An Act amending the certificate of need requirements to exclude expenditures for diagnostic imaging equipment in certain circumstances."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 337

SHORT TITLE: HEALTH CARE: PLAN/COMMISSION/FACILITIES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/22/08 (H) READ THE FIRST TIME - REFERRALS
01/22/08 (H) HES, FIN
01/24/08 (H) HES AT 3:00 PM CAPITOL 106
01/24/08 (H) Heard & Held
01/24/08 (H) MINUTE(HES)
01/31/08 (H) HES AT 3:00 PM CAPITOL 106
01/31/08 (H) Heard & Held -- Assigned to
Subcommittee
01/31/08 (H) MINUTE(HES)
02/09/08 (H) HES AT 9:00 AM CAPITOL 106
02/09/08 (H) Heard & Held
02/09/08 (H) MINUTE(HES)
02/19/08 (H) HES AT 3:00 PM CAPITOL 106

BILL: HB 345

SHORT TITLE: MEDICAL FACILITY CERTIFICATE OF NEED

SPONSOR(s): REPRESENTATIVE(s) KELLY

01/30/08 (H) READ THE FIRST TIME - REFERRALS
01/30/08 (H) HES, FIN
02/09/08 (H) HES AT 9:00 AM CAPITOL 106
02/09/08 (H) Heard & Held
02/09/08 (H) MINUTE(HES)
02/19/08 (H) HES AT 3:00 PM CAPITOL 106

WITNESS REGISTER

KAY BIAS, Alaska Representative
Radiology Business Manager's Medicare Advisory Committee
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 345.

JEFF COOK, Board President
Greater Fairbanks Community Hospital Foundation, Incorporated
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HB 337 and in support of HB 345.

CHRISTINE SCOTT, Patient
Advanced Medical Centers of Alaska
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 337.

ANN MATTHEWS
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 337.

ROD PERDUE, Employee
Fairbanks Memorial Hospital
Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing on HB 337 and HB 345.

MARK ACKLEY, Chief Executive Officer
Imaging Associates of Providence
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 345.

MIKE MCNAMARA, M. D.
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 345.

ROBERT BRIDGES, M. D.; Owner
Aurora Diagnostic Imaging
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 337.

MIKE PRAX
North Pole, Alaska

POSITION STATEMENT: Testified in support of the repeal of the Certificate of Need Program.

JIM LYNCH, Employee
Fairbanks Memorial Hospital
Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing on HB 337 and HB 345.

MARTY O'LONE, Employee
Fairbanks Memorial Hospital
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 345 and in opposition to HB 337.

MAREE BARNEY-SUTLEY
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 337.

ROBERT GOULD, Chief Financial Officer; Head of Operations
Fairbanks Memorial Hospital
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HB 337 and in support of HB 345.

SCOTT BELL, Volunteer
Greater Fairbanks Community Hospital Foundation
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HB 337.

KEVIN DORSEY
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 337.

JAMESON SMYTH
Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing on HB 337.

CHRISTINE PALMER
Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing on HB 337 and HB 345.

PAUL FUHS, Lobbyist
Alaska Open Imaging Center, LLC (AOIC)
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 337 and HB 345.

JEANNINE HINMAN, Director
Regulatory and Government Affairs
Advanced Medical Centers of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing of HB 377 and HB 345.

LEONARD SISK, Physician; Medical Director and Owner
Imaging Associates of Providence (IAP)
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 337 and HB 345.

BOB URATA, Physician; Member
Board of Directors
Bartlett Regional Hospital
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 345.

RYAN SMITH, Chief Executive Officer

Central Peninsula General Hospital
Soldotna, Alaska

POSITION STATEMENT: Testified in opposition to HB 337 and in support of HB 345.

JOEL GILBERTSON, Representative
Providence Health and Services
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 345.

ROD BETTIT, President
Alaska State Hospital and Nursing Home Association (ASHNHA)
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 337 and HB 345.

NORMAN STEPHENS, Chief Executive Officer
Mat-Su Regional Medical Center (MSRMC)
Palmer, Alaska

POSITION STATEMENT: Testified during the hearing on HB 345 and HB 337.

RICHARD COBDEN, M. D.; Chief of Medical Staff
Fairbanks Memorial Hospital (FMH)
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 337.

JOHN BRINGHURST, Chief Executive Officer
Petersburg Medical Center
Petersburg, Alaska

POSITION STATEMENT: Testified in favor of HB 345.

MIKE POWERS, Administrator
Fairbanks Memorial Hospital
Fairbanks, Alaska

POSITION STATEMENT: Testified during the hearing on HB 345 and HB 337.

ACTION NARRATIVE

CHAIR PEGGY WILSON called the House Health, Education and Social Services Standing Committee meeting to order at [3:04:12 PM](#). Representatives Fairclough, Keller, Seaton, Gardner, and Wilson were present at the call to order. Representatives Cissna and Roses arrived as the meeting was in progress. Representative Kurt Olson was also in attendance.

HB 337-HEALTH CARE: PLAN/COMMISSION/FACILITIES
HB 345-MEDICAL FACILITY CERTIFICATE OF NEED

[3:04:36 PM](#)

CHAIR WILSON announced that the order of business would be a hearing on two bills: HOUSE BILL NO. 337, "An Act establishing the Alaska Health Care Commission and the Alaska health care information office; relating to health care planning and information; repealing the certificate of need program for certain health care facilities and relating to the repeal; annulling certain regulations required for implementation of the certificate of need program for certain health care facilities; and providing for an effective date" and, HOUSE BILL NO. 345, "An Act amending the certificate of need requirements to exclude expenditures for diagnostic imaging equipment in certain circumstances."

[3:06:06 PM](#)

CHAIR WILSON informed participants that the committee will only hear testimony today and that each speaker will be limited to three minutes.

[3:07:49 PM](#)

KAY BIAS, Alaska Representative, Radiology Business Manager's Medicare Advisory Committee, expressed her support for Representative Kelly's bill as a fair and equitable alternative to the present Certificate of Need (CON) program. The present system does not define a physician's office and physicians, in partnership with hospitals, have been able to purchase imaging equipment without a CON, unless they are radiologists. Ms. Bias explained that a ruling by Superior Court Judge Niesje Steinkruger led to the decision that radiologists should not be given the status of a physician's office. She opined that the imaging facility in question was not a physician's office due to the ownership structure: 10 percent radiologists and 90 percent private investors, and other factors. Ms. Bias stated that the commissioner [of the Department of Health & Social Services] has not looked at the Medicare guidelines to compare a radiologist physician's office and other imaging centers. She continued to say that HB 345 clearly offers a solution to the restraint of trade on radiologists and also protects the smaller communities from for-profit conglomerates. Ms. Bias urged the committee to support HB 345.

3:10:00 PM

JEFF COOK, Board President, Greater Fairbanks Community Hospital Foundation, Incorporated, stated his opposition to HB 337 and his support of HB 345. He informed the committee that the Greater Fairbanks Community Hospital Foundation was formed in 1968. Previous to that, city and borough of Fairbanks voters had turned down the purchase of St. Joseph's Hospital after its closure. The foundation raised money and opened a new hospital in 1972; it now has 500,000 square feet of acute care, long-term care, and special care facilities. Mr. Cook explained that the hospital is owned by the foundation and is operated by Banner Health. He stressed that the 25 member volunteer board is in opposition to any proposal that will eliminate, or drastically alter, the CON program. Fairbanks Memorial Hospital is open 24 hours per day and provides acute and long-term care, emergency services, psychiatric care, care for chronic inebriates, and treatment for heart, cancer, and diabetic patients; all patients are seen regardless of their ability to pay or their insurance coverage. Mr. Cook opined that it is only fair to eliminate CON if those who offer ambulatory care will also offer 24 hour services to all patients in need. Fairbanks is an isolated community and it is important to have a wide range of medical services, such as the new cancer center, heart center, and cath lab. However, to continue to offer the best care possible, the hospital needs to retain all services, not just the unprofitable and inconvenient services. Mr. Cook re-stated the board's opposition to the elimination of CONs and its support of HB 345.

3:13:21 PM

CHRISTINE SCOTT, Patient, Advanced Medical Centers of Alaska, stated that she is a patient of Advanced Medical Centers of Alaska in Fairbanks. She explained that Fairbanks Memorial Hospital (FMH) does not allow all of the doctors in the Fairbanks area to work in the hospital; therefore, she has to go to Anchorage for medical procedures. Ms. Scott expressed her belief that an out-patient surgery center in Fairbanks would benefit patients and would not take business away from FMH because patients from the medical center are already being treated in Anchorage. She spoke in favor of the elimination of the CON program in order to encourage capitalization.

3:15:51 PM

ANN MATTHEWS, Fairbanks, Alaska, expressed her support for the governor's plan. She related her experience of getting emergency room care at the hospital for the cost of \$5,000 for one visit. She opined that the hospital is a for-profit hospital and nets \$25 million to \$35 million each year. Ms. Matthews said that the CON program limits choices and variety, and access to medical care, while increasing cost. She urged the committee to support SB 245 and HB 337.

[3:17:57 PM](#)

ROD PERDUE, Employee, Fairbanks Memorial Hospital, informed the committee that he works at Fairbanks Memorial Hospital and wanted to speak from a different perspective. He said that he has lived in many communities and places around the world. From the community standpoint, the strength of the hospital benefits the community in two areas. He spoke of the Golden Heart Project; a collaborative effort between the hospital and a number of agencies that will build a behavioral health detox center this year. Mr. Perdue opined that the center benefitted from the support of the hospital, as did the project to build an out-patient diabetes center three years ago. He pointed out that he and his family live in the Interior due to the strength of the community and the hospital is the cornerstone for many activities. Mr. Perdue expressed his belief that it is essential for the well-being of the community to keep the hospital a strong and viable entity.

[3:20:32 PM](#)

MARK ACKLEY, Chief Executive Officer, Imaging Associates of Providence, expressed his full support of HB 345. He stated that the bill will protect the smaller, vulnerable, communities that can not withstand the pressure of new competition resulting from uncontrolled growth. In addition, the bill will encourage a competitive consumer-driven environment that gives choices and improves access to medical services. Mr. Ackley opined that HB 345 will benefit both business and patients who are entitled to a choice in health care decisions; furthermore, it provides clear guidelines for new medical businesses to develop with confidence and sustainability. For example, Imaging Associates of Providence has twice received permission from the state to provide imaging services to Wasilla and Anchorage. However, the decisions were reversed and now both parties are involved in expensive legal proceedings. Mr. Ackley urged the committee to support HB 345.

[3:23:25 PM](#)

MIKE MCNAMARA, M. D., Anchorage, Alaska, informed the committee that he is an orthopedic hand surgeon and is also president of a four member advisory group representing twenty-six limited partner surgeons of the Alaska Surgical Center in Anchorage. The center completes about 5,500 cases per year and has 55 surgeons representing 16 specialties. Dr. McNamara said that about 20 percent of the center's cases are Medicaid, Medicare, VA, Tri-Care and Project Access; the latter is free care for the underserved. He stated his opposition to the repeal of CON and his support of HB 345. Dr. McNamara reminded the committee that the original purpose of the CON in Alaska was to prevent the unnecessary duplication of development. He pointed out that, in Anchorage, there are four primary surgical centers that operate at around fifty-five percent to sixty percent capacity. Fortunately, the community is currently well served by the best surgeons, nurses, and support staff. However, allowing more centers to open will reduce peer oversight and change the existing standard of care. Dr. McNamara pointed out that there is a nationwide shortage of operating room nurses and the centers are already understaffed. He opined that undue competition for staff will not lower nursing costs but will raise costs and overhead. He further explained that larger centers have the power to negotiate with insurance companies and unions to manage costs. He urged the committee not to repeal CON and risk the loss of the centers of excellence in Anchorage. Dr. McNamara opined that there is no need to send patients outside anymore.

[3:28:08 PM](#)

ROBERT BRIDGES, M. D.; owner, Aurora Diagnostic Imaging, informed the committee that his private practice is Aurora Diagnostic Imaging. He stated his support for HB 337; however, he urged consideration of some of the components of HB 345. His experience in private practice and his position with an open imaging center warrants his support of the repeal of CON. The present system hinders care and the influx of new medical practices to the state. In addition, it does not address quality of care and quality assurance for the people of the state. The major problem is the lack of explicit definitions and he opined that HB 345 addresses the need to define what a practice really is. Dr. Bridges indicated that he provides services to Medicare and Medicaid patients and is uniquely qualified for certain procedures; however, he is having difficulty getting the equipment he needs due to the CON

restrictions. Dr. Bridges pointed out the value of diversity to bring in different ideas and progress. At the very least, new definitions and better guidance are needed for the selection of new medical facilities.

[3:30:28 PM](#)

MIKE PRAX, North Pole, Alaska, stated that he wished to advocate for the repeal of the Certificate of Need program and the elimination of the health care commission. He explained that CON is based on three false premises: that anyone should override an individual's right to partake of or to provide medical services; that anyone can override an individual's right to partake of or provide specific medical services; and that one can make a potential life or death decision for another. He opined that CON is a con on the public and a protectionist measure for certain facilities and providers, who then exclude others who wish to provide a service. Mr. Prax said that Fairbanks Memorial Hospital was able to build a cancer center without a proven economical need for one; thus, the term "con." He pointed out that his personal decision is to obtain medical care in the Lower 48 where services are better and costs are lower. Mr. Prax stated that one can not override individual decisions on health care and that the provision of services is up to the market. He urged the committee to repeal the law.

[3:34:03 PM](#)

JIM LYNCH, Employee, Fairbanks Memorial Hospital, informed the committee that he has been a resident of Fairbanks since 1969 and expressed his agreement with the testimony given by Dr. McNamara. He then referred to Representative Kelly's comments made at the reading of the bill. Mr. Lynch disagreed with Representative Kelly's characterization of the issue as "hospitals versus docs" and reminded the committee that physicians are on both sides of the issue. Also, he stated his belief that a CON does not limit or eliminate competition; with key government oversight, the CON program is the necessary foundation that provides the ground rules for competition that creates a sustainable and lasting infrastructure for health care in Alaska.

[3:36:10 PM](#)

MARTY O'LONE, Employee, Fairbanks Memorial Hospital, expressed his belief that the loss of the CON program would inflict tremendous hardship on the rural community of Fairbanks. He

related his experiences as a patient in the intensive care unit and the emergency room after a severe allergic reaction. Mr. O'Lone stated that his care was expensive, but the 24 hour per day care and emergency room care provided by the hospital is valuable and is needed. He stated his opposition to HB 337 and his support of HB 345.

[3:37:52 PM](#)

REPRESENTATIVE SEATON observed that there is support for HB 345 and its exemption of the diagnostic imaging centers under certain conditions. He asked whether the same concept should be applied to ambulatory surgery centers, in addition to diagnostic imaging centers.

[3:38:43 PM](#)

MR. O'LONE expressed his belief that the classifications and parameters of the radiological aspect are set in HB 345. The parameters of surgical centers, that can perform arthroscopies and day surgeries, have not been determined.

[3:39:00 PM](#)

REPRESENTATIVE SEATON asked for a further explanation from other speakers who are supporting HB 345 but not HB 337. He re-stated his question as to why there is support for the elimination, or drawing back, of the CON for the diagnostic centers, but not for surgery centers in those same markets.

[3:39:34 PM](#)

MAREE BARNEY-SUTLEY, Fairbanks, Alaska, stated that she is a patient and a citizen of Fairbanks. She expressed her affection for the hospital, but said that she feels that the pain doctors in the community should be credentialed by the hospital. Ms. Barney-sutley stated her support for HB 337.

[3:41:07 PM](#)

ROBERT GOULD, Chief Financial Officer; Head of Operations, Fairbanks Memorial Hospital, told the committee that he was speaking in opposition to HB 337 and in favor of HB 345. Firstly, he addressed the question of physicians' lack of access to Fairbanks Memorial Hospital and said that there was a period of time when pain services were under an exclusive agreement; however, that is no longer the case. As of approximately six

months ago, the exclusive contract was modified, and the pain physicians in Fairbanks have been invited to apply for privileges to perform surgeries at the hospital. Mr. Gould opined that there are no physicians who have applied for privileges at this time. Secondly, he spoke of the value of the CON program and reminded the committee of the claims, by supporters of imaging centers, that the centers would lower the prices of imaging services in Fairbanks. He compared the prices for three services and concluded that the imaging center prices are actually higher than those of the hospital. Mr. Gould also compared costs for surgeries in Anchorage. He urged the committee to look at the Medicaid data that is available to the state and indicated that this information will allow the committee to analyze the cost of services by the health care providers in the state. He pointed out that competition does not lower the cost of health care and re-stated his support for HB 345.

[3:46:01 PM](#)

REPRESENTATIVE FAIRCLOUGH asked Mr. Gould to speak to the anti-trust issue, the possibility that CONs violate anti-trust laws, that was brought up by the U.S. Department of Justice during a previous hearing of the bill.

[3:46:54 PM](#)

MR. GOULD said that he did not have a response.

[3:47:06 PM](#)

REPRESENTATIVE SEATON asked Mr. Gould to supply the cost comparisons to the committee in writing.

[3:47:13 PM](#)

REPRESENTATIVE KELLER expressed his belief that competition ultimately leads to lower prices. He asked whether Mr. Gould could explain the reason for competition raising health care prices.

[3:47:50 PM](#)

MR. GOULD opined that a not-for-profit hospital and emergency room must take all patients, regardless of their ability to pay. Individual facilities take the "eight to five" business and pull profitable services away from the hospitals. Therefore, in

order to provide the non-profitable services of in-patient, emergency room, home health, and diabetes care, hospitals must increase prices, resulting in the never-ending escalation of costs. In addition, overbuilding and capital expenditures also lead to higher prices.

[3:49:44 PM](#)

SCOTT BELL, Volunteer, Greater Fairbanks Community Hospital Foundation, expressed his opposition to HB 337 and opined that HB 345 is a reasonable compromise. Mr. Bell referred to the testimonies of Dr. McNamara and Mr. Gould and affirmed that the CON does a great job of building a strong health care infrastructure in a rural community such as Fairbanks. He noted that the hospital uses profits from its profitable areas to build and provide services to other areas that are not self-supporting. Mr. Bell stressed his support for the continuation of CON rules.

[3:50:34 PM](#)

KEVIN DORSEY, Fairbanks, Alaska, explained that the reason health care prices rise with new competition, in the short term, is that the CON system has been in place for a long time and has created a dearth of competition that will initially increase prices. However, the elimination of CON will begin the long process of reconstruction that will allow the economy to catch up. He informed the committee that he is a student of economics and that CON policies are anti-competitive. Mr. Dorsey opined that Fairbanks Memorial Hospital is a rich and profitable hospital. He further stated that CON impairs and prevents physician recruitment; doctors of specialty fields are leaving Alaska at a net rate of five to six per year. Mr. Dorsey expressed his disagreement with the idea that Fairbanks is a rural community; in fact, North Fairbanks is growing and, with the gas pipeline coming, Fairbanks Memorial Hospital will not be able to cope with the massive growth as Fairbanks becomes a major industrial city. He added that CON is a source of corruption that will lead to a dearth of care, and urged the committee's support of HB 337.

[3:53:30 PM](#)

REPRESENTATIVE GARDNER asked Mr. Dorsey to elaborate on the reason why CON policies are responsible for a net loss of doctors and prevent physician recruitment.

[3:53:53 PM](#)

MR. DORSEY explained that doctors have two choices: perform non-surgical, non-intensive work or work for the hospital. He opined that many doctors do not want to work under the hospital's coercive terms and with no basis of comparison to contracts.

[3:54:47 PM](#)

JAMESON SMYTH, Fairbanks, Alaska, related his experience as a patient of the Advanced Medical Clinic in Fairbanks. Mr. Smyth said that he has gone to Anchorage three times for treatments that he expected to receive in Fairbanks. These trips are expensive, painful, and difficult. Mr. Smyth encouraged the committee to reduce cost and difficulty for patients. He further stated that going to the imaging centers is a positive experience as they do not have scheduling problems and do a great job.

[3:56:41 PM](#)

CHAIR WILSON asked whether the situation was that Mr. Smyth's doctor was not affiliated with the hospital, or that the procedure could not be done in Fairbanks.

[3:57:07 PM](#)

MR. SMYTH answered that one procedure could not be performed in Fairbanks, but the other two could possibly have been done at the hospital. In answer to a further question, he said that he was not certain of the possibilities for surgery in Fairbanks.

[3:57:44 PM](#)

CHRISTINE PALMER, Fairbanks, Alaska, informed the committee that she flew to Anchorage for surgery. In addition to the discomfort, as a single parent, the additional time needed to travel is difficult for her family. The ability to have surgical procedures in Fairbanks would help save stress and expense.

[3:59:45 PM](#)

CHAIR WILSON closed online testimony.

4:00:00 PM

PAUL FUHS, Lobbyist, Alaska Open Imaging Center, LLC (AOIC), addressed the issue of HB 345 and why his client participated in the negotiations sponsored by the governor in an attempt to solve these problems. He opined that, although HB 511 was enacted, there was a lack of a definition of terms in that legislation; this is corrected by HB 345. Mr. Fuhs explained that by HB 511, physicians are exempt from CON, but individual independent diagnostic testing facilities (IDTF) are not. As a result, a radiologist went to Fairbanks and opened an imaging office as a physician's office, thereby exempt from CON. Its status was affirmed by the commissioner of DHSS. Subsequently, another facility was opened in Mat-Su that was also deemed a physician's office. Meanwhile, in Fairbanks, the Alaska Open Imaging Center (AOIC) was later determined to be an IDTF and was closed. The lack of a sufficient definition in HB 511 led the commissioner to base her decision on the presence of certain equipment. Subsequent to that, the commissioner approved another physician owned facility. In some cases, there has been a transfer of ownership of a facility in an attempt to garner an exemption. Because of these rulings, lawsuits and appeals have been filed in Fairbanks and in Mat-Su. He stated that AOIC has always supported the elimination of CON in the major medical markets of Alaska; that action would solve the problem. In lieu of that action, Mr. Fuhs pointed out that it is the responsibility of the legislature that passed a law without proper definitions, and put the commissioner in a no-win situation, to remedy the situation. He urged the committee to define the terms and pass the negotiated agreement as a reasonable compromise.

4:03:29 PM

REPRESENTATIVE GARDNER expressed her appreciation of Mr. Fuhs explanation; however, she asked for further discussion on the larger issue of whether the CON policy should be dismantled.

4:04:19 PM

MR. FUHS agreed with the need for further study of the CON issue, but re-stated his belief that it is untenable to have a law on the books that nobody can interpret.

4:04:35 PM

REPRESENTATIVE ROSES asked whether Mr. Fuhs participated in the CON Negotiated Regulations Committee.

[4:04:44 PM](#)

MR. FUHS stated that lobbyists were not allowed to participate, but he did attend and was involved.

[4:04:52 PM](#)

REPRESENTATIVE ROSES asked whether Mr. Fuhs felt, as a biased observer, that the process was one that allowed for equal representation for all parties.

[4:05:23 PM](#)

MR. FUHS answered no. He explained that nine hospitals, several physician's offices, and one imaging center were represented. Furthermore, negotiated rulemaking requires 100 percent agreement from all parties, but the administrator proceeded with about 70 percent agreement. Facility ownership is the most difficult position for AOIC and HB 345 is in the spirit of a painful compromise on its part.

[4:06:47 PM](#)

REPRESENTATIVE GARDNER observed that the rule making group did not include consumers and, as lawmakers, the legislature must also safeguard the best interests of Alaskan consumers.

[4:07:14 PM](#)

MR. FUHS agreed with Representative Garner's statement when it applies to a health care commission; however, a negotiated rulemaking [committee] includes the providers and participants only, and is not a public task force.

[4:07:32 PM](#)

REPRESENTATIVE ROSES opined that, when a group is given a job to do, its work should not be ignored. He asked whether the AOIC is comfortable with the conclusions of the CON Negotiated Regulations Committee.

[4:08:02 PM](#)

MR. FUHS answered yes. The only difference his client, AOIC, has is that they are a home grown, Alaskan company, and the requirement of 100 percent physician ownership is devastating.

[4:08:45 PM](#)

REPRESENTATIVE ROSES recalled that the CON discussion has been going on for years, but this is the first agreement. Since the CON Negotiated Regulations Committee has met, there has been a compromise, he opined.

[4:09:52 PM](#)

CHAIR WILSON asked whether, under normal situations, 100 percent agreement is needed for negotiated rulemaking.

[4:10:22 PM](#)

MR. FUHS agreed. He added that a task force will often release a general recommendation.

[4:10:26 PM](#)

CHAIR WILSON further asked whether the fact that the agreement was issued, with only 70 percent participation, is the reason it was not looked at.

[4:10:59 PM](#)

MR. FUHS remarked:

Chairman Wilson, it does, and that's why I believe, although the commissioner hasn't told me this, why she didn't go through with it and you know, everything was agreed to except for the 50 and the 100 percent. I think that's what I could say was the one sticking point and there were a couple side agendas there and that's why that didn't go through.

[4:11:24 PM](#)

JEANNINE HINMAN, Director, Regulatory and Government Affairs, Advanced Medical Centers of Alaska, expressed her company's belief that it has demonstrated that repeal of the CON laws will: increase the access to medical care in the state; increase the quality of medical care; lead to better physician recruitment; and not raise, but lower, the cost. She asked the

committee to carefully review all of the data submitted from the interested parties and to consider the sources of the data, such as the Department of Justice and the Federal Trade Commission, that are the agencies that are tasked with monitoring anti-trust violations. Ms. Hinman supported previous testimony about future gas line employees moving into the Fairbanks area and added that the anticipated increase in injured army veterans will also add patients to Alaska that require comprehensive medical treatment and complex pain management. She described the experience of a veteran whose injuries could be treated in Fairbanks with cooperation from the local hospital. She opined that Fairbanks Memorial Hospital refused to credential Advanced Medical Centers of Alaska pain providers during litigation, and after the restriction was withdrawn, subsequent applications have not been credentialed. Ms. Hinman stated her company's support of the governor's bill. She concluded by pointing out that according to the CON application of 2007, Fairbanks Memorial Hospital reported a medical loss ratio of 1.38 that translates to profit margin of 38 percent; in addition, branches in Alaska are the most profitable of Banner Health Care systems.

[4:15:16 PM](#)

REPRESENTATIVE GARDNER asked whether Advanced Medical Centers of Alaska provided to the committee the document from the Federal Trade Commission.

[4:15:33 PM](#)

MS. HINMAN said no.

[4:15:39 PM](#)

LEONARD SISK, Physician; Medical Director and Owner, Imaging Associates of Providence (IAP), informed the committee that IAP is a physician's office and the physician owner is a radiologist. The practice meets the federal government Centers for Medicare and Medicaid Services (CMS) guidelines for physician's offices in which 50 percent hospital ownership of a physician's practice is allowed. He noted that IAP physicians also provide radiology professional services to Providence Alaska Medical Center. The hospital was chosen to invest in IAP and IAP supports HB 345, a provision of which requires a minimum 50 percent physician ownership before exempting the office from the state CON process. The bill also requires physician-owners to interpret images in the facility. Dr. Sisk said that radiology requires access to expensive machinery, and it is

reasonable that not all of the expense should be paid by the physicians; partnerships between physicians and hospitals for radiologist's offices are allowed by the federal government. He opined that radiologists and hospitals are natural partners to provide communication between facilities and thereby, benefit patients. The most vocal opponent of this exemption is the country's largest publicly traded hospital corporation, whose shareholders will benefit from the monopoly provided by the state. Dr. Sisk pointed out that the bill protects from competition critical facilities in smaller communities with populations of less than 60,000. He stated his support of HB 345 and concluded by pointing out that the state's cost of imaging charges are set by Medicaid, and quoting charges from private insurance is an inaccurate method to compare costs between providers.

[4:19:47 PM](#)

CHAIR WILSON advised that insurance providers have limits for some procedures. She expressed her concern that the committee must consider what the fight between the hospitals, the imaging centers, and the surgery centers, means to patients.

[4:21:03 PM](#)

BOB URATA, Physician; Member, Board of Directors, Bartlett Regional Hospital, informed the committee that he is representing Bartlett Regional Hospital's position in favor of HB 345. Dr. Urata opined that eliminating the CON will be detrimental to areas with small markets, such as Juneau. The increase in competition will only be in profitable, specialized, services; these specialized centers will take high paying private insurance patients only and cripple the hospital's role as the safety net for the community. Strong community hospitals are a major part of rescue response in the event of a natural disaster. Furthermore, the CON process ensures community planning that prevents excess capacity in small markets that is an unwise use of health care dollars and ultimately will reduce quality of care. Dr. Urata referred to a cardiac care study, published in 2002 by the University Of Iowa College Of Medicine. In addition, studies by American auto manufacturers, published by the American Health Planning Association in 2003, found that surgery was cheaper in states with CON policies. He concluded that CON policies protect the consumer by assuring public input, maintaining accessibility to health care and high quality, and helping to contain costs.

[4:24:45 PM](#)

REPRESENTATIVE SEATON asked whether Dr. Urata would give his perspective on the idea that the CON program slows the recruitment, and limits retention, of doctors.

[4:25:08 PM](#)

DR. URATA said that he has not seen any data that supports that.

[4:25:30 PM](#)

RYAN SMITH, Chief Executive Officer, Central Peninsula General Hospital, stated that he was a member of the CON Negotiated Regulation Committee and that HB 345 supports its recommendations. He opined that the bill will act to reduce the amount of litigation, which was one of the goals of the [committee]. Mr. Smith expressed his belief that the surgery centers are not represented by the bill because surgery centers have not attempted to use the physician's office exemption in order to operate. He spoke of physician recruitment and said that recruitment in Soldotna has been successful in the last two years. His experience, in both CON and non CON states, leads him to believe that health care and community benefits will change under the repeal of the CON process. Mr. Smith pointed out that the third vote during the negotiation process was the agreement to accept a consensus of 67 percent to 70 percent of the group; in fact, there was an 85 percent consensus at the end of the process.

[4:27:57 PM](#)

JOEL GILBERTSON, Representative, Providence Health and Services, stated that there are many big issues in health care, and opined that the health care system is broken at the national and statewide level. Mr. Gilbertson said that, unless health care reform in the state is addressed, health care costs will continue to escalate and the ability to deliver quality care will be threatened over time. His organization supported the [CON Negotiated Regulations Committee]; however, trying to solve all of the health care problems through the CON process is too great of a task. The simpler question at the moment, to resolve the conflict over the lack of definitions in HB 511, is improved by the compromises in HB 345. Mr. Gilbertson re-stated the effects of HB 511 and stressed that HB 345 is a reasonable compromise that will, at least, resolve the question that is causing confusion in the community and conflict in the courts

and the administrative hearing process. The bill will also allow the commissioner to focus on the bigger question of how to address health care reform in the state.

[4:31:00 PM](#)

REPRESENTATIVE SEATON observed that the compromise will settle the majority of the lawsuits brought by the imaging centers. He asked whether the solution for out-patient or ambulatory surgery centers should be offered in HB 345, in order to avoid a similar process in the future.

[4:31:51 PM](#)

MR. GILBERTSON explained that an ambulatory surgery center [(ASC)] can not be a physician's office; therefore, there is no need to create a clear standard to separate between a physician's office and an ASC because an ASC is a clearly defined licensed facility at the state and federal level. The question that is not settled is whether, for the purpose of a physician and a physician's office that purchases imaging equipment, they are a physician's office or an independent diagnostic testing facility. He further explained that physician's offices are not licensed and thus, there is no definition. Moreover, the definition under ambulatory surgery center has already been established.

[4:32:54 PM](#)

REPRESENTATIVE SEATON further asked whether Mr. Gilbertson experiences recruitment difficulties with doctors who decide not to come to Alaska because they do not choose to be affiliated with a hospital.

[4:33:32 PM](#)

MR. GILBERTSON said no. He acknowledged that physician recruitment is tough, there is no medical school or residency program, outside of primary care, and physicians graduating now prefer to be employed by a health care system with regular schedules and without call responsibilities. He opined that there are always changes to the market and that CON laws are not a legitimate excuse for the problem of recruiting physicians to Alaska.

[4:34:54 PM](#)

REPRESENTATIVE KELLER asked if there is data on whether doctors are not coming to Alaska because they are not able to open their own ambulatory center.

[4:35:27 PM](#)

MR. GILBERTSON pointed out that the majority of physicians are recruited to be community physicians. Federal law allows hospitals to financially support the recruitment of physicians and they work with local practices and providers, even though few physicians come to work for the hospital. In fact, Providence Medical Center attempts to recruit approximately 30 to 40 doctors per year into the Anchorage area. Mr. Gilbertson said that he has never heard that CON laws are a barrier to a physician coming into the community.

[4:36:56 PM](#)

REPRESENTATIVE ROSES referred to the report issued by the CON Negotiated Regulations Committee and read: "Should CON processes and definitions be in alignment with Medicare?" He then asked for an explanation of how Medicare and the state CON policies are out of "sync."

[4:37:23 PM](#)

MR. GILBERTSON responded that, at the federal level, the Centers for Medicare and Medicaid Services have defined what is, and what is not, a IDTF or a physician's office. In fact, at the federal level, there is no requirement that there is 100 percent physician ownership to be a physician's office; a physician's office can be owned by a physician, a physician in a hospital, or by a hospital. He opined that the CON Negotiated Regulations Committee was acknowledging that physicians, at the federal level, can have partners in running private medical practices.

[4:38:34 PM](#)

ROD BETIT, President, Alaska State Hospital and Nursing Home Association (ASHNHA), expressed his organization's opposition to the repeal of the CON. Mr. Betit called the committee's attention to supporting documents in the committee packet identified as the community benefit report and the analysis of the Department of Justice report. He explained that the community benefit report illustrates the size of the financial burden that hospitals have in covering the uncompensated portion of Medicaid, Medicare, and care for the uninsured, in order to

keep the health care system in Alaska afloat. Mr. Betit suggested that the commission will be helpful in figuring out how to close the gap prior to the elimination of CON in order to level the playing field. He pointed out that there is \$150 million in the report and the regional information comes from across the state. Furthermore, the commission can use the price reporting information to see whether increased choice leads to lower cost. Mr. Betit noted that ASHNHA reports its prices and the comparisons will show that lower cost is not the result. Having this accurate and unchallenged information from all of the parties will lead to a clearer understanding of the situation. He opined that HB 345 will close the gap on the problem for imaging areas and re-stated that the ASHNHA Board of Directors supports the bill at this point in time.

[4:42:25 PM](#)

NORMAN STEPHENS, Chief Executive Officer, Mat-Su Regional Medical Center (MSRMC), informed the committee that he was part of the CON Negotiated Regulations Committee and expressed his disappointment that its work went out the window. He disagreed with previous testimony and said that there were six hospitals represented and that the balance of the participants were representing many of the parties in the legal disputes. He opined that, even though there was tension, the committee was effective; however, a 66 percent consensus is insufficient for a permanent solution to the problem. Mr. Stephens referred to his earlier testimony and expressed his belief that the CON will reduce costs. Furthermore, he said that a lot of what has happened will lead to a slippery slope of future conflict. One of the problems is that competing centers, that are exempt, know about the conflicts and have taken advantage of the situation. Mr. Stephens emphasized that MSRMC has built a \$101 million hospital for the Mat-Su valley, followed the rules, and is now being damaged by an imaging center that did not follow the rules.

[4:46:27 PM](#)

RICHARD COBDEN, M. D.; Chief of Medical Staff, Fairbanks Memorial Hospital (FMH), informed the committee that he is a practicing orthopedic surgeon, in addition to being the Chief of Medical Staff at FMH. He stated that he works with Representatives Kelly and Kawasaki and was surprised that HB 345 was represented as being agreed to by everyone. He opined that the rest of the surgeons, included 90 percent of the surgeons who are not in favor of the CON, did not join in the consensus.

Dr. Cobden said that HB 345 will simply exempt the diagnostic imaging centers, and several already exist. He stated that HB 345 is not a compromise bill. Furthermore, physicians can not be recruited to come to Fairbanks, partly due to CON restrictions, and partly due to the location. In the last eighteen months, Fairbanks has lost six physicians, who relocated to areas where they could practice in an ambulatory surgical center. The situation is very difficult and has resulted in specialty care by visiting physicians. Dr. Cobden explained that the original reason for the CON law was to control capital costs, which it no longer does. The second reason, cost-shifting, to cover the cost of charity and indigent care, is a hidden number. Dr. Cobden referred to the book, "Mired in the Health Care Morass", by Neil Davis, and cited that, according to the author, 1.3 percent of FMH revenue goes to charity and indigent care; total revenue is \$187 million per year; FMH profit is 12 percent per year. The hospital charges profitable services to pay for the areas that are not reimbursed; however, these charges have no oversight, or rules, and are not subject to regulation. He opined that this is a taxing authority that should be held by the legislature, not by hospitals. Finally, the idea of bringing new physicians to the state, when the state does not allow them to make capital investments in their businesses, is discouraging. Dr. Cobden warned that the state will end up with the best hospitals in the nation, but with no physicians. He urged the committee to pass HB 337 and deal with problems separately.

[4:52:01 PM](#)

REPRESENTATIVE FAIRCLOUGH asked whether Dr. Cobden was speaking on behalf of the hospital.

[4:52:27 PM](#)

DR. COBDEN said no. He clarified that he is the Chief of Staff and oversees the credentialing and recruitment of new physicians. Dr. Cobden disagreed with previous testimony that there have been no applications for credentialing from the pain physicians.

[4:52:51 PM](#)

REPRESENTATIVE FAIRCLOUGH observed that Dr. Cobden said "we do not support HB 345" but that previous testimony from three FMH employees does support HB 345.

[4:53:21 PM](#)

DR. COBDEN explained that he is the Chief of Medical Staff and is not speaking for the hospital.

[4:53:56 PM](#)

REPRESENTATIVE SEATON asked whether the previous testimony, that stated that HB 345 does not need to deal with ambulatory surgery centers, is valid.

[4:54:32 PM](#)

DR. COBDEN opined that ambulatory surgery centers should not be excluded from legislation; in fact, ambulatory surgery centers could be substituted for imaging centers in the bill. There is separate licensing after ambulatory surgery centers are established; however, the bill does not address those issues. Dr. Cobden stressed that the overlying issue of CON policies, and resolution of the expensive lawsuits, remains.

[4:55:20 PM](#)

REPRESENTATIVE SEATON asked whether ambulatory surgery centers can be added into the language of HB 345 to take care of some of those problems.

[4:55:29 PM](#)

DR. COBDEN concurred, and then suggested that this addition may lead to consensus.

[4:55:43 PM](#)

JOHN BRINGHURST, Chief Executive Officer, Petersburg Medical Center, spoke in favor of HB 345 as a reasonable compromise to doing away with CON legislation. He said that his 35 years of experience as a hospital administrator have convinced him that a CON law instills benefits that outweigh its costs. Intuitively, it would seem that open competition would lead to lower costs; however, the health care industry does not always follow logic. Mr. Bringhurst gave the example of two hospitals in a community of 28,000 people in Oregon. Although the hospitals were below capacity, there was a joint venture partnership to open a surgery center. This action led to a loss of surgical volume at the hospitals that was less than the increase of surgical volume at the surgery center. Mr. Bringhurst expressed his belief that

physician ownership and self-referrals lead to a conflict of interest and over-utilization. Furthermore, when doctors self-refer there may be no cost competition. He explained that the hospital was left with a lower volume of service and more complex cases. He then pointed out that the small hospital in Petersburg is not rich and will have a \$900,000 loss this year. Finally, Mr. Bringhurst opined that CON does not exclude, but allows the community to have a choice in whether services are needful and will lower cost.

[5:00:14 PM](#)

CHAIR WILSON asked for the number of surgeries that resulted after opening the ambulatory surgery center.

[5:00:33 PM](#)

MR. BRINGHURST stated that the surgical volume at the ambulatory surgery center was higher than the losses to the previous levels at both hospitals, with no increase in population. He said, "It does create a situation where somehow, surgeries were just ... created."

[5:01:08 PM](#)

REPRESENTATIVE CISSNA compared this to a personal situation whereby she received more referrals for further services after obtaining insurance coverage.

[5:01:39 PM](#)

MIKE POWERS, Administrator, Fairbanks Memorial Hospital, informed the committee that he is extremely proud of the progress the hospital has made due to the planning that is possible under CON. He stated that FMH has a long record of success that includes: a long-term skilled nursing facility; a cancer center; an out-patient surgery center; an imaging center; cardiac cath care; electronic medical records; nurses training; and a comprehensive recruiting program. This progress is related to the logical planning provided by CON law. Mr. Powers then explained that the DHSS recently authorized the addition of eight operating rooms in the Fairbanks area. The hospital's appeal of this crippling action resulted in the final approval of two additional operating rooms; although this is still too many, Mr. Powers opined that the system worked. He urged the committee for more support of the planning function at DHSS.

5:04:46 PM

CHAIR WILSON closed testimony on both bills.

5:06:22 PM

[Although not formally stated, HB 345 and HB 337 were held over.]

ADJOURNMENT

There being no further business before the committee, the House Health, Education and Social Services Standing Committee* meeting was adjourned at 5:06 p. m.