

SENATE FINANCE COMMITTEE
February 6, 2008
9:05 a.m.

CALL TO ORDER

Co-Chair Stedman called the Senate Finance Committee meeting to order at [9:05:19 AM](#).

MEMBERS PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Charlie Huggins, Vice-Chair
Senator Kim Elton
Senator Donny Olson
Senator Joe Thomas
Senator Fred Dyson

MEMBERS ABSENT

None

ALSO PRESENT

Senator Bettye Davis; Tom Obermeyer, Staff to Senator Davis; Deborah Behr, Chief Assistant Attorney General, Legislation and Regulation Section, Civil Division, Department of Law; Josh Fink, Public Advocate, Office of Public Advocacy, Department of Administration

PRESENT VIA TELECONFERENCE

Faith Myers, Mental Health Advocate, Anchorage; Dorrance Collins, Mental Health Advocate, Anchorage; Don Roberts, Kodiak; Ron Adler, Alaska Psychiatric Institute; Pat Higgins, North Star Psychiatric; Pat Luby, AARP, Anchorage

SUMMARY

SB 8 "An Act relating to a mental health patient's right to choose the gender of hospital staff providing intimate care to the mental health patient and to the duties of hospital staff in caring for patients receiving mental health treatment."

SB 8 was HEARD and HELD in Committee for further consideration.

SB 101 "An Act relating to private professional conservators and private and public guardians."

SB 101 was HEARD and HELD in Committee for further consideration.

[9:05:40 AM](#)

SENATE BILL NO. 8

"An Act relating to a mental health patient's right to choose the gender of hospital staff providing intimate care to the mental health patient and to the duties of hospital staff in caring for patients receiving mental health treatment."

Co-Chair Hoffman MOVED to ADOPT CSSB 8, labeled 25-L010\E, Mischel, 2/4/08.

Co-Chair Stedman OBJECTED.

Co-Chair Stedman summarized that CSSB 8 changes the age of patient's right to request a care provider by gender from sixteen to eighteen years of age. The bill, as originally introduced, addressed patients sixteen years and older but the Judiciary committee amended it to eighteen years of age.

SENATOR BETTYE DAVIS, SPONSOR elaborated on the reasoning behind the age change. She indicated that patients under eighteen years of age usually enter the mental health care system through the Department of Health and Social Services, parental consent or other professional situations. She considered many teenagers (under eighteen) incapable of making mature decisions due to their past emotional or social experiences. She indicated many facilities would be affected by this age change.

Co-Chair Stedman WITHDREW his OBJECTION.

[9:09:53 AM](#)

TOM OBERMEYER, STAFF TO SENATOR BETTYE DAVIS provided an overview of SB 8 by reading the sponsor statement: (copy on file)

SB 8 provides that a mental health patient 18 years of age or older who is receiving mental health treatment and being provided intimate care at a hospital shall have the right to have care provided by a staff member who is the gender that the patient requests. Many of these patients have been traumatized by sexual and/or physical abuse in the past and they are very sensitive to being touched or assisted by hospital staff who provide intimate care, because the experience may trigger from original abuse feelings of fear, helplessness, distress, humiliation, and loss of trust in staff. The supervisor or manager employed by a hospital shall put notice of this right in a conspicuous place, so patients know they may exercise

this right when they are concerned about the gender responsible for their personal intimate care. While it is understandable that a hospital may not always be able to comply with the requirement of choice of gender in all situations and requests due to staffing schedules and shortages on particular shifts or duty units, the bill requires that the facility document the non-compliance in the patient record that the intimate care was provided by a licensed or unlicensed staff member of a gender opposite that requested by the patient. This information might otherwise be ignored or lost. The information is also useful not only for confirming the good faith effort on the part of the institution to comply with the wishes of the patient, but for medical purposes as well in evaluating the effect on patient outcome, because individuals re-traumatized in this way are subject to chronic stress which can worsen serious mental illness and result in symptomatic relapses and repeated re-hospitalizations. Lastly, this bill will preserve information for inquiry into grievance procedures at mental health facilities under Title 47, which have been described as unduly burdensome by some patients, and easily circumvented or limited because the language is too broad.

[9:12:31 AM](#)

Mr. Obermeyer reminded the committee that this bill only addresses gender choice, not grievance procedures (SB 186 "An Act relating to a mental health patient grievance procedure"). The implementation of the bill presents no additional costs, other than an additional effort on the part of facilities to accommodate patient's requests. Mr. Obermeyer noted that it may be impossible for the facility to accommodate gender choice in all circumstances. He maintained that under such circumstances, the facility only needs to document the occurrence and provide what care is possible. It is the belief of numerous doctors and nurses that this measure will help reduce patient trauma and avoid recidivism among the mental health population.

[9:13:25 AM](#)

Co-Chair Stedman questioned the rationale of allowing the patients, not the hospital, to make the decisions on gender care. Mr. Obermeyer remarked that experience has proven that the gender choice situations are often the easiest for hospitals to ignore. He stressed that hospitals contain a vulnerable, often involuntary population, without much control of their lives once institutionalized. Lacking requirements, the institution may simply follow the procedure that works best for them over the patient's desires. He clarified that this did not necessarily imply

patient abuse, but in situations where patients have been traumatized, it may not be evident to the patients that they had the power to file a complaint. If there is a procedure in place, posted in a prominent place, the patient would be better informed of their rights to request a specific gender or staff member. The entire point of the bill is to protect the vulnerable patient population in the mental health facility. Co-Chair Stedman questioned the meaning of line 14, "if, after reasonable and good faith efforts to comply." Mr. Obermeyer replied that a "good faith" effort means that the hospital or facility must try to accommodate patient needs, but when it is impossible, due to shift or vacations schedules, it may require a second person (of the requested gender) to be in with the patient and staff member. The reasonable and good faith effort is a term used throughout statutory language based on the normal course of business.

[9:16:28 AM](#)

Senator Olson questioned the consequences if the good faith efforts are less than successful. Mr. Obermeyer read page 2, line 1-8, that if the hospital is:

unable to comply with the requirement under (a) of this section, (A) document in the patient record that intimate care was provided by a licensed staff member of the gender opposite to the gender requested by the patient under (a) of this section; or (B) if a licensed staff member is not on duty at the time of the patient's request under (a) of this section, document in the patient record that the care was provided by an unlicensed staff member of the gender opposite to that requested under (a) of this section.

Mr. Obermeyer explained the record of non-compliance is not necessarily to hold the hospital responsible, although there could be instances where this is necessary, but to examine the patient records for the incident date to follow-up in cases of litigation or questions.

[9:18:06 AM](#)

Senator Olson remarked that there had been discussions in Bartlett and Fairbanks Memorial Hospitals to address such issues but wondered how this would affect other hospitals, particularly rural hospitals, which may be understaffed and unable to comply. Mr. Obermeyer reminded the committee that the institution only needs to document the incident if they are unable to comply. Senator Davis added that the bill mentions licensed and unlicensed individuals, allowing the institution to provide the best service possible for them. An alternative way to provide the service could be to involve the community in possible service. Senator Olson wondered if any rural hospitals had given an opinion on this

bill. Mr. Obermeyer responded that he had not heard from any rural hospitals.

Senator Olson inquired on the effect in the very small communities in retaining health care aids. Mr. Obermeyer responded that the language of the bill describes the facility as a hospital; therefore smaller institutions may not fall under this requirement.

[9:20:31 AM](#)

Senator Thomas stressed that the most vulnerable patients are the younger ones. He appreciated that hospitals often try to provide consistent gender care but believed that more attention should be paid to those younger and more prone to possible abuse in an institution.

Senator Davis addressed these concerns by indicating that younger children, when they are institutionalized, usually have other professional support working to protect their rights. She maintained that those adults eighteen years of age and older may not have this kind of protection or the ability to ask for it.

Senator Dyson encouraged the passage of this bill in its present form. He asserted that personal privacy is important to our society and individuals but those with mental handicaps are often prone to exploitation. He believed that laws and regulations were important in assisting patient's needs. Senator Dyson also stressed that a significant percentage of exploitation involved same sex and possible exploiters often obtain employment in positions caring for those they intend to abuse. He maintained that the State of Alaska and the Legislature are committed to providing and protecting personal privacy to prevent further trauma in the lives of mental health patients.

[9:26:41 AM](#)

PATRICK HIGGINS, NORTH STAR BEHAVIORAL HEALTH SYSTEMS, appreciated the Committee review and consideration of this bill.

RON ALDER, DIRECTOR OF ALASKA PSYCHIATRIC INSTITUTE, DEPARTMENT OF HEALTH AND SOCIAL SERVICES applauded any effort to protect the vulnerability of the psychiatrically disabled population. He asserted, as a hospital director, the numerous flaws in the proposed legislation. Mr. Alder observed that there are no United States laws where a legislature mandates the documentation of non-compliance in an accredited hospital and he was concerned that it would set a precedent. He believed that this bill, for public hospitals, should receive some attention from the Department of Law. He remarked that the proposed legislation also

asserts that intimate care only be provided by licensed professionals. Mr. Alder referenced the Joint Mission of Hospital Accreditation Standards which states that licensed professionals are not required. He indicated that when intimate care is required at the Alaska Psychiatric Institute (API), the service is usually provided by unlicensed psychiatric nursing assistants under the direction and supervision of a registered nurse. Mr. Adler emphasized that this decision has not been a problem and questioned this bill's relevance on these issues. He maintained that at the API only one patient complaint had been filed in five years which resulted in an elaborate policy to cover this and future issues. He also noted he was unaware of any problems at Bartlett or Fairbanks Memorial Hospitals. If the intent behind this legislation is to make sure that there is a "trauma-informed" system of care and that the overall direction of the inpatient psychiatric acute care industry needs to move in the direction of the more "trauma-informed" system, then more trauma assessments on patients were needed, not necessarily mandating legislation such as this.

[9:31:37 AM](#)

Senator Olson questioned that if the bill passed and a related problem occurred at API, would the hospital's accreditation be jeopardized. Mr. Adler replied it would not. He clarified that at API an advocate already existed to attend to any patient complaints on an ongoing basis.

[9:32:36 AM](#)

FAITH MYERS, ANCHORAGE, supported the passage of the bill. She restated that SB 8 only asks that psychiatric facilities try and make a "good faith" effort at providing the patient's gender choice for intimate care services. She believed that a callousness or apathy can develop in institutions and psychiatric facilities. She asserted that it is the Statutes and regulations that protect patients. The goals of any legislation should be to empower patients to make decisions that work toward their recovery. Reducing recidivism and trauma to psychiatric patients is the goal of SB 08. She strongly supports the passage of this bill.

[9:34:40 AM](#)

DORRANCE COLLINS, ANCHORAGE, supported the passage of SB 8. Mr. Collins commented that in a recent Alaska Supreme Court decision, the justices stated there was a clear unavoidable tension between psychiatric treatment facilities seeking convenience and economics versus patient's rights which can sometimes manifest into patient abuse. The justices saw it as a given that, without oversight, no reasonable expectation existed that patients would be treated fairly or

have their rights protected. Disability Law Center's (DLC) opinion stated that patients did have a legal right to privacy and that included issues of modesty. Mr. Collins indicated that the attorney for PsychRights concurred with Disability Law Center's opinion that between sixty percent and ninety percent of acute care psychiatric patients have been sexually or physically abused. He believed that recovery begins with allowing patient's to protect themselves and take part in privacy decisions. He maintained that SB 08 only asks that psychiatric facilities make a "good faith" effort to accommodate patient's requests. Mr. Collins advocated the passage of this bill.

[9:36:13 AM](#)

DON ROBERTS, KODIAK, supported the bill but indicated that after listening to the comments, he realized where abuses could occur on both sides of the issue. He elaborated by stating that this law could possibly result in patient harassment of the staff. If the law passes, he would like to see legislative or institutional follow-up on its effectiveness. Mr. Roberts continued that he also recognizes a problem if the facility could dismiss a patient's request because of inconvenience. He believed that in the issue of noncompliance, more than a note in the patient's treatment folder should be required. Mr. Roberts suggested that someone outside the institution, on behalf of the patient, be informed when privacy requests were not met.

[9:38:28 AM](#)

Mr. Obermeyer responded to Mr. Adler's concerns regarding non-compliance in the record. Mr. Obermeyer referred to Mr. Alder's statement that there should be a Department of Law opinion. He noted that Mr. Adler made the same statement in the committee notes of April 2007, giving the Department of Law time to respond if they saw a problem. He mentioned that Senator Davis had addressed a "grievance" procedure (SB 186). Mr. Obermeyer noted Mr. Roberts's suggestion of an outside source being informed of patient grievances. Mr. Obermeyer believed that the Department of Social Services would receive and screen complaints to evaluate the need to be investigated. He suggested that the fact that API has had only one patient complaint in five years could be attributed to the lack of a satisfactory procedure in place to file a complaint.

[9:41:04 AM](#)

Senator Davis thanked the Committee for their consideration of the bill and looked forward to having it back on the floor for later passage.

Senator Thomas referred to Page 2, line 2-4, regarding documentation, and expressed his hope that a more thorough description of the services be mentioned. Mr. Obermeyer responded that that the patient's record is the only thing required to be retained in the hospital. Any notes, comments, or suggestions regarding an incident would disappear once it was believed the problem had been resolved at the lowest level. Mr. Obermeyer indicated the information documented in a patient's record is something that can be retrieved later from the State or an agency or attorneys if they believed an abuse situation existed.

[9:42:37 AM](#)

Senator Davis questioned if Senator Thomas meant that he believed more should be put in the record other than just documenting that the gender request was not provided. She assured the Senator that nurse's and doctor's notes automatically provide more detail than just a simple statement that the service was not provided.

[9:43:14 AM](#)

SB 8 was heard and HELD in Committee for further consideration.

[9:44:00 AM](#)

SENATE BILL NO. 101

"An Act relating to private professional conservators and private and public guardians."

[9:44:24 AM](#)

DANA OWEN, STAFF TO SENATOR ELLIS AND STAFF TO THE LABOR AND COMMERCE COMMITTEE, provided an overview commenting that the Labor and Commerce Committee introduced this bill on behalf of the Office of Public Advocacy. He deferred to Josh Fink, from the Office of Public Advocacy to provide the larger overview of the bill. Mr. Owen described the intent of the bill to encourage more private professional guardians and conservators and to insure these individuals are adequately and appropriately licensed. The bill has been heard in the Labor and Commerce Committee twice. It was returned to the Committee to incorporate a rather large amendment. This amendment is the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. This act of legislation aims to standardize cases and bring order to questions of interstate jurisdiction.

[9:46:51 AM](#)

JOSH FINK, DIRECTOR, OFFICE OF PUBLIC ADVOCACY, DEPARTMENT OF ADMINISTRATION, presented an overview of bill. The legislature enacted HB 280 in 2004, establishing licensure and regulatory oversight of private professional guardians and conservators. Prior to the enactment of the bill there was no state oversight of private guardians or conservators in Alaska. This bill corrects some unintended consequences of the 2004 bill. The hope of the licensure bill would be to regulate the profession by screening more capable individuals less likely to exploit those whose lives they assisted. Mr. Fink believed the bill would regulate the formally unregulated industry and hopefully encourage more development of the industry in Alaska. Mr. Fink revealed that the bill, as written, established some impediments, such as requiring multiple licenses entering into this business. He explained that to provide full guardianship, four licenses were required. This bill eliminates the need for multiple licenses and establishes an individual license. Mr. Fink informed the Committee that this legislation was drafted with input from the Office of Public Advocacy, Occupational Licensing and the Alaska State Association for Guardianship. This bill clarifies, in Section 2 and 4, criminal convictions that would disqualify an individual from obtaining a license. The legislation eliminates the requirement that an applicant provide "proof of the ability" to be bonded and insured. Mr. Fink pointed out that when an appointment is made, the court can require that a bond be posted by the private guardian or conservator on a case-by-case determination. It also establishes that an annual report include total fees collected from the protected persons, total business expenses, and documents necessary to establish the financial solvency of the licensee. The bill also directs that an annual report be submitted to Office Public Advocacy rather than Occupational Licensing.

[9:52:08 AM](#)

Mr. Fink continued that this legislation clarifies that Occupational Licensing may refuse to renew a license and/or take disciplinary action if there is a determination that the licensee failed to meet any of the licensure requirements listed. The legislation further clarifies that financial institutions, regulated by the federal government under the Alaska Statute Title 6, are exempt from the licensing requirements. This legislation requires that public guardians of the Office of Public Advocacy pass the same criminal background checks that are required of private professional guardians and possess the same national certification. Mr. Fink mentioned that amendments added by Labor and Commerce Committee eliminated the need for an expert evaluation to determine whether the respondent is incapacitated if the respondent agrees to the protective appointment. The court must also make written findings if it appoints someone of lower priority as a guardian or

conservator. Mr. Fink informed the committee that currently in Statute there is a list for the order of guardianship appointments. SB 101 asks the courts to make a written response as to why the court chose to make an "out of the order" appointment. This legislation would also exempt the respondent from inspection or copying under the Public Records Act unless the records are relevant to an investigation or formal proceeding. Mr. Fink related that there may be some concern involving the exploitation of a family member obtaining private information that is not required for them to know. Finally a new amendment in the bill would allow OPA to collect its monthly fee from the respondent awards funds held at trust in OPA prior to distributing the funds at the termination of the appointment.

[9:56:14 AM](#)

DEBORAH BEHR, CHIEF ASSISTANT ATTORNEY GENERAL, LEGISLATION AND REGULATION SECTION, CIVIL DIVISION, DEPARTMENT OF LAW and UNIFORM LAW COMMISSIONERS OF ALASKA recommended adoption of the Uniform Adult Guardianship and Protective Proceeding Act, Section 24 to the end of the bill. This uniform act has had experts for years developing a law that works across state lines dealing with the difficulties of multiple guardians residing in different states. This bill makes it easier and less expensive for the courts to address the transfer of guardianship of an incapacitated adult between families residing in different states should the particular need arise. This would require the courts to communicate with each other and determine the best interests of the incapacitated adult. This bill is supported by AARP, the Department of Health and Social Services, the National College of Probate Judges and the National Guardianship Foundation. The bill has no fiscal impact for the State of Alaska. Ms. Behr recommends the passage of this bill.

[9:59:13 AM](#)

Senator Thomas questioned why this was not a more simple issue if it involved transfer of guardianship between family members in different states.

[10:00:43 AM](#)

Ms. Behr responded that in the past, guardianship and conservatorship laws responded to a time when families traveled much less but in this time of higher mobility, it must be addressed. The process can be expensive for the family hiring lawyers from different states to deal with different courts.

Senator Elton inquired about how the criminal history component was performed. Mr. Fink responded that the

applicant is required to submit fingerprints in the application process and the Division of Occupational Licensing runs a criminal history check to confirm if there was a criminal history within the prior ten years of the application. Senator Elton asked who pays for the background check. Mr. Fink responded that an application fee, paid for by the applicant, covers the criminal background check. Senator Elton inquired why a private professional guardian must be licensed but an appointed public guardian or staff person, in Section 22, p. 10-11, has a year before they must apply for and receive certification. He inquired why there would be different criteria for a private individual and for someone who works for OPA. Mr. Fink responded that an individual working for OPA will be supervised and mentored for the year before they are certified.

[10:04:10 AM](#)

Senator Elton indicated that on page 20 it talks about the registration of guardianship orders and protective orders between the different courts. He asked for an explanation on how bonding works. Senator Elton used the example that if a guardian who is appointed in another state applies for jurisdiction within Alaska, could the State of Alaska require a bond of that person or would that be the privilege of the originating court.

Ms. Behr responded that if the courts decided where the individual should be, the other state guardianship would be registered in the original home place of the individual and the other court would monitor any transactions and follow that state's law.

Senator Elton clarified that it is the originating court that applied the standards that the guardian must follow. Ms. Behr affirmed that this bill does not change the guardianship standards requirements of being a guardian that is monitored by the other state.

[10:05:52 AM](#)

Senator Dyson commented on being encouraged that this was being patterned on the Uniform Child Custody Jurisdiction Act. The transitory nature of the Alaskan population makes it important that mutually respected procedures exist for cross jurisdictional issues. He encouraged the passage of this bill.

[10:07:12 AM](#)

PAT LUBY, ADVOCACY DIRECTOR, AARP, ANCHORAGE, considered SB 8 to be excellent and needed legislation from a consumer perspective. He maintained that the growing older population in Alaska makes it important for the State to exercise

oversight over what will only become an expanding guardianship issue. The AARP encouraged support of this bill.

[10:08:06 AM](#)

SB 101 was heard and HELD in Committee for further consideration.

ADJOURNMENT

The meeting was adjourned at 10:09 AM