

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

January 25, 2008

1:32 p.m.

MEMBERS PRESENT

Senator Bettye Davis, Chair
Senator Joe Thomas, Vice Chair
Senator Kim Elton
Senator Fred Dyson
Senator John Cowdery (via teleconference)

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 212

"An Act relating to eligibility requirements for medical assistance for certain children and pregnant women; and providing for an effective date."

MOVED SB 212 OUT OF COMMITTEE

SENATE BILL NO. 245

"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 (CON) 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

PREVIOUS COMMITTEE ACTION

BILL: SB 212

SHORT TITLE: MEDICAL ASSISTANCE ELIGIBILITY

SPONSOR(s): SENATOR(s) DAVIS

01/16/08	(S)	PREFILE RELEASED 1/4/08
01/16/08	(S)	READ THE FIRST TIME - REFERRALS
01/16/08	(S)	HES, L&C, FIN
01/23/08	(S)	HES AT 1:30 PM BUTROVICH 205
01/23/08	(S)	<Bill Held Over to 1/25/08>
01/25/08	(S)	HES AT 1:30 PM BUTROVICH 205

BILL: SB 245

SHORT TITLE: HEALTH CARE: PLAN/COMMISSION/FACILITIES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/19/08 (S) READ THE FIRST TIME - REFERRALS
01/19/08 (S) HES, FIN
01/25/08 (S) HES AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

SARALYN TABACHNICK, Executive Director
Aiding Women in Abuse and Rape Emergencies, Inc. (AWARE)
Juneau, AK
POSITION STATEMENT: Supported SB 212.

STEVE HORN, Executive Director
Alaska Behavioral Health Association
Soldotna, AK
POSITION STATEMENT: Supported SB 212.

KIM ADALIA-LEFF
Interior Alaska Center for Non-Violent Living
Fairbanks, AK
POSITION STATEMENT: Supported SB 212.

DR. BOB URATA MD
Family Practice Physician
Juneau, AK
POSITION STATEMENT: Supported SB 212.

ELLIE FITZGERALD, Director
Division of Public Assistance
Health and Social Services
Juneau, AK
POSITION STATEMENT: Answered questions about SB 212.

KARLEEN JACKSON, Commissioner
Department of Health and Social Services (DHSS)
Juneau, AK
POSITION STATEMENT: Presented SB 245.

DR. JAY BUTLER, Chief Medical Officer
Department of Health and Social Services (DHSS)
Juneau, AK
POSITION STATEMENT: Offered a presentation on the web-based information center component of SB 245.

ROBERT JAMES CIMASI, President
Health Capital Consultants
St. Louis, MI
POSITION STATEMENT: Supported SB 245.

BRUCE JAMES
Alaska Surgery Center Inc.
Anchorage, AK
POSITION STATEMENT: Opposed SB 245.

ROD BETIT, President and CEO
Alaska State Hospital and Nursing Home Association (ASHNA)
Juneau, AK
POSITION STATEMENT: Opposed SB 245.

ACTION NARRATIVE

CHAIR BETTYE DAVIS called the Senate Health, Education and Social Services Standing Committee meeting to order at [1:32:22 PM](#). Senators Fred Dyson, Kim Elton, Joe Thomas, and Chair Bettye Davis were present at the call to order. Senator John Cowdery was attending via teleconference.

SB 212-MEDICAL ASSISTANCE ELIGIBILITY

CHAIR DAVIS announced consideration of SB 212 and asked if the administration had anything to add regarding this bill. She then opened the floor to testimony.

[1:34:16 PM](#)

SARALYN TABACHNICK, Executive Director, Aiding Women in Abuse and Rape Emergencies, Inc. (AWARE), felt that SB 212 would be very helpful to the people they serve, who are victims of domestic violence and sexual assault.

[1:36:30 PM](#)

CHAIR DAVIS asked to hear from anyone who had concerns about or opposed the bill. Those in favor of the bill were asked to raise their hands and were noted by number. She then called for testimony from witnesses present by teleconference.

STEVE HORN, Executive Director, Alaska Behavioral Health Association and member of the Governor's Health Care Strategic Planning Council, testified in support of SB 212 and encouraged the legislature to move forward with the bill.

KIM ADALIA-LEFF, Interior Alaska Center for Non-Violent Living, Fairbanks, testified in support of SB 212 as a single parent dependent upon access to Denali Kid Care.

DR. BOB URATA, Family Practice Physician and member of the Governor's Health Care Strategic Planning Council, Juneau, Alaska, urged the legislature to pass SB 212 because it would leverage federal money to assist the state in providing health care to the 15,000 or more uninsured children in the state.

ELLIE FITZGERALD, Director, Division of Public Assistance, Health and Social Services, Juneau, Alaska, offered to answer any questions regarding the fiscal notes or enrollment.

SENATOR ELTON asked how many Alaskans would be added to the program by changing the limit from 175 to 200 percent of the federal poverty level.

MS. FITZGERALD responded that the department estimated 1277 children would be enrolled if the change were made as reflected in the fiscal note. She added that when the level was changed to 175 percent, 843 more children were enrolled. She did not have data available on the number of pregnant women who would be enrolled if this change were made.

[1:44:46 PM](#)

SENATOR THOMAS moved to report SB 212 from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

SB 245-HEALTH CARE: PLAN/COMMISSION/FACILITIES

[1:45:25 PM](#)

CHAIR DAVIS announced that the Governor's bill SB 245 was up for consideration, and asked the administration to present an overview including any amendments that they intended to offer. She said she would take public testimony today and would take another day to go through the bill with the committee for questions, answers and suggested changes.

[1:46:39 PM](#)

KARLEEN JACKSON, Commissioner, Department of Health and Social Services (DHSS), said this bill had three components. First, an Alaska Health Care Commission tasked to create and maintain a comprehensive Alaska health care plan. This came out of the Governor's Health Care Strategies Planning Council and was

recognized by the Certificate of Need Negotiated Rulemaking Committee. Second, a web-based information source where health care consumers would be able to look at the services available in any area of the state and compare the cost and quality of those services. At this point, she turned the presentation over to her colleague, Dr. Jay Butler, for a visual presentation of the Department's vision for that web site.

[1:48:11 PM](#)

DR. JAY BUTLER, Chief Medical Examiner, Department of Health and Social Services (DHSS), explained that the site would focus first on providing health information to Alaskans to help them make good health care choices and second on assisting them to find economical, good quality health care. He demonstrated the options offered on three existing web sites as examples of the type of services that could be made available to Alaskans.

[1:56:19 PM](#)

COMMISSIONER JACKSON presented the third component of the Governor's Health Care Transparency Act, which would address repealing the Certificate of Need. She explained that the Certificate of Need program was the one tool available to the department to help ensure access to affordable health care. The Certificate of Need Rulemaking Committee met to discuss how that program might be modified to better meet Alaska's needs, but those meetings did not produce solutions to the problems they face with the CON. She felt that the CON could no longer provide what Alaska needs in terms of market-driven health care.

[2:01:03 PM](#)

COMMISSIONER JACKSON added that the department was planning to amend the bill to include a tiered approach to repealing the Certificate of Need, leaving residential psychiatric treatment programs, nursing homes and critical access hospitals on the CON for two years beyond initial implementation of the bill.

She paused for questions before turning the presentation over to an expert on the Certificate of Need program.

[2:01:38 PM](#)

SENATOR ELTON said he would hold his question on the Certificate of Need until after the expert's testimony. He asked Dr. Butler whether the Florida web site he used as an example expanded its knowledgebase to Florida's equivalent of our "Medco", a pharmacy benefit manager, and their drug prices, particularly through mail-order services.

DR. BUTLER replied that he had not found that information on the Florida site.

2:03:13 PM

SENATOR ELTON said it was easy to apply the issue of transparency to the community drugstore, but states around the nation were finding it difficult to apply transparency to pharmacy benefit managers because of their relationships with drug manufacturers, and were adopting statutory approaches to the problem. He asked Commissioner Jackson if the department had thought about that when it was putting the legislation together.

COMMISSIONER JACKSON said that, although they did not consider it when drafting the legislation, they were doing so as they considered implementation. She said that the CS referenced the type of things that would be on the web site rather than specific items; the intent was to empower consumers to make choices with the information available to them.

SENATOR ELTON said he assumed that these issues might be addressed through the proposed legislation, but transparency might also occur through the contract between the state and the pharmaceutical benefits manager.

2:05:58 PM

COMMISSIONER JACKSON replied that was an interesting thought, but what they wanted to accomplish was to construct the framework on which to hang the details of building this information.

SENATOR ELTON commented that he would be bothered if the bill required transparency of the neighborhood drug store and was not applied to what he saw as an equal or greater problem when it came to the cost of pharmaceuticals.

CHAIR DAVIS thanked him for bringing that forward and agreed that it should be discussed.

2:07:13 PM

SENATOR DYSON asked Dr. Butler if he was contemplating any web-based information on the safety of medical providers, such as infection rates at specific hospitals, or malpractice incidents related to providers.

DR. BUTLER replied that safety information could certainly be incorporated and was available on some state's sites.

SENATOR DYSON asked if that would be a good policy, and whether it was the intention of the administration to put that information on the web in the future.

DR. BUTLER replied that it could be a very useful tool, but there were caveats and he could not give a simple yes or no answer.

[2:09:51 PM](#)

SENATOR DYSON asked if the state could be sued for publishing truthful but derogatory information about a particular facility.

DR. BUTLER replied that legal council would have to be involved, and noted that the Attorney General, rather than their health officer, was the lead for the Florida web site on drug costs.

SENATOR DYSON remarked that, as Senator Elton mentioned, a number of rural Alaskans got their prescriptions through the mail. He wondered whether the proposed web-based information system would let patients know where they could find medications when there was no local pharmacy.

DR. BUTLER said that was not the intention of the site. The focus was to provide the information to those who were not already shopping online and perhaps to provide more attractive and safer options to the internet shoppers.

[2:12:21 PM](#)

CHAIR DAVIS thanked the committee for bringing these questions forward, but said that what they needed was an overview of what the Administration wanted to accomplish. They could deal with the details of modifying the bill later.

SENATOR THOMAS asked if the states that had implemented this type of web site had studied what benefit might come back in the form of reimbursements.

DR. BUTLER replied that he had not researched that thoroughly. However Kentucky, another state that had a good wellness and health risk assessment tool, had linked it to a site for state employees. Kentucky told him that although they were still working on the calculations, they were aware of at least seven cases where they believed they had averted bariatric surgery by becoming more actively involved in managing obesity and diabetes in at-risk state employees. Those surgeries would have cost more than the state's entire information program.

[2:15:14 PM](#)

SENATOR THOMAS commented that by the time people started looking for information on prescriptions and procedures, they already had health problems. He thought the state should be intervening much earlier in life by improving health education in the schools.

[2:15:51 PM](#)

SENATOR ELTON followed up on Senator Thomas' comment by telling the committee that many communities, including Juneau, had adopted a "healthy habits" approach that was successful in reducing health care costs. He asked whether that was considered at all when drafting the legislation.

COMMISSIONER JACKSON replied that this bill was a starting point and she looked forward to further discussions.

CHAIR DAVIS said the Health Strategy Council had discussed all of the issues that were brought up during this meeting and many could be found on the Council's website. She pointed out that their packets should contain a list of all of the topics the Council had approached and the studies it had considered.

[2:17:16 PM](#)

COMMISSIONER JACKSON reminded them that the bill was not only about repealing the Certificate of Need; all three pieces were interactive. She invited Robert Cimasi, an expert around the issues of the CON, to present his material.

CHAIR DAVIS asked Commissioner Jackson to present her assessment of the bill and the amendment she referenced earlier before turning the floor over to Mr. Cimasi.

COMMISSIONER JACKSON replied that there had been a lot of contention around this issue and that, despite the efforts of a committee to come to consensus regarding how they might improve the CON program, tightening the process had not improved the situation. She said that repealing the Certificate of Need program was a better course of action. She said DHSS saw the Health Care Transparency Act as the beginning of the conversation about all three components of the bill.

[2:19:28 PM](#)

ROBERT JAMES CIMASI, President, Health Capital Consultants, St. Louis MI, supported SB 245.

He said that based on his experience working with health care providers, the committee should advance SB 245 and repeal Certificate of Need regulation in the State of Alaska. He listed some major points outlined in his written testimony:

1. The CON had a consistent history as a failed health planning policy tool as far back as the mid-seventies. It was a reaction to health care being paid for on a cost plus basis, and within that structure the costs to develop facilities were passed on with a guaranteed margin.
2. By the early 1980's, health care was being paid for on a prospective payment system. Providers and hospitals were told in advance what they would be paid for procedures, so the sole purpose for Certificate of Need was eliminated.
3. The Con was repealed entirely in 14 states and partially in many others.
4. A study published by the University of Washington found that in eight of the states that had repealed the CON, there was no evidence to support an increase in costs. While there was conflicting or limited evidence regarding the availability of health care services, any surges tended to moderate over time.
5. In 1998 a Duke University study also found no evidence of increased expenditures following the repeal of Certificate of Need.
6. The Federal Trade Commission (FTC) repeatedly denounced the CON and encouraged states to consider whether the CON best served their citizens' health care needs. In July 2004 a joint study with Department of Justice concluded that there was significant evidence that the CON actually drove up costs by fostering anti-competitive barriers to market entry of better options.
7. In 2005 the FTC presented a statement before the Subcommittee on Federal Financial Management stating that the efficacy of the CON was such that it should be discontinued.

[2:27:50 PM](#)

He directed the committee to references in his written testimony to a significant amount of additional research regarding those issues.

[2:28:11 PM](#)

MR. CIMASI stated that in the failure to lower health care costs there was significant denial of access to patient choice. This effect would be exacerbated in a state like Alaska, with a

widely dispersed population and huge geographic proximity challenges.

He said that the Certificate of Need was very anti-provider, protecting the interests of large hospital systems and creating a barrier to recruitment in underserved areas. He could find no evidence that the CON served health care quality and concluded that the Certificate of Need had outlived its usefulness. With the focus on transparency, there was a huge movement away from defined benefit and toward defined contribution plans. He felt that the Certificate of Need program presented a significant impediment to structuring a provider network in Alaska to facilitate high quality services. Significant litigation regarding the CON was diverting funds away from patient care and dissuading new provider enterprises from coming to Alaska.

[2:32:59 PM](#)

MR. CIMASI committed Health Capital Consultants to continue its research into the CON and to making what they learn available to the committee. He thanked the committee for their time and urged them to repeal Certificate of Need in Alaska once and for all.

[2:33:34 PM](#)

CHAIR DAVIS asked how their research took into consideration the uniqueness of Alaska's health care system.

MR. CIMASI clarified that he was testifying as a public health policy expert, not as a paid consultant, and said he supported the repeal of the CON on an informed basis. He said Health Capital Consultants had just completed a major client engagement in Alaska involving several hundred hours of research into the utilization demand for inpatient and outpatient services, including the geographic dispersion of provider patterns in the state and the continuing challenge of physician manpower shortages.

[2:35:38 PM](#)

SENATOR ELTON thanked Mr. Cimasi for his testimony. He said that Mr. Cimasi was described by the executive who submitted the bill as an expert, but he had never heard a description of the Certificate of Need in such black and white terms. He asked if it would be fair to characterize Mr. Cimasi not as an expert, but as an advocate for one point of view.

MR. CIMASI responded that he was an advocate for his own informed opinion that the Certificate of Need did not meet its stated purpose of lowering costs, and that he didn't know of any

expert in the country who could testify that it did work. He reiterated that he was not an advocate for any client or group of providers and that they embarked on their research without any predetermined outcome in mind.

[2:38:22 PM](#)

SENATOR ELTON commented that Mr. Cimasi had used some pretty strong language in support of his position, but there were other experts who could also inform the committee. In his community he would submit his hospital as an expert, and they came to an exactly opposite conclusion.

He pointed out that in the eight of the states Mr. Cimasi said had repealed the Certificate of Need, a patient could drive somewhere else to get services, which was not possible in many Alaskan communities.

[2:40:12 PM](#)

MR. CIMASI responded that in those communities where hospitals were in an oligopoly position, they found the CON very convenient, because it was inconvenient to have to deal with competition. That did not mean that their position was correct from a health policy planning perspective, and all of the research he had been privy to demonstrated that. So, while he could understand and sympathize with the views of a community hospital that didn't find competition convenient, and he had no "bone to pick" with someone who had the day in, day out obligation to serve patients in his community, he believed that the empirical research he tried to present in his testimony stood on its own.

SENATOR ELTON said he thought there were areas of gray here, and that Mr. Cimasi seemed to be implying that his community hospital and other health care providers in this state were lying, or had closed their eyes to the empirical data.

MR. CIMASI declared that he had never stated or implied such a thing, and that he would never say that someone who disagreed with him or his research was not legitimately presenting their viewpoint.

[2:43:26 PM](#)

SENATOR THOMAS asked if Mr. Cimasi's report addressed how they might guarantee access to health care to low income families and people without insurance. He wondered whether the eight states that had repealed the CON had taken any other steps to ensure

that people were not denied treatment because they were low income or did not have insurance.

MR. CIMASI replied that he believed several states had taken steps to ensure licensed providers do treat certain classes of patients under specific circumstances; but the Certificate of Need didn't really address that. He said it was his understanding that the purpose of the CON regulation in Alaska was to save costs, not to assure treatment to any class of patient so, while he thought it was a grave concern, he did not believe that repeal of the CON would have any effect on access to services.

[2:46:18 PM](#)

CHAIR DAVIS asked if the administration had any other comments.

COMMISSIONER JACKSON said the previous discussions served to show just how contentious this issue can be. She pointed out that it was not about liberal or conservative, Republican or Democrat, but about all Alaskans, and would take everyone working together to come to some resolution. She asked that they take up the amendments at another meeting to allow for further testimony.

[2:47:23 PM](#)

BRUCE JAMES, Alaska Surgery Center, said the Center had 26 physician partners and was very much in favor of keeping the Certificate of Need. He sat on the Negotiated Rulemaking Committee, which voted by a 98 percent margin to retain the CON, although all present agreed that it needed some modification.

[2:49:23 PM](#)

CHAIR DAVIS asked for comments on provisions in the bill other than the Certificate of Need.

[2:49:40 PM](#)

ROD BETIT, President and CEO, Alaska State Hospital and Nursing Home Association (ASHNA), representing approximately 37 member organizations, said that ASHNA was very concerned that repeal of the Certificate of Need was a part of the Transparency Act. He had served on both the Health Care Strategies Planning Council and the Negotiated Rulemaking Committee and participated in DHSS interim hearings on the Certificate of Need; he did not expect the bill to call for repeal when over 90% of the participants in the hearings felt the CON should be retained and modified. Also, they had negotiated with the key parties in the appeals before the department since those meetings, in order to come up with

alternative language to place before the legislature that should take those appeals off the table.

He said he would like to see the administration's amendments and meet with his members before making additional comments, but went on to say that the statewide health plan is a great idea that should move forward. He continued that the health care commission was something they supported conceptually as a vehicle through which to continue productive discussion for presentation to the legislature on how to improve access and/or costs in this state. They also supported the concept of information reporting, but would want to talk about how it would be structured and the timing for it.

He made clear that he did not agree with Mr. Cimasi and that there were other experts who would testify to how well the Certificate of Need had served the state.

[2:55:59 PM](#)

CHAIR DAVIS said they had run out of time and would take public testimony at the next meeting. She invited those who did not have the opportunity to testify today to come back and testify the next time the bill was on the schedule. She held SB 245 in committee.

CHAIR DAVIS adjourned the meeting at [2:57:38 PM](#).