

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

March 28, 2008

1:38 p.m.

MEMBERS PRESENT

Senator Bettye Davis, Chair
Senator Joe Thomas, Vice Chair
Senator John Cowdery
Senator Kim Elton
Senator Fred Dyson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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 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."

MOVED CSSB 245(HES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

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
01/25/08	(S)	Heard & Held
01/25/08	(S)	MINUTE(HES)
02/08/08	(S)	HES AT 1:30 PM BUTROVICH 205
02/08/08	(S)	Heard & Held
02/08/08	(S)	MINUTE(HES)
02/20/08	(S)	HES AT 1:30 PM BUTROVICH 205
02/20/08	(S)	Heard & Held
02/20/08	(S)	MINUTE(HES)
03/12/08	(S)	HES AT 5:00 PM BUTROVICH 205

03/12/08 (S) Heard & Held
03/12/08 (S) MINUTE(HES)
03/28/08 (S) HES AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

DON BURRELL

Staff to Senator Davis
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Presented changes in SB 245, Version \V.

SCOTT BELL, Board of Directors
Greater Fairbanks Community Hospital Foundation
Fairbanks, AK

POSITION STATEMENT: Opposed SB 245.

PAUL MORRIS

Alaska Regional Hospitals
Anchorage, AK

POSITION STATEMENT: Opposed SB 245.

KARLEEN JACKSON, Commissioner
Department of Health and Social Services (DHSS)
Juneau, AK

POSITION STATEMENT: Answered questions about SB 245.

JEAN MISCHEL, Attorney at Law
Legislative Legal and Research Services Division
Legislative Affairs Agency
Juneau, AK

POSITION STATEMENT: Answered questions about SB 245.

ACTION NARRATIVE

CHAIR BETTYE DAVIS called the Senate Health, Education and Social Services Standing Committee meeting to order at [1:38:00 PM](#) Present at the call to order were Senators John Cowdery, Fred Dyson, Kim Elton, Joe Thomas and Chair Bettye Davis.

SB 245-HEALTH CARE: PLAN/COMMISSION/FACILITIES

CHAIR DAVIS announced consideration of SB 245.

[1:38:44 PM](#)

SENATOR COWDERY moved to adopt the proposed committee substitute (CS to SB 245, labeled 25-GS2050\V, as the working document of the committee. There being no objection, the motion carried.

DON BURRELL, Staff to Senator Davis, Anchorage, AK, explained that Version \V made only one change; on page 13, lines 8-11 Section 11 was added stating:

the Department of Health and Social Services shall contract with an entity which has no financial interest in health care service it conduct a comprehensive study of the effects of the Certificate of Need Program (CON) in the state. The Department shall provide a copy of the study to the Alaska State Legislature.

This study was also added to the language of the title on page 1, line 4, "providing for a study of the Certificate of Need Program."

CHAIR DAVIS asked for questions.

SENATOR DYSON asked Chair Davis' leave to defer his questions until after public testimony.

1:42:02 PM

SCOTT BELL, Board of Directors, [Executive Committee] member, Greater Fairbanks Community Hospital Foundation, Fairbanks, AK, opposed SB 245. He felt that CON regulations had been instrumental in allowing the Fairbanks Memorial Hospital to develop many of the wide-ranging health care services critical to their small, isolated town. With the protection of the CON regs, Fairbanks Memorial Hospital had used the profits from surgery and imaging services performed at the hospital to fund necessary but unprofitable services such as long-term care at Denali Center; mental health care services; an emergency room open 24 hours a day, 7 days a week; a cancer treatment center; a newly opened cardiac catheterization lab; a diabetes clinic; and to recruit independent physicians to practice in the Fairbanks area. He urged the committee to keep the CON regulations in place.

SENATOR THOMAS asked Mr. Bell whether he felt a study would not convince people that the CON should be maintained.

MR. BELL responded that it would depend on who did the study. He thought that a study would support it; but he worried about

other aspects of bill. He said this bill felt like 2 steps on the slippery slope toward doing away with the CON, even with the study involved.

CHAIR DAVIS asked if Mr. Bell had a copy of the new version of the bill.

MR. BELL answered that the version he had was \A.

CHAIR DAVIS advised that the committee was working from Version \V; in this particular version the CON study was added.

MR. BELL agreed that was a good addition, but he was concerned that the result of the study would not be taken in to account.

CHAIR DAVIS assured him that this version did not eliminate the CON.

MR. BELL said his understanding was that it would, and apologized for his misunderstanding.

CHAIR DAVIS asked if she could send him a copy of the new version.

MR. BELL said he would stop by and pick one up.

SENATOR ELTON told Mr. Bell that the pertinent pages in the new version, given his concern for the CON, were in Section 5 beginning on the bottom of page 4 and running to the top of page 5. The substantive change, the *only* change to the CON, was that there was no cap to the amount of money that could be spent on diagnostic imaging facilities in communities with populations of 60,000 or more.

SENATOR COWDERY asked if Mr. Bell had a definition of a "critical access hospital."

MR. BELL answered that he did not.

[1:47:41 PM](#)

PAUL MORRIS, Alaska Regional Hospitals, thought the study was a great starting point. He thought that was something they should look at before making changes to legislation related to the CON. In his short tenure in the state, he had seen the political aspects of the CON and a lot of maneuvering taking place; he felt that the first thing they needed to do was to get a good sense of where they were at and identify a starting point. He

was on the negotiated rule-making committee and felt that was a great attempt at evaluating the CON process; they came away with a consensus on a starting point and recommendations of where the state needed to go. He highly recommended that they look at those recommendations and the study and get a lot of input on it before making any changes.

He cautioned that the language in Version \V was already creating a "carve out." The 50/50 and the exclusion of boroughs over 60,000 were making changes to the CON process before they had had a chance to fully evaluate what needed to take place. He said what they were doing was creating an exception, a loop-hole, whatever they wanted to call it, that would further erode the CON process before it was fully evaluated, which he thought would be detrimental in the long run. Several other states had looked at the impact of carving out aspects of the CON and it was detrimental. He cited the well-documented case in Ohio, which showed that the erosion of the CON ultimately increased the cost of health care to the state.

He stressed that he fully supported the findings of the rule-making committee that the CON was a good process and that the language just needed to be refined.

SENATOR DYSON asked Mr. Morris to repeat his last statement.

MR. MORRIS explained that the negotiated rule-making committee came away with recommendations to refine the language, keeping the CON and not allowing the 50/50 joint venture carve-out in the CON process. Currently regulation allowed for imaging equipment in a facility that was 100 percent owned by physicians; if they did a 50/50 joint venture it would totally change the intent of the CON by allowing that carve-out and would further erode the whole CON process. The next step, in his opinion, would be to allow joint ventures in ambulatory surgery centers. He repeated that it was well documented that it would escalate the cost of health care.

SENATOR THOMAS agreed that bits and pieces would be taken and the courts would settle some of it, so the study was a reasonable way to approach it. He asked Mr. Morris if the rule-making committee gathered and reviewed the other studies.

MR. MORRIS said not everyone was aware of some of the studies that had taken place. He was, because he was working on his MBA and had written a paper on the CON in relation to that.

SENATOR ELTON asked if Mr. Morris would be willing to share his research with the committee.

MR. MORRIS said he would.

SENATOR COWDERY asked if the definition of critical access hospitals was in statute as well as in this bill.

[1:53:31 PM](#)

KARLEEN JACKSON, Commissioner, Department of Health and Social Services (DHSS) directed Senator Cowdery to page 4 of the bill...

CHAIR DAVIS interrupted and said that the Senator wanted to know if it was also in statute, in case this bill did not pass.

COMMISSIONER JACKSON advised that this referenced another statute, AS 18.05.

SENATOR COWDERY asked if a critical access hospital was one that was open 24/7.

COMMISSIONER JACKSON read the federal definition of a critical access hospital:

a small, rural hospital that is financially challenged given the limited population size that they serve. These are hospitals located in a county, borough, considered rural, located more than a 35 mile drive from another facility, or is a necessary provider of health care services to residents in the area and has no more than 25 patient beds.

SENATOR COWDERY maintained that it didn't answer the question of whether it was open 24/7.

CHAIR DAVIS said that if it was a hospital, she would expect it to be open 24/7.

COMMISSIONER JACKSON said that would be her understanding.

SENATOR DYSON asked Commissioner Jackson whether the administration was in favor of all of the changes made in this CS.

COMMISSIONER JACKSON said the Governor would still like to see the repeal of the Certificate of Need Program. She believed

there were some pieces of this legislation however, that would get them closer to a better program if they wound up keeping a program. So if the bill passed, she would have that conversation with the Governor about what the positive things might be. There were a couple of things they would likely ask to be tweaked in the committee of next referral, particularly things regarding the information office.

SENATOR DYSON asked if this bill would go to Finance.

CHAIR DAVIS said it would.

SENATOR DYSON suggested, given where they were at in the schedule, with 100 bills stacked up in Finance, if there were things that need to be changed they should entertain them in this committee. He asked if the Commissioner could point them out specifically.

COMMISSIONER JACKSON said she could.

On page 5 of the bill, line 29, one member of the committee was to be from the Alaska Commission on Aging; in talking with Jess Jesse, CEO of the Alaska Mental Health Trust Authority, they would prefer that the Trust Authority have a membership seat. She pointed out that the Commission on Aging was represented by the Mental Health Trust Authority.

SENATOR DYSON commented that the CS says "3 public members who are health care providers, appointed by the governor, for hospitals, physicians, and mental health" [page 6, paragraph (5) on lines 3-5].

COMMISSIONER JACKSON said she was referring to number (3) on page 5.

SENATOR DYSON asked if their concern would not be covered by page 6, line 5.

COMMISSIONER JACKSON answered that it could be; what she was getting at was that if they were going to have one of the sub-boards of the Mental Health Trust represented and not the others, it would be somewhat difficult. The Mental Health Trust Authority thought it would be better if they filled that seat; she said if they wanted to eliminate that member and have the Mental Health seat cover it, that would be another option.

SENATOR DYSON said that certainly wasn't what he wanted. He asked what other aspects of the CS they were uncomfortable with.

COMMISSIONER JACKSON replied that on page 8, line 18, where it said that the database was "developed under (a) of this section" and that it "must include the following:" they felt it would be more useful to say "may" rather than "must" so it could be brought up bit-by-bit as pieces were ready, rather than having to wait until all the required information was completed.

SENATOR DYSON asked if it would satisfy them if line 18 were modified to include the phrase "must, as available."

COMMISSIONER JACKSON said it would.

CHAIR DAVIS asked Commissioner Jackson to repeat what she wanted changed.

COMMISSIONER JACKSON said [the line should read] either "may" rather than "must," or, as Senator Dyson suggested, "as the information is available." So the database developed under this section "must include, as the information is available, the following."

SENATOR ELTON conceded that would work and was certainly safer.

[2:01:14 PM](#)

SENATOR DYSON asked if the commissioner had any other concerns.

COMMISSIONER JACKSON answered that page 9, numbers 3 and 4, referred to a list of the 100 hundred most commonly prescribed medications and a list of the 100 most commonly conducted medical procedures. The Chief Medical Officer [Jay Butler] suggested that those lines be amended to read "at least 25" so those lists could be added to after the database was published.

SENATOR ELTON pointed out that they had already amended the bill to say "as data becomes available," so he saw no need to change those numbers.

SENATOR DYSON said he would not be averse to cutting it down to 50 or something; but he thought Senator Elton was correct.

COMMISSIONER JACKSON continued; on page 11, on lines 28 and 29, there were not definitions for a licensed pharmacy or for a physician's office and they would like those to be added. She said their final concern was on page 13...

SENATOR ELTON interjected that he thought one of the elements in the existing Certificate of Need Program defined a physician's office. He asked if that was not correct.

COMMISSIONER JACKSON admitted that was one of the things they had wrestled with. They had various definitions, but she did not have one with her.

SENATOR DYSON asked if they could do a conceptual amendment today.

CHAIR DAVIS said she didn't see how they could do a conceptual amendment without the correct language. She said she was troubled by the fact that this bill had been held for several weeks to allow enough time to get all of the information together and the department had not come forward with these concerns until today. These things could have been taken care of before the meeting.

COMMISSIONER JACKSON responded that was why she said these were small things that could be done in the next committee.

CHAIR DAVIS said she heard that.

SENATOR DYSON asked what the change on page 13 was.

COMMISSIONER JACKSON said she was confused by the fact that Section 14 said "Except as provided in secs. 12 ... this Act takes effect July 1, 2008." Then Section 12 said "Section 2 of this Act takes effect July 1, 2013." She admitted this might simply be her misunderstanding of how timelines were drafted in legislation; but it seemed like a circular reference.

CHAIR DAVIS explained that 2013 was the expiration date of the Commission. She believed that legal could explain it more clearly than she had, but thought the dates were as they should be.

[2:05:58 PM](#)

SENATOR DYSON asked who was the primary author of this CS.

CHAIR DAVIS answered that her office staff, Tom and Don, both worked on it. She asked Don to get Jean Mischel from legal on line to answer questions.

SENATOR DYSON said that on page 7, line 15, the bill they got said one of the goals of the Commission was to reduce health care for all to below the national average; the committee substitute took that out. He wondered why it had been removed.

SENATOR ELTON recalled that, some time ago, the department had discussed the possibility that the goal might be unattainable and that the language should be amended to "reduce the rate of growth." He asked if his recollection was correct.

DON BURRELL confirmed that it was.

CHAIR DAVIS asked if Mr. Burrell had in front of him a list of all of the amendments that had been made.

DON BURRELL informed Senator Dyson that that particular change occurred in Version \E, at least 3 versions ago.

[2:12:04 PM](#)

SENATOR DYSON agreed that might have been a reasonable change. He continued that on page 8, line 11, the original version had said "for all" and the CS substituted "about." He wondered why that had been changed.

DON BURRELL said he did not have those changes but recalled that was change was also made about 3 versions ago, when they fine-tuned the language.

CHAIR DAVIS reiterated that there was only one change between the previous version and this one; that was to assign responsibility for the contract for the CON study to the department.

SENATOR DYSON acknowledged that he might be asking questions about a version that was approved by the committee previously; but he asked if anyone remembered a discussion about taking out the phrase "for all" and substituting "about."

CHAIR DAVIS asked if he had a problem with that language.

SENATOR DYSON said "Yes."

SENATOR ELTON did not recall any discussion about it, but did not believe it was a substantive change. The current version read "maintain an information database on the internet of information about health care facilities in the state;" and there were no exceptions listed so he read that to mean all

health care facilities. He suspected that change might have been made by the drafter.

SENATOR DYSON suspected the same thing; he would like it to be on the record however, that the committee intended it to mean all of the facilities.

CHAIR DAVIS said she didn't think "all facilities" was realistic; they didn't even know all of the facilities that existed. She asked Jean Mischel to comment.

2:14:09 PM

JEAN MISCHEL, Attorney at Law, Legislative Legal and Research Services Division, Legislative Affairs Agency, Juneau, AK, said she was at a loss because she had just dialed in and did not know what section they were discussing.

CHAIR DAVIS advised that they were on SB 245, Version \V and that Senator Dyson was questioning a change.

SENATOR DYSON repeated that on page 8, line 11, previous versions read "database on the internet of information for all health care facilities in the state;" and in this version the words "for all" had been taken out and "about" had been substituted.

JEAN MISCHEL replied that she would have to pull her hard-file to be sure; but she believed that was a specific request based on the concern that Senator Davis just expressed.

SENATOR DYSON said it was not clear to them that the bill called for a lot of reports and then it called for the state to establish a database and then there was going to be a website. He was not clear that the stuff from the reports would get into the database and that the database would be placed on the website. He said in their reading of it, that was not clear. Their intention was that the information be available to the public so they could make the best informed decisions; he asked if she could help him with that.

JEAN MISCHEL said she interpreted his question to be whether or not the database would be publicly available and asked if that was the question.

SENATOR DYSON answered yes; he questioned whether the stuff from the reports would be required to end up in the database and whether the database would be made available on the website.

JEAN MISCHEL responded that she did not see any confidentiality requirements that would keep any information in the database from public access. Under the public records law, unless it was specified that it would not be available, it appeared to her to be intentionally publicly available. Under new section 18.09.120, the mandatory reporting section, page 10, lines 9-10, it talked about the information being reported "shall be placed" on the database.

SENATOR DYSON asked if it was clear in the CS that the stuff from the database went onto the web site.

JEAN MISCHEL answered "Yes."

SENATOR DYSON asked if Ms. Mischel could point out where that was made clear.

JEAN MISCHEL pointed to [Sec. 18.09.110] the lead-in on page 8, beginning on line 10: "The department shall establish and maintain an information database on the Internet ..." and to the cross-reference in 18.09.120 to that section on page 10, lines 9-10, "for placement in the database developed under AS 18.09.110."

[2:18:47 PM](#)

SENATOR DYSON said that would satisfy him. Moving on to page 10, line 14, he did not feel it was clear where it said "negotiated prices," that they meant to include prices for all the services that were rendered. He wanted that to be made more explicit so a customer shopping by price could not only see what the comparative prices for the same services would be, but also the comparative prices that various classes of consumers paid.

JEAN MISCHEL indicated that the language on line 14 had been changed since the \L version, but that it could certainly be clarified further through an amendment by the committee.

SENATOR THOMAS asked Ms. Mischel, if they were to add a time frame for the Certificate of Need study to be completed and delivered to the legislature, whether that amendment should be made on page 13, line 11 and running on for the next couple of lines.

JEAN MISCHEL answered "Yes."

SENATOR DYSON asked Ms. Mischel to clarify what he perceived to be a contradiction between page 10, lines 8-9, which provided that a mandatory reporting schedule would be set by the department, and page 7, line 23, which said the commission would establish the schedule.

[2:22:36 PM](#)

JEAN MISCHEL asked for a moment to review the language, then answered that there might be a conflict with regard to the reporting requirements but not the database.

SENATOR DYSON continued that on page 11, beginning on line 6, the CS seemed to say that information [regarding an adverse action] would be provided to the department; originally the Governor's bill said it should go to the Commission. He asked if the committee had made that change.

CHAIR DAVIS said that if it had been changed, then it was changed at their request.

SENATOR DYSON said he didn't care about the history of the change; he just wanted what was best. He asked the commissioner which made the most sense.

[2:25:07 PM](#)

COMMISSIONER JACKSON replied that it would seem having the information come to the department for posting to the database would probably be the most efficient.

SENATOR THOMAS asked Commissioner Jackson for some direction with regard to the timeframe for completion of the CON study. He noted that she had referenced a couple of studies in a letter to the chairman of the committee, and was curious as to the timeframe and whether those studies were as complex and critical as this one might be.

COMMISSIONER JACKSON replied that each study was somewhat unique. She would expect this study to be fairly quick because so much source material had already been gathered through the process at the various hearings. Assuming the bill passed and they were able to get a Request For Proposal (RFP) out on the street and have funding by July 1, 2008, they could probably have it for the 2009 legislative session.

[2:28:14 PM](#)

Amendment 1

SENATOR THOMAS moved Amendment 1 to the language on page 13, line 11: Add after "legislature." The words "no later Feb 15 2009." There being no objection, Amendment 1 was adopted.

SENATOR DYSON thought that Jean Mischel agreed that there was a conflict in the CS between page 10, lines 8-9 and page 7, line 23, regarding who would set the reporting schedule. He proposed that they choose one of those options and make the two consistent.

SENATOR ELTON said that, as he read it, this was a two-step process. Page 10 was about the information gathering process and said the health care facilities would provide their information to the department on a schedule set by the department. The language on page 7 referred to the information posting process, in which the commission would review and approve the information that was collected by the department and set a schedule for the department to post that to the database. He asked Ms. Mischel if she read it that way.

JEAN MISCHEL said that was one possible interpretation. She felt that the word "implementation" on line 24 was ambiguous; however she believed that his interpretation represented the original intent.

SENATOR ELTON asked if it was less ambiguous if, on page 7, line 24, they struck "implementation" and inserted "and establish a schedule for posting on the database."

JEAN MISCHEL answered yes, it left no overlap when stated that way.

Amendment 2

SENATOR ELTON moved Amendment 2 to language on page 7, line 24: strike "implementation of" and substitute "posting on." There being no objection, Amendment 2 was adopted.

Amendment 3

SENATOR DYSON moved Amendment 3 to language on page 8, line 18: After the word "include" and before the word "the", insert the phrase "as available" so subparagraph (a) would read "of this section must include, as available, the following:" There being no objection, Amendment 3 was adopted.

Amendment 4

SENATOR DYSON moved Amendment 4 to language on page 8, line 11: At the end of the line, replace the word "about" with "for all"

so that would read "establish and maintain an information database on the Internet of information for all health care facilities in the state."

2:36:47 PM

CHAIR DAVIS said she had some concern about that language but she would leave it to the committee to decide.

SENATOR THOMAS stated that he had no problem with that change and asked if Senator Dyson proposed to make the same alteration to line 6 [paragraph (1)] where it used that same terminology.

SENATOR DYSON agreed that he would, but asked Commissioner Jackson whether there were things that would fall under health care that were not licensed and that the state might not even know about.

COMMISSIONER JACKSON cautioned that, as fast as the industry was changing, that would be her one concern. Using "must" for "all" made her nervous because there could be something out there that they didn't know about until they discovered they hadn't put the information out. She said that was part of the concern with defining licensed pharmacies; for example, would a licensed pharmacy in a bigger variety store be considered a licensed pharmacy for the purposes of this information gathering?

SENATOR DYSON said he wanted information about where the pharmacies were located; and he assumed all the pharmacies were licensed so that one didn't bother him. What he worried about was something that didn't fall under any supervision, maybe a faith healing center or something else; but it seemed to him that anything important enough to be licensed and fall under public health, they would want to know about. He asked if there was anything out there that they might oversee in their various functions that would not need to be included.

COMMISSIONER JACKSON supposed that she might have used a poor example. She did worry that by getting so specific, they were inadvertently setting themselves up, when the intention was to get all the information they could.

SENATOR DYSON asked if saying "all licensed" would get everyone they wanted to be reporting.

COMMISSIONER JACKSON said the language that used "about" made her more comfortable.

SENATOR DYSON withdrew Amendment 4.

[2:39:44 PM](#)

CHAIR DAVIS called a brief at ease.

CHAIR DAVIS called the committee back to order at [2:41:27 PM](#).

SENATOR ELTON moved to report committee substitute for SB 245, as amended Version \V, from the committee with individual recommendations and attached fiscal note(s).

SENATOR COWDERY objected.

A roll call vote was taken:

Senators Dyson, Elton, Thomas and Davis voted yea.

Senator Cowdery voted nay.

The motion carried 4 to 1. Therefore, CSSB 245(HES) moved from committee.

There being no further business to come before the committee, Chair Davis adjourned the meeting at [2:42:56 PM](#).