

ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

April 11, 2009

3:09 p.m.

MEMBERS PRESENT

Representative Bob Herron, Co-Chair
Representative Wes Keller, Co-Chair
Representative John Coghill
Representative Bob Lynn
Representative Paul Seaton
Representative Sharon Cissna
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 32(FIN)

"An Act relating to medical assistance payments for home and community-based services and provision of personal care services in a recipient's home; and providing for an effective date."

- MOVED OUT OF COMMITTEE

HOUSE BILL NO. 223

"An Act relating to the qualifications for residential psychiatric treatment center caregiver staff; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 50

"An Act relating to limitations on mandatory overtime for registered nurses and licensed practical nurses in health care facilities; and providing for an effective date."

- HEARD AND HELD

SENATE BILL NO. 13

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

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SB 32

SHORT TITLE: MEDICAID:HOME/COMMUNITY BASED SERVICES

SPONSOR(s): SENATOR(s) ELLIS

01/21/09	(S)	READ THE FIRST TIME - REFERRALS
01/21/09	(S)	HSS, FIN
01/21/09	(S)	PREFILE RELEASED 1/9/09
02/04/09	(S)	HSS AT 1:30 PM BUTROVICH 205
02/04/09	(S)	Heard & Held
02/04/09	(S)	MINUTE(HSS)
02/23/09	(S)	HSS AT 1:30 PM BUTROVICH 205
02/23/09	(S)	Heard & Held
02/23/09	(S)	MINUTE(HSS)
02/25/09	(S)	HSS AT 1:30 PM BUTROVICH 205
02/25/09	(S)	Moved CSSB 32(HSS) Out of Committee
02/25/09	(S)	MINUTE(HSS)
02/27/09	(S)	HSS RPT CS 4DP 1NR NEW TITLE
02/27/09	(S)	DP: DAVIS, ELLIS, THOMAS, PASKVAN
02/27/09	(S)	NR: DYSON
03/11/09	(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/11/09	(S)	Heard & Held
03/11/09	(S)	MINUTE(FIN)
03/30/09	(S)	NR: STEDMAN, OLSON
03/30/09	(S)	DP: HOFFMAN, THOMAS, ELLIS
03/30/09	(S)	FIN RPT CS 3DP 2NR NEW TITLE
03/30/09	(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/30/09	(S)	Moved CSSB 32(HSS) Out of Committee
03/30/09	(S)	MINUTE(FIN)
04/07/09	(S)	VERSION: CSSB 32(FIN)
04/07/09	(S)	TRANSMITTED TO (H)
04/08/09	(H)	READ THE FIRST TIME - REFERRALS
04/08/09	(H)	HSS, FIN
04/11/09	(H)	HSS AT 3:00 PM CAPITOL 106

BILL: HB 223

SHORT TITLE: TRAINING FOR PSYCHIATRIC TREATMENT STAFF

SPONSOR(s): HEALTH & SOCIAL SERVICES

04/08/09	(H)	READ THE FIRST TIME - REFERRALS
04/08/09	(H)	HSS
04/09/09	(H)	HSS AT 3:00 PM CAPITOL 106

04/09/09 (H) Heard & Held
04/09/09 (H) MINUTE(HSS)
04/11/09 (H) HSS AT 3:00 PM CAPITOL 106

BILL: HB 50

SHORT TITLE: LIMIT OVERTIME FOR REGISTERED NURSES

SPONSOR(s): REPRESENTATIVE(s) WILSON, GARA, TUCK, PETERSEN,
LYNN, SEATON, GATTO, CISSNA, MUNOZ, GARDNER

01/20/09 (H) PREFILE RELEASED 1/9/09
01/20/09 (H) READ THE FIRST TIME - REFERRALS
01/20/09 (H) HSS, FIN
03/12/09 (H) HSS AT 3:00 PM CAPITOL 106
03/12/09 (H) Heard & Held
03/12/09 (H) MINUTE(HSS)
04/11/09 (H) HSS AT 3:00 PM CAPITOL 106

BILL: SB 13

SHORT TITLE: MEDICAL ASSISTANCE ELIGIBILITY

SPONSOR(s): SENATOR(s) DAVIS

01/21/09 (S) READ THE FIRST TIME - REFERRALS
01/21/09 (S) HSS, FIN
01/21/09 (S) PREFILE RELEASED 1/9/09
02/09/09 (S) HSS AT 1:30 PM BUTROVICH 205
02/09/09 (S) Moved SB 13 Out of Committee
02/09/09 (S) MINUTE(HSS)
02/11/09 (S) DP: DAVIS, THOMAS, ELLIS, PASKVAN
02/11/09 (S) HSS RPT 4DP
02/25/09 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/25/09 (S) Heard & Held
02/25/09 (S) MINUTE(FIN)
03/11/09 (S) DP: HOFFMAN, THOMAS, ELLIS
03/11/09 (S) NR: STEDMAN, HUGGINS, OLSON
03/11/09 (S) FIN RPT 3DP 3NR
03/11/09 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/11/09 (S) Moved SB 13 Out of Committee
03/11/09 (S) MINUTE(FIN)
04/06/09 (S) VERSION: SB 13
04/06/09 (S) TRANSMITTED TO (H)
04/07/09 (H) READ THE FIRST TIME - REFERRALS
04/07/09 (H) HSS, FIN
04/11/09 (H) HSS AT 3:00 PM CAPITOL 106

WITNESS REGISTER

MAX HENSLEY, Staff

to Senator Johnny Ellis
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 32 for the prime sponsor,
Senator Ellis.

JON SHERWOOD, Medicaid Special Projects
Office of the Commissioner
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Spoke in support of SB 32.

MARIANNE MILLS, President
AgeNet

POSITION STATEMENT: Spoke in support of SB 32.

STEVE LESKO, President
KEY Coalition of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 32.

MATT JOHNSON, Staff
to Representative Wes Keller
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Explained the proposed amendment to HB 223
labeled C.3.

JEFF JESSEE, Chief Executive Officer
Alaska Mental Health Trust Authority (AMHTA)
Department of Revenue (DOR)
Anchorage, Alaska

POSITION STATEMENT: Testified about HB 223.

MYRA MUNSON, Attorney
The Boys and Girls Home of Alaska
Fairbanks, Alaska

POSITION STATEMENT: Spoke in support of HB 223.

PAT HEFLEY, Deputy Commissioner
Office of the Commissioner
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Testified about HB 223.

STACIE KRALY, Chief Assistant Attorney General;
Statewide Section Chief

Human Services Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Answered questions during testimony about HB 223.

REPRESENTATIVE PEGGY WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As the prime sponsor of HB 50, answered questions on the bill.

NANCY DAVIS, President
Alaska Nurses Association (ANA)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 50.

LANETTA LUNDBERG, Director
Human Resources
Ketchikan General Hospital
Ketchikan, Alaska

POSITION STATEMENT: Testified in opposition to HB 50.

MICHAEL SMITH
Tanana Chiefs Conference (TCC)
Fairbanks, Alaska

POSITION STATEMENT: Testified about HB 50.

STACY ALLEN, Health Care Representative
Laborers Local 341

POSITION STATEMENT: Testified in support of HB 50.

JUANITA DIAMOND
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 50.

CHRISTINA VANCLEVE, RN

POSITION STATEMENT: Spoke in support of HB 50.

PATRICIA SENNER, RN
Anchorage, Alaska

POSITION STATEMENT: Testified about HB 50.

DEBBIE THOMPSON, Executive Director
Alaska Nurses Association (ANA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 50.

KATHLEEN GETTYES, President
Providence Registered Nurses Bargaining Unit
Providence Hospital
Anchorage, Alaska

POSITION STATEMENT: Spoke in support of HB 50.

LEE ANN COX, Human Resources Manager
Wildflower Court
Juneau, Alaska

POSITION STATEMENT: Spoke in opposition to HB 50.

ANGEL DOTOMAIN, President & CEO
Alaska Native Health Board (ANHB)
Anchorage, Alaska

POSITION STATEMENT: Spoke in opposition to HB 50.

ACTION NARRATIVE

[3:09:27 PM](#)

CO-CHAIR WES KELLER called the House Health and Social Services Standing Committee meeting to order at 3:09 p.m. Representatives Keller, Herron, Holmes, Coghill, Cissna, and Lynn were present at the call to order. Representatives Seaton arrived as the meeting was in progress.

SB 32-MEDICAID:HOME/COMMUNITY BASED SERVICES

[3:09:55 PM](#)

CO-CHAIR KELLER announced that the first order of business would be CS FOR SENATE BILL NO. 32(FIN), "An Act relating to medical assistance payments for home and community-based services and provision of personal care services in a recipient's home; and providing for an effective date."

[3:10:21 PM](#)

MAX HENSLEY, Staff to Senator Johnny Ellis, Alaska State Legislature, explained that SB 32 was a collaborative effort. He stated that home and community based services were the key to improving the quality of life for seniors and the developmentally disabled. He emphasized that SB 32 was not intended to take anything away from care providers, but instead to create an equitable and predictable process. He observed

that home and community based services were less expensive than institutional care. He pointed out that long term care costs were a very large percentage of projected Medicaid expenses. He stated that most providers had not seen an increase to payment structure since 2004. He explained that SB 32 gave Department of Health and Social Services (DHSS) the flexibility to devise a cost based system for all providers. He explained that Section 1 set rates for home and community based services, as well as personal care services. He shared that it also reviewed the rates of payment, but he emphasized that nothing in the bill appropriated money for the future. He explained that DHSS would forward its cost proposal survey of suggested rates, which would become part of the budget process. He noted that there would be an annual rate review, but that the cost survey would only be every four years. He pointed out that the inflation rate would also be considered.

[3:15:17 PM](#)

MR. HENSLEY directed attention to Section 2, and confirmed that DHSS would report the trends and the elements in established payment rates. He explained that Section 3 repealed Section 2 on June 30, 2014. He pointed out that Section 4 made the bill effective on July 1, 2011, in order to allow DHSS the time to develop the methodology. He reviewed the fiscal notes and said that one was for three DHSS positions, of which 50 percent would be federally funded. He explained that the second fiscal note was a projection for the rate increases, in anticipation of the cost survey results.

[3:18:19 PM](#)

JON SHERWOOD, Medicaid Special Projects, Office of the Commissioner, Department of Health and Social Services (DHSS), said that the department had worked with the sponsor, and DHSS was comfortable with the bill language.

[3:18:51 PM](#)

CO-CHAIR KELLER opened public testimony.

[3:19:02 PM](#)

MARIANNE MILLS, President, AgeNet, explained that AgeNet was a group of 25 statewide organizations which provided services in the homes of the elderly, the community centers, and the adult day facilities. She reported that AgeNet, along with the

Beneficiary Boards of Alaska, Alaska Mental Health Trust Authority (AMHTA), and other provider groups, had declared regular rate reviews to be the first priority. She noted that this coalition had met with Commissioner Hogan (DHSS) and Senator Ellis. She offered her support for SB 32. She expressed that the goal of the coalition was to find good objective data for the actual costs of home and community based services. She indicated that this would allow for the best decisions.

[3:21:08 PM](#)

REPRESENTATIVE CISSNA said that rate reviews were very important. She asked if this would study potential care giver positions, as well as existing ones.

MR. HENSLEY explained that SB 32 covered rate reviews for the service providers listed under the four current Alaska Medicaid waivers, as well as rate reviews for the providers of personal care attendants.

[3:22:31 PM](#)

REPRESENTATIVE CISSNA asked if other potential positions would be covered.

MR. HENSLEY replied that an earlier study had reviewed a broader group of DHSS funded service providers. He clarified that the providers referenced in SB 32 were currently ready for rate reviews. He agreed that other care givers may be included in future rate reviews.

[3:23:29 PM](#)

REPRESENTATIVE CISSNA asked how long this would take to put into effect.

MR. HENSLEY said that the prior study was for a year. He noted that DHSS requested 2 years to develop the rate methodology. He reported the annual rate review would go into effect in FY2012.

[3:24:23 PM](#)

STEVE LESKO, President, KEY Coalition of Alaska, said that it was urgent to pass SB 32 right away. He shared that the goal to eliminate the wait list [for services] was restrained by the lack of a rate review process for the community programs. He

opined that this had resulted in difficulties for the programs with recruitment and retention of staff. He noted that benefit cuts, increases in deductibles, and the inability to staff had resulted in a lack of service. He cited that the community programs did not have equal access to the rate increase reviews which hospitals were allowed. He declared that this was a labor intensive profession with big challenges to ensure an adequate workforce. He stressed that the health and safety of Alaska's most vulnerable citizens was the paramount concern. He emphasized that the KEY Coalition supported SB 32.

[3:27:38 PM](#)

CO-CHAIR KELLER stated that he was a cross sponsor for SB 32.

[3:27:59 PM](#)

REPRESENTATIVE COGHILL suggested that the rate review and the methodology review should go hand in hand. He noted that the pressure to raise rates would necessitate that all were treated fairly.

[3:29:58 PM](#)

REPRESENTATIVE CISSNA agreed that it was necessary to address the work force issue immediately.

[3:30:25 PM](#)

CO-CHAIR HERRON posed that the legislation should oblige DHSS to implement the program in 2012.

MR. HENSLEY replied that there was every reason to believe that DHSS would do the required methodology work to institute a cost rate when the bill takes effect.

[3:31:22 PM](#)

MR. SHERWOOD asked that DHSS have administrative support in order to start in two years. He declared that the providers were not prepared to submit the cost reporting which the department needed for analysis. He explained that it was necessary to tell the providers in advance what information was necessary, and then collect and analyze the responses. He opined that DHSS had the authority to move forward prior to the effective date of the bill.

[3:33:03 PM](#)

REPRESENTATIVE COGHILL cautioned to be aware of the cost to providers for collecting information.

MR. SHERWOOD replied that the current language allowed for a less burdensome cost survey for the providers.

[3:34:12 PM](#)

CO-CHAIR HERRON moved to report CSSB 32 (FIN) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 32 (FIN) was reported from the House Health and Social Services Standing Committee.

[3:34:40 PM](#)

HB 223-TRAINING FOR PSYCHIATRIC TREATMENT STAFF

[3:34:58 PM](#)

CO-CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 223, "An Act relating to the qualifications for residential psychiatric treatment center caregiver staff; and providing for an effective date."

[The committee had previously adopted Version C, as the working document.]

[3:35:39 PM](#)

CO-CHAIR HERRON moved to adopt the amendment labeled C.3, 4/10/09, which read: [original punctuation provided]
[Included in the members' packets.]

Page 1, line 14 - page 2, line 3:

Delete all material and insert:

"residential treatment for children, inpatient long-term treatment for children, or other treatment of severely emotionally disturbed children; and"

Page 2, lines 9-13:

Delete all material and insert:

"(A) at least four years of increasingly responsible caregiver experience in residential treatment for children, inpatient long-term treatment

of children, or treatment of severely emotionally
disturbed children; and"

Page 2, lines 24-27:

Delete all material and insert:

"(C) be assigned to work at the center only
during hours in which supervision or mentorship is
available on-site from an individual

(i) who has a bachelor's degree in a
human-services-related field or meets the
requirements of (2) or (3) of this subsection,
provided

(ii) there must be no less than 1
person on-duty who meets the criteria under (i)
of this paragraph for each 6 caregivers who are
qualified only under this subsection."

Page 2, line 28

Following "training"

Insert "in residential child care"

Page 3, line 3:

Delete all material and insert:

***Sec. 2.** The uncodified law of the State of Alaska is
amended by adding a new section to read:

TRANSITIONAL PROVISIONS; REGULATIONS. The
Department of Health and Social Services may proceed
to adopt regulations necessary regarding standards for
residential child care facilities, including the
qualifications of caregivers in residential
psychiatric treatment centers. The regulations take
effect under AS 44.62 (Administrative Procedure Act),
provided that regulations inconsistent with this Act
may not be adopted with an effective date earlier than
April 15, 2010.

***Sec. 3.** AS 47.32.055 is repealed.

***Sec. 4.** Sections 1 and 2 of this Act take effect
immediately under AS 01.10.070(c).

***Sec. 5.** Section 3 of this Act takes effect April
15, 2010.

[3:35:49 PM](#)

REPRESENTATIVE HOLMES objected for discussion.

[3:36:42 PM](#)

MATT JOHNSON, Staff to Representative Wes Keller, Alaska State Legislature, said that the amendment, labeled C.3, was an attempt to consolidate all of the proposed amendments. He discussed each of the provisions offered in the amendment. He explained that the Page 1 and the Page 2, lines 9-13 provisions would make the statute conform exactly to current standards. He stated that Page 2, lines 24-27 would ensure that caregivers who were qualified under the new standard in subsection (c) could only work when a supervisor who had at least a bachelor's degree in a human-service-related field or experience in treatment of children was on-duty. He also noted that the ratio of supervision could be no less than 1 to 6. He pointed out that Page 2, line 28, would ensure that the training would be equivalent to that currently provided. He summarized that the new Section 2 would authorize DHSS to adopt regulations which might be inconsistent with Section 1, provided they did not go into effect prior to April 15, 2010. He said that the new Section 3 would repeal some of the qualifications required of caregivers in RPTCs [residential psychiatric treatment center], as of April 15, 2010. He presented the new Section 4, which conferred authority upon DHSS to adopt regulations for caregiver qualifications and other standards for RPTCs, and would be immediately effective. He finished the amendment discussion and reported that the new Section 5 would delay the effective date of the repealer in Section 3 until April 15, 2010.

[3:40:07 PM](#)

REPRESENTATIVE CISSNA asked if DHSS was going to comment.

MR. JOHNSON replied that DHSS had just received a copy of the proposed amendment.

[3:40:33 PM](#)

REPRESENTATIVE COGHILL opined that DHSS could already solve the problem without SB 32. He announced that he would oppose the bill, provided DHSS arrived at a solution. He offered his support of the proposed amendment if it would facilitate a solution to the workforce entrance barrier problem.

[3:42:25 PM](#)

CO-CHAIR KELLER stated that he wanted only one working document.

[3:42:35 PM](#)

REPRESENTATIVE SEATON referred to Page 2, lines 24-27, and asked for an explanation to the amendment percentage of 1 to 6, or 16 percent, which was substantially higher than the DHSS ratio of 10 percent.

MR. JOHNSON replied that the 1 to 6 ratio conformed to the norm of other states.

[3:43:54 PM](#)

REPRESENTATIVE SEATON asked who suggested this ratio.

MR. JOHNSON replied that Myra Munson supplied that language.

[3:44:15 PM](#)

REPRESENTATIVE SEATON asked for supporting data to this lower level, as it did not agree with the DHSS suggested ratio.

[3:44:46 PM](#)

CO-CHAIR KELLER announced that the objection to the amendment, labeled C.3, would remain while the House Health and Social Services Standing Committee listened to public testimony.

[3:45:23 PM](#)

JEFF JESSEE, Chief Executive Officer, Alaska Mental Health Trust Authority, Department of Revenue (DOR), opined that the amendment discussion was proof that trying to write regulation into statute was not a good idea. He pointed out the disparity in suggested ratio mentioned earlier was an example of poor process. He noted that DHSS Commissioner Hogan had committed to work on these regulations. He suggested that DHSS be given the opportunity to respond over the interim, and if DHSS had not made satisfactory progress, to move forward with the bill during the next session.

CO-CHAIR KELLER replied that DHSS had not yet responded with a proposal.

[3:48:12 PM](#)

REPRESENTATIVE CISSNA asked what AMHTA was doing for the Bring The Kids Home program. She asked specifically if AMHTA had discussed the workforce shortages, analyzed the needs, and offered any suggestions.

MR. JESSEE, in response to Representative Cissna, said that the work group met regularly, discussed these issues, and had placed an emphasis on work force development, not just the RPTC levels of care. He allowed that it was challenging for AMHTA and DHSS to work on everything at once. He reported that these regulations were a priority, in order to recruit people with reasonable qualifications. He explained that the Bring the Kids Home program had invested in work force development. He pointed out that the work force would review what other states had done, and would report back to the committee with a set of regulations that would meet the needs of the kids and the providers.

[3:52:18 PM](#)

MYRA MUNSON, Attorney, The Boys and Girls Home of Alaska, reiterated that there was an ongoing problem of hiring enough direct care providers. She noted that a Fairbanks RPTC would need variances, or passage of HB 223, for hiring its staff. She opined that the amendment, labeled C.3, reflected a reasonable standard, based upon her research and past experience. She explained the reasons for the staffing standards. She expressed her trust for DHSS and AMHTA intent, but reflected that the process could be interminably slow. She proposed that HB 223 should be passed, take immediate effect, and have an August 15, 2009, repeal date. She reported that it took nine months for an assisted living regulation to take effect after the published first notice, and that it was thirteen months for a barrier crimes regulation. She pointed out that the first notice of a Medicaid re-write was published in July, 2006, with a supplemental notice published in September, 2008, and there was still not a published regulation. She agreed that this work was hard, and that there were a lot of issues for review. She reported that there was currently a "real life problem with a real life provider who received a Certificate of Need from the state." She reported that without sufficient response, the ability to provide care would be compromised. She expressed a lack of confidence that variance would solve the problem. She suggested that HB 223 should be passed, with a sunset clause for one year. She referred to the fiscal note, and relayed that Alaska Children's Services (ACS) had offered its residential

care training program, which met the current standard, to any other providers at no charge.

[4:00:54 PM](#)

REPRESENTATIVE COGHILL asked how many individual variances would be requested by the Fairbanks RPTC.

MS. MUNSON replied that she did not know about the process for granting variances, but that she had heard the ACS testimony of refusal to its variance request.

REPRESENTATIVE COGHILL replied that DHSS had testified that a variance was available. He asked if The Boys and Girls Home of Alaska had applied for a variance.

[4:01:42 PM](#)

MS. MUNSON said that one variance was pending, but not in regard to the direct care giver staff. She relayed that the Boys and Girls Home was waiting for a DHSS report that identified the DHSS concerns.

[4:02:26 PM](#)

REPRESENTATIVE COGHILL observed that DHSS should be questioned about responding. He suggested that The Boys and Girls Home of Alaska should immediately apply for a variance.

[4:02:58 PM](#)

MS. MUNSON reported that the variance process was described as a regulatory process. She opined that The Boys and Girls Home of Alaska and DHSS needed to develop a collaborative relationship.

[4:04:04 PM](#)

REPRESENTATIVE COGHILL noted that there appeared to be economic duress.

MS. MUNSON replied that she was not aware of any financial sanctions. She stated that it was a necessary facility, it was granted a 44 bed Certificate of Need, and it would close without Medicaid approval, which was contingent on the licensing.

[4:05:04 PM](#)

CO-CHAIR KELLER said that this had been an ongoing process.

[4:05:35 PM](#)

CO-CHAIR HERRON asked if the "statutory fix" would alleviate a cash flow problem for The Boys and Girls Home of Alaska.

MS. MUNSON said that the bill was not necessary for economic protection, except to make The Boys and Girls Home of Alaska eligible for the care payments that other RPTCs received. She affirmed that HB 223 was a quicker, more effective, more certain means than the variance process. She related that the motive would be to stay open and provide quality care.

[4:07:03 PM](#)

CO-CHAIR HERRON opined that a "statutory fix" would give The Boys and Girls Home of Alaska a better cash flow.

MS. MUNSON replied that HB 223 would allow them to provide care consistent with state requirements.

[4:07:26 PM](#)

CO-CHAIR KELLER said that DHSS was determined to work collaboratively with The Boys and Girls Home of Alaska.

[4:07:42 PM](#)

REPRESENTATIVE CISSNA asked if The Boys and Girls Home of Alaska was operating in good standing.

MS. MUNSON replied that, to her knowledge, DHSS had taken no action to revoke its license. She confirmed that they had received a letter from Medicaid stating a necessity for further training and monitoring. She acknowledged that there had been start up problems which needed to be fixed, and that there was an ongoing staffing review. She emphasized that the staffing requirements were higher than The Boys and Girls Home of Alaska had been able to meet.

MS. MUNSON, in response to Representative Cissna, said that the only effect of the bill would be for staffing to be based on the new standard.

[4:10:58 PM](#)

REPRESENTATIVE SEATON asked about the economic impact of going out of business for lack of Medicaid funding as opposed to the economic impact of a few caregivers with a different experience level. He asked for a clarification.

[4:11:38 PM](#)

MS. MUNSON explained that this was a 44 bed unit, with only 33 percent of the staff meeting the existing direct caregiver licensing standards. She noted that fewer staff resulted in fewer available beds. She indicated that the facility had a financial breakeven number for occupied beds, in order to remain open.

REPRESENTATIVE SEATON responded that this was the first notification that only one third of the staff met the existing requirements. He asked for clarification for the proposed Section 3, contained in the amendment, labeled C.3.

MS. MUNSON, in response to Representative Seaton, noted that testimony during SB 32 had affirmed that a solution was best attained through regulation. She pointed out that many testifiers had admitted that there was a long standing problem. She explained that Section 3 allowed an operative one year window, which would then be repealed. She pointed out that during the interim, DHSS could write new regulations, which would go into effect after April 15, 2010.

[4:16:54 PM](#)

PAT HEFLEY, Deputy Commissioner, Office of the Commissioner, Department of Health and Social Services (DHSS), acknowledged that DHSS was asked to re-write regulations in 24 hours. He shared that his team met, collected documents, and concluded that the responsibility was to keep the places safe, to bring the kids home, and to work with the private agencies for success. He relayed that DHSS did not know about these specific work force shortages. He reiterated an earlier stated DHSS mission for workforce development. He shared that there were many more issues than could be addressed in 24 hours. He stressed that DHSS was serious about its mission, and he offered his belief that DHSS had systems to address most of the issues concerned. He confirmed that DHSS had a variance system which approved almost 100 percent of requested variances. He said that DHSS had offered The Boys and Girls Home of Alaska a variance the prior October.

REPRESENTATIVE COGHILL asked for a definition to that variance.

[4:20:42 PM](#)

MR. HEFLEY said that currently there was not an institutional variance for employment. He acknowledged that it was not unusual for a work force challenge, and that there was a system for accommodation to individuals. He shared that a conclusion of the recent work group was for a return to the principles. He acknowledged a work force shortage in this particular area. He expressed a desire for DHSS to work with the provider groups and the family members, and to review the issues and requested changes. He explained that he did not want to put the kids at risk for a year. He requested to maintain the current system, while working to build a new system during the next 9 months. He offered a letter outlining this plan from the commissioner, which read in part:

The department commits to enhancing and expediting the process by which a residential psychiatric treatment center can apply for and obtain a decision on a variance application regarding caregiver qualifications. The department commits to promulgating and adopting new regulations by January 19, 2010, related to the qualifications for caregivers in residential psychiatric treatment centers. The department commits to reporting to the legislature on August 1, 2009, and November 1, 2009, with the department's progress in promulgating and adopting the aforementioned regulations. The department commits to the report that shall provide information relating to all of the efforts that we have done in terms of soliciting input from agency provider groups, families, and other shareholders efforts in developing and expanding the caregiver workforce pool through increasing options for people to obtain DHSS approved training and information on the standards and we will evaluate and change the regulations pertaining to information on the standards in other states for education and training for qualifications for caregiver staff and requirements for direct supervision, mentoring, and staffing ratios.

He added that this plan would not be a huge document.

[4:26:37 PM](#)

CO-CHAIR HERRON remarked that the legislative process could be clumsy, and he asked if this would still be in effect if HB 223 did not become law.

MR. HEFLEY, in response to Co-Chair Herron, said that DHSS wanted to make an improvement, and that this issue needed to be addressed.

[4:27:23 PM](#)

CO-CHAIR HERRON asked if this was an accelerated regulatory process, or in any way different than the normal regulatory process.

MR. HEFLEY responded that it was a priority, and would receive special attention.

[4:28:21 PM](#)

REPRESENTATIVE CISSNA remarked that the upcoming interim was a time for the committee to help develop a system for healthier, shorter stays.

MR. HEFLEY voiced appreciation for the comment, but said that DHSS did not want to redesign the entire Bring the Kids Home program. He agreed that there would be a separate process for addressing the issues she advocated.

[4:30:28 PM](#)

REPRESENTATIVE CISSNA asked if The Boys and Girls Home of Alaska was operating in good standing. She also asked if HB 223 would affect any action or consideration from DHSS toward The Boys and Girls Home of Alaska.

MR. HEFLEY suggested that the DHSS attorney respond.

[4:32:19 PM](#)

STACIE KRALY, Chief Assistant Attorney General; Statewide Section Chief, Human Services Section, Civil Division (Juneau), Department of Law (DOL), in response to Representative Cissna, said that The Boys and Girls Home of Alaska was currently open and operating. She revealed that it had been issued a sanction letter under the state Medicaid program which was related to the programmatic side of caregiver qualifications. She indicated that a report was forthcoming on a licensing investigation. She

responded to the second question from Representative Cissna, and replied that the bill, as originally proposed, had a retroactive provision, which would have nullified any action by DHSS. She opined that removal of the transitional language, should this bill pass and a licensing action take place, could be used as a defense against any licensing enforcement action from DHSS.

[4:33:58 PM](#)

REPRESENTATIVE SEATON opined that this bill did not solve the problem.

MR. HEFLEY, in response to Representative Seaton, said that he was correct in his assessment. He said that the intent was to find a solution. He explained that DHSS wanted the kids to be safe.

[4:38:05 PM](#)

CO-CHAIR KELLER reminded Mr. Hefley to send the letter from the DHSS Commissioner.

[4:39:43 PM](#)

The gavel was passed from Co-Chair Keller to Co-Chair Herron.

The committee took an at-ease from 4:39 p.m. to 4:40 p.m.

[4:40:54 PM](#)

[The proposed amendment, labeled C.3, was held for further discussion.]

[HB 223 was held over.]

The committee took an at-ease from 4:40 p.m. to 4:42 p.m.

HB 50-LIMIT OVERTIME FOR REGISTERED NURSES

[4:42:53 PM](#)

CO-CHAIR HERRON announced that the final order of business would be HOUSE BILL NO. 50, "An Act relating to limitations on mandatory overtime for registered nurses and licensed practical nurses in health care facilities; and providing for an effective date."

[4:43:31 PM](#)

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, declared that HB 50 was a patient and nurse safety bill. She referred to the earlier hearing on the bill, and announced that the changes to the bill addressed the four major concerns.

[4:44:48 PM](#)

CO-CHAIR HERRON said that he would continue to work with the sponsor on HB 50.

[4:45:16 PM](#)

NANCY DAVIS, President, Alaska Nurses Association (ANA), said that the ANA was aware of the proposed changes to the bill, and that the ANA supported the bill. She stated that nurses, employers, and health care facilities should all assure the safety of patients. She declared that a statewide standard would protect patients and nurses, and that patient safety should not be a negotiable issue. She expressed support for flexible staffing, and said that employers and nurses could agree on the shift length. She pointed out that an important part of HB 50 was the protection against retaliation for a nurse who spoke up for safety. She noted the challenges for rural staffing. She directed attention to the limitations placed by other professions to the number of hours worked. She said that ANA had worked for five years to limit excessive work hours and overtime, and that ANA offered its support for HB 50.

[4:51:16 PM](#)

LANETTA LUNDBERG, Director, Human Resources, Ketchikan General Hospital, said that HB 50 placed unwarranted regulation and management, and that it was a response to isolated situations. She opined that HB 50 was structured for a few people, but would place an undue hardship on the majority.

[4:53:23 PM](#)

MICHAEL SMITH, Tanana Chiefs Conference (TCC), explained that Tanana Chiefs Conference (TCC) was a tribal consortium that provided health care services to the Interior Native community. He acknowledged the shortage of nurses, but stated that HB 50 exacerbated the problem for Native non-profit health services. He directed attention to the unique challenges of Alaska. He listed some of the TCC major concerns for regulation, which

included the application to federal facilities and the Indian Health Services. He noted the ambiguity for travel time in the proposed bill. He offered to listen to the proposed amendments and then to work with the sponsor for changes that would not adversely affect rural healthcare providers.

[4:58:22 PM](#)

STACY ALLEN, Health Care Representative, said that HB 50 was about patient safety. She stated that unlimited overtime was not a safe nursing practice. She offered support for HB 50.

[5:00:08 PM](#)

REPRESENTATIVE LYNN noted that he had a conflict of interest, as his daughter was a registered nurse.

[5:00:31 PM](#)

JUANITA DIAMOND stated that the bill was for the promotion of better patient care and nurse safety. She pointed out that 15 states had already adopted similar legislation. She said that she supported HB 50.

[5:01:55 PM](#)

CHRISTINA VANCLEVE, RN, said that the passage of HB 50 was crucial to protect the health and safety of Alaskans, and to protect the occupational safety of nurses.

[5:02:54 PM](#)

PATRICIA SENNER, RN, said that HB 50 had a lot of workforce implications. She noted that the average age of nurses was 48, and that extending the number of hours worked could impact the decisions for nurses to stay in the work force. She noted that younger nurses had families and could not work long hours and overtime. She shared an example of mandated overtime at Alaska Psychiatric Institute which resulted in the departure of the young nurses. She stated that the other states in the Pacific Northwest had eliminated mandatory overtime.

[5:04:35 PM](#)

DEBBIE THOMPSON, Executive Director, Alaska Nurses Association (ANA), said that ANA supported HB 50, and she offered assistance with the draft work for any changes to the bill.

5:05:30 PM

KATHLEEN GETTYES, President, Providence Registered Nurses Bargaining Unit, Providence Hospital, shared a personal story about nursing care. She spoke in support of HB 50, and she said that Alaskans should expect that nurses are alert and properly rested. She stated that HB 50 would protect the patients, the nurses, and the health care facility.

5:08:02 PM

LEE ANN COX, Human Resources Manager, Wildflower Court, said that Wildflower Court opposed HB 50. She explained that Wildflower Court did not have any mandatory overtime, or mandatory on-call, and did not have any complaints. She stated that HB 50 "would eliminate our ability as a healthcare provider to responsibly staff in a time of need if it was to arise." She detailed its staffing schedule options. She pointed out that the bill would set a needless precedent for government intervention for Wildflower Court, and many other facilities. She questioned the need to report on a non-existent issue at Wildflower Court, especially with the myriad of already required reports and forms.

5:12:28 PM

ANGEL DOTOMAIN, President & CEO, Alaska Native Health Board (ANHB), agreed with the concerns raised by other tribal health care services. She acknowledged the concerns by the ANA, and its goal to improve the workplace and patient safety. She listed the concerns of ANHB, to include: similar legislation had not been implemented in any rural states; there was not a documented need for HB 50, as the shortage of nurses allowed the freedom to move; ANHB organizations did not agree that mandatory overtime was an issue, as there were existing processes for addressing nurse concerns; the exemption for some facilities raised legal questions, especially for any impact on the Alaska Native Medical Center (ANMC) Level II trauma center; the legislation did not address the regional recruitment concerns. She commented on the onerous and costly reporting requirements. She explained that the Fair Labor Standards Act was recently revised to recognize the need for flexibility with some nurse scheduling. She pointed out that Tribal Health facilities would be adversely impacted by HB 50. She offered to work with all the stakeholders to meet the needs for patient safety.

5:19:26 PM

CO-CHAIR HERRON asked to see some data that supported the assumption that patient safety was at risk. He referred to the current bargaining discussions between Providence Hospital and its nurses, and questioned whether mandatory overtime was an issue.

5:21:39 PM

REPRESENTATIVE WILSON referred to a power point and a nurses' survey [included in the members' packets.] and pointed out that these were a good source for many answers.

5:22:25 PM

REPRESENTATIVE CISSNA expressed her concern for the rural communities.

REPRESENTATIVE WILSON acknowledged that there was a problem for the rural areas, and she posed the possibility that an exemption might be allowed.

REPRESENTATIVE CISSNA said that she would like to work with Representative Wilson on that possibility.

5:23:48 PM

CO-CHAIR HERRON reflected that it was important to not create two types of nurses, based on federal and private facilities.

5:24:01 PM

REPRESENTATIVE SEATON expressed concern with the allowable working hours and the reporting requirements of HB 50.

[HB 50 was held over.]

5:25:00 PM

ADJOURNMENT

There being no further business before the House Health and Social Services Standing Committee, the meeting was adjourned at 5:25 p.m.