

ALASKA STATE LEGISLATURE
SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

February 4, 2009

1:32 p.m.

MEMBERS PRESENT

Senator Bettye Davis, Chair
Senator Joe Paskvan, Vice Chair
Senator Johnny Ellis
Senator Joe Thomas
Senator Fred Dyson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 32

"An Act relating to medical assistance payments for home and community-based services."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 32

SHORT TITLE: MEDICAID:HOME/COMMUNITY BASED SERVICES

SPONSOR(s): SENATOR(s) ELLIS

01/21/09	(S)	PREFILE RELEASED 1/9/09
01/21/09	(S)	READ THE FIRST TIME - REFERRALS
01/21/09	(S)	HSS, FIN
02/04/09	(S)	HSS AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

MAX HENSLEY, staff
to Senator Johnny Ellis
State Capital
Juneau, AK

POSITION STATEMENT: Read the sponsor's statement.

MARIE DARLIN, Coordinator
AARP Capital City Task Force
Juneau, AK

POSITION STATEMENT: Supported SB 32.

LYNN KENNEY

Alaska Association on Developmental Disabilities (AADD)
Wasilla, AK

POSITION STATEMENT: Supported SB 32.

STEVE LESKO, President
State Board of Directors
Key Coalition of Alaska
Anchorage, AK

POSITION STATEMENT: Supported SB 32.

JIM BECK, Executive Director
Access Alaska
Anchorage, AK

POSITION STATEMENT: Supported SB 32.

JOHN CANNON, Executive Director
MatSu Services for Children and Adults
Wasilla, AK,

POSITION STATEMENT: Supported SB 32.

MIKE RACE, head of the Legislative Committee
Pioneers of Alaska
Juneau, AK

POSITION STATEMENT: Supported SB 32.

JON SHERWOOD, Medical Assistant Administrator
Department of Health and Social Services (DHSS)
Juneau, AK,

POSITION STATEMENT: Answered questions regarding provider rates.

ACTION NARRATIVE

[1:32:42 PM](#)

CHAIR BETTYE DAVIS called the Senate Health and Social Services Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Ellis, Paskvan, Thomas, Dyson and Davis.

SB 32-MEDICAID:HOME/COMMUNITY BASED SERVICES

CHAIR DAVIS announced consideration of SB 32.

SENATOR ELLIS thanked the committee for hearing this bill so promptly and for the co-sponsorship of several members of the

committee. He said this bill provides for regular rate review for home and community-based services. These are the home and community-based services that help Alaska seniors and Alaskans with developmental disabilities; he was pleased to report that letters of support have been coming into his offices from providers across the state. This is a topic of keen interest because it affects the quality of life for Alaskan seniors and those with developmental disabilities and because for many community-based services it is a matter of staying in business or going out of business.

He said that when he was approached last fall about sponsoring this legislation, he researched the statutes and realized it is absolutely appropriate that statute calls for regular rate reviews for hospitals and nursing homes, which do a terrific job caring for Alaskans. The state has also made a policy and budget decision to license and encourage home and community-based services offering a lower level of care to keep Alaskans out of those more expensive and restrictive settings. There is a place for all of the for-profit and non-profit businesses in the continuum of care across Alaska; so when people asked him why hospitals and nursing homes have regular rate review and consideration for covering the true cost of care, while home and community services do not, he could not give a rational response. The time has come for this legislature to consider regular, if not annual, rate review for the home and community-based services.

SENATOR ELLIS met with Commissioner Bill Hogan, Department of Health and Social Services (DHSS) and members of his team yesterday; they have decided to work collaboratively to find common ground on this issue. He added that he would like to offer some recommendations and refined language that were developed through that collaboration at a future meeting in the form of a proposed committee substitute, but wanted the committee to hear some important testimony today.

[1:37:52 PM](#)

MAX HENSLEY, staff to Senator Ellis, said that because they anticipate some technical changes to the bill going forward, he would speak broadly to the intent of the bill at this time.

CHAIR DAVIS interjected that she would like Mr. Hensley to present the sponsor's statement for people in the audience who are not familiar with the bill.

MR. HENSLEY explained that SB 32 creates a mechanism for providers of home and community-based services to receive regular rate reviews. Providers of home and community-based services do so through four Medicaid waivers that the state of Alaska currently holds, which allow them to seek reimbursement on a 50/50 state/federal match. Those four waivers cover the categories of older Alaskans, the developmentally disabled, children with complex medical conditions and adults with physical disabilities. There are approximately 350 providers serving 6400 people across state under these waivers. This does not include the 845 people who were on the developmental disabilities wait list at the close of fiscal year 2008.

The rates these providers receive were frozen for years, until the legislature gave them a four percent rate boost across the board in 2008. Many of them have not received a comprehensive rate review since 2004 and some have not had a review in more than a decade, which means their reimbursement rates are based on an antiquated methodology that does not reflect modern prices and practices. These services are key to allowing people to continue to live their lives in their communities among family and friends, holding jobs as productive members of society.

He highlighted a few of the many associations around the state that have provided letters in support of this legislation, including: AARP, The Commission on Aging, The Mental Health Board, The Advisory Board on Alcohol and Drug Abuse, The Mental Health Trust Authority, the AgeNet coalition of health providers and Alaska Behavioral Health Association.

[1:41:02 PM](#)

MR. HENSLEY added that there are three sections in the bill; all three add the words "home and community based services as defined in the Medicaid waivers section of statutes" to the current rate review section, which applies to the institutional services.

CHAIR DAVIS announced that she will take public testimony before entertaining questions.

[1:41:41 PM](#)

MARIE DARLIN, AARP Capital City Task Force, Juneau, AK, said AARP strongly supports this bill. These community services are very important to all the members of AARP; with an aging population, it is important that these providers be properly paid so they can continue to provide the services needed to keep people out of more costly facilities. She reminded the members

that this also affects younger people who have disabilities and who, with these services, may be given the opportunity to be part of their communities.

It makes sense, she concluded, to review these rates yearly as they do for hospitals; it might actually result in more home and community-based services, which are desperately needed and represent a less-costly way to do business.

[1:44:20 PM](#)

LYNN KENNEY, Alaska Association on Developmental Disabilities (AADD), Wasilla, AK, said AADD is an organization of over 30 disabilities service providers statewide including Bethel, Kotzebue, Nome, Seward, Homer, Soldotna, Valdez, Sitka, Ketchikan, Anchorage, Juneau and Fairbanks. It was formed approximately 28 years ago to create a united provider voice for best practices, advocacy, partnership and networking and was spearheaded by the Fairbanks Resource Agency, Hope Cottages and ARCA [American Rehabilitation Counseling Association]; that idea evolved into AADD. AADD member organizations share similar concerns, experience similar problems and have a unique perspective as providers of services. Today AADD remains a united body that volunteers time, effort, expertise and a belief in what people working together can accomplish. AADD strongly supports SB 32 and appreciates this legislation being introduced by Senator Ellis and co-sponsored by the Chair.

AADD Member organizations have been struggling to continue to provide the same level of services with rates that were frozen in 2004. Last year the legislature did grant a modest increase in rates, but there is no increment in this year's budget, nor is there a mechanism in place for rates to keep up with inflation and cost of living increases. Providers are deeply concerned about how they can continue to offer the best care possible. How, she asked, can they keep quality personnel with no pay increases, shrinking benefits and extended work days? They are losing many good employees who aren't leaving to work for another provider but are leaving the field all together.

MS. KENNEY urged the committee to support SB 32.

[1:47:55 PM](#)

JOHN CANNON, Executive Director, Matsu Services for Children and Adults, Wasilla, AK, said he agrees with the previous testimony. He thanked the committee for their consideration of the bill and expressed his strong support. His agency serves over 300 MatSu residents with disabilities and this would make a tremendous

difference in their lives; it will give the agency the stability it needs, with rates they can rely on and a more dependable pricing structure.

[1:49:12 PM](#)

MIKE RACE, past president of Pioneers of Alaska and head of their legislative committee, Juneau, AK, expressed his appreciation for the opportunity to speak before the committee. Pioneers of Alaska is very supportive of this legislation; the quality of care that people can bring into their homes for themselves and their families is critical to their members, he said, and the intent of this legislation is superb. He thanked the committee again and said the Pioneers of Alaska will be looking forward to further action.

[1:50:39 PM](#)

JOHN SHERWOOD, [Medical Assistant Administrator] Department of Health and Social Services (DHSS), Juneau, AK, agreed that this is a very important subject. He said the department has been working with a contractor for about a year to develop new rate methodologies for paying providers and appreciates Senator Ellis addressing it in this legislation. The department also appreciates the increase they were able to give providers through the budget last year. They do have some concerns about specific provisions of the bill and look forward to working with both Senator Ellis and the committee to come up with language that will be acceptable to all.

[1:52:08 PM](#)

SENATOR DYSON asked if he understood correctly that the department has been looking at the adequacy of these rates for about a year.

MR. SHERWOOD confirmed that the department has been looking at the rates; they surveyed providers during the late summer and fall of 2008 to get cost information and see how it compares with current rates. One of the things they discovered is that the kind of cost accounting the department uses for rates isn't the same as the accounting many of these providers do. Consequently they could not get as much information as they wanted, but to the extent they could find it, it appeared that costs were about equal to rates with variations among different types of services. Of course, he said, to some extent that reflects the fact that the State is the primary payer for most of these services; people can only spend the amount of money the state pays them to provide a service, so there is a circular nature to the calculation.

SENATOR DYSON asked if he is correct in assuming that the department does not need this bill to perform a study or to adjust rates.

MR. SHERWOOD agreed that they do have the regulatory authority to set rates or establish a rate methodology.

SENATOR DYSON asked what the department wants to see adjusted in this legislation; what is the department uncomfortable about in it or in the direction that Senator Ellis is headed with it.

[1:54:40 PM](#)

MR. SHERWOOD responded that the department has a couple of concerns with it; one is placing the rate-setting provision for these providers in the same statute they use for the health facilities. There is a history to that health facility statute that goes back to a period of time when the federal government dictated a very specific way the state had to establish rates for those facilities and the statute was intended to bring the state into compliance with the federal statute. For the most part, the explicit methodologies for setting provider rates are not set in statute as it deprives the state of one possible option when it needs to look at cost-containment strategies. The department is willing to look at language that establishes some parameters about how they will develop rates and how frequently they will be reviewed.

SENATOR DYSON asked Mr. Sherwood if he is correct in saying that the department believes methodology is better set in regulation rather than in statute.

MR. SHERWOOD confirmed that is the long-standing preference of the department.

SENATOR DYSON agreed with Senator Ellis that it is the legislature's responsibility to make sure there are sufficient resources available to protect the well-being of the state's vulnerable population. Before this process is over, he said, he would like someone from the department to tell the committee whether or not there are sufficient funds in the rate to provide this vulnerable population the quality of help they need.

[1:57:33 PM](#)

MR. SHERWOOD said he thinks they can come to a decision about whether a methodology is adequate to provide good rate-setting. They still have a lot to learn about provider costs however, so

he cannot make a definitive statement that where they will be tomorrow is exactly where they should be.

1:58:35 PM

SENATOR DYSON asked Mr. Sherwood if it is true that the state does not have an ombudsman monitoring the care of these folks and that no audit has been performed. He said he thinks he understands Mr. Sherwood's and the department's position; they are worried that the legislature will put into statute a mechanism that is going to drive costs at a time when the state is facing a \$1.6 billion deficit and he appreciates their concern. If indeed these clients are not getting the level of care they need however, that would indicate that the methodology the state uses for setting the costs is missing something; or the methodology isn't being applied; or if it is being applied, the state is not appropriating the money.

MR. SHERWOOD agreed that cost and rate of payment are certainly important considerations in the quality of care, but not the only considerations that might affect quality. He believes Alaska is fortunate to have many dedicated providers who strive to provide quality services in difficult circumstances. He also mentioned that there is a long-term care ombudsman who oversees the quality of some, but not all of the providers that would be affected by this bill.

SENATOR DYSON said he appreciates that the department is working with Senator Ellis to improve the bill. He encouraged Mr. Sherwood to fight for what he believes is the right methodology and hoped he would soon be able to state definitively that the administration either recommends this to go forward or it doesn't.

2:01:19 PM

CHAIR DAVIS pointed out that this is the Health and Social Services Committee and they won't be dealing with the financial issues; Finance will take that up.

She advised Mr. Sherwood that while she appreciates the fact that he has been working with Senator Ellis's office, this bill is now in her possession because she chairs the HSS committee and she expects to hear about anything the department is doing and any concerns they have before he comes before the committee to testify. She said it sounds as if the department is working with Senator Ellis to reach a compromise and draft another bill, but it is up to the legislature to decide if it should be in policy, regulation or statute. She asserted that she isn't

trying to pin him down, but she does not want to be left out of the loop.

[2:03:11 PM](#)

SENATOR DYSON responded to Chair Davis's comments, saying that one of the limitations the Alaska legislature has to deal with is that they are not able to change regulation by resolution, as they are in many states. That often leaves the legislature in the position of using the heavy hammer of statute in order to force changes in regulations they believe are inadequate. He agreed with Senator Davis that it is the job of the Health and Social Services Committee to look after the care that Alaska's citizens are getting and said he hopes the two of them will go to battle with Finance if necessary to get the funding to do what is needed.

CHAIR DAVIS said she has no problem with that; she just wants to point out that their focus now is not on the finances but on the bill before them. The Finance Committee will have the chance to figure out where the money is coming from. Meanwhile, she wants to keep her focus on the mission of this committee.

SENATOR ELLIS thanked Mr. Sherwood for his communication and collaboration. He asked if it is fair to say that the number of times over the last 20 years that the department has reviewed and increased rates through the regulatory process has been infrequent.

MR. SHERWOOD answered that some of these rates have been changed infrequently; prior to 2004, some of the rates were reviewed and adjusted annually based on budgeted cost information but since that time very little analysis has been done.

[2:05:37 PM](#)

SENATOR ELLIS asked if he could speak briefly to some of the shortcomings of the questionnaire that was created by the department's contractor and what they might do to improve upon that. It was described to him by many of the service providers as a complicated questionnaire and he understands that it received a rather poor response.

MR. SHERWOOD said their contractor put out a survey in line with common cost accounting surveys used to set rates for different sorts of providers in other states. The department discovered that most of Alaska's providers, having never done that kind of cost accounting, did not have accounting systems that made it easy to accurately determine what information they needed to

enter. Even some of the providers whose systems could provide the information said they didn't feel they could verify its accuracy; so they chose not to include it. In subsequent meetings with providers, many of them said that if the department could give them a standard for reporting in advance, they would be willing to amend their accounting systems in order to respond.

SENATOR DYSON left the meeting at 2:07 p.m.

SENATOR ELLIS affirmed that there is more work to be done. Finally, he said, it is not his intent to materially affect the annual rate review for hospitals and nursing homes. He believes it should be relatively easy for the drafter to compartmentalize what he is trying to do with this legislation in a portion of the statute that will have no affect on the long legal history of hospital and nursing home rate setting. He is just trying to ensure the same less restrictive, more cost-effective consideration for home and community-based services.

2:08:48 PM

CHAIR DAVIS thanked Mr. Sherwood for his testimony and agreed that there is more work to be done on this bill. She then announced that she would open the floor to public testimony.

2:09:04 PM

STEVE LESKO, President, State Board of Directors, Key Coalition of Alaska, Anchorage, AK, stated that in terms of historical significance and importance, this is the most critical testimony he's given in over 30 years. Decades ago, a reporter named Geraldo Rivera exposed the horrors, atrocities, segregation and brutalization of those who lived in a now infamous institution called "Willowbrook." This past December, he asserted that the wait list is, in essence, the new institution, calling it "imprisoning," producing tremendous stress and strain. Alaska by and through the fiscal accountability and programmatic compassion of this legislature and administration has instituted a concerted plan to eradicate its wait list by implementing a draw of over 50 eligible individuals each quarter; only yesterday that list held captive over 1300 of Alaska's families. Today that number has been reduced to 845. There is just one significant problem; Alaska's community programs and the lack of a rate-review process. Due to this systematic operation to eradicate the waiting, the "patient," the community programs and all the Alaskan families they support, is dying. Many of the symptoms have been reported: a significant inability to recruit and retain qualified staff; cuts in benefits that include health

insurance; dramatic increases in co-pay and deductibles; a sporadic inability to consistently and effectively train many staff that results in a chronic lack of service and a revolving door of staff turn over and the reality that many staff need to maintain two jobs, to come to work when sick to fill vacancies or to work unhealthy double shifts ... 16 or more hours on the job per day. Programs have cut, reduced and eliminated, begged, borrowed, maintained lines of credit and have stretched themselves so precariously thin that they are now in a danger zone where something must and something will have to give.

MR. LESKO continued, stressing that everyone should be aware of the escalating list of expenses they face every day from gasoline prices, to heating costs, goods and products, rentals, transportation and insurance. Last year [home and community-based services] saw a four percent increase after a four-plus year rate freeze; factored over a period of six years, community programs will have received 2/3 of one percent annually! The commercial sector would increase the price of products, institute layoffs or simply shut their doors; these home and community-based service providers can do neither, nor would they choose to do so. Theirs is a labor-intensive profession and the challenges to secure an adequate workforce are growing astronomically. The health and safety of Alaska's most vulnerable citizens is their paramount concern; this is why the Key Coalition of Alaska embraces and unequivocally supports SB 32 as a desperately needed solution to the rapid deterioration of the community support network.

He urged the committee to begin forging a legacy built on equity, parity and a true sense of community preservation.

[2:13:43 PM](#)

CHAIR DAVIS advised the committee that Jack Nielson, Executive Director, Department of Health and Social Services, Anchorage, AK, and Emily Ennis, Fairbanks Resource Agency, Fairbanks, AK, are on line and available for questions if needed.

CHAIR DAVIS closed public testimony and announced that SB 32 will not be moved today; she asked the sponsor if he would like to make a closing statement.

[2:14:52 PM](#)

SENATOR ELLIS said there is more work to be done; he intends to bring a set of choices before the committee for discussion and perhaps a committee substitute for their consideration. Out of respect for the committee's time he said, he did not encourage

everyone to testify, although there were people all over the state "chomping at the bit" to do so. His office has been soliciting letters of support and resolutions from all over the state and those continue to pour in.

Many of Alaska's home and community-based services have reached a breaking point. As Steve Lesko said so eloquently, they can't lay off workers; they can't close their doors or people would be out in the streets; the time has come to have some regular rate review so they can keep up with reality and the cost of doing business. These providers, the vulnerable children and adults, are looking to the legislature to make the right decision.

[2:16:49 PM](#)

JIM BECK, Executive Director, Access Alaska, Anchorage, AK, spoke as an advocate for the rights of persons with disabilities and elder Alaskans and as a provider of Medicaid personal care assistance. He said much of his testimony has been covered by others, but he wants to make two points. He wants to make sure that personal care assistant services are included in the final version this bill. Personal care assistant services are a foundational set of services that aren't part of the four Medicaid waivers Mr. Hensley talked about. These services save the state a lot of money and currently serve thousands of Alaskans in their homes. He also emphasized the importance of statutory rate review. It is clear, he said, that regulatory authority is not enough or personal care would not have gone over 10 years without a rate increase. Starving providers on the most cost-effective end of the long-term care system is terribly ineffective public policy; home and community-based services must be on an equal footing with expensive institutional care. He pointed out that he has not once seen the state threaten Providence Hospital or any of the institutional care providers with rates as a means of cost-containment, yet that is exactly the strategy that has been foisted on home and community-based service agencies for years. It is Access Alaska's hope that SB 32 will solve that problem and put them on a statutory footing and not a regulatory one. With that, he thanked the committee for hearing this bill and said he would provide further testimony in writing.

[2:19:43 PM](#)

SENATOR THOMAS said that Mr. Beck's testimony is along the lines of his own concerns. He is not intimately familiar with 47.07.070 or with the definition of "home and community-based services" under the Act; so he is curious as to how comprehensive this is and what other services they might they be

missing. He said they should be looking to make sure those ancillary services are at least considered.

SENATOR ELLIS said his office can get that information.

2:20:42 PM

CHAIR DAVIS reiterated that many people have provided written testimony; they couldn't possibly have accommodated all of the people who wanted to speak. She repeated that this bill will be coming back at a later time. [SB 32 was held in committee.]

2:21:12 PM

There being no further business to come before the committee, CHAIR DAVIS adjourned the meeting at 2:21 PM.