

ALASKA STATE LEGISLATURE
SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

January 30, 2012

1:31 p.m.

MEMBERS PRESENT

Senator Bettye Davis, Chair
Senator Dennis Egan
Senator Kevin Meyer
Senator Fred Dyson

MEMBERS ABSENT

Senator Johnny Ellis

COMMITTEE CALENDAR

SENATE BILL NO. 172

"An Act relating to health care decisions, including do not resuscitate orders."

- MOVED SB 172 OUT OF COMMITTEE

SENATE BILL NO. 144

"An Act temporarily reinstating the child and adult immunization program in the Department of Health and Social Services; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 172

SHORT TITLE: CARE DIRECTIVES/DO NOT RESUSCITATE ORDERS

SPONSOR(s): SENATOR(s) DYSON

01/20/12	(S)	READ THE FIRST TIME - REFERRALS
01/20/12	(S)	HSS, JUD
01/30/12	(S)	HSS AT 1:30 PM BUTROVICH 205

BILL: SB 144

SHORT TITLE: STATE IMMUNIZATION PROGRAM

SPONSOR(s): SENATOR(s) GIESSEL, OLSON

01/17/12	(S)	PREFILE RELEASED 1/6/12
01/17/12	(S)	READ THE FIRST TIME - REFERRALS

01/17/12 (S) HSS, FIN
01/30/12 (S) HSS AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

SENATOR FRED DYSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 172.

CHUCK KOPP, Staff
Senator Fred Dyson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis of SB 172 on behalf of the sponsor.

TERRY BANNISTER, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions related to SB 172.

WARD HURLBURT, M.D.
Director and Chief Medical Officer
Division of Public Health
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: Testified on SB 172 and on SB 144.

SENATOR CATHY GIESSEL
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Co-sponsor of SB 144.

JONATHAN TAYLOR, Intern
Senator Cathy Giessel
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis of SB 144 for the sponsor.

ROSALYN SINGLETON, M.D.
American Academy of Pediatrics
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 144.

GEORGE RHYNEER, M.D.
Legislative Affairs Chair
Alaska Physicians and Surgeons
Eagle River, Alaska

POSITION STATEMENT: Testified in support of SB 144.

RANDI SWEET
United Way of Anchorage
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 144.

MARY SULLIVAN
Alaska Primary Care Association
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 144.

CHUCK WHEELER
Nome, Alaska

POSITION STATEMENT: Testified in support of SB 144.

GEORGE BROWN, M.D.
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 144.

ACTION NARRATIVE

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CHAIR BETTYE DAVIS called the Senate Health and Social Services Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Egan, Dyson, Meyer, and Chair Davis.

SB 172-CARE DIRECTIVES/DO NOT RESUSCITATE ORDERS

[1:32:43 PM](#)

CHAIR DAVIS announced that the first order of business to come before the committee was SB 172, of which she is a co-sponsor.

SENATOR FRED DYSON, primary sponsor, stated that the purpose of SB 172 is to correct possible ambiguities in end-of-life decisions currently in statute and ensure that the intent of the legislature is followed. It also protects patient rights and do-not-resuscitate (DNR) orders. He emphasized that the patient's wishes should always predominate. In the case of an incompetent patient, the responsibility would fall to family members or authorized surrogates.

SENATOR DYSON related that the Health Care Decisions Act, which was passed in 2004, changed provisions in AS 13.52.120 by establishing a presumption in favor of life. When there is a question as to what should be done medically, the presumption is to preserve the life of the patient. He said he believed that when the statute is read in its entirety, it can and should be interpreted to allow the patient, or their authorized representative, to prevent a physician from issuing a DNR order. This legislation would clarify the authority of DNR decisions with respect to the patient and physicians, and amend the Alaska Care Directive form to allow patients to accept or refuse life-sustaining procedures. He reported no opposition to SB 172 and noted that it has also been referred to the Senate Judiciary Standing Committee.

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CHUCK KOPP, staff to Senator Dyson, presented the sectional analysis:

Section 1 amends AS 13.52.045 to prohibit a health care institution or facility from interpreting the issuance of a DNR order as preventing the providing of life-sustaining procedures to the patient.

Section 2 amends AS 13.52.060(e) to prohibit a health care provider from declining, for reasons of conscience, to comply with a DNR order that is consistent with this chapter. It also states that the subsection does not allow a health care provider, institution, or facility to decline to comply with an individual instruction or a health care decision that requests that cardiopulmonary resuscitation (CPR) or other resuscitative measures be provided.

Section 3 amends AS 13.52.060(f) to state that the subsection does not allow a health care provider, institution, or facility to decline to comply with an advance health care directive or a health care decision that is consistent with the chapter and that requests that CPR or other resuscitative measures be provided. The subsection addresses declining to comply with an individual instruction or health care decision that requires medically ineffective health care or health care contrary to generally accepted health care standards.

MR. KOPP noted a drafting error on page 2, line 13; "declined to comply with an advanced health care directive" should be changed to "declined to comply with an individual instruction" to make it consistent with line 9.

CHAIR DAVIS commented that Terry Bannister was available to answer questions.

MR. KOPP continued:

Section 4 amends AS 13.52.065(a) to limit a physician's right to issue a DNR order only as provided in AS 13.52.065.

Section 5 amends AS 13.52.065(b) to require that the protocol adopted by the department for withholding CPR comply with AS 13.52.065.

Section 6 adds new subsections (g-j). Subsection (g) prohibits a physician from issuing a DNR order for a patient without the express consent described in the subsection, except as provided in (h). Subsection (h) states that a physician may issue a DNR order for a patient without the expressed consent required by (g) if the patient does not have capacity, no one is authorized to make health care decisions, and the patient has an advanced health care directive that indicates the patient wants a DNR order, or the directive is silent about the issuance of a DNR order and another physician concurs in the decision.

Subsection (i) requires a physician to revoke a DNR order for a patient if the issuance of the DNR violates (g), if the patient has capacity and requests that the DNR order be revoked, if the patient does not want a DNR order, or if the patient does not have capacity and does not have an advance health care directive that indicates that the patient wants a DNR, and a person authorized to make health care decisions for the patient requests or does not oppose the revocation of the DNR order. A physician shall also revoke a DNR order if the patient is under 18 years of age and the parent or guardian of the patient requests that the DNR order be revoked.

Subsection (j) says a physician may revoke a DNR order issued by another physician for a patient if the

physician has a physician-patient relationship or a health care obligation to the patient.

Section 7, amends AS 13.52.080(a) to replace a citation to a subsection that is repealed by this bill.

Section 8 amends AS 13.52.080(c) to provide that its immunity provisions do not apply if a DNR order relied on by the health care provider, institution, or facility was issued in violation of AS 13.52.065.

Section 9 amends AS 13.52.120(b) to clarify that a violation of the new provisions added by bill section 6, does not, in the context of the provisions required consistency with the chapter, constitute a homicide. It also adds a cross reference to the new (h) as an exception for applying the subsection's approach to suicide or homicide.

Section 10 adds AS 13.52.120(h) to state that the provisions in (b) about homicide and suicide do not apply to a person who orders or causes the withholding or withdrawal of life-sustaining procedures and acts intentionally, recklessly, with criminal negligence, or with gross negligence.

Section 11 amends the optional form in AS 13.52.300 to add a section regarding a patient's wishes on life-sustaining procedures. He directed attention to page 13 of the bill.

Section 12 Amends AS 13.52.390, the definition section, to change the definition of "health care decision" to state that the term includes a direction about receiving CPR or other resuscitative measures.

Section 13 repeals AS 13.52.065(f), which currently addresses how DNR orders are made ineffective.

Section 14 adds a provision to indicate how DNR orders made before the bill's effective date are to be treated in light of the bill.

TERRY BANNISTER, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, agreed that the previously suggested correction would parallel previous language.

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WARD HURLBURT, M.D., Director and Chief Medical Officer, Division of Public Health, Department of Health and Social Services (DHSS), stated that SB 172 matched his experience as a doctor and hospital administrator. He agreed with the intent of the bill to honor the patient's wishes and to prolong life when there is a question about what is to be done medically. He called the bill reasonable and appropriate. He stated that the bill would not require additional funding.

CHAIR DAVIS thanked the sponsor for addressing health care DNR decisions. She said the bill has been sent to the Medical Association and has been referred to the Senate Judiciary Standing Committee.

SENATOR DYSON commented that the bill was written in collaboration with one of the major health providers. He preferred to move the bill.

CHAIR DAVIS said she had no problem moving the bill.

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SENATOR EGAN moved to report SB 172 from committee with individual recommendations and attached zero fiscal note.

CHAIR DAVIS announced that without objection, SB 172 moved from the Senate Health and Social Services Committee.

SB 144-STATE IMMUNIZATION PROGRAM

[1:52:36 PM](#)

CHAIR DAVIS announced the consideration of SB 144.

SENATOR CATHY GIESSEL, co-sponsor, introduced SB 144. She recalled the history of smallpox inoculation in the United States initiated by George Washington. She said that smallpox has been essentially wiped out due to effective vaccination. She shared the history of the Iditarod Sled Dog Race, initially called the Great Race of Mercy, due to its role in saving Nome from being decimated by diphtheria, which, today, has also been eradicated due to vaccination. Polio has also been eradicated because of vaccination programs.

She spoke of generous funding for Alaska from Senator Ted Steven's office, which provided a "universal" vaccination program. In 2008 the Center for Disease Control began to cut

back federal funding for the Alaska Immunization Program (AIP) from \$4.3 million to \$700,000 for FY13. Due to this loss of funding, the state has discontinued vaccinations for adults and for around 47,000 underinsured children. SB 144 would provide state-funded vaccinations until 2015.

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JONATHAN TAYLOR, intern to Senator Giessel, presented the sectional analysis for the sponsor. He said that Section 1 provides a statement of legislative intent pertaining to AIP, which is established in Section 2 of the bill. It includes a summary of the past and future of the program and emphasizes the temporary nature of the program.

Section 2 establishes AIP in the Department of Health and Social Services (DHSS) and requires the department to determine eligibility, moved to adopt regulations, and apply for available funds. It establishes standards for provider and recipient participation in the program and the types of vaccinations covered.

Section 3 authorizes the immediate adoption of regulations by DHSS.

Section 4 establishes a delayed repeal of the Act of June 30, 2015.

Section 5 provides an immediate effective date.

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SENATOR GIESSEL introduced Rosalyn Singleton and George Rhyneer.

[2:00:31 PM](#)

ROSALYN SINGLETON, M.D., American Academy of Pediatrics, testified in support of SB 144. She recalled her experience as a pediatrician before vaccinations were available. She shared what would happen if vaccinations were not reinstated. If the bill does not pass, next year the state would provide vaccines only for children who are eligible under Medicaid and Alaska Native programs or who are uninsured. This puts Alaska at risk for outbreaks of measles and other infections.

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GEORGE RHYNEER, M.D., Legislative Affairs Chair, Alaska Physicians and Surgeons, testified in support of SB 144. He spoke of the benefits he and his family and friends have

received from the state vaccination program. He said a letter of support would be forthcoming.

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RANDI SWEET, United Way of Anchorage, testified in support of SB 144. She encouraged a long-term funding resolution for the state vaccination program. She described vaccinations as critical to both adults' and children's health. She referred to the constitutional mandate that the legislature provide for the promotion and protection of public health, which SB 144 would do.

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MARY SULLIVAN, Alaska Primary Care Association, testified in support of SB 144. She spoke of the negative effects on community health centers if vaccinations are not increased.

[2:07:40 PM](#)

WARD HURLBURT, M.D., Director and Chief Medical Officer, Division of Public Health, Department of Health and Social Services (DHSS), testified on SB 144. He said DHSS is in favor of the bill, but requires a minimal fiscal note. He spoke of his experience in Dillingham when there were no vaccinations. He shared that Alaska currently rates at number 42 among states in immunization programs. Half of the children in Alaska qualify for federally funded vaccination programs. About 25 percent have coverage through private insurance. The bill targets the 25 percent that do not qualify for federal funding and have no insurance.

DR. HURLBURT related that from a public health standpoint, without an immunization rate of 80 percent, there is no "herd immunity", which means there is a risk to the whole population. Alaska has the highest percentage of "parental hesitancy" at 9 percent. The department is working on that issue. He gave credit to the health care workers in Talkeetna, a challenging community, for their efforts to increase the immunization rate.

CHAIR DAVIS commented that a fiscal note was forthcoming from DHSS.

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CHUCK WHEELER, Nome, testifying on his own behalf, spoke in support of SB 144. He said the state was notified in 2008 of the funding cuts and last year he was aware of federal funding cuts. He noted that immunization costs keep escalating and the funding keeps decreasing. He shared statistics of high disease rates in

Northwest Alaska. Vaccinations are not available in Nome. The uninsured cannot afford vaccinations. He supported vaccinations as a needed prevention program.

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GEORGE BROWN, M.D., testified in support of SB 144. He inquired about medical costs per child of the whooping cough vaccine, as opposed to the cost of the outbreak of whooping cough in Southeast Alaska in 2007-8. He said the vaccine costs about \$2.40. He asked about the cost of the H1N1 influenza vaccination, versus the cost of the epidemic in 2009-10. He said the cost of the vaccine was about \$3.20. He reported that the cost savings for the measles, mumps, and rubella vaccination was \$16 for every dollar invested. He noted that the child vaccination program in Washington State consists of a pooling of federal, private, and state funds to assure that all children receive all recommended immunizations.

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CHAIR DAVIS said she was familiar with Washington State's program and suggested pooling might be a good method of providing an immunization program for Alaska. She said the task at hand is to fund Alaska's program for this year. She emphasized that SB 144 was a very important bill.

SENATOR EGAN referred to page 3, subsection (f)(1), and asked why meningococcal and human papillomavirus vaccines were exempted.

DR. HURLBURT responded that the two vaccines were not included because they are very costly and the cost benefit ratio is not as good. For most other vaccines, the savings in medical costs is about \$8 per child for every dollar spent. The goal of the legislation is to make the program affordable and provide the best protection, first for the children, and then for adults who don't have other coverage.

SENATOR EGAN wondered why this issue couldn't be addressed long term, rather than temporarily.

SENATOR GIESSEL stated that the reason the bill only goes through 2015 is because the plan is to research other state immunization programs in order to come up with a long-term program for Alaska.

DR. HURLBURT spoke of models found in Washington and New Hampshire. There are cost and supply advantages for a state to

purchase all immunizations in order to create a universal program. Alaska is attempting to have a universal program.

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SENATOR DYSON said he thought the bill could move from committee.

SENATOR DAVIS said she would prefer to have a fiscal note first. She added that another issue which merits attention is the "opt out" choice parents have.

SENATOR MEYER questioned how to address the 9 percent of parents who are reluctant to have their children immunized.

DR. HURLBURT said he thought education was the solution to dispelling false information about immunizations. He referred to a British study which promoted a misconception that vaccinations caused autism. There is also the issue that a two-year-old needs about 15 shots over the first couple years, which bothers parents. Cost is also a concern. Public health nurses and school requirements are part of the solution. Mississippi has a law that requires a provider's note to excuse a child from receiving vaccinations.

SENATOR MEYER asked what the average rate of parental hesitancy was.

DR. HURLBURT explained that 9 percent is the number of parents who opt out of having their children immunized. Alaska's immunization rate is currently 60 percent. Alaska Native children have an immunization rate of 90 percent.

CHAIR DAVIS held SB 144 in committee.

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There being no further business to come before the committee, Chair Davis adjourned the Senate Health and Social Services Standing Committee meeting at 2:30 p.m.