

**ALASKA STATE LEGISLATURE**  
**SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE**

March 21, 2012

1:33 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. 221

"An Act relating to the disposition of proceeds from the alcoholic beverage tax and to the alcohol and other drug abuse treatment and prevention fund."

- MOVED SB 221 OUT OF COMMITTEE

SENATE BILL NO. 118

"An Act providing medical assistance reimbursement for the services of licensed marital and family therapists."

- MOVED SB 118 OUT OF COMMITTEE

SENATE BILL NO. 5

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

- MOVED CSSB 5(HSS) OUT OF COMMITTEE

SENATE BILL NO. 55

"An Act relating to mental health patient rights, notifications, and grievance procedures."

- MOVED CSSB 55(HSS) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 221

SHORT TITLE: ALCOHOLIC BEV. TAX/PREVENTION FUND  
SPONSOR(s): FINANCE

02/29/12 (S) READ THE FIRST TIME - REFERRALS  
02/29/12 (S) HSS, FIN  
03/21/12 (S) HSS AT 1:30 PM BUTROVICH 205

BILL: SB 118

SHORT TITLE: MEDICAID REIMBURSEMENT FOR FAMILY THERAPY  
SPONSOR(s): SENATOR(s) DAVIS

04/01/11 (S) READ THE FIRST TIME - REFERRALS  
04/01/11 (S) HSS, FIN  
03/21/12 (S) HSS AT 1:30 PM BUTROVICH 205

BILL: SB 5

SHORT TITLE: MEDICAL ASSISTANCE ELIGIBILITY  
SPONSOR(s): SENATOR(s) DAVIS, EGAN, ELLIS, FRENCH, WIELECHOWSKI

01/19/11 (S) PREFILE RELEASED 1/7/11  
01/19/11 (S) READ THE FIRST TIME - REFERRALS  
01/19/11 (S) HSS, FIN  
03/07/11 (S) HSS AT 1:30 PM BUTROVICH 205  
03/07/11 (S) Heard & Held  
03/07/11 (S) MINUTE(HSS)  
03/23/11 (S) HSS AT 1:30 PM BUTROVICH 205  
03/23/11 (S) Heard & Held  
03/23/11 (S) MINUTE(HSS)  
03/28/11 (S) HSS AT 1:30 PM BUTROVICH 205  
03/28/11 (S) Moved SB 5 Out of Committee  
03/28/11 (S) MINUTE(HSS)  
03/30/11 (S) HSS RPT 3DP 1DNP 1AM  
03/30/11 (S) DP: DAVIS, ELLIS, EGAN  
03/30/11 (S) DNP: DYSON  
03/30/11 (S) AM: MEYER  
04/08/11 (S) FIN AT 9:00 AM SENATE FINANCE 532  
04/08/11 (S) Heard & Held  
04/08/11 (S) MINUTE(FIN)  
04/11/11 (S) FIN RPT 4DP 2NR  
04/11/11 (S) DP: HOFFMAN, THOMAS, EGAN, ELLIS  
04/11/11 (S) NR: STEDMAN, OLSON  
04/11/11 (S) FIN AT 9:00 AM SENATE FINANCE 532  
04/11/11 (S) Moved SB 5 Out of Committee  
04/11/11 (S) MINUTE(FIN)  
04/14/11 (S) RETURNED TO RLS COMMITTEE  
03/16/12 (S) RETURNED TO HSS COMMITTEE  
03/19/12 (S) HSS AT 1:30 PM BUTROVICH 205

03/19/12 (S) Heard & Held  
03/19/12 (S) MINUTE(HSS)  
03/21/12 (S) HSS AT 1:30 PM BUTROVICH 205

BILL: SB 55

SHORT TITLE: MENTAL HEALTH PATIENT RIGHTS & GRIEVANCES

SPONSOR(S): SENATOR(S) DAVIS

01/19/11 (S) READ THE FIRST TIME - REFERRALS  
01/19/11 (S) HSS, FIN  
02/15/12 (S) HSS AT 1:30 PM BUTROVICH 205  
02/15/12 (S) Heard & Held  
02/15/12 (S) MINUTE(HSS)  
03/21/12 (S) HSS AT 1:30 PM BUTROVICH 205

**WITNESS REGISTER**

JAY LIVEY, Staff  
Senator Lyman Hoffman  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Introduced SB 221 on behalf of the Senate Finance Committee, sponsor of SB 221.

KATE BURKHART, Executive Director  
Advisory Board on Alcoholism and Drug Abuse  
Division of Behavior Health  
Department of Health and Social Services  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of SB 221.

DALE FOX, President  
Alaska CHARR  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 221.

CHRISTY LAWTON, Director  
Office of Children's Services  
Department of Health and Social Services  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the discussion of SB 221.

JEFF JESSEE, Chief Executive Officer  
Alaska Mental Health Trust Authority  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 221.

KAREN EAKES, Chair  
Ketchikan Wellness Coalition  
Ketchikan, Alaska  
**POSITION STATEMENT:** Testified in support of SB 221.

MARILEE FLETCHER, Behavioral Health Specialist  
Division of Behavioral Health  
Department of Health and Social Services  
Juneau, Alaska  
**POSITION STATEMENT:** Answered questions related to SB 221.

JOANNA BALES, Deputy Director  
Tax Division  
Department of Revenue  
Anchorage, Alaska  
**POSITION STATEMENT:** Answered questions related to SB 221.

CELESTE HODGE, Staff  
Senator Bettye Davis  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Introduced SB 118 on behalf of the sponsor.

KEN MCCARTY, Marriage and Family Therapist  
Kodiak, Alaska  
**POSITION STATEMENT:** Spoke in favor of SB 118.

MICHAEL WEINGARTEN, Marriage and Family Therapist  
Anchorage, Alaska  
**POSITION STATEMENT:** Testified in support of SB 118.

JANA MINER-COLLINS, Marriage and Family Therapist  
Palmer, Alaska  
**POSITION STATEMENT:** Testified in support of SB 118.

LINDA KING, President  
Alaska Association of Marriage and Family Therapy  
Anchorage, Alaska  
**POSITION STATEMENT:** Testified in support of SB 118.

JON SHERWOOD, Medicaid Special Projects  
Office of the Commissioner  
Department of Health and Social Services  
Juneau, Alaska  
**POSITION STATEMENT:** Provided information on a fiscal note for SB 118.

TERI KEKLAK, Section Manager  
Program Integrity Section  
Division, Department of Behavioral Health  
Department of Health and Social Services  
Anchorage, Alaska

**POSITION STATEMENT:** Provided information related to SB 118.

DIXIE HOOD, Marriage and Family Therapist  
Juneau, Alaska

**POSITION STATEMENT:** Urged the committee to support SB 118.

JEAN MISCHEL, Attorney  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions pertaining to SB 5

THOMAS OBERMEYER, Staff  
Senator Bettye Davis  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Explained changes in SB 5 on behalf of the sponsor.

#### **ACTION NARRATIVE**

[1:33:59 PM](#)

**CHAIR BETTYE DAVIS** called the Senate Health and Social Services Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Dyson, Meyer, and Chair Davis. Senator Egan arrived shortly thereafter.

#### **SB 221-ALCOHOLIC BEV. TAX/PREVENTION FUND**

[1:35:01 PM](#)

CHAIR DAVIS announced that the first bill before the committee would be SB 221.

JAY LIVEY, staff to Senator Lyman Hoffman, introduced SB 221 on behalf of the Senate Finance Committee, sponsor of SB 221. He began by saying that SB 221 is a relatively simple bill. It states that the legislature should allocate 100 percent of existing alcohol tax revenues to fund substance abuse treatment prevention programs. This allocation is intended to supplement

and not supplant existing money that has been appropriated for treatment programs.

He explained that the bill proposes a significant change in thinking about funding alcohol and drug abuse programs. It does not create a dedicated fund, as money still has to be appropriated before it can be spent. But it does send the signal that as a state we do understand the great need for more alcohol and drug abuse treatment.

MR. LIVEY reported that during the current fiscal year, the revenue to the fund was approximately \$19.8 million. This accounts for half of the alcohol taxes collected. Expenditures from the fund during this fiscal year total approximately \$19.6 million. He related that the bulk of this expenditure is for behavioral health grants - this category of funding accounts for almost 80 per cent of the expenditures - with the bulk of the rest going to rural services and suicide prevention, and small portions to administration and Medicaid. He referred to a list of grantees in members' packets.

MR. LIVEY pointed out that if this bill were to pass, an additional \$20.4 million would be available for appropriation. He opined that everyone could suggest areas in which to spend the money - domestic violence programs, child abuse treatment and prevention, corrections, fetal alcohol syndrome, and others. He said many would agree that there is a need in all of these areas for expanded or new programs. He believed that between the advocates, the experts in the department, and the legislature, a rational plan for determining the most cost-effective use of this money can be crafted.

[1:38:41 PM](#)

SENATOR MEYER said he looked at the list of items under behavioral health and saw the inclusion of the FASD Program.

MR. LIVEY agreed it was there. He said he thought a little over \$2 million went to that program.

SENATOR MEYER wanted to be sure that education was included along with prevention and intervention of FASD. He summarized that a separate prevention fund would be set up from which amounts could be appropriated.

MR. LIVEY said that was correct. He explained that the fund already exists. Currently, half of all alcohol tax revenues go

into that fund and 50 percent of the fund is available to be appropriated by the legislature.

CHAIR DAVIS opened public testimony.

[1:41:28 PM](#)

KATE BURKHART, Executive Director, Advisory Board on Alcoholism and Drug Abuse, Division of Behavior Health, Department of Health and Social Services, testified in support of SB 221. She referred to a letter of support from the Board in members' packets that included strong support that all of the money from the alcohol excise tax be allocated to substance abuse prevention and treatment services. She said the legislative intent behind the increase in the alcohol tax is to supplement, not supplant general funds.

She addressed ways the funding could be used. She shared statistics about youth drinking. This legislation would make additional resources available for prevention, as well as for treatment services. The Alaska Judicial Council released a report on the impact of the Therapeutic Justice program, which showed a lower rate of recidivism after participation in the process. She concluded that an investment in treatment will reap savings.

[1:45:04 PM](#)

DALE FOX, President, Alaska CHARR, testified in support of SB 221. He urged the committee to provide more funds for detox and rehab services. One challenge is having programs available when people are ready to receive help. Frequently, citizens look for help and are unable to find the services they need. He said the alcohol industry supports SB 221. He made three recommendations: the state should study available programs to determine which ones are producing results, fund more beds, doctors, and nurses at detox facilities, and assist more people get help from rehab services.

[1:48:21 PM](#)

CHRISTY LAWTON, Director, Office of Children's Services (OCS), Department of Health and Social Services, spoke of her role in working with alcohol abuse issues. She reported that most of the cases reported to OCS are related to substance abuse and due to neglect, sexual abuse, physical abuse, and mental injury. Neglect is the prevailing issue. Western Alaska has the highest number of substance abuse cases. OCS connects families to state resources statewide. She noted that sometimes alcohol abuse is the prevailing issue that brings families to OCS's attention,

and other times another issue unveils a substance abuse problem in the family. She did not have data that provided the number of cases that are as a direct result of substance abuse; however, she said her personal experience shows that substance abuse is a daily challenge.

JEFF JESSEE, Chief Executive Officer, Alaska Mental Health Trust Authority, testified in support of SB 221. He termed it an important first step in trying to get a handle on some of the alcohol problems in the state. He reported that several years ago the Trust funded a study on what the cost of alcohol was to the state and to the state budget. Overall, alcohol abuse and problems related to alcohol abuse cost the state over \$700 million. Alcohol abuse costs the state budget hundreds of millions of dollars in terms of abuses and crimes and lost productivity.

MR. JESSEE stressed that AMHTA is in total agreement with CHARR on this issue. He suggested that the next steps are to get a good evaluation of current programs and share which ones are successful with the public. The second goal is to determine where the unmet needs are. Next, the legislature and the executive branch should set some goals. For example, one might be to provide treatment for domestic violence and sexual assault victims. Other examples might be treatment for parents who are involved with OCS or treatment for those who are incarcerated and support services upon release from prison. He emphasized how important it is to provide treatment immediately for those who need it. He suggested setting goals in these areas and working with multiple agencies to develop policies in order to improve the quality of life and to reduce the costs of alcoholism in Alaska.

[1:55:43 PM](#)

KAREN EAKES, Chair, Ketchikan Wellness Coalition, testified in support of SB 221. She shared the results of a community survey which showed that substance abuse had the highest needs in Ketchikan. She said that 37 percent of the respondents viewed substance abuse as one of the three biggest health issues in Ketchikan. She stated the benefits of funding prevention programs.

MARILEE FLETCHER, Behavioral Health Specialist, Division of Behavioral Health, Department of Health and Social Services (DHSS), answered questions related to SB 221.

[1:58:31 PM](#)

SENATOR DYSON asked what was behind the policy decision to not put all the proceeds from the alcohol tax into alcohol treatment.

MS. FLETCHER said she understood that they were used for alcohol treatment.

SENATOR DYSON pointed out that only 50 percent of the receipts go towards treatment.

JOANNA BALES, Deputy Director, Tax Division, Department of Revenue (DOR), addressed Senator Dyson's question. She recalled that 50 percent of the alcohol tax revenue went into the fund when it was first created in 2002. At that time the alcohol tax was bringing in between \$12 million and \$13 million each year. She said she understood that when alcohol tax revenues increased to about \$30 million a year, 50 percent of the tax exceeded what was currently going into the fund - about \$19 million. It was a policy call to continue to contribute 50 percent to the prevention fund.

SENATOR DYSON understood that it was an executive branch decision, not a legislative decision.

MS. BALES clarified that the legislation was sponsored by then-Representative Lisa Murkowski.

SENATOR DYSON stated that he supports expanding the amount of money that goes into treatment. He asked if there was any discussion of deducting administrative costs from alcohol tax receipts.

MS. BALES replied that she was not aware of that discussion. She explained that most DOR programs are not receipt driven, but are funded by general funds.

[2:01:21 PM](#)

SENATOR DYSON asked if DHSS uses a percentage of the receipts to cover the administration of the fund.

MS. FLETCHER said she believed a small percentage does go toward administering the fund.

CHAIR DAVIS noted that Senate Finance will hear SB 221 next. She reported numerous letters of support for the bill and said she has received no opposition to the bill.

[2:02:23 PM](#)

SENATOR EGAN moved to report SB 221 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SB 221 was reported out of the Senate Health and Social Services Standing committee.

At-ease from 2:02 p.m. to 2:05 p.m.

**SB 118-MEDICAID REIMBURSEMENT FOR FAMILY THERAPY**

[2:05:21 PM](#)

CHAIR DAVIS stated that SB 118 was before the committee.

CELESTE HODGE, staff, Senator Bettye Davis, sponsor of SB 118, introduced the bill. She read from the following sponsor statement:

SB 118 is a simple bill that adds counseling services provided by a licensed marital and family therapist to the list of optional services covered by the Medical Assistance Program in the state of Alaska. Under current Alaska law, licensed marital and family therapists are not eligible to receive direct reimbursement for services provided to Medicaid-eligible clients. Community behavioral health service providers and mental health physicians' clinics that are enrolled with the Medicaid program and employ or contract with licensed family and medical therapists may receive Medicaid reimbursement for those services.

The Department of Health and Social Services will pay for behavioral health services provided by a mental health physician's clinic, only if the services are for treatment and a diagnosable mental health disorder and the services are provided by a psychiatrist or by one of the following licensed professionals who work under the direct supervision of the psychiatrist. Those professional individuals include psychologists, psychological associates, clinical social workers, physician assistants, advanced nurse practitioners, psychiatric nursing clinical specialists, marital and family therapist, or professional counselors. For community behavior health service providers, clinic services must be provided by a member of the community behavior health service provider's staff who is a physician, a physician's assistant, advanced nurse practitioner, or mental health professional clinician

under the general direction of a physician. Otherwise, the only independent providers who are eligible to bill directly for Medicaid behavioral health services are licensed psychologists and physicians.

According to the Kaiser Family Foundation, about 47 percent of Alaska's population, or 334,975 are living in mental health professional shortage areas. Of that group, Kaiser estimates that over 38 percent are underserved. In September of 2011, the Alaska Primary Care Association issued a resolution supporting Medicaid licensed marriage and family therapists, among others, in order to address the shortage of mental health providers and to improve access to behavioral health services in the state.

SENATOR DAVIS opened public testimony.

[2:08:35 PM](#)

KEN MCCARTY, Marriage and Family Therapist, spoke in favor of SB 118. He discussed the lack of family therapists in the state. He described some of the frustrations from this issue and shared examples in Kodiak, Barrow, and Nome. He explained that American Family Therapists can provide mental health work and substance abuse treatment. Adding them to the list under Title 47 would give the state more resources to provide for community needs.

[2:11:20 PM](#)

MICHAEL WEINGARTEN, Marriage and Family Therapist, testified in support of SB 118. He shared his experience with all types of clients. He related that very few Medicaid clients show up for counseling without a referral from some agency, person, or court. Many children in residential treatment are required to have family treatment. Most Medicaid patients show up for treatment because they must. He spoke in favor of independent therapists being included on the list of providers, as included in this bill.

[2:17:16 PM](#)

JANA MINER-COLLINS, Marriage and Family Therapist, testified in support of SB 118. She spoke of the possibility of having to turn Medicaid clients away because of the loss of a physician who provided those services. Those clients will not be able to receive services because therapists are not currently listed as Medicaid providers.

LINDA KING, President, Alaska Association of Marriage and Family Therapy, testified in support of SB 118. She related her experience in a clinic that turns away Medicaid clients because therapists are not currently considered providers. She reported that Alaska has a high number of child neglect and abuse cases, and there is a problem with lack of therapy services for these children, leading to a cycle of abuse. She reported that most states allow licensed marital and family therapists to be included as Medicaid providers.

[2:22:52 PM](#)

CHAIR DAVIS requested someone from the Department of Health and Social Services to testify on the bill.

JON SHERWOOD, Medicaid Special Projects, Office of the Commissioner, Department of Health and Social Services, provided information about a fiscal note for SB 118 regarding medical assistance administration. He related information about the changes to the claims payment system. He estimated a one-time cost of \$275,000 of which \$68,800 would be general funds.

CHAIR DAVIS asked if family therapists would be an asset to the state under Medicaid.

[2:25:17 PM](#)

TERI KEKLAK, Section Manager, Program Integrity Section Division, Department of Behavioral Health, Department of Health and Social Services, provided information related to SB 118. She reported that the division is neutral on the bill. She explained that when a new provider is added to the Medicaid system, there are issues to work on before implementation of a new service category can be added. She stated that adding a new provider to Medicaid improves access to clients.

CHAIR DAVIS said the bill would be going to Senate Finance next. She opined that the bill was needed. She asked committee members for their opinions.

[2:27:36 PM](#)

SENATOR DYSON shared that he did not have a conflict of interest now that his wife has retired as a licensed marital and family therapist.

DIXIE HOOD, Marriage and Family Therapist, urged the committee to support SB 118. She said she the bill would allow for more options for patients seeking counseling services, especially in areas with limited mental health providers. She opined that

including therapists under Medicaid would save money from no longer having psychiatrists and psychologists travel to provide those services. Passage of SB 118 would also provide fair reimbursement to therapists.

She shared her experience of providing a sliding fee scale for Medicaid patients in order to serve them. She spoke of the qualifications to be a licensed therapist, her wide range of experience, and the unfairness of not being able to be reimbursed for Medicaid.

[2:35:12 PM](#)

CHAIR DAVIS thanked Ms. Hood for her work. She closed public testimony.

CHAIR DAVIS stated that she felt the bill was needed.

SENATOR EGAN moved to report SB 118 from committee with individual recommendations and the accompanying fiscal notes. There being no objection, SB 118 was reported from the Senate Health and Social Services Standing Committee.

At-ease from 2:36 p.m. to 2:38 p.m.

#### **SB 5-MEDICAL ASSISTANCE ELIGIBILITY**

[2:38:17 PM](#)

CHAIR DAVIS announced that the next bill before the committee was SB 5. She noted that at the previous meeting the CS for SB 5, version I, was adopted.

SENATOR MEYER asked if anyone from the Department of Law was present.

JEAN MISCHEL, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, answered questions pertaining to SB 5.

SENATOR MEYER pointed out that the new version [I] of the bill addresses previous concerns about abortion funding. By [maintaining] Medicaid coverage for children over 12 at 175 percent of the federal poverty level (FPL), the risk of funding more abortions is reduced. He asked if two classes of people were being created by the bill; those over 12 who are funded at 175 percent of the FPL and those 12 and under who are funded at 200 percent of the FPL. He questioned if SB 5 could be challenged in court for that reason. He requested a legal

explanation of what the court would likely do if the bill is challenged.

MS. MISCHEL replied that she did consider the equal protection issue that might be raised when drawing a line regarding eligibility based on age. She said she could not predict if the bill will be challenged for that reason; however, she opined if the bill is challenged on equal protection grounds, it would likely survive constitutional scrutiny because Medicaid has many age categories for both mandatory and optional services. Under an equal protection analysis, the courts would examine whether or not children over 13 are similarly situated to the expanded income eligibility category that version I of SB 5 provides. That would be a hurdle for a challenger because teenagers have different types of health problems and the legislature has the ability to make cost decisions and provide services that the legislature considers, from a policy standpoint, valuable and cost effective.

MS. MISCHEL explained that Congress provides that for mandatory coverage, all states that participate in Medicaid must provide mandatory medical services for kids age six and younger at 133 percent of FPL. That demonstrates that there already is an age cutoff. Some states only provide for that age group; Nevada is an example. She continued to say if a family is at or below 100 percent of the FPL, that age limit goes away. SB 5 goes well above the mandatory minimums.

MS. MISCHEL stated that if the court found that teenagers were similarly situated to kids under 13, then the court would look at whether or not there is a fundamental interest at stake. She said she could not answer that complicated question. She stressed that it is up to the legislature to articulate either a compelling interest or a legitimate interest, depending on what the court determines is at stake. Because there is a potential for dealing with reproductive services for teenagers, the court could apply the compelling interest standard if they found that teenagers were similarly situated. She noted that would be a higher burden for the state to meet, but not an impossible burden. There are many potential state interests, such as to provide medical services to a more vulnerable population, or to cover immunizations for school-age children. The legislature would have to justify treating similarly situated individuals. If a court found that it was just an economic interest, the state would need to articulate a legitimate interest for drawing the age distinction and provide some rational basis for cutting off the age limits.

MS. MISCHEL related that she could not find any cases that looked at age limits that would have precedential value. She gave an example of a Washington state case for home care services in which an "age of 13", along with "a child living at home", was found to be arbitrary. The court would be looking to see if the age cutoff was arbitrary. SB 5 is neutral about what type of care is provided. She concluded that it is up to the legislature to draw the distinctions. Age categories are common distinctions made for Medicaid purposes. She gave examples of age categories. She said SB 5 just deals with an added income limit.

MS. MISCHEL stated that the risk to the state is fairly low because if an equal protection challenge did prevail, after first a finding that the younger kids are similarly situated to the older ones, and that the state either didn't have a compelling interest or legitimate interest that is reasonably related to the change in the law, the result would not be to eliminate Medicaid care for children in general, it would be to go back to the 175 percent category.

MS. MISCHEL pointed out that the other thing version I of SB 5 does is include the added income category for children under the age of 13 in the cost-sharing provision, just as it does for children under 19 years old who are from homes with incomes over 175 percent of the FPL.

[2:50:36 PM](#)

SENATOR MEYER summarized that if the courts would find SB 5 to be unconstitutional, the statute would revert back to 175 percent of the FPL for everyone.

MS. MISCHEL said yes. The court would invalidate the change.

SENATOR MEYER noted that the reason the age distinction was being made in the bill was due to the possibility of abortions. He asked if the court would find that reason arbitrary and capricious.

MS. MISCHEL said she did not know, but thought it extremely unlikely. The Alaska Supreme Court has already found that the state has a legitimate interest in protecting children and providing medically necessary services. In the parental consent case, it was found that parents and the state have a legitimate interest in preventing abortions for children to the extent that is allowed under the privacy interests in the state. She did not

think "arbitrary" would be considered. The question is whether or not the court would say the only reason the legislature has limited the increased eligibility category is to exclude abortion coverage. She opined that someone might be able to argue the case on privacy grounds. The court would apply a compelling interest standard and that interest would have to be narrowly tailored to the change. Even under the higher level of scrutiny, the court could find compelling state interest, as they did in the parental notice litigation.

SENATOR MEYER gave an example of a qualifying child, age 12, losing eligibility at age 13.

MS. MISCHEL agreed with Senator Meyer's example.

SENATOR DYSON thanked Ms. Mischel for her work. He guessed that the bill would be challenged, and that it would be difficult for the amendment to survive the court challenge.

[2:54:23 PM](#)

MS. MISCHEL suggested articulating additional policy reasons for the age cutoff, in addition to preventing teen abortions or pregnancies. She gave examples such as how many children are affected, the cost benefit analysis, and types of medical care younger children need versus older children.

SENATOR DYSON understood it was up to the state to demonstrate a compelling state interest for the position it is taking on the amended version of SB 5 in order to meet any challenges.

CHAIR DAVIS said the bill would not go to Senate Finance, but rather to Senate Rules. She requested that the bill be moved from committee.

SENATOR MEYER asked about the new fiscal notes.

CHAIR DAVIS said fiscal notes will be attached when the bill goes to the Rules Committee.

At-ease from 2:57 p.m. to 2:58 p.m.

[2:58:23 PM](#)

SENATOR EGAN moved to report the CS for SB 5, version I, from committee with individual recommendations and the forthcoming fiscal notes.

SENATOR DYSON objected.

A roll call vote was taken. Senators Meyer, Egan, and Davis voted in favor of the motion and Senator Dyson voted against it. Therefore, CSSB 5(HSS) moved from the Senate Health and Social Services Committee by a 3:1 vote.

At-ease from 2:59 p.m. to 3:00 p.m.

**SB 55-MENTAL HEALTH PATIENT RIGHTS & GRIEVANCES**

[3:00:14 PM](#)

CHAIR DAVIS announced that SB 55 was before the committee. She related that the committee has already heard the bill and she wished to move it on to the next committee of referral.

SENATOR EGAN moved to adopt the CS for SB 55, labeled 27-LS0082\R, as the working draft before the committee.

CHAIR DAVIS objected for discussion purposes.

[3:01:44 PM](#)

THOMAS OBERMEYER, Staff, Senator Bettye Davis, sponsor of SB 55, explained the changes in the bill. Section 1 of the bill adds eight rights to the list of rights of the person undergoing a mental health evaluation. This change accommodates requests made by the Department of Health and Social Services (DHSS) and others.

Section 2 establishes the grievance procedure that had been described before, but now more carefully defines "grievance" to mean "a complaint concerning the patient's treatment care or rights at a mental health evaluation or treatment facility in the state." It includes that the imposition of attorney's fees on the grievant would inflict undue hardship.

Section 3 requires that DHSS provide a standardized notice to patients that separately describes patient rights, available assistance, and the grievance procedure, and provide a written copy.

Section 4 provides that the presumption in Section 2 has the effect of changing Rule 82, Alaska Rules of Civil Procedure.

Section 5 provides a conditional effect of the presumption added in Section 2 that it would take effect only if Section 4 receives a two-thirds majority vote of each house. Only one

section would require a two-thirds vote and that is if the court rules regarding attorney's fees were changed.

CHAIR DAVIS noted the changes made were at the request of the committee at a previous meeting.

CHAIR DAVIS asked for a motion to move the bill from committee. [The assumption was that the objection for discussion purposes was removed.]

SENATOR EGAN moved to report the CS for SB 55, version R, from committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 55(HSS) was reported from the Senate Health and Social Services Standing Committee.

[3:04:44 PM](#)

There being no further business to come before the committee, Chair Davis adjourned the Senate Health and Social Services Standing Committee at 3:04 p.m.