ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE
March 26, 2013
3:04 p.m.

MEMBERS PRESENT

Representative Pete Higgins, Chair
Representative Wes Keller, Vice Chair
Representative Lance Pruitt
Representative Lora Reinbold
Representative Paul Seaton
Representative Geran Tarr

MEMBERS ABSENT

Representative Benjamin Nageak

COMMITTEE CALENDAR

HOUSE BILL NO. 53
"An Act establishing a consultation requirement with respect to the prescription of opiates under certain circumstances."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 53
SHORT TITLE: CONSULTATION FOR OPIATE PRESCRIPTION
SPONSOR(s): REPRESENTATIVE(s) KELLER

01/16/13	(H)	PREFILE RELEASED 1/11/13
01/16/13	(H)	READ THE FIRST TIME - REFERRALS
01/16/13	(H)	HSS, L&C
01/31/13	(H)	HSS AT 3:00 PM CAPITOL 106
01/31/13	(H)	Heard & Held
01/31/13	(H)	MINUTE(HSS)
03/26/13	(H)	HSS AT 3:00 PM CAPITOL 106

WITNESS REGISTER

JIM POUND, Staff
Representative Wes Keller
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 53 as staff for Representative Keller, sponsor of the bill.

MARJORIE POWELL
PhRMA
Washington, DC
POSITION STATEMENT: Testified during discussion of HB 53.

LESLEY DEJARAY, Nurse Practitioner
Sand Point, Alaska
POSITION STATEMENT: Testified during discussion of HB 53.

PATRICIA SENNER
Alaska Nurses Association
Anchorage, Alaska
POSITION STATEMENT: Testified during discussion of HB 53.

JOE CHANDLER, M.D.
AA Spine & Pain Clinic
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to HB 53.

JUDITH DEARBORN, President
Alaska Association of Nurse Anesthetists
Fairbanks, Alaska
POSITION STATEMENT: Testified during discussion of HB 53.

EVA STASSEN, Family Nurse Practitioner
American Association of Nurse Practitioners
Alaska Nurse Practitioner Association
Anchorage, Alaska
POSITION STATEMENT: Testified during discussion of HB 53.

DON HABEGER, Director
Division of Corporations, Business, and Professional Licensing
Department of Commerce, Community & Economic Development
Juneau, Alaska
POSITION STATEMENT: Testified during discussion of HB 53.

ACTION NARRATIVE

3:04:29 PM

CHAIR PETE HIGGINS called the House Health and Social Services Standing Committee meeting to order at 3:04 p.m. Representatives Higgins, Keller, Tarr, Seaton, and Reinbold were

present at the call to order. Representative Pruitt arrived as the meeting was in progress.

HB 53-CONSULTATION FOR OPIATE PRESCRIPTION

3:05:23 PM

CHAIR HIGGINS announced that the only order of business would be HOUSE BILL NO. 53, "An Act establishing a consultation requirement with respect to the prescription of opiates under certain circumstances." [In front of the committee was Version 28-LS0177\C, adopted as the working document on January 31, 2013.]

3:05:31 PM

REPRESENTATIVE REINBOLD moved to adopt the proposed committee substitute (CS) for HB 53, labeled 28-LS0177\Y, Martin, 3/25/13, as the working document. There being no objection, it was so ordered.

3:05:53 PM

REPRESENTATIVE KELLER, as the sponsor of proposed HB 53, said that he appreciated the careful consideration by the committee and that he hoped to move the bill out of committee this session. He directed attention to the two letters in opposition to the proposed bill. [Included in members' packets] He expressed his respect for both the groups, and declared that he wanted to resolve these differences, and move the proposed bill forward.

3:07:34 PM

CHAIR HIGGINS asked that Representative Keller address the changes in the proposed CS, Version Y.

REPRESENTATIVE KELLER, in response, said that there had been some misunderstanding based on the original document, Version A. He asked to first address the opposition to hopefully clarify some of these concerns.

REPRESENTATIVE KELLER, in reference to the letter in opposition to proposed HB 53 from the Pharmaceutical Research and Manufacturers of America (PhRMA) [Included in members' packets], said that PhRMA shared his concern with "the growing non-medical use of prescription drugs." He clarified that this, however,

was not the intent of proposed HB 53, as the bill was focused on the legal use or misuse of prescription drugs, although it did indirectly address the illegal abuse. He expressed his agreement with the statement in the letter, "PhRMA believes that all participants in the drug manufacturing and distribution system must participate in the efforts to reduce the abuse of prescription drugs." He stated that the direct intent of the proposed bill was to address medical use and the resulting addictions. He directed attention to the reference in the letter to the State of Washington legislation, which had created a difficulty for patients to access pain treatment. He stated that there was "raw evidence" that the addiction problem was increasing. He asked that PhRMA reconsider its concerns, especially for the shortage of pain specialists in Alaska, which he declared had been addressed in Version Y. He pointed to page 3, paragraph 1, of the opposition letter, which read: "Therefore, education about the possibility of addiction and how to work with patients to prevent addiction would be much more beneficial." He declared that this was a goal of proposed Version Y. He stated that there was now a lot of information on-line. He directed attention to another letter of opposition, and expressed agreement that there had been an oversight in the original bill, Version A, but that this had now been addressed.

3:12:08 PM

JIM POUND, Staff, Representative Wes Keller, Alaska State Legislature, explained that Version Y corrected changes that had been "inadvertently missed" in the previous working document. He noted some of the changes included in Version C: page 3, line 3, a medical professional could designate a member of staff to check the database, and the language "or more" was added to the milligrams of morphine equivalent; page 3, line 12, changed from four weeks to six weeks after major surgery as this was a more realistic time frame; page 4, line 27, allowed the controlling boards to write regulations to administer pain management in each of their areas of expertise; page 4, line 30, allowed the individual boards to determine the continuing education requirements for a pain management specialist; page 7, lines 14 and 17, added "or more"; page 8, line 1, changed language for end of life care and the need for larger doses of opiates for a longer period of time for cancer patients; page 8, [line 18] used language in existing statute to define nurse anesthetist; page 9, line 28, explained the guidelines of regulations for nurse practitioners and anesthetists; page 13, [line 2] listed grounds for denial; page 14, [line 12] included failure to check the database; and pages 16 and 17 included

requirements for the methadone clinics. He noted that the clinics were not included as pain management specialists, were required to provide their patient information to the database for access by local emergency rooms, and would require that the physician in charge of the methadone clinic act as a primary care physician for any methadone program patient without a primary care physician.

3:18:37 PM

REPRESENTATIVE SEATON, referring to page 3, lines 11 and 12, offered his belief that the proposed bill only applied to a patient after 6 weeks, and he asked if there was any application to the patient prior to this time period.

MR. POUND expressed his agreement that there was not application until that point.

REPRESENTATIVE SEATON pointed to the exclusions on page 3, lines 24, 26, 27, and 30, and to page 4, line 3, as well as other areas in the proposed bill, and asked to whom the proposed bill would apply.

3:21:00 PM

MR. POUND, in response, said that there were situations and individuals who took more than 120 mg/day of opiates for pain relief, and that the proposed bill would let the medical professionals make the decision for the necessary dosage and for the necessity for consultation with the pain management specialist.

3:22:29 PM

REPRESENTATIVE SEATON, pointing to all the exemptions, asked about the scope of patients included under the proposed bill.

3:23:56 PM

REPRESENTATIVE KELLER explained that the proposed bill was attempting to accommodate all the interests in the medical profession, and that the remaining patients were those on an increasing dosage of pain medication opiates and were in danger with a risk to their life. He stated that a dosage above 120 mg/day increased the risk for death and that the proposed bill applied to those people "inadvertently being lead into the trap of addiction."

3:25:34 PM

REPRESENTATIVE SEATON asked how often that dentists were prescribing more than six weeks of opiate drugs to Alaskans in the aforementioned category.

REPRESENTATIVE KELLER suggested that he ask the dentists, and that this was the intent of the new database.

3:26:34 PM

CHAIR HIGGINS, in response as a dentist, explained that a high dosage of opiates for a long period of time was necessary for pain management of temporomandibular joint disorders, and that most of these patients were referenced to oral surgeons.

REPRESENTATIVE SEATON stated that he was seeking to understand the breadth of the problem.

CHAIR HIGGINS, in response as a dentist, said that he might see one or two of these patients each year, and he suggested multiplying that by the number of dentists in Alaska. He pointed out that once he had done whatever he felt possible, he would then recommend the patient for surgery. He stated that occasionally pain management was the only solution.

REPRESENTATIVE SEATON commented that he would like to get an idea of the extent of this problem within all the medical professions.

3:29:26 PM

REPRESENTATIVE KELLER suggested that Representative Seaton ask the Department of Health and Social Services.

REPRESENTATIVE REINBOLD opined that "this is a tough issue to talk about because we're not experts." She stated that she did not "want to shackle providers, yet, I am really concerned. I've heard of many cases out in the community where kids'll break their leg skiing and end up getting addicted to these." She declared it to be a serious issue. She expressed her hope that the bill had not been so watered down as to not be effective, and she offered her belief that the six week time period was a long time. She asked for expert, well rounded testimony that could also offer other options to discourage the use of opiates.

3:30:46 PM

REPRESENTATIVE TARR asked the sponsor if he would seek adjustments to the fiscal note if the database was not funded.

REPRESENTATIVE KELLER replied that the database was, overall, a very useful tool and that the database was in danger from lack of funding. He shared that he had not chosen to offer a bill to include funding for the database, offering his belief that the use of the database was broader, bigger, and more important than the proposed bill. He declared a need for the legislature to address funding for the database.

3:32:24 PM

CHAIR HIGGINS pointed out the importance of the database to the proposed bill. He stated that, should funding for the database disappear, the proposed bill was negated. He shared that funding for the database would be terminated on June 30, 2013, and that he was not aware of any proposal to continue funding. He suggested that Representative Keller table the proposed bill until funding for the database could be obtained, opining that this was bad legislation without the database, and that funding for the database could be difficult.

REPRESENTATIVE KELLER replied that he would prefer to have the proposed bill moved forward, as it brought more awareness for the significance of the database. He affirmed that he did not view a hold on the proposed bill as a hostile act.

3:34:18 PM

REPRESENTATIVE SEATON directed attention to page 3, line 5, and asked when these grounds for discipline would go into effect.

3:36:08 PM

REPRESENTATIVE KELLER expressed his agreement that some clarification language could be necessary. He opined that the intent was to not indiscriminately prescribe medication without knowledge of the current prescription dosage levels for the patient. He stated that a patient under the care of a physician could have good reason for long term dosage for pain management. He offered his belief that there should be a consequence to the treating physician if a high dosage was prescribed without checking the database.

3:37:23 PM

REPRESENTATIVE SEATON asked to clarify that consultation with a pain management specialist was required for any usage more than six weeks; and, if you were a dentist, it was necessary to check the controlled substance prescription database, although he was unsure what was to be verified in the database.

3:38:05 PM

CHAIR HIGGINS clarified that this database check would be required for all health care providers, although page 3 of the proposed bill only referenced dentists.

CHAIR HIGGINS explained that the database was key to the proposed bill, and that his understanding for the intent of the proposed bill was for the health care provider to check the database to ensure that the patient was not already receiving a prescription of more than 120 mg/day of opiate from another provider. He clarified that this was not limited to a database check after six weeks. After six weeks of prescription, it became necessary for the patient to confer with a pain management specialist before any more prescription could be written.

REPRESENTATIVE KELLER expressed his agreement.

CHAIR HIGGINS directed attention to page 10, line 8, which offered regulations which defined procedures for board approval of advanced nurse practitioners and nurse anesthesiologists as pain management specialists. He asked how it would be guaranteed that 30 percent of a practice was for pain management care, as stated in the proposed bill. He also asked how it had been determined that 30 percent was the optimal amount of time.

3:40:25 PM

MR. POUND replied that, as many medical professionals worked 30 percent of their time in pain management, this had been adopted as the benchmark.

CHAIR HIGGINS asked how it had been determined that these medical professionals worked 30 percent of their time in pain management.

MR. POUND offered his belief that this was in response to questions from the [state] medical board.

REPRESENTATIVE KELLER declared that the intent of the sponsor was to give discretion to the various boards to set "appropriate and responsible levels." He directed attention to page 10, line 5, which discussed continuing education "in an amount specified by the board." He declared that this was a good faith effort for the various boards to adjust the appropriate levels of training, in order to stop the increase of addiction related to opiates.

3:41:57 PM

REPRESENTATIVE SEATON stated that he was unclear for the intent of page 10, lines 8-9. He directed attention to page 9, line 28, which allowed the board "to adopt regulations to define the procedure for the board to approve" a nurse anesthetist or advanced nurse practitioner as a pain specialist; yet, moving on to page 10, lines 1-5, he pointed out that it was also necessary to obtain a certification in pain management from an accredited agency, with a minimum of three years of clinical experience in pain management, and to receive continuing education. He asked the reason for all of the above to be denied if a person was not in a practice which consisted of 30 percent of pain management.

REPRESENTATIVE KELLER suggested that Representative Seaton ask the professionals.

3:43:53 PM

The committee took an at-ease from 3:43 p.m. to 3:47 p.m.

3:47:27 PM

CHAIR HIGGINS brought the committee back to order.

3:47:51 PM

MARJORIE POWELL, PhRMA, announcing that she represented the pharmacists, asked to make some additional points, beyond those addressed in the PhRMA letter titled, "In Opposition of Alaska House Bill 53, March 26, 2013," which is included in members' packets. She said that PhRMA was concerned whenever anyone abused prescription medicine, especially when those patients who had temporary or permanent pain became addicted and abused medication. She explained that some chronic pain was treated

with stable doses of medications, although, over time, patients could need increased dosages. She declared that PhRMA was concerned that there had not been consistent provider education to identify those individuals with a tendency toward addiction, and to offer an alternative treatment to prevent the development of addiction. She relayed that PhRMA had worked with groups to develop provider educational material for all health care professionals who prescribe potentially addictive medications. She declared the importance for the ability to prescribe, identify, and work with these medications. She pointed out that there were techniques which could be applied by a general practitioner. She declared that PhRMA supported the National Governors Association, which, when reviewing the abuse of prescription drugs, had determined the importance for educational materials to all health care providers. She recommended that, as Alaska only had 18 accredited pain specialists, there should be a more general requirement for all health care providers to obtain educational training and techniques for identification and interaction with those patients at risk of addiction. She pointed out that many Alaskans would not have access to pain specialists. She reported that the pharmaceutical industry was researching abuse resistant formulas for medications.

3:54:12 PM

MS. POWELL said that states with operating databases which were accessible to medical providers other than the prescribers had determined this "to be very helpful in identifying patients who may be, in fact, coming to a doctor just to try and get the pain medication." She declared that one of the problems for databases in many states was that Veterans Affairs data was not currently included as federal regulations prohibited the release of this data. She noted that there was an effort to adjust this regulation. She emphasized the necessity for funding the database and for a regular update to the information. She extolled the benefit for offering more continuing medical education on long term pain to all health care professionals. She shared a personal anecdote about her family members with chronic pain, noting that this legislation would require all of them to see a pain specialist, necessitating very difficult and painful travel.

3:58:18 PM

LESLEY DEJARAY, Nurse Practitioner, said that she wanted to share the realities of working as a nurse practitioner in rural

Alaska. She explained that the services in the region were limited, and that the majority of service was in Anchorage. She pointed to the six week requirement in the proposed bill, and stated that a referral request would not even be scheduled in a foreseeable time span. She noted that the usual time frame for a scheduled appointment with a specialist was about twelve weeks. She expressed her support for the database.

4:01:09 PM

PATRICIA SENNER, Alaska Nurses Association, expressed her gratitude for the inclusion of nurse anesthetists to the proposed bill, as they were commonly the pain management specialists. She declared her agreement with many of the points made by PhARMA. She reported that the Alaska Nurses Association was in support of the prescription drug monitoring system. She stated that each person accessing the database should have their own access code. She suggested that the financing for the database be split between the licensing fees and a public protection department.

4:03:48 PM

REPRESENTATIVE SEATON asked if she would support inclusion of the provision requiring that 30 percent of a current practice was in pain management care, or would the provision for accredited certification as a pain management specialist, three years of clinical practice, and continuing education be sufficient.

MS. SENNER replied that, as the role of nurse anesthetists would often only have 10 percent of its practice in pain management care, she would support elimination of this requirement.

4:05:21 PM

CHAIR HIGGINS expressed agreement for the importance of the database, although he would not support an increase to his dental professional fees.

4:05:55 PM

JOE CHANDLER, M.D., AA Spine & Pain Clinic, reported that he had shared the proposed bill with other providers, including those in his clinic, and asked for their feedback. He emphasized that he had not received any good responses, and he pointed to 50 problems in the bill. He questioned the unexpected consequences

from the proposed bill, and, pointing to similar problems which resulted after passage of a similar bill in the State of Washington, stated that these problems needed to first be resolved. He emphasized that the proposed bill needed a sunset clause, as there was not any secure database funding. He declared that the proposed bill should not be passed out of committee.

4:08:53 PM

REPRESENTATIVE KELLER asked Dr. Chandler for his determination to whether there was a problem with addiction and abuse of opiates, and if so, would a solution best be addressed through the use of a prescription database. He asked if there were any other creative solutions.

4:10:02 PM

DR. CHANDLER offered his belief that the regulation of people was difficult. He expressed his agreement with the problem of addiction to prescription drugs, and he declared that the database was very important. Regarding addiction, he explained that 2 percent of the population was genetically programed toward addiction, which he deemed to be quite rare. He noted that those with mental health issues were "all thrown onto the streets fifty years ago. We have no mental health care in the country now, and that's why we have such a homeless problem." He declared that all the people on the street with chronic pain, cancer, and other medical issues needed care. He declared that an obligation of medicine was to take care of people, and that the proposed bill could become another "insane... medical care" regulation, especially without a sunset clause to get rid of it.

4:12:24 PM

REPRESENTATIVE REINBOLD expressed her concern with opiate addiction, and said "I've even heard about it in kids, ya know, just breaking their leg." She declared that she did not "want to shackle the providers" but there was a need to address the opiate issues. She offered her belief that the first line providers did not understand the long term consequences and effects to families and communities. She expressed her belief for mandatory continuing medical education (CME) for providers.

DR. CHANDLER, in response, said that "common sense is not very common." He offered an example of several patients in rural Alaska who all took medications over 120 mg. He was able to

consult with them using Skype, whereas the regulations required a face-to-face meeting with the primary care provider. He declared that these face-to-face meetings were not feasible for patients in rural Alaska, other than through Skype or some similar communication. He expressed concern for unenforceable and unintended consequences from the proposed bill. He questioned how people could get the three years of experience necessary to be a provider. He declared that people without access to pain providers would have problems. He announced that it was not possible to regulate common sense. He reported that the current educational curriculum in medical schools for pain management was less than one week. He asked what would be used to measure the effects of the proposed bill. He reported that, as the recidivism rate for addicts was between 92-96 percent, there was little funding and the problems would not be resolved quickly.

4:17:38 PM

REPRESENTATIVE REINBOLD asked Dr. Chandler to "send us a list, if you could help us salvage this bill; if not, if you could help us solve this problem." She suggested mandatory CMEs, or fundraising for the database.

DR. CHANDLER affirmed that it was "a very good thing you're trying to do." He pointed out that his medical practice was for chronic pain, and that addiction was a much more difficult issue to deal with. He opined that, of his 7,000 active patients, at least half had medication dosages in excess of those referenced in the proposed bill. He reported that his patients, once referred to his clinic, would never return to their primary physician, thereby consigning to his clinic the responsibility for primary care, as most of the patients received Medicare or had no ability to make payments. He pointed out that the problem was far more extensive than merely solving "the problem of kids that are addicted." He declared that addiction was a problem throughout the country, and that he did not have any answers.

4:19:38 PM

REPRESENTATIVE SEATON asked if Dr. Chandler would forward to the committee the suggestions he had collected.

DR. CHANDLER agreed to summarize and then submit them.

4:20:17 PM

DR. CHANDLER, in response to Representative Tarr, said that almost 100 percent of his patients with pain medications in excess of 120 mg/day were under long term care management.

4:21:33 PM

REPRESENTATIVE KELLER, directing attention to page 5, line 10, clarified that there were other means for becoming a pain management specialist, and that this left broad discretion to the board.

DR. CHANDLER replied that it had been suggested to him that a pain specialist should have a minimum of 50 percent or more of business in pain management.

4:23:48 PM

JUDITH DEARBORN, President, Alaska Association of Nurse Anesthetists, expressed appreciation that nurse anesthetists and nurse practitioners were included in the proposed bill. She pointed out that nurse anesthetists were more practiced in acute and chronic pain management.

4:25:42 PM

REPRESENTATIVE TARR asked if her association would now support the proposed bill.

MS. DEARBORN, in response, said that although the association had been most concerned with inclusion, it had concerns with the proposed bill, emphasizing that the bill should be reviewed more clearly and carefully.

4:26:30 PM

EVA STASSEN, Family Nurse Practitioner, American Association of Nurse Practitioners, Alaska Nurse Practitioner Association, reported that nurse practitioners in Alaska provided a lot of primary care, especially in rural Alaska. She shared that they had a lot of chronic pain patients. She pointed to the difficulty of access to pain management specialists. She asked how the specialists would be reimbursed for services, including telephonic conversations. She asked if there was any data for costs involved to implement the new programs. She acknowledged a problem for the proposed bill with the loss of the database. She affirmed that the database needed to be updated much more

often, and that there needed to be a separate sign on for each designee. She asked who the designees should include. She noted a conflict with the database rule to check the database before prescriptions. She asked about the described penalties for not checking the database, stating that this should not be grounds for license revocation. She asked what would happen if the treating prescriber did not agree with the recommendation of the pain specialist. She asked if patients on a stable, non-escalating dose for a long period of time would be grandfathered in, or now be required to see a pain specialist. She asked what was defined as a reasonable attempt to obtain a consultation. She confirmed that there was a problem with abuse of pain medications, and that the database was a good starting point.

4:33:15 PM

CHAIR HIGGINS asked who would be in control of the database.

4:33:47 PM

DON HABEGER, Director, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community & Economic Development, explained that his division raised the licensee fees when an adjustment for a program was necessary. He clarified that the prescription drug database was overseen by the Board of Pharmacy, and that its federal grant funding would be depleted on August 31, 2013, and that the Board of Pharmacy would then be required to notice the legislature that the funding would cease. He relayed that the database could then become an unfunded mandate, although the Board of Pharmacy had already informed his division that it did not wish to support the database through licensing fees. He reported that regulations for fee increases had determined that the cost could not be shared across programs, but had to be self-funded by the licensees. He concluded that, if there were no changes, the database program would cease at the end of August.

4:36:27 PM

REPRESENTATIVE TARR asked if the database costs could be spread across the licensing fees of the many health care providers affected by this proposed bill.

MR. HABEGER replied that it would be necessary to change the law to allow this, and, if possible, it would also require a discussion with the remainder of the targeted licensees.

4:37:39 PM

REPRESENTATIVE SEATON directed attention to page 16, lines 9 and 12, and asked if this was irrelevant or illegal as federal statutes required an initial baseline dosage of 30 mg. He directed attention to page 16, line 27 of Version Y, which read: "a health care professional who oversees the administration of an opiate to a patient for treatment of drug abuse shall conduct an in-person consultation with the patient's primary care provider..." Noting that this consultation needed to be six months after the start of treatment and every six months after that, he observed that it was difficult to schedule these interviews with a primary care provider, offering his opinion that this was not a "workable scenario." He addressed page 17, line 4, which offered an alternative to a primary care provider for the patient screening, and he stated that this did not exclude, or address, the requirements previously mentioned for an in-person consultation.

4:40:41 PM

REPRESENTATIVE SEATON noted that other questions had been raised regarding the sharing of data, in concern for compliance with Health Insurance Portability and Accountability Act (HIPAA). He shared that a question had also been raised for who had a greater understanding, physicians or administrators, for the prescribed dosages. He noted that this also required consideration for the differences in treatment for drug abuse and pain management.

4:42:20 PM

CHAIR HIGGINS left public testimony open.

[HB 53 was held over.]

4:42:42 PM

ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 4:42 p.m.