

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

February 13, 2014

1:32 p.m.

MEMBERS PRESENT

Senator Mike Dunleavy, Chair
Senator Peter Micciche, Vice Chair
Senator Donald Olson
Senator Bert Stedman

MEMBERS ABSENT

Senator Johnny Ellis

COMMITTEE CALENDAR

SENATE BILL NO. 129

"An Act extending the termination date of the Board of Certified Real Estate Appraisers; and providing for an effective date."

- HEARD & HELD

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 80

"An Act relating to the practice of telemedicine; relating to licenses for out-of-state physicians or podiatrists to practice telemedicine in this state under certain circumstances; and relating to insurance coverage for telemedicine."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 129

SHORT TITLE: EXTEND BOARD OF REAL ESTATE APPRAISERS

SPONSOR(S): RULES BY REQUEST OF LEG BUDGET & AUDIT

01/22/14	(S)	READ THE FIRST TIME - REFERRALS
01/22/14	(S)	L&C
02/13/14	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 80

SHORT TITLE: OUT-OF-STATE PHYSICIAN LICENSE

SPONSOR(S): DYSON

03/15/13	(S)	READ THE FIRST TIME - REFERRALS
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03/15/13 (S) L&C, FIN
04/03/13 (S) SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
04/03/13 (S) L&C, FIN
02/13/14 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

SENATOR ANNA FAIRCLAUGH
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 129.

KRIS CURTIS, Legislative Auditor
Legislative Audit Division
Legislative Affairs Agency
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on SB 129 to describe the sunset review of the Board of Certified Real Estate Appraisers.

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

POSITION STATEMENT: Introduced SB 80 on behalf of the sponsor.

HENRY DEPHILLIPS, MD., Chief Medical Officer
Teladoc, Inc.
Greenwich, Connecticut

POSITION STATEMENT: Testified as a subject matter expert on the telemedicine industry in support of SB 80

DON HABEGER, Director
Division of Corporations, Business, and Professional Licensing
Department of Commerce, Community and Economic Development
Juneau, Alaska

POSITION STATEMENT: Provided information relevant to SB 80

ACTION NARRATIVE

1:32:48 PM

CHAIR MIKE DUNLEAVY called the Senate Labor and Commerce Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Stedman, Micciche, and Chair Dunleavy. Senator Olson arrived during the course of the meeting.

SB 129-EXTEND BOARD OF REAL ESTATE APPRAISERS

1:33:28 PM

CHAIR DUNLEAVY announced the consideration of SB 129. "An Act extending the termination date of the Board of Certified Real Estate Appraisers; and providing for an effective date."

1:33:40 PM

SENATOR ANNA FAIRCLAUGH, sponsor of SB 129, introduced the bill explaining that it extends the Board of Certified Real Estate Appraisers ("Board") for four years from June 30, 2014 to June 30, 2018. The extension is for just four years to ensure that the new federally mandated responsibilities are appropriately instituted and that the board has the support staff to do its duties.

1:35:25 PM

KRIS CURTIS, Legislative Auditor, Legislative Audit Division, Legislative Affairs Agency, Alaska State Legislature, Juneau, Alaska, explained that the agency conducted a sunset review of the Board of Certified Real Estate Appraisers to determine whether it was serving the public's interest and whether it should be extended. The audit determined overall that BCREA is protecting the public's interest by effectively licensing and regulating real estate appraisers. The Board monitors licensees to ensure that only qualified individuals practice and adopts regulatory changes to improve the real estate appraisal profession in Alaska. The Board is scheduled to terminate June 30, 2014 and Legislative Audit is recommending an extension of only four years due to the increase in federally mandated responsibilities.

MS. CURTIS reported that the audit included two recommendations for operational improvements, both of which were directed to the Division of Corporations, Business and Professional Licensing (DCBPL) within the Department of Commerce, Community, and Economic Development. The first recommendation was to improve administrative support to the Board by addressing delays in investigations. The second was for the director of the division to improve the investigative case management system.

The audit found that the investigative case management system does not fully support the investigative unit. It was purchased with the expectation that it would be immediately functional as a case management tool, but it is deficient due to software limitations and a lack of procedures. Both DCBPL and the Board concur with the audit recommendations.

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CHAIR DUNLEAVY recognized that Senator Olson joined the committee.

CHAIR DUNLEAVY stated that public testimony would remain open and he would hold SB 129 in committee for further consideration.

SB 80-OUT-OF-STATE PHYSICIAN LICENSE

[1:38:08 PM](#)

CHAIR DUNLEAVY announced the consideration of SSSB 80. "An Act relating to the practice of telemedicine; relating to licenses for out-of-state physicians or podiatrists to practice telemedicine in this state under certain circumstances; and relating to insurance coverage for telemedicine." He asked for a motion to adopt the work draft committee substitute (CS) for SSSB 80.

SENATOR MICCICHE moved to adopt CS for Sponsor Substitute for SB 80, labeled 28-LS0615\P, as the working document.

CHAIR DUNLEAVY objected for discussion purposes.

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CHUCK KOPP, Staff, Senator Fred Dyson, introduced CSSSSB 80 on behalf of the sponsor. He spoke to the following sponsor statement: [Original punctuation provided.]

CS SSSB 80 introduces into Alaska's Medical Practice Act the practice of telemedicine, sets parameters for prescription of controlled substances without an in-person contact between physician and patient, establishes a definition for *telemedicine*, and provides that health care insurers may not require in-person contact between a health care provider and a patient before payment is made for services. With Alaska's large rural and remote areas, the need for telemedicine is especially acute with much of the state designated as medically underserved by the federal Health Resources and Services Administration.

CS SSSB 80 will provide expanded opportunity for health care delivery for individuals and businesses throughout Alaska. Today, the only delivery of telehealth in Alaska is via the Alaska Federal Health

Care Access Network (AFHCAN), established in 1998 to provide telehealth services for Federal beneficiaries in Alaska, including Alaska Natives. The Alaska Native Tribal Health Care Consortium (ANTHC) manages the telehealth program and provides statewide health and information technology services to Alaska Natives and American Indians, in addition to supporting local tribal health organizations. CS SSSB 80 will allow the cost-savings and efficiencies of telehealth to be delivered to the many other constituencies in Alaska that do not qualify to participate in the ANTHC telehealth program.

In Alaska and nationwide, the ongoing discussion of how to provide greater access to health care at a reasonable cost is becoming ever more relevant. Telemedicine is emerging as a key element in the delivery of health services to children, seniors and other vulnerable populations through the integration of technology and provider care. The Patient Protection and Affordable Care Act is leading to increased demand that physicians interact with more patients. Telemedicine allows physicians to consult with more patients, and enables patients to meet with their physicians in a shorter time period. In terms of economic advantages, telemedicine saves travel time and expense for patients who otherwise have to leave home and work to see a health care provider, provides for more timely diagnosis of ailments, and reduces unnecessary ER visits.

MR. KOPP highlighted the changes between the CS and the original version of the bill.

Section 1 adds a new Sec. 08.64.245 in the Medical Practice Act establishing the practice of telemedicine.

Section 2 establishes three rules for prescribing, dispensing or administering prescription drugs without a physical examination if 1) the prescription drug is not a controlled substance; 2) the physician is located in-state and available to provide follow-up care; and 3) the person receiving the care consents to sending a copy of the records of the encounter to their primary care provider if the prescribing physician is not their primary care provider, and the physician sends the records to the person's primary care provider.

This section no longer has the original license provision for an out-of-state licensing option for out-of-state physicians to practice the delivery of telemedicine within the state.

Section 3 adds a new paragraph (7) to AS 08.64.380 to define the practice of telemedicine.

Section 4 adds a new Sec. 21.54.102 that provides that an insurance company may not require an in-person visit between a physician and patient before payment for services is covered.

Section 5 provides an effective date for the Act.

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MR. KOPP noted that Premera Blue Cross recommended that the bill state that if an insurance plan provides coverage for telemedicine, then prior in-person contact between a health care provider and a patient is not mandated to receive coverage for that service. The sponsor agreed.

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SENATOR OLSON asked if the Medical Board is in favor of the bill.

MR. KOPP said that the Medical Board opposed the initial legislation that included the out-of-state license. They have not articulated their position since that provision was removed. The State Medical Association is neutral on the legislation. Responding to a further question, he said he hasn't spoken with the Alaska Physicians & Surgeons Association.

SENATOR OLSON referenced the reporting requirements in Section 2 and asked what happens if a person doesn't have a primary care physician.

MR. KOPP explained that if there is no primary health care provider, the requirement that the records be forwarded would not be necessary.

SENATOR OLSON asked how Indian Health Service (IHS) patients in rural Alaska participate in this program.

MR. KOPP said any IHS-eligible person is eligible through the Alaska Federal Healthcare Access Network (AFHAN) [that is managed by the Alaska Native Tribal Health Care Consortium.] The bill expands the law to apply to anybody who is not a federal

entity and is not otherwise in an eligible class such as Alaska Native.

SENATOR MICCICHE stated support for the provision that prohibits prescribing controlled substances telephonically.

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At ease

[1:48:12 PM](#)

CHAIR DUNLEAVY reconvened the hearing.

[1:48:22 PM](#)

HENRY DEPHILLIPS, MD., Chief Medical Officer, Teladoc, Inc., Greenwich, Connecticut, stated that he was speaking primarily as a subject matter expert on the telemedicine industry. He would clarify when his comments were specific to Teladoc.

SENATOR MICCICHE noted the substance abuse issues in Alaska and asked Dr. DePhillips to discuss the reasons that the bill prohibits prescribing controlled substances.

DR. DEPHILLIPS explained that the telemedicine industry typically uses the standard of not allowing the prescription of any Drug Enforcement Administration (DEA) controlled substances. Telemedicine is relatively new to the medical field and most of the companies in the industry understand that the bar needs to be fairly high. Thus, the industry excludes DEA defined controlled substances at both the federal and state level.

SENATOR MICCICHE asked Dr. DePhillips to discuss the cross coverage exemption and how this isn't overstepping the bounds of current practice.

DR. DEPHILLIPS explained that to combat Internet prescribing scams that cropped up in the 1990s, most state medical boards, including Alaska's, instituted a prior in-person visit requirement for physicians. This was very successful, but in about 2005 it occurred to some folks that cross covering was technically a violation of the prior in-person visit requirement.

To address this technical violation, many state medical boards have said that physicians who agree to cross cover one another may treat the patient over the phone or remotely without a prior in-person visit. However, legislation such as SB 80 is needed

because there has been a difference of interpretation of that segment of the rules.

DR. DEPHILLIPS explained that counsel for Teladoc did an evaluation of the regulations on a state-by-state basis and came to the conclusion that Teladoc and its competitors are a physician cross coverage service, and would therefore qualify under the cross coverage exception to the prior in-person visit requirement. Most of the telemedicine companies have operated this way in most states, but occasionally a medical board has intervened with one of the physicians. That happened in Alaska when the State Medical Board intervened with a Teladoc physician.

Teladoc was unable to come to a mutual agreement with the State Medical Board and decided to take a legislative approach. The premise is that the quality of the cross coverage service in the telemedicine industry is at least equal to traditional cross coverage. The data supports this. Teladoc has done more than half a million consults with 15 million Americans in a telemedicine program without any liability issues. Patient safety and patient care has not been compromised.

DR. DEPHILLIPS highlighted that the Rand Corporation conducted and published an independent study in the journal *Health Affairs* just last week. It talked about the fact that telemedicine reduces emergency room use for non-emergency problems, improves access for patients who don't have a primary care physician, and improves access for patients who can't get to their primary care physician timely. He encouraged the committee members to review the summary of that study.

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SENATOR MICCICHE asked him to discuss choosing the right treatment for a particular malady.

DR. DEPHILLIPS explained that the telemedicine industry generally treats common, uncomplicated medical problems that are unlikely to become complex or worrisome. The general process is that a call comes in to a call center either telephonically or online requesting a consultation. The person indicates their location, age and the nature of the request. A medical history is required at the beginning of the process and the patient does not receive access to a physician until that medical record is complete. Then the case is sent to the appropriate licensed physician and he/she reviews the medical record. Teladoc, and perhaps other companies, requires the physician to review the data in the medical record before he/she is given access

to the patient for the consultation visit. There is a real time interaction and if the physician has any level of discomfort, he/she is empowered to tell the patient he/she must see a physician in person. Teladoc statistics show that this happens about four percent of the time. He noted that the physician gets paid for rendering care regardless of the recommendation so that doesn't enter into the decision.

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SENATOR OLSON asked Dr. DePhillips where he went to medical school

DR. DEPHILLIPS replied he attended Hahnemann University that is now known as Drexel University in Philadelphia, Pennsylvania. He is a board certified family physician, licensed in Tennessee.

SENATOR OLSON asked him to discuss the State Medical Board objections to out-of-state physicians essentially practicing in the state.

DR. DEPHILLIPS explained that the perceived concern is that the care of the citizens of Alaska will start going, through telemedicine, to physicians in other states. The legislation addresses this concern with the requirement that the physician taking the consultation must be licensed in Alaska and a resident in the state of Alaska. Teladoc is comfortable with the requirement and that is their business model.

Alaska and other medical boards have also voiced concern about patient safety, but two data points argue against that. First is the cross coverage situation that has existed for decades. The second is the more than half a million consultations that have been done through telemedicine without a bad outcome or even a liability claim. He opined that the requirement for an in-person visit with the primary physician was a good idea about 15 years ago, but technology has come to a point where it's appropriate to set that aside.

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SENATOR OLSON spoke to the difficulty of getting people from outside Alaska to appreciate what remote living actually means. He cited the example of an elderly person having an anaphylactic reaction and asked about protection for that person.

DR. DEPHILLIPS said the same risk exists for a person who visits a physician in person; they might go home, take the first dose of a prescription medicine, and have an anaphylactic reaction.

The safeguard in telemedicine is that the consulting physician can tell the patient they need an in-person visit.

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SENATOR OLSON pointed out that somebody in a remote location who is complaining of chest pain might not have the option of visiting a physician in person.

DR. DEPHILLIPS maintained that having telephonic or audio visual access to a physician is a step in the right direction if implemented well. Responding to a further question, he reiterated that Teladoc provides the liability insurance for its doctors and has never had a claim.

SENATOR OLSON asked about protection when someone is on a boat outside the bounds of state waters and subsequently enters state waters.

DR. DEPHILLIPS said that in public safety and most professions there is a justification defense for emergencies.

SENATOR MICCICHE asked if there isn't a waiver for emergency treatment in most situations.

DR. DEPHILLIPS said he isn't an attorney but the Good Samaritan rule exists in many, but not all, places.

SENATOR OLSON related a personal story of getting sued after rendering help.

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DON HABEGER, Director, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community and Economic Development (DCCED), explained that the State Medical Board promulgated a regulation that addresses emergency situations. It says that prescribing, dispensing, and furnishing prescription medication is excluded for use in emergency situations.

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CHAIR DUNLEAVY removed his objection. Finding no further objection, he stated that CSSSSB 80 was adopted.

SHEELA TALLMAN, Senior Manager of Legislative Policy, Premera Blue Cross, offered to answer questions. There were none.

CHAIR DUNLEAVY found no public testimony.

SENATOR OLSON said he'd like to hear the State Medical Board's opinion of the committee substitute.

MR. KOPP said the sponsor has requested that.

CHAIR DUNLEAVY announced he would keep public testimony open and hold SB 80 in committee for further consideration.

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There being no further business to come before the committee, Chair Dunleavy adjourned the Senate Labor and Commerce Standing Committee meeting at 2:11 p.m.