

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

February 6, 2014

9:02 a.m.

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Cathy Giessel, Vice Chair
Senator John Coghill
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Bert Stedman

COMMITTEE CALENDAR

OVERVIEW: DEPARTMENT OF LAW-MEDICAID FRAUD CONTROL UNIT

- HEARD

SENATE BILL NO. 104

"An Act relating to appropriations from the dividend fund; creating the criminal fund; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 104

SHORT TITLE: APPROPRIATIONS FROM THE DIVIDEND FUND

SPONSOR(S): SENATOR(S) DYSON

01/22/14	(S)	PREFILE RELEASED 1/10/14
01/22/14	(S)	READ THE FIRST TIME - REFERRALS
01/22/14	(S)	STA, FIN
02/06/14	(S)	STA AT 9:00 AM BUTROVICH 205

WITNESS REGISTER

ANDREW PETERSON, Assistant Attorney General-Director
Medicaid Fraud Control Unit
Alaska Department of Law
Anchorage, Alaska

POSITION STATEMENT: Provided an overview of the Medicaid Fraud Control Unit.

JOSHUA BANKS, Staff for Senator Dyson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a sectional review for SB 104.

ACTION NARRATIVE

[9:02:48 AM](#)

CHAIR FRED DYSON called the Senate State Affairs Standing Committee meeting to order at 9:02 a.m. Present at the call to order were Senators Giessel, Wielechowski, and Chair Dyson.

CHAIR DYSON announced that the committee calendar entails an overview of the Medical Fraud Unit's work and also a bill that his office has been working on that deals with victim restoration. He specified that the Committee Substitute (CS) will be introduced today for SB 104 with the intent to act on the bill the following week. He believed that SB 104 is not controversial and there is strong support from the Governor.

OVERVIEW: DEPARTMENT OF LAW-MEDICAID FRAUD CONTROL UNIT

[9:03:57 AM](#)

CHAIR DYSON introduced Andrew Peterson, Assistant Attorney General. He explained that Mr. Peterson has taken over as the Director for the Medicaid Fraud Control Unit 15 months ago. He remarked about his frustration at the profound size of the problem of medical fraud in Alaska and the lack of production and performance from Mr. Peterson's predecessor. He noted that Mr. Peterson has approximately six or eight times as many prosecutions with most of them successful.

[9:04:37 AM](#)

ANDREW PETERSON, Assistant Attorney General-Director, Medicaid Fraud Control Unit, Alaska Department of Law, Anchorage, Alaska; noted that the Medicaid Fraud Control Unit (MFCU) was specifically within the Office of Special Prosecutions (OSP). He referred to Chair Dyson's comments that he has been the Director of MFCU for approximately 15 months. He set forth that he would provide an overview about MFCU, some of the restrictions that are placed upon MFCU by the federal funding that is received, give an idea of the type of cases MFCU is generating, where

MFCU's comes from, and some of the results MFCU is currently seeing.

[9:05:42 AM](#)

MR. PETERSON explained that the MFCUs nation-wide were part of the Omnibus Budget Reconciliation Act (OBRA) of 1993. The OBRA requirement established that all of the states, unless they applied for a specific exemption, have a MFCU. He noted that North Dakota is one of the only states that do not currently have a MFCU. He said all of the MFCUs are part of the National Association of Medicaid Fraud Control Units.

He specified that Alaska's MFCU tries to collectively share information, training, and work collaboratively on civil class action suits in which resources can be combined to allow for cases to be pursued that may not be criminal, but there is restitution to be earned by the state. The federal government partly funds MFCUs at 75 percent and the states match 25 percent in addition to imposing a number of different requirements. He said the federal government limits the types of cases MFCU can handle. MFCU is tasked to prosecute medical assistance fraud, allegations of abuse or neglect, and financial exploitation or misappropriation of patient assets all within facilities that accept Medicaid funds.

CHAIR DYSON asked to clarify that federal funding dictates that MFCU primarily goes after provider-fraud rather than patient-fraud.

MR. PETERSON answered correct. He specified that MFCU generally does not go after non-Medicaid cases and recipient fraud. If MFCU identifies a case in which there is recipient fraud happening and there is no collusion with a provider, the case would be referred to the prosecutor for the Alaska Department of Health and Social Services-Division of Public Assistance (DHSS-DPA) within the Office of Special Prosecutions (OPS). If there is collusion between a provider and a recipient in order to defraud the Medicaid system, MFCU would take the case. If there is a situation where there happens to be other state crimes happening, theft crimes, abuse, neglect, anything that does not normally fall within MFCU's general area of authority, MFCU will take those cases as well if there is a Medicaid fraud.

[9:07:52 AM](#)

SENATOR COGHILL joined the committee meeting.

CHAIR DYSON asked if MFCU is precluded from expanding their scope due to federal funding.

MR. PETERSON replied that due to federal funding, MFCU is precluded from taking cases that have no Medicaid fraud provider allegations.

CHAIR DYSON asked if it would be possible for MFCU to create a parallel group who are working on the other things if there was a completely different funding stream for MFCU.

MR. PETERSON replied that he did not know if that is necessary because there are 13 prosecutors within OSP. He noted an example where MFCU has come across Social Security fraud in MFCU's medicating investigations with no Medicaid case to prosecute and the fraud is referred to OSP. He summarized that MFCU has the capacity to take on additional cases outside of MFCU's scope.

He said one of the other limitations currently placed on MFCU is a prohibition against data-mining. He explained that data-mining is utilizing the Medicaid resources or the healthcare resources that MFCU utilizes as part of its ongoing criminal investigations to simply look or troll for criminal conduct. MFCU takes cases that are referred from the public, providers, and mostly the Department of Health and Social Services (DHSS). Once MFCU has a referral and creditable allocation of fraud, MFCU is authorized to use all of the data that is available to prove the fraud. He explained that MFCU does not spend time going out looking for fraud with no allegation.

[9:10:23 AM](#)

He said an additional requirement placed upon MFCU by federal funding is for MFCU to be separate and distinct from DHSS. MFCU is located within the Attorney General's department, separate for DHSS to make sure that MFCU's prosecutions are independently analyzed even though MFCU gets most of its referrals from DHSS. He specified that MFCU's independence allows for MFCU to have the discretion and authority to choose what cases to prosecute and how MFCU goes about their cases.

He said the final requirement placed upon MFCU for federal funding is that MFCU has to have at a minimum of one director or attorney general that is the prosecutor for the unit, an auditor, a Certified Public Accountant (CPA), and a chief investigator. He added that MFCU currently has a chief investigator along with five Investigator III personnel. He noted that MFCU is fortunate to have some extremely skilled

investigators, retired detectives, and individuals with a wide background that includes healthcare. He pointed out an important individual within MFCU that includes a law office assistant that has been with MFCU for 20 years and possesses an extensive background in Medicaid fraud.

[9:12:01 AM](#)

CHAIR DYSON announced that Mr. Peterson had brought along individuals from MFCU.

MR. PETERSON introduced Duane Mayes, Director, Alaska Department of Health and Social Services-Senior and Disabilities Services (DHSS-SDS); Lynne Keilman-Cruz, Chief for Quality Assurance with DHSS-SDS; and Stacie Kraly, Assistant Attorney General with the Alaska Department of Law (DOL) who represents DHSS. He asserted that MFCU's collaboration with the DHSS has been instrumental in increasing the number of prosecutions, the number of cases that MFCU is making, and the money that the state is saving as a result. He pointed out the Ms. Keilman-Cruz and Director Mayes have been instrumental in the partnership between DHSS-SDS and MFCU.

CHAIR DYSON asked if Medicare applies to DHSS-SDS.

MR. PETERSON answered that DHSS-SDS regulates the Personal Care Attendants (PCA) and home healthcare type services that are provided to Medicaid recipients.

[9:13:31 AM](#)

He addressed an overview for MFCU funding and some of the current work MFCU has been doing. He noted that MFCU funding from 2011 to 2012 jumped due to a legislative increase in the number of MFCU investigators from 3 to 6. He pointed out that the number of convictions has been increasing over the last three years:

- 2010: 4 convictions.
- 2011: 1 conviction.
- 2012: 1 conviction.
- 2013: 19 convictions.
- 2014: 25 convictions.

MR. PETERSON pointed out that the 2014 convictions were filed in 2013 and were now coming to fruition. He noted that the number of investigations being referred to MFCU is declining. He revealed that the decline is intentional due to the strategy to

hone the process that referrals are provided by DHSS. He said DOL generally receives referrals for prosecution from law enforcement agencies that screen out noncriminal cases that are not going to be prosecuted. Law enforcement agencies refer cases to DOL that are believed to be criminal. MFCU is different because MFCU's investigators are in DOL. He pointed out that MFCU historically received every complaint or allegation. He noted an example where the Alaska Department of Health and Social Services-Adult Protective Services (DHSS-APS) would automatically send MFCU every allegation that came in and most were not going to be investigated or prosecuted. He explained that allegation screening had taken extra time and resources from MFCU's staff. He noted that MFCU is limiting screening work on the front end by getting better referrals with MFCU investigators spending more time actually investigating cases that are going to be prosecuted. He summarized that while the number of referrals is declining, the number of prosecutions is anticipated to increase over the next few years.

[9:16:31 AM](#)

He addressed what percentage of healthcare expenditures is fraudulent. He noted that he is unable to provide the committee with fraudulent statistics for the state of Alaska and revealed national statistics from the FBI Financial Crimes Report from 2010 to 2011. He detailed that the FBI indicates that somewhere between 3 to 10 percent of all healthcare billing is fraudulent. The two most notable areas are Medicare and Medicaid. He stated that most people would agree that the majority of healthcare providers are honest, diligent, hardworking individuals that are trying to provide quality services. He said the fraud really costs American taxpayers hundreds of millions of dollars every year. He said based on the FBI's fraud statistics, Alaska is losing millions of dollars every year.

CHAIR DYSON asked what Alaska's total Medicaid billing is.

MR. PETERSON replied that he believes Alaska's Medicaid cost is about \$1.5 billion.

CHAIR DYSON calculated that 10 percent of \$1.5 billion is real money.

MR. PETERSON replied potentially. He pointed out that the FBI's annual report indicates that fraud schemes are becoming more sophisticated across the U.S. He said based upon his own MFCU experience, fraud schemes are indeed becoming more sophisticated. The FBI indicated that the best way to attack or

address sophisticated fraud schemes is through collaboration amongst various agencies and that is precisely what MFCU has done over the last 15 months.

9:19:00 AM

He reviewed how MFCU has addressed fraud schemes. He asserted that MFCU works closely with DHSS on a daily basis. He said MFCU mostly coordinates with the DHSS' Medicaid Program Integrity System, and DHSS-SDS' Behavioral Health Quality Assurance oversight. MFCU also works closely with the Department of Law-Civil Division (DOL-CD) with the goal to review cases from the meetings with directors from the various groups. He set forth that he has independent discussion and judgment of which cases to prosecute. He said he takes his lead from DHSS. He added that DHSS is the department that sees the money going out the door and deals with the idea of where money is being wasted. He explained that MFCU takes a look at cases or areas of concern from DHSS. He revealed that if he is concerned that he may not be able to prosecute a specific case because of statutory or regulatory limitations, MFCU works with the DOL-CD to see if MFCU can go after the provider civilly and deem the money paid in overpayment. He added that if there is concern that MFCU cannot do either of the previously mentioned prosecutions, MFCU works with DOL-CD to propose regulatory changes or ultimately to come back to the legislature and ask for a statutory change to plug a loophole.

CHAIR DYSON asked to clarify when Mr. Peterson noted Quality Assurance within DHSS that MFCU is looking at the department's screening of recipients or providers.

MR. PETERSON answered providers. He explained that Quality Assurance within DHSS-SDS regulates the home healthcare attendant industry and licenses them. He added that DHSS-SDS-Quality Assurance regulates providers only and not recipients. He specified that the recipient side is within the DHSS-DPA.

9:21:42 AM

CHAIR DYSON pointed out ads where a provider claims to fix up recipients and takes care of their paperwork. He asked if Mr. Peterson is seeing any pattern where providers are trolling for patients and pushing the limits on getting them qualified.

MR. PETERSON answered yes. He said MCFU is seeing a lot where a PCA will bring their recipient in to get them signed up. He pointed out that in reality it is the recipient's choice where to go and their choice who to have as their provider; it does

not always work that way. He noted that MCFU is actively investigating cases where referral fees are being paid to the PCA to bring their recipients to agencies and the amount of referral fees is often times based upon the number of hours for which the recipient has been authorized services.

He revealed that MCFU has successfully prosecuted a number of cases in which PCAs have colluded with recipients who do not need services. He explained that recipients showed a significant lack of ability during the DHSS assessment that resulted in an increased hourly authorization. He said the arrangements ended up with PCAs splitting the state's money with recipients. He noted that the prosecutions have resulted in PCAs receiving lifetime bans from providing Medicaid services, unless DHSS approves a waiver.

[9:23:48 AM](#)

He said MCFU's recent success in the number of prosecutions is not simply limited to the collaboration with DHSS. MCFU has also been collaborating with Alaska State Troopers (AST) in situations that pertain to search warrant execution and arrest warrants. MCFU has been working with the Municipality of Anchorage and the Anchorage Police Department (APD). MCFU's federal funding source requires that MCFU is essentially supervised or overseen by the Office of the Inspector General (OIG); they have special agents that are located in Seattle who come up to Alaska on a regular basis to assist MCFU with the execution of search warrants or the conducting of investigations. He added that MCFU also works closely with the FBI. He revealed that one of MCFU's best partners has been the U.S. Immigration and Customs Enforcement (ICE). He said ICE has helped MCFU in identifying when home healthcare attendants and or recipients are traveling internationally while allegedly receiving services in Alaska.

CHAIR DYSON asked how ICE's activities assist MCFU.

[9:25:13 AM](#)

MR. PETERSON explained that a participant is assessed for home healthcare services, a PCA provides the service, fills out a timesheet, and the timesheet is submitted to an agency for state billing.

MR. PETERSON noted that there are also waiver-services which involve chore-respite which is PCA relief and transportation services for driving individuals to medical appointments or places recipients need to go. He explained that waiver-services

are also billed to the state. He specified that simply assessing needed services and reviewing timesheets do not indicate fraud is being perpetrated. He added that since services normally take place in somebody's home, it is hard to prove whether or not the services have been provided unless somebody comes forward. He detailed that ICE allows MCFU to look at international travel records and identify PCAs or recipients who have left the country and continue to bill Medicaid for services. He noted that there are possible allowances when a person is travelling domestically if it is for medical reasons, but not for going on a vacation. He said it is more difficult to identify domestic travel, but international travel is easy. He divulged that 40 MCFU prosecutions have been in part initiated by ICE.

[9:27:17 AM](#)

CHAIR DYSON asked to clarify that the recipient or provider was traveling.

MR. PETERSON replied that sometimes it is one, sometimes it is the other, and sometimes it is both. He said all three scenarios are not allowed by state or federal law. He noted that DHSS is innovative in that all PCAs are enrolled providers that entail a background check, billing number, and enrollee number. He explained that the billing and enrollee numbers allows MCFU to identify who is claiming to be providing service. He pointed out that there is only one other state that has their PCAs enrolled. The majority of states have no idea who they are paying to provide services and fraud investigations become more difficult.

He said MCFU also works with the Department of Labor and Workforce Development (DOLWD). He said DOLWD helps MCFU identify what somebody is potentially earning. For example, if a PCA is earning a large amount of money in addition to a second job, there are only so many hours in a day and DOLWD assistance allows MCFU to identify potential fraud. He added that the Department of The Department of Commerce, Community, and Economic Development (DCCED) and the Department of Corrections (DOC) have also assisted MCFU in ongoing investigations.

CHAIR DYSON asked if many other police departments have a white-collar crime unit besides Anchorage Police Department (APD) and Alaska State Troopers (AST).

MR. PETERSON replied that the two main white-collar crime units, the Alaska Bureau of Investigations (ABI) and APD.

CHAIR DYSON asked if the law enforcement departments in Fairbanks, Juneau, Bethel, Kenai, and Soldotna have white-collar units.

MR. PETERSON answered that he did not know.

[9:29:56 AM](#)

He addressed Medicaid payment suspensions. He explained that when DHSS refers a case that MCFU accepts, then DHSS makes an analysis of whether or not there is a credible allegation of fraud. Under federal law if DHSS determines that there is a credible allegation of fraud, DHSS is obligated to suspend provider payment unless MCFU asks for a good-cause law enforcement exception to not suspend payment. He pointed out that payment suspension "stops the bleeding" while the criminal case is ongoing. He said DHSS has suspended Medicaid payments to 62 providers since 2012. He noted that one suspension included a PCA agency that was annually billing the state approximately \$12 million. He pointed out a transportation service provider that went from zero state billings to \$150,000 a month within six months. He said a credible fraud allegation was determined and the transportation service provider was suspended. He added that two medical practices and 58 individual PCAs were suspended from billing Medicaid. DHSS estimates that the 62 provider suspensions are going to save the state of Alaska \$15 million. The practice of quickly imposing suspensions once a credible allegation of fraud has been determined is relatively new. He pointed out that in the past, suspensions would not be imposed until a criminal charge was filed. He added that suspension from Medicaid does come with the right to have an administrative appeal.

[9:32:39 AM](#)

CHAIR DYSON asked if durable medical equipment is a huge area of fraud.

MR. PETERSON answered yes. He noted that MCFU has a couple of ongoing investigations in the area of medical equipment fraud.

CHAIR DYSON noted a conversation with DHSS Commissioner Streur where Medicaid provided a \$25,000 wheel chair with fat tires to a rural recipient and several weeks later the same wheel chair was on sale for \$8,000 on the internet.

MR. PETERSON remarked that MCFU generally looks at cases where providers are charging the state for new equipment and used equipment is being sold to recipients instead.

[9:34:01 AM](#)

He addressed the number of prosecutions MCFU has had from October 2012 through present. MCFU has charged 72 criminal cases with the majority focusing on PCAs billing for services not provided in addition to double billing for their time. He noted additional cases that pertained to endangering the welfare of vulnerable adults.

CHAIR DYSON asked to clarify that Mr. Peterson investigates when there is inappropriate care for a recipient. He asked if Mr. Peterson is getting into ethical malpractice.

MR. PETERSON replied that MCFU looks at criminal statutes that do not involve issues of ethics or malpractice. He pointed out that ethical malpractice cases are referred to other agencies.

He addressed results MCFU has seen since October 2014. MCFU has secured 44 criminal convictions with all of the providers being suspended from providing Medicaid. MCFU has secured \$226,000 in restitution judgments. He pointed out that MCFU has had two civil resolutions which are cases where there was conduct that potentially should not have happened but maybe a civil resolution was better than criminal. MCFU works with its civil counterparts to draft restrictions and limitations on the types of services individuals can provide in the future. He noted MCFU's pending cases for \$1.3 million to \$3 million in potential restitution.

[9:36:26 AM](#)

He addressed notable MCFU cases and pointed out State v. Batac. He explained that Ms. Batac worked both as an Anchorage property tax assessor and at Home Depot. MCFU found that Ms. Batac was billing the state for providing home healthcare services while actually working at Home Depot. He noted that Ms. Batac was also billing for providing home healthcare services while traveling internationally and domestically. He explained that MCFU worked with the Municipality of Anchorage to look at leave-slips to find proof. MCFU was able to prove that Ms. Batac billed the state for services not provided in the amount of \$64,665.47. Ms. Batac received a class B felony conviction, one year in jail, restitution, and ten years formal probation.

MR. PETERSON revealed that MCFU is going back to agencies for restitution in fraudulent billing cases when the agencies certify PCA's falsified timesheets. He asserted that having both the agency and PCA have "skin in the game" has led to agencies

better policing their employees. He added that MCFU has implemented a creative way for the state to see money coming back by incentivizing restitutions with the possibility for probation reduction. He explained that Ms. Batac will receive an early probation termination if she pays the \$65,000, complies with her probation conditions, and has no new criminal convictions over a three year period.

[9:39:02 AM](#)

CHAIR DYSON asked to clarify that MCFU can go after restitution from agencies that approve fraudulent PCA billing.

MR. PETERSON replied yes.

He pointed out another notable case in State v. Gunes. He noted that the fraud committed was only for \$100 and resulted in dividends far beyond MCFU's expectation. As a result, MCFU has collaborated with DHSS to work on changing the voucher program. He explained that Medicaid provides vouchers to recipients for transportation services. He explained that Mr. Gunes had broken one single voucher into multiple parts and submitted for four different rides which were not provided. Mr. Gunes also submitted falsified pickup and drop-off locations that are prohibited. He revealed that Mr. Gunes' \$100 fraud conviction resulted in the Municipality of Anchorage banning him as a chauffeur for five years and revoking his taxi cab permit with an estimated \$39,000 value. He asserted that Mr. Gunes' conviction acts as a deterrent and sends a message to individuals regarding voucher transportation fraud.

[9:41:56 AM](#)

CHAIR DYSON asked how the voucher system works.

MR. PETERSON replied that vouchers are multi-paged and entitles recipients to four different rides. He explained that the cab driver is supposed to indicate pickup and drop-off locations. He pointed out that MCFU investigated if a cab company was promoting the taking of vouchers for prohibited reasons and found that the cab company was doing the right thing by refusing to submit vouchers that involved prohibited locations.

[9:43:07 AM](#)

MR. PETERSON addressed an allegation and ongoing investigation with the Anchorage Transportation Company (ATC). ATC provided escort-transport services for Medicaid recipients and an "escort" who provides assistance. He explained that the allegation is ATC billed for an escort when no escort

accompanied the recipient. He said the credible allegation resulted in ATC's suspension to bill Medicaid while their case is pending with the U.S. Attorney's Office. The Municipality of Anchorage suspended ATC from providing services and revoked five of their permits. He noted that the Municipality of Anchorage has revamped their regulations for escort companies and prohibited their acceptance of Medicaid vouchers. He added that there has been no proof of collusion between cab companies and escort companies.

He addressed a final case that involved an ongoing investigation with a PCA agency in Anchorage. He pointed out that DHSS' Lynn Curse and Director Mays brought the PCA agency case to MCFU. He said the PCA agency case in an ongoing investigation that resulted in 29 criminal charges being filed in July 2013. MCFU was able to show \$362,000 in fraudulent billing with \$346,000 directly attributed to one company alone. To date, MCFU has had approximately 44 cases filed against employees from the PCA agency in question. He revealed that the PCA agency is currently suspended from providing services.

[9:45:35 AM](#)

He said one of the reasons he was asked to take over MCFU was attributed to his past experience collaborating with other state and federal agencies in prosecutions. He detailed that one of the first things MCFU started to do was work with various state and federal partners for assistance. He noted that MCFU operates with limited resources, investigators, and caseloads. MCFU utilizes the expertise of individuals within various state and federal law enforcement agencies to collaborate for case prosecutions. He asserted that MCFU's collaborative strategy is working, resulting in 72 criminal charges filed within the last 15 months. He indicated that MCFU anticipates seeing a continued large number of criminal cases going forward as MCFU continues its collaborative efforts.

He pointed out DHSS' innovative practices in trying to find ways to stop fraud. When MCFU identifies system weaknesses during investigations, DHSS has been extremely responsive in helping MCFU to limit fraud. MCFU is going through a process of restructuring time sheets for PCAs to make it clear and easier to identify when fraudulent billing is occurring. He added that the high level of cooperation between DOL and DHSS has been productive, resulting in the large number of MCFU prosecutions.

[9:47:36 AM](#)

MR. PETERSON noted that criminal fraud prosecutions are having a significant effect in deterring other individuals within communities in a number of ways. MCFU has heard that international travel is being discouraged due to past investigations. He noted that one individual paid back \$7,000 of \$8,000 in fraudulent billing prior to MCFU being made aware of the case. He asserted that MCFU will continue to see good results in prosecutions. He noted that historically there have not been a lot of prosecutions in Medicare fraud until the attention that cases are saving money for the state. He said privately sourced and agency referrals have increased due to the recent success in prosecutions.

[9:49:16 AM](#)

CHAIR DYSON addressed ICE and asked if a disproportionate number of the PCAs were non-citizens.

MR. PETERSON answered no. He specified that ICE has the ability to check when people are traveling. He said he is not aware of the ratio between U.S. citizens and non-citizens.

CHAIR DYSON noted the use of a debit card system by welfare participants. He asked if Medicaid jurisdictions would ever consider using a debit care system to assist with keeping records clear. He added that credit card companies use software to identify unusual transaction patterns.

MR. PETERSON answered that he was not aware of any jurisdictions considering Medicaid debit cards. He said MCFU focuses more on provider-type fraud. He noted that MCFU have come across cases where people have misused Alaska Quest Cards. He added that MCFU does not have the authority to prosecute.

[9:51:55 AM](#)

CHAIR DYSON asked if MCFU is able to go after convicted fraud offenders' personal assets for restitution.

MR. PETERSON replied that MCFU is not allowed. He explained that state law is quite restrictive and noted that there are very few areas exist where MCFU can forfeit assets directly; gambling, prostitution, and drug cases allow for the forfeiture and seizure of assets. He said generally when somebody has an ongoing criminal enterprise and they are convicted, there is no provision in state law for MCFU to go in and seize assets.

CHAIR DYSON asked if there should be laws that allow MCFU to seize assets.

MR. PETERSON answered that Chair Dyson's question is a policy question for the legislature and the Governor. He noted concerns with asset seizures that involve families where innocent members are left destitute. He remarked as a prosecutor that there have been cases where he would have liked the ability to go after funds directly from a deterrence point of view to not allow somebody to profit from fraudulent conduct.

CHAIR DYSON revealed that he was instrumental in a statute change on seizing assets from pimps.

SENATOR WIELECHOWSKI thanked Mr. Peterson for his comprehensive testimony. He asked if similar efforts are underway for Permanent Dividend Fund (PFD) fraud. He related that he hears from constituents about people who have moved out of state and still collect PFD checks. He asked if Mr. Peterson was aware if there is a similar sort of effort in PFD fraud investigations.

[9:54:26 AM](#)

MR. PETERSON answered yes. He explained that there are active and ongoing areas to prosecute PFD fraud in a number of ways. He said OSP has a prosecutor specifically dedicated to do PFD fraud and the PFD program has designated investigators. He noted that the Alaska Department of Fish and Game looks at PFD fraud to verify residency for big game tags. He added that DHSS-DPA uses PFD fraud as an area to verify public assistance qualifications. He said any place MCFU can find PFD fraud, MCFU is actively going after the cases for restitution and subsequent lifetime PFD ban.

CHAIR DYSON asked if there are any other statutory things that the legislature could fix or are there regulations that should or could be changed that would help MCFU.

MR. PETERSON replied that when he has prosecutorial concerns with regulations, he goes back to DHSS to analyze the specific regulations. He explained that regulations written for DHSS focus on providing services and not on violation prosecution. He said regulations are reviewed and submitted as part of the normal regulatory process. He specified that if MCFU's concern is statutory, MCFU makes a proposal both to the Attorney General and to the DHSS Commissioner as part of MCFU's legislative request. He noted that MCFU will probably have requests for the next legislative session.

[9:58:28 AM](#)

CHAIR DYSON asked if MCFU's requested changes will address statutes or regulations.

MR. PETERSON replied that the request will be for changes to statute.

CHAIR DYSON noted that he and the committee appreciates what Mr. Peterson is doing. He noted that he would like to see a lot more publicity so the message gets out. He asked Mr. Peterson to verify that MCFU has been doing press releases.

MR. PETERSON revealed that MCFU has remodeled DOL's website to allow for anonymous Medicaid fraud reporting. He explained that the anonymous input provides MCFU with credible allegations to initiate investigations. He added that MCFU posts on DOL's website public court documents and press releases. He asserted that MCFU is doing what it can to try and spread the word that the state is actively prosecuting Medicaid fraud.

CHAIR DYSON asserted that he always wanted to address a welfare fraud deterrent by having welfare offices show photos of recipients who have cheated the system.

SB 104-APPROPRIATIONS FROM THE DIVIDEND FUND

[10:00:26 AM](#)

CHAIR DYSON announced that the committee is now going to take up SB 104.

[10:00:39 AM](#)

SENATOR GIESSEL moved to adopt work draft Committee Substitute (CS) for SB 104, labeled 28-LS0847\Y, as the working document to replace Senate Bill 104 labeled 28-LS0847\P.

CHAIR DYSON announced that without objection, Version Y was the working document before the committee.

CHAIR DYSON, SB 104's sponsor, commented that a continuing error he has made in the legislature is to work very hard on what he thought was good legislation and finding that the execution of the legislation fell significantly short of what the intentions. He expressed that his fault has been not following up. He revealed that he worked with Representative Berkowitz a decade ago on the whole western-government concept of restorative justice for victims to a pre-offence condition. He noted that when possible, perpetrators are restored to a useful role in life as well.

He revealed that the legislature passed legislation in 1988 to make felons and certain misdemeanants ineligible for their PFD with the intent that the money go for victim restitution. He remarked that by and large, the intended PFD restitution has not happened. He said several heinous crimes lead to the state instituting the Violent Crimes Compensation Board (VCCB). He said he has found out through research that approximately \$100,000 out of the approximate \$500,000 in annual court-ordered restitution is being collected from the agencies that are responsible for getting money to victims. He remarked that victims were going a long time with no help. He set forth a fact that he felt startling where approximately \$12 million to \$13 million in prisoners' PFD funds have gone towards inmate healthcare rather than towards the compensation fund.

He said the intent in SB 104 is to fix the system as intended and to clear up a couple of barriers within the existing statute. He asserted that some of the state's agencies have an agency-centric view of what should happen with the funds as opposed to legislature's clear intent. He noted that the Governor is quite enthusiastic about what the legislature is doing. He said the involved agencies are working with his office and providing good feedback to make the bill better, hence the CS before the committee.

[10:05:26 AM](#)

JOSHUA BANKS, Staff for Senator Dyson, Alaska State Legislature, Juneau, Alaska; provided a CS overview for SB 104.

MR. BANKS set forth that the problem SB 104 is trying to address is as follows:

- Fulfill the constitutional right of victims to receive restitution and compensation. There are two basic vehicles that the state has historically used to achieve victim restitution: DOL Collections Unit (DOL-CU) and the Violent Crimes Compensation Board (VCCB).
- DOL-CU can only help victims after a conviction, if there is a conviction. The end result leaves many victims of horrific crimes without compensation or any restitution. On the other hand, VCCB is able to give compensation as soon as there is a police report, sometimes years before a conviction is even given.

MR. BANKS noted that in FY2012, VCCB was awarded \$637,154 in court-ordered restitution, but only \$47,652 was received.

CHAIR DYSON asked to clarify that VCCB's award is court-ordered.

MR. BANKS answered yes. He continued that the majority of restitution funds that DOL receives are through garnishing PFDs. He said currently under AS 43.23.005, a number of restitution ordered offenders are ineligible for the PFDs that the state cannot garnish. Unfortunately the majority of individual PFDs have gone to DOC: 56 percent in FY2006 and 84 percent in FY2014.

[10:08:04 AM](#)

He addressed SB 104's four primary goals as follows:

1. Seeks to restore crime victims to a pre-offense condition.
2. Establishes a reliable funding source for VCCB.
3. Sets a priority for use of the Criminal Fund.
4. Uses a restitution vehicle that already exists in law.

CHAIR DYSON added that when he and Representative Berkowitz did the restitution legislation a decade ago, it was clearly established that the first priority for any funds that the perpetrator had was to go to the victim. He noted that subsequent legislation added child support to the number one priority. He stressed that he and Representative Berkowitz made it very clear that court costs were secondary to victims and children. He asserted that SB 104 also emphasizes victims and children.

MR. BANKS detailed that there is no amount of money that can be given to repair the victim's emotional and physical damage. He asserted that the primary goal is to use the criminal funds to give some form of relief in compensation for the victims and to establish a reliable funding source for VCCB. He noted that the current statute has no priority set for how the PFD Criminal Fund (PFD-CM) is to be used. The statute that is primarily used is AS 43.23.028(B) that simply states what agencies can receive money from PFD-CM. He detailed that AS 43.23.028(B) has no priority set to which agency should receive more of the fund; it is up to Governor and the legislature to decide. He said the intent is to create a reliable funding source for VCCB and to prioritize PFD-CM so that victims come first. He reiterated that the majority of PFD-CM funds have gone to DOC. He remarked that prisoners are indirectly receiving their lost PFDs when the DOC obtains funds that should be directed to the PFD-CM. He summarized that SB 104 uses the current restitution vehicle by making priority changes to PFD-CM.

[10:11:38 AM](#)

MR. BANKS reviewed the PFD-CM history. HB 245 passed in 1988 to make convicted felons ineligible for a PFD. There was intent language in HB 245 that directed the money to go towards victim compensation with VCCB. He said AS 43.23.005(d) was expanded to also include incarcerated felons, misdemeanants with a prior felony, and third time misdemeanants. He added that since 1988, recipients for PFD-CM was expanded to include DOC. He noted that DOC was not originally intended to be a PFD-CM.

He pointed out that the primary difference with the CS is to change the PFD-CF's primary recipient to VCCB as opposed to DOL. He said the belief is that VCCB can better determine needs and provide funds more quickly to victims.

[10:14:35 AM](#)

He detailed the CS sectional analysis as follows:

Section 1:

- (a) Makes language uniform with other Criminal Fund statutes.
- (b) Ensures that money goes towards priority order created in AS 43.23.031.

Section 3:

- (a) Creates priority order for Criminal Fund:
 - VCCB for victim compensation,
 - CSSD for child support arrearages,
 - State approved rehabilitation programs,
 - Other incarceration cost.
- (b) VCCB will send DOR amount of compensable claims for previous fiscal year.
- (c) CSSD will send amount owed for child support arrearages.
- (d) Court system will send amount owed for court-ordered drug and alcohol treatment.
- (e) DOR will use reports to determine the amount each agency should receive from the PFD-CF.
- (f) DOR will submit a report with the Operating Budget listing the amounts determined under (e).

CHAIR DYSON asked Mr. Banks to continue his sectional analysis at the next committee meeting. He noted that there is no known opposition to SB 104 and he believes the bill is an important piece of legislation. He expressed his intent to get SB 104 out of committee the following week. He said he would commend to the committee's attention the report from Legislative Research on

what has happened historically with victim compensation. He said if the committee reads the report carefully, members may be as angry due to the disturbing information. He said SB 104 has great support from the Governor. He noted a meeting with the Governor where the Governor expressed being surprised that victims' compensation was not working the way it should be. He asked Mr. Banks what department goes after criminal assets in DOL.

[10:17:26 AM](#)

MR. BANKS replied the DOL Collections Unit (DOL-CU).

CHAIR DYSON said DOL-CU is working hard with limited resources. He explained that he had a meeting with DOL-CU and noted that the DOL-CU goes after financial assets, institutions, real property, but does not have the time to go after private property. He disclosed that DOL-CU conveyed that going after somebody's car would cost more money than the asset is worth. He stated that he would argue that a \$100,000 airplane or a \$30,000 pickup could make a huge difference to victims. He added that Governor Parnell said collections can be contracted along with using auction houses to sell seized assets. He summarized that there is an ongoing effort to encourage DOL-CU to do more with private property collections.

[10:18:49 AM](#)

There being no further business to come before the committee, Chair Dyson adjourned the Senate State Affairs Committee at 10:18 a.m.