HOUSE FINANCE COMMITTEE
March 29, 2016
5:08 p.m.

5:08:11 PM

CALL TO ORDER

Co-Chair Thompson called the House Finance Committee meeting to order at 5:08 p.m.

MEMBERS PRESENT

Representative Mark Neuman, Co-Chair
Representative Steve Thompson, Co-Chair
Representative Dan Saddler, Vice-Chair
Representative Bryce Edgmon
Representative Les Gara
Representative Lynn Gattis
Representative David Guttenberg
Representative Scott Kawasaki
Representative Cathy Munoz
Representative Lance Pruitt
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Becky Hultberg, President and CEO, Alaska State Hospital and Nursing Home Association, Juneau.

PRESENT VIA TELECONFERENCE

Robin Minard, Mat-Su Health Foundation, Wasilla; Daniel Nelson, Pharmacist and Member Alaska Pharmacists Association, Fairbanks; Margaret Soden, Retired Pharmacist, and Member Alaska Pharmacists Association, Fairbanks; Nancy Merriman, Executive Director, Alaska Primary Care Association, Juneau; Tara Ruffner, Alaska Pharmacists Association, Kenai; Shannon Hilton, Alaska Nurse Practitioner Association and Advanced Nurse Practitioner Alliance, Anchorage; Lis Houchen, Northwest Regional Director, National Association of Chain Drugstores,

Brinnon, Washington; Dirk White, Pharmacist, Sitka; Timothy Noah Laufer, MD, Anchorage; Dick Hubbs, COO, Geneva Woods Pharmacy, Anchorage; Ilona Farr, Family Practice Physician, Anchorage; Dave Donley, Hope Community Resources, Anchorage; Ross Bieling, Self, Anchorage; Michael Bailey, Vice President, Alaska Association on Development Disabilities, Anchorage; Judy Eledge, Self, Anchorage.

SUMMARY

CSSB 74(FIN) am
MEDICAID REFORM;TELEMEDICINE;DRUG DATABASE

CSSB 74(FIN) am was HEARD and HELD in committee for further consideration.

#sb74
CS FOR SENATE BILL NO. 74(FIN) am

"An Act relating to diagnosis, treatment, and prescription of drugs without a physical examination by a physician; relating to the delivery of services by a licensed professional counselor, marriage and family therapist, psychologist, psychological associate, and social worker by audio, video, or data communications; relating to the duties of the State Medical Board; relating to limitations of actions; establishing the Alaska Medical Assistance False Claim and Reporting Act; relating to medical assistance programs administered by the Department of Health and Social Services; relating to the controlled substance prescription database; relating to the duties of the Board of Pharmacy; relating to the duties of the Department of Commerce, Community, and Economic Development; relating to accounting for program receipts; relating to public record status of records related to the Alaska Medical Assistance False Claim and Reporting Act; establishing a telemedicine business registry; relating to competitive bidding for medical assistance products and services; relating to verification of eligibility for public assistance programs administered by the Department of Health and Social Services; relating to annual audits of state medical assistance providers; relating to reporting overpayments of medical assistance payments; establishing authority to assess civil penalties for violations of medical assistance program requirements;

relating to seizure and forfeiture of property for medical assistance fraud; relating to the duties of the Department of Health and Social Services; establishing medical assistance demonstration projects; relating to Alaska Pioneers' Homes and Alaska Veterans' Homes; relating to the duties of the Department of Administration; relating to the Alaska Mental Health Trust Authority; relating to feasibility studies for the provision of specified state services; amending Rules 4, 5, 7, 12, 24, 26, 27, 41, 77, 79, 82, and 89, Alaska Rules of Civil Procedure, and Rule 37, Alaska Rules of Criminal Procedure; and providing for an effective date."

5:08:38 PM

Co-Chair Thompson discussed the meeting agenda.

^PUBLIC TESTIOMONY

5:08:55 PM

ROBIN MINARD, MAT-SU HEALTH FOUNDATION, WASILLA (via teleconference), testified in support of SB 74. She communicated that the Mat-Su Health Foundation shared ownership in Mat-Su Regional Medical Center and invested its profits back into the community in order to improve the health and wellness of Alaskans in the region. She detailed that the foundation co-owned a hospital to care for people when illness and injury was not prevented; it also made grants to create a healthier population. The foundation had supported Medicaid expansion in order to increase access to behavioral health and primary care for more Alaskans; however, they had supported expansion only if it was coupled with reform. She spoke to the need for Medicaid reform measures. She relayed that expansion had improved access to care for behavioral health issues and could prevent costly emergency department visits. Medicaid expansion and reform could help the foundation provide better care for individuals, better health for populations, and lower per capita costs. She stated that Medicaid expansion and reform could bring more care to more people at a lower cost. The foundation strongly supported the use of telemedicine. She highlighted the difficulty of recruiting and retaining an effective behavioral health workforce in states with large populations like Alaska. She pointed to Alaska's lower rates of psychiatrists, substance

abuse counselors, and other. She stressed that Alaska was designated as federal mental health shortage areas. The foundation also supported the implementation of stronger prescription drug monitoring to help battle opioid abuse. Lastly, the foundation supported the use of case management services in order to incentivize patient-centered care that would result in cost savings. The foundation was particularly interested in case management targeted to high utilizers of emergency care. In 2013 there were more than 6,000 visits to the local hospital emergency department with charges of $23 million by patients with behavioral health needs - the figure did not include $1.6 million for law enforcement, 911 dispatch, and transportation. She noted that only a portion of the patients had been on Medicaid, but the numbers were still significant. There were 66 super utilizers (someone with more than 10 visits to the emergency room annually). She reiterated the foundation's support for the legislation.

5:12:55 PM

DANIEL NELSON, PHARMACIST and MEMBER ALASKA PHARMACISTS ASSOCIATION, FAIRBANKS (via teleconference), spoke in support of the legislation with a modification. He believed that overall SB 74 was a good bill; however, he had some significant concerns related to prescription drug monitoring changes. The believed the requirement for pharmacists to check the database before they dispense a controlled substance was onerous and unnecessary. He believed the check was redundant when it had already been checked by a prescribing physician. He asked for the language be removed.

5:14:52 PM

MARGARET SODEN, RETIRED PHARMACIST and MEMBER ALASKA PHARMACISTS ASSOCIATION, FAIRBANKS (via teleconference), testified in favor of the legislation, but requested changes to portions. She shared that when she had served on the Board of Pharmacy they had begun working on the prescription drug monitoring statutes. She believed the changes had made a big difference in trying to deter some of the controlled prescription substance abuse in Alaska. She had some concerns over some of the proposed changes to the bill related to prescription drugs. She believed it was important to allow prescribers and pharmacists to delegate authority to another person to access the database, but she

believed the delegated authority should only be to licensed personnel. She did not believe a pharmacist should have to check the database each time they received a prescription for a controlled substance - the physician or prescriber should have already checked. She reasoned that pharmacists could always check the database if they had concerns with a patient presenting a prescription. She did not believe the emergency room should be exempt from checking the database. She explained that often "doctor shoppers" went to the emergency room to get additional prescriptions for controlled substances. She reiterated her support for the legislation with minor changes.

5:18:34 PM

BECKY HULTBERG, PRESIDENT and CEO, ALASKA STATE HOSPITAL AND NURSING HOME ASSOCIATION, JUNEAU, spoke in support of the legislation. She shared that earlier in the week the association had provided comments on managed care and the coordinated care demo project in the bill. She addressed specific questions from the morning House Finance Committee meeting related to the emergency room project in Section 31 of the legislation. She communicated that the project was a collaborative effort between hospitals, emergency physicians, and the state, with a goal of reducing the number of unnecessary emergency department visits and improving patient outcomes. She spoke to the shared savings component of the bill specifically related to why the state would share the savings - from the project - with hospitals. Through the project that the association had brought forward, hospitals would be spending money to lose money. She stressed that it was not a great business model; however, it was the right thing to do. One of the problems with the healthcare system was that the payment structure incentivized the wrong things - volume over value. She explained that the hospitals received revenue from Medicaid patients who inappropriately use the emergency room. She furthered that they would lose money in finding less expensive ways to address the patients behavioral or physical health issues. The end result would be better care for the patient and savings to the state. She explained that hospitals were asking (in the legislation) to have the opportunity to negotiate shared savings with the state in order to offset some of the costs the hospitals would invest in the program. Hospitals would be hiring care coordinators, dedicating staff time to implement the project, and their revenue would be reduced from the

specific patients. Currently there was no financial incentive for the hospitals to do any of the things she had mentioned, but through shared savings negotiations with the state, the hospitals could at least recoup the costs they would spend on implementing the program. She stated it was a baby step towards paying for value; aligning the financial interests of providers with those of the state would help achieve the goal of cost savings and improve patient care.

Representative Gara relayed that he had a question related to an emergency room issue.

Co-Chair Thompson noted that the committee would address the question at a later time.

5:21:47 PM

NANCY MERRIMAN, EXECUTIVE DIRECTOR, ALASKA PRIMARY CARE ASSOCIATION, JUNEAU (via teleconference), spoke in support of the bill. She communicated that the association was the statewide technical assistance and training provider for community health centers across the state. She provided additional detail about the association. She urged the committee to retain the pilot language in Section 31, page 33 of the bill. The association had heard from other experts and colleagues nationwide that moving from a volume to value-based payments for providers would protect and preserve the state's providers (especially the safety net providers). She explained that the healthcare system in Alaska had no experience in value-based payments. She furthered that moving from volume-based - which counted visits, tests, and procedures for their mode of payment - to value-based was very different. She believed it was wise to provide transition time for providers. The association believed that Accountable Care Organizations (ACO), demonstrations, and pilots were a good way to give the opportunity - for the infrastructure and patient engagement - to change Aetna's practices. She advocated for a provider-led network would be founded in care coordination for the high cost, high utilizers of healthcare; the health centers served those patients on a regular basis. She spoke to the importance of a data warehouse, data analytics, care coordination, practice management, understanding workflows, and other. The association believed the bill's language would allow for development of the practices, providers, staff, and patients to go from one end of the spectrum to

the other. The end goal was to allow the smooth transition to the "triple aim."

5:25:01 PM

TARA RUFFNER, ALASKA PHARMACISTS ASSOCIATION, KENAI (via teleconference), testified in support of the legislation with opposition to certain aspects related to the Prescription Drug Monitoring Program (PDMP). She referred to Section 18 of the legislation related to pharmacists and prescribers checking the database for each prescription and relayed her belief that the requirement was redundant. She explained that if prescribers were checking before prescribing, pharmacists had other means of ensuring patients were not double dipping. She stated that pharmacists would check any prescription they had concerns about. Additionally, she strongly felt that only licensed individuals should have access to the database. She was concerned that a pharmacist could lose their license for not checking the database, which she believed was too stringent and not congruent with the bill's intent.

5:28:01 PM

SHANNON HILTON, ALASKA NURSE PRACTITIONER ASSOCIATION AND ADVANCED NURSE PRACTITIONER ALLIANCE, ANCHORAGE (via teleconference), spoke in support of the legislation, but had comment about the PDMP portion of the legislation. The association had some concerns about the intended mandate of the prescription drug monitoring database. The association felt that the mandate would cause undo financial and time constraints, while trying to provide the best care possible in busy clinics. She elaborated that it would impact nurse practitioners, surgeons, physicians' assistants, and other. The association recognized that opioid abuse was a multi-factorial crisis; however, the intention to help combat over prescribing opioids and early detection was only one facet of a much larger crisis. Alaska nurse practitioners had expressed major concern that the system was consistently inefficient, which led providers to spend considerable time accessing the database prior to prescribing. Additionally, the association felt that punitive sanctions on providers who fail to check the database prior to filling a prescription was concerning for a number of reasons. She detailed that evaluations of other state's PDMP mandates had shown mixed data on the effects of prescribing habits and mortality outcomes. The

association felt there was the potential for risk of inappropriate clinical decisions. She stated that mandating the use of such a program and imposing the sanctions for failure of use was inconsistent with current guidelines. Mandates would also impose financial constraint on the licensing and regulatory boards. She stated that the use of the PDMP should be performed at the provider's discretion. She provided an example based on her work experience.

5:31:47 PM

LIS HOUCHEN, NORTHWEST REGIONAL DIRECTOR, NATIONAL ASSOCIATION OF CHAIN DRUGSTORES, BRINNON, WASHINGTON (via teleconference), was very supportive of the bill overall; however, she suggested changes to Sections 14, 15, 18, and 19. She shared that the association had worked closely with the Alaska Pharmacy Association on the initial passage of the PDMP. She stated that the PDMP had become a useful tool in deterring the abuse of legal prescriptions of controlled substances. She spoke to current pharmacist requirements. She shared that members of the association were willing to increase the frequency to within one business day from when the prescription was sold. She shared that pharmacists often filled prescriptions that were not picked up; therefore, the association requested that the language reflect that reporting be upon when the prescription was actually picked up; the change would need to be included in Sections 14 and 19. The biggest concern for association members was the requirement in Section 18 for a pharmacist or practitioner to check the database prior to dispensing or writing a prescription. She asked that prescribers be required to check the database prior to issuing a prescription for a controlled substance. She stressed that pharmacists could only dispense controlled substances. Checking the database in advance would eliminate confusion at the pharmacy counter. The additional workload could be detrimental to the patient waiting for a prescription. She noted that pharmacists would continue to check the database based on their professional judgement. She requested the deletion of a provision that would exempt emergency rooms. Based on information received from pharmacists, drug seekers often used emergency rooms (ER) to acquire controlled substances due to the frenetic nature of the ER. She requested that pharmacists and practitioners should only have the ability to delegate access to the database to licensed individuals, which would allow for disciplinary action to be taken if the database was accessed

inappropriately. Lastly, she asked that the language following the word "substance" be deleted from Section 14, subsection (B)(8). She explained that there had been significant changes in reporting the pharmacist license number, which was currently required and unnecessary; the information was not required in other states. She provided a summary of concerns.

Co-Chair Thompson asked testifiers to send in their written remarks.

5:36:51 PM

DIRK WHITE, PHARMACIST, SITKA (via teleconference), agreed with much of the prior testimony. He was concerned about the exemption of emergency room doctors from checking the PDMP. He had witnessed the ER as the main source of drug-seeking and doctor shopping patients. He reasoned that if an ER doctor found that a person had been seeking drugs it would put an end to the situation if the requirement applied to emergency rooms. He pointed to Section 14 and believed language related to the date the prescription was filled and method of payment should be deleted. He thought the language was unnecessary. He believed delegates should be licensed and authorized (Section 15); if a person was not licensed and there was a leak in information he noted there would be no recourse.

5:40:13 PM

TIMOTHY NOAH LAUFER, MD, ANCHORAGE (via teleconference), spoke in general support of the bill, with some concerns. He provided information about his professional background. He applauded the idea of reforming Medicaid in order to do a better job of rationally taking care of people. He stated that primary care doctors were not represented at meetings that impacted primary care doctors. He spoke to the issue of controlled substances, which he believed should be limited to opiates. He stated that all drugs were not the same and opiates were the problem. He furthered that the database was very useful, but it would be onerous and expensive to require its use for all scheduled substances. He discussed that telemedicine could be a great tool; however, he provided a scenario that included a well-trained provider out-of-state making a judgement call about a patient they had never met. He explained that the doctor's threshold for sending the patient to the ER would

be substantially lower, which would result in an uptick in costs and utilization of emergency rooms. He relayed that cost and utilization increased immediately; he believed individuals would be going straight to the ER. He discussed savings that occurred when a person saw their established primary care doctor.

5:43:41 PM

DICK HUBBS, COO, GENEVA WOODS PHARMACY, ANCHORAGE (via teleconference), testified in support of Medicaid reform to improve care and reduce costs for Alaskans. He believed the bill as proposed included several provisions that would result in unintended consequences that would severely impact Alaskans and local businesses. Section 23 proposed to clarify the department's ability to enter into a competitively bid contract for durable medical equipment. He concurred with the clarification, but believed it must be to a company serving Alaskan patients in all aspects; if select portions of service were removed and only very low services remained, local providers would be forced to stop providing the services. He stressed there was no way the state could allow high volume items to be outsourced to an out-of-state provider that was unable to service and repair the equipment. He supported competition, but not if the playing field was not equal. The bill proposed a new provision in Section 17 that would require the adoption of regulations to design and implement the medical assistance reform program. He proposed adding language intended to maximize the benefit that pharmacy initiatives could add to the program. He suggested adding the following language "including paid comprehensive medication review, use of pharmacy transitional services by hospitals, and other services with the proven record of reducing hospitalization and readmissions." Section 10 spoke to penalties and legal fees related to false claims. He believed that penalties less than actual fraud could result in a significant negative consequence. The language referred to false claims in the bill and could easily be misinterpreted. He stated that in many cases the concept of overpayment due to false claims was combined with the concept of fraud; however, the two concepts were different. He recommended removing the term "false" and limiting the penalties to cases of fraud.

5:47:15 PM

ILONA FARR, FAMILY PRACTICE PHYSICIAN, ANCHORAGE (via teleconference), relayed that had many concerns about the bill. She believed the bill included good things, but it also included provisions that could potentially force many private practitioners out of business. She shared that she personally wrote between six and ten prescriptions for controlled substances per day. She stated that people did not look to see what controlled substances were before dealing with the bill because they could include seizure medication, diabetes medication, cough syrup, and other. She explained that patients getting an MRI would also now be included in the database. She stated that the new provision would cost her about an hour per day and would cost her practice approximately $125,000 annually. She stressed that it could be a negative impact of $100 million to the private sector. She stated that the current system worked - she was able to look at the database if she had a patient she was concerned about. She stated that Schedule 3 and 4 drugs had very low risk of abuse. She had looked at studies on preventing drug abuse - in 2014 less than 1 percent of drug abuse cases were related to prescription abuse. She recommended that the provision should be limited to opiates in quantities of more than 40 pills. She asked what the database would be used for in the future. She mentioned the difference between telehealth and telemedicine. She did not believe there would be continuity of care under a system of telehealth. She stated that the physicians treating people would be out-of-state and the hands-on treatment would be lost. She reiterated her concern about the impact of the provisions.

5:52:22 PM

DAVE DONLEY, HOPE COMMUNITY RESOURCES, ANCHORAGE (via teleconference), read from a prepared statement:

> Hope community resources supports the state's efforts toward Medicaid reform and appreciates the work that has gone into SB 74. We were disappointed to learn last week that the language contained in the false claims and reporting act has been submitted for federal approval months ago, without the opportunity for public comments and input.
>
> We remain concerned that the current language does not adequately protect honest providers against liability for the bad acts of rouge employees and provides

> insufficient protections for self-reporting and self-correction of problems. The vast majority of Medicaid providers seek to provide quality services and are the first line of defense against false claims and fraud against Medicaid.
>
> The senate, instead of addressing some of our specific suggestions, chose to place a three year sunset on portions of the Medicaid fraud act section. We are grateful for that sunset provision but continue to believe it would be much better to address the specific concerns prior to passing new law.
>
> We believe we and other providers have asked for very reasonable safeguards for honest law abiding providers.

Mr. Donley relayed that Hope Community Resources had provided three specific suggestions to the committee. The organization wanted to see provisions protecting self-reporting within the Medicaid Fraud Act (Section 10 of the legislation). He recommended the following language on Section 27, page 23 to be included in Section 3, page 7:

> The Department of Health and Social Services may not assess interest or penalties on an overpayment self-identified and repaid by a medical assistance provider under this section.

Mr. Donley stated there had been prior testimony by state officials that similar language in the bill would apply to the Fraud Act sections, but how it would work was unclear because the Fraud Act appeared to stand alone. He believed the language should be clarified because the safe harbor was important to encourage providers to self-report and correct. The organization requested that a more precise definition of "agent" be used in the definitions section of the bill. He suggested the following definition:

> An agent with apparent authority does not include someone acting in violation of the policies or instruction of the principal provider without that provider's knowledge.

Mr. Donley elaborated that the organization would like some protection against liability. Lastly, he requested the

addition of language related to the False Claims Act in Section 10, page 8 of the legislation as follows:

> ...unless the evidence shows that the agent or apparent agent acted with intent to deceive the principal.

Mr. Donley expounded that the suggested language would help protect the state against "rouge agents" acting on their own against instructions.

5:56:06 PM

ROSS BIELING, SELF, ANCHORAGE (via teleconference), reminded the committee that the purpose of the bill was reform - to save money for the state through process. He spoke to cost reductions and earlier testimony that hospitals were spending money to lose money and that there should be shared savings with the state. He countered that if hospitals were losing money none of "us" would be here. He stressed that there was a crisis in the cost of healthcare in Alaska. He stated that Premera had lost $9 million to $12 million the preceding year and Moda could not pay its bills. He stated that the crisis was cost based. He spoke to telehealth. He believed consideration should be given to tort claims that would flow from the cost of patients - the issues were difficult to fine tune but they would happen. He thanked the committee for its attention to detail in the bill.

5:58:45 PM

MICHAEL BAILEY, VICE PRESIDENT, ALASKA ASSOCIATION ON DEVELOPMENT DISABILITIES, ANCHORAGE (via teleconference), provided information about the association. The association supported the concept of Medicaid reform; however, it was disappointed to learn that language had been submitted to the Centers for Medicare and Medicaid Services (CMS) months earlier without the opportunity for public comment. The association requested that the public hearing at least record the concerns of providers. The association supported the conviction of providers who intentionally commit fraud, but it was unreasonable to assume from publicized convictions that all providers were committing fraud. He stated that providers were the first line of defense against false claims and fraud; many of the providers were nationally accredited and had implemented policies designed

to prevent false claims. Some examples included pre-billing controls and post-billing controls (i.e. external audits and accreditation reviews). He agreed with earlier testimony about adding protections for self-reporting. He stated that the remoteness of Alaska did not allow for the micromanagement of every field worker; therefore, many providers had established standard operating procedures that were required for accreditation compliance; expected behavior of employees included fraud and false claims prevention. He supported language to Section 10, page 14 proposed by Mr. Donley - that an agent with an apparent authority did not include someone acting in violation of the policies or instruction of the principal provider without that provider's knowledge. The association also supported language specifying that there should be some relief for the provider when rogue employees intended to deceive the principal.

6:02:09 PM

JUDY ELEDGE, SELF, ANCHORAGE (via teleconference), was disappointed that the legislature could not locate more than $30 million to cut in the reform. She shared that she was on Medicare and had very few services and choices. She was concerned that someone on Medicaid had the "Cadillac plan." She believed the bill was an opportunity to look at some of the services that were offered to people on Medicaid that were not offered to anyone else. She had paid into Medicare and was bothered when people received something they were not paying for - she did not have a problem with it if the individuals were extremely needy, disabled, or had children in need; however, she did not support unique Medicaid services going to people who worked who may not want to be covered on insurance. She believed there had been $222 million in optional Medicaid services in 2014. She recommended looking closely at some of the optional services offered. She did not believe the options should all be available when people working and paying into something else did not receive the benefits.

6:05:01 PM
AT EASE

6:21:59 PM
RECONVENED

Co-Chair Thompson noted that there were no testifiers present or online. He relayed that he would adjourn the meeting at 6:30 p.m. if there were no additional testifiers.

6:22:27 PM
AT EASE

6:30:34 PM
RECONVENED

Co-Chair Thompson relayed that there were no additional testifiers.

CSSB 74(FIN) am was HEARD and HELD in committee for further consideration.

Co-Chair Thompson discussed the agenda for the following day.

#
ADJOURNMENT

6:31:40 PM

The meeting was adjourned at 6:31 p.m.