

HOUSE FINANCE COMMITTEE  
April 9, 2016  
2:11 p.m.

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CALL TO ORDER

Co-Chair Thompson called the House Finance Committee meeting to order at 2:11 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

Rex Shattuck, Staff, Representative Mark Neuman; Jane Pierson, Staff, Representative Steve Thompson; Heather Shaddock, Staff, Senator Pete Kelly; Stacie Kraly, Assistant Attorney General, Department of Law; Jay Butler, Chief Medical Officer, Department of Health and Social Services; Jon Sherwood, Deputy Commissioner, Medicaid and Health Care Policy, Department of Health and Social Services; Representative Liz Vasquez.

PRESENT VIA TELECONFERENCE

Kate Glover, Legislative Legal Services, Legislative Affairs Agency; Erin Narus, State Medicaid Pharmacist, Department of Health and Social Services; Andrew Peterson,

Assistant Attorney General, Office of Special Prosecution,  
Medicaid Fraud Control Unit, Department of Law.

SUMMARY

CSSB 74(FIN) am

MEDICAID REFORM;TELEMEDICINE;DRUG DATABASE

HCS CSSB 74(FIN) was REPORTED out of committee with an "amend" recommendation and with 13 new fiscal impact notes from the Department of Health and Social Services; 1 new fiscal impact note from the Department of Commerce, Community and Economic Development; 1 new fiscal impact note from the Department of Law; 1 new fiscal impact note from the Department of Corrections; and one previously published fiscal note: FN29 (ADM).

#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."

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Co-Chair Thompson discussed that the committee would hear amendments on SB 74.

^AMENDMENTS

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Co-Chair Neuman MOVED to ADOPT Amendment 1, 29-LS0692\T.1 (Glover, 4/7/16) (copy on file). [Note: due to amendment length it has not been included in the minutes. See copy on file.]

Co-Chair Thompson OBJECTED for discussion.

Co-Chair Neuman explained that the amendment addressed a major concern by adding a sunset provision to the Prescription Drug Monitoring Database (PDMP). He elaborated that he had received a couple of letters on the issue. He detailed that the amendment would sunset the PDMP provision in three years; the topic would come before the legislature at that time to determine whether it had worked as intended or if there were areas of concern. He elaborated that because the bill would allow additional individuals to access the PDMP (including non-licensed individuals) he was concerned that information may be leaked. He stated that information had been found that social security numbers and other personal information had been leaked from the database in other states.

Co-Chair Neuman relayed that individuals had expressed surprise when he had asked his constituents whether they were aware the state and federal government kept track of the prescription drugs people took in a database. He believed the provision increased government in people's lives; he was opposed to the database adding more government into people's private lives. He referred to testimony from physicians about the time the database took. He shared that he had spent the past few years talking to many doctors about the issue. He understood the PDMP was an important tool for doctors. He stated that in three years the legislature could look at portions that were expanded to allow access to others. He stressed that the legislators were the voice of the people. He believed it was respectful to take a look to determine whether there had been issues during the first three years. He hoped it would require the department [the Department of Commerce, Community and Economic Development (DCCED)] or medical board to determine if there were issues over the three-year period. He opined the database was very intrusive into people's personal lives.

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Co-Chair Thompson noted that there would be an expense to put the bill's PDMP provision in place. He wondered if there would be another expense in the future if the provision sunset and was reenacted at a later time. Alternatively, he asked if the amendment would merely look at the provision to determine if it should be continued in three years.

Co-Chair Neuman replied that there would be no expense to have the legislature look at the program in three years. His intent was to review the program in three years to determine if it was something the state should continue.

Representative Gattis referred to constituents who had challenges with the database, while others supported it. She struggled with having a database that included people's medicine, but she recognized there was a huge problem facing the state. She also understood there were databases in hospitals and many other places. She asked how the topic would be reported back to the legislature in three years and who would make the report.

Co-Chair Neuman answered that annually the legislature received a report from the department on the PDMP. He talked including the information in a report to the legislature, but he believed it would not be broadly read. Therefore, the amendment would bring the issue before the legislature.

REX SHATTUCK, STAFF, REPRESENTATIVE MARK NEUMAN, elaborated that there was a provision in statute for an annual report back to the legislature. He continued that several other reports came out and requirements that would indicate what a legislator may be looking at. For example, if the database was breached, protocols were in place that were required to be acted upon. He detailed that instead of a full-fledged audit, the reports would give an indication on the program's effectiveness. The report would also include information on the successfulness of many of the provisions in the bill.

Co-Chair Neuman added that he did not want to go through Legislative Budget and Audit due to the expense. The amendment would bring the provision back to the legislature for review just like every other sunset.

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Representative Gara was trying to determine the intent of the amendment. He asked whether the amendment intended a review of how the database provision had worked during the three-year period or whether it would be eliminated in three years, which could mean the legislature would have to pass a new bill.

Mr. Shattuck answered that Amendment 1 would repeal the provision. He continued that a legislator would need to offer legislation to leave the statute as is.

Representative Gara asked for verification that the amendment would repeal the PDMP provision in three years unless another legislator picked it up and introduced another bill to extend it.

Mr. Shattuck answered in the affirmative.

Representative Gara observed that page 5, lines 19 through 21 of the amendment returned to current law and would make the PDMP voluntary. He read from the amendment: "Nothing in

this section requires or obligates a dispenser or practitioner to access or check the database before dispensing, prescribing, or administering a medication..." He asked how it differed from current law.

Mr. Shattuck replied that he had gone through the bill and had been surprised at the complexity of redoing an action. In three years the amendment would return statutes to their current existing language. The language "insert a new bill section to read..." returned the statute to its current language. The amendment would conform to the original bill and reset statutory language to its language at present.

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Representative Gara stated that whether to require physicians to look up Class II and III controlled substances was a policy call. He shared that opioids fell under the Class II category. He detailed in 2012 Alaska had more than twice the national rate of opioid prescription drug overdose deaths. Alaska was one of the states that did not currently require physicians to check the database. He referred to testimony that Class II and III drugs would not be a huge burden and were the most important drugs to check. He noted the original bill had included Class IV, which he did not believe was in the current version. He elaborated that Class III drugs included things like steroids (a person could have a heart attack if they took too many). He characterized Class II and III prescriptions as death drugs if over prescribed. He could be more supportive of an amendment requiring a report to the legislature in three years about whether the program was working. He did not support repealing the section. He had been convinced by testimony of the need to check the database for Class II and III prescriptions. He reasoned the state's heroin problem was worsening, not improving. He specified that one of the ways a person ended up on heroin was starting out on opioid drugs. He did not support the amendment.

Vice-Chair Saddler echoed comments made by Representative Gara. He stated that there was a challenge to balance the right to privacy with the need for public protection and health. The committee had heard substantial testimony about the difficulties with heroin and opioid addiction and had seen evidence that mandating the PDMP consultation and record keeping had an effect in reducing over-prescribing

and overdoses. He also believed it was fair to review how the program would work in Alaska's unique circumstances. He thought allowing a three-year "pilot program" was good, but he wondered about the amendment's provision to report. He supported requiring someone to assess the effectiveness of the PDMP and report to the legislature in advance to determine whether the PDMP mandate should be extended. He supported an amendment to require a report to guide the legislature in two years on whether the mandate should be continued.

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Representative Kawasaki surmised that the language repealing the PDMP provision after three years was located on page 7, line 3. He asked about the effect of the repealer on page 12, line 14 related to section effective dates. He asked if the language pertained to new or old sections.

Mr. Shattuck replied that page 7 was a repealer and page 12, line 14 included the sunset of sections 22, 24, 26, 28, 30, and 32 of the bill, which covered the adjustments proposed in the existing committee substitute (CS).

Representative Kawasaki stated that one of the things the committee had heard during public testimony related to Schedule I (e.g. experimental drugs and marijuana) or Schedule V (e.g. drugs that could be purchased off-the-shelf in Canada). He surmised the drugs in those categories appeared to be things the state could not regulate and there was not substantial risk of addiction. He believed the current CS limited the PDMP requirement to Schedule II and III prescriptions (opioids and drugs with an addictive property) and Schedule IV, which he believed was on the far end of having an addictive property. He stated it appeared that by adding Schedule I through V drugs it would result in extra paperwork for individuals working in pharmacies. He did not know if it was good policy or the intent.

Mr. Shattuck responded that the amendment did not intend to address the policies the committee was currently discussing. The amendment would require a review or repeal in 2020. He explained the amendment contained many things related to policy calls the legislature would have to make. He elaborated that the policy calls would be made at

present and the PDMP portion would come back before the committee in three years for review.

Representative Kawasaki observed that under the amendment pharmacists would have to use the database for all of the schedule drugs instead of limiting the requirement to addictive drugs. He asked if his understanding was accurate.

Mr. Shattuck answered that if the statutes were reset to the current law, he believed it was fair to say that the policy calls made by the committee at present would be undone, but only if the legislature chose not to extend the program in its review.

Representative Kawasaki needed further clarification.

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Co-Chair Neuman clarified that the intent of the amendment was to maintain the original PDMP program. The amendment would review the PDMP expansion in three years. He stated that the language on page 5 of the amendment was not related to the intent of the amendment.

Representative Kawasaki stated that under the current version of the bill the state would not be collecting data for pharmacy transactions for Schedules I and V drugs. He stressed the amendment included those categories as well. He observed the amendment would expand the amount of data collected within the PDMP. He did not know he would support that expansion.

Co-Chair Neuman clarified that the amendment did not intend to change anything currently in SB 74. He detailed that different drug classifications and pharmacist database requirements would remain in law. The amendment would require the legislature to determine whether the action under SB 74 had been appropriate in three years.

Representative Kawasaki addressed a requirement for physicians and pharmacists to use the PDMP. He believed testimony had reported that currently only 30 to 35 percent of those individuals used the database. He recognized it took extra work and time to input data into the database. He noted he had also received calls from constituents about the issue. He believed either the provision should be

implemented and looked at in three years or not done at all. He opined it made sense to look at the provision in three years to determine if it was harmful to physicians' offices or to ramp up the database requirement over time versus making the program optional.

Co-Chair Neuman answered that the intent of the amendment was to implement all of the changes that were currently included in SB 74 for a period of three years. After three years, the legislature would review the statute to determine if it should be continued.

Vice-Chair Saddler MOVED to ADOPT conceptual amendment 1 to Amendment 1. He supported the intended goals of the PDMP. Additionally, he respected Co-Chair Neuman's concerns related to privacy and public safety. The amendment would direct the Department of Health and Social Services (DHSS) to prepare and deliver to the presiding officers of the legislature, a report evaluating the effectiveness of the mandated use of the PDMP in reducing over prescription and addiction of opioid drugs and other effects. The intent would be for the report to guide the legislature on whether to extend the mandate.

Representative Wilson OBJECTED. She asked when the committee became "the enforcement of everything." She was unsure what the report was supposed to be and do. She wanted to see the conceptual amendment in writing if it was to be considered.

Vice-Chair Saddler replied he would be glad to draft the amendment in writing. The intent was to have the mandate exist for three years and to evaluate its effectiveness. He remarked that a previous speaker had asked for information to base a decision on in three years. He believed requiring the department to report on how well the database was achieving its intended purposes would be useful.

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Co-Chair Neuman thought it may be better for Vice-Chair Saddler to offer a separate amendment.

Vice-Chair Saddler WITHDREW conceptual amendment 1 to Amendment 1.

Representative Edgmon asked the amendment sponsor to retrace some of the earlier comments. He believed the amendment made material changes to the entire section. He pointed to the reinsertion of language in Section 25 and the removal of language in Section 26 of the bill. He asked about the impact of the changes.

Mr. Shattuck replied that he did not classify himself as an expert on the database. He detailed that the amendment addressed the CS currently before the committee. He pointed to page 1 of the amendment to bring clarity to the following sections. Page 1, line 2 would insert a new bill section. There were a number of actions that took place in the corresponding section in the bill. He referred to the complex process of reverting statutes back to their former state. He elaborated the process included inserting a new bill section, which would revert statute to its existing language. He continued that the committee may make policy decisions during the current meeting, which would alter the CS. All of the changes would be in place until the review occurred in 2020. He communicated the same explanation pertained to Section 24, page 1, line 17 and page 2, line 27.

Representative Munoz asked if the amendment took the law back to the present law, which included a voluntary PDMP program instead of a mandatory program. Mr. Shattuck answered in the affirmative.

Representative Munoz asked for verification the amendment would repeal the mandatory reporting requirement in three years. Mr. Shattuck answered in the affirmative.

Representative Edgmon believed the amendment seemed to materially weaken the section of the bill, which was integral to the whole PDMP change.

Co-Chair Neuman reasoned that the legislation expanded the PDMP reporting requirement and made reporting mandatory for certain drugs. He remarked the topic had originally been implemented in 2008. He explained the issue had been debated at that time, which was the reason the program was not mandatory. The statute would revert back to the original language if it sunset.

Representative Edgmon asked to be directed to the prevailing language, which would override the language

being removed in Section 25. He cited the language: "Nothing in this section requires or obligates a dispenser or practitioner to access or check the database before dispensing, prescribing, or administering a medication, or providing medical care to a person." He noted the language would be removed with the amendment, but he believed it was being replaced elsewhere.

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Co-Chair Neuman explained the amendment would not take effect until 2020. He specified the amendment would revert the law back to its original state if an extension was not approved by the legislature. The intent of the amendment was to return to the current law, which allowed optional reporting and review of the PDMP. He believed a doctor should review the PDMP if they believed a patient was doctor shopping for prescriptions.

Mr. Shattuck pointed to Section 22, page 22, line 5 of the CS; if the current CS was passed, Section 22 would look exactly the same. If in 2020 the legislature did not choose to extend, the section would revert to current statute. He specified there was currently an annual report from the department, which covered some of the performance measures a legislator may be concerned about.

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Co-Chair Thompson stated that the statute would revert back to the current statute in 2020. He asked for verification that in order to continue the mandatory requirement related to the PDMP it would require new legislation at that time.

Mr. Shattuck replied that the legislature could pass a bill removing the section with the repealing language. A legislator could chose to remove or extend the repealing language and make any adjustments.

Representative Wilson stated that if the public thought that the database applied to all citizens they would have been concerned. She remarked that SB 74 was a Medicaid reform bill. She initially thought the provision only pertained to individuals on Medicaid. She was fine with the amendment. She noted that someone paid the Medicaid bills; therefore, someone knew about prescribed medications and whether medications were overprescribed. She reasoned that

her insurance company knew the medication she was taking. She surmised the issue only pertained to the underinsured population, which she believed had been reduced substantially under Medicaid expansion. She was trying to determine what would happen to a person if the database alerted a misuse. She wondered if a patient would be arrested, if a doctor would be sanctioned, or other.

Co-Chair Neuman replied that it was one of his primary concerns. He provided a scenario in which a person attempted to shop doctors for pain medication. He noted the database would be updated weekly in the current CS. He remarked that there was no enforcement if "it gets out there to the week." He shared that his wife was currently a pharmacy technician and was required to destroy illegal prescription scripts. He suspected the technicians would be responsible for telling a drug addict or gang member they were required to destroy the prescription. He emphasized it was incredibly scary. He wondered why the state was putting Alaskan citizens in that position. He continued that the technician could call the troopers; however, he remarked that when a person reported a home break-in troopers responded they would email a form.

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Representative Wilson stated that she had received a letter from the Alaska Dental Society, which specified requiring a person to be licensed to access the database would waste valuable and expensive practitioners' time for administrative task. She remarked that the change in law would cost providers time and money. She was concerned that if a study needed to be done, she believed it should be done before implementing the mandatory requirement in the CS in order to know the cost ahead of time. She wondered why the requirement would be put on doctors' backs if those paying the Medicaid insurance or private insurance bills were not looking close enough at the issue. She also wondered if negative repercussions would take place against a doctor if they were the unlucky fourth prescriber a person went to for a prescription. She reasoned Alaskans had a hard enough time getting doctors. She believed it would have a negative effect.

Representative Gattis asked for verification that the amendment would make the PDMP effective for three years and would require checking of the database for Schedule II and

III drugs. She asked for verification the provision would sunset after the three-year period, at which point the legislature would review the program.

Mr. Shattuck answered in the affirmative.

Representative Gattis stated that should the amendment pass it would require Schedule II and III drug prescriptions to be input in the database. She wanted to be clear that it was mandatory for three years and that the legislature would receive feedback after that time period.

Co-Chair Neuman answered that the amendment did not address the different schedule drugs. He believed there may be some other amendments addressing some of the least dangerous drugs. He noted SB 74 included the mandatory reporting requirement. The amendment left the PDMP as it would be and asked the legislature to review whether the changes had been appropriate in three years.

Representative Munoz believed that the amendment would make the program voluntary [after three years]. She remarked that currently only 13 percent of doctors were participating in the program. She believed 100 percent participation was needed to be effective. She wondered how the legislature could come back in three years to determine the effectiveness if only 13 percent of the doctors were utilizing the system.

Co-Chair Thompson explained that SB 74 required mandatory reporting. The amendment would remove the mandatory requirement in three years.

Representative Munoz stated that the amendment removed the mandatory requirement.

Co-Chair Neuman clarified that the amendment would remove the mandatory requirement in 2020 unless the legislature extended the requirement. The amendment would maintain all of the requirements in SB 74 and would require any doctor writing a prescription to enter the information into the database for three years. His goal was to have the issue come before the legislature [in 2020].

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Representative Munoz asked for verification that page 5 of amendment (page 25 of the bill) would add back language that had been deleted in the CS.

JANE PIERSON, STAFF, REPRESENTATIVE STEVE THOMPSON, explained that the amendment kept the mandatory reporting requirements currently in the CS; it would create a sunset date of January 1, 2020, which would repeal what was currently in the bill. The program would revert back to the optional program currently in statute. The one problem with the amendment was it would be necessary to remove Schedule I drugs off of the amendment, because Schedule I included marijuana and would be contradictive to the passed voter initiative. She explained the amendment looked complex, but really was not.

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Co-Chair Neuman clarified the intent of the amendment. He addressed the amendment drafter and relayed there had been confusion about the effects of Amendment 1. He detailed there had been questions about whether the amendment removed Schedule I or II drugs. His intent was to maintain the original PDMP implemented in 2008. The only thing the amendment would do was sunset the mandatory requirements included in SB 74 related to the PDMP. He explained the department or another legislator would need to an amendment to implement the programs as they originally were. The intent of the amendment was for the legislature to review the issue in three years.

KATE GLOVER, LEGISLATIVE LEGAL SERVICES, LEGISLATIVE AFFAIRS AGENCY (via teleconference), replied in the affirmative. She explained the impact of the amendment. She detailed that following each section in the bill that changed the PDMP requirement a new section was added that would remove the changes and return statutes to their current state. Sections 22, 24, 26, 28 would take effect and in three years' time they would revert back to the current statute. There were a couple of other sections added by the bill; therefore, the new sections of the PDMP would be repealed in three years. She summarized that in three years the law would look just as it did at present.

Co-Chair Thompson remarked that SB 74 was changing numerous aspects of current statute. He asked how it would reflect on the current bill the committee was addressing.

Ms. Glover replied that the items added in SB 74 would be repealed in three years. There was already a PDMP; AS 17.30.200 was the existing statute, but SB 74 would change the requirements related to the database. Amendment 1 removed all of the changes made by SB 74 [pertaining to the PDMP] in three years to revert back to current statute.

Representative Edgmon pointed to page 3, line 26 of Amendment 1. He noted that the word subpoena had been added. He thought a subpoena was a lower threshold than a search warrant.

Ms. Glover answered that existing statute included the word subpoena, but it was removed in SB 74. The word would be added back into statute in three years to reflect the current statutory language.

Representative Gara understood that the requirement for physicians to look at the PDMP for Schedule II and III drugs would last for three years and become voluntary again under the amendment. He pointed to page 1 of the amendment and noted there were numerous drugs added into the database. He remarked on privacy concerns that had been raised. He observed that it appeared a pharmacist had to enter Schedule II, III, and IV drugs into the PDMP. He asked if the amendment also required pharmacists to enter Schedule IA, IIA, IIIA, IVA, VA, I, and V.

Ms. Glover answered that currently use of the PDMP was optional, but if a pharmacist chose to use the database items that were supposed to be entered were Schedule IA, IIA, IIIA, IVA, VA, as well as drugs under federal law. The language in SB 74 removed the state schedules and included only the federal Schedule II, III, and IV drugs for entry into the database. She continued that in three years' time statute would return to the current language, which would include the state and federal schedule drugs. The program would also revert to being optional.

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Representative Gara asked if the amendment would require the entry of the additional drugs and the bill only required the entry of federal Schedule II, III and IV.

Ms. Glover responded that the bill only required entering federal Schedule II, III, and IV drugs. Current law required all of the schedule drugs listed; the amendment would revert back to current law [in three years].

Representative Gara asked if the change would take place now or at a later effective date. Ms. Glover replied that none of the items in the amendment would take place for three years.

Representative Pruitt explained that the amendment represented current statute. For example, he referred to AS 17.30.200(a) in the amendment and explained current statute included identical language. Currently all of the schedule drugs listed on page 1 of the amendment were listed in statute. Section 21 showed how the statute would be amended. The two key pieces of the amendment were in Section 52, page 7 that removed anything new added in SB 74 related to the PDMP and in the last part of the bill that "took the new stuff in the statute and replaced it with the stuff that's currently in." He stated if there was concern about current statute - he pointed to Schedule I as a concern that had been vocalized - the item would be amended one way or another. He suggested amending the amendment to deal with the committee's desired outcome if it moved forward with a sunset period of three years.

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Representative Guttenberg stated that after training pharmacies and doctors to abide by a mandatory prescription drug database the law would be repealed after January 1, 2020. He continued that theoretically a legislator would spend four months trying to implement a new law to replace it and start over. He noted there would be a gap. He countered that it was not three years and may not even be two years. He furthered that the law would be repealed on January 1, 2020, which was approximately 20 days before session started - a time the legislature could not take action on legislation. He elaborated that if someone wanted to continue the database they would have to pass the law in the 2019 legislature. He reasoned that in order to pass the law in the 2019 legislature it would require a report on

the program's viability and successes, which meant the work would need to begin in 2018. He explained that if the law did not pass in 2019, every doctor and pharmacist in the state would be out and not reporting any longer. He continued that the individuals could then be required to start reporting again three or four months later. He was not sure the amendment was workable. He believed the concept in place would help the legislature to know if the requirement was working. He reiterated that a repeal date of January 1, 2020 meant something would have to pass in 2019. He believed the timeline was too short.

Co-Chair Neuman replied that it was a good point. He believed another noted legislator had suggested a report to the legislature in two years. He would be fine with changing the effective date to 2021 or to April 1, 2020. He reasoned the legislature would have a year to take a look at the issue. The intent was to implement the requirements for a few years to see whether they worked.

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Co-Chair Thompson asked the bill sponsor's staff to address the amendment.

HEATHER SHADDUCK, STAFF, SENATOR PETE KELLY, wanted to be careful in her response because the sponsor understood the committee would make some policy decisions. She relayed the sponsor had tried to fix some of the things that had been brought to the legislature through various reports. She referred to the report from the Controlled Substance Advisory Council asking to strengthen or fix some things related to the PDMP, which were separate from whether the database should be mandatory or not. One of the items had been to allow for a delegated access to the database. The version from the Senate had allowed for any delegated access by a doctor or pharmacist. She detailed that based on public testimony the CS limited the access to individuals licensed or registered by the state's boards and corporations, which increased accountability. The bill had placed the mandatory lookup requirement on the prescriber in order to remove the pressure from the pharmacist. The change also prevented the pharmacists from being faced with awkward conversations; the conversations would happen more appropriately on the frontend with the prescriber. Additionally the schedule drugs had been cleaned up. She specified that state schedule drugs had

been removed because they were only used by law enforcement. She noted that if the amendment passed the state schedule drugs would be added back into statute [after the three-year period]. She furthered that Schedule I had been removed because the drugs had no medical use; the classification also included marijuana, which per the marijuana initiative, the state could not collect any data on users. Schedule V had been removed based on the low threshold or likelihood of addiction. She explained the bill included a limited Schedule II, III, and IV to be monitored under the PDMP. The sunset would automatically put the schedules back into statute.

Ms. Shadduck believed there would be a separate amendment to talk about a report or audit, which Amendment 1 did not include. She referred to page 3 of the amendment where the word "subpoena" was removed; the amendment would add the word back into statute. She explained the word had been removed based on feedback in working with the Department of Law (DOL) to further comply with the Health Insurance Portability and Accountability Act (HIPAA) and to further protect individuals' medical records. The current CS included a search warrant or an order issued by a court. She explained that both items required appearing before a judge. She detailed that a subpoena was a lesser threshold and could be issued by a staff member in a courthouse. She explained removing the mandatory lookup removed the benefit of the provision. She furthered it was the committee's policy call to make on whether a sunset was the wise choice or not. She believed the sponsor would be very supportive of a more comprehensive audit after the three-year period. She relayed that one of the later amendments proposed to change the PDMP effective date sections to July 1, 2017 based on conversations with the Division of Corporations Boards and Professional Licensing [within DCCED] to account for the time needed by the agency. She furthered if the repealer remained at [January 1] 2020 it would require a bill to be passed in 2019, which would only mean 1.5 years of data. She reasoned it may not be possible to tell what was going on based on the limited data at that time.

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Representative Gattis asked why the amendment sponsor had proposed rolling the statute back to current statute at the time of sunset versus reverting back to the bill language.

Co-Chair Neuman answered that he was trying to keep things simple. His intent was to revert the statute back to the current statute [in three years]. He understood and could probably accept a change to an effective date of 2021. He suspected future legislators would change the Schedule I and V and other. He believed the major and most objective portion of the provision was the mandatory requirements for all doctors and the intervention into people's lives. He believed future legislators would have the same concerns. He remarked that marijuana will have been legal for a couple of years and would be addressed. He agreed with the changes that were made. He mentioned pharmacists that had to follow the mandatory requirements, which he believed would be looked at as well. He would accept a friendly amendment to change the effective date to 2021.

Representative Wilson wondered why there was such a low number of doctors (17 percent) using the PDMP currently. She wondered if it was too cumbersome or expensive.

Ms. Shadduck clarified 13.5 percent of current prescribers and 40 percent of pharmacies used the PDMP based on a white paper provided to the committee ["State of Alaska Controlled Substances Advisory Committee White Paper: Increasing the Effectiveness of Alaska's Prescription Drug Monitoring Program (Alaska's PDMP)" (copy on file)]. She shared that some doctors had been unaware the PDMP existed; therefore, part of the issue was education. She relayed that Dr. Zink had provided testimony to the committee that a couple of years ago the emergency room she worked for had gone to the Board of Pharmacy and other stakeholders with the request for a PDMP, only to discover that the database already existed. Additionally, some doctors had experienced problems with using the database, which had been worked on extensively and improved by the Board of Pharmacy and the Division of Corporations Boards and Professional Licensing.

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Vice-Chair Saddler MOVED to ADOPT an amendment to Amendment 1. He directed attention to page 7, line 5 and explained the amendment would change the date 2020 to 2021. Likewise, the date would be changed from 2020 to 2021 on page 12, line 14.

Representative Gara OBJECTED. He did not support a sunset date on the PDMP provision. He WITHDREW his OBJECTION.

Representative Gattis OBJECTED. She asked if the date could be changed to sometime after session started such as April or June.

3:35:03 PM

AT EASE

3:36:03 PM

RECONVENED

Vice-Chair Saddler WITHDREW conceptual amendment 1 to Amendment 1. He MOVED to ADOPT conceptual amendment 2 to Amendment 1. He directed attention to page 7, line 5 and explained the amendment would change the date of January 1, 2020 to July 1, 2021. Likewise, the date would be changed from date of January 1, 2020 to July 1, 2021 on page 12, line 14. There being NO OBJECTION, it was so ordered.

Representative Wilson supported Amendment 1. She thought there would be problems discovered in the future. She remarked the Dental Society had already submitted a concern that she did not see addressed by any of the amendments. She remarked a huge number of people had never used the PDMP. She thought it would be about the providers and whether or not the program was working for them to make sure everything kept on track. She reasoned that if everything was working well the amendment would merely bring the issue back before the legislature to make sure it was addressing anything the providers had issue with. She was frustrated the fiscal notes only reflected costs or savings to the state. She was interested in the costs and savings to the state's communities and providers. She believed there would be unintended consequences and the amendment would force the legislature to review the issues.

Representative Gattis spoke in favor of the amendment. She relayed that the sponsor knew that some of the committee members had been struggling with the data collection issue.

Representative Edgmon viewed the changes to the database as one of the central benefits of the bill. He spoke to significant opioid abuse in his district in Southwest Alaska. He believed the database provisions in the bill seemed to provide a way to help combat the problem. He noted there was significant support for the database. He also respected the issues of privacy and believed they were

well established, but he believed the support outweighed the consequences. He pointed out that it would cost about \$25,000 to run another bill according to the Legislative Affairs Agency from several years earlier. He wondered why an audit could not be conducted as opposed to running another bill. He remarked on time and resources running another bill required. He would support the amendment, albeit somewhat reluctantly.

Representative Pruitt stated there would need to be a bill either way. He elaborated that a bill would be required to extend or make the PDMP provisions permanent. Additionally, a bill would be required to fix the Schedule I drugs that would be included [when the statute reverted back to its current state]. He thought it would be possible to fix one of the problems with a conceptual amendment by eliminating Schedule I from the statute to prevent it from being included when the law reverted back. He explained that if the legislature chose to let the new PDMP provisions sunset, the provisions would sunset without the Schedule I drugs being required in the database, which would fit with the [marijuana voter] initiative.

[3:41:23 PM](#)

Co-Chair Neuman replied that Representative Pruitt made a good point. He supported maintaining the original amendment as is, but would ask staff to work with Legislative Legal Services on the issue as a separate amendment.

Representative Gara spoke in opposition to the amendment. He discussed that Alaska was currently dealing with an opioid epidemic, which also related to a heroin epidemic. He agreed with the bill sponsor that physicians should look up a patient's prescription history related to the limited class of drugs (i.e. steroids, opioids, and other drugs that could kill a person). Additionally, in three years a huge amount of extra work would be created for pharmacists. He pointed to page 1, lines 6 and 7 and detailed pharmacists would have to begin entering a list of additional drugs into the PDMP. He reasoned that if privacy was a concern, adding additional drugs back in would mean thousands more people would be entered into the database. The bill limited the work of the pharmacists and limited the information going into the database to Schedule II, III, and IV drugs.

Representative Guttenberg testified against the amendment. He spoke to the amendment sponsor's concern about pharmacist technicians having to deal with false prescription scripts. He pointed out that retail clerks were routinely faced with tearing up people's credit cards. He had not heard about negative repercussions resulting from those instances. He thought it was a legitimate concern, but he did not think it existed in similar situations in cities in Alaska and the broader U.S. He considered that drug addicts did not have rational behavior, but neither did people using other people's credit cards. He surmised it did not appear to be a substantial problem. He did not believe it was justification for undoing a huge reform. He spoke to the need to get a handle on the drug problem in Alaska and to get control of rising pharmaceutical costs. He believed the concern was a small piece of the overall picture. He spoke to the importance of reform. He believed the amendment went in the wrong direction for the PDMP.

Co-Chair Neuman provided wrap up on the amendment. He understood the opioid problem in the state. He referred to his work on the issue over the past few years. He stated that doctors were being more and more careful about not overprescribing prescriptions. He remarked that the bill sponsor's staff had testified that many doctors did not know the PDMP existed. He remarked that they would know now; he believed the legislature needed to listen to the doctors. He thought that scripts that were being over written would be addressed. He believed doctors needed to start reporting their peers who overwrite prescriptions. He stated there was already a system in place - doctors could make reports to the Board of Medicine. He referred to prior testimony that some doctors felt it was not their business what another doctor was doing. He opined that may be the problem.

[3:47:22 PM](#)

Co-Chair Thompson WITHDREW his OBJECTION.

Representative Guttenberg OBJECTED.

A roll call vote was taken on the motion to Adopt Amendment 1 as amended.

IN FAVOR: Edgmon, Gattis, Kawasaki, Munoz, Pruitt, Saddler,  
Wilson, Neuman, Thompson  
OPPOSED: Gara, Guttenberg

The MOTION to Adopt Amendment 1 as amended PASSED (9/2).  
There being NO further OBJECTION, it was so ordered.

[3:48:23 PM](#)

Representative Edgmon MOVED to ADOPT Amendment 2, 29-  
LS0692\T.13 (Glover, 4/8/16) (copy on file):

Page 24, lines 26 - 27:

Delete all material and insert:

"(11) a practitioner, pharmacist, or clinical staff  
employed by an Alaska tribal health organization,  
including commissioned corps officers of the United  
States Public Health Service employed under a  
memorandum of agreement; in this paragraph, "Alaska  
tribal health organization" has the meaning given to  
"tribal health program" in 25 U.S.C. 1603."

Co-Chair Thompson OBJECTED for discussion.

Representative Edgmon explained that Amendment 2 was  
technical. He pointed to page 24, lines 26 and 27 of the  
bill. The amendment replaced language in the bill with the  
above amendment language as proposed by the Alaska Native  
Tribal Health Consortium (ANTHC). He detailed the language  
in the amendment would do a cleaner job of referencing the  
federal definition. He noted that it was the provision that  
laid out the parties who would have access to the PDMP.

Co-Chair Thompson WITHDREW his OBJECTION. There being NO  
further OBJECTION, Amendment 2 was ADOPTED.

Representative Gattis MOVED to ADOPT Amendment 3, 29-  
LS0692\T.16 (Glover, 4/9/16) (copy on file). [Note: due to  
amendment length it has not been included in the minutes.  
See copy on file.]

Co-Chair Thompson OBJECTED for discussion.

Representative Gattis explained the amendment would delete  
Section 31. She read a statement explaining the amendment:

On the surface requiring competitive bids sounds like the best way to ensure the best price, unfortunately this is not always the case. That's why I'm proposing to eliminate Section 31 calling for competitive bids. This section wasn't requested by the Department of Health and Social Services or conceptualized by somebody wanting to cut the budget. Rather, was advocated by a durable medical good sales representative. This section ties the hands of DHSS. It would require the department to strictly utilize competitive bidding. By supporting my amendment you do not negate the department's ability to utilize competitive bidding, rather you allow the department to make the best business decisions related to the care and costs of healthcare delivery system.

Representative Gattis referred to a bill she had offered on durable medical goods that had been voted on by the committee. She realized the State of Alaska was very different. She referred to not including hand-me-down durable medical goods in her past bill, because sometimes it was not the least expensive way. She remarked that it could potentially be cheaper to fly goods from Seattle than to drive them up a road from somewhere else. She did not want to tie the department's hands. She continued DHSS already had the ability to go out for a request for proposal (RFP) and could use competitive bidding. As the state crunched its budget she did not want to limit the department to a specific way of doing things. She continued to read from a statement:

Also, it's a tough market with lots of paperwork requirements, low margins, and high service demands. Low dollar bidding requirements, without considering the other needs and service demands of an area also greatly diminish the quality of service and care that our Medicaid patients receive. In my area, we have a company that delivers products door-to-door. They assemble them and provide other products and services. They also come back and provide and repair services. Competitive bidding Section 31 that needs to be repealed - there is no promise it will save the state money. In fact, strong arguments can be made that this section is penny-wise and pound-foolish. So I'm asking your vote to eliminate that particular section to be able to give the department the opportunity to go what's least expensive and what works best for Alaska.

3:53:29 PM

Representative Gara stated that Section 31 did not include language specifying DHSS "shall" engage in competitive bidding. He wanted the department to utilize the option when it could bring a cost savings to the state. He observed the amendment would delete page 28, lines 6 through 11 of the bill. He explained page 28, line 7 specified the department "may" enter into a contract for competitive bidding. He believed the department should use the competitive bidding option when it saved money. Based on that he did not support the amendment. He did not see a directive to the department in the legislation.

Representative Gattis answered that the department already may [enter into competitive bidding]. She explained the redundancy of the section. She relayed she had received an email specifying the issue.

Co-Chair Thompson WITHDREW his OBJECTION.

Representative Gara OBJECTED. He would have to read AS 47.07.030. He stated the amendment included language "notwithstanding c of this section." He surmised it must create a concern the department was not allowed to engage in competitive bidding.

Co-Chair Thompson asked the bill sponsor's staff to address the committee.

Ms. Shadduck deferred the question to the department.

Representative Gara restated his question. He stated the bill included language "notwithstanding c of this section the department may enter into a contract for competitive bidding." He wondered if the department would have the ability to enter into competitive bidding without Section 31 of the bill.

ERIN NARUS, STATE MEDICAID PHARMACIST, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (via teleconference), replied that currently the durable medical equipment program was able to enter into contracts for service delivery. She read from the statute under discussion AS 47.05.015(c): A contract authorized under this section is exempt from the competitive bid requirements of AS 36.30." She explained AS

36.30 was the state procurement code. She detailed that when awarding a contract under the section, the department shall request proposals in accordance with regulations of the Department of Administration (DOA). Under the department's current regulations it had the authority to enter into contracts for service delivery. She furthered that within the language in the current CS the department would have the ability to enter into competitive bidding contracts and its ability to do so would not be restricted.

Representative Gara asked if the department would have the ability to engage in competitive bidding without Section 31 of the bill.

Ms. Narus replied that the section related to durable medical equipment was not a requirement. She could not speak to the other specific medical services outlined in the section.

Representative Gara believed the bill should remain as is. He reasoned the section specified the department may engage in competitive bidding. He furthered there was a part of current statute specifying the department was exempt from the competitive bidding part of the procurement process. He explained that the term "may" did not require the department to do anything. He felt safer with the current bill language.

Ms. Shadduck replied that it was the committee's policy call. She stated the department could use the authority if it was granted or it would continue with the contracts it could currently do.

Representative Gattis relayed that she had seen red flags that a particular sales person had been looking specifically for the bill language. She had asked people providing durable medical goods about the issue and had been told there were high profit margins in some of the durable medical equipment. The low profit margins included items such as diapers, gloves, and other. She stated grocery stores knew the items as "loss leaders" but they brought people in for other items. She had been told that the currently under a competitive bid an entity could get the lowest price for high profit margins, but they would not backfill the other low profit margin items they were currently providing. She stressed that on a bigger scale the state lost money that way. The department had indicated

it could submit RFPs to keep expenses down. She furthered the department knew it had to be able to purchase all items. In her perfect world she would like to see the department have the ability to shop at Costco for inexpensive items. She did not want to see unintended consequences from the section.

4:02:13 PM

Vice-Chair Saddler asked for clarification. He asked for verification that while it could appear to be advantageous for the state to have competitive bidding on all products, vendors did not participate in the competition for some items, which would be to the state's detriment.

Representative Gattis clarified that the state wanted competitive bidding on all items. She provided an expensive electronic wheelchair with a high profit margin as an example. She explained there were companies selling the whole gamut. She specified that if a company only took a high profit margin there were people left with trying to fill the bill with the low profit margins and the state still had to buy the products. She did not want to enable a company from outside or inside Alaska to cherry pick.

Representative Gara MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Gattis, Guttenberg, Pruitt, Saddler, Wilson, Edgmon, Thompson, Neuman  
OPPOSED: Gara, Kawasaki

Representative Munoz was absent from the vote.

The MOTION to Adopt Amendment 3 PASSED (2/8). There being NO further OBJECTION, Amendment 3 was ADOPTED.

4:04:25 PM

AT EASE

4:19:18 PM

RECONVENED

Representative Gara MOVED to ADOPT Amendment 4, 29-LS0692\T.15 (Glover, 4/9/16) (copy on file):

Page 37, line 12:

Delete the first occurrence of "The"

Insert "Subject to (b) of this section, the"

Page 37, following line 29:

Insert a new subsection to read:

"(b) After January 1, 2022, the department may not compensate hospital emergency departments, through shared savings, for a reduction in hospital fees resulting from the project."

Reletter the following subsection accordingly.

Representative Wilson OBJECTED.

Representative Gara wanted committee members to be present to vote.

[4:19:59 PM](#)

AT EASE

[4:20:59 PM](#)

RECONVENED

Representative Gara explained the amendment related to page 37 of the bill and was intended to be a cost savings to the state, while being fair to the state's hospitals as well. He stated people had heard for years that too many people were using the emergency room who should not be. He pointed to the expense to hospitals and individuals with insurance who had to pay for uncompensated medical care. Part of the bill's goal was to reduce the number of people going to the emergency room when they did not need to. He stressed the emergency room was a very expensive way to deal with a cold, flu, and other. Hospitals had been concerned about significant uncompensated medical care, but Medicaid reform had enabled them to receive much more compensation for emergency room medical care. The bill included a provision specifying now that fewer people would be utilizing the emergency room for inappropriate care, the state would share its savings with hospitals. He stressed that the individuals should not be going to the emergency room for care. Hospitals argued they were making significant money off people who should not be going to the emergency room. He did not think the state needed to pay for everything. He had spoken to the Alaska State Hospital and Nursing Home Association (ASHNHA) and the bill sponsor's staff to

determine a compromise. He believed the solution he had selected was one the groups could work around, but was not one they were thrilled with. He pointed to page 37 line 12. The amendment would maintain shared savings for five years [until January 1, 2022] and would allow the hospitals time to adjust to the reduced number of patients. He referred to the state's \$4.4 billion deficit. He did not support compensating medical providers in perpetuity because they were not treating patients they should not have been treating in the first place.

[4:24:43 PM](#)

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, Amendment 4 was ADOPTED.

Representative Guttenberg MOVED to ADOPT Amendment 5 29-LS0692\U.A.39 (Mischel/Glover, 3/31/16) (copy on file). [Note: due to amendment length it has not been included in the minutes. See copy on file.] He OBJECTED.

Co-Chair Thompson OBJECTED for discussion.

Representative Guttenberg explained he believed there was a loophole, but the issue was challengeable. He stated the bill removed Schedule III from the database. He referred to the bill's dealing with rural Alaska and how people were able to call in for prescription without dealing with a doctor with only a nurse or nurse's aide. He wanted to ensure the issue was fixed. He wanted to ensure rural Alaskans had the opportunity to utilize telemedicine like others in the state. He wanted to make sure telemedicine was available across the state, but he wanted to ensure the amendment did what he intended. Therefore he WITHDREW his OBJECTION and the Amendment. He expressed his intent to offer the amendment on the House floor at a later date.

Co-Chair Thompson noted Amendment 5 had been WITHDRAWN.

[4:26:25 PM](#)

Co-Chair Thompson MOVED to ADOPT Amendment 6, 29-LS0692\T.8 (Glover, 4/8/16) (copy on file):

Page 12, lines 10 - 11:  
Delete "the earlier of"

Page 12, line 13, following "Services,":  
Insert "whichever is later,"

Representative Gara OBJECTED for discussion.

Ms. Pierson explained the amendment was located in Section 16, page 12 of the bill. The amendment included cleanup language on the statute of limitations for actions related to claims based on medical payment fraud. She read the updated sentence proposed by the amendment:

...a person may not bring an action under AS 09.58.010 - AS 09.58.060, unless the action is commenced six years after the act or omission was committed, or (2) three years after the date when facts material to the action were known, or reasonably should have been known, by the attorney general or the Department of Health and Social Services, whichever is later, but in no event more than 10 years after the date the violation under AS 09.58.010 occurred.

Representative Gara WITHDREW his OBJECTION. There being NO further OBJECTION, Amendment 6 was ADOPTED.

[4:28:27 PM](#)

Co-Chair Thompson MOVED to ADOPT Amendment 7, 29-LS0692\T.17 (Bruce/Glover, 4/9/16) (copy on file):

Delete "that uses remote identity proofing through multiple layers of authentication"

Representative Wilson OBJECTED for discussion.

Ms. Pierson explained the amendment was located in Section 32 of the bill and related to the enhanced computerized eligibility verification system. The bill had included the following language: "that uses remote identity proofing through multiple layers of authentication." She detailed the language would result in a larger fiscal note; therefore, the amendment sponsor wanted the language removed. She furthered the department would ensure security.

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, Amendment 7 was ADOPTED.

4:29:19 PM

Co-Chair Thompson MOVED to ADOPT Amendment 8, 29-LS0692\T.5 (Glover, 4/8/16) (copy on file):

Page 37, line 2:  
Delete "support for and"

Representative Wilson OBJECTED for discussion.

Ms. Pierson explained the amendment was located in Section 38, page 37, line 2 of the bill; it would delete the words "support for and." She detailed the department thought the language could mean an open-ended payment due; therefore, the amendment would delete the language.

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, Amendment 8 was ADOPTED.

4:30:03 PM

Co-Chair Thompson MOVED to ADOPT Amendment 9, 29-LS0692\T.4 (Glover, 4/7/16) (copy on file):

Page 46, following line 30:  
Insert a new subsection to read:  
"(c) The Department of Health and Social Services shall procure a study analyzing the feasibility of privatizing select facilities of the division of juvenile justice and privatizing pharmacy services delivered at Alaska Pioneers' Homes. The Department of Health and Social Services shall deliver a report summarizing the conclusions of the Department of Health and Social Services to the senate secretary and the chief clerk of the house of representatives and notify the legislature that the report is available within 10 days after the convening of the First Regular Session of the Thirtieth Alaska State Legislature."

Reletter the following subsection accordingly.

Representative Wilson OBJECTED for discussion.

Ms. Pierson explained the amendment applied to Section 47, page 46, line 30 of the legislation. The amendment would insert a new subsection, which would provide for a study

analyzing the feasibility of privatization on select juvenile justice homes and privatizing pharmacy services delivered to Alaska Pioneer Homes. She specified the language had been included in the original bill.

Representative Gara objected to spending money on another study on privatization. He believed the study would result in the same response as a previous study showing that the private sector was not willing to provide the services at the current cost unless there was a substantial reduction in some of the protections and services for the people living at the Pioneer Homes. He knew that Representative Munoz had expressed concern about the study in the past. He noted she was not currently present in the room. He believed the study would be throwing good money after bad. He continued that every time "we do this to the folks at the Pioneer Home they get nervous," which he knew because he visited. He stated the issue came up often. He recalled the issue [of privatization] coming up for the first time in 2007 when the former Palin Administration had proposed it. He stated that seniors living in the Pioneer Homes were just trying to live with dignity and often did not have substantial assets and feared they would have no place to live.

Representative Wilson believed the amendment did not address a question of privatizing the Pioneer Home facilities. She believed the amendment only pertained to the privatization of pharmacy services.

Co-Chair Thompson replied in the affirmative.

Co-Chair Neuman testified in support of the amendment. He spoke to the point on juvenile justice centers. He relayed he had brought the issue up with DHSS when he had overseen its budget in the past. He noted that there were juvenile justice centers in Nome and possibly Kotzebue or Bethel. He believed the centers would be much better served by moving more civil law to tribal courts. He believed the programs would fit well under their oversight. He had spoken with the Alaska Native Tribal Health Consortium (ANTHC) and the consortium had believed it was a good idea. He noted the consortium had spoken with rural legislators about the issue. He thought additional funding would be available from the federal government if the centers were under tribal law. He believed it would be better to remove the oversight by state government, which would provide better

local control. The problem had been getting the department and tribal organizations together to take care of the issue. He believed a study showing whether savings existed would be beneficial to help the legislature and tribal organizations decide whether the idea was beneficial. He believed it would save the state a considerable amount of money. He observed the discussions would not start on the topic until the facts had been obtained. He stressed that to get the facts it was necessary to do the research.

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, Amendment 9 was ADOPTED.

Representative Gattis, Vice-Chair Saddler, and Co-Chair Neuman asked to be added as cosponsors to the amendment.

4:35:19 PM

Co-Chair Thompson MOVED to ADOPT Amendment 10, 29-LS0692\T.6 (Glover, 4/8/16) (copy on file):

Page 50, line 7:  
Delete "January 1"  
Insert "July 17"

Representative Wilson OBJECTED for discussion.

Ms. Pierson explained the amendment applied to page 50, line 7; it would delete "January 1" and insert "July 17" - the effective date for the Department of Commerce, Community and Economic Development (DCCED) to get its regulations for the PDMP. The date also corresponded with the department's licensure date. She explained the later date would give the department the time it needed to get regulations in place.

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, Amendment 10 was ADOPTED.

4:36:12 PM

Co-Chair Thompson MOVED to ADOPT Amendment 11, 29-LS0692\T.9 (Mischel, 4/8/16) (copy on file):

Page 14, lines 11 - 12:

Delete "unless the evidence shows that the agent or apparent agent acted with intent to deceive the principal"

Representative Wilson OBJECTED for discussion.

Ms. Pierson explained the amendment applied to page 14, lines 11 and 12 of the legislation. The language had been brought to the committee by the Alaska Medical Association (AMA) due to their concern that if an agent acted with intent to deceive the principal they could be held liable. The language had been included in the bill because the AMA thought it would help protect the AMA, but she believed the department had some issues with the removal of the language.

STACIE KRALY, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, explained the Department of Law (DOL) believed language added to the CS on page 14, lines 11 and 12 would lead to difficulty in getting the Office of Inspector General (OIG) federal certification for the False Claims Act (found in Section 18 of the legislation). The department was concerned the language appeared to create a hold-harmless or savings clause for organizations to present affirmative defenses if an employee acted or created a false claim that would lead to a filing of a false claim. She furthered the concern was it would allow the individual to avoid liability in a situation where they should have specific and certain corporate integrity oversight to ensure the issues did not happen. The department was concerned the language would make OIG certification difficult, which would prevent the department from receiving its 10 percent federal match recoveries.

Representative Wilson asked for further clarification on how the state would be jeopardized.

Ms. Kraly replied that the Office of Inspector General (OIG) had issued guidelines for false claims certification. She believed the information had been presented to the committee ["OIG Guidelines for Evaluating State False Claims Acts" dated March 15, 2013 (copy on file)]. She referred to the rules and tests set forth by the OIG for determining whether or not the federal government would certify a state's False Claims Act. When the department had reviewed the language in the guideline and had looked at

the bill's proposed language it had determined the proposal would create difficulty for certification.

Representative Wilson asked for a copy of the document referred to by Ms. Kraly. She was assuming the department was opposed to Amendment 11.

Ms. Kraly clarified that DOL supported the amendment - the department supported the removal of language from the CS. She detailed the amendment would correct the issue.

[4:40:07 PM](#)

Representative Wilson wanted to see the document. Ms. Kraly replied that she had a copy of the guidelines.

Representative Gara remarked that he did not know what OIG was and what the potential monetary loss to the state would be if the amendment did not pass. He referred to the suggestion that without the amendment the state may not receive authority or funding.

Ms. Kraly replied DOL was concerned that if the language was maintained in the CS there was a potential the OIG federal oversight agency would determine the language did not meet its terms and therefore, it would not certify the False Claims Act, which would mean the state would not receive its enhanced federal match. She explained it was the interpretation of DOL. The department believed the language was too prescriptive and protective of corporate entities in the context of a False Claims Act. As a result, the language would put the act at risk.

Representative Gara referred to Ms. Kraly's testimony that the language would put the act and federal match at risk. He asked for verification that if the department's interpretation was accurate, the state would not be able to use the False Claims Act and the federal funds to help with cases under the False Claims Act may be in jeopardy. He asked for clarification which federal funds may be jeopardized.

Ms. Kraly answered that without federal certification the False Claims Act would still be on the books and available for the department to utilize. She detailed that certification provided enhanced match for recoveries. She was uncertain whether the enhanced federal funding for the

Medicaid Fraud Control Unit could be used to prosecute the claims if the state's False Claims Act was uncertified. She specified the Medicaid Fraud Control Unit would manage the caseload; it received a 75 percent match from the federal government (the state paid the remaining 25 percent). She elaborated that she was uncertain how the funding for the services would be impacted if the federal government had not approved funding for Medicaid recovery purposes.

[4:43:32 PM](#)

Representative Pruitt asked if all nine pages of the new act would potentially be in jeopardy if the amendment language was not included. Mr. Kraly answered in the negative. She detailed that the act would remain in place. She clarified the department supported the amendment because it believed the change would help DOL receive federal certification. She detailed that without federal certification the False Claims Act would remain in effect, but the department would not receive the enhanced federal match for recoveries.

Representative Pruitt asked about the financial amount. Ms. Kraly replied that the enhanced federal match was a 10 point swing. She explained that instead of receiving 50/50, the department would receive 55 percent of any recovery and the federal government would receive 45 percent. The reduction would be percentage split from the formula.

Representative Pruitt surmised it sounded like the state would be placing additional weight on the organization based on a bad actor who may be working for them. He observed they were trying to help someone with an employee that was intentionally deceiving them. He asked how to account for the fact that there were people who may not act in appropriate ways and the employer may not have been a part of the problem. He wondered how to handle the issue.

Ms. Kraly replied that the state's best partners were the organizations (providing the services) in the goal of avoiding fraud, abuse, and waste in the Medicaid program. The department believed the organizations should have sufficient internal control standards to identify those sorts of activities that were happening and to take sufficient action to avoid those sorts of events. The current bill language basically gave the provider a hold-harmless or defense to say it did not ratify the activity

or know it was happening. The department believed an organization should have the ability to identify the information, avoid that sort of construct, and should be held liable for failure to have those internal controls.

Representative Pruitt remarked that some of the organizations were very small and may not be watching everything taking place underneath the organization. He surmised the organizations may have to hire additional people if the state was putting an additional burden on them, which would elevate the company's cost, the cost to the consumer, and the cost to the state as the Medicaid payee. He wondered if there was a certain point the state needed to recognize that all organizations were not giant and could afford to continue to pay numerous employees to provide a service. He reiterated that the organizations were small in some cases.

Ms. Kraly deferred the question to a colleague.

ANDREW PETERSON, ASSISTANT ATTORNEY GENERAL, OFFICE OF SPECIAL PROSECUTION, MEDICAID FRAUD CONTROL UNIT, DEPARTMENT OF LAW (via teleconference), answered that due to the cost of filing the False Claims Act and the associated litigation it was not the type of litigation that would focus on small providers and low-dollar claims. The claims would generally be significant, amounting to hundreds of thousands of dollars or more in loss to the State of Alaska. The concern was the bill language gave an out for corporations (that were in the best position to police their employees to be on the lookout for fraud) to have a financial interest in not looking for or ferreting out fraud that may be occurring within their own industry. He referred to a committee member's question about the amount of money the state may lose. He detailed it was a difficult number to place - it would have been around \$300,000 or more in the past 3 to 4 years; in prior years the amount would have been higher. He noted the state did not have the False Claims Act at that time; however, for example, financial loss had occurred when a pharmaceutical company had off-labeling or was using a pharmaceutical product for a service it should not be used for. In that instance there could be a nation-wide class action, which Alaska would join. The state also received an enhanced recovery on any suit to which the state was a victim of, for civil suits filed within or outside Alaska. He concluded that it could be a fairly substantial amount of

money over time, but the ultimate figure depended on the number of suits and the end result. He did recognize Representative Pruitt's concern with respect to additional burdens placed on smaller employers.

[4:50:30 PM](#)

Representative Wilson asked whether the language [the amendment proposed to delete] could be left in the bill and the committee could insert additional language noting it would only be effective if determined to be consistent with the False Claims Act.

Mr. Peterson deferred the question to Ms. Kraly. He noted that in reviewing the OIG document, the language added did appear to include an additional safeguard for corporations that was not consistent with the OIG guidelines. When DOL had drafted the False Claims Act language it had aimed to design it as close to the federal guidelines as possible in order to avoid any surprises or questions about whether it would meet federal guidance.

Representative Wilson expressed confusion about the testimony. She addressed testimony about the False Claims Act and trying to avoid the loss of federal money. She stated the department's testimony was that the language was also being tightened for other purposes.

Ms. Kraly answered that DOL had drafted the False Claims Act as closely and as narrowly as possible to follow the OIG guidelines. The department believed that the language added in the CS created a potential problem for federal certification. The department would prefer to have the language removed from the CS because it would be the cleanest outcome. She did not know whether or not the language Representative Wilson suggested would be sufficient to meet federal approval. She was not certain how a savings clause would be drafted or evaluated. She did not know how to specify that a portion of the language was good except for the one narrow provision if inconsistent with False Claims Act.

Representative Wilson was not convinced there were no other reasons for the proposed deletion of the language. She thought there could be other impacts of the language deletion apart from the False Claims Act. She thought the deletion of the language may cause more problems for people

who were not guilty. She preferred to maintain the language and to deal with it another way if it did not fit into the False Claims Act.

Representative Gara provided a scenario where the state was improperly billed \$1 million under the False Claims Act. He asked if the state would still have a way to get the money back if the amendment did not pass.

Mr. Peterson replied that the state would still have the ability to go after the provider in one of two ways. He detailed the state could proceed if the hold harmless provision in the bill was maintained the state could proceed, but it would not be eligible for the 10 percent bump in recovery. Second, if the state was unable to prove the elements of a false claim, the state could seek a recovery of the money through the provider, but no portions of the False Claims Act would be applicable.

Vice-Chair Saddler wanted to ensure the language (page 14, lines 7 through 12) simply said a corporation was liable, but if a rouge employee was determined to be deceiving the principal the corporation was not liable. He surmised it seemed to be a reasonable protection. He had missed part of the conversation about why it was essential for a portion of the language to be removed, such that it would be consistent with a federal act.

Ms. Kraly replied when reviewing the OIG guidelines, DOL became concerned the language gave an additional protection to a corporate organization that would limit the state's ability to recover false claims. The department believed the additional language created a difficulty in obtaining federal certification.

Vice-Chair Saddler reasoned the provision was like a get-out-of-jail-free card. He surmised a corporation could be engaged in bad faith, but if it was able to blame the employee for acting with intent to deceive, the language could exculpate the corporation.

Ms. Kraly replied in the affirmative.

Representative Wilson stated she was hearing two sides. She remarked she had first heard the amendment was all about the False Claims Act. She was also hearing the amendment was related to corporations and who the state may or may

not be able to go after. She did not know if the people being held harmless were actually guilty of something. She questioned whether the amendment would broaden the spectrum of entities it could charge even though they may not be guilty.

Representative Gattis stated another representative had communicated the amendment was a good idea. She supported the amendment.

4:58:57 PM

AT EASE

4:59:27 PM

RECONVENED

Ms. Kraly believed one of the committee's concerns was that there was no protections for a corporate entity when an individual acted outside the scope of their authority. She explained there were protections for that circumstance. She furthered that when looking at the False Claims Act and OIG guidelines what constituted knowing behavior and how there had to be a reckless disregard for the truth or falsity of the claim all played into the situation and a corporation would not be in trouble for certain activities. However, under certain circumstances identified in the bill the corporations should be responsible for the actions of employees. There were circumstances when an organization would not be subject to a false claims because of the activities of an employee, but there should be circumstances when they should be responsible. The language currently in the CS gave companies almost an automatic out - in most circumstances companies would have the ability to say they were unaware of what had taken place, the employee had been acting outside the authority of the company, and the company should not be held liable. The department was trying to avoid the situation.

Representative Wilson asked how the issue would impact Pioneer Home. She asked if it would add another liability to the Pioneer Home if the language was deleted.

Ms. Kraly believed that as an enrolled Medicaid provider the Pioneer Home would be subject to a potential False Claims Act. She explained enrolled providers would be subject to the provision under the CS. She detailed in the context of a state action or entity like the Pioneer Home

was if an issue occurred it would be remedied at the level of the commissioner's office; a corporate provider did not have the same corrective measure imposed.

Representative Wilson MAINTAINED her OBJECTION. She thought the deletion could cause more issues than were known.

Representative Pruitt opposed the amendment. He thought the issue had been simple at first. He was concerned about placing strict liability on providers and believed the amendment would place an additional liability. He remarked on the balancing act of making sure there was liability placed on providers, but that protections were provided in certain cases where an individual [employee] may have acted inappropriately. He furthered it was not as difficult to try someone for an affirmative defense, but it was something that could be overcome.

A roll call vote was taken on the motion.

IN FAVOR: Guttenberg, Kawasaki, Munoz, Saddler, Edgmon, Thompson, Neuman

OPPOSED: Pruitt, Wilson, Gattis, Gara

The MOTION to Adopt Amendment 11 PASSED (7/4). There being NO further OBJECTION, it was so ordered.

[5:06:14 PM](#)

Co-Chair Thompson MOVED to ADOPT Amendment 12, 29-LS0692\T.12 (Glover, 4/8/16) (copy on file). [Note: due to amendment length it has not been included in the minutes. See copy on file.]

Co-Chair Neuman OBJECTED for discussion.

Ms. Pierson explained the amendment applied to page 27, line 18 of the legislation. She detailed the amendment would insert a new bill section that had been in the original bill. The section would create a new account for monetary recoveries under the Alaska Medical Assistance False Claim and Reporting Act. The amendment sponsor had worked with the Legislative Finance Division (LFD) and Ms. Kraly with DOL on the amendment. She believed it was a good provision to include in the bill. She specified that LFD had created a new account in order for the money to be

accounted for, which would give the state a better perspective on what the act was doing.

Co-Chair Neuman WITHDREW his OBJECTION.

Representative Wilson OBJECTED. She asked why the language had been removed.

Ms. Pierson answered that during the drafting of the committee substitute LFD had been uncertain about the issue. She had wanted to look further into the idea prior to including it in the legislation. The division had recommended putting the language back into the bill because it believed establishing the account would be a cleaner way to track the money.

Representative Wilson asked for verification that the provision had been in the bill when it had come over from the Senate. Ms. Pierson answered in the affirmative.

Representative Wilson remarked on the inability to have dedicated funds. She understood that for tracking purposes money could sometimes be put into a certain fund. She asked whether the funding could be utilized for anything once it had been deposited into the fund.

Ms. Pierson answered that the new fund would be the 88th account under AS 37.05.146(c). The funds would not be designated and would still have to be appropriated by the legislature. The funds would merely be directed into the account in order for tracking.

Representative Wilson asked if there were other funds going into the account or if it was being created to track only the recovered funds [resulting from the Alaska Medical Assistance False Claim and Reporting Act].

Ms. Pierson answered the account would be brand new with the sole purpose of tracking the funds.

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, Amendment 12 was ADOPTED.

Co-Chair Thompson MOVED to ADOPT Amendment 13, 29-LS0692\T.11 (Mischel/Glover, 4/8/16) (copy on file). [Note: due to amendment length it has not been included in the minutes. See copy on file.]

Co-Chair Neuman OBJECTED for discussion.

Ms. Pierson explained the amendment applied to page 42, lines 19 through 22 of the bill. The amendment would delete Section 42. She asked Ms. Kraly to speak to the amendment.

Co-Chair Thompson clarified the section was on page 42, lines 23 through 30.

Ms. Pierson clarified that it was on page 43 of the bill.

Ms. Kraly relayed that the amendment had been more of a communication issue. She explained that DOL had spoken with Co-Chair Thompson's office about a potential amendment to address the added authority for the Department of Corrections (DOC) to apply for inmates in need of inpatient hospitalization to be covered by Medicaid. She detailed the language [to be deleted by Amendment 13] had been part of that potential amendment. Upon further review and consideration DOL had determined the provision [in Amendment 13] was not required because the statute being amended under AS 47 related to the general relief program and not the medical assistance program; therefore, it was unnecessary. The department believed it would be cleaner to remove the unnecessary provision.

Co-Chair Neuman WITHDREW his OBJECTION. There being NO further OBJECTION, Amendment 13 was ADOPTED.

[5:10:57 PM](#)

Co-Chair Neuman MOVED to ADOPT a conceptual amendment to Amendment 1 as adopted [conceptual amendment 1.A].

[5:11:32 PM](#)

AT EASE

[5:25:06 PM](#)

RECONVENED

Co-Chair Neuman MOVED to ADOPT conceptual amendment 1.A to previously adopted Amendment 1.

Co-Chair Thompson OBJECTED for discussion.

Mr. Shattuck explained the conceptual amendment. The amendment would remove language from adopted Amendment 1 (page 1, line 6; and page 1, lines 19, 20, 22, and 23 of Amendment 1). The amendment would remove Schedule IA, IIA, IIIA, IVA, and VA along with federal Schedule I and V from Sections 22 and 24 of Amendment 1. He referred to Section 21, page 21, lines 29 through 31 of the bill where the language would be removed. The amendment would remove the list of drugs from the specific section, which would be maintained in 2021 when the provision was repealed. [Note: see Amendment 1 discussion related to the PDMP.]

Co-Chair Thompson WITHDREW his OBJECTION. There being NO further OBJECTION, Amendment 1.A was ADOPTED.

[5:28:27 PM](#)

Vice-Chair Saddler MOVED to ADOPT Amendment 15, 29-LS0692\T.2 (Glover, 4/6/16) (copy on file). [Note: due to amendment length it has not been included in the minutes. See copy on file.]

Co-Chair Thompson OBJECTED for discussion.

Vice-Chair Saddler explained the amendment. He discussed committee members had expressed desire to have a report to the legislature with information about the effectiveness of making the PDMP participation mandatory. The amendment would add a small addition to the existing PDMP annual report requirement in AS 17.32.00(m) referenced on line 3 of the amendment. The goal was to receive information regarding database security. He believed everyone should be concerned about the security of the database (referenced on page 1, line 16 of the amendment). The report would also include information on the effectiveness of mandating PDMP participation (line 17) and the effect on the reduction of any inappropriate use or prescription of controlled substances. He referred to earlier committee dialogue about receiving a report with sufficient time in advance of the repealer [passed in Amendment 1] in order to determine whether the PDMP provision was working as planned. Current statute required an annual report from the Board of Pharmacy to the department about the PDMP. The amendment would require a bit more information to be included in the report. He believed the amendment would require extra information the legislature would want to know about the

effectiveness and impact of the mandatory PDMP reporting when it considered whether or not to extend the mandate.

Representative Gara thought studies were always good, but he believed it was necessary to pause for a moment. He stated that the committee did not know the cost of the study. He reasoned it would not be a difficult amendment to add the following year when the cost could be determined. There was no fiscal note associated with the report, but he believed it would cost money. He continued it would require determining reductions in the number of individuals using and getting addicted to controlled substances; it was not information that could be looked up in a book. He explained it would require a field study. He did not know how evidence would be compiled without some associated cost. First, it was necessary to determine whether the legislature wanted to spend the money. Second, it was necessary to determine the fiscal note instead of asking the department (that had received \$142 million in cuts over the past couple of years) to absorb the cost of the study. He believed at a minimum there needed to be a fiscal note for work associated with discovering "reductions, if any, in inappropriate use or prescription of controlled substances resulting from the use of the database."

Vice-Chair Saddler disagreed. He had consulted with the state's chief medical officer Dr. Jay Butler (the state's leading authority for epidemiology) who had communicated the state already collected data on the number of injuries and deaths attributable to overdose. The cause of death was determined and reported to the department. Additionally, DCCED issued the report on overdoses or inappropriate prescriptions - it established a threshold and measured how many times an individual obtained prescriptions at a rate exceeding the threshold. He concluded the information was already gathered, simple to collate, and should be fairly simple to append the information about any possible breeches of the database. He added there was not an additional cost and he did not believe there was a need for a fiscal note.

Ms. Shadduck agreed with Vice-Chair Saddler. She had previously spoken with Janey Hovenden the DCCEC director of the Division of Corporations, Business and Professional Licensing about adding to the DCCED report. She explained the report did not come from DHSS. The current 4-page report had been added to the committee's backup for the

bill ["2016 Alaska Prescription Drug Monitoring Program Report" dated February 11, 2016 (copy on file)]. She agreed the amendment should not add an additional cost to the existing annual reporting.

5:34:39 PM

Co-Chair Thompson asked for verification that the report already existed. Ms. Shadduck answered in the affirmative. Amendment 15 would amended part of the current PDMP statute that required an annual report to the legislature. The amendment added more prescriptive language about what the report should include, including security information and the reductions discussed by Vice-Chair Saddler.

Representative Gara requested to hear from Dr. Butler. He wondered if it was a simple "yes" that the additional information required by Amendment 15 was already compiled and would not result in any additional cost.

JAY BUTLER, CHIEF MEDICAL OFFICER, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, replied "yes."

Representative Kawasaki believed the amendment was important because of the passage of Amendment 1. He detailed the legislature wanted to hear more information about how the PDMP would be utilized. He noted that currently 40 percent of the state's pharmacies and 13 to 14 percent of the state's prescribers utilized the database. The bill would require 100 percent of the prescribers and pharmacies to utilize the PDMP. He wanted to ensure items C and D [of the amendment] would give the legislature enough information so it could understand the new pharmacists and prescribers and how they felt the PDMP was working.

Representative Wilson asked about the federal prescription drug monitoring program. She asked if the state's monitoring program went into the federal database. She wondered why the amendment mentioned the federal program.

Vice-Chair Saddler answered the language referencing the federal program was current statute. He deferred to Ms. Shadduck for further information.

Ms. Shadduck answered that the state's PDMP was a state database, not a federal database. The amendment related to the report required by current state statute.

Representative Wilson asked if the federal prescription drug monitoring program would provide the same data as the state's PDMP was intended to provide. Ms. Shadduck answered the state was only collecting and monitoring data from the state database. She explained the language had been put into statute in 2008 and she did not know why it included the federal database.

Representative Wilson asked if the federal government was already collecting the data. If so, she wondered how it differed from the state PDMP.

Ms. Shadduck answered that the language on line 6 of the amendment referred to a federal prescription drug monitoring program grant. She explained that since the start of the program in 2008 the cost had been covered by a grant instead of being charged to the Board of Pharmacy. She furthered there had been grant programs. She assured the committee the state did not share any information with the federal government unless there was a search warrant or court order.

[5:39:28 PM](#)

Representative Guttenberg was cynical about the amendment and was unsure whether he supported or opposed it. He referenced subsection A of the amendment: "reduce the rate of inappropriate use of prescription drugs by reporting education efforts..." He read subsection B: "reduce the quantity of pharmaceutical controlled substances obtained by individuals attempting to engage in fraud and deceit." He countered that the state was only informed about the individuals who were caught. He read subsection C: "increase coordination among prescription drug monitoring program partners," which he believed the state should be doing. He addressed involving stakeholders in the planning process (subsection D). He discussed that unfortunately the stakeholders the state wanted to talk to were the ones acting illegally. He was concerned about the validity and productiveness of the subsections, with the exception of subsection C. He reasoned "if we're doing all of these already, we're just repeating ourselves." He observed that the subsections were performance measures. He detailed the database was aimed at reducing the inappropriate use or prescription of controlled substances. He wondered what

exactly the items specified in the amendment would accomplish.

Ms. Shadduck replied that subsections A through D were already in current statute and were required to be included in the annual report on the PDMP. She did not know how the items had been decided in 2008. She knew the reports had been helpful for the legislature to determine whether the PDMP was doing what it was designated to do.

Representative Guttenberg looked at item 2 in Amendment 15 related to security of the database. He agreed security was important. He read subsection B under item 2: "reductions, if any, in the inappropriate use or prescription of controlled substances resulting from the use of the database." He did not believe the information should be difficult. He stated the problem with the process was about what the state did not know. He wanted the database to work and target things that were currently unknown with data the state had never collected. He stated at the end of the day the legislature was looking for answers to questions it did not yet have. He was not sure the amendment accomplished the goal, but he hoped it would.

[5:43:11 PM](#)

Co-Chair Neuman spoke in support of the amendment. He remarked on the controversial nature of the PDMP provision. He stated that more information would not hurt. He noted that the committee had been told there would be no additional cost.

Vice-Chair Saddler responded to Representative Guttenberg's questions. He reasoned it was appropriate to package additional information with information the legislature was already receiving in existing annual reports required by law in order to get better information about work being accomplished with the federal grants. He noted there was no additional cost to receive the information about the security of the database and about the reductions in over prescription that may be achieved by the bill's PDMP mandate. The intent of the report was to evaluate the 4-year temporary PDMP mandate. He believed putting all of the information in one place made it easier for future legislatures to evaluate whether to continue the mandate in the future.

Co-Chair Thompson WITHDREW his OBJECTION. There being NO further OBJECTION, Amendment 15 was ADOPTED.

Vice-Chair Saddler addressed the bill's 17 fiscal notes. The first fiscal note was from DHSS related to the Pioneer Homes (OMB Component Number 2671). The second fiscal note was from DHSS for the Division of Behavioral Health (OMB Component Number 2665).

Representative Wilson asked about the costs associated with the fiscal notes.

Vice-Chair Saddler asked if Representative Wilson was requesting the annual costs.

Representative Wilson explained she was interested in the cost or savings reported on the fiscal notes. For example, the first fiscal note included \$1,660,700 in General Fund (GF) savings that would be interagency receipts. She thought the information was supposed to be put on the record. She was fine with whatever the chair preferred.

Co-Chair Thompson asked Vice-Chair Saddler to report the full detail to the committee.

[5:47:04 PM](#)

Vice-Chair Saddler addressed fiscal note OMB Component Number 2671 from DHSS for the Alaska Pioneer Homes. The note contained zero operating expenditures in FY 17 through FY 21, with a reduction in GF of \$1,660,700 and an increase in interagency receipts in the same amount. He addressed the DHSS fiscal impact note OMB Component Number 2665 for the Division of Behavioral Health. There was no fiscal impact in FY 17 and FY 18. There were decrements of \$226,700 in FY 19, \$453,400 in FY 20 through FY 22. He moved to the DHSS fiscal impact note OMB Component Number 242 for the Division of Health Care Services. The note included a cost of \$697,600 in FY 17 through FY 19 and \$316,200 in FY 20 through FY 22.

[5:50:55 PM](#)

Vice-Chair Saddler addressed the DHSS fiscal impact note OMB Component Number 2696 for the Division of Health Care Services. The note included a cost of \$500,000 in FY 17 and \$200,000 in FY 18 through FY 22. He moved to the DHSS

fiscal impact note OMB Component Number 237 for the Division of Public Assistance. The total cost in FY 17 was \$980,000 and zero in FY 18 through FY 22. He turned to the DHSS fiscal impact note OMB Component Number 2663 for the Division of Senior and Disabilities Services.

Co-Chair Thompson asked Vice-Chair Saddler to read only the OMB Component Numbers and departments for the sake of brevity.

Vice-Chair Saddler reviewed the DHSS fiscal impact note OMB Component Number 2875 for the Division of Senior and Disabilities Services. Additional notes included OMB Component Number 2787 from DHSS for the Division of Senior and Disabilities Services; OMB Component Number 309 from DHSS for the Division of Senior and Disabilities Services; OMB Component Number 317 from DHSS for departmental support services; OMB Component Number 2660 from DHSS for the Division of Medicaid Services; OMB Component Number 2077 from DHSS for the Division of Medicaid Services; OMB Component Number 2662 from DHSS for the Division of Medicaid Services; OMB Component Number 2203 from DOL for the Criminal Division; and OMB Component Number 45 from DOA for centralized administrative services.

[5:56:02 PM](#)

AT EASE

[5:56:29 PM](#)

RECONVENED

Vice-Chair Saddler reread OMB Component Number 45 from DOA for centralized administrative services. Additional fiscal notes included OMB Component Number 2360 from DCCED for the Division of Corporations, Business and Professional Licensing; OMB Component Number 2203 from DOL for the Criminal Division; and OMB Component Number 2952 from DOC for the Division of Health and Rehabilitation Services.

[5:58:09 PM](#)

AT EASE

[5:58:22 PM](#)

RECONVENED

Vice-Chair Saddler MOVED to REPORT HCS CSSB 74(FIN) out of committee with individual recommendations and the

accompanying fiscal notes. Legislative Legal Services was directed to make any appropriate conforming or technical changes.

Representative Wilson OBJECTED. She explained she was trying to add up the fiscal notes related to General Funds and did not see \$31 million in savings in FY 17. She observed costs going out and possible savings in out-years. She relayed she would continue to add the savings while others comments on the bill.

Representative Kawasaki could not recall if the committee had an opportunity to ask the bill sponsor [or staff] questions about the CS. He pointed to page 23 of the bill that dealt with new licensing. He detailed that under the legislation there would be agents or employees licensed under statute. He asked how the individuals would be licensed.

Ms. Shadduck answered that the changes had been made based on public testimony in the House Finance Committee. She explained that previously the bill had not included the language "licensed or registered under AS 08" and there had been a concern there would be no oversight related to who a practitioner was delegating access to. The specific statute AS 08 included all of the boards and commissions under DCCED - it would include individuals who fell under the department's licensing or registration requirements, which would ensure some accountability to boards.

Representative Kawasaki pointed to page 26 related to the establishment of registration fees for pharmacists and practitioners. He asked if every pharmacist and practitioner would have to pay a fee established by the department given the bill's requirement for all pharmacists and practitioners to review the PDMP prior to administration of medication in many cases.

Ms. Shadduck answered that it was a stopgap measure. She detailed if there was a need for fees, there had been some concerns about placing fees only on pharmacists. The Division of Corporations, Boards and Professional Licensing had asked for the authority to spread the fees among all registered users out of fairness. She pointed to the language "minus all federal funds acquired for the operational costs of the database" on page 26, lines 26 through 30. She specified the federal funds would come off

first. She furthered if there were federal grants to cover the costs, as in the past and through 2020, the licensing fees would not increase. In the event federal money ended, it had been determined it would not be fair to place all potential increases on the Board of Pharmacy.

Representative Kawasaki discussed that a large bill section dealing with civil asset forfeiture had been removed. He referred to earlier testimony from Mr. Peterson and another staff from a state fraud unit had addressed the necessity of the ability to do civil asset forfeiture in the cases of physician offices and fraud cases. He asked Ms. Shadduck to speak to the removal of the provision.

Ms. Shadduck agreed that the language had been brought forward by the governor and had been included in the Senate Finance Committee CS. She discussed it had been a policy decision in the House Finance Committee based on public testimony and concerns by the committee that civil forfeiture could be problematic.

Representative Kawasaki relayed his appreciation of the work by the sponsor and his staff. He appreciated the process that had gone into building the legislation.

[6:05:57 PM](#)

Representative Guttenberg asked who would be responsible for entering the data into the PDMP. Ms. Shadduck answered that the issue had been cleaned up in the CS. She pointed to Section 22, which listed how pharmacists put data into the PDMP. She explained that only pharmacists would enter data; the prescribers only looked up data.

Representative Gara thanked Ms. Shadduck for her work. He spoke to a document showing the bill would bring over \$100 million in savings by 2021. He asked to go over a couple of the fiscal notes. He referenced OMB Component Number 2077 that included a savings in General Fund match of \$58 million in 2021. The note indicated an additional \$30 million in federal receipts in 2021. He did not see how the number went down to \$27 million in net savings shown on the bottom line of the note. He had the same question with the subsequent fiscal note.

Ms. Shadduck deferred the question to DHSS.

[6:08:55 PM](#)

JON SHERWOOD, DEPUTY COMMISSIONER, MEDICAID AND HEALTH CARE POLICY, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, spoke to the DHSS fiscal note OMB Component Number 2077 related to Medicaid Services. The GF savings for FY 22 would be \$60,224,600; the note there were also expenditures of federal receipts. He spoke to a new fund source related to recovery of money under the False Claims Act. He detailed the total change in funding would be \$31,829,400 in FY 22 when considering all of the items. He reiterated there would be a GF savings of over \$61 million, but there would also be an expenditure of federal and recovered funds.

Representative Gara remarked if the concern was only about state money, it appeared there was \$60 million in savings in FY 22, but he did not know if it included the \$32 million in [federal] grant money. He reasoned they did not usually subtract additional federal funds from savings. He asked for clarity.

Mr. Sherwood answered that the fiscal note convention totaled the expenditures and fund source. He explained it may not make logical sense to combine all of the fund sources when some went up and others went down. For the previous version of the fiscal notes the department had submitted a consolidated page showing all GF savings without other fund source changes. He apologized, but the department had not had time to use the same method on the current fiscal note.

Representative Gara understood they did not subtract getting additional federal funds and spending them. He referred to \$60.2 million in GF savings. He asked if the state was also receiving \$32 million in additional grants.

Mr. Sherwood answered that the \$32 million represented expenditures and the \$60 million on the note related to a fund source change. He explained that total expenditures needed to balance total fund source changes. The first block of numbers on the note was an expenditure and the second block showed where the money was coming from.

[6:13:04 PM](#)

Representative Wilson pointed to DHSS fiscal note OMB Component Number 2077. She referred to the \$20 million in

GF match in FY 17 that would be replaced by the federal receipts fund source. She asked if the state would receive the federal receipts without the bill; if not, she wondered what action the bill took that would enable the state to bring in the \$20,548,400.

Mr. Sherwood answered that primarily the reduction in GF and increase in federal funds in FY 17 came from the change in the federal matching funds claiming policy for services provided through the tribal health system. There were a couple of other small pieces that would take time to delve into.

Representative Wilson understood that the majority was related to the tribal health system. She asked if the savings could be achieved without the bill. Mr. Sherwood believed the state would still have the latitude to pursue the change in federal policy without the legislation.

Representative Wilson pointed to DHSS fiscal note OMB Component Number 2662. She detailed the note included \$2.9 million GF matching funds that would be replaced with federal receipts [in FY 17]. She asked if the federal receipts would be available to the state without the legislation.

Mr. Sherwood replied in the affirmative related to FY 17 and noted that fell under tribal. In subsequent years savings were attached to provisions in the bill.

Representative Wilson understood the provisions were in the bill, but she believed there were many things the department could do without the legislation. She asked if the department could apply for the 1915(i) waiver without the bill.

Mr. Sherwood answered that he believed waiver 1915(i) required legislation.

Representative Wilson pointed to OMB Component Number 2952 was from DOC showed \$6 million in savings in the governor's bill but not in any other areas. She assumed the \$6 million in savings had to do with individuals placed in the hospital for over 24 hours.

Ms. Shadduck answered in the affirmative.

Representative Wilson asked for verification the \$6 million in savings to the state could be achieved without the bill. Ms. Shadduck replied in the negative. She pointed to the second page of the fiscal note and explained some individuals had refused to allow DOC to apply for Medicaid on their behalf. The bill provision ensured the \$6 million in savings to the state would occur.

Representative Wilson provided a hypothetical scenario about a prisoner. She asked if there was a mechanism to force a prisoner to sign over.

6:17:55 PM

AT EASE

6:18:20 PM

RECONVENED

Ms. Shadduck answered that when DOC had a prisoner in its custody who had to leave the facility for 24 hours or longer, the care could qualify for Medicaid, but only if the prisoner agreed for the application to be submitted. The provisions in the bill allowed DOC, only in the case for hospitalizations, to apply for Medicaid. Otherwise, the state paid 100 percent GF.

Representative Wilson wondered what the state could do if the prisoner would not agree to sign for Medicaid. Ms. Shadduck pointed to Section 28, page 27 of the bill.

Representative Wilson asked for further detail.

Ms. Shadduck read from Section 28, subsection (c) of the bill:

The commissioner shall apply for medical assistance under AS 47.07 and for general relief assistance under AS 47.25.120 - 47.25.300 on behalf of a prisoner incarcerated in a correctional facility to establish medical assistance coverage or general relief assistance for the prisoner during a period of hospitalization outside of the correctional facility.

Ms. Shadduck elaborated that subsection (d) addressed how the commissioner may obtain the necessary information.

Representative Wilson would not stop the bill from going forward, but she observed only one fiscal note accounted for the majority of the savings. She remarked substantial expenditures would result from the legislation. She noted the legislation called for approximately 23 new positions, which she believed was substantial. She believed most of the things in the bill could already be done by the department. She wondered what made the legislature think the department would do something because it was put in statute. Additionally, she wondered if all of the choices were right. She recalled testimony that putting out a request for information would be a better strategy because so many states had already gone through the process. She continued the state could then possibly issue an RFP for much of the work.

Representative Wilson was also concerned about the database. She believed the legislature would hear from numerous physicians when they realized what the legislature had done in the bill. She stated the database was a very expensive program. She referred to the time it would take to use the program and who may or may not qualify under the certification section. She detailed the committee had heard from the dental community that most of their staff did not qualify under the certification requirement. She continued it would mean a higher-tier employee would have to sit at a computer to input the detail. She guaranteed that many constituents did not know the specific provisions were about everyone and not just about Medicaid. She understood that there was a drug problem, but she was concerned about privacy. She opined it was possible to find the individuals with drug problems already. She stated bills were being brought in and red flags should be going up if doctors were not doing the right thing. She was still concerned about Amendment 11. She would follow up with an amendment on the House floor.

Representative Wilson understood that significant work had gone into the bill. Her biggest concern was she thought "we could have already done this" and the bill would increase the size of government. She furthered the state was hoping for savings. She referred to \$20 million in proposed savings she thought the state would have received without the bill. She believed it had only been included in the bill to show the savings. She stressed the bill would increase the size of government at a time when the state did not have any money.

Representative Wilson WITHDREW her OBJECTION, but reiterated her concerns. She thought the biggest concern was how to get the department to access savings without legislation.

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Representative Gara thanked DHSS for its work. He gave credit to the department. He discussed that a number of the federal funds the department was leveraging had been available for many years; the department was replacing state expenditures with federal money. He continued that some of the federal money had been available for years and some of it was new. The department was taking advantage of as many areas as possible to find replacement federal funds (roughly \$100 million after the years three and four). He believed DHSS deserved credit for the work. He noted that the bill sponsor [Senator Pete Kelly] and the department had not seen eye-to-eye on some issues in the past and had been able to come together with a bill that would help the state.

Co-Chair Neuman had serious concerns with the bill. He believed it started numerous pilot programs and spent a significant amount of money. He was uncertain of the net-back. He had huge concerns about the PDMP that he did not think was part of the original Medicaid reform bill. He thought it "gets glossed over that the Prescription Drug Database was added into it and making it mandatory for all doctors to use." The committee had also heard that numerous organizations thought it was a great deal and no complaints had been heard. However, the committee also heard there were probably many doctors who were not aware of the changes. He noted that the Alaska Dental Society did not like the change related to the PDMP. The committee had also heard from the Family Medicine Department at the Alaska Regional Hospital, the American Osteopathic Association, and Alaska Osteopathic Medical Association that opposed the PDMP change.

Co-Chair Neuman referred to a retired dentist in his district who wanted to start a practice in Alaska. He detailed the individual did not have a licensed staff to access the database, which would mean more work and cost for him. He used his personal doctor's office as another example. He stressed the busy nature of doctor offices and

believed the PDMP provision added an additional burden. He emphasized that the bill imposed increased government in people's lives. He noted many of his constituents did not know about the PDMP and were in shock when they heard about it. He was glad the issue would be reviewed in several years. He thought the legislature would hear about the issue once it had become law. He referred to the high medical costs in Alaska and believed the bill increased the costs. He stated the bill invaded some of the most personal privacies of Alaskans.

There being NO further OBJECTION, it was so ordered.

HCS CSSB 74(FIN) was REPORTED out of committee with an "amend" recommendation and with 13 new fiscal impact notes from the Department of Health and Social Services; 1 new fiscal impact note from the Department of Commerce, Community and Economic Development; 1 new fiscal impact note from the Department of Law; 1 new fiscal impact note from the Department of Corrections; and one previously published fiscal note: FN29 (ADM).

Co-Chair Thompson discussed the schedule for the following Monday.

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ADJOURNMENT

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The meeting was adjourned at 6:30 p.m.