ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE
March 24, 2016
3:03 p.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Liz Vazquez, Vice Chair
Representative Neal Foster
Representative Louise Stutes
Representative David Talerico
Representative Geran Tarr
Representative Adam Wool

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

PRESENTATION ON TELEHEALTH

- HEARD

HOUSE BILL NO. 344
"An Act relating to the controlled substance prescription database; and providing for an effective date."

- MOVED CSHB 344(HSS) OUT OF COMMITTEE

HOUSE BILL NO. 315
"An Act relating to an electronic visit verification system for providers of certain medical assistance services."

- HEARD & HELD

HOUSE BILL NO. 328
"An Act prohibiting smoking in certain places; relating to education on the smoking prohibition; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 334
"An Act relating to visitation and child custody."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 344
SHORT TITLE: DRUG PRESCRIPTION DATABASE
SPONSOR(s): REPRESENTATIVE(s) SEATON

02/24/16	(H)	READ THE FIRST TIME - REFERRALS
02/24/16	(H)	HSS
03/01/16	(H)	HSS AT 3:15 PM CAPITOL 106
03/01/16	(H)	Heard & Held
03/01/16	(H)	MINUTE (HSS)
03/08/16	(H)	HSS AT 3:00 PM CAPITOL 106
03/08/16	(H)	Heard & Held
03/08/16	(H)	MINUTE (HSS)
03/10/16	(H)	HSS AT 3:00 PM CAPITOL 106
03/10/16	(H)	-- Rescheduled to 3/11/16 at 8:00 a.m. --
03/11/16	(H)	HSS AT 8:00 AM CAPITOL 106
03/11/16	(H)	-- MEETING CANCELED --
03/15/16	(H)	HSS AT 3:00 PM CAPITOL 106
03/15/16	(H)	Heard & Held
03/15/16	(H)	MINUTE (HSS)
03/17/16	(H)	HSS AT 3:00 PM CAPITOL 106
03/17/16	(H)	Scheduled but Not Heard
03/24/16	(H)	HSS AT 3:00 PM CAPITOL 106

BILL: HB 315
SHORT TITLE: ELECTRONIC VISIT VERIFICATION: MEDICAID
SPONSOR(s): REPRESENTATIVE(s) VAZQUEZ

02/17/16	(H)	READ THE FIRST TIME - REFERRALS
02/17/16	(H)	HSS
03/22/16	(H)	HSS AT 3:00 PM CAPITOL 106
03/22/16	(H)	Heard & Held
03/22/16	(H)	MINUTE (HSS)
03/24/16	(H)	HSS AT 3:00 PM CAPITOL 106

BILL: HB 328
SHORT TITLE: REGULATION OF SMOKING
SPONSOR(s): REPRESENTATIVE(s) TALERICO

02/22/16	(H)	READ THE FIRST TIME - REFERRALS
02/22/16	(H)	HSS, JUD, FIN
03/22/16	(H)	HSS AT 3:00 PM CAPITOL 106

03/22/16	(H)	Heard & Held
03/22/16	(H)	MINUTE (HSS)
03/24/16	(H)	HSS AT 3:00 PM CAPITOL 106

WITNESS REGISTER

KATE BLACKMAN
National Conference of State Legislatures
Denver, Colorado
POSITION STATEMENT: Introduced the PowerPoint presentation on Telehealth.

MARIO GUTIERREZ
Center for Connected Health Policy
Sacramento, California
POSITION STATEMENT: Presented a PowerPoint titled "Transforming Health Care With Connected Health."

JANEY HOVENDEN, Director
Division of Corporations, Business, and Professional Licensing
Department of Commerce, Community & Economic Development
Juneau, Alaska
POSITION STATEMENT: Testified and answered questions during discussion of proposed HB 344.

ANITA HALTERMAN, Staff
Representative Liz Vazquez
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified and answered questions during discussion of HB 315, on behalf of the prime sponsor, Representative Vazquez.

DEB ETHERIDGE, Deputy Director
Division of Senior and Disabilities Services
Department of Health and Social Services
Juneau, Alaska
POSITION STATEMENT: Testified and answered questions during discussion of HB 315.

JOSHUA BANKS, Staff
Representative Dave Talerico
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Answered questions on HB 328 on behalf of Representative Talerico, prime sponsor.

CHUCK KOPP, Staff
Senator Peter Micciche
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered testimony and answered questions on behalf of Senator Micciche.

HILARY MARTIN, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 328, answered questions.

Gary Superman, Owner
Hunger Hut Bar, Motel and Liquor
Nikiski, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered opposition to the legislation.

CHRYSTAL SCHOENROCK, Owner
Hunger Hut Bar, Motel and Liquor
Nikiski, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered opposition to the legislation.

DANIEL LYNCH
Soldatna, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered opposition to the legislation.

SHEB GARFIELD
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 325, offered opposition to the inclusion of vaping in the legislation.

GREGORY CONLEY, Attorney
President, American Vaping Association
Medford, New Jersey
POSITION STATEMENT: During the hearing of HB 328, offered opposition to the inclusion of vaping in the legislation.

MICHAEL CERVANTES, Owner
Banks Ale House
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of HB 328, offered opposition to the legislation.

ANGELA CERNICH, Owner
Artic Industries
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered support for the legislation.

CARMEN LUNDE, Director
Kodiak CHARR
Kodiak, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered opposition to the legislation.

ISAAC HEWELL, Owner
Cold Vapes 907
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered opposition to the inclusion of vaping in the legislation.

ALISON HALPIN
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered opposition to the inclusion of vaping in the legislation.

BRIAN PREBLE
Anchorage, Alaska
POSITION STATEMENT: During the hearing of 328, offered opposition to the inclusion of vaping in the legislation.

LARRY HACKENMILLER
Fairbanks, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered opposition to the legislation.

JENNIFER VARGASON
Fairbanks Alaska
POSITION STATEMENT: During the hearing of HB 328, offered opposition to the inclusion of vaping in the legislation.

JESSE WALTON
Fairbanks, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered opposition to the inclusion of vaping in the legislation.

TERRY CROWSON

Delta Junction, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered support for the legislation.

CHERYL SCHOOLEY
Delta Junction, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered support for the legislation.

WAYNE CROWSON
Delta Junction, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered support for the legislation.

ROBIN MINARD, Director
Public Affairs
Mat-Su Health Foundation
Wasilla, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered support for the legislation.

PETE BURNS
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered support for the legislation.

JOHN YORDY, M.D.
Anchorage and Valley Radiation Therapy Centers
Wasilla, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered support for the legislation.

OWEN HANLEY, M.D.
Fairbanks Memorial Hospital
Fairbanks, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered support for the legislation.

ERIC VARGASON
Fairbanks, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered opposition to the inclusion of vaping in the legislation.

STEVEN MAPES
Kenai, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered opposition to the inclusion of vaping in the legislation.

BOB URATA, M.D.
Valley Medical Care
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered support for the legislation.

ANGELA CARROLL
Smoke-Free Alternative Trade Association
Wasilla, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered opposition to the inclusion of vaping in the legislation.

JUNE ROGERS
Fairbanks, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered support for the legislation.

DANNY RUEREP
Fairbanks, Alaska
POSITION STATEMENT: During the hearing of HB 238, offered opposition to the inclusion of vaping in the legislation.

QUOC DONG
Akiak, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered opposition to the inclusion of vaping in the legislation.

OCTAVIA HARRIS
American Lung Association in Alaska
Fairbanks Alaska
POSITION STATEMENT: During the hearing of HB 328, offered support for the legislation.

EMILY NENON, Director
Alaska Government Relations
American Cancer Society Cancer Action Network
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 328, offered support for the legislation.

ACTION NARRATIVE

3:03:36 PM

CHAIR PAUL SEATON called the House Health and Social Services Standing Committee meeting to order at 3:03 p.m.

Representatives Seaton, Vazquez, Talerico, and Stutes were present at the call to order. Representatives Tarr, Foster, and Wool arrived as the meeting was in progress.

Presentation on Telehealth

3:05:35 PM

CHAIR SEATON announced that the first order of business would be a PowerPoint titled "Transforming Health Care With Connected Health" by the National Conference of State Legislators and the Center for Connected Health Policy.

3:07:31 PM

KATE BLACKMAN, National Conference of State Legislatures, advised she is a policy specialist with the bipartisan membership organization of all state legislatures, the National Conference of State Legislatures (NCSL). She explained that NCSL advocates for the interests of states and territories, and provides policy makers with the opportunity to exchange ideas. She explained that the presentation stems from an interest of a team of key Alaska legislators, their staff, and executive branch representatives who convened a National Conference of State Legislatures (NCSL) meeting in August to discuss how health care payment and delivery systems reform. Telehealth has seen increasing adoption and expansion across the nation and the NCSL has been working on these issues in providing information and technical assistance to states. The NCSL also recently prepared a white paper on Telehealth which is meant to serve as a resource to state legislatures.

MS. BLACKMAN related that the NCSL partnered with Mario Gutierrez, Executive Director, Center for Connected Health Policy located in Sacramento, California. She offered that Mr. Gutierrez has had over 30 years of experience in California's non-profit health and health philanthropy sectors, and she then listed his vast experience.

3:09:47 PM

MARIO GUTIERREZ, Center for Connected Health Policy, directed attention to the PowerPoint presentation, "Transforming Health Care with Connected Health. State and National Telehealth Trends and Issues," slide 2, and offered a disclaimer that he is not a lawyer, the information is purely for informational purposes, and the Center for Connected Health Policy is not

funded or supported by any vendor or commercial products or services as it is an independent non-profit organization. He explained that the Center is part of a larger public health institute and its ultimate goal is to achieve equity in health care, and quality and affordable care for all, and further explained that technology is a means toward reaching that goal. He turned to slides 3-4, "Center for Connected Health Policy," and said the Telehealth Resource Center is part of a family of organizations funded through the Office of the Advancement of Telehealth under the Office of Rural Health Policy (ORHP). He turned to slide 5, "TTAC," and explained that TTAC is their sister organization based in Anchorage, and it provides objective information and support related to telehealth and IT technology.

3:12:47 PM

MR. GUTIERREZ, in response to Representative Tarr, explained that the TTAC located in Anchorage is affiliated with the Alaska Native Tribal Health Consortium.

REPRESENTATIVE STUTES asked the difference between telehealth and telemedicine.

MR. GUTIERREZ answered that "telehealth" is the common terminology currently used because it encompasses the entire medical field, and a sub-set of that could be considered "telemedicine."

MR. GUTIERREZ turned to slide 6, "HRSA/OAT Grant 2012 - 2016," and said the detailed information, including this discussion, is on their web site together with legal and research policies, research papers, and basic information. He turned to slide 7, "Telehealth Pioneer?" and explained that the idea of communicating electronically to provide health care services has been envisioned since 1925, and operational for 40-50 years. Although, the advances in the technology and how it is being used is new.

3:15:00 PM

MR. GUTIERREZ turned to slide 8, "The Value Proposition for Telehealth," and said that telehealth is an important aspect of health care reform and improvements in quality of care because the advances in telecommunication technologies can help redistribute health care expertise when there are shortages and limitations, to create the greatest value for consumers, payers,

and health systems. Slides 9-18, "Value of Telehealth." He explained there are three key values of telehealth, "1. Timely Access to Diagnosis & Treatment" with primary and specialty care services, direct to consumer, and emergency care. He explained that cost avoidance is a benefit particularly from the patient side wherein the average cost to an outpatient, waiting two hours, is $43 per visit, although in Alaska it is a much higher number. "2. Enhanced Consultation/Communication," the second key value having to do with enhanced consultation and communication allowing consumers to report to their physician through portals, specialists and primary care providers to communicate, or for multiple communications within a team. Examples of communications are e-Consult and the Project Echo Model. The third value of telehealth is "3. Remote Patient Monitoring" is related to health care when chronic conditions become acute and there is the ability to monitor chronic conditions, allow people to be served in their home particularly home-aging in place, and acute emergency situations.
He explained that Medicare approved Omada as a reimbursable form of Digital Therapeutics that allows the intersections of science, technology, and design wherein consumers could monitor and learn about their own health care. According to a number of studies, he advised, remote monitoring saves money, time, and improves quality. Illnesses that can benefit from remote monitoring include, congestive heart failure, obstructive pulmonary disease, and stroke, and a Canadian study showed they could reduce hospital stays by 50 percent. He opined there will be more use of decentralization of care through remote monitoring to the home, and institutionally based outside of the hospital with less dependence on acute care hospitals which is the most expensive.

3:21:51 PM

MR. GUTIERREZ turned to slide 17, and advised there are limitations and the joke on the slide demonstrates that telehealth is not for every form of care. Slide 18, "Power of Connected-Health Technology." He related that in terms of the value, it is always important to think about telehealth in the context of the three-legged stool as follows: the electronic health records and health information exchanges to ensure there is intra-operability; connection so that the HER's repository of the electronic diagnostic information ultimately leads to improvements in health outcomes; and health plans through the health information exchange. When considering policies, he opined, it is important to consider it in this larger context.

3:22:50 PM

MR. GUTIERREZ directed the committee's attention to the "State Policy Analysis & Trends" section, slides 20-27, and turned to state policy. He reminded the committee that the Medicaid program is different in every state and the Centers for Medicare & Medicaid Services (CMS) give the states the ability to define for themselves how it will deliver and pay for health care services using Medicaid resources with matching dollars. The result, he noted, has been a patchwork of laws, regulations and policies where no two states are alike. Subsequent to receiving a federal grant, the Center now has a continuous update on the laws and regulations in every state, which is located on its website. He explained that he defines telehealth policy according to the key areas listed on slide 24. More commonly 43 states still use a form of telemedicine, 28 states have moved to using telehealth as the umbrella terminology, and 2 states do not have any definition. The most common form of reimbursement, because it has been around the longest, has been live video but in some ways live video could be the most inefficient form of care.

3:25:11 PM

MR. GUTIERREZ noted that on slide 25, despite all the evidence in the field and studies performed, only 9 states currently will reimburse for "store and forward", and 16 states for remote patient monitoring. Parity in payment is something that Alaska is currently considering, and there are 27 states that have some form of language related to parity, but parity is difficult to determine. It must be clear whether it is just parity in services that are covered, or whether it also includes parity in payment. He explained that a majority of states have a clause that says "subject to the terms and conditions of a contract." Which means that depending upon the payer, they can determine whether or not they will pay for telehealth, whether they don't pay for a particular service, or whether it is not included in their policy. It is important when considering legislation and policies that it be clear that if there will be parity it has to be without any kind of conditional clauses attached to it. He related a large upsurge this past year in bills introduced across the country reforming telehealth laws, and that 2016 has shown an even greater amount. The majority focus on telehealth standards, across state licensing, prescribing, and just changes to telehealth laws.

3:27:22 PM

MR. GUTIERREZ turned to the "Highlights of Individual States" section, slides 28-37, and offered that the State of Nevada has a clear and clean definition of telehealth, it removed any prior authorization from the provision of telehealth services which says that telehealth should not be treated as something different. In 2011, California passed a comprehensive bill that covers much of what he would like to see in legislation around the country, although there are areas that need improvement. Key here, he pointed out is that the State of California now has language that will reimburse for all forms of telehealth and it removes the restriction on the geographic and institutional location of where telehealth services can take place. Another large change was the requirement that it is only limited to certain professions, mostly the medical profession, and it was changed to allow that any licensed professional can now use telehealth for health care. The parity legislation still has the clause "subject to the conditions of the policy." The State of Mississippi has one of the more advanced policies in the country and it recently passed a law that requires all employee benefit plans to cover all forms of telehealth, and requires reimbursement for store and forward. The State of Minnesota recently changed its laws and it now has a clean definition of telehealth that covers live video, store and forward, and remote monitoring through its Elderly Waiver (EV) program. The State of Indiana passed a law this past week which still defines it as telemedicine but has clearly defined video conferencing, store it forward, and remote patient monitoring. The most important piece of this legislation is that it now allows not just physicians but physician assistants and advanced-nurse practitioners to treat patients via telemedicine without a prior in-person visit, and to prescribe without the requirement that the person be seen in-person, with some conditions.

3:30:53 PM

MR. GUTIERREZ asked the committee to keep in mind that beyond this legislation, the administrations in each state - the departments of health care and health care services also have a say in how they interpret those legislations, so he warned that the committee be sure that that is consistent. Also, licensing boards are now becoming more important as each professional licensing board can now put its own limits on what could be used for telehealth and under what conditions, and the courts are now playing a big role. He noted that Alaska is considering cross-state licensing with the Federation of State Medical Boards (FSMB). He pointed out that this does not create a telehealth

national license as it simply facilitates the process through the compact that is created for any physician in any state in good standing to apply for a license in another state to take place much earlier. Two major cases in the courts include: Planned Parenthood of the Heartland, Inc., and Jill Meadows v. Iowa Board of Medicine, in which the Board of Medicine has a rule requiring an in-person examination for the administration of an abortion inducing drug and an in-person follow-up visit. He explained that that became a model other states were going to follow; however, it was ruled unconstitutional by the Iowa Supreme Court and so those laws have now been rolled back. Another lawsuit closely watched is Teledoc, Inc. v. Texas Medical Board, where the medical board is requiring a medical doctor face-to-face visit before a physician can prescribe medication and this case is currently moving through appeals.

3:32:52 PM

MR. GUTIERREZ turned to the "Federal Telehealth Policies" section, slides 38-46, and said that this is a field that is moving at the speed of light, but on the federal telehealth policy side it is moving at the speed of Old Man River. He remarked that the Social Security Act defines how Medicare is administered, what is payable and reimbursed, and under what conditions, and was passed when the first smart phone was invented by Maxwell Smart. Although, he commented there have been a few incremental changes, but by and large Medicare is stuck in an old way of thinking in terms of health care delivery. Universally, across the county among telehealth providers and policy makers, it is believed that Medicare policies are sorely outdated. (Indisc.) must be in a medical home in a strictly defined rule area. Alaska and Hawaii are part of a demonstration project for "Store and Forward" and Alaska is using store and forward in remote villages for care. It is the policy of this federal administration, moving forward, that all of Medicare will be in some form of managed care plan by 2018. This provides a lot of opportunity for telehealth, but thus far only 1 percent of Medicare beneficiaries are able to take advantage. Currently, there are only two plans that provide for telehealth through their plans at the University of Pittsburg. House Resolution 2 in Congress, the Medicare Access and Chip Program had some good language related to advancing telehealth practices; however, a couple of studies are being called for before anything can be done.

3:35:15 PM

MR. GUTIERREZ referred to Next Generation ACO and said it is a breakthrough in telehealth and the CMS is now funding 20 pilot programs across the country for a two year demonstration in which it has lifted all of the requirements related to geographic limitations, and is encouraging the use of telehealth. He described Congressional Bill S. 2484 as an exciting bill in that the sponsors have been careful to craft it so it meets the neutrality requirements of the Office of Management & Budget and Congressional Budget Office on their scoring to ensure that all bills are budget neutral, and opined it may have a chance of passing during the lame duck session. Important factors to keep in mind around telehealth is that this is a mode of delivery and it is not a different form of health care so all laws apply, he said. This is important, particularly around liability and confidentiality and privacy through HIPAA. Alaska still remains one of the 10 worst states in access to broadband internet, clearly as Mr. Michael Rilly reported from the FCC, Alaska is different in size, transportation, and weather creates huge blocks for access to care. Even though, he noted, Alaska has a model program, there is still a long way to go in terms of no matter what laws are in place, if it doesn't have the super highway to deliver, Alaska will be inhibited in its ability to take full advantage of telehealth.

3:37:5 PM

MR. GUTIERREZ turned to the "Technology-Enables Health Care Trends in the 21st Century section, slides 47-62, and said that Joseph Kvedar, M.D., wrote The Internet of Healthy Things and that he would highlight a number of points from the book to keep in mind in where the nation will be in health care. The movement from volume to value where the results will be paid for rather than paying for the inefficient pay for service model will be the standard. Including, he added, the idea that the 21st century is moving from illness care to keeping people healthy, moving away from in-patient focus and hospital and physician focus to more of a continuum of care and a model where there are shared risk between payers, providers, and consumers. The pathway to greatness in health care delivery and making health care accessible to all with quality and efficiency is to think about where the nation will be in the future. Making incremental changes in moving forward is helpful, but the nation wants the kind of policies it can grow into and allow for these technologies to flourish with the proper safeguards. Slide 50, he advised, depicts the traditional model of the physician being at the center of health care, mostly in-person, facility

centric, of which is becoming outdated. The health care model of the future is depicted on slide 51, wherein the consumer will be and should be at the center of all approaches to health care delivery in which all forms of care, whether specialty care, primary care, or community resources providing holistic care, can be interconnected between virtual means of communication and support. He described this as one of the most untapped, underutilized forms in telehealth, but being able to build a system allowing this type of approach will be critically important, particularly given the types of challenges being faced in Alaska.

3:40:38 PM

MR. GUTIERREZ turned to "2. Commercialization of Health Care: A Fact of Life," is Dr. Kvedar's second point about the future in that commercialization of health care is everywhere, including consumer driven direct where the consumer can be at home with a sick child, call a doctor on demand or American Well, and pay with their credit card for a consultation and a non-narcotic prescription. He described it as a multi-billion dollar industry that continues to grow, and it is tied to the retail market place so places such as Walmart Care Clinic, CVS Caremark have invested significantly. He pointed out that Walgreens is a leader and it partnered with Providence Health Care Services and now has 25 retail clinics in Oregon and Washington and expects to expand nationally. Interestingly, he noted, Walgreens is tying the whole notion of retail health care to its retail business so that within the records of its members, it will provide loyalty points for improvements in wellness care that can be used for retail purchases.

3:42:15 PM

MR. GUTIERREZ turned to "Technology is Growing and Here to Stay," and related that this is not the future as this is now the ability for the consumer to use their iPhone to instantaneously through Bluetooth and in real time, review their EKG or send it to the consumer's cardiac physician, or an organization that can provide an instant reading. The flexibility and ability to use technologies now, as long as there is access to high speed broadband, is at the consumer's fingertips. He remarked that the world of clunky cameras and monitors is a thing of the past except in the carts used in hospitals. Currently, there are peripherals that can generate information from long distances using telehealth with high quality and definition when using wireless devices. For

example, the Berkeley "Tricorder" is the smallest remote monitoring on the market today and it is smaller than the size of a quarter. By using Bluetooth connectivity it can send information on a real time basis, in any number of biometric measures, to the consumer's health care provider. Although, he opined, this will be outdated in the next year as new forms come into play. Incredibly, there is now the ability to monitor patients taking their medications with a microchip that has been approved by the FDA, which dissolves in a patient's system and sends a signal to the physician or health care team through Bluetooth internet. He related that this appears to be similar to "Nanny Government" but consider the hundreds of millions of dollars lost in poor medication adherence either by not taking the medications or taking the wrong medications and this is a way of not only improving the quality of care but also improving the cost efficiency.

MR. GUTIERREZ advised that Dr. Kvedar's last point is "4. Virtual Care Anywhere" and perspective is that the nation is moving to the point where care could be provided in many locations and, in fact health care delivery is moving in that direction with over 75 million virtual visits predicted by 2020. Kaiser Permanente has been a pioneer in this regard and is the largest national non-profit health plan. In 2013, and in Northern California alone, Kaiser Permanente documented 10.5 million virtual visits, and by the end of 2016 it is expected the number of virtual visits will exceed the number of in-person visits. Over time Kaiser Permanente expects that 75 percent of all visits will be performed virtually. He explained that it is not reducing the number of in-person visits rather that the patients seen by their physicians and specialists are patients that really need to be seen. Routine follow up visits, checking in, communication visits, and labs can be performed virtually. He stated that his favorite organization is Mercy Virtual based just outside of St. Louis, and the slide depicts an actual picture of a hospital without beds in which it acts as the command center for four states in which they are interconnected with clinics, hospitals, and physicians in other facilities to provide everything from routine monitoring to emergency care from this facility. It expects that within the next five years it will have performed 3 million virtual visits, he said.

CHAIR SEATON commented that this presentation brought the committee along from the traditional model of medicine. He then listed the individuals available for testimony or questions.

3:47:50 PM

REPRESENTATIVE WOOL referred to his statement that telehealth virtual visits will not reduce the number of inpatient visits a health care providers sees in one day, together with the portion of the physician's day spent with telehealth visits and asked whether their days would be spent in telehealth and face-to-face patients.

MR. GUTIERREZ explained the idea is that a physician can now increase their reach to the number of patients in a panel by working through their health care team, using physician extenders, to provide care using telehealth and the ability to do their routine visits using the health care delivery team. He said it is not always the physician communicating directly with the patient, and what Kaiser Permanente has been promoting, and what it is proving in its work, is that it increases the efficiency, and allows its physicians and specialists to work at the top of their license. The patients actually being seen are patients who really need to be seen, so it is an enrichment and not a replacement to care.

3:49:30 PM

REPRESENTATIVE WOOL surmised that the sickest patients most in need of the highest level of the licensing would see that person. Obviously, he noted, the geographical barriers are being knocked down so it does not matter whether the patient lives next door to the clinic, the patient may still be treated by telehealth. He offered his hope that the pricing is more on a global scale which would be helpful, and asked whether there are instances where a patient who wants to see their physician would still have access, or would that access be more towards a Cadillac or higher end level coverage.

MR. GUTIERREZ explained that the ability to see a physician, or a specialist in particular when there is a shortage of the distribution of specialists, is one that is causing rationing of health care by the de facto and long delays in getting access to that care. To the extent that this accelerates the process for a physician to either have an e-consult with a specialist about a particular patient to avoid having a long wait, or to actually have a consultation either in-person or through the store and forward, telehealth allows it to be performed in a more efficient manner. Yes, he said, if a patient really wants to see their physician to the extent there is an appointment time involved, certainly. He opined there truly are times a patient needs to be seen by a physician encompassing the touch factor

that is always important in the ideal world, but this is an opportunity to expand care.

3:51:48 PM

CHAIR SEATON asked for clarification of the term "physician extenders," and asked whether that includes other people within their practice with a lower level of licensing who can take care of the routine issues.

MR. GUTIERREZ said that was correct, advanced practice nurseries would include nurse practitioners who are trained to take care of most routine forms of medical care and are supervised by a physician. In some states nurse practitioners are allowed to practice independently, but in most cases they are being supervised by a physician so in the event there is a complication or an issue they can reach out to that physician. A physician assistant is a national licensing with specific training, similar to a nurse practitioner and operates in the same manner.

3:52:56 PM

REPRESENTATIVE TARR referred to slide regarding over 200 bills in 42 states, with a bullet point of "Telehealth Professional Standards," and another slide that discussed the interstate compact, and not changing what it means to be licensed as a doctor in a state or an ANP and surmised that those licensed people are being defined a scope of practice for telehealth.

MR. GUTIERREZ responded not in a scope of practice, but within the context of how telehealth is used. For example, some states require a physical examination before a telehealth visit can be provided, and some states are repealing those types of issues to make it more accessible. Another example would be where the physician can be licensed in another state and separate from the compact, can provide care under certain conditions in that state.

REPRESENTATIVE TARR described this as more about delivery of health and not so much about any new type of ethical standards or expectations on the provider end of things as those opportunities are expanded.

MR. GUTIERREZ said no, that it is important to keep in mind that telehealth is a modality; therefore, to the extent that whatever licensing requirements there may be for whatever profession

beyond just physicians, that all standards apply. It is not a separate or above that license or requirement, and he hasn't seen anything in other states.

REPRESENTATIVE TARR asked about store and forward.

MR. GUTIERREZ replied that this is a form of care that has been used successfully with dermatology and ophthalmology with high definition digital images. Currently, with smart phones it is even possible to get the type of high definition that meets the standards. For example, in ophthalmology, the retina of a diabetic patient could be sent to a specialist a long distance away and the specialist could review that during their down time and make a determination as to whether or not that patient has a likelihood of damage to the retina that could lead to blindness. He related that it has been very successful, particularly with Native populations. Another example is dermatology wherein an image can be sent through secure email to a specialist for review and they can make a diagnosis and determination as to whether or not it is a suspicious lesion and advise back to the primary care physician.

3:56:57 PM

CHAIR SEATON asked about the State of Nevada slide which read, "Prior authorization provision is specific ... is expressly prohibited," and asked whether that provision was part of an overall bill, or a standalone provision, or is it in Medicaid or private practice, or both.

MR. GUTIERREZ opined that this was in Medicaid and it was part of the Medicaid regulations that initially required that before a service could be provided there had to be prior authorization. The requirement was in the State of California and it was a deterrent for physicians to utilize the technologies because getting prior authorization from a state office of Medicaid in many cases causes more problems than it is worth. By lifting that requirement it facilitated the process ...

CHAIR SEATON asked whether that was a requirement in the Medicaid plan.

MR. GUTIERREZ answered in the affirmative.

CHAIR SEATON referred to Omada, the digital therapeutics, and asked him to explain the slide that reads, "A new category of

medicine, and then offers each employer and a health plans a full service ... full service team at no cost."

MR. GUTIERREZ answered that the CMS has now approved Omada for reimbursement under Medicare, and he felt it was important to include in this presentation. He opined that he does not know much about it other than the fact that it is a sophisticated technology that allows a consumer to monitor their own chronic condition and be coached through a virtual means to the Omada system and control their diabetes, obesity, hypertension and all of the major chronic diseases that can become killers as they become acute. Omada has been one of the more successful companies and their website is the best place to go for information. Contrary to a lot of the obesity prevention programs that have low compliance after six months, this form has proven to be successful with high compliance for up to one year. Omada is seeing extensive cost savings and, he opined, that is what Medicare was most impressed with in terms of preventable conditions.

4:00:12 PM

CHAIR SEATON asked whether this was a CMS determination or something that must be in the state plan as well.

MR. GUTIERREZ opined that it was a CMS determination for Medicare, and for Medicaid it would have to be part of the state plan.

CHAIR SEATON said the committee would note that as it goes through Medicaid reform legislation.

4:00:39 PM

REPRESENTATIVE TARR opined that the application of telehealth in Alaska has been entirely providing services in more remote areas where there wouldn't be specialists and where services were more limited. She said she saw a paradigm shift with his presentation to something that is more expansive in the application and referred to his testimony of enhancing the system and quality. She pointed out that she is not yet seeing it as useful in every circumstance and she is hung up on the need for an in-person visit and the Nevada bill explicitly prohibits that. It is hard for her, she offered, to see how to obtain the strength in the doctor/patient relationship that is needed for a long term positive interaction if they never

actually meet face to face. She asked for his comments as to whether that is a patchwork of how people feel.

MR. GUTIERREZ related that it is important to highlight that telehealth does not replace the necessity for an in-person visit and opined that the State of Nevada law specifically lifted the requirement for a prior visit. Certainly, telehealth has been a valuable resource for isolated rural communities and it is a great opportunity to enhance care and access. Although, virtual care and technology is a powerful tool for achieving the triple aim of health care, when pondering the value of all health care in any geographical area consider the proposition of giving the most value and the greatest efficiency of health care resources available. Telehealth does not replace the in-person care, telehealth is an enhancement to the delivery of high quality care and it is a value tool in that sense, but not one that should ever be seen as replacing the necessity of an in-person visit, he remarked.

CHAIR SEATON thanked Mr. Gutierrez, and noted that the presentation expanded the committee's knowledge and raised issues it will want to take up in moving forward.

HB 344-DRUG PRESCRIPTION DATABASE

4:04:12 PM

CHAIR SEATON announced that the next order of business would be HOUSE BILL NO. 344, "An Act relating to the controlled substance prescription database; and providing for an effective date."

[Before the committee was the proposed committee substitute (CS) for HB 344, Version 29-LS1378\N, Bruce, 3/14/16, as a working document.]

4:04:30 PM

The committee took an at-ease from 4:04 p.m. to 4:07 p.m.

4:07:40 PM

CHAIR SEATON moved to adopt Amendment 2, labeled 29-LS1378\N.3, which read:

Page 16, line 16, following "**patient**":
Insert "**more than a three-day supply of**"

REPRESENTATIVE TARR objected for discussion.

CHAIR SEATON explained that this amendment would add an exemption to the mandatory review of the database required in Sec. 19, page 16, lines 14-20. The exemption would mean that a practitioner or pharmacist would not be required to check the database if they are dispensing a controlled substance with a supply of three days or less. Although, they could still check but there would not be a requirement to check.

4:08:59 PM

REPRESENTATIVE TARR noted that it reads more than a three day and surmised that it includes the third day.

CHAIR SEATON agreed, and said three days or less.

4:09:28 PM

REPRESENTATIVE TARR removed her objection. There being no objection, Amendment 2 was adopted.

4:10:00 PM

CHAIR SEATON moved to adopt Amendment 3, Version 29-LS1378\N.5, which read:

> Page 17, line 17, following "state":
> Insert "for an occupation or activity listed under AS 08.01.010"

REPRESENTATIVE STUTES objected for discussion.

CHAIR SEATON referred to Sec. 20, subsection (q), page 17, lines 15-17, which read:

> (q) A pharmacist or practitioner may only delegate access to the database under (b) or (d) of this section to an employee or agent who is licensed or registered in the state.

CHAIR SEATON explained that the amendment would clarify that the person must be licensed or registered for an occupation or activity listed in AS 08.01.010. The reason being to make clear that they must be licensed or registered with the Division of Corporations, Business, and Professional Licensing and not some

unintended registration, such as the sex offender registry, thereby, designating which licenses or registration would be covered, he advised.

4:11:18 PM

REPRESENTATIVE STUTES removed her objection. There being no objection, Amendment 3 was adopted.

4:11:47 PM

CHAIR SEATON moved to adopt Amendment 4, Version 29-LS1378\N.6, which read:

> Page 18, line 15, following "TRANSITION.":
> Insert "(a)"
>
> Page 18, following line 18:
> Insert a new subsection to read:
> "(b) On or before October 1, 2019, the Department of Commerce, Community, and Economic Development shall solicit comments on the level of burden on providers created by the review requirement in AS 17.30.200(k)(4), enacted by sec. 19 of this Act. The department shall summarize, in a report to the legislature, the comments received by the department and its findings based on the comments. The department shall deliver the report to the senate secretary and the chief clerk of the house of representatives not later than October 1, 2019, and notify the legislature that the report is available. The legislature may assess whether the review requirement under AS 17.30.200(k)(4), enacted by sec. 19 of this Act, remains necessary or if alternative language should be considered based on the report."

REPRESENTATIVE TARR objected for discussion.

CHAIR SEATON explained that the amendment would add to the uncodified law, under Sec. 22 of the HB 334. He paraphrased that the amendment directs the Department of Commerce, Community & Economic Development to solicit comments from providers regarding the level of burden on providers created by the review requirement of AS 17.30.200(k)(4) and to deliver to the legislature a report summarizing the comments and the Department of Commerce, Community & Economic Development's findings based on the comments. The report would be due October 1, 2019, and

the legislature may assess whether the review requirement is still necessary or whether alternative language would be preferable. Basically, he pointed out, this directs the Department of Commerce, Community & Economic Development to collect comments on the burden on providers created by the requirement to review the database prior to prescribing, dispensing, or administering, and the department would then present comments to the legislature with the findings. The legislature would then have the option to re-examine and review the requirement. It is not a sunset but it is a review and report. The date of October 1, 2019 would give the department two years and three months from the effective date to collect these comments and generate a report.

4:13:45 PM

REPRESENTATIVE TARR asked who would prepare the report because the Department of Commerce, Community & Economic Development (DCCED) is the stop gap to move the database over to the department as it does the professional licensing, but is the department well equipped to receive comments. For example, the Department of Health and Social Services (DHSS) is regularly communicating with its Medicaid providers, and suggested that possibly it should be DCCED and DHSS.

CHAIR SEATON said he presumed that each one of the professional boards would be handling those, and called on Ms. Janey Hovenden to respond.

4:14:54 PM

JANEY HOVENDEN, Director, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community & Economic Development, explained that as she reads the amendment, the program coordinator would coordinate all information with all of the different boards and members in licensing, which is how a survey would be generated. The survey would go out to all registered people with a database and solicit their input, collect the information and prepare the required report to the legislature, she said.

4:15:42 PM

REPRESENTATIVE TARR asked whether she felt equipped to handle this task and the volume of respondents which could be in the hundreds or thousands. She further asked that whether with existing resources the department would be able to pull together

a report, or whether the report would be a self-generated report with something such as "Survey Monkey and that would be sufficient.

MS. HOVENDEN replied that even though the department is slowly gathering email addresses it isn't quite equipped for that and would notify as it does all regulation projects or anything like that, send snail mail to everyone. The program coordinator being requested in this bill would spearhead that entire project as one of the duties of the position.

REPRESENTATIVE TARR related that sounds more realistic in terms of a hefty project and she did not know what to expect and sometimes given the opportunity people have a lot to say.

CHAIR SEATON commented that he agrees that without a program coordinator if the legislature was just dumping this on the department, which would not be something that would be easily handled.

4:17:15 PM

REPRESENTATIVE STUTES asked whether this project could be performed in a timely fashion. She described concern that people cannot receive a response from the Division of Corporations, Business, and Professional Licensing, currently.

CHAIR SEATON reiterated that there is a program coordinator hired for this specific coordination of the database and it is not giving the department another job. The description of a program coordinator is located within the fiscal note and the report period is for two years and three months only. There will be a summary of the problems received prepared for the legislature.

REPRESENTATIVE STUTES asked whether the coordinator would work under the Division of Corporations, Business, and Professional Licensing.

MS. HOVENDEN replied yes.

REPRESENTATIVE STUTES said that was her concern.

4:19:22 PM

REPRESENTATIVE VAZQUEZ said she likes the intent of the amendment in receiving feedback from providers regarding the

burden that will be placed upon them, but she is concerned there will not be feedback until three and one-half years away because that is too long of a period of time. At most it should be one year from now, or something in January, 2017. Although, she commented, not all of the information will have been received to assess the type of burden but there would be an initial indication and annual reports thereafter. She referred to line 11 of Amendment 4, and pointed out that the amendment states a report shall be submitted on "not later than October 1, 2019," and it is now March 24, 2016.

4:20:32 PM

CHAIR SEATON explained that the effective date is July 2017.

REPRESENTATIVE VAZQUEZ asked to shorten the time frame in order to know the type of burden it will impose on the providers.

4:21:08 PM

CHAIR SEATON responded that he was trying to give at least one year of the program being in effect to coordinate that information in an effective manner, and this is not an annual report. He remarked he has tried to eliminate some of the burden by allowing the chief pharmacist to also authorize someone who is licensed or registered in the health field, and there is accountability against their license. The testimony the committee received was that the department is the busiest at the end of the legislature or the fiscal year and the best time to prepare the report is October or November so it would be ready for the legislature in the following year. He commented that preparing a report in June or July for the legislature may not be reviewed until the next session, and receiving a shorter term report wouldn't cover an entire year's worth of the program and the intention is to calculate feedback. In the event the committee does not wish to have a report, he said he could remove the report.

4:23:40 PM

REPRESENTATIVE TARR noted that the effective date is July 1, 2017, and a full year would be 2018, and suggested using January 1, 2019.

CHAIR SEATON asked whether the department could change the report date.

MS. HOVENDEN responded that the report will be presented whenever it is requested.

4:24:50 PM

REPRESENTATIVE TARR moved to adopt Conceptual Amendment 1 to Amendment 4, to change the date on line 6 to January 1, 2019; and on line 11 to change the date to January 1, 2019.

CHAIR SEATON objected. He surmised that it would be Conceptual Amendment 1 to Amendment 4 to change October 1, 2019, to January 1, 2019, on line 6 and line 11.

REPRESENTATIVE TARR agreed.

4:25:41 PM

REPRESENTATIVE WOOL said that based on the pharmacist's comments that expressed possibly foreseeable problems, he opined that it gives them a year to evaluate, and after that year the department has five months to complete a report. He related that it is a good timeline.

CHAIR SEATON removed his objection. There being no objection, Conceptual Amendment 1 to Amendment 4 was adopted.

4:26:34 PM

REPRESENTATIVE TARR removed her objection to Amendment 4 as amended. There being no objection, Amendment 4, as amended, was adopted.

4:27:36 PM

REPRESENTATIVE VAZQUEZ moved to report CSHB 344, Version 29-LS1378\N, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 344(HSS) was reported from the House Health, Education and Social Services Standing Committee

4:28:20 PM

The committee took an at-ease from 4:28 p.m. to 4:31 p.m.

HB 315-ELECTRONIC VISIT VERIFICATION: MEDICAID

4:31:24 PM

CHAIR SEATON announced that the next order of business would be HOUSE BILL NO. 315, "An Act relating to an electronic visit verification system for providers of certain medical assistance services."

4:31:43 PM

REPRESENTATIVE VAZQUEZ moved to adopt CSHB 315, Version 29-LS1287\E, Glover, 3/21/16, as the working document.

REPRESENTATIVE STUTES objected

4:32:18 PM

ANITA HALTERMAN, Staff, Representative Liz Vazquez, Alaska State Legislature, read from prepared testimony as follows:

> The most salient points of this bill is that the bill protects the most vulnerable of our population. It does so by allowing an alert to be triggered for the home and community based provider agency who then can remediate this matter with a beneficiary. The goal of HB 315 is to ensure that the state only pays providers for the approved services that are rendered by the appropriate home health agency personnel while within that recipient's home or other authorized setting. Alaska's population is aging and the demand for PCA and home care services will increase. Accordingly it will continue to become increasingly more important to ensure that the home care is delivered properly and that publically funded resources are being managed and spent appropriately. It is anticipated that Alaska has the potential to realize savings of between $15 million and $35 million with this bill.

CHAIR SEATON asked how the anticipated savings are to be realized.

4:34:01 PM

MS. HALTERMAN answered that she would like to get a little bit more background on the bill, there's been a lot of questions about the bill that have been raised by the public and the Department of Health and Social Services. She asked that she be allowed to read notes written for the record, as follows:

House Bill 315 is the electronic visit verification Medicaid bill. A 2012, the Government Accountability Office (GAO) report has indicated that 40 percent of all national fraud convictions initiated by the Medicaid Fraud Control Units (MFCUs) are related to services that are rendered in the home and community based settings. According to the institutes of Medicaid ... medicine fraud ... medical fraud and abuse in health care costs $75 billion annually, and the cost to unattended patients can be immeasurable. It has been reported that the adoption of use of technology is not only about compliance, it is about survival. Even FedEx deliveries of a $4 item requires an electronic signature proving the delivery. Why shouldn't something as valuable as patient care be electronically documented and verified? Perspective approaches to combatting fraud, waste, and abuse, are far more effective than reactive or retrospective approaches such as audits and imposing new mandates. To give a little bit of history, the State of Alaska has previously considered using electronic visit electronic verification systems. On July 28, 2014, it was reported by the Anchorage or the ... the ADN that the state was considering a pilot for EVV. The Assistant Attorney General at that time reported that Medicaid fraud was costing Alaska Medicaid a conservative estimate of $45 million per year. EVV systems are easy to use, they don't require any installation of software or hardware. They ensure that beneficiaries receive the services that are authorized for the support that has been approved and for which the state is being billed. A person who can use EVV, typically can use the telephone. EVV is used for compliance and for quality assurance purposes throughout the nation. Beneficiaries are identified by either a landline or a GPS location and caregivers are identified by a unique identifier, and a biometric match that allows the system to verify that the calls were made from the proper caregiver for the beneficiary. EVV systems authenticate the presence of service providers, they may rely on telephony, which is the most commonly used form of EVV, GPS tracking, biometrics, computers for the provider agencies, mobile tablets, tokens, or other applications - those names of devices vary by vendor, and then smart phones. An individual without landline or systems used to authenticate services can be provided a device

by a vendor, kind of like a pager. This generates a client ID with a ... that provides a digital readout that can be given to the caregiver who can call in and then enter that code into a system about that client. Our research indicates that it appears the average cost of ... of that verification is approximately $0.15 per visit. Biometrics are critical component for successful EVV implementation. They ensure further reduction of fraud, waste, and abuse by identifying that caregiver's identify. Statewide independent approaches involve vendor solutions and are considered funded mandates. These are cloud-based platforms that allow for remote patient monitoring. The states that have chosen the statewide approaches have done so because they want to maintain oversight over their EVV systems. Statewide vendor solutions do the following: it allows the state to access federal assistance matching percentages of up to 90 percent for frontend system development; they gain 75 percent for recurring costs when the systems are plugged into the claims system; it removes fraud liability from the consumer directed home care provider agency and it places it directly on the consumer directed PCA or caregiver under her consumer directed clients. This morning I confirmed with the department that only approximately 1.5 percent of the clients are served under an agency based model, so this would limit liability from any of our consumer directed beneficiaries and their agencies.

4:39:13 PM

CHAIR SEATON asked for more explanation.

MS. HALTERMAN explained there are two different models, such as an agency based model that typically requires that the agency staff the beneficiary's care in that home, and sends someone, typically a CNA, to the home to provide that care. The agency has some direct responsibility over directing the care when it is an agency based caregiver. When it is a consumer directed PCA model, the consumer directly hires, supervises, and fires their caregivers, they provide the training, and they are responsible for the oversight of their care. These systems place that responsibility more directly on the consumer and its caregivers, rather than the agency, she said.

4:40:16 PM

MS. HALTERMAN continued reading her written testimony as follows:

> Statewide vendor solutions can also be set to trigger an alert so that they can be sent to the provider agency in order for that agency to investigate a gap in care. These can be set to set an alert to an administrator within the state agency, but only if the state chooses that option. EVV systems can monitor to ensure visits are happening as expected and/or alert that provider agency when a gap in care is occurring. The reports and these alerts are optional for the Department of Health and Social Services. Provider agencies maintain all control over scheduling and resolving any gaps in care with that direct caregiver. Generally, vendors provide training and the use of the EVV systems to administrative staff within those agencies, who then provide training to the direct caregiver. EVV systems statewide allow for con ... configuration of new software so EVV systems can incorporate programs specific business rules for each of our agencies. They ensure for comprehensive training to be consistently provided, which may include providing a training kit, visual aids, videos, or documentation on best practices. EVV systems can generate reports that alert agencies when the caregiver fails to show up. EVV systems can be integrated, again with the existing provider systems, to minimize the impact on those provider agencies.
>
> A standards based approach, which we've heard some folks testify and some ... we've seen some written testimony in support of. Um, I want to kind of define the standards based approach. It is an approach where the department sets the minimum set of requirements that the provider must meet with the use of an EVV system. The provider then needs to ensure that those requirements ... um, occur with the solution that they provide ... or they procure on their own. Standards based approaches are unfunded mandates. States have chosen those options but those that have done so have experienced that they have little control and oversight over their data. The standards approach may lead to increased reimbursement due to the cost and complications of implementing new systems for each provider. For instance, the State of Washington we

have learned has increased reimbursement to providers due to the implementation of a standards based recordkeeping system or timekeeping system. It's not technically a fully ... fully functioning EVV system. It has no oversight or management of claims integration.

4:43:15 PM

MS. HALTERMAN continued reading her written testimony as follows:

Standards based EVV systems do not necessarily lead to the savings that are found in the vendor based solutions because the provider still maintains control and check the validity of all of the data that is sent to the state. There is no data sent to the state independently and; therefore, no independence of any EVV data. Standards based solutions may become too costly for some of our smaller providers. They may become far too complicated for smaller providers to implement. Even our PCA Association has pointed this fact out. Our fear is that if we implement a standards based solution this could cause some of our small providers in Alaska to close their doors and impede competition due to an unfunded mandate of the development of new systems. Standards based EVV systems can significantly slow implementation because if the state allows for integration of standards based EVV solutions into existing business practices it may take a lot longer to finish full implementation. Standards based EVV approaches can be challenging for some of our providers, it can be complicated for those providers. They may delay the full implementation or cause non-compliance for provider agencies that can't fully implement. They may reduce the savings generated, again due to the lack of oversight and control. This is still essentially a (indisc.) model with no upfront fraud prevention. Standards based solutions place the burden of verifying or certifying systems within the State of Alaska on the department in order to assure that strong technical controls are placed and maintained. Requiring the state to make exceptions to address the needs of remote or small providers as has been suggested by some, may force a vendor solution in part to be considered along with a

standards based solution because otherwise small providers may be forced to close their doors.

4:45:34 PM

MS. HALTERMAN continued reading her written testimony as follows:

So, I want to talk a little bit about what EVV systems do. EVV systems can do the following: they can reduce inappropriate billing for home health and personal care attendant services; they can improve efficiencies; reduce paid work for both the agencies and the State of Alaska's Medicaid Agency. They can improve quality by ensuring services are provided for the most vulnerable of our populations. They may assist agencies and providers in helping to identify unmet needs or missed or late appointments when caregivers don't show. They may improve the ability to make adjustments to care quickly by triggering an alert to an agency who then knows the caregiver didn't show up, they can initiate a backup plan. They can improve policy decisions and improve strategies due to the ... having access to the encounter data that the state has never had before. It can improve data collection, evaluation, and also provide a unified view of each home and community based and PCA service that will allow care to be examined across multiple agencies and possibly multiple provider types. This will improve the quality of services for those beneficiaries. EVV systems can afford a more effective invoice, billing, scheduling, and documentation of the service delivery process and they can lead to enhanced administrative processes for those agencies. EVV systems capture and electronically submit claims data with accurate dates from visits that are verified which allows the state to validate that the data is coming from an independent source. EVV systems can ease reporting by providing a central location that identifies the support and services that those providers are rendering. EVV systems can generate exception reports that can be run ad hoc ... um, and they can reduce adult protective service issues and the need for investigations. These reports may help DHSS identify concerns earlier than they have been able to do so in the past. So, the benefits of EVV include the

potential to eliminate the padding of timesheets by caregivers, it allows for a flag to the supervisors, the agencies ... um, to alert to suspected abuse or neglect. It can reduce errors, it can save money for agencies and for the State of Alaska. If plugged into the claims system it can speed up payments if implemented with that claims system. It can ensure compliance with state and federal regulations. It can improve quality assurance and streamline processes including payroll for many of our agencies. They can improve efficiencies and effectiveness. And, lastly save money on audits because the proof of care will be automated.

I have in our research, Rep. Vazquez and I have discovered...

4:49:10 PM

REPRESENTATIVE VAZQUEZ interjected that she wanted to place certain relative experiences on the record and offered her extensive Medicaid fraud background. She related that many states have been using electronic visit verification (EVV) systems for years, if not decades. As a prosecutor she attended numerous national conferences on Medicaid fraud and has seen demonstrations on how these systems work. Currently, there is evidence that these systems can save states money by reducing fraud, waste, and abuse, and add to the quality of care that the most vulnerable of Alaska's population needs. Recent research indicates that Congress has gotten onto this idea, and in 2015, Representative Steven Guthrie introduced HR 2446, which would require these types of systems for every state offering Medicaid, which is now all 50 states, and stipulates that states that do not implement the system will be subject a decrease of Federal Medical Assistance Percentage (FMAP), the federal share. The most recent action on this bill was November 4, 2015, when the bill was forwarded to the subcommittee on Health to the full Energy and Commerce Committee. In 2015, on the House of Representatives side of Congress, Senator Charles "Chuck" Grassley introduced SB 2416, which also would require EVV systems in Medicaid and in addition Medicare. The bill stipulates that states that do not implement will be subject to a decreased federal share in Medicaid, or FMAP. She explained that it's always difficult, as a prosecutor who also dealt with civil cases, to chase after Medicaid providers after the fact because it very difficult once the horse has left the barn to recover money. In 2015, there was a PCA agency owner and it was

alleged that $1.2 million were billed inappropriately to the Medicaid program. Restitution was ordered by the judge at judgement but recovering $1.2 million posed a difficult challenge for the state. This bill in essence would try to catch the fraud, waste, and abuse, upfront before the horse leaves the barn and it also adds to the quality of care for individuals, she explained.

4:53:32 PM

MS. HALTERMAN added that their research identified a number of vendors that provide this service. Sandata is the vendor the sponsor's office has been working with to crunch numbers that used some data from Kaiser Family Foundation from 2012. She pointed out that Sandata would like to analyze more current data and the department has been speaking with this vendor and they had a meeting to share insights about these systems, and answer questions. There are a number of vendors such as, First Data, Vilify Health, Access, Technology Solutions, and Care Watch are all EVV vendors. She explained that it has been made clear to Sandata that no guarantee were offered to Sandata in the RFP process. She said that unfortunately, of the 130 fraud cases that have been investigated by Alaska's Medicaid Fraud Control Unit, 120 of them are directly related to the populations that would be targeted with this bill.

MS. HALTERMAN referred to Sandata's Brian Lawson's previous testimony and said he is willing to make himself available for anyone with further questions to explain the benefits of analyzing real data and the return on investment found from an effective implementation of an EVV system. Although, Sandata was not their only research tool, it helped develop the pricing and return on investment forecast is collected from the Kaiser Family Foundation, its 2012 data. It has been noted that the enrollment in populations in the Medicaid expenditures are down, but only PCA data was presented. Ms. Halterman continued reading her written testimony as follows:

> While the return on investment that was generated by Sandata includes not just PCA, it identifies potential savings for home and community based waiver. Now, in the targets that they presented on that return and investment because it was not using actual Medicaid data. They would need to have access to true data, real data, from the department, enrollments numbers and spending outcomes in order to present a more valid forecast of what these savings could be. So now the

current data does show that the beneficiaries and spending are down slightly for these populations that would be targeted with this bill. It is clear that the proper implementation of an EVV system would provide a significant return on investment regardless of what the numbers are, regardless of how much is spent. The 5 percent return on investment was based on the PCA and home and community based population savings that use an EVV system. And the total of those expenditures was approximately $305 million, the numbers again used for the analysis was sample data and it used fail information that the vendor identified from a source that was valid but wasn't a reliable ... necessarily a 100 percent reliable source. If the department is willing to provide more reliable data, the vendor is willing to analyze current real data to come up with a realistic return on investment. It should be noted that while Sandata did present a return on investment that used 5 percent, 8 percent, and 12 percent returns, Medicaid Fraud Control unit has alerted us that those are conservative estimates because they have presented that fraud has conservatively reached approximately 20 percent with those populations. So sadly, in light of the testimony last year in Senate Finance and House Finance it is clear that Alaska has a fraud problem. Several documents...

4:59:54 PM

REPRESENTATIVE SEATON interrupted and pointed out that the committee actually wanted a summary of changes. Before each member is HB 315, with a proposal to take up a committee substitute which is different, he said. The committee wanted a summary of those changes which he opined that one requires that a standards based model be used, and Version E is that the department shall contract with the vendor to implement an electronic visit verification (EVV) system. Also, he said it required real time reporting, to the extent feasible. He asked whether the committee has questions on considering the vendor model versus the standard based model in the original bill.

5:01:25 PM

REPRESENTATIVE TARR advised she does not have Version E.

The committee took an at-ease from 5:01 p.m. to 5:05 p.m.

5:05:23 PM

REPRESENTATIVE WOOL noted that the committee heard from the vendors during the last committee meeting and asked whether the committee has heard from the department.

5:06:29 PM

DEB ETHERIDGE, Deputy Director, Division of Senior and Disabilities Services, Department of Health and Social Services, said she is available.

REPRESENTATIVE SEATON asked Ms. Etheridge to discuss fiscal note wherein it lists $224,000 each year for the next five years; however, in the analysis, he paraphrased the following: "Three states passed legislation to implement an EVV program and two are fully implemented but that they reported there was high cost of however reported initial cost for implementation of $13 million." He remarked that he is trying to relate that although they have a larger population, but it reads that "a timeline for implementation be 24 months." He pointed out that this fiscal note relates to Version A.

5:07:47 PM

REPRESENTATIVE VAZQUEZ offered a correction that the fiscal note before the committee, OMB Component Number 2663, states that the total cost is $224,200, and it would be 50 percent federal match so the general fund match would be $112,100.

REPRESENTATIVE SEATON offered that it is a recurring cost and he is trying to determine how that corresponds to the narrative, and he paraphrased the following, "that said in several places that the impacts were substantial.

5:08:55 PM

MS. ETHERIDGE responded that the fiscal note before the committee is a fiscal note to the administrative component, and it captures the department's personnel costs for implementation and ongoing compliance and oversight of the electronic visit verification (EVV) system. The fiscal note was developed on the original version and not on Version E. The other estimated cost that the department struggled to develop would have impacted the Senior and Disability Services Medicaid component and at this time there is not an indeterminate Medicaid component note.

However, the division did note in the narrative on its administrative fiscal note that there would be expenditures impacting its Medicaid budget, and it gave some logic about what the division anticipates or why it had difficulty anticipating the cost associated with how it would impact Medicaid.

REPRESENTATIVE SEATON surmised that was looking at one GGU Health Program Manager II positions in Anchorage, and it is the main portion of the fiscal note.

MS. ETHERIDGE agreed that it is the main portion of the administrative fiscal note.

REPRESENTATIVE SEATON asked whether Ms. Etheridge had had a chance to look at the vendor portion and generate a fiscal note.

MS. ETHERIDGE stated that she had an opportunity today to learn more about the intention of the implementation of the EVV system and she has a better understanding of what the obligations may be and she is preparing a fiscal note.

REPRESENTATIVE SEATON added that he just wanted to clarify that because there is a single fiscal note there, but that's if the department would do it and not through the vendor model which is Version E.

5:11:38 PM

REPRESENTATIVE TARR offered that due to the recent changes to the PCA program, and also the major Medicaid reform package that is moving through the legislature, her concern is that this is potentially too many things at once.

MS. ETHERIDGE related that the department does, and the Division of Senior and Disability Services has a number of initiatives in which it is working on currently through Medicaid reform, through its CMS compliance necessary for the home community based services. Which includes the initiatives the department has taken to streamline and have more oversight over its personal care program. She noted that is part of the reason the department would require additional staff to implement this program, and the department anticipates it will take 24 months, at least.

REPRESENTATIVE TARR surmised that the changes that affected the amount of time each recipient is receiving, in part to address the issue of potential fraud or misuse of the time. She opined

that in this particular instance, some of the potential problems may have been addressed through that process.

MS. ETHERIDGE answered that the division has made some changes to account for time for task, and it allocates time and then the recipient receives a time that is authorized weekly. The division feels like it has oversight and a more clear understanding of the services it has been authorizing; however, it understands the benefits of an EVV system as it has explored implementing that system. There are some examples of rounding that may happen that it may capture if it was to be directly tied into the division's enterprise system so that claims were tied into the system so there could be some efficiencies in that way. She advised that it is difficult for the division to say what percent of fraud would be realized at this time, but she has talked to other states and is trying to get a handle on it.

5:14:24 PM

REPRESENTATIVE SEATON reminded the committee that the motion to adopt Version E, a vendor system, is still on the table.

5:14:33 PM

REPRESENTATIVE STUTES removed her objection to adopt CSHB 315, Version 29-LS1287\E, Glover, 3/21/16, as the working document. There being no objection, Version E was before the committee.

CHAIR SEATON asked Ms. Etheridge to round out some numbers for Version E.

MS. ETHERIDGE agreed.

[HB 315 was held over.]

HB 328-REGULATION OF SMOKING

5:16:36 PM

REPRESENTATIVE SEATON announced that the final order of business would be HOUSE BILL NO. 328, "An Act prohibiting smoking in certain places; relating to education on the smoking prohibition; and providing for an effective date."

5:17:26 PM

REPRESENTATIVE TALERICO moved to adopt the proposed committee substitute (CS) for HB 328, Version 29-LS1502\W, Martin, 3/18/16, as the working document.

REPRESENTATIVE SEATON objected for discussion.

5:18:20 PM

REPRESENTATIVE TALERICO noted that current Alaska law prohibits smoking in many areas of the state, including healthcare facilities, schools, childcare facilities, and public meeting rooms in government buildings. He offered that one of his biggest concerns is the state level of Medicaid expenditures attributed to smoking is about $67 Million per year. There is no doubt, he said, that a fair portion of this is certainly driven by Alaska's current fiscal situation, but this committee has routinely discussed healthcare and preventative measure to improve Alaska's situation statewide.

CHAIR SEATON asked for a quick explanation of the significant changes between the original bill and the committee substitute being considered.

5:19:59 PM

JOSHUA BANKS, Staff, Representative Dave Talerico, Alaska State Legislature, advised that Version W was drafted to mirror the changes made to SB 1. [He presented a slideshow titled "HB 328, The 'Take it Outside' Act," slides 1-6.]

5:20:10 PM

REPRESENTATIVE SEATON removed his objection to adopt Version W as the committee's working document. There being no further objection, Version W was before the committee.

5:20:48 PM

MR. BANKS continued his presentation and advised that HB 328 is all about saving lives and dollars, helping Alaskans to be healthier, and to spend less on healthcare. The bill will provide a smoke-free work environment for Alaska's workforce, it will create a standard for smoking that is effective statewide, and it will put all businesses and workplaces throughout Alaska on a level playing field. Currently, approximately one-half of Alaska's population is covered by smoke-free workplace laws, yet a 2015 Dittman Research survey shows that 88 percent of Alaskans

support a statewide smoke-free law. The sponsor's office has conclusive evidence regarding Anchorage's smoke-free ordinance that smoke-free laws do not have adverse economic consequences for restaurants and bars subject to the laws. The bill does not ban smoking or the use of e-cigarettes and Section 1 of the bill depicts the areas where smoking is prohibited under AS 13.85.301.

5:22:27 PM

MR. BANKS explained that Section 1, AS 18.35.301(a) and (b) provides a statewide smoking prohibition in enclosed public spaces, public transportation vehicles and facilities, places of employment, government buildings, buildings or residences where a business is located for paid childcare, paid adult care, healthcare facilities, Pioneer Homes, Veteran's Homes, and vehicles that are places of employment with certain exceptions. Also included under AS 18.35.301(c) are school grounds, public parks, outdoor arena seating, smoke-free campuses, and areas within certain distances from entrances, windows, and air in-take vents of buildings where smoking is prohibited.

MR. BANKS continued that under Sections 2-4, 6-7, the Department of Environmental Conservation (DEC) commissioner adopt regulations for filing, processing, and investigating violations of this bill, including the filing of complaints and issuance of citations. AS 18.35.321 requires the DEC to work with the Department of Health and Social Services to implement this smoking prohibition and provide educational programs to those affected by this bill. The DEC can also delegate responsibilities to another agency, such as the Department of Health and Social Services under AS 18.35.316(b). The bill requires that a person in charge of a place where smoking is prohibited display signs under AS 18.35.306, and the signs can be provided by the Department of Environmental Conservation. The Division of Public Health's Tobacco and Prevention and Control Program will be responsible for providing public education materials, he said.

5:24:21 PM

CHUCK KOPP, Staff, Senator Peter Micciche, Alaska State Legislature, [referred to slides 7-12], and advised that the Surgeon General's report is the 31st report in 50 years issued to document the dangers of involuntary exposure to second-hand smoke. More recent data suggests that this public health concern is described as a "quite urgent matter" that must be

addressed. Since the period of time the Surgeon General began reporting on this issue, over the last 50 years, the nation's premature deaths caused by smoke and exposure to secondhand smoke is up to approximately 21 million Americans. With regard to DUI fatalities where people die violently and quickly, there are 10,000 in one year, yet the nation has over 41,000 secondhand smoke fatalities in one year. The national blood alcohol content (BAC) was 0.15 percent, then it was changed to 0.10 percent, and currently the BAC is 0.08 percent or greater. He noted that drinking and driving a vehicle and secondhand smoke both involve the reckless use of a dangerous substance that kills people. He advised that approximately 440,000 smokers die in the United States each year.

5:26:25 PM

MR. KOPP noted that stroke is the most recent causally linked disease to secondhand smoke exposure by the Centers for Disease Control and Prevention (CDC). It is known that exposure to secondhand smoke within 30 minutes has a "nearly immediate" impact on the cardiovascular system, damaging blood vessels, making blood more likely to clot, and increasing the risk for heart attack and stroke. The Surgeon General's Report is that there is no safe level of secondhand smoke exposure and it is casually linked to 20 percent to 30 percent increased risk for stroke. The national cost is $5.6 billion per year in lost productivity due to exposure to secondhand smoke, and in Alaska 60 deaths each year and more than $1 million each year directly related to lost productivity. He related that $1 million is probably a conservative number, which is not counting Medicaid costs which Representative Talerico covered earlier. He stated that evidence is sufficient to infer this causal relationship and the implementation of a smoke-free policy leads directly to reduction in coronary events among people age 65 years and older. There are several large municipalities in the United States that have gone smoke-free, such as Colorado and Arizona, that had upwards of 40 percent and 45 percent decrease in coronary and stroke incidents over one year after going smoke-free. The only variable they could contribute to the decrease was going smoke-free. Mr. Kopp pointed out that the bill sponsor looks at this bill as a question of rights of people that choose to smoke versus the need to breathe, and a clean indoor policy does not prohibit smoking it only requires that those who choose to smoke do so in manner that does not threaten or harm others.

5:28:25 PM

MR. BANKS turned to slides 13-20 of the slideshow and pointed out that a good portion of the opposition to this bill is that e-cigarettes are included within the bill as smoking. The sponsor believes there is good rationale for grouping e-cigarettes with traditional cigarettes even though they are different from traditional cigarettes. E-cigarettes are generally battery operated and use an atomizer to heat liquid from a cartridge until it becomes a chemical-filled aerosol, and can contain nicotine, ultrafine metal particles, volatile organic compounds, and other carcinogenic toxins. The use of e-cigarettes by high school students has increased dramatically from 1.5 percent in 2011, to 13.4 percent in 2014. He remarked that slide 14 depicts the trend in contrast to the decrease in use of the traditional cigarettes by high school students. This trend, as well as advertising by e-cigarette companies have many people worried, including the CDC which believes that the increased marketing and use by youth of e-cigarettes could reverse the progress in preventing tobacco use by youth. The CDC noted that some of the same marketing strategies used by the tobacco industry are being used to encourage the use of e-cigarettes by today's youth. Under AS 11.76.109, it is illegal to sell or give products containing nicotine to anyone under the age of 19, and e-cigarette retailers do not need a sales license endorsement, so there is no program of compliance checks for these sales, he pointed out.

5:30:19 PM

MR. BANKS, turned to side 17, and advised that separating smokers from non-smokers, air cleaning technology, and ventilation systems cannot effectively and reliably protect public health. Smoke-free workplace laws have been seen to help reduce tobacco use among smokers, and former Surgeon General C. Everett Koop, who served under President Ronald Reagan, stated the following:

> The right of smokers to smoke ends where their behavior affects the health and well-being of others; furthermore, it is the smoker's responsibility to ensure that they do not expose non-smokers.

MR. BANKS continued that as previously mentioned, approximately one-half of Alaska's population is protected by local ordinances from secondhand smoke at work, including: Anchorage, Juneau, Bethel, Dillingham, Unalaska, and Palmer. The remaining boroughs with large populations do not have the legal health

powers to enact smoke-free laws, and this does not include the unorganized boroughs of Alaska. Overall, Alaskans support laws such as HB 328, and 88 percent of Alaskans overall agree that all Alaskan workers should be protected from secondhand smoke in the workplace. This includes the majority of smokers who support smoke-free workplace laws, and by regions in Alaska the support of this law ranges from 75 percent to 88 percent. He related that the legislation is good for Alaskan's health, businesses, and good for Alaska overall. He said that a number of research sources used to create the slideshow are slides 20-21.

5:32:14 PM

REPRESENTATIVE SEATON referred to Section 1, AS 18.35.301(b)(7), page 2, lines 13-14, which read:

> (7) in a building or residence that is the site of a business at which the care of adults is provided on a fee-for-fee basis;

CHAIR SEATON asked whether that includes PCAs that are receiving personal care health services in their own home. He explained that they've been trying through Medicaid to get out of institutional care by providing services at home.

MR. KOPP responded that it does not, this was an amendment in the Senate side to specifically make it so that a residence being occupied by a homeowner who is provided personal assistance care is not required to stop smoking. He explained that it is only when a residence is used as a business, which is why specific language was included, that it is site of a business in which the care of adults is provided. Unless it is an adult care business, a homeowner can smoke "if they are receiving care from a personal care assistant," he explained.

5:33:58 PM

CHAIR SEATON referred to Section 1, AS 18.35.301(d)(1)(D), page 3, lines 13-14, which read:

> (D) that is a freestanding building not attached to another business or to a residence;

CHAIR SEATON asked the relationship to subparagraph (D) versus "it doesn't share a ventilation system with another part of the building." He asked whether that is the purpose of the

freestanding building, that it is not attached to any other building or business.

5:34:39 PM

MR. KOPP replied that primarily its purpose is to prevent fumes and particulates from being shared and a free standing building accomplishes that. Representative Seaton is correct in that the primary concern is that it is not impacting other businesses, he replied.

REPRESENTATIVE WOOL referred to the free standing building, and used the example of downtown Juneau where it is buildings, buildings, buildings touching, although there are separate walls, it depends upon the actual structures. He asked whether those are free standing because there is not an air gap between them or are they continuous buildings.

MR. KOPP opined that from an engineering standpoint most of those building would probably be considered free standing because they do not appear to be structurally dependent upon one another.

5:35:50 PM

REPRESENTATIVE WOOL opined that if one of those buildings was torn down the others would still be standing, hence free standing.

MR. KOPP responded yes, that is a good way to define it.

REPRESENTATIVE WOOL said he was uncertain whether the buildings touched walls at the Rockwell, in downtown Juneau.

REPRESENTATIVE SEATON noted that his normal definition of a free standing building is buildings that are not in contact with each other. He opined that the definition needs to be clarified.

MR. KOPP agreed.

REPRESENTATIVE STUTES noted that there is a zero fiscal note, yet DEC is required to provide signs to hundreds of places, is required to enforce the statute, and is required to educate the public. She asked how that is possible with no money.

5:37:17 PM

MR. KOPP offered that under the law, DEC is already required to do this and this bill is amending current law. The DEC already has regulatory oversight of the prohibition of smoking and already works with the Department of Health and Social Services with signage. The sponsor drafted the bill so that the signs required are part of its current inventory, and many of these places are already posted "smoke-free" workplaces involving state facilities and buildings. He advised that it is part of the Department of Environmental Conservation's ongoing expense that it is already engaged with. Current law was just amended but it currently has this regulatory oversight, he related.

REPRESENTATIVE STUTES surmised that approximately 50 percent of the municipalities, villages, and cities in Alaska are smoke-free.

MR. KOPP agreed and related that most of the buildings that have the infrastructure and population base are already covered.

REPRESENTATIVE STUTES said she does not believe there is no fiscal note that should be attached to this because it doesn't make sense.

CHAIR SEATON advised that the department will be asked to justify its fiscal note.

5:39:20 PM

REPRESENTATIVE TARR referred to Section 1, AS 18.35.301(c), page 2, line 18, which read:

(c) Smoking is prohibited outdoors

REPRESENTATIVE TARR advised that these are in new sections of the bill and referred to paragraph (c)(1), which read:

(1) at an area located at a public or private school or a state or municipal park that is primarily designated as a place for children to play;

REPRESENTATIVE TARR opined that she thinks of Alaska's public lands as being available for anyone to enjoy whether an adult or a child. For example, currently someone could be at a municipal park and smoke a cigarette and this bill would prohibit that. She asked who is going to say whether the park has to have a certain number of picnic tables that a certain percentage of adults would also frequent.

MR. KOPP responded that the key qualifier for that language is that it is a park that is primarily designated as a place for children to play. Municipal parks are not primarily playgrounds as some are campgrounds, and the emphasis here is those that are primarily designated as a place for children to play.

5:41:13 PM

REPRESENTATIVE TARR referred to page 2, line 21, (c)(2), which read:

(2) in a seating area for an outdoor arena, stadium, or amphitheater;

REPRESENTATIVE TARR noted there are places that have gone smoke-free and have physically built something to be a smoking area. Although, if this were an outdoor facility where there was a designated smoking area it appears that the language is broad enough that that would also be prohibited. She asked that the restrictiveness of that language be explained.

5:42:06 PM

HILARY MARTIN, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, Alaska State Legislature, responded that the park issue on paragraph (1) reads that it is primarily designated as a place for children to play, although it is slightly unclear there would have to be a decision made that it is primarily a place for children to play. She referred to the park strip in downtown Anchorage where there are ball fields and other things, and then there is a playground area and, she opined, that is what the bill is getting at. Signs would also have to be posted with the idea that a person wouldn't be walking and suddenly walk into an area where smoking is prohibited and didn't realize, she offered.

REPRESENTATIVE TARR pointed out that she has difficult with that because in the neighborhoods she represents she frequently sees people at the parks smoking, but they are doing it there rather than being at home where the children are. She described it as trying to make a good decision to not smoke around children by going to a different nearby location that has a picnic table or a swing. Although, she said, that would put them in a situation of being in violation of the law. She expressed discomfort because it appears that enforcement could be difficult and it

may be left to interpretation as to what is legal in that particular area, and unfairly get someone in trouble.

MR. KOPP suggested deleting "primarily" and the provision would read "designated as a place" so there is no question, and a no smoking sign must be posted close to the playground.

5:44:45 PM

REPRESENTATIVE WOOL pointed out that there are many outdoor recreational areas that have a smaller area within it where children play, and within that same body of land people may be walking their dogs, and adults hangout and play Frisbee with other adults. He offered that he can see mission creep as far the "Take it Outside" issue wherein a person can't just take it outside in that they have to take it outside to a certain area outside. He referred to Section 1, AS 18.35.301(c)(4)(A) and (B), page 2 lines 25-29, which read:

> (A) 10 feet of an entrance to a bar or restaurant that serves alcoholic beverages;
>
> (B) 20 feet of an entrance, open window, or heating or ventilation system air intake vent at an enclosed area at a place where smoking is prohibited under this section; or

5:45:43 PM

REPRESENTATIVE WOOL remarked that a person walking down the sidewalk in downtown Juneau smoking would have to walk in the middle of the street to not violate (c)(4)(A) and (B).

MR. KOPP clarified that the intention with not being within 10 feet of a bar or restaurant is that those tend to be higher volume businesses, people step outside and don't have to step out as far. They do not have to walk in the middle of the street and can walk up or down the sidewalk. He turned to (c)(4)(B) and said 20 feet of an entrance would also cover health care facilities and other places because it reads "at a place where smoking is prohibited under this section." This entire section covers a number of places that Mr. Banks highlighted that fall under this provision. Rather than trying to break down an individual distance it was standardized, he explained.

REPRESENTATIVE WOOL surmised that prohibited other places may be a hardware store, jeweler, or sandwich shop and would all be at

a 20 foot buffer so it may be difficult to walk down the sidewalk, and he noted that may be the intent. He reiterated that he is referring to a dense urban area such as downtown Juneau or Anchorage.

MR. KOPP advised that the idea to keep the smoke outside is primarily what the sponsors are getting at. Representative Wool is correct, that the distance may be something to be discussed.

REPRESENTATIVE TARR referred to the questions regarding the fiscal note and said that she noticed on page 4, beginning line 17 with the notice of prohibition and said smoking prohibited by law and the burning cigarette but, she pointed out, if this will be expanded to e-cigarettes and vaping she did not see a definition in the bill for what would be considered those products. She noted that these technologies are changing so she was unsure whether that is a necessity. She referred back to the "Notice of prohibition," and opined it would need to be more explicit because there is a lot of confusion about the international no smoking people are thinking like a traditional tobacco cigarette. She said she was unsure whether she would automatically think that e-cigarettes and vaping were prohibited, and the language should be more explicit and in that sense maybe the existing inventory of signage wouldn't actually be as useable, or maybe could have a sticker put on it.

5:49:25 PM

MR. KOPP referred to the definition of smoking, Section 12, AS 18.35.399(11), page 9, lines 28-30, which read:

> (11) "smoking" means using an e-cigarette or other oral smoking device or inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette, pipe, or tobacco or plant product intended for inhalation.

MR. KOPP explained that the sponsors tried to cover as many things as possible under that definition so the smoking signs would work. Also, the public information campaign has rolled out with the smoke-free law which is significant, and the Department of Health and Social Services does that in cooperation with the Department of Environmental Conservation, which is identified in a later section and they work hand in glove. Currently, that is one of the duties of the Department of Health and Social Services under AS 44.29.020(a)(14), which read:

(14) a comprehensive smoking education, tobacco use prevention, and tobacco control program; to the maximum extent possible, the department shall administer the program required under this paragraph by grant or contract with one or more organizations in the state; the department's program must include

(A) a community-based tobacco use prevention and cessation component addressing the needs of youth and adults that includes use of cessation aids such as a nicotine patch or a nicotine gum tobacco substitute;

(B) youth-based efforts that involve youth in the design and implementation of tobacco control efforts;

(C) anti-tobacco counter-marketing targeting both youth and adult populations designed to communicate messages to help prevent youth initiation of tobacco use, promote cessation among tobacco users, and educate the public about the lethal effects of exposure to secondhand smoke;

(D) tobacco use surveys of youth and adult populations concerning knowledge, awareness, attitude, and use of tobacco products; and

(E) an enforcement component;

5:50:36 PM

MR. KOPP agreed about the public education, and Alaska Airlines as an example in that it advises no smoking and that includes e-cigarettes.

REPRESENTATIVE SEATON referred to Section 1, AS 18.35.301(f)(2), Page 4, lines 5-6, which read:

(2) on a marine vessel when the vessel is engaged in commercial fishing or sport charter fishing or is otherwise used as a place of employment.

CHAIR SEATON noted it is an exemption; however, he asked why the language solely discusses ocean vessels because sport fishing

takes place in guiding on free water systems. He asked whether the terminology "marine vessel" specifically is in there to mean only at sea.

MR. KOPP referred to line 6, and noted that it includes sport charter fishing. He said that charter means a vessel which is a place of employment; therefore, sport fishing boats are also exempted for the same purpose that a commercial fishing vessel is. The state territorial waters only go out three miles so for a near shore fisherman it means working on open decks where there is outdoor, fresh air exposure. The skipper or captain can regulate how far from the air intake or vent a fisherman must stand when smoking. He described this as angels dancing on the head of a pin - some of the judgment calls, but the people in the work boat industry brought to the sponsors attention that they are outdoors all of the time.

5:50:40 PM

REPRESENTATIVE SEATON remarked that the language will have to be looked at because it starts on a marine vessel, and the others are modifying what is being done but it is on a marine vessel. It does not say that it is on a sport charter fishing vessels, but rather a marine vessel when engaged either in commercial or sport fishing. In the event a fisherman is halibut fishing this would apply, but if the fisherman was on the Kenai River fishing for King Salmon they are not on a marine vessel.

MR. KOPP noted that if the fisherman is out with friends sport fishing, they can smoke. He referred to page 4, lines 1-6, which read:

> (f) Notwithstanding (b) of this section, unless the owner or operator prohibits it, smoking is allowed
> (2) on a marine vessel when the vessel is engaged in commercial fishing or sport charter fishing or is otherwise used as a place of employment.

MR. KOPP explained that it is being used as a place of employment at that time, but if a fisherman is out having fun fishing it wouldn't apply.

REPRESENTATIVE SEATON related that the language would be looked at further.

5:54:10 PM

REPRESENTATIVE TARR referred to Section 1, AS 18.35.301(a)(3), page 1, lines6-7, and lines 11-12, which read:

> (a) Smoking is prohibited in an enclosed area in a public place, including an enclosed area
> (3) at a public transit depot, bus shelter, airport terminal, or other public transportation facility;

REPRESENTATIVE TARR opined that currently when going through an airport terminal there is an enclosed designated smoking area and asked whether the provision makes those areas illegal.

5:54:39 PM

MR. KOPP opined that currently there are not any airports, other than international terminals which do because people are in transit and are not under FTSA regulation. They may be allowed to leave the airport while in transit and they do have a smoke-free room. This legislation covers that as an exemption wherein they can have the smoke rooms in those airports where people cannot leave the airport to step outside.

5:55:11 PM

REPRESENTATIVE STUTES offered concern about the enforcement and described it as passive enforcement such that "they are going to give you a 1-800 number and if somebody's in violation you just pick up the phone and call 1-800 and say, hey this place is in violation," and that concerns her. To 86 someone, they will be on the horn in a pair of seconds telling someone the establishment is in violation. It further reads that "citations could be made by the Department of Health and Social Services designated staff or another agency," which is unclear. This can be addressed at a later time but, she expressed, it is a concern as it is the enforcement.

MR. KOPP advised that when Anchorage went smoke-free in 2007, within five years of enforcement it only had three citations because there was almost 100 percent voluntary compliance. This is not a heavy handed thing and it is complaint driven and not pro-active. In fact, for a peace officer to be involved these offenses must occur in their presence and not called in. Traditionally, he offered, it has been passively carried out because people want this and they voluntarily comply. Joe Darnel, with the Tobacco Prevention Program can speak to how the program works as they have been doing this and it is low

maintenance on them to gain compliance. He explained that they have a program of warnings, educating business owners, and that Anchorage is over 300,000 people and have only had three citations in five years.

REPRESENTATIVE STUTES commented that areas Mr. Kopp referred to have voluntarily gone smoke-free, this is not a voluntary program as the legislation is taking one-half of the state that is non-smoking and, she said, it has been on the ballots and they've voted it down.

5:57:40 PM

REPRESENTATIVE WOOL read, "in a seating area for an outdoor arena, stadium, or amphitheater" means a seating area in the prior three areas.

MR. KOPP responded where the public can come and be seated.

REPRESENTATIVE WOOL continued that an outdoor amphitheater grassy hill is fine, although if it is a seating area ...

MR. KOPP advised it is a designated seating area for the public to come in and sit for an event.

REPRESENTATIVE SEATON opened public testimony and advised all testifiers to limit their testimonies to two minutes.

5:58:55 PM

GARY SUPERMAN, Owner, Hunger Hut Bar, Motel and Liquor advised that he sits on the state board of CHARR, and said that all of Mr. Kopps' citations and figures are alarming and provocative for everyone to chew on. Unfortunately, he stated, they've been promulgated out of a 1992 EPA study that was thrown out by the United States District Court in 1995 as being pure junk science. Advocacy groups assert that these bans help shape individual preferences against smoking, and in fact these re-education efforts have drastic reshaped attitudes of smokers and non-smokers alike. He related that Alaska is acclimated to the fact that public buildings and private building are now non-smoking, what is unacceptable is the advocacy groups' absolute unwillingness to allow a few remaining venues to accommodate Alaskans own preferences. At this juncture in time, the rights of non-smokers and non-patrons of bars supersede the rights of his smoking patrons and himself as a business owner. He expressed that there is no net benefit to anyone, this is simply

a taking, no one is compelled to enter his establishment, and he respects adults choosing to make their own decisions. He referred to postings and articles he has seen describing the upcoming Senate vote on SB 1, and described it as little more than a proclamation of disgust from his view point. It looks like the former mayor of Soldatna and current mayor of Kenai will soon be triumphant once and for all in their relentless crusade to save society. Their zeal seeks to impose one of the ultimate nanny state devices down the throat of those who only wish to be left alone in the last refuges left in the state. There is no smoking in public buildings and HB 328 and SB 1 are de facto already as the only places left that allow a few bars whose numbers dwindle annually, and he and his wife own one. He related that the battle has smacked of elitism and basic contempt for the unwashed working classes who still partake. He advised that he will not comply and "you will have to bring the strong arm of the state down on me. I will not be re-educated. I loathe their politically correct agendas and dangerous genuflections to special interests groups whose only interest is control over those of us who still have a notion of what freedom is."

6:01:58 PM

CHRYSTAL SCHOENROCK, Owner, Hunger Hut Bar, Motel and Liquor, said she is the secretary for Kenai Peninsula CHARR and a member of the Alaska State CHARR. She put forth that she would like to know why smokers can't have the same rights as non-smokers as there should be an area that does not prohibit smoking so smokers do not have to go outside 20-30 feet from a building at -10 to -30 below. Her patrons want smoking, all of her employees smoke, and her patrons help her to pay the bills, licenses, permits, stock, and taxes. She referred to the low rate of oil prices and that people are being laid off, and said she cannot wait five years to increase the amount of patrons in her bar. When the small businesses are forced to close, Alaska does not receive their taxes. She agreed to post signs indicating that smoking is permitted, and if a patron doesn't want to enter because they are a non-smoker, "then don't come in. So be it." As it stands, the smokers have no rights and this is not fair and just, and "as far as I'm concerned, my patrons, and I have people coming in my bar that doesn't smoke, nor do they drink. But, I feel that my patrons have a right to have what they need and I feel that as a business owner paying all my everything, that I should have the right to say what going goes on in my establishment and not have to worry about what's going on in my parking lot or in a little building."

6:04:20 PM

DANIEL LYNCH said he is representing himself and freedom in Alaska. He related that it makes his heart sing to see so many economic free market Republicans on the committee knowing that they are not believers of the nanny state government and he has confidence they will do the right thing and leave this legislation in committee. America was built on tobacco and freedom. There are two "watering holes" in Soldotna across the street from one another, and one establishment has chosen not to allow smoking, and the owner of the other establishment has chosen to allow smoking. The BFW, Elks, and veterans currently decide through their membership how to run their rules and their buildings. He described that the numbers related to secondhand smoke are speculative at best, and that he works on equipment that causes his mustache to wring with oil yet he wouldn't be allowed to smoke. In the event he succumbs to lung issues, people would say that he was a smoker and it had nothing to do with the diesel running out of his mustache. The fallacy of being a workplace safety issue is a simple strawman, and driving to the LIO office he passed six fast-food drive-through restaurants and a dozen drive-through coffee shacks all with employees hanging out the window sucking in carbon monoxide from every vehicle, engine and tailpipe. It is known that smoking is not a good habit and in his 45 years of doing so he has contributed $10s of thousands of dollars to the federal, state, borough, and city tax collectors, and he said he presumes the legislature will increase alcohol and tobacco taxes again this year. He asked that if the revenue from tobacco stopped, how it would be replaced, by taking away the freedom of smokers.

6:07:22 PM

SHEB GARFIELD advised he is an ex-smoker and is now an avid vaporer. He asked that the vaping provision in the legislation be completely removed in that vaping is in this bill because it looks like smoking. The bill includes vaporizers due to the fear of secondhand vapor being as dangerous as secondhand smoke, and it pre-emptively bans its use in public places and businesses even though a short time on google will show the opposite. He then read various studies and health expert's reports that he would submit to the committee.

6:10:14 PM

CHAIR SEATON asked Mr. Garfield to send the studies electronically to the committee.

6:10:29 PM

GREGORY CONLEY, Attorney, said he has been a leading advocate for vapor products, e-cigarettes, and that he used them to quit smoking approximately five years ago. He explained that vapor products are not tobacco products, as it is anti-tobacco technology products. Vapors are smoke-free, tobacco-free, and often nicotine-free and are increasingly being recognized as a smart way to get smokers to transition away from dangerous and densely combustible cigarettes. Contrary to claims previous made in this committee, there is no evidence that these products pose risks to bystanders, but there is evidence of long harm reversal or quality of life improvement in smokers who have made the switch including smokers with COPD and asthma. He advised that in previous testimony he discussed a review published last year by Tuttle Publishing advising that one of its main conclusions is that vaping should not be treated like smoking, and it was endorsed by a dozen of the largest (indisc.) groups in the United Kingdom, including Cancer Research United Kingdom, the Royal College of Physicians, and the United Kingdom's largest anti-smoking organizations. He surmised that these groups support smoking bans but government mandated vaping restrictions go too far. These restrictions could have grave unintended consequences, such as sending a deadly message to smokers that vaping is no less hazardous than inhaling burning smoke. In 2014, among adult smokers that quit in the last year, 22 percent were using vapor products and these products are helping smokers quit. These products also have the potential to save Medicaid and Medicare costs because a study by State Budget Solutions suggested a multi-billion savings if smokers need to switch. He urged the committee to amend the bill's definition of smoking to only include products that actually create smoke. He added that this is also true for the vapor product retailers, they need to be exempt from this bill even if they share a wall to another business. Both Chicago and New York City, two anti-tobacco cities that have banned smoking and retail tobacco stores, created exemptions that allow vaporing in vape stores. He asked that if the bill must move forward to consider exempting bars, private workplaces and other places where the public is invited and only adults congregate.

CHAIR SEATON advised that he was welcome to submit written comments to the committee as well.

6:13:19 PM

MICHAEL CERVANTES, Owner, Banks Ale House, said he is a board member for Alaska CHARR, and that as an owner of a local business it is his choice to be smoke-free or not, and this bill takes that privilege away from local entrepreneurs in the state. He referred to testimonies regarding secondhand smoke and its impact on individuals and he agrees that secondhand smoke is a choice for an individual to make when entering a smoking establishment. Most areas throughout the state, whether the establishment is posted non-smoking or smoking allowed the signs are posted at the entrance of most bars or restaurants. He expressed that he disagrees with the testimony that when a smoking establishment goes non-smoking they do not feel a financial impact because friends and other owners who have gone smoke-free and (indisc.) claim businesses grow because the customers have left their establishment to go into a smoking establishment. Not every owner has the opportunity to wait multiple years to gain back or re-establish that customer base that they lost to another restaurant or bar. He asked that the committee oppose HB 328 as it does offend and restrict owners and others from smoking being available to their community.

6:16:19 PM

ANGELA CERNICH, Owner, Artic Industries, said she is an Alaska born Athabascan woman who along with her husband own and operate Artic Industries. There is no irony in the fact that her business focuses on (indisc.) in the workplace. Secondhand smoke is a personal concern for her because as a child she was raised in a smoke filled environment complements of her parents who were proverbial chain smokers. This caused a profound effect on her personal health in that she has many issues related to her severe allergies with smoke. After moving out of her home, many of the severe issues subsided; however, as a young adult she always felt the asthmatic and lung issues related to the damage done to her lungs. Last year at the hospital with lungs that were collapsing, she was diagnosed with Chronic Obstructive Pulmonary Disease (COPD) and she personally never smoked a day in her life, but is now facing a lifelong disease that will shorten her life, a disease she has to fight with all of its symptoms. Even a common cold becomes a lengthy disease that causes her to have coughing bouts that cause migraine-like headaches and, yet she is not the one who caused this. She expressed that when she hears 'no one should be allowed to take away their right to smoke', she responds that she does have a right to be in a smoke-free environment. She

related that some areas in Alaska are small with few jobs and while taking care of her father who suffered from cancer, the only job she could find was at the Inlet (indisc.), which is a restaurant/bar that allowed smoking. Within one week she was so sick she had to quit her job and because no other jobs were available she was forced to leave and did not have the chance to spend that time with her dying father. She related that if her father were alive today, without a doubt he would look a person in the eye and tell them to take smoking outside.

6:19:23 PM

CARMEN LUNDE, Director, Kodiak CHARR, said the Kodiak CHARR opposes the bill because it believes strongly that business owners have the right to make their own choices without government on any federal, state, local level mandating laws for a small business owner to go against their wishes. Punishing smokers for their own good is repulsive to basic freedoms of choice and she does not feel government has any role in making these choices for its citizens. Kodiak has positively handled the smoking the issue and has used the common sense approach that works. There are 16 non-smoking establishments and 6 smoking establishments giving every adult a free choice to enjoy their drinks in both type establishments, and this demonstrates free choice at its best. Alaskans live in a country where personal choice is one of its most cherished freedoms. Personally, she said, every day one or more of our personal choices are being taken away from us. She asked the committee to not take another freedom away as people should not be forced to stand outside to smoke a cigarette in cold and freezing temperatures. She advised that two of Kodiak's busiest establishments went non-smoking last year and within three months had to re-instate smoking due to their heavy losses of income, and she wonders how many businesses can weather that loss in being forced to close their doors. Please leave the choice of smoking or non-smoking to the men and women who own these establishments as they have the right to do what is best for their individual establishments, she said.

6:21:32 PM

ISAAC HEWELL, Owner, Cold Vapes 907, said he is vice-president of Clear The Air Alaska which is the state's local trade association and consumer advocacy for the vaping industry. He advised is a former smoker who saved his life by switching to electronic cigarettes and feels tremendously healthier as a result. The use of e-cigarettes benefits the environment,

health, and costs to consumers, and it is premature to suggest that vaping is unhealthy just by certain national health advocacy's suggestions. He related that he is unaware of any national double-blind multi-year academic studies but noted various studies in the United Kingdom. Most recent studies completed by the (indisc.) and funded by the FDA and NIH have found that electronic cigarettes are not a gateway to tobacco use, and that 75 percent of minors get cigarettes from social sources. The exit for current tobacco users is to switch to safe alternatives, and other states have recognized that vaping is not smoking, such as Idaho, Nevada, and New York, he said.

6:24:31 PM

ALISON HALPIN offered that the bill violates individual human rights and includes vaporizers as smoking. Vaping and smoking are two entirely different things as stated in People v. Thomas, in that an electronic cigarette does not contain or burn tobacco. The court noted, instead the use of such a device which is commonly referred to as vaping, involve the inhalation of vaporized (indisc.) cigarette liquid consisting of water, nicotine, (indisc.), and vegetable glycerin occasionally (indisc.). She related that this state has a tobacco use problem and as a former smoker who tried multiple DHSS approved (indisc.) devices to try to quit tobacco and failed with each product, she found vaping and has been tobacco free for three years. Vaping has been proven by public health in England to be 95 percent safer than with combustible cigarettes. Alaska is fighting against the tobacco problem, not the nicotine problem in that is an organic chemical created by plants naturally. Nicotine is found in many vegetables, such as eggplants, potatoes, tomatoes, kale, and many other green leafy vegetables. Nicotine is the only trait similar to tobacco products and she urged the committee to remove vaping from this bill.

6:26:16 PM

BRIAN PREBLE said he agrees with everything the last two witnesses testified to in that vaping is not smoking. He has four children and does not allow them around his vaping, they do not enter places that allows vaping which is his choice as an adult and an American. He does choose to vape in his work vehicle and outdoors and, he opined that responsible users of vapor products often try to keep it out of the line of those it could affect because they know what cigarettes have done to people. He asked the committee to oppose this bill or at least rewrite it to focus more on actual smoking and secondhand smoke,

and until more is known about vaping it should not be lumped in with the issue of secondhand smoke.

6:27:52 PM

LARRY HACKENMILLER said that the mere presence of smoke inside a building where the public is allowed does not legally constitute a public health hazard, or where people are employed. In federal law in the Clean Air Act, indoor air quality is controlled by OSHA and under this act all air contaminants known today are listed in the air contaminant standards of 29 CRF 1910.1000. It lists the concentration of the contaminant being inhaled and the time of exposure to come up with a risk assessment, and they all have "permissible exposure levels or limits" to determine the public health risk associated with the chemical. As for secondhand smoke in the air, OSHA the authority of indoor air quality, has stated outright "field studies on environmental tobacco smoking indicate that under normal conditions the components in second ... in tobacco smoke are diluted below existing permissible exposure levels (PELs) as referenced in the Air Contaminant Standard. Further, it would be very rare to find a workplace with so much smoking that any PEL would be exceeded." He said it is difficult to justify the need for HB 328, to protect the public health when no public protections are needed under existing federal standards. The data relating to death and major health issues attributed to the presence of secondhand smoke in the workplace does not cite OSHA as a reference in their quoted science references. He asked whether the committee found that odd that the people with the authority and control of indoor air quality has not been referenced in all of these scientific studies about the woes of secondhand smoke, 60 people dying a year of something that OSHA indicates a person can't get enough of in a building. He suggested asking the references of what OSHA has to say about their research and to ask the experts to testify. This is indoor air, what about outdoor air, what was the concentration of the contaminants causing death and major health issues outside the baseball stadium. Currently, AS 18.35 regulates smoking in certain areas and states "the statute considers smoking in any form a nuisance and a public health hazard and; therefore, prohibits smoking in public places and indoor places." This is in conflict with the Clean Air Act, he pointed out, which identified public health hazard through the air contaminant standards in practice today. The key word here is hazard and the starting point for each of these issues is that the indoor air quality does not legally recognize secondhand smoke as a public hazard. He asked that someone show him the

science about outdoor air and testify about the patterns of secondhand smoke and what the permissible exposure limit is for outside air quality on secondhand smoke. He referred to the fiscal note problem and said if the bill is passed that the state will have to send a trooper out to the villages to give a $50 citation so there will be a fiscal note.

6:31:33 PM

JENNIFER VARGASON said vaping saved her life from the ball and chain of tobacco use, she and her family are healthier, and she does not understand how smoking tobacco and vaping is the same. Vapor products do not contain tobacco so there is no combustion and research has shown that vaping does not have the harmful effects of smoking, and there are no carcinogens for bystanders. The ingredients in a liquid are in everyday food products consumed, and it has been shown that nicotine is not harmful. She referred to an article that stated that there have been instances where nicotine has been known to help certain conditions, such as Alzheimer's, depression, Parkinson's disease, and more. She is an ex-smoker who, initially, rolled her eyes at vaping but then gave it a try and since December 2013 has been completely without tobacco. She asked the committee to please reconsider HB 328.

6:34:25 PM

JESSE WALTON asked that all references to vaping be removed from the bill. She has been vaping since 2013 when she received a Christmas gift from a nurse practitioner, which allowed her to quit smoking. She feels healthier, has more energy, and is able to get the snow machine unstuck. She listed the amount of milligrams she started on and is now down to, and listed the various remedies she previously tried, yet always found herself with a cigarette in her hand. [Difficult to decipher Ms. Walton's testimony due to audio.] There are many people in Fairbanks trying to quit smoking for themselves and their families, and there are reputable vape shops around Alaska where people are welcome to learn about the industry, she said.

6:36:18 PM

TERRY CROWSON said that the committee is aware that secondhand smoke is bad and how bad [background noises masked the audio]. She related that when a local vote to prohibit smoking is held, those who vote against public smoking and lose the vote, lose a lot more than face because the public loses the opportunity for

clean air. Although, the public has the choice to not go where smoking is allowed, the public loses the opportunity to socialize, do business, or whatever is offered. This bill would protect not only folks who need a job bad enough to take a job in a smoking situation, but also everyone who does business in these places. The legislature has an opportunity to promote and enable a healthier Alaskan environment. Please take action to make this positive difference for healthy living for those Alaskans who can't count on a clean deep breath, she asked. In small communities there often is only one choice of a similar place to do business and when that business allows smoke there is no choice for those who want to avoid secondhand smoke. After listening to prior testimony, she suggested removing the vaping provisions and move on to protect Alaskans from secondhand smoke.

6:38:41 PM

CHERYL SCHOOLEY said that people who have made the responsible choice to not smoke are victims of secondhand smoke in establishments where smoking is still legally allowed. This backward mindset sends a message from the legislature that it is okay to light up, and puff up, secondhand smoke. This bill promotes a healthier Alaska which will lower health costs and help budget challenges, without this bill it appears the state is choosing to promote the negative effects. Alaska has a pristine image to be proud of, and is a market for the tourism industry, let's be a class act, she remarked.

6:39:38 PM

WAYNE CROWSON said he has listened to smokers testify today, and listened to them having trouble breathing and coughing as they spoke, which was him 20 years ago. His lungs are much clearer now since he's quit smoking and he would like to keep them that way, he commented. Please move this bill to the governor for signing this session as the governor wrote "Alaskans Health First," he said.

6:40:26 PM

ROBIN MINARD, Director, Public Affairs, Mat-Su Health Foundation, said she strongly supports HB 328. While making great headway in the Mat-Su and Alaska, she pointed out that Alaska continued to have some of the highest tobacco use rates in the nation. Tobacco use rates bump up its chronic respiratory disease rates, such as bronchitis, asthma, and COPD.

Tobacco use costs Alaska $579 million annually in direct medical costs and lost productivity due to tobacco related deaths. She stressed that enacting this law in Alaska to require smoke-free public places will help reduce these costs and will also help reduce Medicaid costs, something that the legislators and the Foundation care deeply about. Much has been said about the effects of secondhand smoke and e-vaping, and she stated that Alaska needs robust clean indoor air statutes that includes e-cigarettes because adolescents perceive e-cigarettes as safer than traditional cigarettes. In addressing the myths that these products are safer or that they are a cessation tool, she advised they are the opposite. These products are a grooming tool, grooming kids to accept, like, and become dependent upon smoking and nicotine. A 2015, National Institute of Health report showed that ninth-graders using these e-cigarettes were over three times more likely to begin using traditional tobacco products than those who didn't. She asked the committee to keep in mind that e-cigarettes have not been approved by the FDA as a smoking cessation aide. As discussed earlier, only one-half of Alaskans are protected by smoke-free workplace laws and many jurisdictions, such as Mat-Su, do not have the health powers necessary to pass an areawide smoke-free ban. This legislation is the next step in further reducing smoking rates and secondhand smoke exposure in Alaska, it is the next step in raising the health status of all Alaskans, the Mat-Su Health Foundation supports the bill, and she asked that the committee expedite its passage.

6:42:40 PM

PETE BURNS said he is testifying for himself and Humpy's Great Alaskan Ale House. He offered testimony as follows:

> I know this sounds bad that sometimes go against the grain and CHARR has always been a great advocate for various industry stuff, but for this one I have to go against them.
>
> My story is, my father was born in 1936. He started smoking in 1951, in 1994 he passed. He gave up smoking. 1998 he had his first heart attack. He was wheelchair bound from then for the next part of his life. 2002 I had a pain in my hip, I went to the doctors here in Anchorage, they sent me to the Seattle Cancer Care Alliance in Seattle. One thing is that I had never smoked, I had never been around it in my life. I spent three and one-half months in the Cancer

Care Alliance, over a year am able to walk. And I vividly remember my dad sitting in a wheelchair sobbing thinking he had caused cancer in me. Whether he did or didn't it did not matter when you are a child your father is your idol. I went in remission at that time, within one year and one-half. 2009 May 15th, my father got sick with what he thought was a chest cold, he was admitted to a hospital in Knoxville, Tennessee. July 29th, 45 days later he passed away and in those 45 days he went from 185 pounds to 85 pounds. He developed emphysema and COPD. He hid it from our family, he didn't want us to know. Our family incurred over $300,000 in debt for his hospital stays. It is a debt that we gladly would have paid any day just to have one more day with our father.

I am selfish. I miss my father. I wish someone back in the 1950s and 1960s had done this to my father. Taken that away from them. It's not about me, it's not about you, it's about the families, their kids that don't have a choice in this to grow up like me. I'm a 44 year old man and mention my father puts me on the ground. I cannot see him again, I cannot even begin, I cannot learn from him again. All I can do is know that he knows that I am fighting a good fight for him. I beg you pass this, end it now. Thank you.

6:45:43 PM

JOHN YORDY, M.D., Anchorage and Valley Radiation Therapy Centers, said he is testifying in support of this bill and on behalf of the Anchorage and Valley Radiation Therapy Centers and himself, he lives and works in Wasilla, and treats cancer patients with radiation therapy. He related that his concern is with the health risks of secondhand smoke and the disease causing properties of being exposed to smoke. He referred to the testimonies regarding businesses and individuals opposing smoke-free work environments and explain that from the health care perspective in treating cancer patients on a daily basis and watching the effects of what cancer does, as well as knowing the exposure to smoke has directly caused some of the cancers that he is treating makes him compelled and passionate about trying to eradicate smoking from the workplace. There are many reasons why people may feel compelled to expose themselves to secondhand smoke despite a desire to the contrary. It may be the only job or the best job they can get and, he pointed out,

many people live in an area where it may be difficult to find a good job so they feel compelled to put themselves into the [smoked-filled] situation so they can put food on the table or buy medicine for their children. There are other professions dependent upon protecting themselves in a public situation such as musicians, who may feel compelled to perform in an environment that is smoke-filled. He related that his concern is for these people who may not be smokers themselves, but are being forced to partake in work situations that cause them to breathe in smoke that can be harmful to their health. For these reasons, he said he strongly supports this legislation and asked that the committee consider passage so all Alaskans can work and live in smoke-free workplace environments.

6:48:15 PM

OWEN HANLEY, M.D., Fairbanks Memorial Hospital, said he is a pulmonary lung doctor and he strongly supports the legislation. He pointed out that patients in Fairbanks want the same protection that citizens in Juneau and Anchorage have, and disagrees with the remark that one-half of the state wanted it and the other half didn't want it and voted it out. He related that Fairbanks hasn't had an opportunity because our borough has no health powers. [Audio difficulties.] My patients would love to have a smoke-free environment (indisc.) in Fairbanks. Some patients are living in housing and on oxygen but the people in the hallways and next door are smoking and have ventilation systems (indisc.). Most Alaskans would like to enjoy the same opportunities of smoke-free clean air that legislators have in their buildings, he said. (Indisc.) testimony that since OSHA doesn't find secondhand smoke exceeds a particular toxic standard that it is therefore safe. The science of the evidence is overwhelming that secondhand smoke is lethal, and the evidence is overwhelming that limiting secondhand smoke has dramatic reduction in heart attacks and strokes. E-cigarettes must be banned, while it may be true that some e-cigarettes are safe, there are enumerable things that can be put in the containers such as, nicotine, marijuana, or an unlimited amount of chemicals, an e-cigarette is just a delivery device and it would be impossible to legislate or enforce what is in an individual vaping device. He stated that there is no way to ensure that an e-cigarette contains a safe substance, and whether the person next to them is producing a harmful toxin. The legislation is not asking people to quit using it, just to take it outside, he pointed out.

6:51:00 PM

ERIC VARGASON referred to the prior testimonies and opined that everyone wants the same thing, although, he does not believe including vaping and e-cigarettes language is most prudent. He said he opposes this bill due to the inclusion of the vaping language because by not allowing sampling "e-juices" in vape shops the bill is basically pushing more people to smoke, at the end of the day. He advised the committee that everyone wants clean air and to consider the relevant studies testified to today, otherwise, it as not only jumping the gun but it is irresponsible and overreaching. He said that when he is alone in his house vaping and his children are with their mother, he is still left to these standards. Not only is that not fair, he advised but the government is telling him what he can and cannot do in his own house provided he is not hurting anyone else. He said he has chosen to not vape around anyone else, vaping has made him healthy, and speaking as a former smoker he does not need a study to tell him how he feels right now.

6:53:21 PM

STEVEN MAPES said he is speaking in opposition to HB 328 and is speaking for all of the adults on the Kenai Peninsula who have made the choice to vape rather than smoke. He referred to various studies and noted that one study indicated the threshold limit values of vapors produced by e-cigarettes were magnitudes below OSHA limits. Adults choosing to vape rather than smoke looked to unbiased independent studies to help them make informed decisions. He stated that vaping has saved previous smokers thousands of dollar because they "ain't paintin their lungs with tar and fillin their blood stream with carbon monoxide" and it has had a tremendous positive impact on their lives, including his. This bill would effectively regulate this healthier alternative out of existence, and it will harm the health and wellbeing of the citizens of Alaska. The standalone language for vape shops and secondhand vape goes against all of the science and research available today. He related that both of his parents died of lung cancer and it was ugly, and he made the choice to quit smoking and finally found vaping. He has been vaping for four years and can breathe and exercise and feels about 1,000 times better. On a side note, he said he sees adults writing testimonies for their children to read at these teleconferences, and he watches this happening at the Kenai LIO every time he goes down there, and these actions taint this process.

6:55:41 PM

BOB URATA, MD, Valley Medical Care, said he was born and raised in Wrangell, and has practiced medicine in Juneau since 1984. He has been a volunteer for the American Heart Association for 16 years and is testifying today as a representative for the American Heart Association and himself. He expressed his support for this bill and the inclusion of e-cigarettes because every 34 seconds an American dies of a heart attack, every 40 seconds an American dies of a stroke; and cancer and cardiovascular disease are the number one and two causes of the deaths of Alaskans. Secondhand smoke is one of the main causes, he stressed and it kills over 50,000 Americans each year, it is expensive as the CDC reports secondhand smoke exposure causes the United States to spend $5.6 billion a year in lost productivity, tobacco expenditures in the United States are $133 billion in direct medical care for adults, and this state may save $5 million in Medicaid medical expenses if not more. An example of a success of the Clean Air Act is Pueblo, Colorado - 1.5 years before and after passage of its smoke-free ordinance it saw a 20 percent rise in bar and restaurant sales tax revenue and a 27 percent decrease in heart attacks. He opined e-cigarettes should be included due to the serious questions about their safety because the FDA found toxins that are known to cause problems to health, and also nicotine in the products. A medical saying is "First do no harm" and he believes that vaping must remain in the bill. Imagine the many lives saved if cigarettes had been properly studied before being placed on the market and Alaskans must make sure that e-cigarettes are safe before exposing everyone to them. In closing, the positive impacts will benefit many in the short and long term and on behalf of the American Heart Association and many Alaskans, he urged the committee to support this bill.

6:58:27 PM

ANGELA CARROLL, Smoke-Free Alternative Trade Association, said she represents the Smoke-Free Alternative Trade Association and noted that more states are looking at electronic delivery systems to add a solution to the tobacco problem. These states are reviewing the science behind this new technology that is saving lives and could ultimately save billions in health care costs including lost work time, per a scientific study released by the State Budget Solutions in March 2015. She read various studies and peer reviewed studies and advised that they have been submitted as documents of opposition. She remarked that as representatives of Alaska the committee has an opportunity to show its constituents the members care about their health, and

are in favor of Alaskans utilizing a safer alternative to combustible cigarettes by supporting vape shops. Alaskans make the choice to enter a vape shop to test flavors and find the device to help them to maintain that vapor alternative. This bill would force current vape owners to relocate (indisc.) for vape products and this one provision will force most vape shop owners out of business in Alaska, eliminating the opportunity for adult Alaskans who currently smoke from discovering this alternative to combustible cigarettes. For these reasons the members of the Smoke-Free Alternative Trade Association (SFATA) are asking that the vape language be removed from this bill, and in the alternative SFATA is asking for the standalone requirement to be removed so they can continue to operate in their current location. No shop currently meets these requirements and it would be cost prohibitive for these "mom and pop" establishments to (indisc.) standalone structures. If the bill passes as written the SFATA members would close up existing shops and this alternative combustible cigarette would be lost. She asked that the legislation be re-written before passing it out of committee.

7:01:47 PM

JUNE ROGERS said she is testifying as a concerned member of the community and as a business owner. She said she has long been in favor of a smoke-free environment because 15 years ago when she and her husband began their business, a coffee house and recording studio, they determined that the business would be smoke-free. A significant factor in her strong support of this bill is that her mother was diagnosed with emphysema and had never smoked, although, she did work in smoke filled restaurants for most of her life. Ms. Rogers advised she has never smoked, but in earlier times of her performance work she spent too many hours in smoke filled rooms, breathing more deeply than perhaps anyone else in the room as she sang for their entertainment. While she does not have the severe condition that her mother has, she does have issues of allergic and problematic breathing responses to smoke filled rooms. She referred to the comment that people make the choice to work in such conditions, true enough and; therefore, made the decision to create her own smoke free workplace where her band performs every Friday and Saturday evening. However, she pointed out this is not a realistic option for most musicians, particularly young hopeful musicians, and stressed that they should not have to put their health in jeopardy in order to work. In speaking with club owners who have converted to smoke free venues she is not surprised when they advise that their revenue increased substantially. Only

recently did she investigate the properties of e-cigarettes but based upon what she has learned, she firmly agrees that including them as an item that does not deserve acceptance in a smoke-free venue. As Alaskan leaders, legislators are called upon to decide on a broad spectrum of issues that relate to the wellbeing of Alaska's communities, she asked that the committee give its upmost consideration to this bill as it will provide a more productive and healthy workplace, and not surprisingly will also benefit in less healthcare costs for Alaska.

7:04:00 PM

DANNY RUEREP said his opposition to HB 328 is based solely [on vaping] because he does not want to see the vape shops in local communities removed because it will destroy the vaping local economies. He described this as a step in the wrong direction because he had been a smoker for 20 years until he found a local vape shop and sampled every liquid he desired, and advised he has now been two years free of cigarettes. He related to the committee that in taking the vaping provisions out of the bill there will be less opposition.

7:055 PM

QUOC DONG said that he had smoked for 10 years, vaped for three years, quit vaping, and has gone from 18 milligrams of nicotine to zero. He opined that it is a good tool for people to transition their lives from tobacco smoking. While in school he was taught that if he made a mistake with something he had to do it in the correct manner twice before he could learn it correctly, and felt that is the same for any habit. In order to quit smoking, he opined, a couple of years might be a more reasonable expectation of people and that eventually most people vaping will quit vaping in addition to not smoking. The environment in which vaping has been created is not similar to smoking as it is built on innovations. In an economy that has led to many devices and different types of e-liquids in a short period of time, if bills such as HB 328 continue to be passed in the United States, different innovations will arise and the legislature will be dealing with a whole other thing that could be far worse than vaping. In order to pre-empt that, he opined the committee should reconsider the language and reconsider how vaping is used before actually passing laws. With the introduction of marijuana to Alaska, he opined that the two industries side-by-side and a negative view on vaping could potentially create a hazardous environment for nicotine users. He advised that some vape shops in Anchorage sell marijuana

tools which, unsurprisingly, are smokeless devices that don't produce vapor. Speaking as a person who formerly vaped, he said he has quite a bit of vaping paraphernalia which also includes 100 milligrams per milliliter nicotine. He related that if he were to drink the entire bottle he would die so some people may have the wrong impression about what vaping is.

7:08:56 PM

OCTAVIA HARRIS, American Lung Association in Alaska, said the American Lung Association in Alaska supports HB 328 as there is no safe level of secondhand smoke or aerosol exposure. She pointed out that there is statewide support for this bill and approximately 1,000 businesses and organizations from all corners of the state have signed resolutions in support of this measure, and an updated version will be submitted to the committee. She asked that committee support the legislation and pass it out of committee.

7:10:11 PM

EMILY NENON, Director, Alaska Government Relations, American Cancer Society Cancer Action Network, noted that a number of volunteers contacted her after Tuesday's hearing regarding not getting a chance to testify and she suggested that the folks send in their written comments. She pointed out that the legislation is modeled after a number of the existing ordinances in the state including Anchorage. The language around the children's play area is discussing playground equipment, which is identical to the language already in place in Anchorage and existing ordinances around the state. No smoking on a toddler's swing is how it has been interpreted over time, she remarked, and the bill is focused on inside workplaces. Regarding the questions around the education program, the Department of Health and Social Services has an existing tobacco prevention program with grantees around the state performing educational (programs) regarding secondhand smoke and other tobacco issues. She pointed out that those folks performing the education work now will be transitioning some of their work to implementation, and education around this bill is already in place and being performed which is one of the reasons there is no additional cost. Many discussions have come up around electronic cigarettes as cessation products which, she related, is not the argument at hand in this bill because it is simply discussing exposure to secondhand aerosol.

REPRESENTATIVE SEATON, after ascertaining no one wished to testify, closed public testimony.

7:13:06 PM

REPRESENTATIVE SEATON advised he will take the bill up at a future hearing, questions were submitted to the sponsor who indicated he will return the answers to the committee, and it would be best that all amendments are prepared by Legislature Legal and Research Services.

[HB 328 was held over.]

7:13:45 PM

ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 7:13 p.m.