

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 1, 2016

1:31 p.m.

MEMBERS PRESENT

Senator Mia Costello, Chair
Senator Cathy Giessel, Vice Chair
Senator Kevin Meyer
Senator Johnny Ellis

MEMBERS ABSENT

Senator Gary Stevens

COMMITTEE CALENDAR

SENATE BILL NO. 98

"An Act relating to diagnosis, treatment, and prescription of drugs without a physical examination."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 98

SHORT TITLE: PRESCRIPTION WITHOUT PHYS. EXAM.

SPONSOR(S): SENATOR(S) MICCICHE

04/07/15	(S)	READ THE FIRST TIME - REFERRALS
04/07/15	(S)	HSS, L&C
04/13/15	(S)	HSS AT 1:30 PM BUTROVICH 205
04/13/15	(S)	Heard & Held
04/13/15	(S)	MINUTE (HSS)
01/25/16	(S)	HSS AT 1:30 PM BUTROVICH 205
01/25/16	(S)	Scheduled but Not Heard
01/27/16	(S)	HSS AT 1:30 PM BUTROVICH 205
01/27/16	(S)	Heard & Held
01/27/16	(S)	MINUTE (HSS)
02/01/16	(S)	HSS AT 1:30 PM BUTROVICH 205
02/01/16	(S)	Moved CSSB 98(HSS) Out of Committee
02/01/16	(S)	MINUTE (HSS)
02/03/16	(S)	HSS RPT CS 1DP 3NR NEW TITLE
02/03/16	(S)	DP: GIESSEL

02/03/16	(S)	NR: STEDMAN, ELLIS, STOLTZE
02/03/16	(S)	FIN REFERRAL ADDED AFTER L&C
02/24/16	(S)	L&C WAIVED PUBLIC HEARING NOTICE, RULE 23
02/26/16	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/26/16	(S)	Heard & Held
02/26/16	(S)	MINUTE (L&C)
03/01/16	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

DR. MELINDA RATHKOMPFF MD, President
Alaska State Medical Association (ASMA)
Anchorage, Alaska

POSITION STATEMENT: Commented on ASMA concerns with SB 98.

DR. HENRY DEPHILLIPS M.D., Chief Medical Officer
Teladoc
Nashville, Tennessee

POSITION STATEMENT: Testified in support of SB 98.

DR. DAVID POWERS M.D., family physician
Dillingham, Alaska

POSITION STATEMENT: Commented on SB 98.

BILL ALTLAND, member
Board of Pharmacy
Craig, Alaska

POSITION STATEMENT: Raised questions about the impact of SB 98.

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

POSITION STATEMENT: Answered questions related to SB 98.

WESTON EILER, Staff
Senate Labor and Commerce Committee and Senator Mia Costello
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Reviewed the changes that appear in version E of SB 98.

SARAH CHAMBERS, Operations Manager
Division of Corporations, Business and Professional Licensing
Department of Commerce, Community and Economic Development
Juneau, Alaska

POSITION STATEMENT: Answered questions related to SB 98.

ACTION NARRATIVE

1:31:02 PM

CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Giessel, Ellis, Meyer, and Chair Costello. Noting that this is Alaska history week, she reviewed the career of former legislator, William Beltz.

SB 98-PRESCRIPTION WITHOUT PHYS. EXAM.

1:32:51 PM

CHAIR COSTELLO announced the consideration of SB 98. She noted that this is the second hearing, public testimony is open, and a committee substitute (CS) is anticipated.

1:33:48 PM

At ease from 1:33 p.m. to 1:38 p.m.

1:39:00 PM

DR. MELINDA RATHKOMPFF MD, President, Alaska State Medical Association (ASMA), thanked the sponsor and her staff for working with ASMA to address its concerns with SB 98. She assured the committee that the primary concern is the care of patients and that is driving her comments today. She said ASMA supports the use of telemedicine, but wants to ensure there is appropriate oversight and regulation as it expands in Alaska. ASMA supports the model where a provider gives care over a video feed while another health care provider is with the patient to help facilitate the visit. Typically, there is a preexisting doctor-patient relationship or there's a relationship between the doctor giving care and the health care provider on the other end. There is also the ability for follow up care either in-person or a future telemedicine visit with the same provider. She said this model has great potential to expand access to care and reduce costs. The Alaska State Medical Association supports this model.

However, ASMA is concerned with telehealth models of care when there is no prior established doctor-patient relationship, the patient doesn't get to select the provider, and they don't have easy follow-up with the same provider. ASMA is concerned about providers outside Alaska that may not understand the challenges some patients in Alaska face. She described a personal example early in her career in Alaska. A physician from Stanford

contacted her about transferring care of an Alaska Native infant who had a rare immune deficiency and required ventilator support to breath. Her family lived in a remote village outside of Barrow and the Stanford physician hadn't checked to see if the family had electricity or running water in the home. She also didn't understand why the family wouldn't have mentioned these impediments to care.

She questioned how it would be possible to ensure the best care for patients if this new model is adopted, and stressed the need for the State Medical Board to have the authority to regulate this new model. She said ASMA appreciates the new draft that gives the medical board oversight at the individual physician level, but what's needed is more oversight at the company level. If a telemedicine company as a whole doesn't meet the standards of care that others deliver, the state needs the ability to stop that delivery of care. She concluded that this isn't about stopping the use of telemedicine, but about ensuring it's done well and protects the health of Alaskans.

1:44:29 PM

DR. HENRY DEPHILLIPS M.D., Chief Medical Officer for Teladoc, said he wanted to start his testimony by responding to the last question about guaranteeing to protect the health of Alaskans. He explained that clinicians always look at evidence-based data to make treatment decisions. For example, decades ago the standard of care for a heart attack was bed rest for two weeks. Today the standard of care for a heart attack is to get the patient up and out of bed within the first 24 hours. Outcome studies comparing the two treatment modalities demonstrate that the latter results in much better patient outcomes.

DR. DEPHILLIPS recommended the committee look at the data. He first pointed out that for every 1 million visits to private practice physicians, approximately 17 liability claims go to completion. The average payout for each claim is \$248,000. By comparison, telemedicine nationwide has done 2 million e-visits and not one medical liability claim has been filed.

DR. DEPHILLIPS talked about the cost savings associated with telemedicine. A Harvard Medical School researcher independently did a pre and post look at the telemedicine benefit a Fortune 500 employer decided to implement among its employee base. After 18 months the analysis of 150,000 employees and their families showed that every consult done through the telemedicine program resulted in an average medical cost savings of \$673. Extrapolating that to the 575,000 visits that Teladoc did in

calendar year 2015, indicates that Teladoc has been able to save all clients combined, \$387 million in medical cost savings. A majority of those are savings in the emergency room for the treatment on non-emergency conditions.

He shared the data point that Teladoc currently operates in 49 states, including Alaska, and covers approximately 15 million Americans. Clients in Alaska include GCI, Alaska Airlines, Home Depot, Lowes, Premera, Aetna, and Costco. He noted that Aetna is contemplating extending the telemedicine benefit to all state employees. These companies buy the benefit so Teladoc has been well vetted.

DR. DEPHILLIPS explained that Teladoc's quality oversight program looks at prescribing patterns across its prescriber network. An interesting outlier popped up this month in that program and he wonders how long it would take the private practice world to pick up a similar outlier.

DR. DEPHILLIPS concluded his remarks saying SB 98 is focused on allowing physicians that are licensed by the State Medical Board to practice the medicine they were trained to practice and decide for themselves what modality to use to diagnose and treat patients. With all the safeguards currently in place, patient safety appears to be doing extremely well under the current model.

[1:51:54 PM](#)

SENATOR GIESSEL asked if there is a limit to the number of times that a person can call a Teladoc provider before they're referred to a primary care doctor.

DR. DEPHILLIPS said any person who uses Teladoc services 3 times in 90 days or 8 times in a 12 month period is immediately flagged and Teladoc reaches out and tells the patient they need to get a primary care physician. The patient is excluded from the program until they demonstrate they have established that relationship.

SENATOR GIESSEL asked what instructions are given to a patient in the event they don't get better.

DR. DEPHILLIPS explained that there are discharge instructions after every e-visit, including what to do if the patient doesn't improve. For 72 hours after the e-visit there is a secure email communication between the patient and the clinical staff, including the physician. Second, Teladoc can identify the

patients that don't have a primary care physician and reach out to the health plan partner to help the patient find a physician. Third, their physicians tell patients if the telemedicine platform is not appropriate for the illness or problem. They are directed them to their primary care physician or to call 911. This happens 4 percent of the time.

[1:57:14 PM](#)

DR. DAVID POWERS M.D., family physician in practice in Dillingham, mentioned his previous testimony and emphasized that the current telemedicine model is open to all comers. He highlighted the potential misperception about what it's like in rural Alaska and opined that SB 98 won't help a lot of these people get medicines if they're prescribed. The medicine would have to be mailed from a pharmacy in Anchorage or the person could go to the village health aide. The latter is how medicine is dispensed in the existing telemedicine model. He opined that SB 98 will mostly impact Alaskans that live in larger cities where pharmacies are available.

DR. POWERS gave the bill high marks for convenience and cost savings, but said it will never meet the standard of an in-person visit. He assured the committee that the State Medical Board has no financial irons in this fire. The board simply wants the best health care for Alaskans.

CHAIR COSTELLO noted the individuals available to answer questions.

[2:00:35 PM](#)

BILL ALTLAND, member, Board of Pharmacy, said he's a registered pharmacist who has worked in rural Alaska. He mentioned a new regulation and attorney general opinion related to non-public health service providers in rural Alaska not needing to be licensed if they work for the Native health system. He believes this will become the rule for pharmacy, dental and nursing and wonders how professional boards in the state will address that.

CHAIR COSTELLO asked Ms. Hovenden to respond to Mr. Altland's questions.

[2:04:36 PM](#)

JANEY HOVENDEN, Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development (DCCED), said Mr. Altland is referring to the federal law that exempts medical professionals working for

tribal corporations or the federal government from the requirement to be licensed in Alaska.

SENATOR GIESSEL advised that Indian Health Service employees are federal and they must be licensed in a state, but not necessarily the state where they're practicing. She recalled that has been the case for about 20 years, but it's new that employees of Native corporations would be exempt. She emphasized the importance of clarifying the issue.

MS. HOVENDEN agreed to provide follow-up information.

[2:06:31 PM](#)

CHAIR COSTELLO closed public testimony on SB 98. She advised that the committee received a draft committee substitute and would recess until 2:30 to give staff time to review it.

[2:35:59 PM](#)

CHAIR COSTELLO reconvened the meeting and asked for a motion to adopt the committee substitute (CS).

[2:36:16 PM](#)

SENATOR GIESSEL moved to adopt the work draft CS for SB 98, labeled 29-LS0838\E, as the working document.

CHAIR COSTELLO objected for discussion purposes and invited Mr. Eiler to explain the changes.

[2:36:40 PM](#)

WESTON EILER, Staff, Senate Labor and Commerce Committee and Senator Mia Costello, explained the changes that appear in version E of SB 98.

Page 2, lines 16-19, primarily adds the words "standards of care" and other drafting conventions. Section 3 amends the duties of the board to include text provided by some of the stakeholders. He read the language on page 3, paragraph (6), about adopting regulations establishing standards of care under AS 08.64.364. Page 3, line 9, starts the renumbering of the sections. Page 4, lines 5-10, subsection (d), clarifies that a physician may not prescribe an abortion-inducing drug or prescribe a controlled substance without a prior physician-patient relationship.

MR. EILER advised that these changes were made in consultation with stakeholders to provide additional safeguards for telemedicine. He noted that Legislative Legal Services opined

that changing the preambulatory language in each section from prohibitions to the positive could be inferred by the courts as the legislature specifically limiting authorizations to what is listed.

He noted a memorandum from the Department of Commerce, Community and Economic Development (DCCED) that responds to previous questions about the financial impact of the boards affected by SB 98. The packets also contain an April 17, 2012 opinion from the Department of Law that gives context to the question raised about licensing requirements for pharmacists working for Alaska Native tribal health programs.

[2:40:37 PM](#)

CHAIR COSTELLO removed her objection.

[2:40:46 PM](#)

SENATOR GIESSEL moved a conceptual amendment to rewrite the language on page 4, lines 7-10, paragraph (2). It would read as follows:

CONCEPTUAL AMENDMENT 1

(2) prescribe, dispense, or administer a prescription drug in response to an Internet questionnaire or electronic mail message with whom the physician does not have a prior physician-patient relationship.

CHAIR COSTELLO found no objection and Conceptual Amendment 1 was adopted. She asked if there was further objection to the amended committee substitute.

[2:42:26 PM](#)

SENATOR ELLIS asked Mr. Eiler to reference the five concerns expressed by the Alaska State Medical Association, and the extent to which the CS addresses those concerns. "That would determine if I maintain further objection to the adoption of the committee substitute," he said.

[2:43:03 PM](#)

MR. EILER said the committee worked closely with ASMA and the sponsor to implement provisions of the letter dated 2/25/2016, most of which relate to providing safeguards and sideboards. He listed the concerns on page 1: 1) the prescription not be a controlled substance, 2) the physician be located in Alaska, 3) the physician or another physician in group practice is

available to provide follow-up care, 4) the patient consent to sending a copy of the records to the patient's primary care provider. He offered his belief that the CS addresses those concerns.

SENATOR ELLIS again asked if all the concerns articulated by the Alaska State Medical Association are fully addressed in the committee substitute.

MR. EILER replied: "I think we have achieved the provision they would like to see amended in advancing or moving forward the legislation."

[2:45:08 PM](#)

SENATOR GIESSEL directed attention to Section 3 that addresses the duties of the board. She said she suspects the language regarding standards of care comes from the model policy of the Federation of State Medical Boards organization. She opined that it would provide the board the latitude to be specific about telehealth services.

CHAIR COSTELLO said she'd like someone from the Alaska State Medical Association to answer Senator Ellis's question.

[2:46:34 PM](#)

At ease

[2:48:03 PM](#)

CHAIR COSTELLO reconvened the meeting and asked Senator Ellis to restate his question for Dr. Rathkompf.

SENATOR ELLIS asked the extent to which the proposed committee substitute addresses the five concerns outlined in the Alaska State Medical Association letter.

[2:49:43 PM](#)

DR. MELINDA RATHKOMPf MD, President, Alaska State Medical Association, said ASMA is appreciative that the CS addresses many of the concerns, but the issue that is not addressed is the suggestion to create a registry for businesses that are conducting telemedicine in order to provide oversight at a business level. ASMA feels it's important to have some capability to regulate or provide business oversight, since it is a different model of telemedicine that is strictly company-run.

CHAIR COSTELLO asked if the provisions in the bill allowing the board to adopt regulations provides the authority for business oversight. If not, would she like that to be added.

DR. RATHKOPF answered yes, that needs to be added. There is oversight at the individual physician level, but there is no assurance that telemedicine businesses coming into the state will adopt that same standard. She questioned what the oversight would be if a business didn't adopt the same standard.

CHAIR COSTELLO asked Senator Ellis if he maintained his objection.

[2:51:43 PM](#)

SENATOR ELLIS answered yes. He added that he appreciates the work that's been done to address four of the five concerns but it seems that the Labor and Commerce Committee is the place to address the issue of business oversight.

CHAIR COSTELLO said it's the intent of the chair to deliver the best work product possible to the next committee.

She asked Ms. Hovenden if she had language to suggest for a new paragraph (7) in Section 3 that allows the board to adopt regulations to provide appropriate business oversight.

SENATOR GIESSEL said she appreciates what ASMA is proposing, but she believes that authority belongs to the Division of Corporations, Business and Professional Licensing, not the State Medical Board.

[2:53:32 PM](#)

JANEY HOVENDEN, Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development, said she believes this can be fleshed out in regulations. Her belief is that it would be under the jurisdiction of the State Medical Board but she would have to research that further. She deferred further comment to Sara Chambers.

[2:54:22 PM](#)

SARAH CHAMBERS, Operations Manager, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development (DCCED), said her understanding is the statutory authority to develop a mandatory registry would need to be housed in the State Medical Board under AS 08.64.101, or an appropriate subsection. The division

would need to be granted the authority to support the board's development of such a registry.

SENATOR GIESSEL recapped the answer and said that seems outside the expertise of the State Medical Board.

MS. CHAMBERS replied her understanding is that any sort of license or registry that would fall under the purview of the State Medical Board would need to reside under that board. The division could regulate the registry but then it would fall outside the State Medical Board's jurisdiction. They would be unable to pass judgement on whether a telemedicine company had the protocols to ensure their employees are acting according to the standards of the Federation of State Medical Boards and American Medical Association for telemedicine that are already in place.

[2:57:15 PM](#)

CHAIR COSTELLO stated that the amended committee substitute for SB 98 has not been adopted, and she would hold the bill awaiting a new committee substitute.

[2:57:31 PM](#)

There being no further business to come before the committee, Chair Costello adjourned the Senate Labor and Commerce Standing Committee meeting at 2:57 p.m.