

ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

May 13, 2021

3:27 p.m.

MEMBERS PRESENT

Representative Liz Snyder, Co-Chair
Representative Tiffany Zulkosky, Co-Chair
Representative Ivy Spohnholz
Representative Zack Fields
Representative Ken McCarty
Representative Mike Prax
Representative Christopher Kurka

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 89 (FIN)

"An Act relating to house rules for assisted living homes."

- MOVED HCS CSSB 89 (HSS) OUT OF COMMITTEE

HOUSE BILL NO. 106

"An Act relating to missing persons under 21 years of age."

- MOVED HB 106 OUT OF COMMITTEE

HOUSE BILL NO. 153

"An Act relating to the identification, location, and notification of specified family members of a child who is in state custody."

- HEARD & HELD

HOUSE BILL NO. 139

"An Act relating to guardians, guardianships, successor guardians, incapacitated guardians, incapacitated individuals, and testamentary appointments of guardians; and relating to withholding or withdrawing life-sustaining procedures."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 89

SHORT TITLE: ASSISTED LIVING HOMES: HOUSE RULES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/22/21 (S) READ THE FIRST TIME - REFERRALS
02/22/21 (S) HSS, FIN
03/18/21 (S) HSS AT 1:30 PM BUTROVICH 205
03/18/21 (S) Heard & Held
03/18/21 (S) MINUTE(HSS)
03/30/21 (S) HSS AT 1:30 PM BUTROVICH 205
03/30/21 (S) Moved SB 89 Out of Committee
03/30/21 (S) MINUTE(HSS)
03/31/21 (S) HSS RPT 4DP 1NR
03/31/21 (S) DP: WILSON, BEGICH, COSTELLO, HUGHES
03/31/21 (S) NR: REINBOLD
04/07/21 (S) FIN AT 9:00 AM SENATE FINANCE 532
04/07/21 (S) Heard & Held
04/07/21 (S) MINUTE(FIN)
04/12/21 (S) FIN AT 9:00 AM SENATE FINANCE 532
04/12/21 (S) <Bill Hearing Rescheduled to 4/14/21>
04/14/21 (S) FIN RPT CS 6DP 1NR SAME TITLE
04/14/21 (S) DP: STEDMAN, BISHOP, HOFFMAN, WILSON,
WIELECHOWSKI, VON IMHOF
04/14/21 (S) NR: OLSON
04/14/21 (S) FIN AT 9:00 AM SENATE FINANCE 532
04/14/21 (S) Moved CSSB 89(FIN) Out of Committee
04/14/21 (S) MINUTE(FIN)
04/26/21 (S) TRANSMITTED TO (H)
04/26/21 (S) VERSION: CSSB 89(FIN)
04/28/21 (H) READ THE FIRST TIME - REFERRALS
04/28/21 (H) HSS
04/29/21 (H) HSS AT 3:00 PM DAVIS 106
04/29/21 (H) -- MEETING CANCELED --
05/04/21 (H) HSS AT 3:00 PM DAVIS 106
05/04/21 (H) Heard & Held
05/04/21 (H) MINUTE(HSS)
05/11/21 (H) HSS AT 3:00 PM DAVIS 106
05/11/21 (H) -- MEETING CANCELED --
05/13/21 (H) HSS AT 3:00 PM DAVIS 106

BILL: HB 106

SHORT TITLE: MISSING PERSONS UNDER 21 YEARS OLD

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/19/21 (H) READ THE FIRST TIME - REFERRALS
02/19/21 (H) STA, HSS

03/11/21	(H)	STA AT 3:00 PM GRUENBERG 120
03/11/21	(H)	Scheduled but Not Heard
03/16/21	(H)	STA AT 3:00 PM GRUENBERG 120
03/16/21	(H)	Heard & Held
03/16/21	(H)	MINUTE(STA)
03/25/21	(H)	STA AT 3:00 PM GRUENBERG 120
03/25/21	(H)	-- MEETING CANCELED --
04/01/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/01/21	(H)	Heard & Held
04/01/21	(H)	MINUTE(STA)
04/08/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/08/21	(H)	Moved HB 106 Out of Committee
04/08/21	(H)	MINUTE(STA)
04/09/21	(H)	STA RPT 5DP 2NR
04/09/21	(H)	DP: CLAMAN, STORY, VANCE, TARR, KREISS- TOMKINS
04/09/21	(H)	NR: EASTMAN, KAUFMAN
04/22/21	(H)	HSS AT 3:00 PM DAVIS 106
04/22/21	(H)	Heard & Held
04/22/21	(H)	MINUTE(HSS)
04/27/21	(H)	HSS AT 3:00 PM DAVIS 106
04/27/21	(H)	Heard & Held
04/27/21	(H)	MINUTE(HSS)
05/04/21	(H)	HSS AT 3:00 PM DAVIS 106
05/04/21	(H)	<Bill Hearing Canceled>
05/11/21	(H)	HSS AT 3:00 PM DAVIS 106
05/11/21	(H)	-- MEETING CANCELED --
05/13/21	(H)	HSS AT 3:00 PM DAVIS 106

BILL: HB 153

SHORT TITLE: CHILD IN NEED OF AID; NOTICE OF PLACEMENT
SPONSOR(s): CRONK

03/26/21	(H)	READ THE FIRST TIME - REFERRALS
03/26/21	(H)	HSS, JUD
04/20/21	(H)	HSS AT 3:00 PM DAVIS 106
04/20/21	(H)	Heard & Held
04/20/21	(H)	MINUTE(HSS)
05/04/21	(H)	HSS AT 3:00 PM DAVIS 106
05/04/21	(H)	<Bill Hearing Canceled>
05/11/21	(H)	HSS AT 3:00 PM DAVIS 106
05/11/21	(H)	-- MEETING CANCELED --
05/13/21	(H)	HSS AT 3:00 PM DAVIS 106

BILL: HB 139

SHORT TITLE: GUARDIANS; LIFE-SUSTAINING PROCEDURES
SPONSOR(s): HANNAN

03/17/21 (H) READ THE FIRST TIME - REFERRALS
03/17/21 (H) HSS, JUD
05/13/21 (H) HSS AT 3:00 PM DAVIS 106

WITNESS REGISTER

CRAIG BAXTER, Program Manager
Residential Licensing Section
Division of Health Care Services
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on CSSB 89(FIN).

LYNNE KEILMAN-CRUZ, Chief of Quality
Division of Seniors and Disabilities
Department of Health and Social Services (DHSS)

POSITION STATEMENT: Answered questions during the hearing on CSSB 89(FIN).

LISA PURINTON, Chief
Criminal Records and Identification Bureau
Division of Statewide Services
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: During the hearing on HB 106, provided a summary of the bill on behalf of the administration.

SUE STANCLIFF, Staff
Representative Mike Cronk
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 153, discussed the bill on behalf of Representative Cronk, prime sponsor.

REPRESENTATIVE SARA HANNAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, presented HB 139.

TIMOTHY CLARK, Staff
Representative Sara Hannan
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis of HB 139 on behalf of Representative Hannan, prime sponsor.

PAUL DOUGLAS
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 139.

ACTION NARRATIVE

[3:27:26 PM](#)

CO-CHAIR LIZ SNYDER called the House Health and Social Services Standing Committee meeting to order at 3:27 p.m. Representatives Spohnholz, Prax, Kurka, Zulkosky, and Snyder were present at the call to order. Representatives McCarty and Fields arrived as the meeting was in progress.

SB 89-ASSISTED LIVING HOMES: HOUSE RULES

[3:28:56 PM](#)

CO-CHAIR SNYDER announced that the first order of business would be CS FOR SENATE BILL NO. 89(FIN), "An Act relating to house rules for assisted living homes."

CO-CHAIR SNYDER reminded members that this bill, by request of the governor, is the companion bill to HB 103, which the committee heard on 4/13/21 and for which public testimony was taken. She further reminded members that the committee first heard CSSB 89(FIN) on [5/4/21], at which time amendments were offered and the bill was held over for further discussion and the amendment deadline extended. She explained that after Amendment 2 was adopted it became clear during testimony by Mr. Craig Baxter that the amendment needed to be changed. She said the amendment's sponsor, Representative Spohnholz, would therefore like to withdraw Amendment 2 and offer a revised version to be responsive to the needs of the Department of Health and Social Services (DHSS). She invited Representative Spohnholz to provide background information.

[3:31:32 PM](#)

REPRESENTATIVE SPOHNHOLZ stated that in working with Mr. Baxter and Suzanne Cunningham [Department of Health and Social Services (DHSS)], and Stephanie Wheeler, State Long Term Care Ombudsman, it was decided to rescind action on Amendment 2 and adopt a new amendment that is clearer and will not require as detailed of a regulation package. Amendment 3, she continued, is therefore an update to the three changes put into the bill at the request of

the long term care ombudsman [via adoption of Amendment 2], which are updated Internet access, quality of care, and protection against retaliation.

[3:32:59 PM](#)

The committee took an at-ease from 3:33 p.m. to 3:35 p.m.

[3:35:29 PM](#)

CO-CHAIR ZULKOSKY moved to rescind the adoption of Amendment 2 to CSSB 89(FIN). There being no objection, the adoption of Amendment 2 was rescinded.

REPRESENTATIVE SPOHNHOLZ [moved to withdraw] Amendment 2 to CSSB 89(FIN). There being no objection, it was so ordered.

[3:35:56 PM](#)

REPRESENTATIVE SPOHNHOLZ moved to adopt Amendment 3 to CSSB 89(FIN), labeled 32-GS1675\B.1, Dunmire, 5/12/21, which read:

Page 2, line 1, following "environment":
Insert "**free from abuse and discrimination**"

Page 2, line 16:
Delete "and"
Insert "[AND]"

Page 2, line 18, following "**AS 47.33.060**":
Insert "**;** **and**
(D) having access to the Internet provided by the home, subject to availability in the community, and having a private device to access the Internet at the resident's own expense"

Page 3, line 5, following "with":
Insert "**cultural preferences and**"

Page 3, line 11, following "home":
Insert "**without fear of reprisal or retaliation**"

Page 3, line 18:
Delete "and"
Insert "[AND]"

Page 3, line 20, following "home":

Insert ";
(20) receive information in a language the resident understands; and
(21) receive quality care; in this paragraph, "quality care" means care of a resident in accordance with the resident's assisted living plan, plan of care, personal preferences, and health care providers' recommendations"

Page 3, following line 20:

Insert a new bill section to read:

"* **Sec. 4.** AS 47.33.990 is amended by adding new paragraphs to read:

(20) "retaliation" means an adverse action taken, or threatened, by an assisted living home or an agent of an assisted living home against a resident in response to a complaint made to, or about, the home."

CO-CHAIR ZULKOSKY objected for the purpose of discussion.

REPRESENTATIVE SPOHNHOLZ explained that Amendment 3 is the [proposed] new compromise language from working with Mr. Baxter and [Ms.] Wheeler, and that the language would continue to provide protection from abuse and discrimination. She specified that the language for updating the Internet access provision now states, "having access to the Internet provided by the home, subject to availability in the community, and having a private device to access the Internet at the resident's own expense". So, she explained, it is saying that the resident must provide his or her own device and that to the extent Internet is available in the community, the home should provide it. Representative Spohnholz conveyed that the language for quality care now states, "means care of a resident in accordance with the resident's assisted living plan, plan of care, personal preferences, and health care providers' recommendations". She noted that this definition is consistent with the intent of a home and community-based waiver services final rule, given the purpose of the bill is to get Alaska in compliance with that. Lastly, she said, Amendment 3 would add a definition to retaliation under AS 47.33.990, which is not currently defined in the assisted living homes chapter. This new language states that retaliation "means an adverse action taken, or threatened, by an assisted living home or an agent of an assisted living home against a resident in response to a complaint made to, or about, the home." She pointed out that this language is more specific so that a perception of a threat does not qualify.

[3:38:20 PM](#)

REPRESENTATIVE KURKA said his concern is whether this language would prohibit the home from expelling a resident who is hostile and making it a bad experience for everyone.

REPRESENTATIVE SPOHNHOLZ replied that Amendment 3 is drafted in a way so it would not create the scenario where assisted living homes are forced to have hostile residents living there. She deferred to DHSS to address the process for evicting someone who is hostile.

[3:40:26 PM](#)

CRAIG BAXTER, Program Manager, Residential Licensing Section, Division of Health Care Services, Department of Health and Social Services (DHSS), responded that there are six different reasons under which an assisted living home can evict a resident, of which one is documented disruptive behavior that puts the resident, staff, or other residents in the home at risk. If the facility meets proof that the resident's behaviors are putting others at risk, [the facility] can terminate its contract with the resident. He said DHSS would not look at it as retaliation if the resident involved was threatening others, harming others, harming themselves, or harming staff.

[3:41:15 PM](#)

REPRESENTATIVE KURKA said he is concerned about the practicality of the language in Amendment 3 regarding Internet availability in the community. For example, he pointed out, Wasilla has good Internet service in general but certain spots within the community have poor service, which is the case for his business location. He said it makes sense that the device for accessing the Internet be at the resident's own expense, but he is concerned about having the requirement as a right.

REPRESENTATIVE MCCARTY offered his belief that the amendment's language, "subject to availability in the community," does address the concern because it would fit the scenario of availability in one spot in the community but no availability across the street from that spot.

REPRESENTATIVE KURKA argued that the language is the same community not a different community, and "community" is broader than the language [in Amendment 2] which specifically stated available to the "home". So, he maintained, if a certain level

of service is available in the community, the home would have to provide that level of service even if the Internet provider was unable to provide that same level of access to the home.

REPRESENTATIVE MCCARTY said he is not concerned with the use of community nor the device being at the resident's own expense.

REPRESENTATIVE KURKA suggested a conceptual amendment that would replace "in the community" with "to the home".

REPRESENTATIVE SPOHNHOLZ suggested "in the community to the home,".

CO-CHAIR SNYDER suggested "availability to the home in the community,".

[3:46:33 PM](#)

REPRESENTATIVE SPOHNHOLZ moved Conceptual Amendment 1 to Amendment 3: after "availability" insert "to the home". Thus page 1, line 11, would read, "subject to availability to the home in the community, and having a private device to". There being no objection, Conceptual Amendment 1 to Amendment 3 was adopted.

[3:47:56 PM](#)

The committee took a brief at-ease.

[3:48:34 PM](#)

CO-CHAIR ZULKOSKY asked whether it is clear within this language that there are exceptions for facilities located within communities that don't have unencumbered access to the Internet.

MR. BAXTER responded that he believes the language as crafted would cover DHSS for ensuring that exemptions could be carved out for communities and individual facilities that have difficulty accessing the Internet or high-speed Internet.

[3:51:03 PM](#)

REPRESENTATIVE KURKA noted the inequality of Internet pricing across the state. He pointed out that the further away from urban areas the higher the cost for the same level of service costs. He said he is concerned about putting this cost burden on the assisted living homes unless it is something the homes

already have. He said he is going to oppose Amendment 3 rather than offer an amendment to shift this cost burden from the home to the resident.

CO-CHAIR ZULKOSKY removed her objection to the motion to adopt Amendment 3 [as amended] to CSSB 89(FIN).

REPRESENTATIVE KURKA objected to Amendment 3, as amended.

A roll call vote was taken. Representatives McCarty, Spohnholz, Fields, Zulkosky, and Snyder voted in favor of Amendment 3, as amended. Representatives Prax and Kurka voted against it. Amendment 3, as amended, was therefore adopted by a vote of 5-2.

[3:54:21 PM](#)

REPRESENTATIVE KURKA moved to adopt Amendment 4 to CSSB 89(FIN), as amended, labeled 32-GS1675\B.2, Dunmire, 5/13/21, which read:

Page 1, lines 4 - 5:

Delete ". The house rules must be consistent with 42 C.F.R. 441.301(c) (4) and [,]"
Insert ", "

Page 1, line 6, following "chapter.":

Insert "An assisted living home that receives federal funds shall adopt rules consistent with 42 C.F.R. 441.301(c) (4)."

Page 1, line 12, following "42 C.F.R. 441.301(c) (4) (vi) (D)":

Insert "if the provider receives federal funds"

CO-CHAIR SNYDER objected for the purpose of discussion.

REPRESENTATIVE KURKA spoke to Amendment 4. He allowed it is important to protect residents in [assisted living] homes in statute, but said he is concerned that the bill cites federal laws and regulations that the homes must comply with. That is appropriate for homes which are receiving federal funds, he stated, but it would be unjust and inviting federal overreach to require homes which do not receive federal funds to comply with federal regulations. He said Amendment 4 would therefore limit the scope of this to those homes that receive federal.

CO-CHAIR SNYDER requested Ms. Lynne Keilman-Cruz to speak to the concern that Amendment 4 would address.

3:56:11 PM

LYNNE KEILMAN-CRUZ, Chief of Quality, Division of Seniors and Disabilities, related that [DHSS] had considered that language in the bill but didn't see how a system could be established where private-pay individuals who could potentially pay more would have less rights than those receiving support under the Medicaid waivers. It would be a double standard, she stated, so for consistency [DHSS] made it apply to all providers regardless of the funding type. She said [DHSS] believes this is minimally burdensome as currently written without Amendment 4 and there is no indication that providers would not currently meet those minimal standards. She further noted that there are very few providers not receiving Medicaid or not certified Medicaid providers, so the language in the bill is minimally burdensome to the department.

MR. BAXTER agreed. He stated that if this right is going to be afforded to residents in some assisted living homes it should be afforded in all assisted living homes. For residents' rights, he said, it must be remembered that these are the residents' homes, not institutions, so this is something that should be supported across all facilities, not as certain ones that are dependent on Medicaid dollars. He said residents and their families would find it difficult to comprehend if a resident was to move from one home to another and the rules on their rights suddenly change because that home doesn't accept Medicaid home and community-based waiver service. He maintained that residents should be afforded the right regardless of which assisted living home they are residing in and should be able to have visitors of their choosing at the time of their choice, just as would anyone else living in their own personal home.

4:00:01 PM

REPRESENTATIVE PRAX said he doesn't understand how anybody would be forced to live in any given home, so he questions why the homes should be required to do something. If a person wants a service that is not offered, he continued, then that person has the right to not purchase that assisted living home.

CO-CHAIR SNYDER responded that sometimes by virtue of limited availability a person's options are restricted, and therefore someone requiring the services of an assisted living home is forced into that option.

REPRESENTATIVE SPOHNHOLZ noted 42 CFR 441.301(c)(4) includes an individual's rights to privacy, dignity, respect, and freedom from coercion and restraint. She stated that folks should be able to have the things listed here as rights regardless of whether they are being paid for by the resident or by Medicaid. These are people's homes, places where three or more people live, she continued, and people should be able to live in dignity and free from interference, so they have the liberty to live their best lives.

REPRESENTATIVE PRAX concurred, but said the simple solution is that someone can move if they don't like where they are living. He said he questions how often people are forced to live in a given home situation.

REPRESENTATIVE SPOHNHOLZ answered that these are people who cannot live by themselves autonomously. She stated that in some communities there may not be multiple assisted living homes and therefore few choices. She further stated that at a little over 700 assisted living homes in Alaska there aren't enough to meet the need and it is difficult to find a home. It needs to be ensured that everybody can have the rights of dignity and liberty, she said, regardless of how it is being paid for.

[4:03:47 PM](#)

REPRESENTATIVE KURKA stated that Amendment 4 would not change the nearly three pages of statute that do guarantee the rights of residents. He said his objection and the thrust of the amendment is not that onerous things are being added to this law, but that federal statute is being cited, which is subject to change and not governed by the Alaska State Legislature. If it is thought that those federal rules are good, he continued, then they should be put into state statute instead of citing the federal code number and saying a home must comply with federal rules and state rules. There are two standards, he stated, and the issue is saying that a home must comply with the federal rules even if not receiving federal monies.

CO-CHAIR SNYDER stated she sees the logic, but noted it isn't unusual to reference federal rules and regulations in Alaska statute and therefore it isn't something that makes this unique to some other aspects of Alaska's statutes. She said there is opportunity moving forward if Representative Kurka wants to pursue being more specific with state protections and integrating that into state statute, but that it gives her pause

to remove these protections before being prepared to insert state level protections.

CO-CHAIR ZULKOSKY asked whether she is correct in understanding that the department's position is that adopting Amendment 4 could make enforcement of this legislation complicated and potentially burdensome for DHSS.

MR. BAXTER replied that having two different standards would make it difficult for DHSS to apply them and people would struggle when trying to transition between the facility types with different standards. He advised that having the same standard across the board for all facilities and all residents is ideal, especially since it is a resident's right.

[4:08:35 PM](#)

REPRESENTATIVE KURKA submitted that citing federal [law and regulation] in Alaska statutes is part of the problem - the state is held by federal strings that may or may not be in the best interest of the state and its communities. He said he isn't saying there is anything objectionable in this specific federal statute, rather he is objecting to applying federal strings to [assisted living] homes that are not taking federal money. Regarding the department's concerns about enforcement, he argued that DHSS has two separate standards that are being added here and it's not a matter that these rights are being deprived but that new federal requirements are being referenced in addition to the state's requirements. He said homes will have to comply with nearly three pages of rights and regulations and it's a matter of whether to comply with federal statute or code when a home is not receiving federal money.

CO-CHAIR SNYDER maintained her objection.

A roll call vote was taken. Representative Kurka voted in favor of Amendment 4. Representatives Fields, McCarty, Spohnholz, Prax, Zulkosky, and Snyder voted against it. Therefore, Amendment 4 failed to be adopted by a vote of 1-6.

[4:11:35 PM](#)

CO-CHAIR ZULKOSKY moved to report CSSB 89(FIN), as amended, out of committee with individual recommendations and the accompanying fiscal notes, and to give Legislative Legal Services the authority to make technical and conforming changes.

[4:12:09 PM](#)

The committee took a brief at-ease.

[4:12:42 PM](#)

REPRESENTATIVE KURKA objected.

A roll call vote was taken. Representatives Spohnholz, Fields, McCarty, Prax, Zulkosky, and Snyder voted in favor of reporting CSSB 89(FIN), as amended, out of committee. Representative Kurka voted against it. Therefore, HCS CSSB 89(HSS) was reported out of the House Health and Social Services Standing Committee by a vote of 6-1.

[4:13:38 PM](#)

The committee took an at-ease from 4:13 p.m. to 4:16 p.m.

HB 106-MISSING PERSONS UNDER 21 YEARS OLD

[4:16:56 PM](#)

CO-CHAIR SNYDER announced that the next order of business would be HOUSE BILL NO. 106, "An Act relating to missing persons under 21 years of age."

[4:17:29 PM](#)

LISA PURINTON, Chief, Criminal Records and Identification Bureau, Division of Statewide Services, Department of Public Safety (DPS), provided a summary of HB 106 on behalf of the bill sponsor, House Rules by request of the governor. She explained that HB 106 would align state law with federal requirements as it relates to missing persons under the age 21. She said current state law requires law enforcement agencies to report information for missing individuals under the age of 18 to the state and national databases for missing juveniles, and to the Missing Persons Clearinghouse, and this information must be reported within 24 hours of learning the person has been reported missing. She explained that HB 106 would increase the age from 18 years to individuals under 21 years to address that vulnerable population, usually college age population, that are often away from the home for the first time. As well, HB 106 would change the 24-hour timeframe to within 2 hours of receiving notification for agencies to report that information

to the state and national databases. She further specified that HB 106 would address changes to AS 18.65.620 and AS 47.10.141.

REPRESENTATIVE KURKA asked whether these are already things the state is generally doing, and it is just a matter of codifying the practice.

MS. PURINTON confirmed that this is correct. She said most of the law enforcement agencies are aware of this difference between state law and federal requirements and most do their best to comply with the federal requirement to get the data entered within two hours of receipt of the information. She stated that right now the department conducts training with law enforcement and trains them to the more restrictive federal requirement. But, she continued, there is no state requirement for them to do that; the bill addresses that gap so there is conforming language on both sides.

[4:21:58 PM](#)

REPRESENTATIVE PRAX requested confirmation that this proposed change is to align Alaska statute with federal requirements, nothing more, nothing less.

MS. PURINTON responded that that is correct. She said there are no major changes other than to increase the reporting requirement to age 21 and to more timely enter this information into the database, which is to align state requirements with federal law.

[4:22:40 PM](#)

CO-CHAIR ZULKOSKY moved to report HB 106 out of committee with individual recommendations and the accompanying zero fiscal note.

[4:23:11 PM](#)

The committee took a brief at-ease at 4:23 p.m.

[4:23:18 PM](#)

CO-CHAIR SNYDER announced that there being no objection, HB 106 was reported out of the House Health and Social Services Standing Committee.

[4:24:11 PM](#)

The committee took an at-ease from 4:24 p.m. to 4:30 p.m.

HB 153-CHILD IN NEED OF AID; NOTICE OF PLACEMENT

[4:30:49 PM](#)

CO-CHAIR SNYDER announced that the next order of business would be HOUSE BILL NO. 153, "An Act relating to the identification, location, and notification of specified family members of a child who is in state custody."

[4:31:07 PM](#)

SUE STANCLIFF, Staff, Representative Mike Cronk, Alaska State Legislature, on behalf of Representative Cronk, prime sponsor, stated that HB 153 would ensure extended family members or close family friends are contacted as potential foster parents. She said the bill's main provision would make sure that a supervisor signs off that the required due diligence search for family members has occurred. If not, she continued, the social worker is directed to complete that search to the supervisor's satisfaction in as a timely manner as possible. She further noted that the bill requires the search to be completed within a 30-day time limit, but also recognizes that Alaska is an expansive state so an extensive search may require additional time. The bill allows for that leeway, she added, but requires a supervisor to verify the progress.

MS. STANCLIFF stated that HB 153 would put this additional protection into statute since it is not currently addressed by the Office of Children's Service's (OCS). She said the policy is warranted due to the continuous high social worker turnover rate - some social workers are very new and may not continue beyond one or two years. Having a supervisor sign off that a family search has been thoroughly conducted will ensure that children are protected and in the best foster home possible. When good family placement is available, she added, keeping a child with his or her family or as close to home as possible is often the placement of the child's best interest, which is the bill's intent.

[4:33:21 PM](#)

REPRESENTATIVE MCCARTY offered his support for HB 153. He asked whether OCS has had any disagreements with the proposed legislation.

MS. STANCLIFF responded that the sponsor's understanding is that OCS is already doing this to the best of its ability and putting this into statute will codify that OCS is to do this. If OCS is not able to do it, then the supervisor would provide a written progress statement.

[4:35:21 PM](#)

REPRESENTATIVE KURKA said he likes the direction of the bill but questions whether it needs to be strengthened or cleaned up. He pointed out that for a child the 30-day requirement, which could be extended with a supervisor's approval, represents a long time. He drew attention to the term "due diligence" on page 1, line 13, and asked whether there is a standard or definition for the term. He stated he doesn't want to pass a bill full of good intent but without enough teeth to meaningfully achieve its objective.

MS. STANCLIFF replied that she doesn't have a definitive answer or response to the comments, but said the department tries to adhere to the timeframe. She specified that this is carryover from previous legislation and the sponsor took the 30 days directly from that previous work. Regarding page 1, lines 12-14, she stated that if the department is not able to complete the search within the 30 days, the supervisor must notify that DHSS has done its best to find the relatives within that 30-day period. She noted that completing the search isn't as difficult in Bush villages where everybody knows everybody and knows the families, but it can become very challenging in a different setting or if there is no living relative.

[4:39:31 PM](#)

REPRESENTATIVE KURKA stated he would like to receive background information on the previous legislative history as well as on the standard for due diligence. He referred to page 1, line 9, regarding notifying ["adult family members of the child"] and asked how family is defined.

MS. STANCLIFF answered that it is defined in statute.

[4:40:52 PM](#)

CO-CHAIR ZULKOSKY asked whether the sponsor has reached out to child welfare advocates or folks in the field who have assessed this legislation.

MS. STANCLIFF replied that the sponsor felt this was a very simple bill and has not heard from [child welfare advocates] or reached out to foster care but has spoken with the department.

CO-CHAIR ZULKOSKY noted that in 2018 Alaska was the third lowest in non-relative placement, although it may have improved with the Tribal Child Welfare Compact. She said she is interested in a future discussion with the department about where that is at in context with HB 153.

[4:42:39 PM](#)

REPRESENTATIVE FIELDS asked whether the sponsor has coordinated with Facing Foster Care, an advocacy group for foster families in Anchorage.

MS. STANCLIFF responded no but said the sponsor would do that with invited testimony.

REPRESENTATIVE SPOHNHOLZ recounted that in 2018 House Bill 151 was enacted, which required that supervisors document in writing in the case file whether a search had been conducted for an appropriate placement with an adult family member or a family friend. She offered her understanding that federal law requires the 30-day timeframe, which is why it wasn't put into House Bill 151 at that time. She encouraged the sponsor to reach out to former Representative Les Gara and Amanda Metivier with Facing Foster Care in Alaska given they are experts in child welfare law and the history of reform over the last decade and could help in the crafting and understanding the background.

MS. STANCLIFF expressed her thanks for this information. She stated that AS 47.10.990 defines adult family members.

CO-CHAIR SNYDER announced that HB 153 was held over.

HB 139-GUARDIANS; LIFE-SUSTAINING PROCEDURES

[4:45:18 PM](#)

CO-CHAIR SNYDER announced that the final order of business would be HOUSE BILL NO. 139, "An Act relating to guardians, guardianships, successor guardians, incapacitated guardians, incapacitated individuals, and testamentary appointments of guardians; and relating to withholding or withdrawing life-sustaining procedures."

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CO-CHAIR ZULKOSKY moved to adopt the proposed committee substitute (CS) for HB 139, Version LS0036\G, Bannister, 5/10/21, as the working document. There being no objection, Version G was before the committee.

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REPRESENTATIVE SARA HANNAN, Alaska State Legislature, as prime sponsor, presented HB 139. She explained that the bill comes from constituents and would resolve a very real issue that they are facing. She said HB 139 would do three things. First, it would give legal guardians of incapacitated adult wards the authority to consent on behalf of that ward to cease or withhold lifesaving medical measures when those procedures would only prolong the dying process or offer no reasonable expectation of cure or relief for the illness that the ward is being treated for. Second, it would allow the guardian of an incapacitated ward to make a testamentary (by will) appointment of a subsequent guardian for the ward should the current guardian die. Third, it would allow a guardian to name a successor guardian of his or her ward should the guardian become incapacitated. She noted that these provisions are all legal, that guardianships vary from state to state, and that the circumstances being looked at in HB 139 are narrow in the statutory areas of Alaska law.

REPRESENTATIVE HANNAN related that Paul Douglas, the constituent who brought this issue to her, is an older man who is faced with having an incapacitated [adult] child with a disease. The family fears that, once they have passed, the decisions they've made for their son for the last 60 years will not be able to be carried out. She noted that a group within the court system, the American Association of Retired Persons (AARP), and the legal community called [Working Interdisciplinary Networks of Guardianship Stakeholder (WINGS)], are looking at several aspects of guardianship law in Alaska that they believe are not adequate to deal with all circumstances. But, she continued, she has not yet engaged with those groups on this one very narrow piece that her constituent asked her to investigate.

[4:49:56 PM](#)

TIMOTHY CLARK, Staff, Representative Sara Hannan, Alaska State Legislature, provided a sectional analysis of HB 139 on behalf

of Representative Hannan, prime sponsor. He stated that the foundation of the bill is best interest of the ward. Under existing Alaska law, he explained, the authority of guardians is limited in end-of-life circumstances, which does not work in the best interest of the wards. There are examples within the Journal of the American Medical Association, he continued, of when a guardian cannot ascertain a patient's preferences and faces the ethical challenges involved in assessing a person's best interest. Guardians may be reluctant to give orders limiting treatment, he related, and reports have long suggested that they choose instead the safer path of aggressive care by default or defer to a cumbersome judicial process. That "safer path" can result in prolonging the dying process and suffering of the ward under the most extreme end of life circumstance.

MR. CLARK informed the committee that most states do not have very clear guidance for guardians in statute. That lack of clarity, he said, can lead to these inadvertent circumstances where suffering is often prolonged needlessly. Besides the specific circumstances of the sponsor's constituent, he noted, there are also more general circumstances in terms of the wellbeing of incapacitated wards under these end-of-life situations.

MR. CLARK noted that in granting guardians this authority the guardian is still not alone in this decision-making process. It is required, he pointed out, that the incapacitated ward not have on record anything written or known otherwise in terms of what his or her end-of-life choices may be. Secondly, the ward would have to suffer from what is known in law as a qualifying condition, which is essentially a terminal illness or permanent unconsciousness. The determination of that condition must be made by the ward's personal physician and another doctor if available, and when it comes to permanent unconsciousness a neurologist also must agree.

MR. CLARK addressed the provisions of HB 139. He explained that the sections in the bill dealing with a guardian's ability to name a successor guardian in a will in case of the guardian's death, or to nominate a successor in case of the guardian's own incapacity [in the future], is a peace of mind issue for someone devoted to their adult incapacitated ward. With these mechanisms, he continued, a guardian can have the peace of mind that their ward will be looked after by someone who shares their concern for their ward's wellbeing.

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MR. CLARK provided the sectional analysis for HB 139. He said Section 1 would amend AS 13.26.211 by adding a new subsection that allows the guardian of an incapacitated person to appoint by will a person to act as guardian for the ward if the current guardian dies. This new subsection also states that the appointment of the new guardian takes effect when the appointee has given notice to the persons and in one of the manners described in AS 13.26.296 and files acceptance of the appointment in the court in which the will is probated. He noted that AS 13.26.296 has to do with notification of the ward, the ward's relatives if they can be found, or other interested parties. He stated that in a future hearing the attorneys consulted by the sponsor can describe this provision further in that the court would still have authority to make a final judgement on the successor guardian's nomination.

REPRESENTATIVE HANNAN, responding to Co-Chair Snyder, noted that Mr. Paul Douglas, a constituent of hers, is committed to this issue and has illuminating insights.

[4:59:09 PM](#)

PAUL DOUGLAS testified in support of HB 139. He stated he is the father and legal guardian of his son who has been incapacitated since birth. He explained that several years ago, while exploring advance directives and end of life issues, he came to the realization that after more than 50 years of caring for, overseeing, and participating in the development, education, and overall wellbeing of his son, Alaska's statutes preclude him from participating in all lifesaving decisions regarding medical procedures related to his son's quality of life and end of life care. After several years of seeking support from his local legislators to modify the existing statutes, he continued, Representative Hannan and her staff accepted the challenge.

MR. DOUGLAS stated that this issue is very real to him because in September 2020 his son was diagnosed with stage five advanced kidney disease with a projected life expectancy of six to twelve months. He said he agrees with the medical community's advisement that his son is not a candidate for dialysis and that the only solution is to focus on quality-of-life issues. However, he pointed out, current state statute does not allow him to make those decisions on behalf of his incapacitated son.

MR. DOUGLAS asked committee members to consider the plight of hundreds of other Alaska families as they face these same heart-rending decisions. He said his intent today is to focus not only on his own personal dilemma but to in a small way represent the grave issues facing many other Alaska families caring for incapacitated wards. He urged the committee to support HB 139.

REPRESENTATIVE SPOHNHOLZ requested Mr. Douglas to describe what he means by "quality of life" decisions.

MR. DOUGLAS indicated that he meant decisions whether to provide life sustaining medical procedures [when doing so may not be the best decision]. He said his son is wheelchair bound after spinal surgery in 2016 and is now suffering from untreatable advanced kidney disease, so his lifetime is short and doing anything to prolong that doesn't make sense. After discussions with his [son's] personal care physician and other physicians, he stated, the consensus is that that is the appropriate way to go. But, he continued, according to statute he cannot make that decision and tell the doctors this is what he wants to do.

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MR. CLARK resumed the sectional analysis. He explained that Section 2 would amend 13.26.281(a), which refers to the termination of guardianships, to add that the subsection is subject to subsection (c) in the same section.

MR. CLARK stated that Section 3 would amend AS 13.26.281 by adding a new subsection (c) that would allow a guardian of an incapacitated person, while having capacity, to name a person to become a successor guardian for the incapacitated person if the guardian becomes incapacitated. He said this subsection also notes that the person named by the guardian has priority as successor, despite the categories of priority described in AS 13.26.311. He noted that this subsection further states that the appointment of the successor guardian takes effect when the appointee has given notice to the persons and in one of the manners described in AS 13.26.296 and has accepted the appointment.

MR. CLARK stated that Section 4 relates to the authority of a guardian to decide on behalf of an incapacitated ward when it comes to end of life decisions. He said Section 4 would amend AS 13.26.316(c) which has to do with the general powers and duties of guardians in two ways. The first is mainly housekeeping and would substitute the word ["ensure" for

"assure"] in four places where it appears in the section. The second is the addition of a new [paragraph] (8), which states that a guardian may make the decision to withdraw or withhold life-sustaining procedures from the ward if doing so is in the best interest of the ward. Any such decision must be made according to AS 13.52.045, which is addressed in Section 5 of the bill.

MR. CLARK explained that Section 5 would amend AS 13.52.045, which pertains to the conditions under which life-sustaining procedures may be withdrawn or withheld, including that the ward must have a qualifying condition as determined by the ward's primary physician and at least one other physician if another is available. A determination of permanent unconsciousness must include a consultation with a neurologist. He further explained that in this section "a guardian of an incapacitated person under AS 13.26" is added to those persons who may determine that life-sustaining procedures may be withheld or withdrawn from a patient if doing so would be consistent with the patient's best interests.

MR. CLARK concluded the sectional analysis by pointing out that Section 6 would repeal AS 13.26.316(e)(3), which in current statute prohibits a guardian from consenting to the withholding of lifesaving procedures on behalf of their ward.

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REPRESENTATIVE MCCARTY asked whether a guardian wishing to appoint [a successor] guardian via a will would be appointed in a proactive manner. In response to Mr. Clark, he noted that Section 1 refers to appointment [of a successor guardian] by will and that Section 3 refers to naming a successor guardian in case the guardian becomes incapacitated. He asked whether one person would be the "runner up" in the flow.

MR. CLARK replied that in the case of a testamentary appointment of a surrogate in case the current guardian dies, he assumes the current guardian could take that step at any time during his or her guardianship while still living. He said the naming a successor guardian should the current guardian become incapacitated must take place while the current guardian still has capacity.

REPRESENTATIVE MCCARTY surmised that these provisions are not asking for that to be done in advance.

MR. CLARK answered that these provisions would be completely voluntary on the part of any guardian.

REPRESENTATIVE HANNAN responded that it must be done in advance. For example, she said, the will of [the current guardian] would have to include the testamentary selection. Or, if Mr. Douglas decided he needed to have a guardian lined up in case he had a stroke, that would have to be done now while Mr. Douglas has full capacity to decide to choose someone to become the guardian for his son. So, she added, they both would have to be done prior to the event where they would be needed.

REPRESENTATIVE MCCARTY posed a scenario in which Mr. Douglas is the guardian for Representative McCarty who is incapacitated. He inquired whether Mr. Douglas must have a backup guardian in case something happens to Mr. Douglas unexpectedly.

MR. CLARK replied that these provisions are something a guardian may choose to do, not anything that a guardian would be required to do. If a guardian did choose to appoint a successor guardian by will, a testamentary procedure, then the guardian would have to be alive to create that will and provision in that will. Also, he continued, it is clear in the bill that the current guardian must have capacity at the time of appointing a successor guardian in the event of the current guardian's future incapacity.

REPRESENTATIVE MCCARTY surmised that if something happened to the guardian the courts become the guardian of the ward.

MR. CLARK deferred the question into the future when there is an attorney available to answer it.

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CO-CHAIR ZULKOSKY stated she is interested in hearing from invited testimony regarding the legal constructs around what happens under current law in the absence of HB 139.

REPRESENTATIVE SPOHNHOLZ urged that the Office of Public Advocacy be brought into this conversation since it handles public guardianship for the State of Alaska and could help unpack the legal framework for this in a constructive way. She pointed out that there is familial guardianship and public guardianship, and that care must be taken in crafting law to not conflate the two. She inquired about the rationale in Section 4 for changing the word "assure" to "ensure" in multiple places.

MR. CLARK answered that according to the bill's drafting attorney it is a style update that is legally preferred and believed to be more explicit. Responding further to Representative Spohnholz, he confirmed it is housekeeping and not a policy call that is changing the meaning.

[5:19:02 PM](#)

REPRESENTATIVE KURKA asked whether the provision in Section 1 would cause problems with contingency appointees in a will and other legal documents, or whether there is other statute that would supersede these circumstances.

MR. CLARK replied that this provision is for the guardian of an incapacitated ward to appoint, via the guardian's will, a successor guardian for the ward should the guardian die.

REPRESENTATIVE KURKA posed a scenario in which he is the guardian of a certain individual and via his will he has appointed Representative McCarty as his replacement guardian. The certain individual, he continued, has his own legal statement that appoints Representative Kurka as guardian and Representative Prax successor guardian. He asserted that the certain individual's statement making Representative Prax the successor would be a superseding document and that this contingency is not in the bill's language.

MR. CLARK offered his assumption that if an incapacitated ward had created a power of attorney or other document for health care decisions while the ward had capacity, then that document would supersede in healthcare decisions by the guardian. He said this can be confirmed by attorneys during future hearings.

REPRESENTATIVE HANNAN pointed out that the difference in the scenario that Representative Kurka is describing is someone who has had capacity and made decisions. She said HB 139 addresses the loophole of a person who has never had capacity to make those decisions and documents. The concern here, she continued, is the guardian who has always had that ability but loses it. Currently, when the guardian dies, the courts make the decision about who becomes the decider for that person. This family, she continued, is asking for the ability to have the family participate in that decision.

[HB 139 was held over.]

5:26:29 PM

ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 5:26 p.m.