

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

February 20, 2023

1:32 p.m.

MEMBERS PRESENT

Senator Jesse Bjorkman, Chair
Senator Click Bishop, Vice Chair
Senator Elvi Gray-Jackson
Senator Kelly Merrick
Senator Forrest Dunbar

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

PRESENTATION(S): 80TH PERCENTILE RULE FROM THE DIVISION OF INSURANCE

- HEARD

SENATE BILL NO. 70

"An Act relating to coverage for additional insureds under owner and contractor controlled insurance programs; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 55

"An Act extending the termination date of the State Medical Board; and providing for an effective date."

- MOVED SB 55 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 70

SHORT TITLE: OWNER & CONTRACTOR CONTROLLED INSURANCE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/15/23	(S)	READ THE FIRST TIME - REFERRALS
02/15/23	(S)	L&C
02/17/23	(S)	JUD REFERRAL ADDED AFTER L&C

02/20/23 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 55

SHORT TITLE: EXTEND STATE MEDICAL BOARD

SPONSOR(s): WIELECHOWSKI

02/01/23 (S) READ THE FIRST TIME - REFERRALS
02/01/23 (S) L&C, FIN
02/17/23 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/17/23 (S) Heard & Held
02/17/23 (S) MINUTE(L&C)
02/20/23 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

LORI WING-HEIER, Director

Division of Insurance

Department of Commerce, Community and Economic Development

Anchorage, Alaska

POSITION STATEMENT: Presented an overview of the 80th Percentile Rule relating to health insurance.

LORI WING-HEIER, Director

Division of Insurance

Department of Commerce, Community and Economic Development

Anchorage, Alaska

POSITION STATEMENT: Introduced SB 70 on behalf of the administration.

ED MARTIN, representing self

Kenai, Alaska

POSITION STATEMENT: Testified in opposition to SB 70.

SENATOR BILL WIELECHOWSKI, District K

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Provided a brief recap of SB 55.

ACTION NARRATIVE

1:32:30 PM

VICE-CHAIR CLICK BISHOP called the Senate Labor and Commerce Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Gray-Jackson, Dunbar, Merrick, Chair Bjorkman (via teleconference) and Vice-Chair Bishop.

**PRESENTATION(S): 80th PERCENTILE RULE FROM THE DIVISION OF
INSURANCE**

[1:33:14 PM](#)

VICE-CHAIR BISHOP announced a presentation from the Division of Insurance titled, "Alaska's 80th Percentile Rule". He invited Ms. Wing-Heier to put herself on the record and begin her testimony.

[1:33:57 PM](#)

LORI WING-HEIER, Director, Division of Insurance, Department of Commerce, Community and Economic Development, Anchorage, Alaska, presented an overview of the 80th Percentile Rule. The 80th percentile is not a statute; it is a regulation. The division issued a public testimony notice on whether the state should repeal the 80th Percentile Rule. It is a controversial subject. The division has scheduled three hearings. She said consumers that purchase healthcare insurance will testify the 80th percentile is driving up the cost of healthcare, and consequently, drives up the cost of health insurance. She said providers will testify the 80th percentile is what keeps them doing business in Alaska. She said the administration is in a conundrum. It knows how much the cost of the state's healthcare affects private citizens, small employers, large employers, and school districts, but the administration also respects its healthcare providers.

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MS. WING-HEIER reviewed slide 2.

What is the 80th Percentile Rule?

3AAC 26.110(a) in relevant part provides "a person that provides coverage in this state for health care services or supplies on an expense incurred basis for which benefits are based on an amount that is less than the actual amount billed for the health care services or supplies shall...determine the final payment for a covered service or supply based on an amount that ...is equal to or greater than the 80th percentile of charges (based on a statistically credible profile for each geographical area) for the health care services or supplies."

MS. WING-HEIER clarified this regulation describes "a person" as an insurance company or someone paying healthcare bills. A person shall pay what is determined as the final payment for a

covered service or supply based on an amount equal to or greater than the 80th percentile charges based on a statistically credible profile for each geographical area. Determining a statistically credible profile for each geographical region is sometimes tricky because the state is extensive, and costs vary from rural to urban.

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MS. WING-HEIER reviewed slide 3:

This is not paying claims at 80 percent

Different health care providers may charge different amounts for the same health care service. When these different charges are listed from the lowest charge to the highest charge, the 80th percentile would be the data point where 80 percent of the number of listed charges fall below the data point and 20 percent of the number of listed charges fall above the data point.

MS. WING-HEIER said it is known that different healthcare providers charge different amounts. It is a concern. There are two different fees:

- The division refers to one as the rack rate, and
- The negotiated rate is what insurance companies pay.

MS. WING-HEIER clarified that the 80th percentile is not the same as 80 percent; it does not mean health-insurers pay 80 percent of a bill. The 80th percentile means the median of all the charges in the system and the data point where 80 percent fall above and 20 percent fall below. The charges are fairly similar for radiologists, anesthesiologists, etc. There is not much difference in their charges. The committee will hear various arguments from constituents. She said one argument is that the 80th percentile sometimes helps set rates, remarking that she neither agrees nor disagrees with the view.

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MS. WING-HEIER advanced to slide 4 to discuss who the 80th Percentile Rule affects. She said it applies directly to all insured plans, which is a small Alaska group. The division estimates that 15 - 20 percent of Alaskans are in an insured health plan, where there is an insurance company that the division regulates. The 80th percentile does not cover union trusts and self-insured plans, but large plan administrators

expect to be paid near or close to the 80th percentile. The state plan paid at that higher rate up until recently but has negotiated down. She noted it has become a common way to pay for healthcare, even on self-funded or large trust plans. Slide 4 reads:

Who does the 80th Percentile Rule apply to?

The Rule applies to accepted health benefit plans and health benefit plans in the individual, small group, and large group markets.

The Rule does not apply to self-funded health benefit plans typically established by large employers.

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SENATOR GRAY-JACKSON asked for more detail about how the 80th percentile works.

MS. WING-HEIER offered a supposition, using basic math to answer the question.

SENATOR GRAY-JACKSON said that she understood the math but sought more overall detail.

MS. WING-HEIER replied that the Rule applies to out-of-network claims but not to in-network claims because those rates are negotiated.

SENATOR GRAY-JACKSON sought confirmation that the application of the Rule depends on whether the claim is in-network or out-of-network.

MS. WING-HEIER answered yes. The Rule applies to out-of-network claims; in-network claims have a negotiated rate. The 80th percentile applies to claims where the insurance provider and the health care provider have not agreed on a contract. More and more providers are in-network in Alaska; nonetheless, there are still a few out-of-network providers.

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MS. WING-HEIER reviewed slides 5, 6, and 7:

Slide 5

Why was it adopted?

The Alaska Division of Insurance updated the governing regulation in 2004 and added the minimum 80th Percentile Rule as the standard for claims reimbursement at the time.

The regulation was originally adopted to protect consumers from excessive bills.

Slide 6

Why is the division considering repealing?

The rule has been criticized for influencing the cost of health care in the state; and

The consumer protection may no longer be necessary due to Congress passing the No Surprise Act in 2020.

Slide 7

The No Surprise Act

Previously consumers were responsible for balance bills often referred to as surprise billing.

With the 80th Percentile Rule, Alaskans with state regulated health coverage rarely saw large surprise bills.

Now the No Surprise Act protects consumers covered under group and individual health plans from most surprise medical bills.

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MS. WING-HEIER said the 80th Percentile Rule was adopted in 2004 because Alaskan consumers complained insurance companies paid such small amounts that they were left with huge balance bills or surprise bills. This regulation was implemented to protect consumers from companies that paid \$10 on a \$100 charge.

MS. WING-HEIER said she was a proponent of the 80th Percentile Rule. She thought it would prevent surprise bills; however, Alaska did not really have a surprise bill problem because insurance providers paid at the 80th percentile. The federal government passed the No Surprise Act in 2020. The Act required insurance companies and healthcare providers to negotiate rates, which took the consumer out of the middle. In Alaska, a qualifying payment amount in statute or regulation takes

precedence. So, even with the No Surprise Act, Alaska still adjudicates claims based on the 80th percentile.

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SENATOR DUNBAR asked what the No Surprise Act covers.

MS. WING-HEIER replied that the No Surprise Act (NSA) covers the consumer protections listed on slide 8:

NSA - Consumer Protections

Establishes new federal protections against most surprise medical bills in certain cases:

- When a patient receives out-of-network services during an emergency visit, or
- From a non-network provider at an in-network hospital without advance notice (e.g. anesthesiology, radiology, etc.), or
- Services from an out-of-network air ambulance service provider.

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SENATOR DUNBAR sought confirmation that the No Surprise Act deals primarily with emergency room visits and other procedures.

MS. WING-HEIER answered that is correct.

SENATOR DUNBAR sought confirmation that the 80th Percentile Rule covers a much broader scope than the NSA. Repealing the Rule would leave some gaps; NSA only alleviates some of the concerns the Rule addresses.

MS. WING-HEIER answered there could be some gaps. A No Surprise Act dispute between a provider and a payer goes to adjudication, and it is settled in almost a baseball-style arbitration. Alaska has not seen many adjudications because of the 80th Percentile Rule; however, the division expects there will be payer and provider payment disputes if the 80th percentile goes away.

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VICE-CHAIR BISHOP commented that he would like to see the percentage of people inside and outside the 80th percentile on a pie chart. He asked whether there is data on who is still

covered by the 80th percentile, for example, is it 10, 15, or 20 percent of the population.

MS. WING-HEIER answered that she does not have that data. The division compared Alaska's charges to Seattle and North Dakota. In 2018 or 2019, the division did a fairly large study to see the difference between what Alaska paid at the 80th percentile. Those negotiating the in-network agreements say the 80th Percentile Rule is a detriment and cannot negotiate as strong a deal as they would like. Providers can stay out-of-network and get paid 80th percentile fees, whereas in-network providers get paid less. This is one concern that prompted this hearing.

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MS. WING-HEIER reviewed slide 9, "NSA - Enhanced Consumer Disclosure:"

A provider or facility must disclose information regarding balance billing protections.

Provide a good faith estimate of the expected charges in advance of scheduled services, or upon request, to patients or their representatives.

These tools are intended to allow consumers of healthcare to make informed decisions about utilizing in- and out-of-network providers or facilities.

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MS. WING-HEIER advanced to slide 10. She said hearings start Wednesday. It is a regulation process. She said that she understands the concerns of the medical community and consumers. The state is at a point where it needs to make the decision to repeal or keep going with the 80th percentile and high healthcare costs. Slide 10 reads:

Public Comment Period

The division seeks comments and recommendations from members of the public on whether to make changes to 3 AAC 26.110.

Three hearings:

- February 22nd - Atwood Building, Anchorage, AK
- February 24th - Atwood Building, Anchorage, AK
- March 1st - State Office Building, Juneau, Alaska

Submit written comments to Sarah Bailey at Sarah.Bailey@Alaska.gov Comment period closes on March 6, 2023.

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SENATOR DUNBAR asked which states have an 80th Percentile Rule or something similar to it and how the cost of health care compares in the states that have and do not have it.

MS. WING-HEIER answered New York is the only state that uses an 80th Percentile Rule, and only for emergencies. They have been getting away from it since the No Surprise Act passed. No other state uses it like Alaska does, not one.

SENATOR DUNBAR sought confirmation that the legislature funded an all-payer claims database last year.

MS. WING-HEIER replied that the legislature funded the division to get the state, Medicaid, AlaskaCare, and insurance companies to submit claims voluntarily. It will not encompass all Alaskans as a true all-payer claims database would.

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SENATOR DUNBAR asked whether the large insurance companies agreed to give their data to the all-payer claims database.

MS. WING-HEIER replied the database is not all set up yet. The division went through a request for proposal (RFP) process, issued a contract in July, and signed it by November. So, the system is in the design phase. She expressed her belief that the largest insurer would participate in the database, and the smaller insurance companies will too. Premera has 90 percent of the market in Alaska.

SENATOR DUNBAR sought confirmation that Premera intends to participate.

MS. WING-HEIER confirmed Premera will participate.

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CHAIR BJORKMAN (via teleconference) sought confirmation that the 80th Percentile Rule acts as a price guarantee. Providers determine the amount they can charge, then submit those prices to the all-payer claims database. Therein, they kind of control the cost themselves. He asked if this was a correct characterization.

MS. WING-HEIER replied that this has been one of the criticisms about this regulation from many people, but she declined to characterize the regulation.

CHAIR BJORKMAN asked how she would explain it better.

MS. WING-HEIER answered the 80th percentile sets a high bar for claim payments and probably allows little room for insurance companies to negotiate network agreements that help reduce the cost of health care.

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CHAIR BJORKMAN asked if the high bar for payments is set when providers, who expect 80th percentile payments, submit their prices to the all-payer claims database.

MS. WING-HEIER replied that she is not sure that it would be, adding she was unsure about the question. She asked him to elaborate.

CHAIR BJORKMAN asked who provides the prices that establish the 80th percentile number.

MS. WING-HEIER answered the providers do.

CHAIR BJORKMAN asked whether those prices are used to calculate the guaranteed rate insurance companies use to pay claims. He sought confirmation that providers have an extraordinary influence over the guaranteed, by law, price floor.

MS. WING-HEIER answered yes, it does give them a healthy say in what insurance companies pay them.

CHAIR BJORKMAN restated and sought confirmation that:

- providers input the cost of their services into the database;
- the price level of the 80th percentile is calculated based on those costs; and
- providers are guaranteed payment at that level.

MS. WING-HEIER answered that is correct.

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SENATOR DUNBAR dovetailed off Chair Bjorkman's statements. He sought confirmation that 15 - 20 percent of people have insurance plans subject to the 80th Percentile Rule. He asked whether the 80th Percentile Rule is calculated based on the 15 - 20 percent numbers or all paid claims.

MS. WING-HEIER answered it is all claims.

SENATOR DUNBAR asked if it was fair to say that might reduce costs a bit because the other 80 - 85 percent are presumably negotiating a little bit more aggressively to get some of the costs down.

MS. WING-HEIER replied that she could be wrong, but 85 percent might be a little high for in-network providers.

SENATOR DUNBAR said that regardless of the numbers, in-network providers are presumably negotiating harder to lower costs. He asked if that is a fair assessment.

MS. WING-HEIER answered yes.

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SENATOR DUNBAR commented that on its face, it seems like a ratchet. If it has to be the 80th percentile, then it seems like the costs will go forever. There is no natural mechanism to bring it down. He asked about Medicare and Medicaid. He expressed concern about unintended consequences for Medicaid and Medicare recipients, wondering whether there is any concern that this will reduce access to providers for either of those groups.

MS. WING-HEIER answered that the division does not believe it will affect Medicaid and Medicare recipients. She noted some providers do not accept Medicare or Medicaid. The Department of Health (DOH) may have a different view.

SENATOR DUNBAR asked why DOH might have a different view.

MS. WING-HEIER said that she could not speak on behalf of DOH. She speaks as the Division of Insurance director, and from the division's view, it appears the 80th percentile will not affect Medicaid and Medicare recipients or have an unintended consequence.

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VICE-CHAIR BISHOP asked whether the state would have a fairly good overview by the end of the March 1 regulation and public comment process.

MS. WING-HEIER replied that it would.

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SENATOR GRAY-JACKSON sought confirmation that the Rule only applies to out-of-network providers. Other providers negotiate their prices.

MS. WING-HEIER replied that is correct.

SENATOR GRAY-JACKSON asked whether the Rule applies to the Indian Health Service (IHS).

MS. WING-HEIER answered no it does not.

SENATOR GRAY-JACKSON sought confirmation that the Rule does not apply because IHS is a federal agency.

MS. WING-HEIER responded that is correct. She clarified there could be a situation in a rural community, or someone who is not a beneficiary under IHS could get treatment. That facility could still bill Premera, Moda Health, and Aetna.

SB 70-OWNER & CONTRACTOR CONTROLLED INSURANCE

[1:55:17 PM](#)

VICE-CHAIR BISHOP announced the consideration of SENATE BILL NO. 70 "An Act relating to coverage for additional insureds under owner and contractor controlled insurance programs; and providing for an effective date."

VICE-CHAIR BISHOP invited Ms. Wing-Heier to put herself on the record and introduce SB 70.

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LORI WING-HEIER, Director, Division of Insurance, Department of Commerce, Community and Economic Development, Anchorage, Alaska, introduced SB 70 on behalf of the administration. She said a large construction project in Alaska:

- is worth over \$50 million;
- has to be in a defined location, and
- has a defined period, like two or three years.

MS. WING-HEIER said the Trans-Alaska Pipeline and some improvement projects at the Anchorage International Airport would qualify as large construction projects. The owner buys all the insurance for a project instead of every contractor and sub-contractor buying their own. She said there is not really a limit to what an owner can purchase, naming workers' compensation, general liability, and professional liability insurance. The project owner controls a master program and insures employees and all the project workers under it. In some situations, the owner delegates that authority to the general contractor; that is called contractor-controlled instead of owner-controlled, which is basically the same thing.

MS. WING-HEIER said she consulted attorneys representing the division to propose changing one sentence. The sentence clarifies that a contractor would be an additional insured or a sub-contractor would be an additional insured and have the full benefits of the insurance policy that the owner would buy. She said the original bill will be amended, but the intent will not change. The administration introduced SB 70, so the division is ready to help if a project exceeds \$50 million; the division has to approve these projects. She believed a project like this could be on the North Slope.

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SENATOR DUNBAR commented that SB 70 deletes paragraph (4). He asked how long this language has been in statute.

MS. WING-HEIER replied since 2005.

SENATOR DUNBAR asked whether there have been any large construction projects since 2005 that went through this process.

MS. WING-HEIER expressed her assurance that projects have qualified since 2005. However, she has not approved one in her ten years with the division. She said the division reviewed the statutory language and noticed some ambiguity. The changes in SB 70 clarify the intent.

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VICE-CHAIR BISHOP opened public testimony on SB 70.

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ED MARTIN, representing self, Kenai, Alaska, testified in opposition to SB 70. He is a general contractor who is licensed, bonded, and insured. He has contracted in Alaska for many years. He said his concern is that the state is unnecessarily creating

money for insurance companies. It is ironic that state attorneys want to change one word in a statute. It is also ironic that the state is not following AS 39.15.010-100. He said that public official bonds are not provided for any department heads who should carry a bond for malfeasance, misfeasance, and nonfeasance in office. It blows his mind that the attorneys want to change one word that would affect the private sector yet disregard AS 39.15.010-100. He said he would not turn down insurance if someone wanted to insure him, but he wants the state to be accountable for following the statutes that other citizens have to follow. He said he would like the committee to investigate and follow up on AS 39.15.010-100.

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VICE-CHAIR BISHOP closed public testimony on SB 70.

VICE-CHAIR BISHOP invited Ms. Wing-Heier to offer a closing statement.

[2:04:06 PM](#)

MS. WING-HEIER said the division will offer an amendment to SB 70 during the next hearing that is likely to alleviate some concerns.

VICE-CHAIR BISHOP held SB 70 in committee.

[2:04:27 PM](#)

At ease.

SB 55-EXTEND STATE MEDICAL BOARD

[2:04:54 PM](#)

VICE-CHAIR BISHOP reconvened the meeting and announced the consideration of SENATE BILL NO. 55 "An Act extending the termination date of the State Medical Board; and providing for an effective date."

He said this is the second hearing and the intention is to hear a brief recap of the bill, close public testimony, and solicit the will of the committee. He invited Senator Wielechowski to put himself on the record and begin the recap of SB 55.

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SENATOR BILL WIELECHOWSKI, District K, Alaska State Legislature, Juneau, Alaska, sponsor of SB 55, stated that the bill extends the termination date of the State Medical Board from June 30, 2023 to June 30, 2031.

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VICE-CHAIR BISHOP asked if anyone wished to testify on SB 55. Finding no testifiers, he closed public testimony.

[2:06:25 PM](#)

SENATOR GRAY-JACKSON moved to report SB 55, work order 33-LS-0347\A, from committee with individual recommendations and attached fiscal note(s).

[2:06:38 PM](#)

VICE-CHAIR BISHOP found no objection and SB 55 was reported from the Senate Labor and Commerce Standing Committee.

[2:07:13 PM](#)

There being no further business to come before the committee, Vice-Chair Bishop adjourned the Senate Labor and Commerce Standing Committee meeting at 2:07 p.m.