

HB

1

<TARGET><BILL>HB 1</BILL><SUBJECT>HB
1</SUBJECT><COMM>HJUD27</COMM></TARGET>

Alaska State Legislature

SESSION ADDRESS:
Alaska State Capitol
Juneau, Alaska 99801
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Representative Carl Gatto

TO: Representative Carl Gatto, Chair
House Judiciary Committee

FROM: Rep. Carl Gatto 

DATE: March 25, 2011

RE: Request for a hearing of CSHB 01 (HSS)

Enclosed is the committee packet for CSHB 01 (HSS), *Alaska Health Freedom Act*. I have included a sponsor statement, the original and current version of the bill, and other supplemental material.

I would appreciate a hearing before your House Judiciary Committee at your earliest convenience. I appreciate your time and look forward to your reply.

Please contact my staff member, Karen Sawyer at 465-5025, with any questions or comments regarding this request.

Thank you for your consideration.

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Representative Carl Gatto

CSHB 01 (HSS) Alaska Health Freedom Act

The Alaska Health Freedom Act codifies as state policy that every person in the state of Alaska is and shall continue to be free from government compulsion in the selection of health insurance options, and that such liberty is protected by the Constitutions of the United States and the State of Alaska. The bill removes the authority of any state official or employee from enforcing any penalty which violates the policy. **CSHB 1 (HSS)** affirms the right of all Alaskans to choose their own "mode of securing health care services."

We allege that the new federal law, *Patient Protection and Affordable Care Act (PPACA)*, infringes upon the constitutional rights of U.S. individuals by mandating all citizens and legal residents have qualifying health care coverage or pay a tax penalty. By imposing such a mandate, the law exceeds the powers of the United States under the Constitution.

There are currently 44 state legislatures who have introduced legislation to limit, alter or oppose selected state or federal actions, including single-payer provisions and mandates that would require purchase of insurance. Please help Alaska join nine other states, Virginia, Idaho, Utah, Georgia, Louisiana, Arizona, Oklahoma, and Missouri, who enacted legislation in 2010 to establish the individual's right in their state to be free from government force to make their own choice about health care.

Contact: Karen Sawyer
465-5025
27-LS0006\M
Updated March 31, 2011

Alaska State Legislature

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Representative Carl Gatto

Explanation of Changes from HB 01, version A To CSHB 01 (HSS) version M

There was a concern from the HSS Committee regarding the definition of penalty in HB01, version A. Under the Patient Protection and Affordable Care Act (PPACA), there is a mandate requiring all citizens and legal residents to have qualifying health care coverage or pay a tax penalty.

A scenario was presented that an individual decided to opt out of obtaining health care insurance coverage under the PPACA. He then received health care services and was issued a bill from the practitioner. Under HB01, "*...a person has the right to choose or decline any mode of obtaining health care services without penalty or threat of penalty.*"

The concern was that this individual could say that the bill from the practitioner could be viewed as a "penalty" under the definition in HB 01, stating that a "*penalty means a fine, tax, surcharge, fee, or other monetary charge.*" This individual could potentially not pay for the practitioner's bill because HB01 states a person declining health care insurance would not be penalized.

Therefore, a qualifying statement was added in CSHB 01 (HSS), Page 2, Line 9 stating "*...however, liability for the cost of health care services is not a penalty*". This additional definition to "penalty" will alleviate the concern of practitioners not being paid for health care services.

Karen Sawyer
March 16, 2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB001
 () Publish Date: _____

Identifier (file name): HB001-DHSS-HCMS-02-24-11
 Title: Policy for Securing Health Care Services
 Sponsor: Rep. Bob Lynn, Rep. Carl Gatto
 Requester: House HSS Committee
 Dept. Affected: Health and Social Services
 Appropriation: Medicaid Services
 Allocation: Heath Care Medicaid Services
 OMB Component Number: 2077

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES								
CHANGE IN REVENUES								

FUND SOURCE (Thousands of Dollars)

	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost: _____

POSITIONS

	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

NA

Prepared by: Kim Poppe-Smart, Director
 Division: Health Care Services
 Approved by: Alison Elgee, Assistant Commissioner
DHSS Finance & Management Services

Phone 334-2520
 Date/Time 2/24/11 12:00 AM
 Date 2/24/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB001

Analysis:

The bill adds a new AS 44.99.130, which states that a person has the right to choose any mode of obtaining or declining health care without subject to penalty or threat of penalty. There is an exception for health programs that are required by the State, its political subdivisions, and State courts. The bill adds no responsibility to the Department of Health and Social Services and would not directly impact it.

Explanation of Page 1, Line 12: *“(1) does not apply to health care services provided or required by the state, a political subdivision of the state, or a court of the state; and may not impair a contract right that provides health care services.”*

This subsection does not apply to

- persons in custody of the Department of Correction or a local confinement facility or who have not completed all requirements imposed as the result of a sentence in a criminal conviction, including, but not limited to, any type of probation, parole, or post-release supervision.
- This section shall not be construed to expand, limit, or otherwise modify any of the following:
 - (1) that a spouse is liable for the necessary expenses incurred by the other spouse, including expenses incurred by medical necessity, or any other duty a person owes to a spouse or dependent with respect to the provision of health care services or medical treatment.
 - (2) Any law regarding which health care services or medical treatments are lawful within this State or who is authorized to provide health care services or medical treatments within this State.
 - (3) Any law regarding the right or duty of a parent or guardian in the determination or provision of health care services or medical treatment for a minor.
 - (4) Any law regarding the screening of newborns for metabolic or other hereditary and congenital disorders, examination and testing of a child for lead poisoning and health assessments for children entering Kindergarten in the public schools
 - (5) Any law regarding health care services or medical treatments ordered under the Workers' Compensation Act.
 - (6) Any law regarding health care services or medical treatment regarding involuntary commitments for mental illness or substance abuse.
 - (7) The physical and mental examination of a party ordered by a judge, such as, blood or genetic testing to establish paternity
 - (8) Any law requiring the provision of health insurance for employees as a condition of receiving State economic incentives.
 - (9) Any law regarding the examination and testing of persons to determine possible exposure to nuclear, biological, or chemical agents caused by a terrorist incident

NFIB

The Voice of Small Business®

ALASKA

February 28, 2011

The Honorable Carl Gatto
Alaska State Representative
State Capitol Building
Juneau, Alaska 99801-1182

RE: House Bill 1

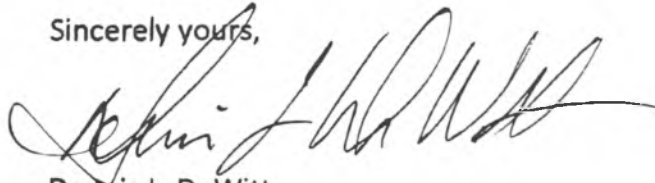
Dear Representative Gatto,

On behalf of the National Federation of Independent Business/Alaska, I wish to express our support for House Bill 1. The National Federation of Independent Business is the largest small-business advocacy group in the Alaska.

House Bill 1 establishes a state policy that an individual cannot be coerced to purchase a health insurance policy. This legislation at the state level will help block a government requirement to purchase health insurance. If enacted in Alaska, the legislation will block an individual mandate. NFIB believes that the government does not have constitutional authority to mandate an individual purchase health insurance.

As you may be aware, NFIB is the only trade association that is a party to the lawsuit filed in federal court in Florida. The district court found in favor of our suit. We expect the government will appeal the ruling. In the interim, we believe it is important that Alaska, that is also a party to the suit, set a state policy consistent with the position advocated in the lawsuit.

Sincerely yours,



Dennis L. DeWitt
Alaska State Director

cc: House Health Education & Social Services Committee



AARP Alaska
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February 28, 2011

The Honorable Wes Keller, Chair
House Health and Social Services Committee
Alaska Capitol, Room 432
Juneau, AK 99801-1182

RE: HB 1 (Gatto and Lynn)—Oppose

Dear Chair Keller:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the House Health and Social Services Committee to oppose HB 1, authored by Representatives Carl Gatto and Bob Lynn and co-sponsored by Representative Peggy Wilson.

There is no doubt that there is significant disagreement about the impact of federal health care reform, in particular the individual mandate.

To date, three federal judges have found it constitutional and two have found aspects of the federal bill to be unconstitutional.

AARP advocates for the full implementation of the Affordable Care Act in every state. We believe the federal law should be implemented to best meet the needs of older Americans and their families.

If HB 1 is enacted, we believe Alaskans would face a series of unintended consequences:

- Who would pay for the health care costs of individuals who decide to opt out of coverage? Would our hospitals have to provide free care to those who choose not to obtain insurance or who have limited coverage or high deductibles? To make up for this free care, hospitals would have to charge everyone else more, resulting in higher premiums for individuals, employers, state and local government and school districts, PERS and TRS.
- Because it would allow individuals to opt out of any health care coverage, HB 1 could, for example, preclude courts from ordering one party in a divorce proceeding to maintain health insurance for his spouse and children. This would leave many without coverage and some would undoubtedly seek coverage under Medicaid and Denali KidCare or rely on uncompensated hospital care.
- We understand that HB 1 would permit the sale of insurance by out-of-state and off-shore insurance companies not subject to state laws, regulation or courts. Consumers who have problems would not be able to seek the assistance of the Alaska Division of Insurance.

AARP believes there is great uncertainty of how the legislation would be carried out. The consequences of HB 1 are, we believe, not fully known or understood.

The language is vague and will be open to so many interpretations that it can only result in costly litigation for the state.

Our health care should not end up in litigation—that's nobody's idea of freedom of choice.

HB 1 could also impact the private sector too. It could result in insurance companies raising premiums, deductibles and co-pays—driving up already skyrocketing health care costs for individuals and businesses. Physicians and other providers, including our network of community health centers, hospitals and nursing homes, would find themselves serving even more uninsured patients.

HB 1 is a risky gamble. It is more than a political gesture to Washington, DC. HB 1 raises too many unanswered questions and unintended consequences. Why bet Alaska's health care on an unproven idea?

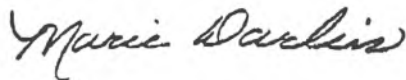
The federal health care reform implementation improves the state's ability to deliver health care for its citizens. Health care for our citizens is too important to become a turf war between the state and federal government.

AARP requests an "NAY" vote on HB 1.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Vice-Chair Alan Dick
Representative Bob Herron
Representative Paul Seaton
Representative Sharon Cissna
Representative Bob Miller
Representative Charisse Millett
Representative Carl Gatto
Representative Bob Lynn



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March 31, 2011

The Honorable Carl Gatto, Chair
House Judiciary Committee
Alaska Capitol, Room 118
Juneau, AK 99801-1182

RE: HB 1 (Gatto and Lynn)—Oppose

Dear Chair Gatto:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the House Judiciary Committee to oppose HB 1, authored by you and Representative Bob Lynn and co-sponsored by Representative Peggy Wilson.

There is no doubt that there is significant disagreement about the impact of federal health care reform, in particular the individual mandate.

To date, three federal judges have found it constitutional and two have found aspects of the federal bill to be unconstitutional.

AARP advocates for the full implementation of the Affordable Care Act in every state. We believe the federal law should be implemented to best meet the needs of older Americans and their families.

If HB 1 is enacted, we believe Alaskans would face a series of unintended consequences:

- Who would pay for the health care costs of individuals who decide to opt out of coverage? Would our hospitals have to provide free care to those who choose not to obtain insurance or who have limited coverage or high deductibles? To make up for this free care, hospitals would have to charge everyone else more, resulting in higher premiums for individuals, employers, state and local government and school districts, PERS and TRS.
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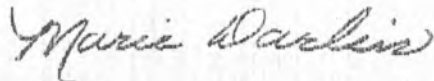
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Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Vice-Chair Steve Thompson
Representative Wes Keller
Representative Bob Lynn
Representative Lance Pruitt
Representative Max Graenberg
Representative Lindsey Holmes

Sarah Munson

From: Karen Sawyer
Sent: Friday, April 01, 2011 9:13 AM
To: Sarah Munson
Subject: FW: HB 179

Importance: High

From: Sally Clampitt [<mailto:sclampitt.sPCA@alaska.net>]
Sent: Friday, April 01, 2011 8:57 AM
To: Rep. Bob Lynn; Rep. Carl Gatto; Rep. Mike Chenault; Rep. David Guttenberg; Rep. Berta Gardner
Subject: HB 179
Importance: High

Dear Representatives Lynn, Gatto, Chenault, Guttenbert and Gardner:

The Alaska Society for the Prevention of Cruelty to Animals strongly supports any legislation that strengthens our state animal cruelty laws. We understand that HB 179 is before you now, and would provide that cruelty to five or more animals, as defined in more detail in the legislation, would constitute a class C felony. While we understand that there may be isolated instances where "back yard" individuals are charged with cruelty or neglect, to less than 5 animals, that is determined not to rise to the level of a felony, they should be treated as the exception to the rule, and not be the basis for a rule that allows cruelty to 4 animals, for example. If an individual commits egregious cruelty to 5 animals, s/he is guilty of a felony, but the same act(s) to 4 animals is not; and egregious pain and suffering to one animal is not. We do not believe that these standards are in the best interest of the animals.

We understand that Anchorage Animal Care and Control has made recommendations that would modify the proposed HB 179 so that this loophole does not occur. We sincerely hope that you will take their recommendations into serious consideration.

We are very grateful to all of you for your interest and hard work on behalf of animals, and hope that you will take HB 179 just one more notch to make it truly effective and meaningful for those creatures who depend entirely upon your decisions for their very lives.

Respectfully,

Sally Clampitt
Executive Director
Alaska SPCA
549 W. International Airport Rd. #B2
Anchorage, AK 99518
Office Tel: 907-562-2999
Cell: 907-350-0945
<http://www.alaskasPCA.org/>

CS FOR HOUSE BILL NO. 1(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES GATTO AND LYNN, Peggy Wilson

A BILL

FOR AN ACT ENTITLED

1 **"An Act stating a public policy that allows a person to accept or decline any offered**
2 **mode of securing health care services."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 SHORT TITLE. This Act may be known as the Alaska Health Freedom Act.

7 *** Sec. 2.** AS 44.99 is amended by adding a new section to article 2 to read:

8 **Sec. 44.99.130. Declaration of policy for securing health care services.** (a) It
9 is the policy of the State of Alaska that a person has the right to accept or decline any
10 offered mode of obtaining health care services without penalty or threat of penalty.

11 (b) The policy stated in (a) of this section

12 (1) does not apply to health care services provided or required by the
13 state, a political subdivision of the state, or a court of the state; and

14 (2) may not impair a contract right that provides health care services.

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(c) In this section,

(1) "health care services" means a service or treatment, or provision of a product, for the care of a physical or mental disease, illness, injury, defect, or condition, or to maintain or improve physical or mental health;

(2) "mode of obtaining" means directly purchasing health care services from a health care provider or purchasing insurance to cover the cost of health care services;

(3) "penalty" means a fine, tax, surcharge, fee, or other monetary charge; however, liability for the cost of health care services is not a penalty.

27-LS0006\B
Gatto
4/6/11

Conceptual Amendment

OFFERED IN THE HOUSE
TO WORK DRAFT CS HB 01 (JUD)

REP. GATTO

Page 1, Line 4-6

Delete lines 4-6

Page 2, Line 6

Insert after health care provider (AS DEFINED IN SEC. 09.55.560)

"material" to a reasonable patient's decision concerning treatment. Under this view, expert testimony concerning the professional standard of disclosure is not a necessary element of the plaintiff's case because the scope of disclosure is measured from the standpoint of the patient. *Korman v. Mallin*, 858 P.2d 1145 (Alaska 1993).

Signed informed consent. — The requirements set forth in 7 AAC 12.120(c) are not inconsistent with this section. The regulations simply impose a supplemental requirement that the patient's medical record contain a "signed informed consent" before a surgical procedure may begin. *Sweet v. Sisters of Providence*, 895 P.2d 484 (Alaska 1995).

In a medical malpractice suit, the court found no merit in the patient's contention that the implied consent form was invalid, because it was witnessed by a nurse instead of being signed in the doctor's presence. Neither this section nor its implementing regulation, 7 AAC 12.120, require that the treating physician personally read the consent form to the patient or witness the patient's signature. *Harrold v. Artwohl*, 132 P.3d 276 (Alaska 2006).

Discussion of risks associated with procedure. — In a case involving informed consent, summary judgment was improperly granted in favor of several healthcare providers where no evidence was presented regarding whether the risks associated with a catheterization were discussed with a patient prior to the performance of the procedure. *Parker v. Tomera*, 89 P.3d 761 (Alaska 2004).

Failure to inform patient of reasonable alternative. — Where a patient underwent surgery to remove his appendix, the record suggested that he may not have been told that a CT scan could have ruled out the need for immediate surgery. The supe-

rior court erred by dismissing his malpractice suit upon summary judgment; a triable issue of fact was raised concerning informed consent under this section. *Harrold v. Artwohl*, 132 P.3d 276 (Alaska 2006).

Informing patient of HIV/AIDS status of hospital roommate. — Assignment of a room and a roommate to patient does not qualify as a "treatment or procedure," requiring informed consent. *Gallant v. United States*, 392 F. Supp. 2d 1077 (D. Alaska Oct. 5, 2005).

Validity of regulation. — The trial court in an evidentiary hearing did not adequately investigate the application of 7 AAC 12.120(c) which requires a signed informed consent before a surgical procedure because there was an insufficient factual basis from which to conclude that the regulation either was or was not obscure and whether or not it could be fairly interpreted to set the standard of care. *Sweet v. Sisters of Providence*, 895 P.2d 484 (Alaska 1995).

Hospital's duty to obtain consent. — This section did not impose a duty on a hospital to obtain a patient's consent before her physicians proposed and ordered blood transfusions. *Ward v. Lutheran Hosps. & Homes Soc'y of Am., Inc.*, 963 P.2d 1031 (Alaska 1998).

Jury instructions held proper. — In a medical malpractice case, a court properly instructed the jury that the doctor had a duty to disclose information that would be material to a reasonable patient; "material information" was defined as information which the surgeon knew or should have known would be regarded as significant by a reasonable person in the patient's position. *Marsingill v. O'Malley*, 128 P.3d 151 (Alaska 2006).

Cited in *Marsingill v. O'Malley*, 58 P.3d 495 (Alaska 2002).

Collateral references. — Modern status of views as to general measure of physician's duty to inform patient of risks of proposed treatment, 88 ALR3d 1008.

Duty of medical practitioner to warn patient of subsequently discovered danger from treatment previously given, 12 ALR4th 11.

Liability for failure of physician to inform patient of

alternative modes of diagnosis or treatment, 38 ALR4th 900.

Medical practitioner's liability for treatment given child without parents' consent, 67 ALR4th 511.

Malpractice: physician's duty, under informed consent doctrine, to obtain patient's consent to treatment in pregnancy or childbirth cases, 89 ALR4th 799.

Sec. 09.55.560. Definitions. In AS 09.55.530 — 09.55.560,

(1) "board" means an arbitration board established under AS 09.55.535;

(2) "health care provider" means an acupuncturist licensed under AS 08.06; an audiologist or speech-language pathologist licensed under AS 08.11; a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational therapist licensed under AS 08.84; a physician or physician assistant licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; a hospital as defined in AS 47.32.900, including a governmentally owned or operated hospital; an employee of a health care provider acting within the course and scope of employment; an ambulatory surgical facility and other organizations whose primary purpose is the delivery of health care, including a health maintenance organization, individual practice association, integrated delivery system, preferred provider organization or arrangement, and a physical hospital organization;

(3) "panel" means an expert advisory panel established under AS 09.55.536;