

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 0072

9923 HOUSE LABOR & COMMERCE

ALASKA DENTAL CARE BILL OF RIGHTS

A bill currently before the Alaska State Legislature entitled the "Alaska Dental Care Bill of Rights" speaks to certain issues as they pertain to your rights as a dental patient both in terms of the care you receive and the reimbursement of benefit claims for that treatment. The key points of the bill are as follows:

1. A health care insurer may not prohibit a person from obtaining dental care services from a dentist of the patient's choice, including a specialist.

2. A health care insurer may not restrict a patient's right to receive full information from their dentist regarding the care or treatment options available to the patient.

3. If a health care insurer wishes to review dental treatment, a dental treatment plan or conduct a utilization review, such review must be completed by a dentist licensed in this state.



4. A health care insurer may not directly or indirectly reimburse a patient for the cost of treatment at a different rate because of the patient's choice of dentist.

5. A health care insurer may not deny coverage, cancel a health insurance plan or otherwise take action against a patient or dentist because the patient has asserted one of these rights.

6. A person may bring civil action against a health care insurer to enforce these rights.

If you support this legislation, please sign your name in the space provided. Also, if you are willing to write a letter or testify before the State Legislature in support of this bill based on the above provisions or if you have had experiences related to these provisions, please indicate your willingness to do so by placing a check mark in the appropriate box. Thank you for participating.....The Alaska Dental Society

Signature	Printed Name	Address	Registered Voter?	Phone	Letter?	Testify?
<i>Carmen C. Whitmire</i>	Carmen C. Whitmire	PO Box 10595 Fbks AK 99501	Yes	499-0891		
<i>Judith Besser</i>	SANDRA BESSER	PO Box 82261 Fbks AK 99708	YES	457-1294		
<i>Patricia Mohman</i>	Patricia Mohman	POB 83688 Fbks AK 99708	YES	479-5294		
<i>Marcia Hajdukovich</i>	Marcia Hajdukovich	Box 72036	yes	457-4956		
<i>Sandra Kachman</i>	Sandra Kachman	2292 Larissa Dr Fbk 99712	yes	488-9765		
<i>Judith A. Hogenson</i>	Judith Hogenson	450 Valley View Dr. Fbks 99712	yes	457-1613		
<i>Pamela Wentz</i>	Pamela Wentz	3213 Riverview Dr. Fbks 99709	yes	479-8871		
<i>Gary Napiewski</i>	GARY NAPIEWSKI	420 FAREWELL AVE. Fbk AK	YES	452-3372		
<i>Iris Lindsey</i>	Iris Lindsey	P.O. Box 10272 Fbks 99710	yes	457-7766		
<i>Tom L. Chao</i>	Tom L. Chao	PO Box 83944 Fbks AK 99708	YES	479-2031		

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Signature	Printed Name	Address	Registered Voter?	Phone	Letter?	Testify?
<i>Jonathan P. Joller</i>	Jonathan P. Joller	460 McKinley View Dr. FBKS AK	Yes	(907) 452-5896		
<i>Kathy Helmsick</i>	Kathy Helmsick	358 Shannon Dr FBKS AK	Yes	907-452-7627		
<i>Corrie Seekatz</i>	Corrie Seekatz	4730 Princeton FBKS AK	Yes	907-474-2192		
<i>Mary LeBon</i>	Mary LeBon	P.O. Box 84912 FBKS AK	Yes	907-457-6999		
<i>AL GILHUY</i>	AL GILHUY	194 EAGLE RIDGE FBKS AK	YES	907-457-3651		
<i>Pam Grellmore</i>	Pam Grellmore	1136 July Dr. FBKS	Yes	907-479-7530		
<i>John Olson</i>	JOHN OLSON	1543 Seaside Loop FBKS	Yes	907-479-2648		
<i>MALLE BURGRAF</i>	MALLE BURGRAF	P.O. Box 80405, 99708	Yes	907-479-2734		
<i>Mary A Lynch</i>	Mary A Lynch	4608 Stanford Dr. 99709	Yes	907-479-6091		
<i>JAMES ROBERTSON</i>	JAMES ROBERTSON	1016 JOHN KALINAK ST FBKS 99708	Yes	907-488-6778		

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Signature	Printed Name	Address	Registered Voter?	Phone	Letter?	Testify?
<i>Christine Hume</i>	Christine Hume	PO Box 82797 Fairbanks ⁹⁹⁷⁰⁸ AK	Yes	⁹⁰⁷⁻ 479-0431		
<i>Leeann Schlottplatz</i>	Leeann Schlottplatz	471 Hillside Dr Fairbanks ⁹⁹⁷¹² AK	Yes	457-5635		
<i>Don Tan Gray</i>	Don Tan GRAY	399 Hillside Drive - Fairbanks ^{AK 99712}	Yes	457-5737		
<i>Monica E. Thomas</i>	Monica E. Thomas	PO Box 60309 Fairbanks ⁹⁹⁷⁰⁶ AK	Yes	455-6612		
<i>Anthony F. Gasbarre</i>	Anthony F. Gasbarre	2687 Hensel Trail Fairbanks ^{AK 99709}	Yes	455-6287		
<i>Donald E. West</i>	DONALD E. WEST	P.O. Box 82213	Yes	479-4453		
<i>G.T. Wehner</i>	G.T. WEHNER	304 18th Ave Fairbanks ⁹⁹⁷⁰¹ AK	Yes	456-4866		
<i>Jim Butta</i>	Jim Butta	2511 St. E Fairbanks	Yes	458-2522		
<i>Eileen Cowce</i>	Eileen Cowce	1715 Chena River Fairbanks ^{AK 99709}	Yes	479-2852		
<i>Charles Steinhilber</i>	CHARLES STEINHILBER	1015 Joyce Dr Fairbanks ^{AK 99709}	Yes	457-7725		

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Signature	Printed Name	Address	Registered Voter?	Phone	Letter?	Testify?
<i>Robert D. McNeil</i>	ROBERT D MCNEIL	3300 WEST 81ST AV	YES	(907) 248-2458	YES	
<i>John Leoney</i>	JOHN LEONEY	3904-A LOIS DR ANCH AK	YES	907-563-8877	YES	
<i>Myrona Williams</i>	MYRONA WILLIAMS	42135 Rushwood Anch AK	Yes	907-345 7616	Yes	
<i>Don Kliment</i>	Don Kliment	9151 cathedral pl	Yes	243-0855	Yes	
<i>Don Plancich</i>	Don Plancich	2072 Stanford Dr. 99508	yes	907) 214-6116		

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Apr. 16 1999 02:29PM P7

PHONE NO. : 9072763808

FROM : TOOTHDOC00000000

04/16/99 FRI 13:04 [TX/RX NO 5110] @007

ALASKA DENTAL CARE BILL OF RIGHTS

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Signature	Printed Name	Address	Registered Voter?	Phone	Letter?	Testify?
<i>Cindy Haase</i>	CINDY HAASE	3750 FURROW CREEK	YES	345-4348		
<i>Dorothy Wenzel</i>	Dorothy WENZEL	9566 Canton Loop	YES	345-6848		
<i>Carol Plancich</i>	CAROL PLANCICH	2072 Stanford Dr 99508	YES	274-6168		
<i>Cindy McCann</i>	CINDY MCCANN	7041 Oakwood Dr.	YES	578-3111 3987		
<i>Stephanie B. Urdahl</i>	Stephanie B. Urdahl	13521 Seachant Cir. 99516	YES	345-7850		

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Apr. 16 1999 02:27PM PS

PHONE NO. : 9072763808

FROM : TOOTHDOC00000000

04/16/99 FRI 13:04 [TX/RX NO 5110] [005]

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Signature	Printed Name	Address	Registered Voter?	Phone	Letter?	Testify?
<i>[Handwritten Signature]</i>	RAY A. ENGLUND	3504 Iowa ST	YES	243-4591		
<i>[Handwritten Signature]</i>	MARY AMELIN	14900 Longview Dr	YES	745 2217		
<i>[Handwritten Signature]</i>	JAMES BARTON	4685 CASCADE TR	YES	243 5253		

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Apr. 16 1999 02:26PM P4

PHONE NO. : 9072763808

FROM : TOOTHDOCS00000000

[TX/RX NO 5110] 0004

04/16/99 FRI 13:04

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Signature	Printed Name	Address	Registered Voter?	Phone	Letter? Testify?
<i>David E. Lowry</i>	DAVID E. LOWRY	3622 Carleton Ave. Anchorage	YES	907-243-6402	X
<i>Wade K. Mahoric</i>	Wade K. Mahoric	1803 Roosevelt Dr.	NO	907-561-4159	
<i>Laura Mahoric</i>	Laura Mahoric	1803 Roosevelt Dr. #55517	YES	907-561-4159	X
<i>Dale A. Fosselman</i>	Dale A. Fosselman	425 Dr. 99614 Palmer	YES	907-746-6878	
<i>Barb Underwood</i>	Barb Underwood	PO Box 87-7161	yes	907-395-0512	
<i>Michael C. Culler</i>	Michael Culler	1565 Fifth rd wasilla ak	YES	907-276-0718	
<i>Melissa Culler</i>	Melissa Culler	1725 Fifth Rd wasilla 99751	YES	907-571-1718	X
<i>Julie A. Hammond</i>	Julie Hammond	8440 Menara Ct	yes	907-349-7998	
<i>Peggy Hinchey</i>	Peggy Hinchey	8561 Cross Pointe Ln. A/A 99501	yes	907-338-7706	
<i>Annie Vitt</i>	Annie Vitt	7430 Bravo Cir	YES	907-522-6144	

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Apr. 16 1999 02:25PM P3

PHONE NO. : 9072763808

FROM : TOOTHDOCS00000000

04/16/99 FRI 13:04 [TX/RX NO 5110] @003

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<i>Holly R. Layton</i>	Holly R. Layton	2050 MINNECVA WAY Anch. AK 99515	yes	349-2652		✓
<i>Carol Brassfield</i>	Carol Brassfield	12541 Windward Anch 99516	yes	345-4590	✓	
<i>Carol Hastings</i>	CAROL HASTINGS	10313 WINDY PARK PL ANCH 99571	YES	694-4908		✓
<i>Gloria Kurtzweil</i>	Gloria Kurtzweil	12200 RAINBOW AVE Anch 99516	YES	345-0716	✓	✓
<i>Cindy MacPerron</i>	CINDY MACPERRON	7041 CHALKWOOD DR 99507	yes	344-3987	✓	✓
<i>Marilyn Roth</i>	Marilyn Roth	8040 King St. '99518	Yes	345-0133	✓	✓
<i>Teri Lovin</i>	Teri Lovin	8570 Broadway Cir Anch AK 99504	yes	338-6438	✓	
<i>Robert N. McCormick</i>	ROBERT N. MCCORMICK	7220 HUNTSMEAR CIR.	YES	344-9998	✓	
<i>Mark V. Loomis</i>	MARK V. LOOMIS	927 DENALI ST, ANCH. AK 99501	yes	274-7236		
<i>Warren Urda</i>	Warren Urda	13521 Seachan Cir 99516	Yes	345-3813	✓	

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Signature	Printed Name	Address	Registered Voter?	Phone	Letter?	Testify?
<i>Cynthia Tiracelli</i>	Cynthia Tiracelli	4030 A. Plutsky, Willow AK 99651	NO	357-5559		
<i>Nathan Binkley</i>	NATHAN Binkley	1100E Box 7532 Palmer AK 99645	YES	746-7531		
<i>Jared Hodgson</i>	Jared Hodgson	PO Box 977536 Willow AK 99654	YES	357-3827		
<i>DAN HEIL</i>	DAN HEIL	HL5 Box 16797-0 Palmer AK	YES	745-6788		
<i>Adel Neuman</i>	Adel Neuman	P.O. Box 520666 Big Lake AK	YES	892-7000		
<i>DICK CRACK</i>	DICK CRACK	PO Box 4533 Palmer AK	YES	376-0140		
<i>JANET L. PETTY</i>	JANET L. PETTY	PO BOX 873022 WILLIOW AK	YES	376-1234		
<i>MIKE PETTY</i>	MIKE PETTY	PO BOX 9775022 WILLIOW AK	YES	376-7234		
<i>JACK WARD</i>	JACK WARD	P.O. Box 13 Willow AK	YES	495-1166		

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HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 3, 1999

FURTHER REFERRALS:

Finance

Date of Committee Action: April 12, 2000

The LABOR AND COMMERCE Committee considered:

HB 121

HOUSE BILL NO. 121

DENTAL CARE INSURANCE

"An Act relating to patients' rights under a health care insurance plan or contract providing coverage for dental care, and prohibiting certain practices by health care insurers relating to dental care."

recommends it be replaced with the following committee substitute CS HB 121 CLTC the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) Dced 4/13/00

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	

CHAIR'S SIGNATURE

[Signature: Na Kately]

4-12-2000

4/12/00 Halcro rescind failure to move out - adopted

WORK DRAFT

WORK DRAFT

WORK DRAFT

4/12/00 Halcro as working document

1-LS0454K

Ford

4/12/00

Adopted

4/12/00 out w/ mdu recs & updated fiscal notes

CS FOR HOUSE BILL NO. 121()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVE BUNDE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to patients' rights under a health care insurance plan or
2 contract providing coverage for dental care, and prohibiting certain practices by
3 health care insurers relating to dental care."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

7 SHORT TITLE. This Act may be known as the Alaska Dental Care Bill of Rights.

8 * Sec. 2. AS 21.42 is amended by adding a new section to read:

9 Sec 21.42.390. Requirements relating to dental care coverage provisions.

10 (a) A health care insurer who provides coverage for dental care may not include in
11 the health care insurance plan or contract a provision that

12 (1) prohibits a covered person from obtaining dental care services from
13 a dentist of the person's choice, including a specialist;

14 (2) restricts a covered person's right to receive full information from

1 the person's dentist regarding the care or treatment options that the dentist believes are
2 in the best interests of the person.

3 (b) A health care insurance plan or contract that provides coverage for dental
4 services that allows the health care insurer to review a treatment plan or conduct a
5 utilization review must contain a provision that a treatment plan review or utilization
6 review relating to dental care for a covered person receiving treatment in this state
7 must be conducted by a dentist if the claim for reimbursement or payment is denied.

8 (c) A health care insurer may reimburse a covered person at a different rate
9 because of the person's choice of a dentist if the dentist is not a part of the covered
10 person's dental network or preferred provider organization agreement. The covered
11 expense for non-network providers may not be less than that allowed to a network
12 provider, although the covered expense may be reimbursed at a lower percentage or
13 with higher deductibles than if the service had been provided within the network.

14 (d) A health care insurer may not deny

15 (1) dental coverage, cancel a health care insurance plan or contract, or
16 otherwise take action against a covered person or a dentist because the person has
17 asserted a right described in this section;

18 (2) dental coverage or eligibility for dental coverage because the
19 covered person chooses a dentist outside of a preferred provider organization
20 agreement.

21 (e) A covered person may bring a civil action against a health care insurer to
22 enforce the person's rights under this section if the covered person has completed
23 arbitration of the dispute.

24 (f) A dentist who treats a covered person may not waive uncovered dental
25 expenses for which the covered person has liability because a covered person chose
26 the dentist outside of a dental network or a preferred provider organization agreement.

27 (g) In this section,

28 (1) "covered expense" means charges that are payable under plan
29 provisions;

30 (2) "dentist" means a person licensed in this state to practice dentistry;

31 (3) "preferred provider" means a dental provider who has signed an

1 agreement with a dental care plan to provide services to plan participants at a specific
2 rate.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CSHB 121 (L&C)

Revision Date/Time (Note if correction) 04/13/00 Dept. Affected Community & Economic Development
 Title "An Act relating to patients' rights under a health care BRU Insurance
insurance plan or contract providing coverage for dental care . . . Component Insurance
 Sponsor Representative Bunde
 Requester H (L&C) Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

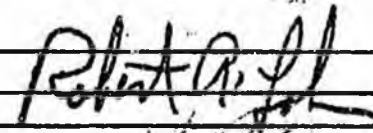
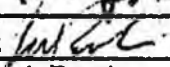
Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr  Phone 269-7900
 Division Insurance Date/Time 4-13-00 4:37 PM
 Approved by Commissioner Deborah B. Sedwick  Date 4-13-00
 Agency Community & Economic Development

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CS HB 121 (L&C)

Revision Date/Time 4/14/00 Dept. Affected Administration
 Title Dental Care Insurance BRU Centralized Administrative Services
 Component Retirement and Benefits
 Sponsor Representative Bunde
 Requester (H) L&C Component No. 64

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (1029 P/E Retire)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Although the State of Alaska self-insured health program is not legally obligated to mandates set by the legislature in Title 21, the state has followed such mandates for public policy reasons. The state health plans do not currently have any preferred provider arrangements with dentists.

Prepared by: Guy Bell, Director Phone 465-4471
 Division Retirement and Benefits Date/Time _____
 Approved by Commissioner: Robert Poe, Jr Date 4/14/00
 Agency Department of Administration

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HOUSE LABOR AND COMMERCE STANDING COMMITTEE

DATE: 3/24/99

ISSUE: HB 121

move HB 121 out of committee w/ conceptual amendment, 2 fiscal notes, 1 indiv. rec.

	YEA	NAY	PRESENT
Chairman Rokeberg	✓		
Representative Brice		✓	
Representative Cissna		✓	
Representative Sanders		✓	
Representative Harris		✓	
Representative Murkowski	✓		
Representative Halcro, Vice Chair		✓	
TOTALS:	2	5	

PASSED _____ FAILED ✓

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 121

Revision Date: _____
 Title: Dental Care Insurance
 Sponsor: Representative Bunde
 Requestor: (H) L&C

Department Affected: Administration
 BRU: Centralized Administrative Service
 Component: Retirement & Benefits
 COMPONENT SERIAL NO. 64

Expenditures/Revenues: (Thousands of Dollars)
 Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2000	FY 2001	FY2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	**	**	**	**

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	**	**	**	**

Estimate of any current year (FY 99) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This legislation will have no immediate cost to state agencies. Although the State of Alaska self-insured health program is not legally obligated to mandates set by the legislature in Title 21, the state has followed such mandates for public policy reasons. The state health plans do not currently have any preferred provider arrangements with dentists. If enacted, this legislation would prohibit the state from entering into such arrangements for cost savings reasons in the future.

Prepared by: Guy Bell, Director
 Division: _____

Phone: 465-4460
 Date: _____

Approved by Commissioner: Robert Poe Jr. *[Signature]*
 Agency: Department of Administration

Date: 3/17/99

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Alaska State Legislature

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E-MAIL
Representative_Con_Bunde@legis.state.ak.us

REPRESENTATIVE CON BUNDE

District 18

VICE-CHAIR: HOUSE FINANCE COMMITTEE
MEMBER: LEGISLATIVE BUDGET & AUDIT COMMITTEE

SPONSOR STATEMENT

HB 121

"An Act relating to patients' rights under a health care insurance plan or contract providing coverage for dental care, and prohibiting certain practices by health care insurers relating to dental care."

Consumers have to ask if their dental care has improved or become more efficient since the beginning of managed care. Many people in need of a dentist say they can't see the dentist they wish to see; they spend less time with the dentist they do see; and they feel rushed into and out of the dentist office.

When a dentist enters a preferred provider organization, the result is that an insurance company saves money and a dentist gains a volume of patients. By increasing the volume of patients each patient receives a fraction of the care that they should receive. Is it fair to allow insurance companies to tell YOU who will do your dental care?

HB 121 sets out the rights of dental health care consumers. This bill specifically:

- Allows consumers to choose any dentist they wish to see including a specialist.
- Prohibits insurers from reimbursing a covered person at a different rate because of the person's choice of dentist.
- Gives covered people the right to receive full information regarding their care options without fearing adverse actions from insurance companies.
- Allows patients to take civil action against health care insurers to enforce their rights.
- Requires any dental treatment plan review or utilization review to be conducted by a dentist.

I urge the committee's thoughtful consideration of this proposed legislation and the swift passage of this legislation from the committee.

TESTIMONY ON HOUSE BILL 121
BEFORE THE ALASKA HOUSE LABOR & COMMERCE COMMITTEE
March 19, 1999

My name is Gordon Evans and I represent the Health Insurance Association of America. HIAA is a national trade association of commercial health insurance companies which provide health insurance for approximately 55 million Americans.

HIAA strongly opposes House Bill 121. As presently written, HB 121 is really anti-consumer legislation. Let me dissect the bill paragraph by paragraph, if I may.

Sections (a)(1) and (c)(1) are so closely intertwined that I will discuss them together.

Under Section (a)(1), a health care insurance plan could not include a provision prohibiting a person from obtaining dental care services from a dentist of the person's choice, including a specialist. As you probably are aware, managed care plans attract providers by guaranteeing access to a specified pool of enrollees. Most health plans now offer the option of going out of the plan's provider network if the enrollee is willing to pay a surcharge to make up for the added cost. And that's as it should be, since out-of-network providers haven't offered enrollees a volume discount.

Proposed section (c)(1), requiring same rate of reimbursement regardless of choice of dentist, makes it very difficult for PPOs (preferred provider organizations) to negotiate discounts with dentists in their network in return for

a guarantee that the network dentists receive a certain volume of business. These volume discounts are now one of the primary ways of keeping the cost of care down, even more so than management of care.

This provision would make it difficult, if not impossible, for health plans to allow enrollees to benefit from negotiated discounts. Dentists may like the bill since it would allow them to charge more for their services, but consumers ultimately will be the losers.

HIAA has no problem with section (a)(2), regarding information on treatment options. We believe a person should be told which treatment options are in his or her best interest.

With regard to sections (b) and (e) of the bill, on page 2, HIAA believes it is both unnecessary and unwise to require that all utilization review decisions be conducted by a dentist licensed in this state. It is unlikely that most health plans can have a dentist licensed in Alaska review all dental care utilization review decisions. National plans have licensed dentists and other licensed health care professionals perform the review, but can't possibly have them licensed in all states.

Finally, Mr. Chairman, HIAA has problems with section (c)(2), which would prohibit an insurer from denying coverage, cancelling a plan, or otherwise taking action against either the insured or a dentist for asserting a right described in the

legislation, and also section (d), which would allow an insured to file suit against the insurer to enforce the insured's rights under the legislation. We believe the Division of Insurance already has existing authority covering both circumstances -- to prohibit the insurer from taking the actions set out in (c)(2) and to require the insurer to recognize the insured's rights under the plan. Allowing private causes of action in this situation would serve only to further clog up an already oversaturated court system.

*NORM - would you kindly see that
this Bill 121 moves out of committee*

House Bill No. 121

"An act relating to patients' rights under a health care insurance plan or contract providing coverage for dental care, and prohibiting certain practices by health care insurers relating to dental care"

Section I. SHORT TITLE. This act may be known as the Alaska Dental Care Bill of Rights.

Section II. AS 21.42 is amended by adding a new section to read:

Section 21.42.390 Requirement relating to dental care coverage provisions

- (a) A health care insurer who provides coverage for dental care may not include in the health care insurance plan or contract a provision that
 - (1) prohibits a covered person from obtaining dental care services from a dentist of the person's choice, including a specialist;
 - (2) restricts a covered person's right to receive full information from the person's dentist regarding the care or treatment options that the dentist believes are in the best interests of the person.
- (b) A health care insurance plan or contract that provides coverage for dental services that allows the health care insurer to review a treatment plan or conduct a utilization review must contain a provision that a treatment plan review or utilization review relating to dental care for a covered person receiving treatment in this state must be conducted by a dentist.
- (c) A health care insurer may not
 - (1) directly or indirectly reimburse a covered person at a different rate because of the person's choice of a dentist;
 - (2) deny coverage, cancel a health care insurance plan or contract, or otherwise take action against a covered person or a dentist because the person has asserted a right described in this section.
- (d) A covered person may bring a civil action against a health care insurer to enforce the person's rights under this section.
- (e) In this section, "dentist" means a person licensed in this state to practice dentistry.

Members of HOUSE LABOR & COMMERCE COMMITTEE

- ✓ **Chairman:** Representative Norman Rokeberg
- Vice Chair:** Representative Andrew Halcro
- Member:** Representative John Harris
- ✓ **Member:** Representative Lisa Murkowski
- ✓ **Member:** Representative Jerry Sanders
- Member:** Representative Tom Brice
- Member:** Representative Sharon Cissna

Reconstructive & Cosmetic Dentistry
 Laser Dentistry
DON E. BURK, D.M.D., P.C.
 The Leslie Building
 8805 Dawson St., Suite 101
 Anchorage, Alaska 99503
 (907) 582-6458

HB 121 - Opposed

Testimony of Rosemarie Kalamarides

I work with a self funded^{plan}, therefore, like most major employers in Alaska, we are not affected by this legislation. This bill will however, restrict those employers who must buy insured products from insurance companies, to provide more affordable dental coverage for their employees. In the end, the employees will bear the burden of the cost of this legislation and only the dentists who have encouraged this bill will benefit.

The text of this bill attempts to create the appearance that Preferred Provider Arrangements somehow reduce care for a patient and restrict their ability to openly communicate with their doctor, thereby affecting their "rights."

The sponsor's statement specifically states that "By increasing the volume of patients, each patient receives a fraction of the care." This is absolutely false. Therefore, the pretext of this bill is all wrong and the results will be the opposite of the intent the sponsor's statement promotes.

Preferred Provider Arrangements or Organizations (or PPO's) are not HMO's. PPOs do not reduce the amount of care provided the patient. They only exist to *control the cost* of care so that each patient can be afforded *more care!*

It is a simple concept: the payer negotiates with a group of doctors who agree to provide a level of service at a particular rate. The *doctors* must provide the service at these reduced rates. In exchange, they are given volume referrals.

Let me illustrate; if you agree to buy one widget, you will pay \$500, but if you agree to buy 100 widgets, then you pay \$300 per widget. The widget is the same! Same concept with PPOs—the care doesn't change, only the cost does because of the volume.

This proposed legislation is drafted to look like it supports the patient's rights. But, unfortunately, it will do nothing for the patient and will only enrich the highest paid professionals in the state.

The fluff in the bill even attempts to create the appearance that insurance companies are restricting information to patients and that patients should fear reprisal from insurers. While I do not work with an insurance company, I've never seen or heard any evidence to suggest this is a problem in Alaska. However, if this were a problem, then legislation to protect patients would be appropriate. But to propose a bill which protects against a non-existent problem is inappropriate.

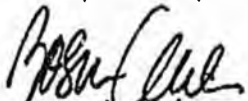
The issue is really the price of choice. Do you sincerely think that the price of choice will be paid by the insurance company? Of course not. By the employer or the doctor? Of course not. By the patient? Absolutely!

If you were just a working stiff, trying to pay your bills each month and you learn your kid needs braces and were then told that due to HB 121 and the restriction placed on PPO arrangements, while you can choose any dentist you want, your health plan can only afford to cover \$1,000 of your child's braces. And then you were told, that if this restrictive legislation had not passed, the Plan would have covered \$1,500 of your child's braces, How would you feel?

I'm confident you will not pass this out of committee. I am grateful that the democratic process requires this type of debate. Without it, quickly drafted or poorly thought-out legislation would be passed. I support patients' rights, but this legislation does nothing to promote those rights. It will only serve to increase health care costs which will be paid by those who can least afford it.

Anytime you propose legislation under the banner of helping an unrepresented group when result only serves to enrich a few wealthy Alaskans, it just makes the process unseemly. Please, do what is ethically correct and oppose this.

Thank you for your time and opportunity to testify against the proposed HB 121.


Rosemarie Kalamarides
907-565-8310
PO Box 240887
Anchorage AK 99524-0887



3200 Providence Drive
P.O. Box 196604
Anchorage, Alaska
99519-6604

Tel 907.562.2211

**Providence Health System
Statement of Opposition to HB 121
March 19, 1999**

*Presented by Janet Oates, Director of
Government Relations, 907 261-4946
P.O. Box 196604, Anchorage, AK 99519-6604*

Providence Health System expresses concern about HB 121. We understand that dentists are worrying about protecting their incomes. But at the same time we urge you to consider the needs of many Alaskan businesses who are doing their best to provide health and dental benefits to their employees.

Contracting for "preferred provider" relationships has been a significant factor in keeping insurance and health industry rates from spiraling totally out of control in Alaska. Those of you who have heard us testify on this topic in the past know how it works: negotiated discount pricing in exchange for patient volume. This bill would eliminate the possibility of that approach in dental coverage.

We have also commented in the past about the issue of choice. This bill talks about the "covered persons" choice. But it doesn't address the choice of an employer who offers a dental benefit and may well be covering a significant portion of the cost. When it comes to choosing no dental benefit or a benefit with a certain list of "preferred providers", we suspect many employers—and employees--would go with the latter. This bill interferes with an employer's opportunity to choose and manage affordable benefit packages which then in turn reduces access to care for many Alaskans.

Providence is not in the dental business, but as one of the state's largest employers we know a lot about the cost of providing health and dental benefits to our own employees. As a health care provider, we know the number of uninsured adults in Alaska remains high. From both perspectives we caution you against taking actions that discourage employers from offering decent health and dental plans.

Last year we saw the chiropractors carve out their own protection in SB 197. This bill carves out special protection for dentists. This isn't the path to greater health access for Alaskans. We urge you not to pass this bill.

THOMAS G. HIPHER, D.D.S.

March 17, 1999

Alaska State Legislature
Labor and Commerce Committee
State Capitol Building, Room 24
120 4th Street
Juneau, AK 99801-3382

MAR 23 1999

RE: HB 121

To: Representative Norman Rokeberg, Chair
Representative Andrew Halcro, Vice Chair
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna
Janet Seitz-Committee Aide

Dear Representatives:

House Bill 121 is before you with regards to dental Patient's Rights. The purpose of the bill is to define how insurance companies can act with regards to patients that are members of Preferred Provider Organizations, Dental Health Maintenance Organizations and other entities that exist under the auspices of managed care. It also pertains to patients covered under any other type of dental insurance plan except ERISA plans. Some very fundamental patient rights are being violated when it comes to benefits offered under many insurance plans. Therefore, HB 121 has been introduced to protect our patients' basic rights as they relate to the dental health care they receive and the reimbursement by their insurance carriers for this care.

Last year, HB 300 was introduced and held up in the Labor and Commerce Committee because the insurance industry and their lobbyists successfully diverted the issue from one of "patient's rights" to an issue about the increased costs that the bill would create if it were to pass. The insurance industry was also successful in convincing the committee that HB 300 was an "Any Willing Provider" piece of legislation. HB 121 is similar to last year's HB 300, but differs in that it pertains only to dental care.

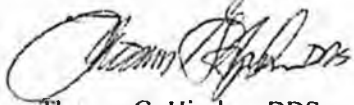
I have prepared a detailed comparison between the current HB 121, entitled the "Alaska Dental Care Bill of Rights" and "Any Willing Provider" legislation to help you understand what the differences are and to show you that **HB 121 is not "Any Willing Provider" legislation.** For you to think or to assume that HB 121 is "Any Willing Provider" legislation is incorrect. I am certain that the insurance industry will once again try to sway your vote based on two matters, namely 1) that this is "Any Willing Provider" legislation and 2) that costs will increase as a result of this legislation because they have convinced you that it is "Any Willing Provider" legislation.

Please take the time to consider the differences and realize that the insurance industry is doing nothing but protecting their bottom line at the expense of patient's rights. If the insurance industry truly believes that costs will rise as a result of this legislation, there are far better options that companies can pursue other than dental insurance that will provide patients with these rights at a much lower cost than that which can be provided by the insurance industry. Dental care does not meet the criteria for an insured risk, therefore dental care does not

need to be *insured*. In fact, the term "dental insurance" is a misnomer. Dental costs are very predictable year after year and can simply be budgeted for by a company. If you would like to learn more about this, contact either myself or Mr. Brian Rogers, a former legislator with whom all of you are familiar. If the insurance industry insists that costs will increase, we will show you how they can actually be lowered, even with passage of this bill.

I urge you to study the facts very carefully and study the eyes of the people that are trying to convince you that this bill is bad for patients. I apologize that I cannot testify at the public hearing on March 19, 1999 due to a prior commitment to take care of a patient from out of state. However, if you have any questions with regards to anything in this letter or the accompanying comparison sheets, please contact me either by mail, email at simsa@alaska.net or by telephone at (907) 349-5585.

Respectfully submitted,



Thomas G. Hipsher, DDS

Cc: Alaska Dental Society
Dr. David Logan, President of the Alaska Dental Society
Dr. Rob Robinson
Mr. Brian Rogers

Any Willing Provider vs. Patient's Rights Legislation

Prepared by Thomas G. Hipsher, DDS

Key points with "Any Willing Provider" legislation:

1. Any dentist can join the PPO (Preferred Provider Organization) or DHMO (Dental Health Maintenance Organization), therefore the insurance company cannot limit the number of dentists.
2. Each dentist that joins agrees to a set fee schedule and cannot balance bill for procedures covered under the PPO or DHMO agreement.
3. Each dentist that joins agrees to all contractual requirements of the PPO or DHMO.
4. Patients have no legal recourse against an insurance company in a PPO or DHMO for treatment that the insurance company has dictated as appropriate for the patient and for which the patient is ultimately harmed by the treatment through no fault of the provider.
5. When a PPO or DHMO is limited to a few dentists, the participating providers are usually guaranteed a large number of patients to help offset the decrease in fees paid. When the PPO or DHMO has open enrollment, the more providers that join diminishes the number of patients that each provider can treat, therefore it becomes more difficult for a provider to survive financially. This is particularly true in a capitated plan where the doctor is paid a set monthly fee for the number of patients assigned to him/her. In these situations, the PPO and DHMO will have difficulty keeping providers because of actual monetary concerns, therefore, the PPO or DHMO falls apart.
6. "Any Willing Provider" legislation is good for the patients in one respect because when more providers join the PPO or DHMO, they have a greater choice of providers. The down side for the patients is that the care is limited to what the PPO or DHMO says is appropriate. Another down side for the patients is when the patients go to non-participating providers, the PPO or DHMO either pays a reduced amount for the service (an amount less than the schedule of allowances) or pays nothing at all. In this situation, the patients must pay the difference between what the non-participating providers charge and what has been allowed by the PPO or DHMO. Therefore, there is a strong financial disincentive for patients to leave the PPO or DHMO. This tends to have a stabilizing effect on the PPO or DHMO. The following will illustrate this situation:

Type of Entity or Legislation

	<u>PPO or DHMO</u>	<u>Any Willing Provider</u>	<u>No Patient Rights</u>
Total number of Patients	20	20	20
Total number of procedures	100	100	100
Normal provider fees charged	\$10,000	\$10,000	\$10,000
Contractual provider fees charged	\$7,000	\$7,000	no contract
Average reimbursement by insurance company	\$5,600	\$5,600	\$4,480
Cost to the patients **	\$1,400	\$1,400	\$5,520
Increase (Decrease) in insurance company profit	-0-	-0-	\$1,120

**This represents the insurance co-payment amount for the "PPO or DHMO" and "Any Willing Provider" situation and the co-payment plus balance billing for the "No Patient's Rights" situation. Under the "PPO or DHMO" and the "Any Willing Provider" situations, there can be no balance billing to the patient.

Key points with the "Patient's Rights" legislation:

1. Dentists can join PPO's and DHMO's, but usually by invitation from the PPO or DHMO. Therefore, PPO's and DHMO's can exist in this situation.

2. The number of dentists that belong to a PPO or DHMO is usually limited because of the need by the insurance company to guarantee a certain number of patients to the participating providers. This is to help offset the decrease in fee allowances to the providers. Patient's Rights legislation will actually benefit PPO's and DHMO's in that participating providers will be given a strong incentive to perform better because the patients can, in effect, fire them for inadequate or inappropriate treatment. There is even stronger incentive for non-participating providers to provide better services due to the increased costs to the patients. However, if the patients decide they want to pay the additional costs because they feel that they receive better treatment elsewhere, they should have the right to do so.
3. The most important element is for the patient. If Patient's Rights legislation is passed, patients are still given strong financial incentives to receive treatment under their PPO or DHMO, but they are able to take their benefits with them if the plan fails to live up to the patients needs or satisfaction. In other words, patients are guaranteed that when treatment is rendered either by participating or non-participating providers, that the procedures will be covered to the same extent. **The difference in cost to the insurance company would be absolutely nothing.** The following scenario will illustrate this:

Legislation Type

	<u>Any Willing Provider</u>	<u>Patient's Rights</u>
Total number of Patients	20	20
Total number of procedures	100	100
Normal provider fees charged	\$10,000	\$10,000
Contractual provider fees charged	\$7,000	no contract
Average reimbursement by insurance company	\$5,600	\$5,600
Cost to the patient **	\$1,400	\$4,400
Increase (Decrease) in insurance company profit	-0-	-0-

**This represents the insurance co-payment amount for the "Any Willing Provider" situation and the co-payment plus balance billing for the "Patient's Rights" situation.

4. As shown above, **there is a strong financial disincentive for a patient to leave a participating provider** for treatment. However, if the patient elects to spend the additional out-of-pocket money, he/she should have the right to do so and at least receive a benefit equal to that which would have been obtained had they sought treatment from a participating provider. After all, they or their employer are paying the insurance company a premium. Again, **the additional cost to the insurance company is nothing.**
5. The only potential for increased costs to insurance companies under the Patient's Rights legislation is the situation where the majority of patients elect to go outside the network of participating providers. With fewer patients for the participating providers, the insurance company may have to increase its payment schedule to the providers in order to make up for the decrease in the numbers of patients seeing the participating providers. If this occurs and patients are in fact willing to pay the additional costs, then there is something basically wrong with the PPO or DHMO that is causing the patients to seek treatment elsewhere.
6. Patients are given the right to bring civil action against an insurance company for any harm that has been done to them as a result of decisions made by the insurance company. Also, a patient's policy cannot be cancelled because the patient has exercised any rights under the Patient's Rights legislation.

THOMAS G. HIPHER, D.D.S.

Telefacsimile Cover Sheet

Date: March 17, 1999

Time: 5:20 PM

To: All addressees and cc:'s **Fax #:** See below

Attn: _____ **Re:** House Bill 121

From: Thomas G. Hipsher, DDS **Fax #:** (907) 522-1663

5 Pages including this cover sheet.

To all Representatives via Ms. Patty Swenson (Con Bunde's Office) 907-465-3871
Alaska Dental Society 563-3009
Dr. David Logan 907-780-4274
Dr. Rob Robinson 907-373-7500
Brian Rogers 907-452-3134

TALKING POINTS HB121

I am here today to discuss protecting basic patient rights. HB121 is designed to protect the most basic of patient rights, namely to be able to choose your dentist and to be treated fairly by your insurance company.

HB121 asks that patients have 4 rights preserved.

Patients should be allowed to seek the dentists of their choice and be allowed access to specialist care as needed. This is the most basic of rights – to choose who delivers your dental care.

You have created a bond with your dentist and you would not wish for that bond to be broken by your insurance company. More importantly, think of the kids who have forged a bond with their dentists after much time and effort on the kids, parents and dentists part. Would you like having that bond broken by an insurance company in those circumstances?

Gag clauses. The need to restrict their usage is self-evident.

A licensed dentist should review claims. This insures that the person entrusted to determine the proper benefit has an actual knowledge of dentistry. The current system uses clerks following a manual that is usually written by someone without any actual knowledge of dental treatment.

Lastly, HB121 asks that patients not be discriminated against by their insurance company based on their choice of dentists. This is by far the most misunderstood part of HB121. The dentist is going to receive the same reimbursement regardless of the passage of HB121; it is the patient who suffers under the current system. This bears repeating

We have heard today how this bill is Any Willing Provider under another name. This is simply not so. If patients see dentists outside of the panel they have a copayment to meet, they stay inside the panel they do not. That in a nutshell sums up the difference between Any Willing Provider and HB121 and why patients still have a financial incentive to see dentist within the panel and why this legislation will not change the viability of PPO's and HMOs.

Dentists will still have the same incentive to be members of managed care plans, namely a directed source of patients from the insurance companies in exchange for discounted fees. HB121 will not change this relationship in any way: the vast majority of patients will seek plan dentists to avoid copayments and dentists will participate to ensure a steady influx of patients. It is the small number of patients who see a dentist outside the managed care plan that this bill seeks to address. The nonparticipating dentist will fare no better or worse under HB121; it is truly about patient protection.

High Costs in all health care industry

This bill is not an attempt to short circuit the managed care process but *by insurance plans* simply to insure that the patients who are covered ~~under such plan~~ have their basic rights preserved. Even though the financial provisions of HB121 will *affect* only ~~cover~~ a small number of the patients covered under managed care plans their rights are no less important for their small numbers.

Under the current system patients who see dentists outside the panels of managed care plans are forced to endure a double financial penalty. They have copayments to meet for their treatment, which is fair and why there is a financial incentive to stay within the plan, however, they are also forced to pay the penalty cost between what is paid to plan dentists and what is paid to nonparticipating dentists, which is not fair. Once again it is crucial to remember the dentist is paid the same regardless of the passage of HB121, it is the patient who suffers.

There are two possibilities for how HB121 would affect insurance companies: if they planned on every patient seeing a participating dentist then there will be no revenue difference what-so-ever to the **insurance company**. All we are asking is they reimburse the **patient** the same amount they would pay a plan dentist. Now if the insurance company has counted on reimbursing some patients at a lessor rate because they went outside the plan then they will see a revenue difference. If this is the case then they are no longer seeking to control costs but to punish patients for seeking care from a nonparticipating dentist and make a profit on the patients' penalty.

The insurance companies have spoken today about their role in protecting the patients from dentists. Unfortunately, no one is providing the opposite role namely protecting the patients from insurance companies. The only option for patients is using the "review process" of the insurance companies, a self-controlled fox guarding the henhouse process.

It is also worthwhile to note that for all the rhetoric from the insurance companies about protection the ADS is here supporting patient rights that provide no benefit to dentists and the insurance companies are opposing even the most basic rights of patients.

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LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 17, 1999

SUBJECT: Sectional Summary of HB 121.

TO: Representative Con Bunde
Attn: Patti Swenson

FROM: Michael F. Ford 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Short title.

Section 2. Prohibits a health care insurer from imposing certain restrictions relating to choice of a dental care provider and relating to information about treatment options. Requires that decisions about dental care insurance coverage be made by a dentist. Imposes restrictions on reimbursement rates and prohibits retaliation by an insurer for assertion of a right described in this section. Provides for a private cause of action to enforce rights under this section.

MFF:glc
99-106.glc

DENTISTRY
AND THE LAW

ERISA Update

A recent federal district court decision upholds portions of a Texas patient protection statute establishing a patient's right to sue a health maintenance organization.

In 1997, Texas passed a law establishing a cause of action for malpractice against an HMO or other managed care organization. This law, the Texas Health Care Liability Act, is the first of its kind and has been applauded by many.

After its enactment, the law was challenged by four subsidiaries of Astra Liability Casualty Co., which sued the Texas Department of Insurance on the basis that the law was preempted by the Employee Retirement Income Security Act, or ERISA. But a Texas federal judge has upheld portions of the law that secure a patient's right to sue an HMO for malpractice injuries.¹

ERISA'S PREEMPTIVE CAPABILITIES

To understand the lawsuit, it is necessary to have a general understanding of ERISA and how it purports to preempt some state laws. ERISA is a federal statute that was enacted to protect employee pension benefits by applying extensive controls to em-

ployee pension programs. Self-funded health benefit plans—in which an employer puts aside its own moneys to pay employee health care bills, as opposed to purchasing a health insurance policy from an insurance company—also are covered under ERISA. The idea was to have a nationwide set of rules for employers with pension and benefit plans so that they would not need to comply with a patchwork of state regulations.

To promote the uniform operation of benefit plans according to these federal requirements, ERISA contains a broad preemption clause: it generally preempts all state laws insofar as they relate to any employee benefit plan. Thus, if a patient sues a company because its corporate practices led to injury, the corporate defendant is immune from state law liability, such as for malpractice, if the benefits plan is covered under ERISA.

The distinction between whether a state law claim arises out of a benefits determination or a treatment decision can be a slippery one. For example, cases in which the claim alleges the improper processing of a claim for bene-

BY PETER M. SPIRKAS, J.D.

fits—such as the refusal of an insurer or utilization reviewer to authorize treatment—are generally considered by the courts to arise from a benefits or administrative determination and, thus, are preempted.

As discussed in my February JADA column,¹ ERISA preemption has led to troubling results in some cases. The remedies provided through ERISA are more limited than those available in the typical state law malpractice action. While ERISA permits plaintiffs to recover benefits that were wrongfully denied, it does not allow plaintiffs to recover money damages typically available in a state law malpractice action, such as for pain and suffering, lost wages and loss of consortium.

THE TEXAS CASE

Returning to the case, the Texas law allows a person to sue a health insurance carrier, HMO or other managed care entity for damages caused by the entity's failure to exercise ordinary care when making health care decisions. The law also holds such companies liable for substandard treatment decisions made by their employees, agents or representatives.

The challengers essentially argued that the law amounted to impermissible interference by the state with the federal, uniform scheme of employee benefit regulation under ERISA. Judge Vanessa Gilmore of the U.S. District Court for the Southern District of Texas disagreed. She found that the law merely requires health insur-

ance carriers, HMOs and other managed care entities to exercise ordinary care when making medical decisions—and imposes the standard to use ordinary care on such entities without any reference to, or reliance on, an ERISA plan. In other words, the law imposes a standard of ordinary care on health insurance carriers, HMOs and other managed care entities regardless of whether the commercial coverage or membership therein is ultimately secured by an ERISA plan, a private purchase or some other arrangement.

The district court found that the Texas law was distinguishable from two New York statutes that were held to be preempted by the U.S. Supreme Court, because the existence of an ERISA plan was essential to such laws' operation. The New York statutes had prohibited employers from structuring their employee benefit plans in a particular manner—something apparently related to the administration of the plan.

The judge noted that the Texas law does not open HMOs to all types of lawsuits. It only allows lawsuits based on the quality of benefits provided—not a benefit determination.

The court did find that portions of the Texas law are preempted by ERISA because such provisions improperly mandate the administration of employee benefits. These portions of the law were severed from the portion that was upheld.

At press time, both sides of the case were considering appealing the ruling. Whether or to



Mr. Billie is ADA general counsel and an adjunct professor of law at Loyola University of Chicago School of Law. He has lectured and written on legal issues and is a fellow of the American College of Trial Lawyers. Address reprint requests to Mr. Billie at the ADA, 811 E. Chicago Ave., Chicago, IL 60611.

what extent state patient protection legislation is preempted by ERISA is still open to question. It remains to be seen whether a higher court will overturn or modify this particular decision and how other courts will treat similar legislation. It is a nebulous area that has led to calls for congressional clarification.

CONCLUSION

In previous columns, I have explored cases in which plaintiffs have successfully held managed care companies liable for the actions of its doctors—based on the legal theories of agency and vicarious liability. If statutes such as the Texas Health Care Liability Act are upheld, patients may have expanded avenues for redress. ■

This article is informational only, and does not constitute legal advice. Dentists must consult with their private attorneys for such advice.

The author expresses his appreciation to Jill Wolowita, manager, ADA Contract Analysis Service, for her assistance in preparing this article.

1. Corporate Health Insurance Inc. vs. The Texas Department of Insurance, 12 F.Supp.2d 697 (S.D. Texas 1998).
2. Billie PM. Should ERISA be amended? JADA 1998;128:242-4.

*David L. Nielson, D.D.S.**Julie M. Robinson, D.D.S.*

GENERAL DENTISTRY

880 N STREET, SUITE 301
ANCHORAGE, ALASKA 99501
TELEPHONE 276-7787
279-8274

3-10-99

Dear Representative Rokeberg,

As residents in your legislative district, as dentists, and as individuals who are concerned about where health care in America is heading, we feel compelled to write in favor of HB121, the Dental Patient Rights Bill.

While the public is, at the present time, ultimately able to choose any dentist they wish, there are many factors at work in the insurance market place that severely limit that ability by incorporating financial penalties for doing so. It is imperative that patients be able to freely choose any general dentist or specialist they wish to see without their insurance company limiting that right by reimbursing the patients at a different rate depending on which provider they choose.

HB 121 also addresses another fundamental right to which patients must be entitled. Under no circumstances should an insurance plan discourage or withhold the patients right to at least hear all available treatment options. The public deserves to make informed decisions about their health care, and withholding the mention of treatment options should not be tolerated.

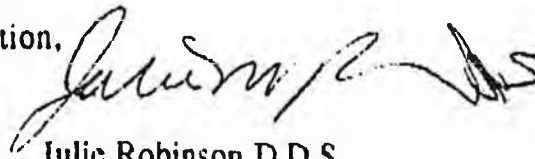
Obviously enough, an insurance company should be able to review submitted claims and treatment plans. However, is it in the patients best interest to have these reviews done by a clerical person with no dental training and nothing more than a written set of guidelines to go on? I submit to you that the public deserves the right to have a fair and reasonable review of their treatment plan by an individual who thoroughly understands which course of treatment is in each patients best interest. That individual should be a licensed dentist.

We urge you to take an important step towards protecting public rights and vote yes to pass this bill out of the House Labor and Commerce Committee.

Thank you for your consideration.



David Nielson D.D.S.



Julie Robinson D.D.S.

March 10, 1999

Dear Representative Rokeberg,

I am writing in response to HB 121, the Dental Patients Bill of Rights.

It is my understanding that this bill affects me in the following areas:

I should be able to choose my own dentist.

I should be able to seek the care of a specialist should the need arise and that decision should be made between me and my dentist of choice. No insurance company should be able to limit this right.

I should be able to make an informed decision regarding my health care and the treatment options that my dentist believes are in my best interest.

I should be able to expect that any review of my treatment plan or my care be made by someone with an understanding of dentistry i.e., a licensed dentist.

I should expect reimbursement financially by an insurance company without being penalized because of my choice of a dentist.

A copy of The Dental Patient Rights Bill was referred to me and as a dental patient as well as an employee of a dental office, I felt it necessary to express my opinions.

Sincerely,

Lorraine Childress

Lorraine Childress
Dental Administrator

William P. Fell D.D.S.



(907) 274-5617

549 W. Fireweed Lane • Anchorage, AK 99503

March 10, 1999

Dear Representative Rokeberg,

I am writing in support of HB 121, the Dental Patient Rights Bill.

HB 121 preserves the basic rights of patients to be treated fairly regardless of the type of their dental insurance.

Patients deserve the right to see the dentist of their choice including a specialist if it is appropriate. This is the most basic right of a patient, being able to choose who provides their dentistry.

Patients should be told of their full range of treatment options not just the ones an insurance company would like them to hear. They deserve to make an informed decision about their health care. The right to hear about all treatment options available is basic to that right.

Patients deserve to have their benefits reviewed by a licensed dentist not a clerical person without any dental training. To use anyone other than a licensed dentist is to deprive the patients of the right of a reasonable review and any recourse for that review.

Lastly, patients should not be discriminated against financially by insurance companies because of their choice of dentists. To reimburse patients differently for their choice of dentists penalized the patients right to choose.

I urge you to vote yes to pass this important bill out of the House Labor and Commerce Committee.

Sincerely,

Handwritten signature of William Fell

William Fell
Executive Committee Member



Alaska Dental Society

3305 Arctic Blvd., Suite 102
Anchorage, Alaska 99503-4975
(907) 563-3003 • FAX: 563-3009

March 8, 1999

Representative Norman Rokeberg
Alaska State Legislature
State Capitol
Juneau, AK

Dear Representative Rokeberg:

The Alaska Dental Society is urging all members of the House Labor and Commerce Committee to move HB121, the Dental Patient Rights Bill, out of Committee.

HB121 preserves the patient's most basic rights: The right to choose a dentist, to be told about available treatments, to have a trained dentist review dental insurance claims and to be equally reimbursed for those claims by their insurance companies.

Patients should be able to choose their dentist. There is no reasonable circumstance where an insurance company should supersede that right.

Patients should be aware of all reasonable treatment options available for their dental conditions. To allow "gag" clauses that limit dentists' ability to discuss treatment options is to deny patients the ability to make informed decisions.

A licensed dentist should review treatment plans and claims. Using a dentist to review claims insures an understanding of different types of dental treatment and why they are used. Use of a licensed dentist would help to insure this person is current in their dental knowledge and provides some recourse for patients if they have to appeal their claim.

It is crucial to remember the dentist who is not participating in a plan is paid the same regardless of the passage of HB121; it is the patient who is suffers under the current system. HB121 will not change the amount an insurance company pays for a given treatment, unless the insurance company counted on reimbursing some patients at a lesser rate. All HB121 asks is the insurance company pay the same amount to the patient regardless of their choice of dentists.

Thank you in advance for your consideration of this HB121 This legislation will help provide the necessary protection of patients from unfair practices by insurance companies. The Alaska Dental Society urges the House Labor and Commerce Committee's favorable response.

Sincerely,

David G. Logan, DDS
President
Alaska Dental Society

Post-Net Fax Note 7672
 To Patty Swenson
 Company Rep. Con Bunde
 Location
 Fax # Telephone #
 Comments

No. of Pages 7 Today's Date 3/10/99 Time AM
 From Dr. Mike Sage
 Company
 Location Dept. Charge
 Fax # Telephone #
 Original Destroy Return Call for pickup
 Disposition

RE: HB 121



March 10, 1999

C. Michael Sage, D.D.S., F.A.G.D., P.C.
 FELLOW ACADEMY GENERAL DENTISTRY

Representative Con Bunde
 Alaska State Legislature
 State Capitol (MS3100)
 Juneau, AK 99801-1182

Dear Representative Bunde,

I am writing to you to ask for your support of HB 121, the Dental Patient Rights Bill.

This bill is needed to preserve Alaskan's right to choose their dental health care provider, without the pressure of financial discrimination by insurance companies.

Alaskans deserve the right to see the dentist of their choice, including specialists if they feel it is necessary. It is important that patients are informed of the full range of treatment options, and not just those options deemed "adequate treatment" by an insurance company.

When a dental care plan or contract provision allows for treatment plan review or utilization review, that review should be conducted by a licensed dentist. To entrust this procedure to clerical personnel with no understanding of dentistry is certainly not in the patients' best interest.

Again, I urge you to give your full support to HB 121, and to vote yes to pass this bill out of the House Labor and Commerce Committee.

Sincerely,

C. Michael Sage D.D.S.

C. Michael Sage D.D.S.



C. Michael Sage, D.D.S., F.A.G.D., P.C.
FELLOW ACADEMY GENERAL DENTISTRY

March 10, 1999

Representative Norman Rokeburg
Alaska State Legislature
State Capitol (MS3100)
Juneau, AK 99801-1182

Dear Representative Rokeburg,

I am writing to you to ask for your support of **HB 121, the Dental Patient Rights Bill.**

This bill is needed to preserve Alaskan's right to choose their dental health care provider, without the pressure of financial discrimination by insurance companies.

Alaskans deserve the right to see the dentist of their choice, including specialists if they feel it is necessary. It is important that patients are informed of the full range of treatment options, and not just those options deemed "adequate treatment" by an insurance company.

When a dental care plan or contract provision allows for treatment plan review or utilization review, that review should be conducted by a licensed dentist. To entrust this procedure to clerical personnel with no understanding of dentistry is certainly not in the patients' best interest.

Again, I urge you to give your full support to **HB 121**, and to vote yes to pass this bill out of the House Labor and Commerce Committee.

Sincerely,

C. Michael Sage D.D.S.

C. Michael Sage D.D.S.

VICKEY J. HODNIK, D.D.S.

4014 Lake Street, Suite 210
Homer, Alaska 99603

Telephone: (907) 235-7585
FAX: (907) 235-7311

March 10, 1999

Representative Norman Rokeberg
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Representative Rokeberg,

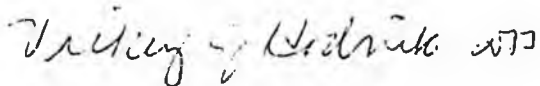
I am writing this letter to support HB 121, "The Dental Patient Rights Bill", because it protects Alaskans seeking dental care.

I believe that everyone has the right to choose their dental care provider, and, if the provider they choose is not a preferred provider, their insurance plan should pay the same amount for treatment that they pay a preferred provider.

All patients need to be told what their treatment needs are, what their options are and then choose their own treatment plan. All treatment plans must be prepared by a licensed dentist and not a non-dentist employee of an insurance company.

Please vote Yes to pass this bill (HB 121) out of the House of Labor and Commerce Committee.

Sincerely,



Vickey J. Hodnik, DDS
Pres.-elect Alaska Dental Society

"An Atmosphere of Sincere
Warmth and Caring"



Ronald J. Glaeser, D.D.S.
A PRACTICE LIMITED TO ORTHODONTICS

March 11, 1999

Representative Norman Rokeberg
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Representative Rokeberg:

I am writing in support of HB 121, the Dental Patient Rights Bill.

HB 121 preserves the basic rights of patients to be treated fairly regardless of their dental insurance. Patients deserve the right to see the dentist of their choice including a specialist. They should be told their full range of rights; not just those imposed by insurance companies. They deserve to have their charges reviewed by a claims adjuster with a dental background and training. Also, patients should not be hindered financially or discriminated against by their insurance companies.

I urge you to vote yes to pass this important bill out of the House Labor and Commerce Committee.

Sincerely,

A handwritten signature in cursive script that reads "Dr. Ronald J. Glaeser".

Ronald I. Glaeser, D.D.S., Inc.
Member, Executive Council
Alaska Dental Society

MAR 16 1999

Helmbrecht Dental

MICHAEL J. HELMBRECHT, D.D.S.

421 Third Street Fairbanks, Alaska 99701

(907) 456-1237 FAX (907) 452-4778

March 16, 1999

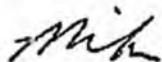
Dear Representative Norman Rokeberg:

I am writing in support of HB121, the Dental Patients Rights Bill.

We need to assure that the dental patient in Alaska maintains the right to full disclosure of treatment options from his or her dentist. This would in effect prevent the dentist from side-stepping obligations to the patient in order to fulfill contractual obligations to the insurance company. Also, the patient would maintain the freedom to choose the dentist or dental specialist that is right for his or her treatment.

Please pass this very important piece of legislation out of committee.

Sincerely,



Michael J. Helmbrecht. D.D.S.

HB

1 2 3

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 3, 1999

FURTHER REFERRALS:

Date of Committee Action: 15 Mar 1999

The LABOR AND COMMERCE Committee considered:

HB 123

HOUSE BILL NO. 123

EXEMPT SKI PATROL FROM MINIMUM WAGE

"An Act exempting individuals who provide ski patrol services on a voluntary basis from the requirement for payment of minimum wage and overtime compensation; and providing for an effective date."

recommends it be replaced with the following committee substitute CS hb 123(L+C) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) LABOR

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Tom Kely</i>	✓			
<i>Ch HW</i>	✓			
<i>Jim Sanchez</i>	✓			
<i>Tom Bruce</i>			✓	
<i>SAUNDERS</i>	✓			
<i>John H. Harris</i>	✓			

CHAIR'S SIGNATURE *Tom Kely* 3-15-99

Friday, March 12, 1999

VIA FAX

MAR 12 1999

Representative Norman Rokeberg
State House of Representatives
State Capitol, Room 24
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

I am writing in absolute support of HB 123 exempting the volunteer members of the National Ski Patrol from the requirements of the wage and hour provisions under Alaska Statutes. The United States has long been a country where the spirit of volunteerism has been the cornerstone of life. From the days of the "barn raising", to helping a neighbor in need with home maintenance, to relief from natural disasters such as floods and fires, people volunteering to help their neighbors and strangers alike have made this country strong and tied its people together.

It is ironic that the State would have an oversight in legislation that discourages the substantial contribution of volunteers. As someone who has spent their entire life helping people in one forum or another with great personal satisfaction, I would like to see the legislation passed this session (HB123) in order that I might continue.

The National Ski Patrol volunteers provide a wide variety of assistance to all types of outdoor sports enthusiasts throughout the year. We have helped with foot and mountain bike races in the summer, cross country ski meets, adventure skiing such as the annual Nordic Ski Train, extreme skiing national events at Valdez, skier safety education and emergency first aid at all the alpine ski areas (and many wilderness ski areas such as Hatcher Pass) in Alaska, and backcountry search and rescue for avalanche situations. I sincerely believe that the State and its residents have benefited greatly from these activities.

Now the increases in litigation and people trying to pass on liability for their own actions have expanded to threaten even such benign activities as National Ski Patrol volunteerism. When I injured my knee training for the Ski Patrol some eight years ago, it never occurred to me that anyone else should be liable for that injury except myself. I know that most of my fellow volunteers feel the same way. The statutory change is required to protect from lawsuits the groups and areas that allow volunteers to help make the experiences safer and care for injured sports participants to minimize the disruptions in their lives.

This legislation does NOT open a "Pandora's Box" of further legislation. It cannot be construed as applying to other groups – or be extrapolated to other groups of volunteers. I fail to comprehend how any individual or agency in good conscience could challenge the value of volunteers in any form to contribute to society. The fact is that the volunteers of the National Ski Patrol make great efforts to provide for increased

enjoyment and safety of outdoor sports participants without asking for anything in return except the satisfaction of helping others. It should be of paramount importance to the legislature that the public is not denied the benefits of the services provided by the volunteers of the National Ski Patrol in the future.

You and your fellow legislators have the opportunity at hand to make a continuation of volunteerism a reality without harming anyone. How much more of a positive statement can you make in this period of increasing demands on our citizens? I urge you to seize this opportunity to make a positive contribution to outdoor sports enthusiasts throughout Alaska by passing this legislation and following it up through the Senate to insure it becomes a reality!

Sincerely:

Joe Wehrman

Joseph F. Wehrman III
P.O. Box 244435
Anchorage, Alaska 99524

(907) 522-3611

Representative Rokeberg - please share this with your fellow Committee Members and any others you feel appropriate. A lot of people really would benefit from this legislation!

Thanks!

Joe Wehrman

CS FOR HOUSE BILL NO. 123(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the exemption from the requirement for payment of minimum
2 wage and overtime compensation for certain volunteers of nonprofit organizations;
3 exempting individuals who provide ski patrol services on a voluntary basis from
4 the requirement for payment of minimum wage and overtime compensation; and
5 providing for an effective date."

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

7 * Section 1. AS 23.10.055(6) is amended to read:

8 (6) an individual engaged in the nonprofit activities of a nonprofit
9 religious, charitable, cemetery, or educational organization or other nonprofit
10 organization where the employer-employee relationship does not, in fact, exist, and
11 where services rendered to the organization are on a voluntary basis and are related
12 only to the organization's nonprofit activities;

13 * Sec. 2. AS 23.10.055(16) is amended to read:

1
2
3
4
5
6
7

(16) an individual who

(A) provides emergency medical services only on a voluntary basis;

(B) [OR AN INDIVIDUAL WHO] serves with a full-time fire department only on a voluntary basis; or

(C) provides ski patrol services on a voluntary basis.

* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

Joint Statement of Understanding Between the National Ski Patrol and the National Ski Areas Association (Revised July 1993)

This Joint Statement of Understanding is intended to define the relative positions of general ski area management, through the auspices of the National Ski Areas Association (hereafter NSAA), and the National Ski Patrol (hereafter NSP) and its member volunteer patrols and patrollers. It is recognized that matters which may not be covered in this Joint Statement may develop from time to time in the future, and that such matters may, by mutual agreement, be the subject of a further expansion of this Joint Statement of Understanding, if necessary and agreed upon.

It is recognized between the parties to this Joint Statement or Agreement that individual groups of volunteer patrollers may form and/or belong to a patrol organization that is itself a member of the NSP. However, any NSP member or group of patrollers performing ski patrol services at a ski area in the United States is subject to the following:

1. A patrol, once established at a given ski area, is under the supervision of the ski area management and must abide by the policies and procedures established by that management.
2. The patrol director of any NSP volunteer patrol shall, if required by area management, certify that all patrollers at that area have completed the training and educational requirements set forth by the NSP Board of Directors and have met all Outdoor Emergency Care (OEC) requirements.
The NSAA encourages its member areas to require patrollers at each area to meet the current NSP training and educational criteria or their equivalent.
3. Management shall, at all times, have the right to approve the selection of the volunteer patrol director. Management shall likewise have the right to dismiss the patrol director or any patroller at any time. If requested by area management, the NSP division director shall confirm management's decision in this regard.
4. NSP and NSAA recognize the importance of educating lift evacuation participants as to appropriate lift evacuation techniques and the specific implementation details in the ski area lift evacuation plan. The establishment of necessary policies and procedures for lift evacuation, lift evacuation training, and the selection of equipment to be used in conjunction with such evacuation or training is the sole responsibility of ski area management. Patrollers will participate in lift evacuation and lift evacuation training only as ski area management shall direct.
5. Both the NSP and ski area management agree that incident investigation and documentation is an important element of patrol activity. To that end, ski area management shall establish a procedure for accurate compilation, safe retention, authorized disclosure of and controlled access to information and documentation relating to any incident. As such, no patroller shall make any statement regarding any incident to anyone, other than to proper authorities having rightful jurisdiction. Any such inquiry shall, in any event, and in the first instance, be referred to area management or its appointed representative.
6. It is recognized that ski area management ultimately supervises and controls many of the patrolling activities of individual NSP members and patrols at each ski area. As such, it may be asserted that the ski area bears legal responsibility for such acts of its patrollers. It is also understood and agreed that there are services provided by individual NSP members based upon their training received from NSP. To the extent that claims are made against individual ski areas relating to activities over which ski area management has ultimate supervision or control, it is agreed that the ski area should make no claim or demand or suit against NSP or its directors, officers, and employees. Likewise, to the extent that the basis for any such claim relates to areas of specialty training of individual patrollers by NSP, NSP should not make any claim against individual ski areas, regardless of any claim made against them.
7. It is specifically understood between the parties to this Agreement that nothing herein, and nothing contained in any individual agreement between the NSP and individual ski areas based on the Joint Statement of Understanding, shall in any way vary the clear, non-employee status of individual volunteer patrollers. In fact, it is expressly understood between the NSP and the NSAA, as well as the membership of both organizations, that the volunteer patrollers are not and have not been employees, but agents when acting within the scope of their assigned duties, in view of the voluntary nature of their patrolling services.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 123

Revision Date/Time (Note if correction): _____
 Title: Exempt Vol. Ski Patrol From
Minimum Wage
 Sponsor: House L&C
 Requester: House L&C

Department Affected: Labor
 BRU: Labor Standards & Safety
 Component: _____
Wage and Hour
 COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
CHANGE IN REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
FUND SOURCE #						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

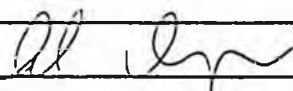
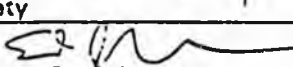
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

This bill exempts non-profit ski patrols from the state minimum wage and overtime laws.. Currently, the only non-profit groups that may accept volunteer labor are those that are organized for religious, educational, charitable or cemetery purposes.

Prepared by: Al Dwyer, Director  Phone: 465-4855
 Division: Labor Standards & Safety Date/Time: 3/8/99 10:16 AM
 Approved by Commissioner: Ed Flanagan, Commissioner 
 Agency: Department of Labor Date: 3/8/99

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Mar-10-99 02:17P

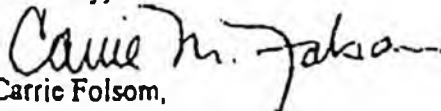
P.01

Fairbanks Legislative Info. Office
119 N Cushman, Suite 101
Fairbanks, AK. 99701-2879
Phone: (907) 452-4448
Fax: (907) 456-3346

To Whom It May Concern:

This is pertaining to the BILL: HB 123. We, all of Ski Patrol support the HB 123 Bill. We enjoy Voluntarily putting in time to feel as though we are giving the skiing community our care and support of safe fun skiing. So please we need the exemption provided in the HB 123 Bill. "We Need Your Support."

Sincerely,


Carrie Folsom,
Fairbanks, AK.
Moose Mtn. Ski Patrol.

MAR 10 1999

Bob Janes
P.O. Box 240432
Douglas, Ak 99824

March 10, 1999

PUBLIC OPINION MESSAGE

FAX To: Alaska House of Representatives (465-2864)
Labor and Commerce Committee
Attention: Representative Norman Rokeberg, Chairman

Dear Representative Rokeberg:

This message is in support of HB123 to Exempt Volunteer Ski Patrollers from the Alaska wage and hour statutes. I understand you have a committee hearing on it, scheduled for 3:15pm today.

I have been a resident of Douglas, Alaska for thirty three years, and during this period I have served as an active volunteer ski patroller with the Juneau National Ski Patrol. I believe our services to the public are very comparable to other groups that have been specifically named in the authorized list of people who are exempt from the minimum wage and overtime statutes in Alaska. Specifically, volunteer firemen, and volunteer ambulance attendants perform similar services to our patrolling duties of providing outdoor emergency care to injured persons on the ski slopes at operating ski areas throughout the state.

You already have a position paper from the Alaska Division of the National Ski Patrol which fully explains the reasoning for the requested legislation to include our group in the exemption list. As a member of that organization, I fully support the stated position.

Sincerely,


Bob Janes

Juneau National Ski Patrol

March 10, 1999

Via: Facsimile

Representative Norm Rokeberg
House Labor and Commerce Committee
130 Seward St.
Juneau, AK. 99801

Dear Representative Rokeberg:

Please give your support to HB 123 which exempts a person who provides ski patrol services on a voluntary basis from the requirement for payment of minimum wage and overtime compensation.

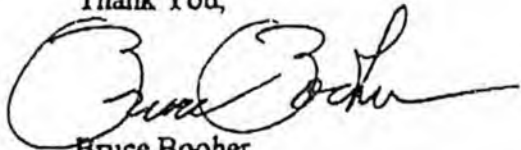
The volunteer ski patrol provides excellent on-mountain coverage to ski areas throughout Alaska with volunteers from all walks of life. As an example, the volunteer patrol at Alyeska Ski Resort includes dentists, lawyers and teachers as well as business owners, service technicians and sales people.

Training standards are high and are set by the National Ski Patrol, an organization every patroller is a member of. In Alaska it is the volunteer patrollers, certified by the National Ski Patrol, that provide training for all new volunteer and professional patrollers.

The ski patrol is an excellent way for many of us to give something of value back to our community. Each of us does so without need of, or desire for, wage or overtime compensation. Rather, it is felt to be an excellent method of attaining excellent first aid and communication skills and utilizing those skills in a way that benefit the skiing public.

Again, please support HB 123 and through that support, the volunteer ski patrol throughout Alaska.

Thank You,



Bruce Booher
Alyeska Ski Patrol - Senior Patroller
3930 North Point Dr.
Anchorage, AK. 99515

1-LS0577G
Cramer
3/9/99

MAR 20 1999

CS FOR HOUSE BILL NO. 123(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the exemption from the requirement for payment of minimum
2 wage and overtime compensation for certain volunteers of nonprofit organizations;
3 exempting individuals who provide ski patrol services on a voluntary basis from
4 the requirement for payment of minimum wage and overtime compensation; and
5 providing for an effective date."

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

7 * Section 1. AS 23.10.055(6) is amended to read:

8 (6) an individual engaged in the nonprofit activities of a nonprofit
9 religious, charitable, cemetery, or educational organization or other nonprofit
10 organization where the employer-employee relationship does not, in fact, exist, and
11 where services rendered to the organization are on a voluntary basis and are related
12 only to the organization's nonprofit activities;

13 * Sec. 2. AS 23.10.055 is amended by adding a new paragraph to read:

- 1 (17) an individual who provides ski patrol services on a voluntary basis.
- 2 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

Subject: Fiscal Notes

Date: Wed, 03 Mar 1999 13:54:13 -0900

From: Janet Seitz <Janet_Seitz@legis.state.ak.us>

Organization: Alaska State Legislature

To: Shari_Kochman@gov.state.ak.us

Hi Shari:

A big THANKS for the HB 79 fiscal note!!!

On the schedule for Mar 8-12:

HB 123 - Exempt Voluntary Ski Patrol Members from Minimum Wage
(Department of Labor) to be heard on 3/10/99

HB 17 - PERS Credit for Noncertificated Employees (Department of
Administration, Department of Education) to be heard on 3/12/99

Janet

3/9/99 - 7:30 am

HB 123

No Fiscal Note Received Yet

Janet

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2040

SPONSOR STATEMENT HOUSE BILL 123

An Act exempting individuals who provide ski patrol services on a voluntary basis from the requirement for payment of minimum wage and overtime compensation; and providing for an effective date.

House Bill 123 would exempt the approximately 400 *volunteer* ski patrol members who assist in saving lives and provide educational information about emergency care, avalanche danger, mountain travel, etc. Alaska's current laws do not specifically set forth this group as being exempt from the minimum wage and overtime statutes.

The current exemption list in AS 23.10.055 does include an exemption for volunteer emergency medical providers [AS 23.10.055(16)]; and volunteers for nonprofit religious, charitable, cemetery or educational organizations [AS 23.10.055(6)].

The problem arises with ski patrollers in that these volunteers normally provide their services under the direction of a ski area operator, a public lands administrator, or the manager of some kind of outdoor recreation. The volunteer patrollers are supervised by and operate under the control of the ski area operator, administrator or manager. In addition to the volunteer members, there may be other paid employees involved in similar work. This brings us to the problem area and the reason the exemption is needed: Because volunteer ski patrollers are not specifically named in the authorized list of people/groups who are exempt from the minimum wage and overtime statutes in Alaska, it may be illegal to use volunteer patrollers.

As the volunteer patrollers provide valuable services to all Alaskans, we would encourage the adoption of HB 123 so that such services can continue to be offered. Without this language, there is a real danger that ski patrols in Alaska would cease to exist.

Your support would be appreciated.

ED1:03/04/99

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2040

SECTIONAL ANALYSIS HOUSE BILL 123

An Act exempting individuals who provide ski patrol services on a voluntary basis from the requirement for payment of minimum wage and overtime compensation; and providing for an effective date.

- Section 1:** Adds an individual who provides ski patrol services on a voluntary basis to the list of persons exempted from Alaska Wage and Hour Act.
- Section 2:** Effective date: Immediate.

ED1:03/04/99

Sec. 23.10.055. Exemptions.

The provisions of AS 23.10.050 - 23.10.150 do not apply to

(1) an individual employed in agriculture, which includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices, including forestry and lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market;

(2) an individual employed in the catching, trapping, cultivating or farming, netting or taking of any kind of fish, shellfish, or other aquatic forms of animal and vegetable life;

(3) an individual employed in the hand picking of shrimp;

(4) an individual employed in domestic service, including a baby-sitter, in or about a private home;

(5) an individual employed by the United States or by the state or political subdivision of the state, except as provided in AS 23.10.065(b), including prisoners not on furlough detained or confined in prison facilities;

(6) an individual engaged in the activities of a nonprofit religious, charitable, cemetery, or educational organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis;

(7) an employee engaged in the delivery of newspapers to the consumer;

(8) an individual employed solely as a watchman or caretaker of a plant or property that is not in productive use for a period of four months or more;

(9) an individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of an outside salesman or a salesman who is employed on a straight commission basis;

(10) an individual employed in the search for placer or hard rock minerals;

(11) an individual under 18 years of age employed on a part-time basis not more than 30 hours in a week;

(12) employment by a nonprofit educational or child care facility to serve as a parent of children while the children are in residence at the facility if the employment requires residence at the facility and is compensated on a cash basis exclusive of room and board at an annual rate of not less than

(A) \$10,000 for an unmarried person; or

(B) \$15,000 for a married couple;

(13) an individual who drives a taxicab, is compensated for taxicab services exclusively by customers of the service, whose written contractual arrangements with owners of taxicab vehicles, taxicab permits, or radio dispatch services are based upon flat contractual rates and not based on a percentage share of the individual's receipts from customers, and whose written contract with owners of taxicab vehicles, taxicab permits, or radio dispatch services specifically provides that the contract places no restrictions on hours worked by the individual or on areas in which the individual may work except to comply with local ordinances;

(14) a person who holds a license under AS 08.54 and who is employed by a registered guide or master guide licensed under AS 08.54, for the first 60 work days in which the person is employed by the registered guide or master guide during a calendar year;

(15) an individual engaged in activities for a nonprofit religious, charitable, civic, cemetery, recreational, or educational organization where the employer-employee relationship does not, in fact, exist, and where services are rendered to the organization under a work activity requirement of AS 47.27 (Alaska temporary assistance program); or

(16) an individual who provides emergency medical services only on a voluntary basis or an individual who serves with a full-time fire department only on a voluntary basis.

History -

(Sec. 2(1) ch 171 SLA 1959; am Sec. 1 ch 2 SLA 1962; am Sec. 1 ch 50 SLA 1972; am Sec. 2 ch 124 SLA 1978; am Sec. 1 ch 115 SLA 1982; am Sec. 2 ch 12 SLA 1990; am Sec. 2 ch 13 SLA 1993; am Sec. 10 ch 33 SLA 1996; am Sec. 9 ch 107 SLA 1996; am Sec. 1 ch 23 SLA 1997)

Revisors Notes -

Paragraph (15) was enacted as (14). Renumbered in 1996.

Cross References -

For legislative purpose in enacting paragraph (13), see Sec. 1, ch. 13, SLA 1993 in the Temporary and Special Acts.

Amendment Notes -

The 1993 amendment, effective May 8, 1993, added paragraph (13).

The first 1996 amendment, effective May 23, 1996, added paragraph (14).

The second 1996 amendment, effective July 1, 1997, added paragraph (15).

The 1997 amendment, effective May 9, 1997, added paragraph (16).

Decisions -

Employees covered by and exempt from Fair Labor Standards Act. - AS 23.10.050 - 23.10.150 apply to both employees covered by the Fair Labor Standards Act, 29 U.S.C. Sec. 201-219, and those who are, because of insufficient connections to interstate commerce, exempt from the Fair Labor Standards Act. *Webster v. Bechtel, Inc.*, 621 P.2d 890 (Alaska 1980).

Helicopter pilot not classified as professional. - A commercial helicopter pilot is not a professional for purposes of the Alaska Wage and Hour Act. *Dayhoff v. Temsco Helicopters, Inc.*, 848 P.2d 1367 (Alaska 1993).

Prisoners excluded from operation of chapter. - See *McGinnis v. Stevens*, 543 P.2d 1221 (Alaska 1975).

Restaurant managers. - Partial summary judgment for plaintiffs was improper where superior court was obliged to consider district manager's testimony that restaurant managers such as plaintiffs spent less than 10 percent of their time performing tasks otherwise performed by hourly employees; a genuine issue of material fact existed as to whether plaintiffs spent more than 20 percent of their time on duties not directly and closely related to management of the restaurant. *American Restaurant Group v. Clark*, 889 P.2d 595 (Alaska 1995).

Retail manager not exempt. - Although the retail store manager supervised employees and made more than \$600 per week, he was not exempt from the Alaska Wage and Hour Act since he spent more than 20% of his time in retail sales, an activity normally performed by nonmanagerial employees. *Grimes v. Kinney Shoe Corp.*, 902 F. Supp. 1070 (D. Alaska 1995).

Applied in *Alaska Int'l Indus., Inc. v. Musarra*, 602 P.2d 1240 (Alaska 1979).

Cited in *Dresser Indus., Inc. v. Alaska Dep't of Labor*, 633 P.2d 998 (Alaska 1981), cert. denied, 455 U.S. 1019, 102 S. Ct. 1716, 72 L. Ed. 2d 137 (1982).

Collateral Refs -

Who is employed in "executive or administrative capacity" within exemptions from minimum wage and maximum hours provisions of Fair Labor Standards Act. 40 ALR2d 332; 124 ALR Fed. 1; 131 ALR Fed. 1.

Who is employed in "professional capacity," within exemption, under 29 USCS Sec. 213(a)(1), from minimum wage and maximum hours provisions of Fair Labor Standards Act. 77 ALR Fed. 681.

Employee training time as exempt from minimum wage and overtime requirements of Fair Labor Standards Act. 80 ALR Fed. 246.



February 1999
National Ski Patrol
Alaska Division
Wage and Hour Legislation Exemption

Overview of Issue

Since it was founded in 1938, the National Ski Patrol (NSP) has evolved from a handful of ski patrollers into the world's largest patrol organization which supports, participates in, and influences the outdoor recreation community at large. Throughout the history of the NSP, its members have devoted a significant part of their lives to providing the public with emergency care, rescue services, and education programs that promote the safety and enjoyment of mountain recreation. As a result, thousands of injured people have received prompt, skillful emergency care, and numerous lives have been saved.

Most of the 28,500 current members of NSP are volunteers, and in Alaska there are nearly 400 registered volunteer patrollers serving the outdoor recreational interests in Juneau, Cordova, Anchorage, Palmer and Fairbanks.

Because of the efforts of these volunteer patrollers in Alaska, many lives are saved, plus the public receives many educational offerings in Outdoor Emergency Care, Avalanche Preparedness, Mountain Travel and ski patrol skills.

By virtue of an oversight, however, the current Alaska wage and hour statutes appear to make the use of volunteer patrollers impossible at many of our local ski areas. Because volunteer ski patrollers are not specifically named in the authorized list of people (groups) who are exempt from the minimum wage and overtime statutes in Alaska, it may be illegal to use volunteer patrollers.

We do not believe the legislature intended this results. The exemption list already provides wage and hour exemption for groups such as volunteer ambulance attendants, volunteer fireman, volunteer coaches and officials and other similar groups.

Legislation is needed to include the term "volunteer ski patroller" in AS 23.10.055, the exemption list, to allow the NSP to continue in the State of Alaska.

Background and history of NSP in the US and Alaska

Before 1932, alpine skiing was relatively unknown in the United States. Most Americans got their first exposure to alpine skiing through media coverage of the 1932 Winter Olympics at Lake Placid, New York. Inevitably, the sport took off.

Since ski lessons were virtually nonexistent, few skiers had learned to turn well and some could not turn at all, thanks to primitive equipment on unpacked snow. Accidents were common, and most skiers accepted them as the price to pay for participating in the sport.

Charles Minot "Minnie" Dole, an insurance broker from Greenwich, Connecticut, realized the need for emergency care and rescue services for injured skiers back in 1936. Dole was skiing at Stowe, Vermont, with family and friends when he took a fall, heard the bone snap in his ankle and lay helpless in the snow. His friend stayed with him while his wife went for help. The first person she encountered was a farmer who said that anyone foolish enough to ski deserved whatever fate offered! Finally his wife located two people who hauled Dole off the mountain in a makeshift toboggan improvised from a piece of tin roofing. X-rays showed a break so severe that Dole was told he may never walk again, let alone ski. But he was determined to recover, and he did.

The same determination compelled Dole to improve emergency care for skiers when, two months later, his friend was killed in a ski race. At the suggestion of the president of the American Ski Club, Dole was placed in charge of a ski safety committee for the club. In March, 1938, Dole organized a volunteer ski patrol for the National Downhill races at Stowe. The president of what is now the United States Ski Association was so impressed with the patrol, he asked Dole to organize a similar patrol on a national basis.

From the beginning, NSP rescue work was not confined to the ski slopes – patrollers helped out whenever and wherever accidents occurred. Ski patrols in the West helped locate Army Air Corps planes that crashed. When the United States entered World War II, Dole approached the War Department on several occasions about forming a winter warfare group similar to those already in existence in Europe. After quite a bit of effort and red tape, Dole convinced the Chief of Staff on the value of such a unit, and in 1942, the beginnings of the famed Tenth Mountain Division were born. General Mark Clark called the Tenth the finest division he had ever seen. An amazing number of well-known patrollers, ski area managers, ski equipment manufacturers and other ski personalities are part of this division.

After World War II, the sport of skiing grew at a phenomenal rate. The growth of the NSP kept pace with the increasing popularity of skiing. By 1948, the tenth anniversary of the founding of NSP, there were 193 ski patrols and 4,500 registered patrollers. Meanwhile in Alaska, skiing and patrolling were gaining eminence along with rest of the nation. Skiers in Juneau formed a ski club in 1935, with the first patrol formed in 1939, working closely with the US Forest Service. The first patrol was formed in Anchorage in 1941 to serve the fledgling Arctic Valley ski area for the Anchorage Ski Club. Other patrols were formed to serve the skiing public in Fairbanks, Dutch Harbor, Kodiak, Cordova and many other communities. In 1982, Alaska was honored when Ron Ricketts of Fairbanks, was elected as the National Chairman.

Today the National Ski Patrol is an association of 28,500 members who are represented at 99% of the ski areas in the United States, and in some areas of Europe and Asia. The history of NSP is rich and varied, reflecting the dedication of members who are motivated by a love of outdoor recreation and the desire to help those in need. This long tradition of promoting the enjoyment and safety of skiing prompted the United States Congress to grant a federal charter to the NSP under Public Law 96-489. The NSP is registered under Section 501(c)(1) of the Internal Revenue Service Code as a nonprofit association organized and operated exclusively for educational purposes. Subordinate units are granted exempt status under section 501(c)(3).

NSP is dedicated to providing its members with educational programs and materials that will help them fulfill their role within the outdoor recreation community, whether in the context of skiing, snowboarding, or otherwise. Normally, NSP members provide this service *under the direction of a ski area operator, a public lands administrator, or the manager of some other kind of outdoor recreation*. This is a very important distinction, as it forms the basis of the current issue.

The mission of the national organization is somewhat different than that of its subunits (local patrols). The mission of the NSP national organization is to provide its members with educational resources to help them fulfill the duties required of them required by area management. The associations goal is to provide high quality training programs in multiple disciplines and to deliver these programs to the membership in a cost-effective manner. Just a few NSP programs offered locally include:

- Outdoor Emergency Care – the flagship of NSP, this 120 hour course is equivalent to EMT I. All ski areas in Alaska are required by law to have patrollers that meet the minimum requirements of this NSP class.
- Basic and Advanced Avalanche – the basic class is required by the Alaska Division for every patroller in the State. These classes are also offered to the general public on a regular basis.
- Basic and Advanced Mountaineer – these courses teach students how to be an asset in a remote search and rescue. The classes teach winter survival and travel, search and rescue techniques and some mountain travel basics.
- Alpine Toboggan Handling – there are a host of courses available, ranging from Patroller 101, to Senior clinics, Certified clinics, Toboggan Enhancement Seminars, Phase II Toboggan Instructor Course and more.
- Instructor Development – the NSP offers both the basic Phase I and the more advanced Phase II to our instructors. These classes help our instructors to be better educators through the understanding of adult learning theory, lesson planning and how to deliver technical content.

There are dozens more courses ranging from technical skills progression, to leadership and teaching skills. Nearly 30% of the patrollers registered in Alaska are instructors! Patrollers in Alaska are also active in many other aspects of community service. You will find our members working with mountain rescue teams, Search and Rescue Dogs, American Red Cross, American Heart Association, volunteer ambulance crews, volunteer fire departments, local sporting events (such as Run for Women, Mayor's Marathon and dozens of other events) and many more activities.

It is important to note, however, that a patrol, once established at a given ski area, is under the supervision and direction of the ski area manager or local public lands administrator and must abide by the policies and procedures established by management. The ski area manager or public lands administrator ultimately supervises and controls the patrolling activities (on hill operations) of individual NSP members and patrols at each ski area. While an area's paid patrollers are *employees* of the area, the area's volunteer patroller are *agents* of the area and the distinctions of ski area managers and NSP is discussed annually between the NSP patrol representative and the ski area manager.

Current Alaska statute language and the impact

The Alaska Division of the National Ski Patrol currently has nearly 400 patrollers registered in eighteen patrols across the state. Each of these patrols serves a different ski area (or geographical area in the case of the Anchorage Nordic Patrol). Ski areas in Alaska are a bit unique in that we have a quite a mixture of ownership. We have publicly owned areas (such as Hilltop and Juneau); privately owned areas (such as Moose Mountain, Mount Alyeska and SkiLand); military areas (such as Hillberg, Arctic Valley Military, Birch Hill, Ravenwood and Frank Rapids); privately owned non-profit area (Arctic Valley Civilian Ski Area) and a Nordic patrol that services most all of Southcentral Alaska on lands that are public, private, municipal, state and federal.

Because the current wording in the Alaska statutes (AS 23.10.055) does not expressly allow volunteer ski patrollers; a valid interpretation of the law is that volunteer patrollers are not legally allowed to patrol at any entity not specifically excluded by exemption (such as the non-profit area in Anchorage and perhaps the municipal areas). Although there is not consensus on the status of these patrollers or areas either.

So why do we want volunteer patrollers to continue to exist in Alaska?

Probably the single biggest reason is that without the support of the volunteer patrollers in Alaska, ski patrols would cease to exist. As previously mentioned, nearly 30% of the patrollers in Alaska are instructors. Take away the instructor cadre and there will be no Outdoor Emergency Care; Avalanche or Mountaineering Training; or any other NSP educational programs. If you take away the volunteer leadership and administration there will be no direction, patrol registration, newsletters, instructor support group or funding to accomplish any of our programs.

The second reason is that the organization and the individuals have a long tradition of service and support to the outdoor community. The NSP has been volunteering at ski areas for the past sixty years – nationally and in Alaska. During that time no volunteer ever anticipated that they would be covered under the provisions of minimum wage or overtime laws. This legislation will have no effect on the status of paid patrollers – this is only to rectify the status of volunteer patrollers.

Finally the members of NSP are some of Alaska's generous volunteers. In addition to volunteering their time to serve the outdoor public, almost every patroller is involved in additional civic, community or cultural volunteer activities. Volunteerism must be allowed to flourish and grow, especially as budgets get tightened and we have fewer resources available. Alaska Division NSP members offer the community a tremendous wealth of talent, leadership, technical expertise and time.

NSP volunteers want to continue to ski at the mountains where we have been patrolling for the past sixty years. We want the opportunity to continue to offer our talents to recruit and train patrollers. And we want the legislature to correct this oversight in wage and hour law.

What the solution is for Alaska

We need to enact legislation to include the term "volunteer ski patroller" in the exemption list in the wage and hour section of the statute AS 23.10.050 by adding a new paragraph (number 17) with the language:

(17) an individual who provides ski patrol services only on a voluntary basis.

This legislation will have zero fiscal impact. This legislation will be fully supported by every ski area operator, volunteer patroller and public lands administrator.

A sample bill is attached, the final proposal may vary, but should accomplish the task of allowing volunteer patrollers to continue to patrol at every ski area in Alaska.

Sample Bill

NSP Wage and Hour Exemption
Sample Legislation

HOUSE BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA TWENTY-FIRST LEGISLATURE
- FIRST SESSION

BY REPRESENTATIVE _____

Introduced: __ / __ / _____

Committee Referred: _____

A BILL
FOR AN ACT ENTITLED

"An Act relating to an exemption from the requirement for payment of minimum wage and overtime compensation for volunteer ski patrollers; and providing for an effective date."

BE IT ENACTED BY THE STATE OF ALASKA:

* Section 1. Sec. AS.23.10.055 is amended by adding a new paragraph to read:

(17) an individual who provides ski patrol services on a voluntary basis.

* Sec. 2. This Act takes effect immediately under AS 01.10.070 (c).

For more information

For further information please contact:

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Testimony of Chris Ross
On HB 123 at the
Labor and Commerce Committee Hearing
March 10, 1999 via Teleconference

Good afternoon Mr. Chairman, Distinguished Committee Members and Guests.

My name is Chris Ross. I am employed by NANA Development Corporation as the Corporate Health, Safety and Environmental Manager. I currently serve on the Alaska Safety Advisory Council, as an Industry Representative and chair the Governor's Annual Safety and Health Conference.

But today I am here as a member of the National Ski Patrol System where I am a volunteer ski patroller at Mt. Alyeska.

During the past twenty-two years that I have been a ski patroller I have served in training and testing capacities as a Patrol Candidate Trainer, a Region Proficiency Examiner, Region Director, the Division Mountaineering Advisor, the Division Ski and Toboggan Advisor, and the Division Certified Advisor.

I have served the patrol as the volunteer Patrol Director at Mt. Alyeska for past ten years, and I am currently the Division Director for the Alaska Division NSP.

Throughout the history of the NSP, its members have devoted a significant part of their lives to providing the public with emergency care, rescue services, and education programs that promote the safety and enjoyment of mountain recreation. As a result, thousands of injured people have received prompt, skillful emergency care, and numerous lives have been saved.

The history of NSP is rich and varied, reflecting the dedication of members who are motivated by a love of outdoor recreation and the desire to help those in need. This long tradition of promoting the enjoyment and safety of skiing prompted the United States Congress to grant a federal charter to the NSP under Public Law 96-489. The NSP is registered under Section 501(c)(1) of the Internal Revenue Service Code as a nonprofit association organized and operated exclusively for educational purposes. Subordinate units are granted exempt status under section 501(c)(3).

NSP is dedicated to providing its members with educational programs and materials that will help them fulfill their role within the outdoor recreation community, whether in the context of skiing, snowboarding, or other activities. Normally, NSP members provide this service *under the direction of a ski area operator, a public lands administrator, military base commander, ski club, or municipality*. This is a very important distinction, as it forms the basis of the current issue.

The mission of the national organization is somewhat different than that of its subunits (local patrols). The mission of the NSP *national organization* is to provide its members with educational resources to help them fulfill the *responsibilities* required of them required by area management. The association's goal is to provide high quality training programs in multiple disciplines and to deliver these programs to the membership in a cost-effective manner.

Nearly 30% of the patrollers registered in Alaska are instructors, an amazing percentage. Just a few NSP programs offered locally include:

- Outdoor Emergency Care
- Basic and Advanced Avalanche
- Basic and Advanced Mountaineering
- Alpine Toboggan Handling
- Basic Patroller Training
- Instructor and Leadership Development

And many others.

The Alaska Division of the National Ski Patrol currently has nearly 400 patrollers registered in eighteen patrols across the state. Each of these patrols serves a different ski area (or geographical area in the case of the Anchorage Nordic Patrol and Pioneer Peak Ski Patrol).

Ski areas in Alaska are a bit unique in that we have a quite a mixture of ownership. We have publicly owned areas (such as Hilltop and Juneau); privately owned areas (such as Moose Mountain, Mount Alyeska and Aurora SkiLand); military areas (such as Hillberg, Arctic Valley Military, Birch Hill, Ravenwood and Black Rapids); privately owned non-profit area (Alpenglow and Mt. Eyak) and a Nordic patrol that services most all of Southcentral Alaska on lands that are public, private, municipal, state and federal.

It is important to note, however, that a patrol, once established at a given ski area, is under the supervision and direction of the ski area manager or local public lands administrator and must abide by the policies and procedures established by management. The ski area manager or public lands administrator ultimately supervises and controls the patrolling activities of individual NSP members and patrols at each ski area. While an area's paid patrollers are *employees* of the area, the area's volunteer patroller are *agents* of the area.

By virtue of an oversight, however, the current Alaska wage and hour statutes appear to make the use of volunteer patrollers impossible at many of our local ski areas. Because the current wording in the Alaska statutes (AS 23.10.055) does not expressly allow volunteer ski patrollers; a valid interpretation of the law is that volunteer patrollers are not legally allowed to patrol at any entity not specifically excluded by exemption (such as the non-profit area in Anchorage and perhaps the municipal areas). Although there is not consensus on the status of these patrollers or areas either.

We do not believe the legislature intended these results. The exemption list already provides wage and hour exemption for groups such as volunteer ambulance attendants, volunteer fireman, volunteers for non-profit associations and other similar groups.

Because only two ski resorts in Alaska are non-profit organizations (the others being military, municipal, or for-profit), these current exemptions may not apply.

Legislation is needed to include the term "volunteer ski patroller" in AS 23.10.055 (the exemption list), to allow the NSP to continue in the State of Alaska. This solution is accomplished by the wording in House Bill 123. This legislation will have zero fiscal impact. This legislation is fully supported by our all of our division ski patrol members, each ski area operator, and all public lands administrators.

So why do we want volunteer patrollers to continue to exist in Alaska?

Probably the single biggest reason is that without the support of the volunteer patrollers in Alaska, ski patrols would cease to exist as we know them today. As previously mentioned, nearly 30% of the patrollers in Alaska are instructors. Take away the instructor cadre and there will be no Outdoor Emergency Care; Avalanche or Mountaineering Training; or any other NSP educational programs. If you take away the volunteer leadership and administration there will be no direction, patrol registration, newsletters, instructor support group or funding to accomplish any of our programs.

The second reason is that the organization and the individuals have a long tradition of service and support to the outdoor community. The NSP has been volunteering at ski areas for the past sixty years - nationally and in Alaska. During that time no volunteer ever anticipated that they would be covered under the provisions of minimum wage or overtime laws. This legislation will have no effect on the status of paid patrollers - this is only to rectify the status of volunteer patrollers.

Finally the members of NSP are some of Alaska's generous volunteers. In addition to volunteering their time to serve the outdoor public, almost every patroller is involved in additional civic, community or cultural volunteer activities. Volunteerism must be allowed to flourish and grow, especially as budgets get tightened and we have fewer resources available. Alaska Division NSP members offer the community a tremendous wealth of talent, leadership, technical expertise and time. You will find our members working with mountain rescue teams, Search and Rescue Dogs, American Red Cross, American Heart Association, volunteer ambulance crews, volunteer fire departments, local sporting events (such as Run for Women, Mayor's Marathon and dozens of other events) and many more activities.

But until a new law is enacted, we may not be able to volunteer our time as ski patrollers at many of Alaska's ski resorts.

NSP volunteers want to continue to ski at the mountains where we have been patrolling for the past sixty years. We want the opportunity to continue to offer our talents to recruit and train patrollers. And we want the legislature to correct this oversight in wage and hour law by passing House Bill 123.

Thank you for your attention Mr. Chairman and Distinguished Committee members and I would be happy to answer any questions you may have.

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FACSIMILE COVER PAGE

To: Norm R Rokeberg	From: Ben Stevens
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Company: Alaska State Leg.	Tel #: 907-277-2477
Subject:	
Sent: 3/11/99 at 10:55:14 AM	Pages: 1 (including cover)

MEMO:

Dear Representative Rokeberg:

Please accept this letter in support of CSHB 123 exempting non-profit organizations from hourly and overtime wage compensation regulations for volunteers. The 2001 Special Olympics World Winter Games will require countless hours of volunteer time and commitment. Our estimates indicate we will need over 3,200 volunteers to perform myraid of tasks during the execution of these 2001 Games and our obligated pre-games in 2000.

Organizations like Special Olympics could not function without non-compensated volunteers. If compensation, payroll taxes and overtime pay were required, we would not have the financial resources to execute local Special Olympic games let alone the World Special Olympics games.

Thank you for addressing this issue and thank you for your dedication to all citizens of Alaska.

Ben A. Stevens
President & CEO

MAR 11 1999

Subject: HB 123 Amendment

Date: Thu, 11 Mar 1999 11:01:48 -0900

From: Chris Ross <chris.ross@nana-dev.com>

To: "Janet Seitz" <Janet_Seitz@legis.state.ak.us>

CC: "Larry Daniels (E-mail)" <ldaniels@girdwood.net>,
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Hi Janet,

I have reviewed the language proposed by Randy Carr to add our ski patrol wage and hour exemption into the existing exemption (16) with the medical and fire service group.

Aside from adding a few semicolons (between each of the three different entities) to make it perfectly clear that each of these is a separate group, this looks fine to us.

Randy's proposal should give us the legislative relief we are seeking, plus alleviate the DOL's concern about adding another exemption.

Looks like a great win/win solution for all. Thanks again for all your help and support on this issue.

Chris Ross
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Testimony of Sean Edwards
On HB 123 at the
Labor and Commerce Committee Hearing
March 10, 1999

Good afternoon Mr. Chairman, Distinguished Committee Members and Guests.

My name is Sean Edwards, I am a volunteer ski patroller at Eaglecrest here in Juneau. I have been involved in the Juneau Ski Patrol for most of the past 15 years. I have served as Patrol Director, Outdoor Emergency Care and Avalanche Instructor, and I am currently the Southeast Region Director for the Alaska Division.

Today I would like to talk about the roles we play as members of the National Ski Patrol and at the local patrol level. As members of the National Ski Patrol we are involved in providing our membership with exceptional training programs such as Outdoor Emergency Care. As members of the local patrol we provide Emergency Rescue and Care to the skiing public.

As the skiing industry evolved it became necessary to define the roles of the National Ski Patrol, its members and ski area management. The Joint Statement of Understanding Between the National Ski Patrol and the National Ski Areas Association gives us this definition. I have included a copy with my written testimony.

In a nutshell when we are providing our members with the National Ski Patrol training programs we are involved in a non-profit educational organization which is clearly exempted from wage and hour laws. When we are providing patrol services we act as agents of the ski area management or public lands administrator. This is where the situation becomes less clear. because of the variety of entities responsible for ski area operations such as private companies, public lands administrators, military commanders ski clubs or municipalities.

Most of the ski areas in the state are not run by non-profit organizations and this is where the potential conflict lies. Without a specific exemption many volunteer patrollers may be subject to wage and hour laws which would end volunteer ski patrolling in Alaska.

As a volunteer patroller I ask that you pass HB 123 which will allow myself and the 400 other members of the National Ski Patrol in Alaska to continue to volunteer and spend our time patrolling.

Thank you for your time and attention. If you have any questions I would be happy to answer them as best I can.

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