QUESTIONS AND ANSWERS ON
AS 47.07.020 (b)(6) PROPOSED CHANGE

- **What is SSI?**

SSI, or Supplemental Security Income, is a federal needs-based disability program for adults and children which provides cash benefits and automatic Medicaid eligibility.

- **What are the eligibility requirements for SSI?**

The person must:

(1) Have limited income and resources;
(2) Be an adult or a child who is blind or disabled, or an adult who is age 65 or older;
(3) Live in the United States;
(4) Be a U.S. citizen or an eligible non-citizen (including lawful permanent residents and some other categories...)

- **What are the income and resource requirements for SSI eligibility?**

Monthly benefits are calculated by subtracting certain excluded amounts from the individual's monthly income, and then subtracting the remainder from the maximum SSI benefit amount (currently $674). The resulting amount will be the individual's monthly SSI benefit. In other words, an individual's income must be substantially below the poverty level (which is currently $1,127.50 per month in Alaska).

Individuals may have up to $2,000 in resources, or up to $3,000 in resources for a couple.

- **What is the SSI definition of disability?**

For an adult, the SSI disability requirement is based on the ability to work. An adult is considered disabled if the person cannot do the work they did before and cannot do a different kind of work because of a severe physical or mental condition.

To be eligible for SSI, a child must suffer from serious physical and/or mental problems that prevent the child from living a normal life.

For both adults and children, the disability must last, or be expected to last, for at least a year, or to result in death.

- **Is SSI different from Social Security Disability Insurance?**

Yes. Both programs provide assistance for people with disabilities who meet certain medical criteria, and both are administered by the Social Security Administration. However, Social Security Disability Insurance is a program for individuals (and certain family members) who are "insured," that is, they have worked long enough in jobs where they paid Social Security taxes. SSI, on the other hand, is based solely on the financial need of the disabled individual, even if that person has little or no work history.

- **What is the current maximum monthly benefit amount for SSI?**

In both 2009 and 2010, the maximum monthly cash benefit amount for an individual on SSI is $674 (or $1,011 for a couple). This amount normally increases from year to year based on an automatic annual cost of living adjustment (COLA) which is calculated from changes in the Consumer Price Index (CPI). However, there were no increases in any of the Social Security programs' benefits this past year due to the very low rate of inflation.

- **Why did AS 47.07.020 originally key Medicaid waiver eligibility to an income level three times the maximum monthly SSI benefit rate? When did this statutory limit change?**

In most states, Medicaid financial eligibility rules are more liberal for people who require long-term services. Under federal law, a state may grant Medicaid eligibility to persons who have incomes as high as three times the basic benefit standard for the SSI program. In operating a HCBS waiver program, a state may employ the same financial eligibility rules to determine eligibility as it does for institutional services. Accordingly, before 2003, AS 47.07.020 set Alaska's Medicaid long-term care (including waiver services) financial eligibility at three times the maximum SSI amount. In 2003, that amount was $552, so the income limit that year was $1,656 (three times $552).

In 2003, the Alaska Legislature changed AS 47.07.020 (b) (6) to freeze the Medicaid long-term services income eligibility limit at that year's level ($1,656). This change created a ceiling for waiver eligibility, rather than allowing the eligibility limit to adjust annually in tandem with the SSI maximum benefit amount, which is tied to changes in the Consumer Price Index (CPI). This meant that from 2003 on, a small Social Security COLA could put a person over the $1,656 limit, which no longer adjusted with the SSI rate.

Most public assistance benefits in Alaska are keyed to federal poverty guidelines or other income standards that are automatically adjusted annually.

- **If Alaska returns to the prior version of AS 47.07.020, what will the Medicaid waiver income eligibility limit be?**

The Medicaid waiver income eligibility limit for 2010 would be $2,022 monthly, or three times the current maximum SSI monthly benefit ($674). This would be an increase of slightly over 22 percent in the income limit, and would return waiver coverage to those earning slightly more than 175% of the federal poverty limit (FPL) for Alaska, versus the current 147% FPL.

Year	Waiver Limit	% of AK FPL	(AK FPL)
2003	$1,656	177%	$11,210
2009	$1,656	147%	$13,530
2010	$2,022*	179%	$13,530

*Result of proposed legislation

❖ What problems have been created by the 2003 change to AS 47.07.020?

Most individuals receiving Social Security retirement or disability benefits, or retiree pensions, receive a small annual cost of living adjustment (COLA) to their benefit amounts. Because the waiver eligibility limits no longer adjust with changes in the cost of living, each year some people receiving waiver services find that their adjusted incomes place them slightly over the $1,656 monthly limit, thus ending their eligibility for the Medicaid waiver. People in this position have had to pay privately for nursing home care (thousands of dollars per month) or try to set up a Medicaid qualifying income trust, also known as a Miller trust.

Near the end of 2008, a panic ensued when dozens of individuals received notices that they would no longer be eligible for the waiver after the 2009 Social Security COLA went into effect. While they were told that they may be able to preserve their eligibility by implementing a Miller trust, this was not a workable solution for some recipients. [A Miller trust (or Medicaid qualifying income trust) makes Social Security and other income exempt from calculations of income and resources if the state is reimbursed from the trust for Medicaid expenses upon the recipient's death.]

New waiver applicants who are medically qualified for Medicaid long term services are disqualified for income reasons when they apply, even though their monthly incomes may be very modest, say, 150% of the federal poverty level.

❖ What are the problems with obtaining a Miller trust to shelter excess income in order to continue Medicaid waiver eligibility?

First, the disabled individual must locate an attorney who can assist them in creating a Miller trust (or qualified income trust). While free legal services are available, they are not readily accessible in every community in Alaska. The individual or their family must spend their time (generally around the end-of-year holidays) frantically trying to find affordable legal help. If the person is too disabled to be able to take the steps to create such a trust, and has not granted anyone else the financial power to do so, it will be necessary to go to court to obtain a conservatorship in order to create the Miller trust.

In order to create a Miller trust, the individual must have a trustworthy friend or family member whom they feel will manage the trust responsibly. Sadly, in today's world, attorneys tell us that this can be an issue – many Medicaid recipients do not know anyone they wish to put in charge of their finances. These people must either trust a stranger to manage their money or forego benefits. Other recipients risk their money by having less-than-trustworthy relatives serve as trustee. We are aware of a current case of an elder whose granddaughter has left the state with the individual's trust account funds.

Managing one's own finances is a matter of personal dignity for many older Alaskans. Being forced to give up this right can be stressful and humiliating, as well as financially risky.

Initial responsibilities of a trustee include obtaining a lawyer to draft the trust – sometimes within a 30-day window, registering the trust with the court system, obtaining an identification number from the IRS, setting up a special trust account with a bank (which not all banks will do), arranging direct deposits to that account through Social Security and other income sources, and securing approval for the trust from the Division of Public Assistance (DPA).

There are many additional details specific to management of the Miller trust, such as the requirement for the money to be placed in a non-interest-bearing account.

Once the account is set up, it is the trustee's responsibility to ensure that the trust distributes a monthly allowance to the Medicaid recipient equal to the monthly Medicaid income limit. The trustee must keep the remainder of the monthly income in the account, or purchase items on the recipient's behalf in accordance with certain restrictions. These restrictions are not always clearly spelled out under federal or state law, and are a large source of confusion for trustees. Diligent trustees often fear personal liability for spending trust money on items that turn out to be disapproved. Less-than-diligent trustees can jeopardize a recipient's Medicaid benefits by spending money without regard for the rules. Trustees also have to pass annual audits with DPA to ensure that the trusts are being managed correctly.

Money in the Miller trust can be used only for "allowable expenses," which do not include food or housing expenses. Generally, the individual has received a COLA on their Social Security or pension for the express purpose of keeping up with increased costs of food and housing. Being forbidden to use this extra money for its intended benefit places them at a disadvantage in meeting their basic needs.

Finally, a Miller trust is irrevocable. In the rare event that an individual's health improves to the degree that they are no longer medically eligible for long term services, they will not have access to the funds in the trust for their daily expenses.

Creation of a Miller trust should normally be considered a last resort when there are no other options available.