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March 19, 2013

The Honorable Rep. Bob Lynn, Chair
Alaska House State Affairs Committee
State Capitol, Room 108
Juneau, Alaska 99801

Re: Section 12 of HB 127 (Ombudsman Act Amendments)

Dear Representative Lynn:

The Office of the Ombudsman has asked that the Alaska Legislature determine whether the ombudsman should have jurisdiction over contractors performing certain types of state services. Section 12 of HB 127 proposes to amend the definition of "agency" for purposes of the ombudsman's jurisdiction, to include:

a person under a contract with a state agency to provide a prison, halfway house, or similar residential service on behalf of the Department of Corrections, to provide a juvenile detention facility, treatment facility, or residential treatment program accepting placement of juveniles committed to the custody of the Department of Health and Social Services, or to determine eligibility for a state program or benefit;

As noted in our FAQs for HB 127, the reference to juvenile facilities is intended to encompass facilities that receive placement of youth who are in custody as juvenile delinquents. The Department of Health and Social Services (DHSS) has indicated that the terms "treatment facility" and "residential treatment program" are possibly too broad, and would include therapeutic foster homes, which was not our intent. Our office has therefore prepared a proposed amendment to the § 12, in an effort to clarify the type of entity that we believe should be included in the ombudsman's jurisdiction. We are asking for jurisdiction over juvenile facilities that are less restrictive than locked facilities such as the state-owned McLaughlin Youth Center, but more restrictive than a community placement such as a foster home. Although these facilities

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are far more treatment-oriented than an adult halfway house, the Office of the Ombudsman believes that they fill a similar niche in the juvenile justice system.

Also, it appears that overall, DHSS uses grants at least as often as contracts in retaining private service providers, and our office is thus asking that section 12 be amended to specifically refer to grants as well as contracts. (The Department of Corrections has generally used contracts for custodial facilities, so this change has little effect on the issue of adult correctional facilities).

Below is a table showing the language currently offered in section 12 of HB 127 and the changes our office respectfully suggests:

HB 127**Proposed substitute language**

<p><i>Section 12 amends AS 24.55.330(2) to include as an "agency":</i></p> <p>A person under contract with a state agency to provide a prison, halfway house, or similar residential service on behalf of the Department of Corrections, to provide a juvenile detention facility, treatment facility, or residential treatment program accepting placement of juveniles committed to the custody of the Department of Health and Social Services, or to determine eligibility for a state program or benefit</p>	<p>A person <u>operating</u> under a contract with or a <u>grant from</u> a state agency to provide a prison, halfway house, or similar residential service on behalf of the Department of Corrections, [TO PROVIDE A JUVENILE DETENTION FACILITY, TREATMENT FACILITY, OR RESIDENTIAL TREATMENT PROGRAM ACCEPTING PLACEMENT OF JUVENILES COMMITTED TO THE CUSTODY OF THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES,] <u>to provide a juvenile correctional or detention facility, home, or work camp as authorized by AS 47.14.010 – AS 47.14.050, to provide a residential child care facility or a residential psychiatric treatment center as defined in AS 47.32.900 to the extent that the facility or treatment center accents placement of juveniles committed to the custody of the Department of Health and Social Services,</u> or to determine eligibility for a state program or benefit</p>
<p><i>Section 15 sets an effective date for section 12:</i></p> <p>The uncodified law of the State of Alaska is amended by adding a new section to read:</p> <p>APPLICABILITY. Sections 12 and 13 of this Act apply to contracts entered into after January 1, 2015.</p>	<p>The uncodified law of the State of Alaska is amended by adding a new section to read:</p> <p>APPLICABILITY. Sections 12 and 13 of this Act apply to contracts <u>and grants</u> entered into after January 1, 2015.</p>


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Although our office has discussed juvenile facilities primarily in the context of juvenile justice, DHSS places youth who are adjudicated as Children in Need of Aid (CINA) in the same residential child care facilities. Both categories of youth are in state custody and are being placed in the same facilities, so it does not seem useful to address one category and not the other; as a result, the legislation refers to juveniles in the custody of the Department of Health and Social Services rather than drawing a line based on which division of DHSS has custody.

Sincerely,



Linda Lord-Jenkins
State of Alaska Ombudsman

Cc: Representative Wes Keller, Chair
House Judiciary Committee