

MEMORANDUM

State of Alaska Department of Law

TO: Rep. Tiffany Zulkosky
Rep. Liz Snyder

THRU: Treg R. Taylor
Attorney General

FROM: Stacie Kraly
Chief Assistant Attorney General
Human Services Section

Carla Erickson
Chief Assistant Attorney General
Child Protection Section

DATE: February 25, 2021

TEL. NO.: 907.465.3600

SUBJECT: Overview of Background
on Executive Order 119

As requested, below is an overview of information regarding Executive Order 119 to divide the Department of Health and Social Services into the Department of Health and the Department of Family and Community Services.

AUTHORITY FOR EXECUTIVE ORDERS.

Article III, section 23 of state constitution provides in full:

“The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.”

Under this constitutional authority, previous governors have proposed approximately 118 Executive Orders to reorganize units of state government or change the assignment of functions among its units. A number of Executive Orders have impacted the Department of Health and Social Services:

- Executive Order 54: Attempted to create the Dept. of Corrections from a division that was in DHSS, but it was disapproved by the legislature, which

introduced HB 103 (1983) as a bill to create the new department. Before the House held its concurrent vote on SC CSHB103 (FIN) am S, the governor introduced EO 55, which was not disapproved and which incorporated many of the sections from the bill that were missed in EO 54. (Sheffield, 1983 and 1984).

- Executive Order 108: Reorganized the Department of Health and Social Services, which entailed moving the Division of Senior Services and the Alaska Pioneer Homes from the Department of Administration to the Department of Health and Social Services. (Murkowski, 2003).
- Executive Order 116: Assigned the function of the DHSS departmental administrative hearing process to the Department of Administration, in the Office of Administrative Hearings. (Parnell, 2012).

SCOPE OF EXECUTIVE ORDERS.

An Executive Order is a restructuring of statutes that have already been enacted into law, resulting in the reorganization or reassignment of functions of the executive branch. An Executive Order relocates current statutes or reframes references for administrative, organization, and efficiency purposes.

An Executive Order may not be used to enact new substantive law; as such, it is not treated like a bill and does not require three readings and passage by the legislature prior to going into effect.

EXECUTIVE ORDER 119 DEVELOPMENT PROCESS:

Currently, the Department of Health and Social Services is established primarily in three titles of the Alaska statutes: AS 18, AS 44, and AS 47. But references to the Department of Health and Social Services are found in many titles, chapters, and sections of state law.

The Department of Law identified all instances in statute where the Department of Health and Social Services, the Commissioner of the Department of Health and Social Services, or relevant statutes are referenced and amended each reference to reflect the move to either the Department of Health or the Department of Family and Community Services. Each reference was assigned to the appropriate department based on the authorities or programs of each department. There were approximately 300 discrete references that required a conforming edit to change the name of the department to reflect the appropriate department with the assigned function.

THE STRUCTURE OF THE ORDER:

All of the statutes affected by Executive Order 119 have been properly passed by the legislature and the duties, functions, and programs assigned under those statutes currently reside with the Department of Health and Social Services. Executive Order 119 reallocates these duties, functions, and programs to the Department of Health and the Department of Family and Community Services. In some instances, discussed below, there are functions that are allocated to both departments, in order to fulfil a requirement of a program.

Basic structure. Title 44 of the Alaska Statutes establishes the departments of the Executive Branch. In Section 27 of the Executive Order, AS 44.17.005 is amended to list the Department of Health and the Department of Family and Community Services as principal offices and departments of state government.

Department of Health. Currently, the duties of the Department of Health and Social Services are established under AS 44.29. The Executive Order, beginning in section 29, amends this chapter to reflect that the Department of Health will be established under AS 44.29. The Department of Health will implement duties to oversee specific statutory programs and services outlined in AS 47.05.010. Section 39.

The Executive Order likewise amends AS 18, Public Health, and the authorities and programs of AS 18 Public Health, to reflect that these will be a function of the Department of Health.

Department of Family and Community Services. The Department of Family and Community Services is established under a new chapter, AS 44.30. Section 36. The Department of Family and Community Services will implement specific statutory programs and services outlined in AS 47.06.010. Section 62.

For each Department, the Executive Order then assigns each chapter of Title 47 to the correct Department. For example: AS 47.07 (Medical Assistance) and AS 47.24 (Adult Protective Services) are assigned to the Department of Health, whereas AS 47.10 (Child Welfare) and AS 47.14 (Juvenile Justice) are assigned to the Department of Family and Community Services.

Shared responsibilities. There are statutes that are allocated to both departments because the statute contains a function that each department will have responsibility to provide. For example:

1. AS 47.05 pertaining to background checks: Each respective department will have the responsibility for conducting background checks.
2. AS 47.32 pertaining to licensing of certain facilities: Each respective department will have the responsibility for licensing of certain facilities (health care facilities in Department of Health and foster care homes in the Department of Family and Community Services).
3. AS 47.30 pertaining to mental health: Each respective department will have a responsibility in the planning, support, and provision of a comprehensive mental health program.

Transitional provisions. The order includes, in sections 131 through 145, transitional provisions to assure continuity of operations, including instructions related to

- a. Pending litigation
- b. Grants and contracts
- c. Pending application or certifications
- d. Payments
- e. Continued eligibility for programs
- f. License applications and enforcement
- g. Federally approved state plans and waivers
- h. The tribal child welfare compact
- i. Instructions to the revisors of statutes and regulations
- j. Employment
- k. Membership of boards and commissions
- l. Regulations
- m. Confidentially and information sharing

Specific changes to Boards and Commissions:

1. *The Alaska Mental Health Trust Authority:*

The Alaska Mental Health Trust Authority is established in state law at AS 47.30.011 – AS 47.30.061. The Alaska Mental Health Trust does not operate as a board, commission, or entity of the Department of Health and Social Services. For organization and budgetary purposes, the Alaska Mental Health Trust is housed within the Department of Revenue.

The Executive Order moves the Alaska Mental Health Trust Authority to AS 44.25, which establishes the Department of Revenue as an executive branch department. This is accomplished in Section 28 of the Executive Order, pages 12 through 21.

2. *The Office of the Long-Term Care Ombudsman:*

The Office of the Long-Term Care Ombudsman is established in AS 47.62.010 – through AS 47.62.090 as an entity under the Alaska Mental Health Trust Authority. The Executive Order moves the Office of the Long Term Care Ombudsman to AS 44.25 along with the Alaska Mental Health Trust Authority. This is accomplished in Section 28 of the Executive Order, pages 23 through 27. The Office of the Long Term Care Ombudsman is retained as an entity of the Alaska Mental Health Trust.

3. *Other boards and commissions.* There are a number of boards and commissions that are established in the Department of Health and Social Services that utilize resources of the department. The Executive Order aligns the boards and the commissions with the appropriate department.

The Executive Order moves the Governor’s Council on Disabilities and Special Education currently set forth in 47.80.030-095 as a council under the Department of Health (Section 35, page 31).

The Executive Order moves in statute the Statewide Independent Living Council currently set forth in AS 47.80.300-330 as a council under the Department of Health (Section 35, page 35).

The Executive Order moves in statute the Alaska Mental Health Board as a board currently set forth in AS 47.30.661-669 under the Department of Health (Section 35, page 37).

The Executive Order moves in statute the Alaska Pioneer Home Advisory Board, currently under AS 44.29.500 – AS 44.29.530, as a board under the Department of Family and Community Services (Section 36, page 42).

The Executive Order moves in statute the Alaska Commission on Aging, currently under AS 47.45.200, to a commission under the Department of Health (Section 125 page 92).

The Advisory Board on Alcoholism and Drug Abuse, currently under AS 44.29.100, will be aligned with the Department of Health.

The Statewide Suicide Prevention Council, currently under AS 44.29.300, will be aligned with the Department of Health.

MISCELLANEOUS

Here we address questions raised by **Senate** Finance Committee members on February 18, 2021

First, as to the section on legislative finding for Children and the definition of corporal punishment (AS 47.05.065).

Currently, AS 47.05.065 establishes legislative findings related to Alaska's Child Welfare Statutes. With the reorganization and the realignment of duties and responsibilities of the child welfare programs and family services established in AS 44.30 and AS 47.06, this statute was moved to AS 47.06.020 (Section 62, page 57). It is properly aligned with the Department of Family and Community Services. This statute was originally adopted in 1998 and amended in 2018. The Executive Order makes no change to this language or legislative findings, it merely aligns it with the proper statutory construct for the Department of Family and Community Services.

Next, as to the amendments related to the Pioneers' Home and Veterans Home in AS 08.68.700(g). Section 2

The change in subsection (f) was made to clarify that the regulatory authority under this section will be with the Department of Health.

The change under subsection (g) to the definition of "health care facility" was to ensure that the Department of Health and Social Services did not have regulatory authority over another department's division. However, nothing in this section precludes the Pioneer Homes and Veterans Homes from working with the primary care physicians of their residents relating to issuing death certificates for residents in the future.

In summary, this Executive Order does not remove Pioneer Homes or Veterans Homes from the "health care facility" definition in other definition sections of state law. The definition of health care facility in AS 18.35.399 (prohibiting smoking in certain locations and circumstances) and AS 13.52.390 (Health Care Decisions Act) will still include Pioneer Homes and Veterans Homes.

Further, the Alaska Pioneer and Veterans Homes are not included, nor have they ever been included, in the definitions of "health care facility" under AS 18.07.111 (certificate of need) or AS 18.23.400 (disclosures and report of health care services, prices, and fee information).

Please let us know if you have any questions.