

HB

913

MADE IN U.S.A.

STOCK NO. 7531/3

Oxford Penaflex



CR Frank Harris re telephone to
Kara Rules

Marie Shanon -
Rocky Fordick - H/1155 AA
Henry H. H. /
/ Jim Wolfe - Amell

CR CONTACT HARVEY PITS 279-3462

John Hunter
EVIDENT CHILD CARE CENTER
586-2753 (in Journal)

STATE OF ALASKA
Inter-Department Route Slip

TO:
MAIL STATION NUMBER _____

DEPARTMENT Sen. C-RA Committee

ATTENTION Ben Nardone

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| <input type="checkbox"/> Approval | <input type="checkbox"/> Note & Return |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Initial & Return |
| <input type="checkbox"/> Comment | <input type="checkbox"/> Return As Requested |
| <input type="checkbox"/> Contact Me | <input type="checkbox"/> Return For Approval |
| <input type="checkbox"/> Prepare Reply | <input type="checkbox"/> Necessary Action |
| <input checked="" type="checkbox"/> For Your File | <input type="checkbox"/> Your Information |

Remarks: Position paper on HB 913 per your request. Also, please ask Sen. Ossini to call Eric Lee at 279-3462 if Eric hasn't reached him yet today.

FROM:
MAIL STATION NUMBER 2100

DEPARTMENT DC-RA

BY Jancy Krichuigan DATE 6/1/78

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER POUCH B - JUNEAU 99811

June 1, 1978

The Honorable Joseph L. Orsini
Chairman, Senate Community and
Regional Affairs
Pouch V
Juneau, Alaska 99811

Dear Senator *JLO* Orsini:

It is the Department's opinion that HB 913 will accomplish two things:

1. HB 913 will make the promulgation of regulations for the Day Care Assistance Program mandatory rather than permissive.

The Department has no objection to this change since regulations have already been drafted and should be set in place by this summer. Public input concerning changes will be open through July 31. However, we feel this change is purely academic as regulations are already being written.

2. HB 913 will severely impair the Department's ability to ensure competent administration by a subcontractor on the local level.

The Department is opposed to this change. While the Statutes (AS 44.47.250-310) require the Department to administer the Day Care Assistance Program, HB 913 would severely impair our ability to do so. To administer the program adequately, we feel the Department must have the authority to ensure that the Day Care Assistance Program Administrator, whether subcontracted or not, has the ability to serve the clientele effectively. In addition, certain minimum performance standards, as set forth in our proposed Day Care Assistance Program regulations, are necessary to best serve families in need of assistance, such as the accessibility of the administrator to the public. (If the committee feels that the \$100,000 minimum grant clause for authority to subcontract is inappropriate, the Department will delete this from the proposed regulations in line with your recommendations).

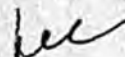
Since the Day Care Assistance Program benefits low-income parents, we are very concerned that poor administration of the Day Care Assistance Program would affect the parents receiving this assistance.

June 1, 1978

We have found this to be the case in the past when subcontractors have not administered the program in an acceptable manner. We have also found that contractors rely heavily on the Department to train the subcontractor and monitor the program, and the contractor does very little, if anything, of this nature.

Due to the above stated reasons, the Department opposes this bill.

Sincerely,



Lee McAnerney
Commissioner

6-1-78

RE CS FOR HB 913

Jim Rhee said that the Am Municipal League supports the CS + the legislation since it would get D CPA out of the business of over-seeing municipal contracting for day care services. Therefore the League did support the bill and the concept behind it.

However Rhee was concerned that the language in the bill would prevent the state from directly administering day care programs in areas where a general municipality, which did not wish to under take the administration of day care contracts, opted out. Rhee would like language, presumably in Sec (6) that would instruct the State to undertake direct day care programs where a municipality was not involved - either in or outside of an organized borough.

JRH.

546-275

5-30-78 John Hinkle Eupat Child Care Center Fairbanks
oppose - see deletion.

Original sponsor: Health, Education and Social Services Committee

Offered: 5/17/78
Referred: Rules

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

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CS FOR HOUSE BILL NO. 913

IN THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to day care programs."

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

* Section 1. AS 44.47.250 is repealed and re-enacted to read:

Sec. 44.47.250. POWERS AND DUTIES. The department shall

- (1) implement and administer a program to assist in providing day care for the children of low-income families according to the requirements of secs. 250 - 310 of this chapter;
- (2) establish standards of eligibility for day care benefits;
- (3) contract for the care of children of eligible families;
- (4) establish procedures to periodically review the needs of families receiving day care benefits;
- (5) contract with consenting municipalities to perform its duties under secs. 250 - 310 of this chapter within those municipalities; a municipality may subcontract with another organization in the community to perform administrative duties; [w/ approval of department]
- (6) contract with day care facilities outside of municipalities; to provide more effective administration of programs in the unorganized borough, the department may contract with another organization in the community or with an organization serving the region in which the community is located to perform administrative duties;
- (7) adopt regulations necessary for the performance of its duties under secs. 250 - 310 of this chapter.

* Sec. 2. AS 44.47.260 is amended to read:

Sec. 44.47.260. LOCAL PARTICIPATION. When a contract is made

1 under sec. 250(5) [SEC. 250(b)(2)] of this chapter between the depart-
2 ment and a municipality, the municipality shall pay the costs of adminis-
3 tering the contractual duties within its jurisdiction.
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DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO: Eric Lee, Director of
Community and Rural
Development

DATE:

January 23, 1978

FILE NO:

TELEPHONE NO:

FROM:

Harvey
F. Harvey Pitts
Child Care Programs
CoordinatorSUBJECT: Recommendations by the
Ombudsman in his October 20,
1977 letter to you concerning
Dr. Gold's complaint

Herein are my comments regarding the several recommendations for improving the DCAP which were set forth by the Ombudsman:

1. To straighten out any confusion that might have been evidenced in this Fairbanks day care administration, we would suggest you begin the tedious but needed process of promulgating regulations, at least in the following areas:
 - A. What is the State's intent and interpretation of "permission to subcontract?" With that permission, is it then the responsibility of the Borough to determine the exact subcontractor?...
 - B. ...the procedure of how one should obtain permission for subcontracting is not clear. For example, it calls for "Written permission from the Department" for a municipality to be able to subcontract. Yet, when should the permission, if so desired, be obtained?...
 - C. ...Should a municipal government have to substantiate why it prefers to operate the program through subcontracts as you once intended?...
 - D. What does the Department infer by the local administering agency's responsibility to serve eligibles in the designated grant area?...should be clarified. It might make more overall management and planning sense to prioritize eligibles from the start of the fiscal year and apportion monthly subsidies to a determined ceiling..."
 - E. ...exact breakdown of State, contractor (or local government) and subcontractor (or local administering agency) responsibility. Appropriate termination procedures for recipients...; methods of accurately informing recipients in a properly designated time frame...; guidelines important for subcontractor's proposals statewide, as well as advertising for new proposals; a spelled-out monitoring effort....
2. ..., we would recommend a clarifying letter be sent to Fairbanks North Star Borough Mayor John Carlson and Fairbanks Borough Assembly Chairman Phil Younkers.

3. We suggest a letter to Dr. Gold...and, by means of this complaint resolution, perhaps a future meeting between you, Pitts, Dr. Gold, the Commissioner and appropriate Borough contacts could take place to iron out personality conflicts that might remain."

As far as I can determine, the above are recaps of the Ombudsman's suggestions with extraneous remarks omitted. The following are my suggestions:

1. First, I am opposed to regulations-any regulations. They are cumbersome, not suited to community variations, and would serve to eliminate the flexibility we have to allow different communities, with unique cultural, traditional and economic needs, to serve their residents the way the local government feels they should be served. Because they have the effect of specific law they predestine a "big brother" approach similar to the federal government's FIDCR which is the prime reason the DCAP program was designed as it is by the legislature. The intent was for a great degree of flexibility. I believe that is why the legislature in its wisdom made promulgating regulations permissive rather than manditory. Indicated by the fact that no funds were appropriated for the promulgation process. That the Department is not required to promulgate regulations, contrary to what Mr. Flavin stated, has been verified by 3 Assistant Attorney Generals. This was the opinion of Dick Bradley (now with Legislative Affairs) when he was with the Department of Law, it is the opinion of Rodger Pegues in the Juneau office of the Department of Law, and is also the opinion of Ivan Lawner, general civil section, of the Anchorage office of the Department of Law. In fact, Mr. Lawner said that courts have held that written guidelines and contracts, such as we have, have been enforced by courts in the same manner as regulations. According to Mr. Lawner, Mr. Flavin is a strong proponent of regulations, but Mr. Lawner too, could not see the need for regulations as recommended by Mr. Flavin. In summary, it my opinion that there is no need for regulations, that they would prove detrimental to the flexability intended for the DCAP by both the legislature and the administration and that we should defer in their promulgation. Perhaps at some later point in time regulations might prove helpful. However, that time would come when history stabilizes the DCAP and not while it is under metamorphosis, certainly not in the near future, if ever. Assimilation of changes into our Day Care Assistance Program Application Manual, and thereby into our contracts, would serve the same purpose as regulations, and would be much more amenable to change with the program.

In paragraph A Flavin recommends that we clarify the Department's intent and interpretation of "permission to subcontract." This recommendation has merit and I suggest we do this in the manual by rewording the 3rd paragraph in Section III on page 2 to read as follows:

A participating government may choose to administer the program directly, and is urged to do so. However, the Department realizes that extenuating circumstances might exist in smaller or rural communities which would make it necessary for the community to subcontract for another appropriate local agency or group to perform local administrative functions. These functions include: outreach, screening of applicants, eligibility determination, authorization, payment to providers, and monthly reporting. If a community opts to subcontract for administration, it must request from and obtain the written approval of the Department to subcontract prior to execution of the subcontract. In no case will the Department allow a community to opt to subcontract or change the sub-contractor whom the Department has previously approved after a grant is made. Violation of this provision will result in immediate termination of the contract and grant.

I believe this would suffice to clarify our intentions regarding both subcontracting and the need to satisfy the Department of the qualifications of the subcontractor to adequately administer the program.

In paragraph 13 it is suggested that we clarify when permission to subcontract should be obtained. My above suggested change will also satisfy this recommendation, which too has merit.

In Paragraph C the suggestion is that we clarify whether a local government should have to substantiate why it prefers to operate the program through subcontracts. I think this suggestion has merit and I think the answer is yes they should. However, because of community variations I don't believe we will be able to spell objective criteria for acceptable needs for subcontracting that could satisfactorily encompass the entire State. Those guidelines inserted because of the above recommendation should suffice here.

Paragraph D suggests we clarify the intent of the LAA's responsibility to serve eligibles in the designated grant area. This can be done most succinctly in Appendix A of the Contracts for Service by deleting the words "to serve all" and replacing them with the words "not to deny assistance to" and adding the words "regardless of the location of the family's residence" to the end of the paragraph so that it reads:

The Contractor agrees not to deny assistance to families with reasonable access to licensed day care facilities within the Fairbanks North Star Borough regardless of the location of the family's residence.

In this same paragraph the Ombudsman also alludes to prioritizing eligibles and restricting monthly expenditures from the start of the fiscal year. It is my feeling that eligibles are prioritized in

the statute (preference shall be shown to low income and single parent families). Furthermore, establishing monthly maximums would be detrimental to the various communities wherein employment fluxuates by season such as in Petersburg and Kodiak or communities undergoing rapid development and construction. I therefore recommend retaining the status quo on priorities and monthly expenditures.

Paragraph E contains a mutiplicity of suggestions:

1. We should spell out the exact breakdown of State, Contractor, and Subcontrqctor responsibility. This is done in the latter half of our manual which is made a part of every contract. Any addition would be redundant, and therefore I recommend no action on this.
2. We should extablish appropriate termination procedures for recipients. At first glance this seems like an excellent suggestion. However, as I thought about ways this could be implemented, several things occurred to me... There are many reasons why clientele terminate from the program. They might marry another person whose combined income exceeds the maximum allowable. Termination in this case is simple - when the client marries, their assistance abruptly terminates. Another client might get a better paying job or might quit working. Again, termination in these cases is simple and abrupt. Perhaps a recipient family is eligible because a non working parent is suddenly incapable of caring for the child(ren) while the parent works either through accidental injury or onset of illness. Eligibility in this case, ceases when the attending physician certifies the incapacipated parent is able to resume caring for the child(ren). Although abrupt, cessation of eligibility in these instances are foreseeable in advance based on information submitted by the client's physician. Therefore, no detailed plan is necessary beyond informing the client termination is a forced cutback as a result of poor planning and administration by the LAA. With our improved monitoring of monthly expenditures this should never happen. But if it does, it obviously will be the result of poor administration of the LAA. Since it is our philosophy to allow as much local control as possible, I believe we should leave this final decision with the LAA. However, since you feel an advance notice of at least 2 weeks should be given prior to termination of assistance, this can be accomplished by adding the following sentence to item #9 in Section V, C of the Program Manual:

"A minimum of 2 weeks notice must be given to any recipient prior to termination of day care assistance when the recipient continues to meet eligibility criteria."

3. Setting forth guidelines important for subcontractors as well as requirements for advertising for subcontractors are also recommended in this paragraph. Setting forth guidelines for acceptable subcontractors indeed merits implementation and I propose to do this by inserting the following paragraph between the existing paragraphs 3 and 4 on page 2 of the manual:

The following criteria are established as minimum for approving subcontractors:

A. REQUIREMENTS

1. Formal training or experience totalling at least four years in one of the helping professions.
2. Demonstrated capability to interpret and apply written instructions.
3. Demonstrated administrative ability to compute gross income and adjusted net income.
4. Administrative experience in program operation.
5. Experience or training in office organization or management.
6. Experience in administering a Social Service Program.
7. Must devote a minimum of 75% of administrator's worktime to the Day Care Assistance Program.
8. Administrative duties may not be delegated, person who meets above criteria must perform all administrative duties related to this program.
9. Must maintain regular office hours in a facility conducive to serving low income and single parents accompanied by children.

Insofar as advertising requirements are concerned, each municipality's ordinance or "regulation" is quite likely to be individual and distinct. I really believe that we would be infringing on local prerogative if we were to attempt to manipulate their bidding and advertising procedures. And yet, I really agree that the more notice and publicity that the municipality gives in seeking subcontractor proposals, the better the program administration will be. Rather than discount this suggestion, I would like to think about this a bit more.

4. A "spelled-out monitoring effort" is also suggested. I feel this suggestion is redundant since this is covered in each contract, wherein the Department reserves the right to examine documents related to the program in the body of the Contract as well as in Section V, D, paragraphs 4 and 5 on page 19 of the program manual.

The suggestion is made that "You expand your direct involvement with the public at large " including:

1. selective recipient interviews during field trips
2. public hearings or some public response mechanism from State residents

The suggestion has a great deal of merit, however, staffing and time constraints preclude its implementation. To implement this suggestion would require an additional full time Field Training Officer. However since public input is always a valuable consideration, beginning immediately we will select names on a random basis from recipient files during field trips for monitoring and will telephone a sample of recipients from each community. This will provide a forum for input by those directly affected by the DCAP. In these telephone calls we will stress confidentiality and that the calls are for obtaining public opinion only.

1. It is suggested that you send a clarifying letter to Borough officials in Fairbanks regarding Dr. Gold. This you have done.
2. It is suggested that you write Dr. Gold, and that a meeting be arranged between the Director, myself, the Commissioner and appropriate Borough officials to iron out personality conflicts. I have no comment regarding the letter but agree that a meeting with Dr. Gold might prove beneficial if he were to continue to be involved. However, I see no reason to include the Commissioner since I'm sure she has no personality conflict with Dr. Gold. However, I'd like to point out that I don't consider differences of opinion, Dr. Gold's defensive tirade in his letter wherein he demanded I apologize to him, a personality conflict. And even if a personality conflict did exist between Gold and myself, I feel I am actualized above petty resentment.

FHP/ad

FNSB Assembly
Work Session
March 16, 1978

Present:

Karen Parr, Presiding
Kevin Harun
Phil Deisher
Joe Marshall
Dave Brennen
Harry Reimer
Andy Karella
Phil Younker
Bill Stringer
Butch Stein

John A. Carlson
Bill Creighton
Ron Hauenstein
Gaye Patrick
Milt Staples
Beth Lausen

- 1) Day Care Assistance Program - Frank Flavin, Ombudsman, Eric Lee, Harvey Pitts

Mayor Carlson gave history of day care assistance program thus far and the problems with the subcontracting of it. Mr. Lee gave some in depth background on the program from the state's standpoint. Federal guidelines were not applicable to Alaska, so state set up its own program. Program is geared for the parent, not the child, so parent can go to work or attend school which will lead to gainfull employment. The state agencies should not directly administer the program through social services and has established the grant program with the local government paying the administration costs. The program is not forced on municipalities, but is available if wanted. It was originally designed to be administered in-house. The borough could appropriate the funds for the administration and have the program administered within the borough. They can give the responsibility to the state for the selection of the subcontractor. Mr. Lee felt the borough should operate the program in-house and all the bigger municipalities do. Smaller ones have contracted out to other social service agencies. Brennen asked if the borough was to separate itself from this service, would it still be available. Lee answered there would be no program in the borough, but the city could take over the program. It would be up to the city whether it would be limited to people within the city or not. Brennen asked why the selection of the subcontractor was not totally left to the borough and Lee answer the borough was merely responsible for the cost of it, the state has the final say and sets the guidelines. Lee stated criteria were laid out at the Aug. meeting with the mayor. Criteria are being drafted, will go to public hearing throughout the state and will become part of the Alaska Administrative Code. This is being pushed, but may take time. It will probably not be done in time for the upcoming year and bids. The current manual is the starting point and public hearings will be based on that. The state has to assume that the proper administrator will be provided for the program. When it is in-house, the qualifications, etc., of the administrator has to be approved by the state. The parents attending question why the assembly did not want the program in-house as they felt it was far better administered. They were told the assembly felt they were overstepping the powers of the borough and it has been proven the voters do not want the assembly to have additional powers.

The parents pointed out this was a job development program, not a social service. The borough will or will not accept the program depending on the conditions and those conditions should be laid out. It should also be decided who the negotiators are to be, the assembly or the administration. The consensus was to set up agreed specifications with the state prior to putting out bid. Providers and recipients will be included in negotiations.

2) Utilization of clerk's office and borough letterhead

Ms. Parr stated clerk's office and equipment was not to be used by assemblymen. A typewriter is available to move into assembly offices. Policy was set for using letterhead only for borough business and assemblymen should have their own stationery for personal use.

3) Code of Ethics

Yunker suggested Nordale review ordinance with amendments. Karella felt the enforcement of this could only be done in court. The ordinance states borough employees and elected officials have to check with borough attorney on future job positions if there might be a conflict. Parr suggested an alternative to putting this on the attorney would be to form an ad hoc committee of the attorney and 2 or 3 others. This would not be a standing committee, but formed for each case. Consensus was to form committee to do in depth study of ordinance. Committee to be: Karella, Parr and Brennen - also notify Marshall & Yunker.

4) Budget and Community Services Requests

Mayor Carlson stated they are looking at about 8.4 mill rate as the budget presently stands. The assembly needs a definition of TVA's goals. Stringer said TVA will be moving from the borough offices and a meeting of TVA board and the assembly would be useful. One portion of a work session will be set aside for TVA.

Shouldn't some of the community service requests be under P&R budget? Brennen suggested a non-revenue fund for community services. If the fund became large enough, the grants could be funded from the interest. Deisher would like to see a percentage of P&R's budget go toward the performing arts. Yunker believes the P&R commission should be directing how the budget is spent. Stein said symphony and theater are not government function and should not be funded.

Terese Kaptur, Fairbanks Symphony, stated all orchestras are supported in part by some of tax support dollars. They are asking for educational and promotional grant. Mailing list is 150 very small fraction of population. All money would be spent in the borough for the borough. This would not be a continuing request. This is their first request because they have found ticket sales do not cover costs. Average attendance is 600 with tickets at \$4.00 general and \$1.00 students.

Phil Gilbert, Hospitality House, stated they would continue mental health program as is now and add about 9 needed services. They need 25% match funding and endorsement with state matching fund with 75%.

Brennen stated endorsement can be given to all applicants for grant and state will pick best bidder. They have most of their 25% money and are only asking for endorsement as suitable group for grant. Consensus was that assembly is not qualified to consider this and cannot endorse one group without listening to all.

Linda Hulbert, Adult Learning Center, stated this is non-profit, private organization. The borough does not offer basic adult education program. Provide no charge service and serve Fairbanks and all interior villages. Rural funding comes from native corporations. They are asking for funding for teachers for special classes, i.e., English as second language, GED. State provided \$124,000 last year and native corp. \$50,000. Younker felt this should be under the school board budget. School board will not get into operating adult education.

5) Chena Wayside

Consensus was not to take it from the state unless it is completed or they will add administrative costs to the offered \$269,000.



FRANK J. GOLD, Ed. D.

Registered Psychologist

12XKXOPHAT 3098 Airport Way
FAIRBANKS, ALASKA 99701
(907) 438-4409

May 19, 1978

Eric Lee, Director
Division of Community & Rural Development
619 Warehouse Avenue, Suite #230
Anchorage, Alaska 99501

Dear Mr. Lee,

This is being written in response to the PROPOSED REGULATIONS for the administration of the Day Care Assistance Program.

The Department of Community & Regional Affairs, Division of Community & Rural Development, is charged with contracting with local communities for the administration of the Day Care Assistance Program; the Department has consistently voiced support for local versus state control of the Program; the Department has held the local community financially responsible for unallowable expenses (as defined by the Division) incurred in the administration of the Program.

Thus, one section in particular is of import and concern in the PROPOSED REGULATIONS: ACC .20(b). In that section, the Department proposes to eliminate the option of subcontracting for communities whose grant is in excess of \$100,000. This I find inconsistent and incomprehensible--in fact, discriminatory!

The Fairbanks North Star Borough Assembly has consistently gone on record as being opposed to administering the Day Care Assistance Program "in house". The Assembly has publically stated, on numerous occasions, that it is their wish to subcontract the Program administration. During the current fiscal year, on just as many occasions, the Division has thwarted that publically-elected body's desire.

Four communities are presently receiving funds in excess of \$100,000: Anchorage, Fairbanks, Juneau, and Kodiak. Two of these communities are consolidated municipalities with departments designed to handle a variety of health/social services; the third is a second class borough presently subcontracting the Program administration successfully. In spite of findings issued by the Office of the Ombudsman, and in spite of the expressed will of elected officials, the fourth community--Fairbanks--does not fall in either category. Because of the obstinance and arrogance found within the Department, the Fairbanks community has been forced to choose between eliminating the Program and operating it "in house".

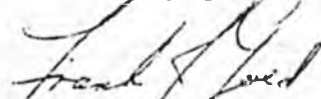
Eric Lee, Director
RE: Day Care Regulations

Page 2
5/19/78

Neither the Department nor the Division should allow itself to be placed in the position of opposing the public will; neither the Department nor the Division should allow itself to be accused of dictating unnecessary administrative procedures to a local community; neither the Department nor the Division should allow itself to be charged with authoritarian discrimination.

I request that the Department of Community & Regional Affairs and the Division of Community & Rural Development eliminate ACC .20(b) and allow every local community the option of subcontracting the administration of the Day Care Assistance Program.

Sincerely yours,



Frank J. Gold, EdD

cc: Commissioner Lee McAnerney
Special Assistant Bill Gordon
Special Assistant Jessie Dodson
Governor Jay Hammond
Senator John Butrovich
Senator John Huber
Senator Glenn Hackney
Representative Fred Brown
Representative Steve Cowper
Representative Charles Parr
Representative Don Bennett
Representative Larry Carpenter
Representative Sally Smith
Representative Lisa Rudd
Office of the Ombudsman
Mayor John Carlson
Members, Fairbanks North Star Borough Assembly
Acting Borough Manager Stuart Benslow, Kodiak

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

F. Harvey Pitts
Child Care Programs Coordinator

January 25, 1978

Eric Lee, Director *EL*
Community and Rural Development

Implementation of
Recommendations of
the Ombudsman

All directives in this memorandum are in reference to your January 23, 1978 memorandum on the subject of recommendations of the Ombudsman in his October 20, 1977 letter to you, concerning Dr. Gold's complaint. You are hereby directed to implement as soon as is possible and practical, within staff time restraints, the following:

- 1) Insert a clarifying paragraph dealing with permission to subcontract, per your memorandum.
- 2) Execute an appendix to all Contracts, redefining the term "to serve" as per your memorandum.
- 3) Add the Program Manual section V C relating to Notice of Termination, as per your memorandum.
- 4) Subcontractor criteria - Implement the changes that you recommend, with the exception of number 7, under the Requirements, requiring seventy-five percent of the Administrator's work time to the program. This needs to be reworded to allow for flexibility, dependent upon the size and nature of the community involved. Seventy-five percent is certainly reasonable for Fairbanks, however, an area such as Nome, or Kotzebue, etc. it might not be appropriate.
- 5) Contract advertising - I would recommend that we insert language into our guidelines that require broad public advertising of all subcontracts, and that the Contractor provide us with their advertising plan, with their permission to subcontract.
- 6) Direct public involvement - Implement your recommendation.

Please advise me when these directives have been carried out.

EL/dt

cc: Lee McAnerney
Commissioner

OCT 29 1977

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

DIVISION OF COMMUNITY AND RURAL DEVELOPMENT

JAY S. HAMMOND, GOVERNOR

619 Warehouse Avenue
Suite 230
Anchorage, Alaska 99501

October 27, 1977

Mr. Frank Flavin
Ombudsman
360 "K" Street
Anchorage, Alaska 99501

Dear Mr. Flavin:

Re: Ombudsman Complaint 77-1421 (findings)

We have reviewed your findings in the above referenced complaint and offer the following responses to specific items mentioned in those findings. Items not specifically referred to, we agree with or do not view as significant enough for comment. All notations are in reference to your Letter of Findings of October 20, 1977.

To set the record straight, page 2 paragraph 3 of your letter states that "he (Pitts) would extend the FY 1977 Contract to the end of September, 1976." This is incorrect. It was the FY 1976 Contract which was extended.

A major point around which you have based your findings and which we have expressed concern in the program administration by Dr. Gold is the question of who may, should, or must be served (page 3).

We would agree that, to an uninformed party, there could appear to be a conflict between the language of Appendix A to the Contract and the Day Care Assistance Manual. The phrase, in Appendix A, "The Contractor agrees to serve all families with reasonable access to licensed day care facilities within the Fairbanks North Star Borough", was included in all the Day Care Contracts after a problem arose in Petersburg with City of Petersburg, as the Contractor, wanting to refuse "service" to persons living in the adjacent community of Kupreanof. "Service", by our definition, means "accepting applications from" or otherwise not discriminating solely on the basis of the geographic location of the individual clients residence.

Frank Flavin
October 27, 1977
Page Two

The phrase referred to in the Day Care Assistance Manual, which is part of the Contract, is absolutely clear that the program is underfunded and that it is not the intention to "subsidize" (as opposed to "serve") all eligible families. We are certain that all contractors and administrators were aware of this fact.

The fact that I specifically reinforced this in person with Dr. Gold is documented in my Trip Report of February 9, 1977 and referred to, by you, on page 6.

You indicate (page 15) that Dr. Gold admits a conflict in philosophy between himself and the Department. As subcontractor his duties were to perform the administrative functions necessary to deliver the required service not to establish policy. If, in fact, his philosophy of the program differed dramatically from that of the State, and his actions did lead to an imposition of his philosophy, there is a serious question of a conflict-of-interest in accepting the subcontract. Dr. Gold's direct and overt actions in the political arena (legislature) were only made possible as a result of information he had access to as a result of his contractual relationship.

As the agent for the Borough and the State, Dr. Gold was acting in a manner contrary to the policies of the agency with whom he was obligated to represent.

In this same regard, we would like to point out that contrary to your statement on page 8, paragraph 5; "During the same time Dr. Gold was testifying against Community and Regional Affairs day care proposals in front of legislative committees", the Department had no day care proposals before the Legislature. Dr. Gold on his own volition was attempting to have a supplemental appropriation introduced.

Much is made of local flexibility, by you, by Dr. Gold and certain by Community and Regional Affairs. On page 4, paragraph 2 you indicate the law "...actually encouraged where applicable.. the local governments to subcontract to a local administering agency." The law is permissive, and permits subcontracting only with the approval of the Department. We can no where find where the law "encourages" subcontracting. You state (page 2) and we agree, that the subcontracting portion of the Statute was designed for rural areas. Fairbanks does not fall in that category.

We disagree with your chronology as portrayed on page 5, paragraph 4. Dr. Gold was instructed verbally (he never requested clarification in writing so it was never given) on more than one occasion that it was not mandatory that he cut off clients already on the program to "make room" for newer applicants with lower incomes. If this were true every program, every day, would need to realign their eligibles with each new applicant. The only requirement was that new AFDC or WIN recipients must be subsidized and an appropriate reserve of funds made available to this group only.

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Page Three

In paragraph 5 of page 5, we feel that Dr. Gold was fully aware that he was not obligated to subsidize all eligible families in the area. His own actions and records will indicate he did not attempt to subsidize all eligibles.

His explanation of short notice to applicants, as stated in your letter, (page 5) was that certain Legislators were working for a speedy supplemental appropriation. It would be considered poor management (and probably illegal) if we were to over expend our funds on the supposition that the Legislature might appropriate additional funds to us in the future. It was no less poor management on the part of Dr. Gold. You indicate that in fact the money was appropriated. We would point out, however, that it was not "speedy" as Dr. Gold anticipated. It in fact was not appropriated until it was too late to be utilized to any extent. Fairbanks utilized only 15 percent of the supplemental.

Your letter reports on page 7 paragraph 3 that:

"Of the \$3,068 in auditable exceptions which Brewer reported on return from her April visit, \$822 were cancelled by the Department when adequate back-up paperwork was provided."

We would make note that actually \$943.96 was cancelled not \$822, as you report. The point is that, much of the paperwork referred to should have been done properly by Dr. Gold in the first place or in the 3-month reviews of applicant files. The matter as to who reimbursed the State is not of concern to us and is a matter between Gold and the Borough.

Page 7, paragraph 4, cites the Department for Mr. Pitts not notifying Dr. Gold of the severity of the actions in regard to denying access to the files. Dr. Gold did receive a copy of the letter to Blevins from Pitts and the attached monitoring report by Ms. Brewer which clearly outlines the severity of the problem.

We would agree with the finding that the Department technically erred in that the Director did not directly communicate in writing the problem of noncompliance with Dr. Gold. The procedure will be strictly adhered to on future actions. We submit however, that Dr. Gold was fully aware of the seriousness of the problem. The mere fact that he sent the "rather inflammatory" letter to Commissioner McAnerney is an indication that he felt threatened and was concerned.

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Page Four

The situation as it relates to Barbara Morse was unfortunate. She was the only professional Divisional employee in Fairbanks. She also happened to be eligible for the DCAP. We would agree that this clouds her involvement. It, however, would have required undue expense to the State to have dispatched another employee to Fairbanks to undertake routine actions related to the program. For example, I specifically requested that she obtain from the Borough the information on the bidding procedures. Her activities on behalf of the Department were limited and had negligible influence on the actions taken.

You indicate that despite specific problems outlined in Brewer's April report she indicates an improvement in the administration. Improvement is only relative to the previous level and does not in any way indicate the acceptability of the "improved" level.

Findings:

A. Action found to be arbitrary

Concur in the technical sense that the procedure was not adequately followed. We do not agree that, as a result, Dr. Gold was not made aware of the seriousness of the problems.

B. Actions found to be based upon improper grounds

Item #2 and item #4

Dr. Gold had been told that there may be additional funds available later. It was indicated these would be in smaller amounts if at all.

In page 13 paragraph 1 you state "The Contract does not state, as you say, that not every eligible person in the Fairbanks area must or should be served". We still maintain that it does, in fact, state this. Article XIV Procedures and Guidelines to the Contract states:

The Contractor shall perform all services in compliance with the procedures and guidelines as outlined in the Department of Community and Regional Affairs Day Care Assistance Program Manual (revised June 7, 1976), attached hereto and made a part hereof (emphasis added), and Alaska Statute 44.47.250-310.

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The Manual (which is part of the Contract) states on page 2 paragraph 1

It is not the purpose of this program to provide free day care to all qualifying for assistance. Current funding does not permit the State to subsidize all eligible families;...

We have previously explained the phrase "to serve" as used in Appendix A.

We would agree with you in the statement that the choice to apportion the total funding on a month-by-month average or not, is one of local flexibility, provided:

1. The interests of the State are protected;
2. The interests of the clientele are protected;
3. The local administrator has justifiable grounds to show the advantages of expending the allocated funds in a manner other than on a monthly programmed annual basis;
4. The administrator accepts the responsibility for his management decisions;
5. That the local management decisions are in keeping with the philosophy and intent of the program.

We are of the opinion that Gold applied his own philosophy to the administration of the program; that he mislead recipients, delegated program authority to inappropriate and unqualified members of his staff and did not maintain necessary supervisory controls; exercised poor judgement in expecting to receive all the necessary funding through political activity and operating the program accordingly; improperly used his position as program administrator in attempts to implement his personal policies and thus, exceeded the bounds of his contractual relationship.

Item #5

Your report consistantly refers to Dr. Gold cutting higher income clients to make room for lower clients as he felt he was obligated to do. Dr. Gold filed Monthly Statistically Reports with our office. We have indicated, and you have acknowledged, they were often late. In addition, they are of poor quality and provide conflicting information. One portion of these forms asks for the number of new families placed on the program during the month by income groups. Dr. Gold's reports indicate that he did add 9 new families in November;

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not all in the lowest group, but in groups I, II and III. The reports for December, January, and February indicate that no new families were added in any group. He does not begin adding again until he feels the Legislature might act in March. His explanation and interpretation of Appendix A, that he had to cut recipients in the higher group to make funding available for new applicants in the lower group, does not correspond with what Dr. Gold was actually doing by his own reports.

You also state "Exactly how the reports should be filed, and what route each report should take through what local, Borough and State offices is unclear, ..." The Department Forms Preparation Manual for the program specifically states on page 3: "This Manual outlines the purpose of each of the above forms as well as the steps for their completion and submission to the correct governmental unit or agency." The Manual then continues to do just that for each form. Dr. Gold received this Manual and was trained in its use.

C. Action Found Unfair

It is our position that the Borough acted prematurely in informing Dr. Gold he would receive the Contract, especially, in light of my meeting with Helen Blevins in May. Our relationship with Dr. Gold was completed upon expiration of the Contract with the Borough on June 30, 1977. We felt no obligation to deal directly with him after that date. You indicate that Dr. Gold was surprised that we would not accept him as a subcontractor. His surprise must have been that a State agency asserted its authority, not that his program administration was considered unsatisfactory.

Agency Action Justified

- A. Statewide perspective needed and obtained through Community and Regional Affairs monitoring.

Concur

- B. Program problems properly outlined by the agency.

Concur. In addition, this experience indicates fault on our part for attempting to work out the problem areas with Dr. Gold and the Borough on an informal basis. Our obvious intent was to maintain a cordial working relationship with both. However, as you have indicated (page 16, paragraph 3), "This same patience also lent to the lack of due process..." We have already revised our procedures and taken corrective actions in this regard.

- C. Suggestions for future program advertising and proposal guidelines proper and helpful.

Concur

- D. However, heavy-handed the Community and Regional Affairs action to discredit, the Borough chose not to challenge the State's authority and chose to accept its critical comments as basis for not renewing the Day Care Contract with Dr. Gold.

We concur with your conclusion that it was rightfully the Borough's decision. However, we would disagree that we were "heavy-handed". You refer to Dr. Gold's emotionally charged and slanderous remarks before the Assembly as advocacy talents and conclude that "he was not precluded by the State from giving his side of the story." We expressed our position in a straight forward manner, as we feel we have the authority and responsibility to do so.

E. RECOMMENDATIONS

We are, and will continue, to consider the recommendations presented. We offer comments on some of these at this time. Others will necessitate a more thorough review to determine their impact and appropriateness. A lack of comment on these here does not indicate a lack of action. We refer to your recommendations by their reference in your letter.

1. Regulations

We have expressed to your staff our position regarding regulations. It is our experience that regulations tend to restrict program flexibility and create bureaucratic barricades. In review of the first two-years operation of the Day Care Assistance program, we agree that some regulations may be appropriate and have begun an examination of the same.

The drafting and implementation of Statewide regulations cost approximately \$10,000. We will discuss submission of this in our Budget to the Legislature, where they can indicate their desire for regulations or not.

2. Letter to the Borough

Concur

3. Letter to Dr. Gold.

No comment.

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SPECIAL FINDINGS

Since you chose to comment on the appropriateness of the A-95 Grant Review and approval system, we would also comment:

This Division (not related to the Day Care program) has for many months been promoting a more efficient, extensive and comprehensive review process.

We would disagree that comments by agencies should only relate to that agency's experience with the Contractor. If this held true, a new applicant would receive no comments, either positive or negative.

This agency reviews several grant applications each month on a wide spectrum of subjects. They are reviewed for clarity, objectivity, budget soundness, contractor history, need for project, inter-relationship of the project to others, relationship to stated administration policies and philosophy. This is totally appropriate and in fact, absolutely necessary to objectively evaluate the merits of each proposal.

In summary, we feel the investigation of the complaint was conducted in a manner satisfactory to us. Your assistant, Kathy Allen, was very courteous and cooperative in her dealings with this office. Although, as we have indicated, we do not totally agree with your interpretations on some matters, we do completely agree with your final conclusion as stated in your October 21, 1977 letter to Dr. Frank Gold:

Please understand that we (Ombudsman) are not in a position to determine whether or not you should have, or should now receive the subcontract for the Fairbanks North Star Borough's administration of the Day Care Assistance program this next year. We believe that position is not one that our office can should, or would want to take in light of our own statutory jurisdiction and responsibilities.

Sincerely,



Eric Lee
Director

EL/dt

cc: Lee McAnerney, Commissioner
John A. Carlson, Mayor,
Fairbanks North Star Borough
Phil Younkers, Chairman,
Fairbanks North Star Borough



ombudsman

Frank Flavin

State of Alaska
360 "K" Street, Room 246
Anchorage, Alaska 99501

(907) 276-4011

October 20, 1977

Eric Lee, Director
Division of Community and Rural Development
Department of Community and Regional Affairs
Bayview Commercial Building Suite 230
619 Warehouse Avenue
Anchorage, Alaska 99501

Re: Ombudsman Complaint 77-1421
(Findings)

Dear Mr. Lee:

Please be advised that the above-noted complaint has been investigated and has been found to be a partially-justified complaint. However, based on conversations with my assistant, I believe we can come to a mutual agreement regarding future action in this case.

The complaint, filed by Dr. Frank Gold of Fairbanks, alleged that your office improperly and unfairly prevented him from obtaining a contract to administer the Day Care Assistance Program within the area of the Fairbanks North Star Borough. Letters from your office to the Borough Assembly and the Borough Mayor became the basis upon which that governmental body determined not to award a second year's day care contract to Dr. Gold.

Dr. Gold has charged that action, based on erroneous grounds outlined in the letters, was an abusive overextension of the State's authority in administering monies for the program.

We have reviewed the files, both in Anchorage and Fairbanks, interviewed several administrators of the day care program, Community and Regional Affairs personnel, Fairbanks officials, day care assistance recipients, and of course, Dr. Gold.

As the entire complaint and resulting situation is to be considered by the Borough assembly again soon, we find it appropriate, and hopefully helpful to all parties, to detail the history of this day care assistance administration in Fairbanks; our findings regarding the Division of Community and Rural Development; and our recommendations, based on those findings. Our intent, by means of the recommendations, is

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to afford an impartial look at the record, set that past record straight, and hopefully, to suggest improvements for this needed program.

SUMMARY OF BACKGROUND RECORD

After the Fairbanks Borough determined there was need for day care assistance, as provided for in AS 44.47.250, the Borough began implementing its own program through funds provided by the Department of Community and Regional Affairs.

The program was administered directly by the Borough through the end of 1976. Due to a transfer of the Central Child Care Coordinator's office from Juneau to Anchorage in the summer of 1976, a timely approval of the FY 1977 Day Care Assistance grant to the Fairbanks North Star Borough was not possible until September, 1976. In a letter dated August 26, 1976, F. Harvey Pitts, the Child Care Coordinator, stated he had received the application for the next year's program funds. At that time, he said the proposal "appears in order and has my approval", but said until the final authorization came through, he would extend the FY 1977 contract to the end of September, 1976. It is important to note here that a copy of that letter was sent to Dr. Frank Gold, who had previously signed a contract with the Borough to begin administering the Day Care Assistance Program on July 1, 1976. Although the FY 1977 contract from the Department to the Borough was not finally approved until September 24, 1976, it was backdated to become effective July 1, 1976.

The Borough, State and Dr. Gold's files all are in agreement that Dr. Gold began administering the Day Care Assistance program in July of 1976. He had not solicited the contract, but rather, he had been approached and asked by borough officials if he would be interested in a contract. He was interested and soon took over full administration of the program.

Regarding legislative intent concerning the statute requiring the Department's permission prior to subcontracting, the record and your recollection of this provision indicate the inclusion was aimed at rural areas. Fairbanks is not a rural area, but the law does not distinguish a difference, between urban and rural areas, thus letting the Fairbanks Borough Assembly opt for subcontracting.

In FY 1977, (contract signed in September, 1976) there was no discussion of the merits of in-house versus subcontracting the program, nor was there any request or demand for permission to subcontract. The reading of the law at the time and the

interpretation up until this past May was that "permission to subcontract" meant the State could allow a municipal government to move the Day Care Assistance Program administration out of its own offices and subcontract. The involvement the State had in the actual subcontractor choice was negligible, at least according to the Borough's interpretation and the 1976 experience.

After a month and a half of program administration, Dr. Gold found he had more applicants than he had anticipated money for the rest of his contract term. Part of this reason was the expressed desire of the State that the program be advertised widely in the North Star Borough area. And, examination of the contract, the regulation manual and the statute are in conflict regarding what the responsibility of the administrator actually is in meeting the demands of all those applicants that qualify for the assistance.

The statutes potentially (from AS 44.47.250 through AS 44.47.3.0) allow for the Department to establish guidelines for parent eligibility, provides for subcontracting the assistance program administration, and sets out the parent responsibility in finding a licensed day care facility for his or her child. It does not directly address how eligible families are to be cut from the program.

The Day Care Assistance Manual (page 2) states: "It is not the purpose of this program to provide free day care to all qualifying for assistance. Current funding does not permit the State to subsidize all eligible families; therefore, lower income families will be given priority."

The contract between the State and the North Star Borough as well as the subcontract between the North Star Borough and Dr. Gold, however, both contain the following section (5) as part of Appendix A, which is to be considered a part of both contractual agreements:

"(5) The contractor agrees to serve all families with reasonable access to licensed day care facilities within the Fairbanks North Star Borough."

Observing that he had reserve money to fund AFDC and WIN recipients, and in light of the aforementioned conflict in interpretation limiting subsidies amongst eligibles, Dr. Gold chose to exercise the flexibility called for in the Day Care Assistance Manual's stated purposes and goals of the program. These purposes, directly quoted, are:

"The act gave responsibility for administration of the program to the Department of Community and Regional Affairs in the hope of encouraging local government participation in the delivery of day care services.* The Department will contract with local communities for direct program administration in order to allow as much local responsibility as possible while assuring the requirements of the law are met."

Where the law gave the department responsibility for allocating its appropriated funds, it also allowed -- and actually encouraged where applicable -- the local governments to subcontract to a local administering agency. The law (AS 44.47.250 (b) (2)) requires C&RA's permission to subcontract; the manual and subsequent contracts call for that permission to be in writing.

Less than one month after the State and Borough had firmed up their mutual contract for FY 1977 funds (on September 24, 1976), Dr. Gold determined that the contractual amount would be far short of the Fairbanks North Star Borough's demand. On October 18, 1976, he wrote to Pitts requesting an additional \$70,000 to \$100,000 to meet the needs projected for the entire fiscal year. Pitts responded in an October 20, 1976 letter that an additional \$22,125 was allocated to the Fairbanks program. He stated, "The problem is, of course, insufficient funding to accommodate all persons eligible for Day Care Assistance." He further suggested that a maximum monthly mean subsidy be established as a monthly ceiling. This would allow for continued funding of AFDC families for the entire year. Pitts stated that after the additional October allocation, there would be "no more additional funds which can be made available" to the Borough during fiscal '77. He suggested that to stay within the monthly ceiling allocations, Dr. Gold curtail assistance beginning with those recipients in the higher income groups.

On October 26, 1976 (or two days after receiving Pitts' letter), Dr. Gold computed a monthly average and sent out a letter to some of the recipients that their assistance would be dropped November 1, 1976. Copies of this letter were sent to both Pitts and Helen Blevens, the Borough's Treasurer.

* This is consistent with the statutory powers and duties of C&RA "to advise and assist local governments" (AS 44.47.050 (1); and to supervise, monitor, and otherwise help make local governments eligible for State, federal and other grants.

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That letter, which became the form for future notification of other applicants who would have to be dropped to allow Dr. Gold to stay within his monthly mean averages, included the following paragraph:

"Due to the inadequate amount of funds provided to the Fairbanks North Star Borough Day Care Assistance Program, it is impossible to continue funding all day care payments for the entire year."

Pitts' Anchorage file shows this copy with no corresponding letter even mentioning--much less criticizing--the explanation Dr. Gold was using.

More low income applicants continued to apply for new Day Care Assistance, thus mandating Dr. Gold to rework his allowable "eligibles" list to stay within his monthly mean. In order to continue giving priority to applicants with lower incomes, even if they were newer applicants than some other higher income eligibles still getting subsidies, Dr. Gold had to revert to cutting off new groups of eligibles within the higher income brackets. This is his understandable explanation of the necessity of staggered elimination of higher income group recipients as the fiscal year progressed.

Admittedly, the above was not his only reason for delaying notification of those who eventually were cut from the program with only a few days' notice. Dr. Gold operated under apparently acceptable interpretations of the contractual terms of serving all eligible families in the Fairbanks Borough area and under the expressed C&RA desire for local flexibility. Dr. Gold considered this short notice (which caused some admitted hardships) as serving the client community until he was forced to cut them from the program. His explanation is that at least four Fairbanks legislators were openly working to expedite a speedy supplemental allocation to the Statewide program, with special attention to the Fairbanks plight.

More money from within C&RA was forthcoming on February 10, 1977, when Pitts and Dr. Gold discussed the new availability of \$18,054 which came from unspent day care assistance money not used by another community. With the initial \$106,495 contract monies, the October \$22,125 monies and this new February allocation of \$18,054, the Fairbanks North Star Borough allocation was a total of \$146,674. This figure was still some \$55,000 short of Dr. Gold's first forecast of the Fairbanks day care needs of \$200,000 in early fall--and about half his January, 1977 forecast to legislators based on increased demands for the assistance from Fairbanksans.

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The administration of the program by Dr. Gold was of no serious concern to the Department's Chief Day Care Coordinator, as is evident in the letter Pitts sent Gold confirming the above additional allocation. Pitts, in a letter dated February 18, 1977, stated, "As in the past, Frank, keep up the good work. I still plan to stop by and visit with you as soon as I can find the time to get out of the office."

File records show that Dr. Gold had incurred no major criticism by the Department, at least through Pitts' previously mentioned letter. The first signs of unrest due to Dr. Gold's management can be evidenced in your trip report dated February 9, 1977 (which was prior to Pitts' above comments of good work.) In that report where you detail discussions with Dr. Gold, you stated, "It is difficult to get the idea across that this is not a "welfare" type program where everyone who meets the guidelines is entitled to service . . . We must address this as a political issue. I would strongly recommend against any supplemental appropriations to Fairbanks or other communities. In my opinion, a supplemental would be rewarding poor planning and mismanagement and penalizing those communities who have conducted a responsible program. They wanted flexibility and authority but are quick to shirk responsibility for problems created . . . We need to work more closely with the grantee communities in preparation of the FY '78 program to avoid a repeat of this years problems."

Ironically, it is about this time when Dr. Gold and other day care administrators Statewide began to address this funding supply as a political issue also. They began intense lobbying with their respective legislators for more funds to last the FY '77 year. And since Pitts' letter followed your report to Commissioner McAnerney (with no subsequent comment to Dr. Gold), we cannot assume he was placed on any notice for rectifying any major or minor concerns you expressed.

Shortly after this public testimony before the legislature, apparent conflicts arose between the day care administrator (Dr. Gold) and the Department. After one visit by the Department's field officer (Jan Brewer) on March 30th, several errors (according to Brewer's March 31st field report) were noted in the administrator's operations. Since Dr. Gold had just hired a new program administrator, Brewer recommended that a subsequent visit to the Fairbanks office take place within a month to better review all the files

after the new program person was more familiar with the job and files.

Brewer returned to the Fairbanks office on April 11, 12 and 13, at which time relations between the local administrator and the agency deteriorated significantly. Dr. Gold, who admits he was made aware of the impending visit by Brewer, was reluctant to allow her access to any files, except the terminated ones, until his program assistant returned to work. He had said his assistant was out sick and Brewer reviewed only the closed files. The next day, (April 12) the assistant was still out sick and Brewer was denied access to the files. She had reminded Dr. Gold of Article VII in his contract with the Borough that mandated the files be open to the Department during regular business hours. Whether Dr. Gold opened his files to her or the following day (April 13) due to the fact his assistant had returned to work or because Borough Treasurer Helen Blevins had called him (at Brewer's request) to mandate Dr. Gold open the files (or a combination of both) is a matter of interpretation. In any event, the files revealed some audit exceptions.

Of the \$3,068 in auditable exceptions which Brewer reported on return from her April visit, \$822 were cancelled by the Department when adequate back-up paperwork was provided. Of the remaining exceptions, it is unclear where the responsibility falls in regards to the errors as the Borough paid at least portions of those exceptions. According to Borough Administrator Ron Garzini and Dr. Gold, several of the exceptions were based on miscalculations made while the Borough still administered the program in-house. Dr. Gold has stated he has not paid any of those audit exceptions in question.

Shortly after the April staff visit, Dr. Gold received a copy of a letter written by Pitts to Blevins in which he outlined the disallowed audit exceptions and detailed the problem regarding access to the files. The letter did not outline actions which Pitts thought were mandatory to insure continuation of the program with Dr. Gold nor did Pitts notify Dr. Gold of the severity of the actions in regard to denying access to the files. We refer here to the Department's Day Care Assistance Application Manual; Page 19, Article 5 of the Department's responsibilities in this program:

"5. When the Director finds that the local agency is not in compliance with the work program and contract, he shall notify the agency of the problem and the requirement for compliance. If after a reasonable period satisfactory

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adjustments are not made, he shall notify the agency that further payments will be withheld until the deficiencies are corrected."

Pitts' April 19 letter to Blevins, however, prompted Dr. Gold to fire off a rather inflammatory letter to Commissioner McAnerny asking that Pitts apologize for the letter, and for Pitts' failure to talk with Dr. Gold before concluding Dr. Gold was in the wrong. Dr. Gold recalls hand-delivering the letter to the Commissioner on April 26.

Dr. Gold received no response from the Commissioner, nor did he receive any letter from Pitts. However, the Anchorage file shows an interesting, (however irrelevant) memo from Pitts which carries a date of April 27. It concerns a proposal by Dr. Gold for a drug abuse grant he applied for in another department--the Drug Abuse Office. The memo was initially written by Pitts on non-ordinary stationery and the copy in the Anchorage file we copied, shows a stamp as having been received by the Drug Abuse Office on May 16, 1977. The memo was written to McAnerney, but the only paragraph to mention Pitts' involvement with Dr. Gold in the day care contract experience vaguely questions Dr. Gold's management of the day care program and Dr. Gold's refusal to allow Brewer access to the files. The last paragraph recommends the following:

"I recommend that the A-95 Grant Request referenced above be denied and that a search be undertaken for a more suitable Drug Abuse Program Administrator."

During the same time Dr. Gold was testifying against C&RA day care proposals in front of legislative committees, the Department began collecting a variety of paperwork regarding Dr. Gold's other involvements.

For example, in the Anchorage day care assistance file on the Fairbanks program, there are some 61 different documents (at least as recorded in September by my assistant, Cathy Allen). Of those 61, 31 documents deal with subjects other than the day care program. A large portion detail problems and criticisms other people had with Dr. Gold's proposed mental health clinic. Eight other pieces of paper dealt with Borough zoning problems--some dating back two years.

Barbara Morse, a Departmental employee directly under your supervision, was also receiving day care assistance through Dr. Gold's administration. She had recorded problems with Dr. Gold's administration of the program as he had required more back-up paperwork in order to adjust the level

Omit

Only

of her income to what she thought was appropriate. The problems with her individual subsidies were not major ones, but it does cloud any involvement she might have had in discrediting Dr. Gold's administration of the program. Borough officials have reported she inquired about several different problem areas, including whether or not proper advertisement had preceded the request for new bidders. In the meantime, John Swan had also been interested as a potential administrator and Morse had been working to interest Swan in the day care program administrator. He had been running a day care facility where Morse had taken her child. When you traveled to Fairbanks for your May 19 meeting with Blevins, Morse was in attendance.

That same trip report includes the following statement: "it was the borough's responsibility to monitor the activities of their subcontractor." You also stated, "that we would be very reluctant to approve a subcontract with Dr. Gold for next year, and recommended that they heartily consider operating the program in-house next year."

Regarding Brewer's field report from the next departmental trip on May 31, she reflected a much brighter picture of Dr. Gold's operation of the program. Although she details one case where a family had to have its payments terminated and the notice was somewhat short and indirect (the day care center was informed), the incident prompted her recommendation that a form and standard termination notice be worked out.

This Brewer report appears to contain other unfavorable impressions concerning Dr. Gold, but no examples were provided; they were requested for the future. Brewer's report states of Dr. Gold's administration of the program that applications were now complete; the back-up data was in place and no other close monitoring would be required before the "contracts are ready for renewal."

In the "Effectiveness of Program In Meeting Goals," Brewer wrote, "The program's effectiveness apparently has improved since the last visit. Applicants are now more carefully screened and clients are not being assisted at correct percentages for their income group."

To maintain a proper perspective, we should point out that the April field trip report with the same evaluation forms, detailed several problem areas: audit exceptions, refusal to allow access to all the files, files were incomplete, etc. To adequately insure we don't overlook that report, we have also included a copy of it as an attachment. The point is that

with the prior report or without it, Dr. Gold's administration of the program as is reflected by Brewer, certainly improved.

There are two final letters (one June 24 and a second dated July 25) which culminated in the Borough's action of not awarding a contract renewal to Dr. Gold.

On June 24, you responded to a June 22 letter from Fairbanks Mayor John Carlson which indicated the Borough's intent to apply for day care funds for fiscal 1978. This letter includes the following paragraph:

"Alaska State Law (AS 44.47.250) allows the borough to subcontract its obligations only with the consent of the Department of Community and Regional Affairs. The Department in examining and evaluating the appropriateness of the grant application, must weigh the commitment, the plan and capabilities of the Borough in administering the program."

It also states:

"Unless the borough can present evidence to indicate and guarantee a significant change in the program management by Dr. Gold that will assure a proper level of performance, the Department will not grant approval to the Borough to subcontract."

Prior to this letter's arrival on Mayor Carlson's desk, the borough had informed Dr. Gold that he was the only agency that responded to the Borough's request for bidders. He was told that he would receive the contract though no official paperwork had been signed. The mayor then informed Dr. Gold of the Department's letter.

Dr. Gold took great exception to your letter in public testimony. The Borough opted to operate the program in-house until it could gather more information about the entire matter and seek proposals from others who might also wish to administer the program. Garzini, in public testimony said had there been no letter from C&RA threatening a discontinuation of the day care assistance funding with Dr. Gold, he would have had little objection to the Borough's renewal of the contract with Dr. Gold.

In a July 25 letter from your office, you further outline other problems with Dr. Gold's past administration of the program and offer the following:

"Subsequent to our initial rejection, the Department has become aware of many other circumstances related to Dr. Gold and his other business activities, contracts and zoning

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problems which would preclude Dr. Gold from being acceptable as the administrator of this program under any conditions."

Since that second letter, the borough has requested and accepted applications from six sources. These applicants all presented proposals for the day care program's administration based on new proposal guidelines that we feel your agency properly assisted in developing. Certainly, with this relatively new program, guidelines for those who might administer the program would be hard to develop based on no prior experience. Also, since your office has noted problem areas--not only in Fairbanks but Statewide--it is appropriate you should assist the local governments in proposal guidelines.

Dr. Gold has since charged the nature of these guidelines was such that it sought to exclude him. Since some valid concerns with his administration of the program prompted such proposal guidelines, we do not find your involvement here to be faulty.

Presently, the Borough is operating the day care assistance program in-house, awaiting the settlement of this Ombudsman complaint, as well as other factors (such as the local election) before opting to award a contract to any of the six proposal applicants (which includes Dr. Gold).

According to Phil Younker, the Borough will take action--one way or another--on this matter in the near future.

FINDINGS:

Pursuant to AS 24.55.150, we have found Departmental actions: 1) to be arbitrary regarding the enforcement of rules set out in the Day Care Assistance Manual; 2) to be based, in part, on improper grounds; 3) to be unfair, procedurally; and 4) unreasonable in the scope of information and materials collected in regard to Dr. Gold.

A. Actions Found to be Arbitrary

In many areas, you have held Dr. Gold accountable for following rules and procedures outlined in the Day Care Assistance Applications' Manual (which was made part of the contract to the Borough and also the subcontract to Dr. Gold). His refusal to allow Brewer access to files; exact compliance with the subsidy scale; required back up information for each applicant; his determination of who should continue to receive subsidies and who should be cut off; and the Borough's failure

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to secure written permission from your division are all covered in the contract and/or manual.

Yet, page 19, article 5 of the manual calls for the Director (identified as you by manual definitions), to notify the agency (identified as Dr. Gold by means of the same manual definitions) of those problems inconsistent with either the work program or contract. If "after a reasonable period satisfactory adjustments are not made" the Director is then to notify the agency that payments will be withheld until the deficiencies are corrected."

Notification of the audit problems went to the Borough Treasurer almost immediately upon Brewer's filing of her trip report. The money was to be immediately withheld and Blevins was warned of the seriousness of Dr. Gold's refusal to allow the C&RA field worker access to all the files. No notice for compliance was given Dr. Gold.

B. Actions Found to be Based Upon Improper Grounds

The July 25 letter to Assembly Chairman Dave Brennan specifically outlined six major criticisms you defined as problems with the day care program administration by Dr. Gold. We find fault with four of those items discussed.

Item #2 and Item #4

We would like to couple Item #2 and Item #4 together as they are similar in our comparison of the facts regarding both. These criticisms deal with the original grant ceiling for the program being \$106,495; that Dr. Gold should have apportioned an equal amount each month for the program's subsidies so that the money would last the year; that there was no mandate to serve all "eligibles" (as you allege is clearly stated in the contract); and that his expressed shortcomings due to improper training is invalid due to four trips made by your staff for auditing and training purposes.

First, we find that although the original grant amount was \$106,495, Dr. Gold had been told from the start of his administering the program that there would be more money available. Pitts had told him that pending reports from other communities regarding whether these other areas would be able to use their allocated day care funds, more money would become available. Extra money was already accumulated from communities which could not get a program established for fiscal 1977 by the time Dr. Gold took charge of the Fairbanks program.

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Dr. Gold chose not to apportion money on a month-to-month average, which was reasonably his prerogative based on the manual, law and contract (plus subcontract). The contract does not state, as you say, "that not every eligible person in the Fairbanks area must or should be served". The contract (in Appendix A) states that the contractor "agrees to serve" all families with reasonable access to licensed day care facilities in the Fairbanks area. The contract states just the opposite, according to our reading, of what you list as its clear statement regarding who should be served.

Whether or not Dr. Gold chose to apportion his total amount on a month-by-month average seems to fall in the category of local flexibility. How else would you interpret Pitts' suggestion that a monthly average be determined and adhered to as was stated in his October 22 letter to Dr. Gold? As long as Dr. Gold held enough money aside for the total subsidizing of WIN and AFDC recipients, then he was not in violation of the contract, according to our review. And, as new applicants qualified as eligibles and had lower incomes than those still receiving subsidies, we believe Dr. Gold was following the priority expressed by the law, guideline manual, contract and subcontract to favor lower income eligibles.

Finally, the lack of training or auditing Dr. Gold alludes to as reason for his shortcomings in administration of the day care program is difficult to determine as valid or invalid. You indicate that he cannot blame base line data projections as his basis for not terminating higher income eligibles. From the first moment he realized he would run short on funding for the year at the maximum subsidizing of all those eligibles, you indicate he should have averaged out his funds based on a month-to-month average. Since the funds did increase (and he had confidence there would be more coming) and there were more new applicants with lower incomes applying for subsidies, we believe Dr. Gold showed a management plan that was not prohibited by his contract--nor even criticised by your agency until after he had terminated many of those on the program under his plan of servicing as many as he could as long as he could. Regarding training and auditing help, the field trip report for October only states that Dr. Gold wasn't able to make a meeting. Your February report does not mention any training or auditing other than your attempt to bring home the point the program was not "a free lunch". (And, Dr. Gold's records show the meeting as more of a strategy one for the legislative effort for supplemental

and fiscal 1978 funding of the program). Brewer's March report allows that new staff were on board and that she would await that staff's familiarization with the back files before auditing. The April field report was covered above and the May report also indicates the Department's action in training Dr. Gold's staff and auditing the Fairbanks files. Proper training and auditing prior to the acknowledged problems in April are hard to detail in light of the field reports on file.

Item #5

The letter to Brennan questions Dr. Gold's method of cutting eligibles from the program; the short time frame in notifying eligibles that they are being cut; the explanation used in the form letter; and the lack of proper monitoring and analysis. The latter, you theorized, might have resulted in fewer cutbacks sooner and addition of new eligibles with lower incomes through natural attrition. Dr. Gold, however, cut eligibles, upon your October suggestion of terminating those from Group V, the Group IV, the Group III, etc. The time frame was short as he expected more funding and exercised his local management flexibility to keep eligibles in the program until the last moment. Regarding the misleading explanation you fault, Dr. Gold had sent the same letter terminating eligibles three different times (with copies to Pitts each time) using the same standard form letter he initiated in October for the first cut-off. No criticism was voiced until your July letter. Had Pitts voiced his concern over the explanation Dr. Gold used, it is likely (according to Dr. Gold) that the form letter would have been changed. Additionally, in the October 20, 1976 letter from Pitts which preceded Dr. Gold's first form letter, Pitts declared the problem "is, of course, insufficient funding to accommodate all persons eligible for Day Care Assistance." Dr. Gold's terminology to recipients of day care subsidies was, "Due to the inadequate amount of funds provided to the Fairbanks North Star Borough Day Care Assistance Program, it is impossible to continue funding all day care payments for the entire year." We don't find the two explanations significantly different.

Since it was (by contract and manual guidelines) the responsibility of both the Borough and the State to "monitor" the local program, we find it inconsistent to solely fault Dr. Gold with failure to properly monitor the program with regard to analyzing the list of eligibles in time to cut higher income eligibles to accommodate new applicants with lower incomes. In fact, the Borough received notice of its

monitoring problems, but the actual local administering agency (Dr. Gold) received none. Also, Dr. Gold's records show no natural attrition where he could have added those new eligibles in question with lower incomes.

Item #6

Here, you report that there were several audit exceptions "for which the borough is financially responsible." You further stated these exceptions "were due primarily to inadequate and inaccurate applicant screening on the part of Dr. Gold's staff". This is not true, according to your files and those of Dr. Gold, as well as information from Garzini. Your contract with the Borough and the subsequent subcontract with Dr. Gold holds the administrator responsible for problems in subsidy eligibility. The Borough paid all the audit exceptions that weren't adjusted after back-up information was obtained from the eligible applicants. Although Garzini states that Dr. Gold paid "a negligible amount" of the exceptions, his files show he paid none. Garzini clarified that most of the exceptions could be traced back to screening work done by the Borough when it first began the program--before Dr. Gold was contracted for the program's administration.

Information regarding the timely filing of monthly reports is difficult to detail except that the departmental files show the reports were late. Exactly how the reports should be filed, and what route each report should take through what local, Borough and State offices is unclear, but it is our finding that these reports were received in your offices late in at least three cases.

C. Action Found Unfair

Even if all the above criticisms and problems with Dr. Gold's administration of the Fairbanks program were accurate, we find it unfair to notify Dr. Gold (and at that, notify him indirectly through a letter to Mayor Carlson) of his total unacceptability for a contract renewal after the Borough has asked him to submit a letter requesting a contract renewal.

We have considered your argument that it was easier not to inform Dr. Gold of each problem as it arose in the hopes he would become a more conscientious administrator as time went by, but it, nevertheless, came as a surprise to him that you would not accept him as a subcontractor. Dr. Gold, and several other agency and local officials, certainly admit there were conflicts of philosophy between him and the Division. All admit there were deep personality conflicts (evident in Dr. Gold's letter to the Commissioner of April 26 and

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Pitts' letter to the Commissioner of April 27). The Borough obviously did not think the problems so severe that they would not have rejected the contract renewal with Dr. Gold. Dr. Gold, after Brewer's May 31 trip, did not think his administration so faulty that a contract renewal would be jeopardized or, he felt, he would have received some feedback, as the Department certainly had been vocal about the program in the past few months.

In addition, Brewer's last field report shows Dr. Gold as improving, though each piece of correspondence from the State to the Borough gets progressively worse in its assessment of Dr. Gold's operation of the day care program in Fairbanks.

In the interest of making the Fairbanks program viable, it is understandable your field worker would attempt (and is evident by her continued patience) to try and correct problem areas as opposed to confronting Dr. Gold and his assistants with each error or criticism. But this same patience also lent to the lack of due process we feel Dr. Gold should have been afforded according to the manual procedures which call for the Director's calling attention to contract and work program problems.

Brewer's last comments in the May field report that additional monitoring in person was not necessary until the "contracts are ready for renewal", raises an inference that the subcontract to Dr. Gold would be acceptable.

The paragraph precluding Dr. Gold from "being acceptable as the administrator of this program under any conditions" based on "other circumstances related to Dr. Gold and his other business activities, contracts and zoning problems," is an unreasonable statement concerning Dr. Gold. The paperwork in his Anchorage file regarding establishment of a new mental health association for possible State grant funding does not show any positive letters about the fledgling group (which is now in the final stages of being approved for funding). The Borough zoning problems you allude to are being pursued through the court system. The "other business activities" reflected in paperwork in the file could include the proposal by Dr. Gold for continued grant allocations for drug treatment programs. Although Pitts' letter pointed out problems with his proposal, Dr. Gold received another year's funding approval just recently. And last, references made by Pitts to my assistant about other "alcoholism" grants awarded Dr. Gold that might interfere with day care recipients using Dr. Gold's same premises,

simply do not exist. He does not now have (nor has he had recently) any alcoholism programs which he is running or administering.

It is in addition to the voluminous paperwork in our files that are not directly germane to the day care program's administration; the somewhat unprecedented letter by Pitts regarding Dr. Gold's drug abuse proposal; the harshness about Dr. Gold's running the program, as is reflected in your letters at the same time his field report evaluations by Brewer were showing improvement the questionable involvement of staff in Fairbanks; and the cloud of doubt by the non-specific paragraph cited above that prompts us to find your agency's actions unreasonable. These unreasonable statements figured heavily in Dr. Gold's not being awarded a second year's subcontract for the Fairbanks North Star Borough Day Care Assistance Program.

AGENCY ACTION JUSTIFIED

- A. Statewide perspective needed and obtained through C&RA monitoring

Since the entire amount of day care assistance monies comes from the State with no federal matching monies, the State is in the best position to judge Statewide need and it can best ascertain how the money should best be allocated to the different programs. Through surveillance and monitoring, it is in a better position to determine how any one program measures up to another. In this regard, it was indeed proper that C&RA did outline all problem areas; we only would ask that more time be afforded in reviewing the cited grounds presented to the Borough Assembly as background for the action against Dr. Gold. Careful review of the Department's file would have cleared up the most serious and certainly the majority of problem areas cited.

- B. Program problems properly outlined by the agency

The untimely filing of monthly reports, the refusal to allow field workers to review day care assistance recipient files at any time during the work day, as well as smaller, case-by-case details that required clarification or more attention are best brought out by the State agency. In some cases, the local government might not watch nor wish to closely monitor a program. The State, which has the background and knowledge of program administration throughout the State, is in a better position to pick up administrative

details that could tighten any single rural or urban program's administration. It would appear that at least some minor paperwork sloppiness as well as the lack of file access were proper criticisms for whatever reasons.

C. Suggestions for future program proposal advertising and proposal guidelines proper and helpful.

The mere questioning of how the contract was advertised in May was appropriate and suggestions for future advertisement were proper. It is possible that the Borough did not think any other local agency would be interested in the day care program's administration as the local government had initially approached Dr. Gold and asked him to administer the program in July of 1976. If the State were made aware of other potential candidates for the administration, it is their duty to inform the local government of such concern. Also, the guidelines for future subcontractors as recommended and mutually-worked out by the Borough and the agency were appropriate. The role of the State in carrying out its statutory authority in this program is primarily to assist the local governments--which it did in both questioning the form and extent of the advertising and working with the Borough on guidelines for future subcontractors.

D. However heavy-handed the C&RA action to discredit, the Borough chose not to challenge the State's authority and chose to accept its critical comments as basis for not renewing the day care contract with Dr. Gold.

If no fair comment had been afforded the subcontractor, we might have pointed out how unfair it was for a State agency--with all its implied power as a government authority--to barrel over a subcontractor. Obviously, given the advocacy talents of our complainant and the time he has been afforded before the Assembly to counter the C&RA comments, he was not precluded by the State from giving his side of the story.

The Borough may have based its action to nullify plans for renewing Dr. Gold's 1977 contract on the State's expressed authority mandating written approval of the exact subcontract. Or, the Borough may have based its action to readvertise the contract based on new guidelines worked out with the agency staff. Most likely, the Borough chose to accept the total accumulation of critical data from your agency along with your assertion that a subcontract with Dr. Gold would not be approved by them. The July 25 letter with the critical comments about advertising and the offer to work out better guideline proposals for subcontractors became the basis for

Dr. Gold's not getting a second year contract based on the old subcontract provisions.

In the same light, we feel it was the Borough's determination not to renew the contract, but that action was heavily based on your letter. Whether the Borough chooses to accept your authority is a matter of Borough or court jurisdiction. Whether the Assembly chooses to accept our analysis of the entire situation as a basis for reexamining their past action or future action is up to them. It is because we do not want to become overly involved in a related matter of municipal and State concern that we have offered these comments regarding action we think the State took that was justified and appropriate.

D. RECOMMENDATIONS

We hope that the review, as we have painstakingly presented it, will provide you with a careful enough review of the facts surrounding this complaint to weigh the following recommendations. It is my understanding that each recommendation has already been broached with you by my assistant. We hope these suggestions will provide you with meaningful alternatives that will tighten up the program's Statewide administration.

1. To straighten any confusion that might have been evidenced in this Fairbanks day care assistance program administration, we would suggest you begin the tedious but needed process of promulgating regulations, at least in the following areas:

A. What is the State's intent and interpretation of "permission to subcontract"? With that permission, is it then the responsibility of the Borough to determine the exact subcontractor? Other State agency examples provide for mixed interpretations as do court rulings on the authority of the State in subcontracting matters. Some rulings and agency examples reflect the contract law's strict interpretation of a due process of authority from the State to the contractor and the subsequent authority from the contractor to the subcontractor, with only minor connections from the State to the subcontractor.

B. In the application manual, it outlines how a day care assistance grant is made to a local government. However, the procedure of how one should obtain permission for subcontracting is not clear. For example, it calls for "written permission from the Department" for a

municipality to be able to subcontract. Yet, when should the permission, if so desired, be obtained? The application manual does not say, but alludes to subcontractor Articles of Incorporation as being necessary for the local government's complete grant application and possible approval. The manual also calls for subcontractor forms to be filled out after the grant is approved. Yet, with this complaint, the Borough was chastised for not seeking and/or obtaining prior written approval before it sent in the grant application for this upcoming year. One way or another, the procedure should be clarified.

C. Since the initial intent of the subcontractor option was to assist the particularly small communities, what kind of consideration should in-house vs. outside municipal subcontract administration be given? Should a municipal government have to substantiate why it prefers to operate the program through subcontracts as you once intended? This clarification might be opportune now with other clarifications sought and, perhaps with the promulgation of regulations.

D. What does the Department infer by the local administering agency's responsibility to serve eligibles in the designated grant area? The confusion that exists through not addressing this point in the statute but addressing it rather contradictorily in the manual and the contract appendix should be clarified. It might make more overall management and planning sense to prioritize eligibles from the start of the fiscal year and apportion monthly subsidies to a determined ceiling, as now appears to be left up to the local government's or local agency's mandate to determine. If you believe the program better run (Statewide) by stricter management guidelines, then those should be clarified and made part of regulations.

E. Other specific areas brought to light by this inquiry stemming from the 1977 Fairbanks program experience should also be clarified in this review process. These areas include exact breakdown of State, contractor (or local government) and subcontractor (or local administering agency) responsibility. Appropriate termination procedures for recipients whose money begins to dwindle faster than anticipated; methods of accurately informing recipients in a properly-designated time frame to insure adequate time for easier adjustment; guidelines important for subcontractors' proposals Statewide, as well as advertising for new proposals; and a spelled-out monitoring effort regarding how problem areas are to be discussed, corrected, challenged and made a basis for disciplinary action should be readied.

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Under litigation and court rulings regarding the applicability of the Administrative Procedures Act to agencies which have the permission to promulgate regulations (which you have in C&RA Day Care Assistance Program statutory authority--AS 44.47.250(b)(1), the courts have held that when you may promulgate regulations, you must.

Regulations for this program have already been discussed. Where we recognize a responsibility of your agency to establish some regulations to clarify the above-cited confusions, we would only suggest you begin work on these matters. However, if the line of agencies now awaiting regulations is too long to accommodate clarifications this year, we would suggest that the applications' manual include the needed clarifications. These additions and changes, as well as specific delineation of responsibilities might also--or might instead--be made a part of the applicable contracts and subcontracts. We are striving for equal enforcement of rules and regulations--no matter what form they should take.

An argument you have presented for not including all those points and matters within the policy manual as perspective regulations is the entire program's "armslength" attitude in its dealing with the general public. (Actually, we would like to see all manual procedures covered by regulation as the actual subsidy scale provides for the real flexibility you seem to desire in the program's administration.) Since a recipient's appeal is to Pitts' office, and since there have been recipients who have been penalized because the subsidy scale was not mandatorily followed by the administrator locally, we believe you have more of a direct link with the general public than your initial establishment of the program first indicated.

We would suggest, if you are considering these recommendations to tighten up on the mutual accountability of all agencies involved, that you expand your direct involvement with the public at large. More carefully outlining procedures and manual interpretations brings you into closer scrutiny by the public. We would suggest you further this involvement (not necessarily dramatically) and include selective recipient interviews in the field trips by your staffers. It is in this monitoring effort that you will get a more direct evaluation of a contractor or subcontractor's work effort.

As another step to involve the public, we would suggest public hearings or some public response mechanism where you might get the general response from State residents on the

matters outlined above. The public may have its own ideas about local versus State control and the guidelines for a contractor's involvement.

2. To clarify the record, which we hope we have detailed adequately to show problems with the grounds you cited for not wanting Dr. Gold involved in a subcontract for the day care program, we would recommend a clarifying letter be sent to Fairbanks Borough Mayor John Carlson and Fairbanks Borough Assembly Chairman Phil Younkers. We would hope the letter might explain the improper grounds we believe might have unfairly weighted Borough opinion against Dr. Gold. The same letter, we would suggest, also include a clarification of your apprehension of Dr. Gold as a future administrator. In talks with my assistant, you have indicated you would not protest Dr. Gold's acquiring of the contract (through criticisms or assertion of C&RA authority) if he were to abide by the guidelines worked out by you and the Borough staff. This explanation would be helpful in the recommended letter to the Borough Assembly and Mayor. Where we would appreciate a clarification of what we think are improper grounds, we would also offer that other proper grounds about Dr. Gold's administration of the program would appropriately be forwarded in this same letter. Assistance in the form of comments about other proposed administrations would also be pertinent and proper here, we feel. Suggested monitoring efforts that might correct future problems while still insuring the Borough and local administering agency the right to due process could be included in this same proposed letter.

3. We would suggest a letter to Dr. Gold, although a copy of the above letter to the Fairbanks Borough would be appreciated as an alternative. Acceptable guidelines that would allow him to obtain the contract without any State controversy should the Borough opt to contract with him again, should be specified in this second letter. A forward, clear assessment of his past performance as an administrator; day care program spokesman before the legislature; and outspoken public critic of the Department would appropriately be outlined in this letter. And, by means of this complaint resolution, perhaps a future meeting between you, Pitts, Dr. Gold, the Commissioner and appropriate Borough contracts could take place to iron out personality conflicts that might remain.

SPECIAL FINDINGS

In the perusal of the file, we took special note of the letter Pitts forwarded to Commissioner McAnerny regarding Dr. Gold's early spring proposal for drug abuse funding. Through the A-95 grant approval process (those being specific funds administered through the State), grant proposals are routinely circulated throughout sister agencies in the hopes that others having dealt with proposed contractors will comment about the contractor in question. The process, although still somewhat rudimentary and selective in the circulation of proposals, is a good one.

The State should have a central information system which would allow cross-referencing and more complete examination of contractors. In this case, comments forwarded by Pitts, however, lead us to examine this process more closely. We find no problem with the concept of cross review of contractors' past performances within the evaluating agency. But, Pitts' assessment of Dr. Gold's proposal is inappropriate. The two-page evaluation (for reasons we have not been able to justify) recommends that another contractor/administrator be found for the Fairbanks drug treatment program. In the six lengthy paragraphs critical of Dr. Gold's drug program proposal, only one paragraph deals with Pitts' direct dealing with Dr. Gold through the day care program he actually oversees. The memo to C&RA Commissioner McAnerny was written on April 27 by Pitts--a day after the Commissioner was hand-delivered an inflammatory letter by Dr. Gold about Pitts' actions in regard to Brewer's controversial field trip to Fairbanks in April.

As there are no regulations, laws, procedures, or even standard practices exercised in the review of A-95 grant application proposals, we cannot find direct fault in Pitts' action except to say it was inappropriate.

Since the comments apparently did not get to the Drug Abuse Review Board in time for their full consideration and since they chose to award the contract to Dr. Gold for this upcoming year, we suggest no future action in this matter. We do feel that the process of cross referencing evaluations be reviewed toward insuring objectivity, accountability and due process so that a valuable tool does not become a "blacklist".

We would recommend that future evaluation by C&RA staff of A-95 proposals be restricted to specific past

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involvement with the contractor and that it be as precise as possible. Hopefully, through central agency, the Division of Policy Development and Planning personnel, there will be adequate response mechanisms afforded the contractor in question so that a fair evaluation is afforded by the State.

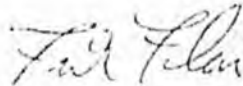
In summary, we hope this exhaustive look at the record has been helpful in your own review of the inquiry to our office by Dr. Gold. We have given much thought to the recommendations and options presented for your consideration in the hopes of bettering the program while setting the past record straight. In constantly weighing the findings and recommendations, we have attempted to set reasonable goals, which we believe are not arbitrary, given your initial discussions with our office last month. Please let us know if you have any questions or comments. We would like some response, even if it is an oral response within a week.

We are forwarding the exact copy of these findings, except for the section which details the staff situation and the details of any specific day care recipients as those names are confidential, to Dr. Gold, the complainant.

As everything but the names and files of day care assistance subsidy recipients are already part of the public record, in light of our prior consultation with you in regard to this matter, and the Borough's involvement as the prime contractor, we will make this report available to the Borough pursuant to their request as is outlined in the letter attached from Mayor Carlson. We will do this unless you have a reasonable objection to this procedure. If so, please give me a call this weekend (October 22 or 23; we plan to be in the office for a good part of the weekend) or call us on Monday or Tuesday, October 24 or 25.

We appreciate your cooperativeness in this matter and thank you for your consideration.

Sincerely,



Frank Flavin
Ombudsman

CA:FF:

cc: Jan Brewer, C&RA Anchorage staff
Harvey Pitts, Day Care Coordinator, C&RA Anchorage staff
Commissioner Lee McAnerny, C&RA
Dr. Frank Gold, former Fairbanks Day Care Assistance
Program Administrator

5-31-78

Harvey Pitts C R/A 279-3462
re CSHB 913

Very much opposed to it.

Eric Lee flying to June to see
Disini re bill.

Being reluctant. Already jumping
regulations. Change language in
sec. 250. Useless. Also remove
Department's regulatory review
authority.

Local Fairbanks problem. But
legislation would have harmful
statewide effects.

Sam Coster has received unfavorable
comments by telegram.

John H. ...

Egypt Child
Care Center ...

as per HR 913 -

"with the approval of the
department" -

No benefit to child care
centers or providers. Henry P. ...
opposed because it makes it
impossible for CIRA to administer.

Mem. of Anthony opposed ??

CIRA opposed.

Ch. ...
CIRA position paper
opposite.

FN - ...

CSHB 913 - Day Care Programs
in 5/26

John Hartle - opposition 586-2753

Changes language -
making mandatory -
removing C&RA Dept.

Harry Pitts - C&RA Dept -

Arch Munnis. opposition



FRANK J. GOLD, Ed. D.

Registered Psychologist

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FAIRBANKS, ALASKA 99701
(907) 456-4409

June 5, 1978

Senator Joe Orsini
Chairman
Community & Regional Affairs
Alaska State Senate
Juneau, Alaska 99811

Dear Senator Orsini,

I have been told that CS HB 913 (an act relating to day care programs) is now in your committee.

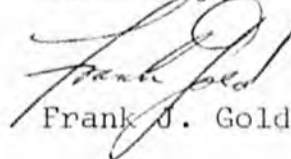
Being aware that the session must be drawing to a close, but also being aware that at least in Fairbanks and Kodiak the contracting municipality's hands are about to be tied by the proposed regulations offered by the Department, I am requesting that your committee act on this legislation if at all possible.

The Department would like to refuse to allow these two communities future sub-contracting privileges. This is most distressing here in Fairbanks since the Fairbanks North Star Borough has continually gone on record as wanting to sub-contract the administration of the Day Care Assistance Program. My contact with Kodiak indicated that they too would like to continue sub-contracting.

This may not be the most important item to come before your committee, but it would be appreciated if you and your associates would find the time to put a minor stop in the irresponsible and dictatorial Department bureaucracy.

Thank you for your time.

Sincerely,



Frank J. Gold

cc: Glenn Hackney
Bill Sumner