

HB

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
REGION X
ARCADE PLAZA BUILDING
1321 SECOND AVENUE
SEATTLE, WASHINGTON 98101

MAY 16 1980

SOCIAL SECURITY ADMINISTRATION
OFFICE OF THE REGIONAL
COMMISSIONER

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COMM. AND. SERVS.

Dr. Helen D. Boirne
Commissioner
Department of Health & Social Services
Pouch H-01
Juneau, Alaska 99811

Dear Dr. Boirne:

We have analyzed Alaska House Bill 968, dated May 1, 1980 and wish to comment on certain of its provisions which, if enacted, would raise compliance issues with respect to Federal regulations.

Alaska House Bill 968 provides an Aid for Dependent Children (AFDC) benefit payment increase of \$100 for a family household consisting of a caretaker parent and one child under age eighteen. If enacted, this legislation would increase the current payment provided under AS 47.25.320(a)(2)(A) from \$350 to \$450. The Bill would also provide a benefit payment increase of \$25 for each additional child in the home (after the second child) under the age of eighteen. This would increase the current payment provided to those children, under AS 47.25.320(a)(2)(C) from \$50 to \$75.

The increases provided under House Bill 968 do not appear to apply to the category of children living with non-needy, non-legally responsible relatives. This category is described under AS 47.25.320(a)(1). The omission of provision of these benefit increases to the category of recipient children living with non-needy relatives, while provided for the category of recipient children living with needy parents, appears to be based on the assumptions that:

- (1) children who live with non-needy, non-legally responsible relatives are less needy than children who live with needy relatives; and,
- (2) non-legally responsible, non-needy relatives automatically provide some support for the child's(ren) needs; and,
- (3) such child's(ren) needs are reduced by shared costs.

These assumptions are in direct conflict with Federal Regulations:

- (a) To treat groups of children differently because of living arrangement based on legal responsibility or not of non-needy caretaker relatives distinguishes the groups on an arbitrary basis thereby creating an unreasonable classification which is expressly prohibited at 45 CFR 233.10(a)(1) which states:

(a) State plan requirements. A State plan under title I, IV-A, X, XIV, or XVI, of the Social Security Act must:

(1) Specify the groups of individuals based on reasonable classifications, that will be included in the program, and all the conditions of eligibility that must be met by the individuals in the groups. The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act.

- (b) The assumption that non-legally responsible caretaker relatives automatically provide some support for the dependent child(ren) and a grant reduction based on that assumption (in this instance, a different and reduced standard as compared to needy children in other circumstances) is expressly prohibited at 45 CFR 233.20(a)(2)(viii) which states:

" . . . Provided that the money amount of any need item included in the standard will not be prorated or otherwise reduced solely because of the presence in the household of a non-legally responsible individual; and the agency will not assume any contribution from such individual for the support of the assistance unit."

- (c) The assumption that a child's(ren) needs are reduced by shared costs and a grant reduction based on that assumption clearly constitutes proration which is expressly prohibited at 45 CFR 233.90(a) which states in part:

" . . . nor may the State agency prorate or otherwise reduce the money amount for any need item included in the standard on the basis of assumed contributions from non-legally responsible individuals living in the household."

Further, the Supreme Court case of Van Jare v. Hurley (1975) prohibits assumption of income for AFDC children in a household with non-needy individuals. A State may not have a separate and reduced standard of living for a child with non-needy, non-legally liable caretaker relatives than with needy caretakers. A State is required to have a single statewide standard, expressed in money amounts, to be used in determining on an objective and equitable basis the needs of applicants and recipients and the amount of the assistance payment (45 CFR 233.20(a)(1) and (2)). To assign two different values to the same item or items of need (such items collectively constitute the standard) for a child based solely on whether or not the child lives with a non-needy, non-legally liable caretaker relative is arbitrary, bearing no relationship to the needs of the child who is receiving the lesser payment.

A State standard may have different dollar amounts for food or clothing for different reasonably defined age groups since older individuals may generally have more costly needs than younger individuals. Differing shelter amounts may result from a State's election to have shelter differentials but this is permitted only when there is objective evidence that there are actual differences in shelter costs between geographic areas and such differences are appreciable. However, such differences appear reasonably based. But this bears no relation to an assumption of income on the unsubstantiated basis that a non-needy, non-legally liable caretaker relative is contributing income towards the support of the needy child in his care and custody.

These rules prohibiting the assumption of income apply to non-legally liable relatives, and to legally liable relatives

other than spouse for spouse or parent for minor child as specified above. Thus, except for spouse for spouse or parent for minor child, a State may not assume that the income of other legally responsible relatives under State law is available to the child.

Notwithstanding, a grant reduction (not a standard reduction), is permitted in those instances where a documented voluntary contribution is made by the non-needy, non-legally responsible caretaker relative.

The following table illustrates the effect of H.B. 968 without the cost-of-living adjustment on State AFDC standards:

Family Size	Children with Needy Relatives		Children with Non-Needy, Non-Legally Responsible Relatives	
	Current Standard	Proposed Standard Under H.B. 968	Current Standard	Proposed Standard Under H.B. 968
1			\$150	\$150
2	\$350	\$450	\$300	\$300
3	\$400	\$525	\$350	\$350
4	\$450	\$600	\$400	\$400
	Plus \$50/month for each additional child under 18	Plus \$75/month for each additional child under 18	Plus \$50/month for each additional child under 18	Plus \$50/month for each additional child under 18

Note that for the category of children living with needy relatives, there is no identification of the amount of the standard that is attributable to the adult caretaker relative. It merely says that for family size of two, a grant of \$350 is made. For two children living with non-needy, non-legally responsible relatives, a grant of \$300 is made. It may be reckoned that the additional \$50 (\$350-50) provided to the needy relative situation is reasonable due to increased costs of shared standard items for adults (this would not hold true for shelter). This was the rationale for Federal approval of the current standard.

Under the proposed H.B. 968 standard, no standard increment is provided to the category of children with non-needy, non-legally responsible caretaker relatives. A difference of \$150 between the two categories

Dr. Helen D. Bohrno - page 5


of recipients is too great to account for an addition based on shared costs that would require an amount of that magnitude for the adult. The Bill did not even address the non-needy, non-legally responsible caretaker relative category. It would appear clear that legislative intent was to increase the needy caretaker relative group, per se.

It must, therefore, be concluded that the new standard results in proration and assumes the availability of income for the non-needy, non-legally responsible caretaker relative category. In no event may income be assumed or shelter costs be prorated.

In summary, should Alaska House Bill 968 be enacted, the State agency, upon implementation, would be out of compliance with Federal regulations as cited herein. In addition, a new or revised State plan submitted to implement such legislation would be unapprovable.

We would be pleased to offer technical assistance including testifying before the legislature on this Bill if so desired.

Sincerely,



Donald C. Sutcliffe
Regional Commissioner

Enclosures

cc:
Rod Holit

§ 47.25.310 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.25.320

Article 3. Aid to Families with Dependent Children Act.

Section	Section
310. Eligibility for assistance	380. Reconsideration and alteration of assistance
320. Amount of assistance	390. [Repealed]
330. Duties of department	395. Alienation and attachment
340. Application for assistance	400. Purpose
350. Investigation of application	402. Reporting change of status
360. Granting of assistance	405. Obtaining assistance by fraud
365. Retraining of parent or family member	410. Definitions
370. [Repealed]	420. Short title

Sec. 47.25.310. Eligibility for assistance. The department shall grant assistance to the family of each dependent child it determines is eligible for assistance under AS 47.25.310 — 47.25.320, or to employers under a work incentive program established by AS 23.15.650, and by § 432(c) (1) of the Federal Social Security Act (42 USC 601 et seq.), as amended. (S 61 2 32 ACIA 1919; am § 2 ch 57 SLA 1919; am § 1 ch 73 SLA 1963; am § 2 ch 134 SLA 1968)

Editor's note. -- The federal provision referred to in this section was added by § 201 of the Social Security Amendments of 1967 (P.L. 90 249, 81 Stat. 821).

A statutory prohibition of welfare benefits to residents of less than a year creates a classification which constitutes an invidious discrimination denying such

residents equal protection of the law. Shapiro v. Thompson, 351 U.S. 616, 16 S. Ct. 1122, 77 L. Ed. 21 (1956).

Cited in Public Defender Agency v. Superior Court, Third Judicial Dist., Sup. Ct. Op. No. 1140 (File No. 2071), 531 P.2d 917 (1975).

Sec. 47.25.320. Amount of assistance. (a) The department shall determine the amount of assistance for a dependent child and the relative with whom the dependent child is living, with regard to the resources and necessary expenditures of the family and the condition existing in each case. Assistance is sufficient if, when added to all other income and support available to the child, the child and relative have reasonable subsistence compatible with decency and health. However, the amount of assistance may not exceed the following:

(1) dependent child living with nonrelatives: for a child under age 18 who is living in the home of a nonrelative, \$150, plus an additional \$150 for the second child, and \$50 a child for the third and each additional child.

(2) dependent child living with parent:

(A) for a parent and one child under 18, a maximum of \$350;

(B) [repealed]

(C) for each additional child under age 18, \$20 a month per child.

(b) The monetary maximums in (a) of this section do not apply to payments made under this program for the care of a dependent child in a foster family home. The payment shall conform to foster care rates as provided by the department.

174/176 AFDC backup

I believe the Lord is with me today to see how we treat his children. How many of you legislators have ever been on welfare?

Suppose at the breakfast table I had kids related to me and also had children not related by blood, and we had eggs for breakfast. You kids that are my grandchildren take one egg apiece, you others can have two eggs. How come grandpa they get two eggs? Well grandson, my State thinks I can buy you the other egg. But grandpa! you don't have the money to do that. I know, but the State gives me more money to feed and buy their clothes. But grandpa, that's not fair.

We all say our kids are our most precious of our resources. We are building schools, highways and so forth for them. I want sound minds and bodies built also for their future.

This State has never, I repeat, never checked to see who is a non-needy relative. We are all classified as non-needy.

Our State has never checked to see if the money given is sufficient for their keep in the first place under the Aid to Dependent Children Program.

I want the increases effective immediately, (before this legislature adjourns, not like last year (effective Jan. 1, 1981)).

The July 1st, percent increase last year was the same as I got Social Security. That was inexcusable.

To make them wait 6 months for the other increase

Leo J. Land

I'll omit any salutations Mr. Chairman and get down to business.

It's my duty as a Alaskan citizen to protect Alaska's resources for Alaskans, and my prime responsibility to protect the poor and needy. The old and ^{especially} the young who cannot protect themselves.

The legislators have the added responsibility by their oath of office to make laws that protect them, their major priority.

The Senior Citizens are ~~protecting~~ ^{able} ~~protect~~ their rights, the children depend on me and you. (who else is there to do it?) That's our sacred duty as Alaskans.

Leo A. Land