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COMMITTEE REPORT

SENATE

1/20/82

FURTHER: Finance

Date: 8-5-10-82

Mr. President: HEALTH, EDUCATION &
SOCIAL SERVICES
The Committee on _____ has had CSRB 357 (Rules) am

public assistance

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for 10357 same title
 new title
- and recommends no pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

AMENDMENT

OFFERED IN THE HOUSE:

By: _____

To: _____ HOUSE BILL No. 357 (Pulse)

SENATE BILL No. _____

PAGE: 10

LINE: after line 2

* Sec. 21 AS 47.40.040 is repealed and reenacted to read:

Sec. 47.40.040. DETERMINATION OF FULL COST OF SERVICES. (a) In this chapter, "full cost" of services shall be determined by the per person, per day cost on the preceding fiscal year plus a proportionate share of anticipated cost of living and staff salary increment increases for the fiscal year for which the full cost of services, determined to be necessary by the department, is being determined. The Department shall establish the 1983 fiscal year cost of care rates per person per day for each level of child care services (in cooperation) with owners or operators of residential child care facilities. The Department shall review available audits of residential child care facilities and ^{hold} public hearings in establishing daily rates under this section. Child care costs for foster homes shall be computed in the same manner as for child care and nursing home institutions except that no salary ~~costs~~ costs may be considered.

(b) In determining daily rates for each level of service under this section the following factors may not be included:

(1) expenses, including salaries and fees, incurred in raising money for the operation of a residential child care facility;

(2) money expended for construction, major equipment, and other capital expenditures;

(3) program and administrative expenses provided by private contributions, grants, and other public or private funding sources not provided under this chapter;

(4) expenses incurred for education or religious training of children residing at a residential child care facility; and

(5) expenses for services that exceed or do not meet the requirements of the department.

page 10, line 4:

Change "Sec. 21" to "Sec. 22"

page 10, line 55

Delete "and AS 47.40"

CSHB 357 (Rules) am

Senate HESS Committee changes to CSHB 357 (Rules) am relating to Adult Public Assistance:

Deleted policy statements relating to Federal government - Sections 5 and 16.

Page 2, lines 17-18 - delete "... and who has been determined eligible under regulations adopted by the department" to reduce the amount of agency discretion.

Page 3, line 11 - added language to allow a person in an institution to apply for APA in anticipation of leaving to avoid a payment lag.

Page 4, lines 14-15 - delete "as in its opinion is justified"

Page 4, line 8 - deleted language for agency review of files every 3 months, as it seemed this short time period was an unreasonable expectation.

Page 5, lines 4-6 - Changed language to indicate that a hearing will be conducted according to department regulations.

Page 5, line 11 - changed " more than one month" to future months, to encourage advance payments rather than delayed payments.

Page 5, lines 20-24 - changed language so that department would document investigations and continue APA payments pending a hearing decision.

Page 6, line 6 - changed "may" to "shall"

Page 6, line 27 - added language to allow a person receiving APA to leave the state temporarily for medical treatment.

Page 8, lines 20-21 - deleted "or a regulation adopted under any of thoses sections" subject to a class B misdemeanor.

The Committee added new sections 10 and 14 to the bill to guarantee interim payments of state APA supplement to those awaiting SSI disability determination (a process which takes from 6 months to 2 years) while not granting medicaid coverage during that period since mistaken eligibility might endanger the allowed medicaid penalty. Upon SSI approval, the applicant will receive retroactive medicaid eligibility prior to application date. The applicant could receive emergency medical care through the GRM program during the interim.

Changes to HB 357:

H HESS: CS incorporated amendments as listed in AG memo.

H Finance: 47.40 repealer

H Rules: 3 amendments proposed by DHSS (see letter)

Floor: repealers discussed, passed.

A M E N D M E N T

By Parr

* Section 1. AS 47.25.250 is amended to read:

Sec. 47.25.250. DISCRETIONARY [TEMPORARY] RELIEF. When a needy person is not entitled to assistance under AS 47.25.120 - 47.25.300 [AND HAS NO RELATIVES IN THE STATE LIABLE FOR HIS SUPPORT UNDER AS 47.25.230 AND 47.25.240], the needy person may receive [TEMPORARY] assistance in the form and amount which the department considers necessary. [TEMPORARY ASSISTANCE FOR NEEDS OTHER THAN TRANSPORTATION AND MEDICAL CARE MAY NOT EXCEED \$60 PER PERSON PER MONTH.]

Full Cost of Care Facilities
Rates as Shown
FY 1980 - 1982

	Audited		Provisional (B) (as of 1/1/82)	1982	
	1980	1981		Preliminary	Final
JCS:					
Jesse Lee		11235	16546	13470	
Aquarius		8912	10760	10661	
Collette		8052	11751	11665	
North Star		7930	10355	10261	
Mary Johnson-Rabbit Creek		16308	16640	16884	
Emergency Shelters		11431	14985	18896	
AK Baptist Family Services		6035	11702		
Alaska Youth Village (c)		7230	(c)		
Sethel Group Home			5906	5772(A)	
Sethel Receiving Home		6402	7552		
South Memorial		11360	14690		
Convent High School			4326		
Hilltop Home	5780	6918	8553		
Kanai Penins Comm D.C. Ctr (D)			9174		
Ketchikan Teen I			7426		
Teen II			8161	6770	
Kodiak Baptist Mission	2387	5442	6161	6143(A)	
Vons Receiving Home			11497	10920	
South Slope Boys Club Home	9791		16835	15944	
North Star Child Home		5596	6225		6225
Presbyt. Hosp. House	8575		11198		
Sitka Rec. Home		3839	4066		
Training Pt Boys Ranch		8935	10537		
Kuan Receiving Home		7689	10617		
St Jude Center			7233		
St Mary's Mission			833		
Ketchikan Dist. Care Unit			15256		

- (A) Report completed, not yet issued, 5/25/82
- (B) Provided by Div of Family & Youth Services
- (c) Not serving State children, any more
- (D) Scheduled for early FY 83.

Note: Years shown "audited" are audited rate, set by audit of prior year's cost report

All units were audited for rates for FY 1981 or 1982 except:

Presbyt. Hosp. House: Last audited rate for FY 1980. Audit for FY 1982 rate currently in process

St. Jude Center,
St. Mary's Mission
Ketchikan Dist. Care Unit } all new

Kanai Peninsula Comm Day Care Ctr: Last audited rate was for FY 79

Convent High School: Very low utilization

May 31, 1982

LETTER OF INTENT

ON

CS FOR HOUSE BILL NO. 357 (Rules) am

and

SENATE CS FOR CS FOR HOUSE BILL NO. 357 (HESS) am S

It is the intent of the Conference Committee with limited powers of Free Conference that the Department of Health and Social Services not have the authority to contract with the federal government for public assistance delivery under this act.

The Committee also recommends that the Governor and the Legislative Budget and Audit Committee, in allocating funds from the Federal Budget Impact Fund, give priority to making up the 2% federal cut in the Medicaid matching rate and the deficit caused by Indian Health Service reduction in medical travel funds so that this money will not be taken from the General Relief Medical Program.

Rep. Terry Martin
Chairman

Sen. Charles H. Parr
Chairman

Rep. Patrick J. Carney

Sen. Don Gilman

Rep. Don Clocksin

Sen. John Sackett

hospital
association

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

May 18, 1982

The Honorable Don Clocksin
Alaska House of Representatives
Pouch V, State Capitol Building
Juneau, AK 99811

Re: HB 357

Dear Don:

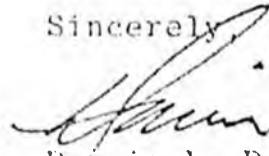
Thank you for having Nina Johnson call Section 10 of SCS for CS for HB 357 (HESS) to my attention.

The Hospital Association would very much like to see it removed. If that is not possible, I would suggest that a presumptive eligibility for General Relief, including assistance, vendor payment and medical aid be granted applicants until a final determination is made. This would give at least minimal assistance to applicants and give the Department a real incentive to get a final determination because 1) they can get 48% federal funding upon determination of eligibility or 2) will be carrying an ineligible person at 100% state cost if they delay a denial.

The presumptive eligibility approach would encourage good program management while providing basic assistance to those who are being held in 'limbo'.

Thank you for your consideration in this matter.

Sincerely,



Dennis L. DeWitt
President



DLD:bf

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC ASSISTANCE

JAY S. HAMMOND, GOVERNOR

POUCH H-07
JUNEAU, ALASKA 99811
PHONE: 465-3355

DOCUMENT NO. 180-82

May 24, 1982

The Honorable Vic Fischer
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

ATTN: Nancy Groszek

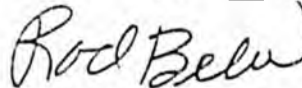
Dear Senator Fischer:

During testimony before your committee I mentioned that the financial risk associated with Medicaid coverage for presumptive disability cases was significant. One ineligible case can greatly distort the State's fiscal liability as calculated by the federal Medicaid formula for assessing error rate penalties.

For example, during the April through September 1981 Quality Control Review period one presumptive case which received \$3777 in Medicaid services was found ineligible by federal Medicaid officials. Our total payment error rate for this same period for all cases reviewed was \$5432. This single case represented 70% of that total amount. Because of this one case the State could be liable for a fiscal penalty of \$4,189,800 after applying the federal formula.

This recipient went on to appeal her denial to federal officials and eventually won. It remains to be seen whether the State can prevail in its argument that the case be thrown out of the liability calculation.

Sincerely,



Rod Betit
Director

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC ASSISTANCE

JAY S. HAMMOND, GOVERNOR

POUCH H-07
JUNEAU, ALASKA 99811

PHONE:

(907)465-3355

DOCUMENT NO. 184-82

May 27, 1982

The Honorable Charles Parr
Alaska State Senate
Pouch V
Juneau, Alaska 99811

RE: GRM Exceptions

Dear Senator Parr:

As you requested, the following is an overview of each GRM case currently considered an exception. As you may know the 300% Medicaid eligibility income for persons in Nursing Homes is \$794.00. Each of these persons are above that income standard:

- I. 26 year old male
Ketchikan, Alaska

Quadriplegic who earned his GED in two months last year after being told by Medical Review and DVR that he needed to show motivation. DVR has been involved with him for several years but has not followed through on any agreements to provide training. The first concrete step was to send him to Anchorage for 3 week training evaluation. Consistent problem has been that DVR couldn't figure out what Mark could be trained for because he has minimal use of his body and is dependent for all his care. Can operate motorized wheel chair and feed himself. His attitude has changed positively in the past year and the drug and alcohol problems have been resolved.

Recommendation: Coordinate with DVR while he's in training, provide supplemental funding for him in an apartment with attendant care. This will require more cooperation from DVR than we've seen in the past, but this is our chance to help free this man from a 'nursing home life'.

Financial Situation

Income
SSI

\$874.00/month

May 27, 1982

<u>Expenses</u>	
Personal Needs	70.00/month
Nursing Home	<u>3171.00/month</u>
State Expense	2367.00 X 12 = \$28404.00

II. 68 year old male
Ketchikan, Alaska

Severe emphysema with 5% lung capacity, receives continuous oxygen, slow general deterioration. Bed rest except up for 2 meals per day. Has a very tenacious hold on life, astounds medical staff by his survival day to day.

Recommendation: No change.

Financial Situation

<u>Income</u>	
SSA	\$644.90/month
ALB	250.00/month
Retirement	<u>143.04/month</u>
	1037.94/month

<u>Expenses</u>	
Personal Needs	70.00/month
Nursing Home	<u>3171.00/month</u>
State Expense	2204.00 X 12 = \$26,448.00

III. 77 year old male
Kodiak, Alaska

Receives insulin injection daily, unable to do it himself. Blindness necessitates verbal guidance in ambulating (with walker), dressing, bathing, grooming, and eating. Wife visits frequently and takes him home on Sundays. Two youngest sons, aged 17 and 19, are not in school or working, but still live at home with the mother. The younger son may go away to school in the summer or fall. Because all the family is in Kodiak and relatives do have contact with the patient, moving to the Anchorage Pioneer Home would be a hardship.

Recommendation: No change.

May 27, 1982

Financial SituationIncome

Retirement	\$266.00/month
SSI	511.00/month
ALB	250.00/month
	<u>1027.00/month</u>

Expenses

Personal Needs	822.00/mo. (family support)
Nursing Home	<u>3840.00/month</u>

State Expense

3635.00 X 12 = \$43,620.00

- IV. 79 year old female
Fairbanks, Alaska

Condition deteriorating rapidly, total care, unaware of surroundings.

Recommendation: No change.

Financial SituationIncome

SSA	\$440.20/month
Retirement	953.05/month
	<u>1393.26</u>

Expenses

Personal Needs	70.00/month
Nursing Home	<u>2700.00/month</u>

State Expense

1376.74 X 12 = \$16,520.88

- V. 24 year old male
Fairbanks, Alaska

Semi-comatose, tube feeding, recurrent pneumonia. Total care.

Recommendation: No change.

Financial SituationIncome

SSA	\$892.00/month
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May 27, 1982

<u>Expenses</u>	
Personal Needs	70.00/month
Nursing Home	<u>2700.00/month</u>
<u>State Expense</u>	1878.00 X 12 = \$22,536.00

VI. 73 year old female
Anchorage, Alaska

Has never recovered from a series of strokes 1 1/2 years ago. Requires total care including bathing, dressing, and feeding. Mumbles but does not speak. Appears to be confused. Does not walk, spends her time in a reclining wheel chair. Requires 2 person transfer. Medical condition stable. Family visits several times per week.

Recommendation: No change.

Financial Situation

<u>Income</u>	
VA	\$607.00/month
Civil Service Retirement	845.00/month
SSA	302.10/month
Family	750.00/month
	<u>2504.10</u>

<u>Expenses</u>	
Personal Needs	70.00/month
Nursing Home	<u>3245.70/month</u>
<u>State Expense</u>	811.60 X 12 = \$9,739.20

VII. 63 year old female
Anchorage, Alaska

Multiple sclerosis, condition stable with gradual deterioration. Only recent change in condition is increased difficulty swallowing. Able to feed herself using adaptive equipment with moderate assistance from staff (cutting food and positioning it). Requires total care--dressing, grocerying, bathing, transferring. Must be turned and positioned every 2 hours to prevent skin breakdown. Mentally alert.

Recommendation: Nursing care unit at Anchorage Pioneer Home when completed.

Financial Situation

May 27, 1982

<u>Income</u>	
SSA	\$ 88.10/month
Retirement (Civil Service)	489.10/month
Retirement (Teachers)	1406.99/month
	<u>1984.19</u>
<u>Expenses</u>	
Personal Needs	70.00/month
Nursing Home	<u>3245.70/month</u>
<u>State Expense</u>	1331.51 X 12 = \$15978.12

VIII.59 year old female
Fairbanks, Alaska

Quadriplegic that is being maintained at home by husband and close friend. No movement except head and eyes, must be constantly cared for.

Recommendation: No Change.

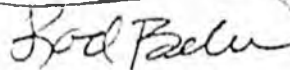
Financial Situation

<u>Income</u>	
SSA	\$670.00/month
Husband/Odd Jobs	500.00/month
	<u>1170.00</u>
<u>Expenses</u>	
Living Costs at Home	1170.00/month
Daily Nursing Services	<u>2000.00/month</u>
<u>State Expense</u>	2000.00 X 12 = \$24000.00

TOTAL STATE EXPENSE FOR GRM EXCEPTIONS \$164,710.20

If I can be of any assistance in determining a method of continuing State support for these individuals please call on me. As you know we feel we have no alternative but to terminate assistance to these individuals in light of the Attorney General's recent opinion.

Sincerely,



Rod Betit,
Director

cc: Helen Beirne
Allen Korhonen
Bob Ogden

MEMORANDUM

State of Alaska *David*

to: Allen Korhonen, Deputy Commissioner
Administrative Management
Department of Health & Social Services

DATE: January 18, 1982

FILE NO: DOCUMENT NO. 127-82

TELEPHONE NO: 465-3355

R. Betit
FROM: Rod Betit, Director
Division of Public Assistance
Department of Health & Social Services

SUBJECT: GRM Exceptions

On December 31, 1981 we agreed to fund the continuation of current GRM Exceptions from monies unspent in the Catastrophic Illness component. The Division intends to follow that course and is moving funds within the BRU to accomplish this. This should relieve the problem for the remainder of FY82.

Subsequent to that December 31 meeting, I also requested my medical staff to re-examine the circumstances around each of the eight remaining GRM Exceptions. A copy of their report is attached for your information.

cc: Bob Ogden

on 4/15/82
As per conversation w/ Rod
Betit, one person has died.
Nancy Grozek

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

May 25, 1982

Honorable Vic Fischer
Senator
State of Alaska
Pouch V
Juneau, Alaska 99811

Re: General Relief Medical
Assistance

Dear Senator Fischer:

You have asked whether general relief medical assistance 1/ can be provided on a permanent basis to individuals who are not eligible for assistance under regulations of the Department of Health and Social Services.

Under AS 47.25.120, the department may provide general relief medical assistance "to a needy person who is eligible under the regulations of the department". The only exception to the requirement that eligibility be prescribed by regulation is contained in AS 47.25.250:

Sec. 47.25.250. TEMPORARY RELIEF. When a needy person is not entitled to assistance under AS 47.25.120 - 47.25.-300 and has no relatives in the state liable for his support under AS 47.25.-230 and 47.25.240, the needy person may receive temporary assistance in the form and amount which the department considers necessary. Temporary assistance for needs other than transportation and medical care may not exceed \$80 per person per month.

1/ General relief medical assistance is a species of financial assistance provided under authority of AS 47.25.120-47.25.300. See, AS 47.25.300(1).

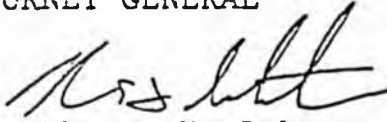
It is noteworthy that this section refers only to the provision of temporary assistance.

The discretion of the Department of Health and Social Services is quite broad with respect to the establishment of eligibility standards. 2/. See, AS 47.05.010(9). However, the department does not have discretion to ignore those standards once they have been established except as necessary to address exigencies of a temporary nature.

If you have further questions in this regard, please do not hesitate to contact this office.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Thomas H. Robertson
Assistant Attorney General

THR:tc

cc: The Honorable Helen D. Beirne
Commissioner, Department of Health
and Social Services

2/ Any distinctions drawn by regulation must comport with the equal protection clauses of the state and federal constitutions. In State v. Erickson, 574 P.2d 1, 12 (Alaska 1978), the Alaska Supreme Court outlined the general approach to be used in analyzing equal protection claims under the more restrictive state law:

Initially, we must look to the purpose of the statute, viewing the legislation as a whole, and the circumstances surrounding it. It must be determined that this purpose is legitimate, that it falls within the police power of the state. Examining the means used to accomplish the legislative objectives and the reasons advanced therefore, the court must then determine whether the means chosen substantially further the goals of the enactment. Finally, the state interest in the chosen means must be balanced against the nature of the constitutional right involved.

CHARLIE PARR

ALASKA LEGISLATURE

S.R. Box 50599
Fairbanks, Alaska 99701
(907) 456-5029

Pouch V
Juneau, Alaska 99811
(907) 465-4907

May 6, 1982

MEMORANDUM

TO: All Members of the H.E.S.S. Committee

FROM: Senator Charlie Parr

SUBJECT: HB 357

After listening to the testimony on this bill it seems to me that the department was going beyond the requirements of law when it began giving state payments to the blind, elderly and disabled based on an initial tentative decision and without waiting for federal SSI determination. Such action had not been practiced before and was at least interim help to the people involved. The problem which has arisen is purely because of the link between such aid and medicaid benefits.

Federal policy on both SSI and Medicaid now seems to make this a risky venture for the state because in a period of limited revenues, federal penalties reduce the number of people we can help. We are in a box.

As I see it, we have several possibilities for action on HB 357:

1. Send forward only the full cost of care compromise which was adopted by the providers and the department and let the adult public assistance part of the bill die. This keeps the status quo.
2. Send forward the full cost of care portion plus the clean-up language on adult public assistance. This again keeps the status quo.
3. Agree with the department--give the power to contract with the federal government. Deny benefits until

and if federal determination of eligibility for SSI is given.

4. Agree with legal services. Give the benefits at the time the state determines eligibility and absorb any penalties when the federal government denies benefits.

If you will let me know your preferences as soon as possible, we will try to have a draft bill ready for you at the next meeting.

POSITION PAPER

CS FOR HOUSE BILL NO. 357 (RULES) am

"An Act relating to Adult Public Assistance."

PART I: OVERVIEW:

CSHB 357 is a very important piece of legislation to the Department for two primary reasons:

- (1) CSHB 357 makes long overdue technical changes to the Department's Adult Public Assistance Programs, and clarifies the Legislature's intent relative to administration of these programs. Failure to resolve this issue this session will result in a ruling from the courts where the issue currently rests (Moore V. Beirne).
- (2) CSHB 357 also seeks to repeal provisions of AS 47.40 dealing with reimbursement of residential child care providers in Alaska. The Department's anticipated FY83 funding level for this program category cannot sustain the current level of court ordered placements unless the full cost of care provisions in AS 47.40 are repealed.

Each of these two issues are discussed in greater detail in Part II of this position paper. The Department's position on CSHB 357 is presented in Part III of this paper.

PART II: DETAILED DISCUSSION:

A. Adult Public Assistance Issues:

- (1) Before 1974, Alaska's three adult assistance programs (APA) were state administered but funded equally with federal and state funds. In 1974, SSI, a federally funded and federally administered welfare program, established a nationwide payment level to the needy aged, blind and disabled. Because that payment level was well below the amounts provided by Alaska's programs, the Legislature elected to continue Alaska's programs, supplementing the federal payments with a state funded and state administered supplemental program. The Department has continued to operate the APA programs in that manner for the intervening 8 years. In a majority of cases, if an individual is not found eligible by the federal government, they do not receive a supplemental payment from the State. While these individuals are awaiting an eligibility decision from the federal government, they receive only the State supplemental payment. The federal payment is withheld until a final decision is made. The State has been challenged in court on this issue by Alaska Legal Services (ALS). ALS contends the Legislature intended the Department to pay both the federal and state share of benefits pending a federal eligibility decision. If the Department loses this challenge in court due to an absence of Legislative clarification, the end result will likely be that these individuals will receive neither the state nor the federal part of the benefits pending a federal eligibility decision. This end result would occur as APA funding levels are not sufficient to allow us to substitute state for federal funds to these applicants, nor do we believe the Legislature would wish us to make such expenditures.

A. APA Issues Continued:

CSHB 357 changes statutes to better reflect the existence of the SSI program and the supplemental nature of the state program. Secondly, it significantly shortens the existing statutes by repealing all Aid to the Disabled and Aid to the Blind statutes which simply repeat provisions in the Old Age Assistance statutes. It does this by modifying the Old Age Assistance statutes to include the Blind and Disabled subcategories under the program term "Adult Public Assistance". Finally, it corrects an important drafting error in AS 47.25.960 in which a permanently and totally disabled person was only defined as "a needy recipient of the State who is not eligible for assistance from another public agency or department providing similar services in the State".

- (2) A second APA issue concerns contracting administration of certain Departmental programs to other agencies or persons. CSHB 357 originally contained a provision adding a new Section 47.05.015 entitled CONTRACTS which was deleted by House floor amendment. This new section would have made it clear that the Department was authorized to contract for administration of certain programs. Of particular concern to the Department is the desire to contract for federal administration of the three Adult Public Assistance programs in FY83. Whereas the federal government now completely controls the eligibility rules for these programs, it would be more cost-effective for the federal government to issue a single check to these individuals with the state portion included. Significant administrative savings can be achieved and a high potential for erroneous payments reduced due to the single point of payment control.

B. Repeal of Full Cost of Care:

In addition to the changes in the public assistance statutes, Committee Substitute for House Bill No. 357 (Rules) am includes a repealer for AS 47.40 in Section 20 of the Bill. Chapter 40, Purchase of Services, is commonly referred to as the full cost of care statute. The full cost of care statute, enacted in 1970, was designed to establish the method of calculating how the State would purchase services from the residential child care providers and from foster homes. Section 47.40.040 (Determination of Full Cost of Services) outlines the method the Department must utilize to determine the rates for child care facilities. "Full cost of services shall be determined by the per person, per day costs in the preceding fiscal year plus a proportionate share of anticipated cost of living and staff salary increment increases for the fiscal year for which the full cost of services, determined to be necessary by the Department, is being determined."

Each year rates are calculated based on each facility's prior year financial experience. The total allowable cost for operating the facility is divided by the number of days of care provided to children during that year. This figure serves as a base daily rate upon which to increase rates further by an inflation factor. Over the years some major problems have developed with this method of calculating rate structures for the providers. First, when calculating the total cost for the facility in the prior year, no consideration is given to the vacancy rate in the facility.

If the facility is licensed for 10 children, but cares for only 5, the operating cost in the prior year will often include the overhead cost for the entire 10 beds, thereby effectively increasing the rates. In addition, the rate is determined by dividing the overall operating cost by the census and, therefore, a low census will result in a higher rate in the upcoming year.

This vacancy factor also creates problems of cycles of feast and famine for facilities should their occupancy rate rise and fall. In a year where the occupancy is low, the facility may have difficulty managing. However, their rates will increase significantly in the next year. Should their occupancy suddenly increase, the raise in rates will result in the facility receiving more money than is necessary for ongoing operations. Similarly, if occupancy rates were high in the prior year upon which rates for this year were calculated, and the number of children decrease, this year's rate will not adequately cover the operating expenses. In short, the full cost of care system of calculating rates tends to create uncertainty for the facilities and often results in the daily rates the State pays for care not accurately reflecting the cost of actual services provided.

Secondly, because the daily rates the State must pay to facilities this year is based on total expenditures from last year, the facilities have claimed that the State must include in the rate determinations all other income received by the facility, be it private donations, community contributions, and even state and federal sources of funds. This interpretation of the statutes means that the cost to the State can rise dramatically in a cumulative fashion, and that local communities are not encouraged to provide ongoing support for facilities benefiting the community. Donations and community support become not a source of basic continuing resources, but a lever to increase State purchase costs in future years.

The repeal of AS 47.40 would provide the Department with an alternative to the full cost of care method of calculating facility rates. If AS 47.40 is repealed, the Department will utilize the existing State laws and procedures for purchasing these services through contracting. The major benefit for the State would be purchasing services the Department of Health and Social Services needs as outlined in a Request for Proposals as opposed to accepting what is available from child care agencies. The Department would also be able to contract for the number of beds to meet their needs in a given community, thus eliminating the payments for a large number of empty beds.

During the FY83 budget process, the Department's budget has been significantly reduced in the area of residential child care. The House budget reduced this component by 2 million dollars; the Governor's revised budget reduces this component by 1 million dollars; and the Senate version of the FY83 budget also reduces it by 1 million dollars. The Department cannot meet these budget reductions without a significant decrease in placements unless AS 47.40 is repealed or significantly amended. The Department favors the repeal of AS 47.40 enabling the Department to contract with individual providers resulting in a significant cost saving without a reduction in the level of services.

III. DEPARTMENTAL POSITION:

In summary, CSHB 357 has become an extremely critical bill to the Department. The Department strongly supports CSHB 357 but recommends the restoration of the CONTRACTS section, AS 47.05.015 to the bill with the language amendments requested in our April 12, 1982 letter to Representative Adams.

Recommended By: Rod Betit
Rod Betit, Director
Division of Public
Assistance

Date: April 23, 1982

Recommended By: John Pugh
John Pugh, Director
Division of Family and
Youth Services

Date: 4/23/82

Approved By: Helen D. Beirne
Helen D. Beirne
Commissioner
Department of Health and
Social Services

Date: 4/23/82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for House Bill No. 357 (Rules) am
Title "An Act relating to Adult Public Assistance."
Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services
Program Category Affected _____
BRU, Program, Or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS		-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)		-0-	-0-	-0-	-0-	-0-
		-0-	-0-	-0-	-0-	-0-
		-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME		-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

CS for House Bill No. 357 (Rules) am would have not fiscal impact on the Department of Health and Social Services.

IV. DATE

4/23/82

PREPARED BY

John R. Pugh
John R. Pugh, Director

AGENCY

Division of Family and Youth Services *JCC*

PHONE

465-3170

Original: Legislative Finance
cc: Budget and Management

Prime Sponsor (First Legislator Named)

35-001 (rev. 12/81)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ODIS MOORE and GLEE OHLSSON,)
 on behalf of themselves and)
 all others similarly situated,)
)
 Plaintiffs,)
)
 vs.)
)
 HELEN D. BEIRNE, in her capacity)
 as Commissioner of Health and)
 Social Services; and ROD BETIT,)
 in his capacity as Director of)
 The Division of Public Assistance,)
)
 Defendants.)

RECEIVED

Department of Law

NOV 9 1981

Office of the Attorney General
600 West 12th
Anchorage, Alaska

RECEIVED
Department of Law
Juneau, Alaska

Civil Action No. 3AN-81-4396

ORDER STRIKING
AFFIRMATIVE DEFENSES

AM NOV 9 1981 PM
7,8,9,10,11,12,1,2,3,4,5,6
A

Plaintiffs having moved that defendants' first, second, third, and fifth affirmative defenses be stricken pursuant to Alaska Civil Rule 12(f) as immaterial, impertinent, or insufficient, arguments of counsel having been heard, and this Court having found that defendants first, second, third, and fifth affirmative defenses are immaterial, impertinent, or insufficient,

IT IS HEREBY ORDERED:

That defendants first, ~~second, third, and fifth~~ affirmative defenses ^{is} ~~be~~ stricken.

DATED this 3 day of November, 1981.

I certify that on 11-3-81
a copy of the above was mailed to each
of the following at their addresses of
record: J. O'Connell, E. P. Kennedy
Secretary M. V. Lee

Daniel A. Moore Jr
JUDGE OF THE SUPERIOR COURT

Secretary to Judge Moore
Plaintiff request to strike Defendants
second, third and fifth affirmative defenses
is denied for the reason that said defenses
raise issues of fact and law, which after discovery
is completed and adequate briefs are submitted
may present issues appropriately decided by
Summary Judgment motions or Trial.

11/3/81

Daniel A. Moore Jr

SEP 28 1981

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
615 "H" STREET, SUITE 100
ANCHORAGE, ALASKA 99501
(907) 272-9431

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ODIS MOORE and GLEE OHLSSON,)
on behalf of themselves and)
all others similarly situated,)

Plaintiffs,)

vs.)

HELEN D. BEIRNE, in her capacity)
as Commissioner of Health and)
Social Services; and ROD BETIT,)
in his capacity as Director of)
The Division of Public Assistance,)

Defendants.)

No. 3AN 81-4396 CIV

ANSWER TO FIRST AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW the defendants, by and through the Office of the Attorney General, and answers plaintiffs' first amended complaint for declaratory and injunctive relief as follows:

I.

PRELIMINARY STATEMENT

1. Admit the allegations in paragraph 1 with the exception of the allegation that the State of Alaska has failed to fully and properly administer a state program.

2. Admit.

3. Admit.

4. Admit that the division, through the department, has determined that certain disabled adults need \$473.00 per month to live at a standard compatible with health and well-being, and deny each and every other allegation of plaintiffs' paragraph 4.

5. Insofar as plaintiffs' paragraph 5 states allegations against defendants, they are denied.

6. Plaintiffs' paragraph 6 is a statement of the relief they are seeking, and does not need to be answered.

///

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE, BRANCH
225 L STREET, SUITE 100
ANCHORAGE, ALASKA 99501
PHONE: 274-3551

II.

PLAINTIFFS

A. PLAINTIFF ODIS MOORE

7-9. Defendants are without information sufficient to admit or deny these allegations except that supplied by plaintiffs, but see no reason to doubt plaintiffs' allegations.

10. Plaintiffs' paragraph 10 states a conclusion which can only be drawn after final decision by the S.S.I. Agency, and therefore defendants must deny plaintiffs' allegation.

11. Admit that plaintiff Moore presently receives AD assistance, and that that assistance is his only source of income, but denies the amount.

12. Deny that on July 1, 1981, the APD payment standard applicable to certain individuals was raised from \$473.00 to \$526.00 per month.

13. Admit that the calculation standard is correct but denies the amount.

14. Admit that the department has calculated plaintiff's AD benefits in the manner described above, and admit that plaintiff Moore does not now receive SSI benefits, but deny each and every other allegation in plaintiffs' paragraph 14.

15. Admit.

16. Admit.

17. Admit.

18. Admit.

19. Admit that the hearing authority, in a hearing decision issued April 20, 1981, determined that plaintiff Moore was entitled to continue AD assistance pending the outcome of his SSI appeal, denied his demand that AD benefits be computed on the same basis as an eligible client, and upheld the department's practice of issuing an interim grant based on calculations set forth above. Defendants deny each and every other

allegation of plaintiffs' paragraph 19.

20. Admit.

21. Admit.

22. Admit.

23. Are without information sufficient to admit or deny the allegations of plaintiffs' paragraph 23 and therefore deny same.

24. Are without information sufficient to admit or deny the allegations of plaintiffs' paragraph 24 and therefore deny same.

B. PLAINTIFF GLEE OHLSSON

25-27. Are without information sufficient to admit or deny the allegations of plaintiffs' paragraphs 25 - 27 except for information supplied by plaintiffs, but see no reason to deny plaintiffs' allegations.

28. Plaintiffs' paragraph 28 states a conclusion which can only be drawn after final decision by the S.S.I. Agency, and therefore defendants must deny plaintiffs' allegation.

29. Admit that plaintiff presently receives AD assistance, and that that assistance is his only source of income, but denies the amount.

30. Deny in that on July 1, 1981, the APD payment standards applicable to certain individuals was raised from \$473.00 to \$526.00 per month.

31. Admit that the calculation standard is correct but denies the amount.

32. Admit that the department has calculated plaintiff's AD benefits in the manner described above, and admit that plaintiff Moore does not now receive SSI benefits, but deny each and every other allegation in plaintiffs' paragraph 32.

33. Admit.

34. Are without knowledge sufficient to admit or

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OFFICE OF THE ATTORNEY GENERAL
AGGREGATE BRANCH
520 E. STREET SOUTH, 100
MONTGOMERY, ALABAMA 36102
PHONE 256-251-2000

deny the allegation of plaintiffs' paragraph 34, and therefore deny same.

35. Admit.

36. Are without knowledge sufficient to admit or deny the allegation of plaintiffs' paragraph 36, and therefore deny same.

37. Admit.

38. Admit.

39. Admit.

40. Admit.

41. Are without knowledge sufficient to admit or deny the allegation of plaintiffs' paragraph 41, and therefore deny same.

42. Deny.

III.

CLASS ACTION ALLEGATIONS

43. Defendants are unable to comment on why plaintiffs brought this action, and therefore deny all the allegations in plaintiffs' paragraph 43.

44. Deny.

45. Deny.

46. Deny.

47. Deny.

48. Deny.

49. Deny.

IV.

DEFENDANTS

50. Admit.

51. Admit.

V.

JURISDICTION

52. A jurisdictional statement is a matter of law and does not need to be answered.

///

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
AIR MAIL ROOM, PHOENIX
370 E. STATE ST. SUITE 1000
PHOENIX, ARIZONA 85004
PHONE: 276-1233

VI.

STATUTORY AND REGULATORY FRAMEWORK

53. Admit.

54. Admit.

55. Admit.

56. Admit, except that the standards of need were modified effective July 1, 1981. A new memorandum was issued June 5, 1981, implementing modified standards.

57. Deny. Standards of need are as follows:

(a) \$426.00

(b) \$526.00

(c) \$638.00

(d) \$773.00

58. Admit that there are only three regulations currently in effect. The department proposed regulations in August of 1979, but these regulations have not been approved by the Attorney General's Office.

59. Admit.

60. Admit.

61. Admit in that the department is required to cooperate with the federal government under Alaska Statutes, that the Social Security Administration has developed a program to provide for reimbursement to the states for any person who is found eligible by the Social Security Administration, but deny that it is a full reimbursement program for benefits paid, and deny that the department has "refused" to participate in this program.

VII.

PRACTICES COMPLAINED OF

62. Admit.

63. Admit.

64. Admit.

65. Admit.

67. Admit.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ALASKA BARRETT, DEAN
470 L. STREET, SUITE 100
ANCHORAGE, ALASKA 99501
PHONE: 276-7500

34

68. Admit.

69. Admit.

70. As to the fact that conditionally eligible APD clients do not receive the same funding as eligible APD clients, the allegation in plaintiffs' paragraph 70 are admitted. All other allegations are denied.

71. As to the fact that conditionally eligible APD clients do not receive the same funding as eligible APD clients, the allegation in plaintiffs' paragraph 71 are admitted. All other allegations are denied.

72. As to the fact that conditionally eligible APD clients do not receive the same funding as eligible APD clients, the allegation in plaintiffs' paragraph 72 are admitted. All other allegations are denied.

73. As to the fact that conditionally eligible APD clients do not receive the same funding as eligible APD clients, the allegation in plaintiffs' paragraph 73 are admitted. All other allegations are denied.

74. As to the fact that conditionally eligible APD clients do not receive the same funding as eligible APD clients, the allegation in plaintiffs' paragraph 74 are admitted. All other allegations are denied.

75. As to the fact that conditionally eligible APD clients do not receive the same funding as eligible APD clients, the allegation in plaintiffs' paragraph 75 are admitted. All other allegations are denied.

VIII.

CAUSES OF ACTION

A. First Cause of Action

76.. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

77. Plaintiffs' paragraph 77 states a conclusion of law and need not be answered, and is therefore denied.

///

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ANCHORAGE, ALASKA
450 E. STREET SUITE 100
ANCHORAGE, ALASKA 99501
PHONE: 274-3551

B. Second Cause of Action

78. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

79. Plaintiffs' paragraph 79 states a conclusion of law and need not be answered, and is therefore denied.

C. Third Cause of Action

80. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

81. Plaintiffs' paragraph 81 states a conclusion of law and need not be answered, and is therefore denied.

D. Fourth Cause of Action

82. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

83. Plaintiffs' paragraph 83 states a conclusion of law and need not be answered, and is therefore denied.

E. Fifth Cause of Action

84. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

85. Plaintiffs' paragraph 85 states a conclusion of law and need not be answered, and is therefore denied.

F. Sixth Cause of Action

86. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

87. Plaintiffs' paragraph 87 states a conclusion of law and need not be answered, and is therefore denied.

88. Plaintiffs' paragraph 88 states a conclusion of law and need not be answered, and is therefore denied.

G. Seventh Cause of Action

89. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

90. Plaintiffs' paragraph 90 states a conclusion of law and need not be answered, and is therefore denied.

91. Plaintiffs' paragraph 91 states a conclusion of law and need not be answered, and is therefore denied.

BARRETT OF LAW
OFFICE OF THE ATTORNEY GENERAL
2001 ROBERT EDDY BLVD
MOBILE, ALABAMA 36688
PHONE: 334-261-3000

H. Eighth Cause of Action

92. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

93. Plaintiffs' paragraph 93 states a conclusion of law and need not be answered, and is therefore denied.

I. Ninth Cause of Action

94. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

95. Plaintiffs' paragraph 95 states a conclusion of law and need not be answered, and is therefore denied.

J. Tenth Cause of Action

96. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

97. Plaintiffs' paragraph 97 states a conclusion of law and need not be answered, and is therefore denied.

98. Plaintiffs' paragraph 98 states a conclusion of law and need not be answered, and is therefore denied.

K. Eleventh Cause of Action

99. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

100. Plaintiffs' paragraph 100 states a conclusion of law and need not be answered, and is therefore denied.

L. Twelfth Cause of Action

101. Defendants reallege each and every answer to plaintiffs' paragraphs 1 through 75.

102. Plaintiffs' paragraph 102 states a conclusion of law and need not be answered, and is therefore denied.

IX.

INJUNCTIVE RELIEF

103. Deny.

104. Admit.

Defendants state their

FIRST AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim upon which relief can

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
STATE OF ALABAMA
600 S. STATE STREET, SUITE 1700
MONTGOMERY, ALABAMA 36102
(205) 261-2000

be granted.

SECOND AFFIRMATIVE DEFENSE

Defendants are immune from suit pursuant to AS 09.50.250.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs mistake the category of aid for which they are eligible.

FOURTH AFFIRMATIVE DEFENSE

Defendants are in full compliance with the laws of the state and the federal government.

FIFTH AFFIRMATIVE DEFENSE

Defendants have fully implemented the law to the best of their ability in light of the availability of funds.

WHEREFORE, defendants pray for relief as follows:

1. That plaintiffs' complaint be dismissed with prejudice.
2. For costs and attorneys fees in defending this action.
3. For such other relief as this court deems just and fair.

DATED: September 3, 1981

WILSON L. CONDON
ATTORNEY GENERAL

By: Elizabeth Ruge Kennedy
Elizabeth Ruge Kennedy
Assistant Attorney General

The undersigned hereby certifies that on the 3rd day of September, 1981 the attached documents were mailed to the attorneys of record: C'Connell.

Marion C. Hilkinson

Subscribed and sworn to before me the date last written

Marion M. Proctor

Notary Public
My Commission Expires 7-21-85

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
325 W. 5th AVENUE, BRIDGE
ANCHORAGE, ALASKA 99501
PHONE: 273-3241

ODIS MOORE and GLEE OHLSSON,)
 on behalf of themselves and)
 all others similarly situated,)
)
 Plaintiffs,)
)
 vs.)
)
 HELEN D. BEIRNE, in her capacity)
 as Commissioner of Health and)
 Social Services; and ROD BETIT,)
 in his capacity as Director of)
 The Division of Public Assistance,)
)
 Defendants.)

Civil Action No. 3AN-81-4396

FIRST AMENDED
 COMPLAINT FOR DECLARATORY AND
 INJUNCTIVE RELIEF

(Alaska Civil Rule 23; Alaska
 Statutes §§ 22, 10, 020;
 44.62.010 et seq. 47.05.010;
 47.25.810; 42 U.S.C. §1983.

COME NOW the plaintiffs, by and through their attorney,
 ALASKA LEGAL SERVICES CORPORATION, and allege as follows:

I.

PRELIMINARY STATEMENT

1. This is an action brought by disabled adults against officials of the State of Alaska for their failure to fully and properly administer a state program critical to the health and welfare of plaintiffs and other eligible disabled adults in this state. The program, Aid to the Permanently and Totally Disabled (hereinafter the AD program), was created to furnish financial assistance to permanently and totally disabled persons who are unable, due to their disability, to otherwise financially support and care for themselves. The AD program is one of the Adult Public Assistance programs administered by the Department pursuant to

LAW OFFICES OF
 ALASKA LEGAL SERVICES CORPORATION
 815 "H" STREET, SUITE 100
 ANCHORAGE, ALASKA 99501
 (907) 272-9431

2. The Department of Health and Social Services (hereinafter the Department) is required to establish standards for determining the amount of assistance which an eligible disabled adult is entitled to receive. The amount of assistance granted is to be determined with regard to the resources and needs of the disabled adult and the conditions existing in each case, and is to be deemed sufficient when, added to all other available income and resources, it provides the disabled adult with a reasonable subsistence compatible with health and well-being.

3. The Division of Public Assistance (hereinafter the Division), the branch of the Department primarily responsible for administration of the AD program, has established standards of need defining the amounts of assistance necessary to provide reasonable subsistence compatible with health and well-being to disabled adults in four categories of household circumstances. If the disabled adult has no other income or resources, the Department is required to provide AD assistance equal to the full applicable standard of need.

4. The Division, and through it the Department, has determined that disabled adults in plaintiffs' circumstances need \$473.00 per month to live at a standard compatible with health and well-being. Despite this determination, Defendants refuse to provide plaintiffs with any more than \$235.00 per month in AD assistance, even though they presently have no other income. Defendants base this refusal on the theory that plaintiffs have applied for and may eventually begin to receive monthly benefits under the federal Supplemental Security Income (hereinafter SSI) program. Despite the fact that plaintiffs do not now receive SSI benefits, and despite the fact that the mere possibility of future SSI benefits is of no use to plaintiffs in attempting to meet current survival needs, defendants calculate the amount of

monthly AD assistance granted by subtracting the estimated amount of future SSI benefits from the applicable standard of need. In effect, defendants pretend that future SSI benefits which a disabled adult may not receive for months or over a year are available to meet current needs. Defendants, by failing to provide plaintiffs with the full amount of AD assistance to which they are entitled, have violated the very purpose of the AD program by denying eligible disabled adults the means to live at a standard compatible with health and well-being.

5. Plaintiffs allege that their rights under state statutes and regulations and under the due process and equal protection clauses of the Alaska and United States Constitution have been violated by this practice.

6. Plaintiffs, individually and on behalf of all others similarly situated, seek a declaration that defendants have a mandatory obligation to administer the AD program in a manner which meets the requirements of state law as well as state and federal constitutional guarantees; injunctive relief compelling defendants to administer the AD program in a manner conforming to state law as well as state and federal constitutional guarantees; and retroactive payments equal to the difference between the amount of AD assistance granted and the amount to which plaintiffs and all others similarly situated were and are entitled.

II.

PLAINTIFFS

A. PLAINTIFF ODIS MOORE

7. Plaintiff ODIS MOORE is a 55 year old man residing in Anchorage, Alaska with his wife and his wife's daughter.

3. Plaintiff MOORE's formal education ended with the second or third grade. He is unable to read or write anything but his name and his wife's name. He has spent his entire working life engaged in occupations demanding arduous physical labor. The bulk of his employment experience has been as an agricultural laborer.

9. In November of 1979 Plaintiff MOORE sustained serious injuries to his left ankle, right shoulder, and hip when he was run over by a tractor. He has not worked since that accident due to his inability to lift, stoop, bend, or walk without experiencing considerable pain. He suffers from post traumatic arthritis and osteoarthritis which is both permanent and progressive and which, combined with his limited education and the non-transferable nature of the work skills he acquired as a heavy laborer, prevent him from obtaining employment and supporting himself.

10. Plaintiff MOORE is in all material respects eligible for state assistance under the AD program.

11. Plaintiff MOORE presently receives AD assistance in the amount of \$235.00 per month. This AD assistance is his only source of income.

12. According to the current standards of need established by the Department pursuant to Alaska Statutes §47.05.010(9), an individual in Plaintiff MOORE's circumstances requires \$473.00 per month to enable him to live at a level of reasonable subsistence compatible with health and well-being.

13. The Department has calculated the amount of AD assistance provided Plaintiff MOORE by subtracting the amount of the monthly SSI payment which it anticipates that he will eventually receive, \$239.00, from the standard of need appropriate for an applicant in his circumstances, \$473.00, and then adding one dollar to result in an AD assistance payment of \$235.00.

14. The Department has calculated Plaintiff MOORE's AD benefits in the manner described in Paragraph 13, above, despite the knowledge that Plaintiff MOORE does not now nor has he ever received SSI benefits.

15. On July 9, 1980, Plaintiff MOORE submitted an application for AD benefits. He had previously applied for SSI benefits on May 27, 1980, and was at the time of his AD application

awaiting an eligibility determination from SSA. The Department made an initial determination that Plaintiff MOORE was eligible for AD assistance and began to provide him with AD benefits computed in the manner described in Paragraph 13, above.

16. SSA made an initial determination that Plaintiff MOORE was not eligible for SSI benefits on July of 1980, and subsequently affirmed its denial in a reconsideration decision issued in October, 1980. Plaintiff MOORE appealed these denials.

17. While Plaintiff MOORE's appeal from SSA's reconsideration decision was pending, the Division notified him that, because he had been determined ineligible for SSI, his AD benefits would be terminated effective December 5, 1980.

18. Plaintiff MOORE requested a fair hearing from the Division to contest termination of his AD benefits. This fair hearing was conducted on February 17, 1981. At the hearing, Plaintiff MOORE challenged not only the proposed termination of his AD benefits, but also the Division's practice of computing his AD benefits as though he were already receiving SSI.

19. In a hearing decision issued April 20, 1981, the Division determined that Plaintiff MOORE was entitled to continued AD assistance pending the outcome of his SSI appeal, and reversed the decision to terminate his AD benefits. However, the hearing authority denied Plaintiff MOORE's demand that his AD benefits be computed on the basis of available income and resources, and upheld the Department's practice of pretending that the prospect of future SSI benefits could somehow supplement Plaintiff MOORE's inadequate AD benefits and assist him in meeting current needs. A copy of the hearing decision issued in Plaintiff MOORE's case is affixed hereto as Exhibit 2.

20. Plaintiff MOORE filed a timely request for review of the April, 1981 fair hearing decision with Defendant Rod Betit,

Director of the Division. In a decision issued May 12, 1981, Defendant Betit affirmed the hearing authority's decision that Plaintiff MOORE was not entitled to any increase in the amount of AD assistance provided him. A copy of Defendant Betit's decision in Plaintiff MOORE's case is affixed hereto as Exhibit 3.

21. Plaintiff MOORE has exhausted his administrative remedies under the AD program.

22. In a decision dated April 30, 1981, an administrative law judge reversed SSA's two prior denials of Plaintiff MOORE's SSI application, and found him eligible for SSI benefits.

23. Although he had been determined eligible for SSI benefits, Plaintiff MOORE still has not received any SSI payments. His sole source of income remains the \$235.00 per month which he receives in AD assistance.

24. As the proximate result of the Department's refusal to provide him with AD assistance equal to the full standard of need for an individual in his circumstances, \$473.00, despite the fact that he has never received so much as one dollar in SSI benefits and has no income other than his AD benefits of \$235.00, Plaintiff MOORE is not presently able nor has he been able since the date of his application for AD benefits to live at a level of reasonable subsistence compatible with health and well-being.

B. PLAINTIFF GLEE OHLSSON

25. Plaintiff GLEE OHLSSON is a 50 year old woman who lives by herself in Anchorage, Alaska.

26. Plaintiff OHLSSON suffers from a manic-depressive personality disorder which subjects her to severe mood swings ranging from elation to severe depression. She also suffers from an organic brain syndrome which impairs her memory functions. In addition to her mental impairments, she also suffers from tendonitis of the right arm and left shoulder, as well as back pain.

27. Before the onset of her mental illness, Plaintiff OHLSSON was employed for twelve years as an elementary school teacher. After being diagnosed as schizophrenic in 1970 she became a housewife, and worked briefly as a secretary/receptionist and again as a library assistant. Her disabilities interfered with her performance in both these positions and caused her to lose both jobs. Because of her mental and physical impairments, she is unable to obtain employment and support herself.

28. Plaintiff OHLSSON is in all material respects eligible for state assistance under the AD program.

29. Plaintiff OHLSSON presently receives AD benefits in the amount of \$235.00 per month. This AD assistance is her only source of income.

30. According to the current standards of need established by the Department pursuant to Alaska Statutes, §47.05.010(9), an individual in Plaintiff OHLSSON's circumstances requires \$473.00 per month to enable her to live at a level of reasonable subsistence compatible with health and well-being.

31. The Department has calculated the amount of AD assistance provided Plaintiff OHLSSON by subtracting the amount of the monthly SSI payment which it anticipates she will eventually receive, \$239.00, from the standard of need appropriate for an individual in her circumstances, \$473.00, and then adding one dollar to result in an AD assistance payment of \$235.00.

32. The Department has calculated Plaintiff OHLSSON's AD benefits in the manner described in Paragraph 31, above, despite the knowledge that Plaintiff OHLSSON does not now nor has she ever received SSI benefits.

33. In September, 1980, Plaintiff OHLSSON submitted an application for assistance under the AD program. Prior to this time, in June of 1980, she had applied for SSI benefits, and was at the time of her AD application awaiting a final eligibility determination from SSA.

34. She is still waiting.

35. The Department made an initial determination that Plaintiff OHLSSON was eligible for AD assistance and began to provide her with AD benefits computed in the manner described in Paragraph 31, above.

36. Plaintiff OHLSSON's SSI application has thus far been denied.. She is still pursuing her administrative avenues of appeal.

37. The Division notified Plaintiff OHLSSON in December, 1980 that her AD benefits would be terminated because she had been determined ineligible for SSI benefits.

38. Plaintiff OHLSSON requested a fair hearing from the Division to contest termination of her AD benefits. The hearing was conducted, and in a hearing decision dated April 8, 1981 the hearing authority reversed the decision to terminate her AD benefits pending the outcome of plaintiff's SSI appeal. A copy of the hearing decision issued in Plaintiff OHLSSON's case is affixed hereto as Exhibit 4.

39. Plaintiff OHLSSON filed a timely appeal to Defendant Betit, Director of the Division, challenging the Division's practice of computing her AD benefits as though she were already receiving SSI.

40. In a decision dated May 4, 1981, Defendant Betit rejected arguments that Plaintiff OHLSSON is entitled to AD assistance in an amount computed with regard only to income and resources actually available to her for the purpose of meeting current needs. A copy of Defendant Betit's decision in Plaintiff OHLSSON's case is affixed hereto as Exhibit 5.

41. Plaintiff OHLSSON has not yet been determined eligible for SSI benefits. Her sole source of income remains the \$235.00 per month which she receives in AD assistance.

42. As the proximate result of the Department's refusal to provide her with AD assistance equal to the full standard of need for an individual in her circumstances, \$473.00, despite

the fact that she has never received so much as one dollar in SSI benefits and has no income other than her AD benefits of \$235.00, Plaintiff OHLSSON is not presently able nor has she been able since the date of her application for AD benefits to live at a level of reasonable subsistence compatible with health and well-being.

III.

CLASS ACTION ALLEGATIONS

43. Plaintiffs bring this action pursuant to Alaska Civil Rule 23 on behalf of themselves and all past, present, and future recipients of AD benefits who have received, receive, or will receive AD assistance in an amount less than that determined necessary to provide them with reasonable subsistence compatible with health and well-being when added to all other available income and resources, because their benefits are calculated as though they were receiving SSI benefits which they do not in fact receive.

44. The class is so numerous that the joinder of all members is impracticable.

45. There are questions of law common to the class.

46. There are questions of fact common to the class.

47. The claims of the representative parties are typical of the claims of the class as a whole in that the Division has computed the amount of AD assistance provided them without regard to available resources and current needs, and has failed to provide assistance in an amount sufficient to provide reasonable subsistence compatible with health and well-being.

48. The representative parties will fairly and adequately protect the interests of the class.

49. The defendants have acted in a manner generally applicable to the class as a whole thereby rendering appropriate final injunctive and declaratory relief.

IV.

DEFENDANTS

50. Defendant Helen Beirne is the Commissioner of Health and Social Services for the Alaska Department of Health and Social Services. In this capacity she is responsible for supervising the operations of the Department, including the Department's Division of Public Assistance. She is sued here in her official capacity.

51. Defendant Rod Betit is the Director of the Division of Public Assistance. As such he is responsible for supervising all of the Division's programs, including the Aid to the Permanently and Totally Disabled Program, and for determining the amount of assistance to be granted a permanently and totally disabled person under the AD program. He is sued here in his official capacity.

V.

JURISDICTION

52. Jurisdiction in this matter is asserted under Alaska Civil Rule 23, Alaska Statutes §22.10.020, and 42 U.S.C. §1983.

VI.

STATUTORY AND REGULATORY FRAMEWORK

53. The Department is required to administer and adopt regulations necessary for administration of the AD program. [Alaska Statute §47.05.010(1),(2).] It is specifically required to establish standards for determining the amount of assistance which an eligible person is entitled to receive under the AD program. That amount of assistance is sufficient when, added to all other income and resources available to an individual, it provides the individual with a reasonable subsistence compatible with health and well-being. [Alaska Statutes §47.05.010(9).]

54. The Department is required to determine the amount of AD assistance to be granted a permanently and totally disabled

person with regard to the resources and needs of the person and the conditions existing in each case. [Alaska Statutes §47.25.310] This section requires that the amount of AD assistance granted be calculated with regard to resources which are actually available to meet current needs.

55. Insofar as is possible, the Department is required to provide eligible disabled individuals with AD assistance sufficient to provide reasonable subsistence compatible with decency and health and according to the standards established by the Department pursuant to Alaska Statutes §47.05.010(9). [Alaska Statutes § 47.25.810] In computing the amount of AD assistance to be granted in a particular instance, the Department may consider what other income and resources are available, but wherever possible the disabled individual is entitled to AD assistance in an amount sufficient to provide reasonable subsistence compatible with decency and health. Put another way, he is entitled to AD assistance sufficient to raise his total available resources to an amount equal to the Department's standard of need for an individual in his circumstances.

56. The standards of need established pursuant to Alaska Statutes §47.05.010(9) and presently in effect were promulgated in a policy memorandum dated April 23, 1980, issued by Defendant Rod Betit, Director of the Division of Public Assistance. The present standards of need became effective July 1, 1980, and prescribe the amount which the Department has determined is necessary to provide AD recipients in four categories of household circumstances with reasonable subsistence compatible with health and well-being. A copy of the April 23, 1980 policy memorandum is affixed hereto as Exhibit 1.

57. The standards of need presently in effect for the AD program are as follows:

Living ArrangementStandard of Need

(a) Individual with household costs of less than \$35 per month.	\$383.00
(b) Individual with household costs of \$35 or more per month.	\$473.00
(c) Couple with household costs of less than \$35 per month.	\$574.00
(d) Couple with household costs of \$35 or more per month.	\$695.00

58. Despite its statutory obligation to adopt regulations necessary for administration of the AD program [Alaska Statutes §47.05.010(2)] the Department has validly promulgated only three regulations pursuant to the Administrative Procedure Act. [Alaska Statutes §44.62.010 et seq.] These three regulations, found at 7 AAC 40.005 through .100, concern the value and type of property which an AD recipient may possess; age requirements for program participation; and definitions for "Adult Public Assistance", "blindness", and "disability". These are the only validly promulgated regulations governing administration of the AD program.

59. The three regulations referred to in Paragraph 58, above, are manifestly inadequate for the purpose of administering the AD program in that, among other deficiencies, they fail to specify any procedures for determining eligibility or the amount of assistance to which an eligible disabled adult is entitled.

60. Recognizing the inadequacy of present regulations, the Department in August of 1979 submitted proposed regulations governing Adult Public Assistance Programs (of which the AD program is one) to the Attorney General. Although these proposed regulations have not yet been validly promulgated pursuant to the Administrative Procedure Act and are thus of no legal force and effect, the Department conducts its day to day administration of the AD program according to these proposed regulations.

61. The Department is required to cooperate with the federal government in matters of mutual concern pertaining to all forms of public assistance. [Alaska Statutes §47.05.010(5).] In order to assure that potential recipients of SSI would receive full state benefits pending a final determination by the Social Security Administration and to assure that the respective states would be reimbursed for such assistance payments, the Social Security Administration developed a program to provide for such reimbursement to the states. [20 C.F.R. §§416.525 and .1901 et seq.] The Department has refused to participate in this program.

VII.

PRACTICES COMPLAINED OF

62. Section 40.060 of the proposed regulations purports to require each AD applicant who meets SSI income eligibility standards to apply for SSI assistance.

63. The practice of the Department is to make an initial determination regarding AD eligibility based on a physicians statement submitted on a Departmental "AD-2" form, provide AD assistance if the applicant is determined to be an eligible disabled person, and then wait for the federal Social Security Administration (SSA) to determine whether disability exists for SSI purposes.

64. Section 40.370 of the proposed regulations purports to govern computation of the amount of AD assistance to which an eligible disabled person is entitled. The practice of the Department is to compute AD payments according to the procedures contained in this section.

65. According to Section 40.370 of the proposed regulations, the Department calculates the amount of AD assistance provided by subtracting "net countable income" (determined under Section 350 of the proposed regulations) from the appropriate standard of need. The Department then provides one dollar more than the difference between the net countable income and the appropriate standard of need in AD assistance.

66. Section 40.300(c) of the proposed regulations provides as follows:

(c) Eligibility on the basis of income is determined on a monthly basis. Income is counted in the calendar month in which it is actually received or is first available for use. However, net earnings from self-employment will be computed on a yearly basis and then divided by 12 to determine monthly income. Unless otherwise specified in this chapter, a payment, benefit, property, or service is considered as income in the month of receipt, but any portion of such income which is retained in any month subsequent to the month of receipt is then considered as a resource.

67. Section 40.370(b) of the proposed regulations provides as follows:

In the case of eligible individuals who are required to apply for SSI assistance under Sec. 60 of this chapter, during each month in which Adult Public Assistance eligibility is found to exist but SSI has not yet determined eligibility and established a payment amount, the computation of the Adult Public Assistance payment shall include as available income the amount which the division determines the SSI monthly payment for that month would be if SSI had completed its determination.

68. The Department uses the procedure set forth in Section 40.370(b) of the proposed regulations to calculate the amount of AD assistance provided an AD recipient who is awaiting an SSI eligibility determination or payment of SSI benefits from SSA.

69. The Department's methods of computing AD benefits and the effects of those methods are the same regardless of which standard of need is appropriate for the particular household. Only the numbers change.

70. The effect of the practice set forth in Section 40.370(b) of the proposed regulations and followed by the Department is that the Department fails to provide plaintiffs and others similarly situated with AD assistance sufficient to provide reasonable subsistence compatible with health and well-being when added to all other income and resources available to the disabled individual as required by Alaska Statutes §47.05.010(9).

71. The effect of the practice set forth in Section 40.370(b) of the proposed regulations and followed by the Department is that the Department fails to compute the amount of AD assistance granted plaintiffs and others similarly situated with regard to their resources and needs and the conditions existing in each case as required by Alaska Statutes §47.25.810.

72. The effect of the practice set forth in Section 40.370(b) of the proposed regulations and followed by the Department is that the Department fails to provide plaintiffs and others similarly situated with AD assistance sufficient to provide reasonable subsistence compatible with decency and health as required by Alaska Statutes §47.25.810.

73. The effect of the practice set forth in Section 40.370(b) of the proposed regulations and followed by the Department is that the Department fails to calculate the amount of AD assistance provided to plaintiffs and others similarly situated in the same manner as it calculates the amount of AD assistance provided to all other AD recipients, i.e., with regard to available income and resources.

74. The effect of the practice set forth in Section 40.370(b) of the proposed regulations and followed by the Department is that the Department fails to calculate the amount of AD assistance provided to plaintiffs and others similarly situated in the same manner as it calculates the amount of AD assistance provided to AD recipients who are awaiting eligibility determinations or benefit payments under programs other than SSI.

75. The effect of the practice set forth in Section 40.370(b) of the proposed regulations and followed by the Department is that the Department calculates the amount of AD assistance provided plaintiffs and others similarly situated by pretending that SSI benefits which may not be received for months or years are available to meet a disabled adult's current survival needs.

CAUSES OF ACTION

A. First Cause of Action

76. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

77. In failing to determine the amount of AD assistance to be granted plaintiffs and class members with regard to available resources and current needs, defendants have violated Alaska Statutes §47.25.810.

B. Second Cause of Action

78. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

79. In failing to provide plaintiffs and class members with AD benefits sufficient to provide reasonable subsistence compatible with decency and health according to the Division's own standards of assistance, defendants have violated Alaska Statutes §47.25.810.

C. Third Cause of Action

80. Plaintiffs reallege each and every allegation of Paragraphs 1 through 75.

81. In failing to determine the amount of AD assistance to be granted plaintiffs and class members with regard to available income and resources, defendants have violated Alaska Statutes §47.05.010(9).

D. Fourth Cause of Action

82. Plaintiffs reallege each and every allegation of paragraph 1 through 75.

83. In failing to provide plaintiffs and class members with AD benefits sufficient to provide reasonable subsistence compatible with health and well-being, defendants have violated Alaska Statutes §47.05.010(9).

E. Fifth Cause of Action

84. Plaintiffs reallege each and every allegation of paragraph 1 through 75.

85. In failing to promulgate regulations consistent with Alaska Statutes §§47.05.010 and 47.25.810 in that proposed regulations of the Department do not provide plaintiffs and class members' with AD benefits sufficient to provide reasonable subsistence and said proposed regulations fail to determine amounts of assistance to be granted plaintiffs and class members with regard to available income and resources, defendants have violated Alaska Statutes 44.62.030.

F. Sixth Cause of Action

86. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

87. By their actions in refusing to compute the amount of AD assistance granted plaintiffs and class members with regard to available income and resources while computing assistance granted all other AD recipients with regard to available income and resources, defendants have denied plaintiffs and class members equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States.

88. The conduct described in paragraph 87 above entitles plaintiffs and class members to equitable relief under 42 U.S.C. §1983.

G. Seventh Cause of Action

89. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

90. By their actions in refusing to provide plaintiffs and class members with AD assistance sufficient when added to all other income and resources to provide reasonable subsistence compatible with health and well-being, while providing assistance sufficient for that purpose to all other AD recipients, defendants have denied plaintiffs and class members equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

91. The conduct described in paragraph 90 above entitles plaintiffs and class members to equitable relief under 42 U.S.C. §1983.

H. Eighth Cause of Action

92. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

93. By their actions in refusing to provide plaintiffs and class members with AD assistance sufficient when added to all other available income and resources to provide reasonable subsistence compatible with health and well-being, while providing assistance sufficient for that purpose to all other AD recipients, defendants have denied plaintiffs and class members equal protection of the laws in violation of Article 1, Section 1 of the Constitution of Alaska.

I. Ninth Cause of Action

94. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

95. By their actions in refusing to compute the amount of AD assistance granted plaintiffs and class members with regard to available income and resources while computing AD assistance granted all other AD recipients with regard to available resources, defendants have denied plaintiffs and class members equal protection of the law in violation of Article 1, Section 1 of the Constitution of Alaska.

J. Tenth Cause of Action

96. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

97. By their actions in presuming that SSI benefits to which plaintiffs and class members may become entitled and receive in the future are available for use in meeting current needs, defendants have denied plaintiffs and class members due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

98. The conduct described in paragraph 97 above entitles plaintiffs and class members to equitable relief under 42 U.S.C. §1983.

K. Eleventh Cause of Action

99. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

100. By their actions in presuming that SSI benefits to which plaintiffs and class members may become entitled and receive in the future are available for use in meeting current needs, defendants have denied plaintiffs and class members due process of law in violation of Article 1 Section 7 of the Constitution of the State of Alaska.

L. Twelfth Cause of Action

101. Plaintiffs reallege each and every allegation of paragraphs 1 through 75.

102. In failing to cooperate with the federal government by refusing to enter into an agreement with the Social Security Administration which would allow for reimbursement to the state for interim assistance payments, defendants have violated Alaska Statutes §47.05.010(5).

IX.

INJUNCTIVE RELIEF

103. Plaintiffs and class members have suffered and continue to suffer grievous and irreparable injury by reason of defendants' unlawful refusal to provide them with AD assistance sufficient according to the Department's own standards of need to enable them to live at a level of reasonable subsistence compatible with health and well-being.

104. Plaintiffs have exhausted their administrative remedies and have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

A. Certify the class in this matter as soon as possible.

B. Reverse defendants' determinations that plaintiffs are not entitled to AD assistance in an amount sufficient to provide them with reasonable subsistence compatible with health and well-being according to the standards of need established by the Department.

C. Enter a declaratory judgment declaring that defendants have a duty pursuant to Alaska Statutes §§47.05.010(9) and 47.25.810 to provide plaintiffs with AD benefits in at least an amount sufficient to meet their reasonable subsistence need and according to the standards of need established by the Department which are unmet by their actually and currently available income and resources.

D. Issue a preliminary and permanent injunction enjoining defendants, their successors in office, agents, employees, all persons acting by through, or under them, and all persons subject to their supervision or acting in concert with them from failing to:

1. Provide plaintiffs with AD benefits in at least an amount sufficient to meet their reasonable subsistence needs according to the standards of need established by the Department which are unmet by their actually and currently available income and resources, retroactively to the date of their applications for AD assistance.

2. Promulgate regulations to provide for AD recipients unmet needs as described in Paragraph D(1), above.

3. Implement state procedures by which plaintiffs can recover AD assistance wrongfully denied them and notify the members of the plaintiff class of such procedures.

E. Award plaintiffs pre-judgment and post-judgment interest.

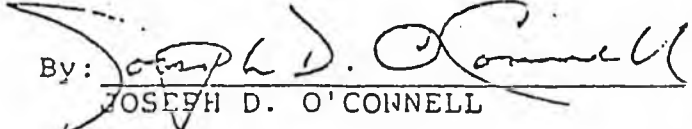
F. Award plaintiffs' costs and attorneys fees.

G. Grant plaintiffs such other further relief as this Court may deem just and equitable.

DATED this 25th day of June, 1981.

Respectfully submitted,

ALASKA LEGAL SERVICES CORPORATION
JOSEPH D. O'CONNELL
DONALD SURGEON
Attorneys for Plaintiffs

By: 
JOSEPH D. O'CONNELL

ATTACHMENTS

- Exhibit #1: April 23, 1980 policy memorandum from Rod Betit, Director of the Division of Public Assistance.
- Exhibit #2: Fair hearing decision for Odis Moore, dated April 20, 1981.
- Exhibit #3: Review of fair hearing decision for Odis Moore, dated May 12, 1981.
- Exhibit #4: Fair hearing decision for Glee Ohlsson, dated April 8, 1981.
- Exhibit #5: Review of fair hearing decision for Glee Ohlsson, dated May 4, 1981.

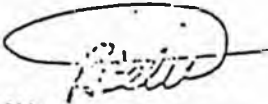
TO All District Offices

DATE: April 23, 1980

FILE NO:

TELEPHONE NO:

SUBJECT: APA Benefit Increases


FROM: Rod Betit
Director

Cash benefits will increase to many recipients of Adult Public Assistance (Old Age Assistance, Aid to the Disabled, and Aid to the Blind) effective July 1, 1980. Also, Federal benefits for SSA and SSI are increasing by 14.5%. The amounts of the increase and procedures for implementing these increases are discussed below:

I. STATE POLICY, EFFECTIVE JULY 1, 1980

Effective July 1, 1980, the assistance standards (eligibility standard) for OAA, AB, and AD programs will increase as follows:

<u>Living Arrangement</u>	<u>Current Assistance Standard</u>	<u>Assistance Standards Effec. 7/1/80</u>
(1) Individual with household costs of less than \$35 per month.	\$ 335.00	\$ 385.00
(2) Individual with household costs of \$35 or more per month.	414.00	475.00
(3) Couple with household costs of \$35 or more per month.	502.00	574.00
(4) Couple with household costs of \$35 or more per month.	608.00	695.00
(5) Individual in nursing home. Note: The Medicaid eligibility standard for nursing home care increases from:	\$ 624.00 to	\$ 714.00

II. PROCEDURES FOR IMPLEMENTATION

1. All APA cases must be pulled and inspected for possible changes. Use latest available APA warrant register (regular and supplemental) to insure that all cases are reviewed and changed as appropriate. Remember also to include all new cases opened effective June 1980.
2. Determine recipient's new state assistance standard from the table under "I. State Policy", above.

3. Determine the recipient's new income to be counted against the state assistance standard. On July 1, 1980, all SSI or SSA payments will increase by approximately 14.3%. If the recipient is SSI-eligible, use the following chart to determine the new SSI level, regardless of whether the SSI recipient also receives SSA. Use the following chart only if the recipient is eligible to receive SSI benefits.

<u>SSI Recipient's Living Arrangements and Income Status</u>	<u>Current SSI Amount</u>	<u>New SSI Amount from which State Grant is Computed</u>
a) Individual/own household/ no income	\$ 208.20	\$ 238.00
b) Individual/own household/ with income	228.20	258.00
c) Couple/own household/ no income	312.30	357.00
d) Couple/own household/ with income	332.30	377.00
e) Individual/another household/ Board & Room/no income	158.80	158.67
f) Individual another household/ Board & Room/with income	158.80	178.67
g) Couple/another household/ Board & Room/no income	208.20	238.00
h) Couple/another household/ Board & Room/with income	228.20	258.00
i) SSI Nursing Home Payment	25.00	25.00

4. If the recipient is not eligible for SSI, but receives Social Security, add 14.3% to his or her gross benefits from these programs. Obtain the new amount by multiplying the current amount by 1.143. For example:

$$\begin{array}{r}
 \$ 232.50 \text{ SSA amount prior to 7/80} \\
 \times \quad 1.143 \\
 \hline
 \$ 265.75 \text{ New Income (round out to nearest dollar, \$266)}
 \end{array}$$

5. Compute the new state grant by subtracting the new gross income amount from the new assistance standard.

For example:

\$ 473.00	New Assistance Standard
265.00	New Income Amount
<u>\$ 208.00</u>	New State Payment

Gross income will continue to be used in computing eligibility and grant amounts for all APA cases.

6. DO NOT SEND GEN #12s TO RECIPIENTS!

Simply ROC that you have done the 7/1 change. This year Central Office will send a card stuffer in each recipient's APA July check that explains in general terms why his or her check increased.

7. These SSA-SSI and State payment increases will also affect certain AFDC, Food Stamp, and GRM cases. Do not forget to adjust these cases. (All other policies relating to APA eligibility continue without change.)

Food Stamp cases fall into one of the following categories for this exercise.

- (a) combined APA/FSP cases; or
- (b) combined AFDC/FSP cases; or
- (c) combined APA/AFDC/FSP cases; or
- (d) pure FSP cases (no AFDC or APA involved).

Districts should adjust only those Food Stamp cases that are combined with either an APA and/or an AFDC case where the payment is being changed. Some pure FSP cases may experience an increase in Social Security payments, but these increases are to be picked up later through the regular change of circumstance notice from the clients.

8. This year the Nursing Home APA/Medicaid recipients must have their personal allowance increased from \$25 (\$20 for grandfathered cases) to \$35.00 for all Medicaid nursing home cases. A letter will be sent soon to each nursing home administrator announcing this change and asking them to inform their patients. Each nursing home income credits form will have to be changed by DOs and ROs for 7/1 Change as necessary the income amounts listed, and do not forget to increase the personal needs allowance deduction.

SSI \$25 personal needs allowance recipients who have less than \$10 in SSI-disregarded other income will have to have an APA grant established in order to bring their total personal needs allowance up to \$35. These recipients are the only ones who should receive a Gen #12 notice.

Examples:

- (a) Client has only \$25 SSI check. Add a \$10 monthly APA grant to the open APA zero-grant BAF. Send a Gen #12.

- (b) Client has \$32.50 SSA just 7/1/80 increase. SSI disregards \$20, leaving \$12.50. SSI pays an additional \$12.50 to bring client to the SSI \$25 personal needs allowance. Do not open an APA grant! Just change the nursing home income credits form. The total income credit is decreased by \$10 and the income by the client is increased by \$10. In this case, of the \$45 total SSI and SSA income, the nursing home applies \$10 against their bill to Medicaid and the clients keeps \$35. DO NOT send a Gen #12.
9. 7/1/80 change BAFs should be submitted on a daily basis. The BAFs submitted with grant adjustments for the 7/1/80 changes must be received by Central Office before the BAF cutoff date for the July Regular Warrant Run. BAFs received in Central Office after the cutoff date will not be processed in time for the July Regular Warrant Run. At this time the exact cutoff date has not been set. We expect it will be June 25th at the earliest.

BAFs submitted because of these program changes should have "7/1/80 Change" entered in the Remarks section at the bottom of the BAF. Remember, any BAF which is submitted for a grant increase effective July 1, but is received after cutoff, will miss the deadline. You will have to submit a "Special Warrant Request" form for the amount of the July increase.

10. Do not forget that AFDC Manual Change #10 limited the maximum amount that can be diverted between AFDC and APA-only cases to \$200. See AFDC Manual Sec. 3211.12d. When you change these diversion cases, the change must comply with this new limit.

IMPORTANT NOTICE

Each year the Social Security Administration increases its payments by the percentage that the national cost of living has gone up during the past year.

Alaska State law requires us to increase your Adult Public Assistance payment by the same percentage. This year the cost of living increase will be 14.3%.

This means your July Adult Public Assistance check will be approximately 14.3% larger than it was in June.

Because we have to calculate the increase in each person's Adult Public Assistance check by hand, there is a chance we won't be able to adjust everyone's check for July. If the check you get with this notice is the same amount that it was in June, do not worry. We will increase the amount of your August check and we will send you an extra check later for what we owe you for July. If you don't see an increase by your August check, then you should contact your fee agent or eligibility worker, and we will look into the problem right away.

cc: Region X SSI

GL/ae :

April 29, 1980

(907) 465-3347

Edis Moore
1200 Columbine #29
Building "E"
Anchorage, Alaska 99504

Dear Mr. Moore:

This letter is directed to you with respect to your Aid to the Disabled fair hearing held on February 11, 1981. I have been designated the Fair Hearing Authority for your fair hearing and I shall render the final decision on your complaint on behalf of the Department of Health and Social Services, Division of Public Assistance.

I. ISSUES LEADING TO THIS APPEAL

My review of the Fair Hearing Officer's report, your testimony, and all of the support documents and evidence presented during the course of the hearing indicated the following circumstances in your case:

You applied for Aid to the Disabled on July 9, 1980, shortly after applying for SSI assistance from the Social Security Administration. Your AD assistance, opened on "presumptive" basis, was closed based on your Social Security /SSI denial of your disability. You requested a "reconsideration" from SSI, which was denied, and you subsequently requested a formal hearing from them. This hearing is pending. You also requested a hearing from this Division concerning your AD closure.

II. DISCUSSION/FINDINGS

The State of Alaska Aid to the Disabled program is primarily a program that is supplemental to the federal SSI assistance program. In order to determine who is "permanently and totally disabled" as required by Alaska Statute (AS 47.25.790), we use the same legal and regulatory definition of disability as Social Security (from Sec. 1614 of the Social Security Act).

Disability determination is a very complicated process, involving hundreds of dollars and many hours of expert evaluation. Social Security contracts its determinations to experts in Alaska's Division of Vocational Rehabilitation. The "preliminary" determination upon which we opened your Aid to the Disabled case is not a full disability determination. It is a simple device to speed temporary assistance to needy people while the time-consuming actual determination process goes on. The Division of Public Assistance lacks the funds and staff to do full disability determinations; we must therefore follow the decision made by Social Security's contractor.

April 10, 1981

Your representative argued that you meet the requirements of the existing state statutes and regulations defining disability. These differ in some ways from proposed definitions in proposed statutes and regulations, which she argued you also meet. I find the evidence supports the former claim: You are disabled under existing state statutes and regulations. I make no finding on the latter claim, for no finding is necessary having a positive finding on the former. (I note, however, that the evidence presented is ample to show disability exists in the objective "laboratory findings and measurements" were presented to demonstrate disability according to SSA/SSI criteria. I would recommend obtaining more ample measurements for presentation during your SSI hearing.)

Finding that the evidence supports that you are disabled under existing state regulations and law, by means of a copy of this letter I am instructing the Hearing Officer to see to it that your "presumptive" AD case is reopened in its original monthly payment amount, and that cash and medical benefits be given you retroactively to the effective date of your AD closure, if necessary. This assistance is to continue until the decision on your SSI hearing is made.

Regarding the amount of retroactive and continuing AD payments, I note that AS 47.25.010, as amended, specifies only a maximum payment level, leaving considerable discretion to the Department. Further, the existence of the essentially "supplemental" AD program cannot and should not relieve the Social Security Administration of its duty and obligation to make prompt decisions and conduct timely appeals hearings. My decision compels the presumption that your appeals decision will be in your favor and SSI will shortly issue you retroactive benefits. Rather than compel you to repay the Division or suspend your AD eligibility when that occurs, I believe it is reasonable to order that the amount of AD assistance paid to you be that which you would receive were SSI already making payments to you.

IV. FURTHER APPEAL RIGHTS

If for any reason you are not satisfied with this decision you may pursue your complaint by requesting a review by the Director, Division of Public Assistance, Department of Health and Social Services, Pouch # 07, Juneau, Alaska 99911 within 15 days of receipt of this decision. In addition, you are entitled to pursue this matter through the court system.

Sincerely,

Carson Lofides
Fair Hearing Authority

Page 2 Exhibit 2

May 12, 1981

Odis Moore
1200 Columbine #29
Building "E"
Anchorage, Alaska 99504

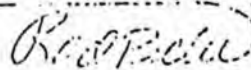
Dear Mr. Moore:

This is in reply to your appeal of a fair hearing decision rendered by Mr. Gordon Landes on April 20, 1981.

Following review of Mr. Landes' decision and the memorandum of appeal submitted by Alaska Legal Services, I conclude that Mr. Landes' decision extended the only relief available to you under the Alaska Adult Public Assistance Program. I find that the Division is not able to make any further adjustments in the amount of assistance available to you.

This decision exhausts the administrative remedies available to you. Should you desire further review of this issue, your next level of appeal is through the Alaska Court System.

Sincerely,



Rod Betit
Director

cc: Gordon Landes - Fair Hearing Authority
Joseph O'Connell - Alaska Legal Services ✓
Judie Walker

Ms. Gine Ohlsson
8001 Euben #16
Anchorage, Alaska 99504

Dear Ms. Ohlsson:

This letter is directed to you with respect to your Aid to the Disabled fair hearing held on February 6, 1981. I have been designated the Fair Hearing Authority for your fair hearing and I shall render the final decision on your complaint on behalf of the Department of Health and Social Services, Division of Public Assistance.

I. ISSUES LEADING TO THIS APPEAL

My review of the Fair Hearing Officer's report, your testimony, and of all the support documents and evidence presented during the course of the hearing indicated the following circumstances in case:

You were receiving Aid to the Disabled based upon a "presumptive" decision that you were disabled, while your disability application for SSI was pending with the Social Security Administration. SSA denied your application, and it later denied your August, 1980 reconsideration. Your AD benefits were stopped effective January 1, 1981, based on these SSA denials of your disability. You requested a hearing from SSA and a hearing from the Division.

II DISCUSSION

Your representative raised two basic issues: (1) Are you in fact disabled according to AD and SSI criteria?; and (2) is a "preliminary negative decision" by SSI binding on the Aid to the Disabled program?

Regarding the latter question, I note that it is true that the regulations linking the AD decision to the SSA/SSI decision are not yet effective. Nevertheless, these are no other regulations that are effective. Also, the Division lacks the staff and funds to do full-fledged disability determinations independent of (and duplicative of) the Social Security Administration, and, finally, the AD program is clearly "supplemental" in intent and design; it is not a program which can or should be totally independent of SSA's programs.

This, while your representative's argument is correct, I have no choice but to restrict it from an operational perspective; absent changes of a magnitude not within my ability or authority to compel to occur, there is no alternative to continuing the present program policies.

April 7, 1981

I find that your representative errs in considering the initial denial of your SSI application to be a "preliminary" decision. Like virtually any application decision in any program, it is indeed a "final" decision, made with a full consideration of all available evidence. It is final unless or until it is reversed by a subsequent reconsideration or hearing process, and as a final decision it must be acted upon, even though it may be subject to review at some later time.

To return to the first issue--that of whether or not you are disabled-- I find that the evidence introduced by your representative is sufficient to demonstrate that you fit the common understanding of the term "permanently and totally disabled" (AS 47.25.720). (This term is not defined in Alaska Statute as yet; in the interim, we are using the definition of disability in Sec. 1614 of the Social Security Act.) Indeed, from the evidence it seems possible to me that your appeal to the Social Security Administration will be successful.

Given this judgement, and given the fact that the AD regulations are only pending, I find that I have the latitude to grant you a continuation of state-only Aid to the Disabled assistance until the Social Security Administration renders a decision on your SSA hearing.

III FINDINGS

By means of a copy of this letter, I am instructing Pat Anson, Hearing Officer, to see that your AD case is reopened or continued pending a decision on your SSA hearing.

IV. FURTHER APPEAL RIGHTS

If for any reason you are not satisfied with this decision you may pursue your complaint by requesting a review by the Director, Division of Public Assistance, Department of Health and Social Services, Pouch H-07, Juneau, Alaska 99811 within 15 days of receipt of this decision. In addition, you are entitled to pursue this matter through the court system.

Sincerely,

Gordon G. Landes
Fair Hearing Authority

cc: Pat Anson, FHO
Ina Arnold, SR
Duane Sipary, ALSC Anchorage

May 4, 1981

Ms. Glee Ohlsson
8001 Duben, #16
Anchorage, Alaska 99504

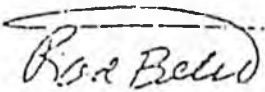
Dear Ms. Ohlsson:

This is in reply to your appeal of a fair hearing decision rendered by Mr. Gordon Landes on April 8, 1981.

Following review of Mr. Landes' decision and the memorandum of appeal submitted by Alaska Legal Services, I conclude that Mr. Landes' decision extended the only relief available to you under the Alaska Adult Public Assistance Program. I find that the Division is not able to make any further adjustments in the amount of assistance available to you.

This decision exhausts the administrative remedies available to you. Should you desire further review of this issue, your next level of appeal is through the Alaska Court System.

Sincerely,


Rod Betit
Director

cc: Gordon Landes - Fair Hearing Authority
✓ Duane Sipary - Alaska Legal Services



Full Cost of Care

AS 47.40 the "Full Cost of Care" statute relates to the payment mechanism for homes for children in custody of the state. Because of the statute, inequities in rates for children's homes have arisen. Funding for FY'83 is inadequate to continue the provisions of AS 47.40, and because the issue is complicated the House repealed the statute.

The Senate HESS Committee, after several hearings, felt there was validity to paying rates relative to true cost, rather than simply going to contracting. Therefore SCS for CS HB 357 reflects a compromise which suspends AS 47.40 through 1984 for a study of methods to redetermine the rates while freezing rates for 1983 and adding a 5% increase in 1984. Costs related to the study will be absorbed by the Division of Family and Youth Services.

Adult Public Assistance

The original purpose of HB 357 was to clean-up language in the statutes relating to Old Age Assistance, Aid to the Blind and Aid to the Permanently and Totally Disabled. Essentially, this bill combines the three programs into one - Adult Public Assistance.

During hearings in the Senate HESS Committee, the subject of interim payments of the state Adult Public Assistance Supplement for those awaiting SSI disability determination was raised. Those applying for SSI wait from 6 months to 2 years for final determination, and the state has been making interim payments of the state supplement and admitting those people to the medicaid program. As this situation has created an error payment problem for the medicaid program and has been dealt with by regulation rather than legislative action, the Senate HESS Committee decided to mandate state supplement payments during the period of determination without medicaid benefits. (sections 9 and 13 of Bill) This would leave that population (about 500 people) without medical coverage other than emergency coverage through the GRM program, but would provide them with some financial assistance.

CSHB 357 (Rules) am

Senate HESS Committee changes to CSHB 357 (Rules) am relating to Adult Public Assistance:

Deleted policy statements relating to Federal government - Sections 5 and 16.

Page 2, lines 17-18 - delete "... and who has been determined eligible under regulations adopted by the department" to reduce the amount of agency discretion.

Page 3, line 11 - added language to allow a person in an institution to apply for APA in anticipation of leaving to avoid a payment lag.

Page 4, lines 14-15 - delete "as in its opinion is justified"

Page 4, line 8 - deleted language for agency review of files every 3 months, as it seemed this short time period was an unreasonable expectation.

Page 5, lines 4-6 - Changed language to indicate that a hearing will be conducted according to department regulations.

Page 5, line 11 - changed " more than one month" to future months, to encourage advance payments rather than delayed payments.

Page 5, lines 20-24 - changed language so that department would document investigations and continue APA payments pending a hearing decision.

Page 6, line 6 - changed "may" to "shall"

Page 6, line 27 - added language to allow a person receiving APA to leave the state temporarily for medical treatment.

Page 8, lines 20-21 - deleted "or a regulation adopted under any of thoses sections" subject to a class B misdemeanor.

The Committee added new sections 10 and 14 to the bill to guarantee interim payments of state APA supplement to those awaiting SSI disability determination (a process which takes from 6 months to 2 years) while not granting medicaid coverage during that period since mistaken eligibility might endanger the allowed medicaid penalty. Upon SSI approval, the applicant will receive retroactive medicaid eligibility prior to application date. The applicant could receive emergency medical care through the GRM program during the interim.

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF
THE ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Notice is hereby given that the Alaska Department of Health and Social Services, under the authority vested by AS 47.05.010, proposes to adopt and repeal regulations in Title 7 of the Alaska Administrative Code to implement AS 47.25.430 - 47.25.970, as follows:

The Department of Health and Social Services proposes to repeal 7AAC 40.05, 40.15, and 40.100, which define the eligibility factors of age and property retention and provide definitions for the Adult Public Assistance program (Old Age Assistance, Aid to the Disabled, and Aid to the Blind).

The Department of Health and Social Services proposes to adopt regulations which define the conditions of participation in the Adult Public Assistance program in Alaska. This includes provisions relating to the application process, factors of eligibility, computation and payment of benefits, recipient responsibilities, and conditions of continuing eligibility. The subject matter of the regulations which are proposed for repeal is ~~also~~ addressed, with changes, in these proposed regulations.

These regulations were originally proposed in February, 1979, and public hearings were held in Anchorage, Juneau and Fairbanks during March, 1979. Since that time, they have been modified to reflect public comments, changes in benefits levels, and changes in federal regulations governing the Medicaid and Supplemental Security Income Programs. Because of the length of time this revision process has required and because some of the changes made in the regulations are significant the Department urges all interested parties to review the revised regulations and offer comments upon them.

If these regulations were to be adopted substantially as proposed, they would result in no benefits or administrative expenditures beyond those already anticipated for Fiscal Year 1982. The Department foresees no need for an increased appropriation as a result of these proposals.

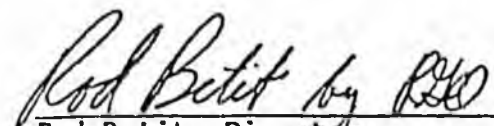
Copies of the proposed regulations may be obtained by writing to: Director, Division of Public Assistance, Pouch H-07, Juneau, Alaska 99811, or by calling (907) 465-3347.

Any person may present written statements or arguments relative to the actions proposed at Room 318, Alaska Office Building, Juneau, Alaska before 4:30 pm on Friday, July 10, 1981. Written comments may be mailed to Division of Public Assistance, Attention: APA Program Officer, Pouch H-07, Juneau, Alaska 99811. Questions and oral comments may be addressed by telephone to Gordon Landes, Public Assistance Program Officer, Division of Public Assistance, (907) 4653347.

The Department of Health and Social Services, upon its own motion or at the instance of any interested person, may at the hearing or after it adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Dated

5/28/81


Rod Betit, Director
Division of Public Assistance

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC ASSISTANCE

JAY S. HAMMOND, GOVERNOR

POUCH H-07
JUNEAU, ALASKA 99811
PHONE:

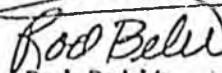
Dear Interested Party:

Enclosed for your review is a copy of proposed regulations concerning Alaska's "Adult Public Assistance" programs: Old Age Assistance, Aid to the Blind, and Aid to the Disabled. We invite your comments on these regulations.

Since you have shown an interest in these programs, we'd also like to call your attention to the introduction this year of House Bill No. 357, "An Act relating to adult public assistance." This bill, introduced by the Rules Committee, by request of the Governor, is our attempt to bring the Adult Public Assistance programs' three separate sets of statutes together into one section, and to amend these very old laws to better reflect the way the current programs have actually operated since the start of the federal Supplemental Security Income program. We intended this bill to be a "housekeeping measure" only, not one that would affect current recipients or make any major program changes.

At this point HB 357 does not appear likely to be acted upon during this Legislative session, so time is available for you to obtain a copy, review it, and offer your comments to your Legislator before the 1982 session. If you send him or her specific suggestions on additions and corrections to the bill, we'd appreciate receiving a courtesy copy of your input.

Sincerely,



Rod Betit
Director

Enclosure

CHAPTER 40
ADULT PUBLIC ASSISTANCE

Section

- 450. Report of change
- 460. Redeterminations
- 470. Suspension and termination
- 480. Social Security and SSI overpayments
- 490. Repayment of overpayments
- 500. Correction of underpayments
- 900. Definitions

7AAC 40.005. PROPERTY RETENTION. Repealed , 1979.

7AAC 40.015. AGE. Repealed , 1979.

7AAC 40.020. INTRODUCTION. The provisions of this chapter apply to the Old Age Assistance, Aid to the Blind, and Aid to the Disabled subprograms within the Adult Public Assistance Program. The Adult Public Assistance Program provides regular monthly cash assistance to eligible aged, blind, or disabled persons who:

(1) receive, or are eligible to receive, monthly Supplemental Security Income (SSI) Assistance from the Bureau of Supplemental Security Income, Social Security Administration, U.S. Department of Health, Education and Welfare; or

(2) would qualify to receive SSI assistance in all respects except that their countable monthly income is greater than the SSI income limits but is less than the Adult Public Assistance limits; or

(3) validly received Adult Public Assistance in December, 1973, and have continuously met the Adult Public Assistance eligibility requirements in effect during December, 1973.

(Eff. / /79, Register .)

Authority: AS 47.05.010
AS 47.25.430
AS 47.25.620
AS 47.25.790

Revisor Skayd

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the purchase of social services by
7 the state; and providing for an effective date."

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

9 * Section 1. AS 47.40.010(a) is repealed and reenacted to read:

10 (a) When the department purchases services for persons for whom
11 the state has assumed responsibility under the laws of the state, the
12 department shall

13 (1) adopt regulations establishing the levels of care to be
14 provided;

15 (2) contract for the delivery of services at each level of
16 care to be provided;

17 (3) place persons for whom the state has assumed responsi-
18 bility at appropriate levels of care in light of individual needs.

19 * Sec. 2. AS 47.40.020 is amended to read:

20 . Sec. 47.40.020. LICENSING AND SUPERVISION. A person [ANYONE]
21 providing services which are purchased by the department under this
22 chapter shall [, IF REQUIRED BY THE DEPARTMENT,] be licensed and super-
23 vised in the same manner as boarding homes, foster homes and other
24 institutions as provided for in AS 47.35.010 - 47.35.080.

25 * Sec. 3. AS 47.40.030 is repealed and reenacted to read:

26 Sec. 47.40.030. REQUIRED ACCOUNTING PROCEDURES. (a) A person who
27 solicits or receives payment for services, other than foster home care,
28 X under this chapter shall

29 (1) meet generally accepted accounting principles; and

1 (2) upon request of the department, produce for inspection
2 and copying all fiscal information, books, records, and accounts relat-
3 ing to the cost of providing services.

4 (b) Information acquired by the department under (a) of this
5 section is public information unless its disclosure is prohibited by
6 law.

7 * Sec. 4. AS 47.40 is amended by adding new sections to read:

8 Sec. 47.40.041. CREATION OF RESIDENTIAL CHILD CARE SERVICES COM-
9 MITTEE. (a) There is created a Residential Child Care Services Com-
10 mittee for the purpose of establishing cost of care rates for each level
11 of child care services established by the department.

12 (b) The committee consists of five members appointed by the gover-
13 nor. Two members of the committee shall be appointed from among owners,
14 operators and employees of residential child care facilities, two mem-
15 bers shall be employees of the department, and one member shall be a
16 member of the legislature.

17 (c) The term of each member of the committee is three years.

18 (d) Members of the committee serve without compensation but are
19 entitled to per diem and travel expenses authorized by law for boards
20 and commissions.

21 Sec. 47.40.043. DETERMINATION OF RATES OF PAYMENT FOR RESIDENTIAL
22 CHILD CARE SERVICES. (a) ~~The Residential Child Care Services Committee~~
23 shall establish a daily rate for the cost of each level of residential
24 child care services. The committee shall review available audits of
25 residential child care facilities and hold public hearings in estab-
26 lishing a daily rate under this subsection.

27 (b) A daily rate established by the committee is the maximum
28 amount the department may pay for a particular level of service. The
29 committee may adjust a daily rate based on regional variations in the

1 cost of living in the state.

2 (c) Each daily rate shall be separately recalculated every two
3 years during the first session of each legislature. In each year in
4 which there is no recalculation, the committee may adjust each daily
5 rate for inflation by a uniform percentage.

6 (d) Public hearings concerning recalculation or adjustments of
7 daily rates shall be held in February each year.

8 (e) In determining daily rates for each level of service under
9 this section the following factors may not be included:

- 10 thi (1) expenses, including salaries and fees, incurred in rais-
- 11 i money for the operation of a residential child care facility;
- 12 ing (2) expenses incurred for education or religious training of
- 13 children residing at a residential child care facility; and
- 14 (3) expenses for services that exceed or do not meet the
- 15 requirements of the department.

16 (f) This section does not apply to the provision of foster home
17 care.

18 Sec. 47.40.045. NEGOTIATION OF CONTRACTS. (a) The department
19 shall, as often as it considers necessary, enter into negotiations for
20 the purchase of services under this chapter.

21 (b) This section does not apply to the provision of foster home
22 care.

23 Sec. 47.40.047. FOSTER HOME CARE RATES. The department shall
24 establish foster home care rates by regulation under AS 47.40.075.

25 * Sec. 5. AS 47.40 is amended by adding a new section to read:

26 Sec. 47.40.075. REGULATIONS. The department may adopt regulations
27 necessary to carry out this chapter.

28 * Sec. 6. AS 47.40.080 is repealed and reenacted to read:

29 Sec. 47.40.080. DEFINITIONS. In this chapter

1 (1) "committee" means the Residential Child Care Services
2 Committee;

3 (2) "department" means the Department of Health and Social
4 Services;

5 (3) "services" means care provided in a foster home or resi-
6 dential child care facility, but does not include medical care or any
7 service for which the manner or rate of payment is otherwise prescribed
8 by law.

9 * Sec. 7. AS 47.05.010(14), AS 47.40.040, and 47.40.010 are repealed.

10 * Sec. 8. This Act takes effect July 1, 1982.

11 *needs def. of capital + ed.*

Sofa
4/13/82*Proofed*
4-13A M E N D M E N T

Offered in the HOUSE

By Buchholdt

TO: CSHB 357(Fin)

Page 1, line 6, after "assistance";

Insert "; and providing for an effective date"

Page 10, after line 3:

Insert the following new material:

- * Sec. 21. AS 47.40.010(a) ^{alter} ~~(3)~~ ⁽⁴⁾ _i repealed and reenacted to read:
 (3) place persons for whom the state has assumed responsibility at appropriate levels of care in light of individual needs.
- * Sec. 22. AS 47.40.020 is amended to read:
 Sec. 47.40.020. LICENSING AND SUPERVISION. A person [ANYONE] providing services which are purchased by the department under this chapter shall [, IF REQUIRED BY THE DEPARTMENT,] be licensed and supervised in the same manner as boarding homes, foster homes and other institutions as provided for in AS 47.35.010 - 47.35.080.
- * Sec. 23. AS 47.40.030 is repealed and reenacted to read:
 Sec. 47.40.030. REQUIRED ACCOUNTING PROCEDURES. (a) A person who solicits or receives payment for services, other than foster home care, under this chapter shall
- (1) meet generally accepted accounting principles; and
 - (2) upon request of the department, produce for inspection

*These amended
versions of full
cost of care
were considered
in the house*

and copying all fiscal information, books, records, and accounts relating to the cost of providing services.

(b) Information acquired by the department under (a) of this section is public information unless its disclosure is prohibited by law.

* Sec. 24. AS 47.40.040 is repealed and reenacted to read:

Sec. 47.40.040. DETERMINATION OF FULL COST OF SERVICES. (a) In this chapter, "full cost" of services shall be determined by the per person, per day cost in the preceding fiscal year plus a proportionate share of anticipated cost of living and staff salary increment increases for the fiscal year for which the full cost of services, determined to be necessary by the department, is being determined.

(b) In determining daily rates for each level of service under this section the following factors may not be included:

(1) expenses, including salaries and fees, incurred in raising money for the operation of a residential child care facility;

(2) money expended for construction, major equipment, and other capital expenditures;

(3) program and administrative expenses provided by private contributions, grants, and other public or private funding sources not provided under this chapter;

(4) expenses incurred for education or religious training of children residing at a residential child care facility; and

(5) expenses for services that exceed or do not meet the requirements of the department.

(c) This section does not apply to the provision of foster home care.

* Sec. 25. AS 47.40 is amended by adding a new section to read:

Sec. 47.40.047. FOSTER HOME CARE RATES. The department shall establish foster home care rates by regulation under AS 47.40.075.

* Sec. 26. AS 47.40 is amended by adding a new section to read:

Sec. 47.40.075. REGULATIONS. The department may adopt regulations necessary to carry out this chapter.

* Sec. 27. AS 47.40.080 is repealed and reenacted to read:

Sec. 47.40.080. DEFINITIONS. In this chapter

(1) "capital expenditures" means money expended for construction, renovation, or equipment purchases over \$25,000 in value;

(2) "department" means the Department of Health and Social Services;

(3) "education" means formal schooling at the pre-elementary, elementary, or secondary level which is generally provided by public or private schools but does not include tutoring, music, art lessons, or other supplementary programs that are determined to be important for a child's development;

(4) "services" means care provided in a foster home or residential child care facility, but does not include medical care or any service for which the manner or rate of payment is otherwise prescribed by law.

* Sec. 28. CREATION OF RESIDENTIAL CHILD CARE SERVICES COMMITTEE. (a)

Notwithstanding AS 47.40.040, there is created a Residential Child Care

4(?)

Services Committee for the purpose of establishing for the 198~~4~~ fiscal year cost of care rates per person per day for each level of child care services established by the Department of Health and Social Services. The committee shall review available audits of residential child care facilities and hold public hearings in establishing daily rates under this section.

(b) The Residential Child Care Services Committee consists of five members appointed by the commissioner of health and social services. Two members of the committee shall be appointed from among owners, operators, and employees of residential child care facilities, two members shall be employees of the Department of Health and Social Services and one member shall be a member of the legislature.

(c) Members of the Residential Child Care Services Committee serve without compensation but are entitled to per diem and travel expenses authorized by law for boards and commissions.

(d) The Residential Child Care Services Committee shall report its findings to the Department of Health and Social Services by January 1, 1983.

Page 10, line 4:

Change "Sec. 21" to "Sec. 29"

Page 10, line 5:

Delete "AS 47.40" and insert "AS 47.40.050" in its place

Page 10, after line 5:

Insert the following new material:

* Sec. 30. This Act takes effect July 1, 1982.

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FROM: THE ALASKA ASSOCIATION OF HOMES FOR CHILDREN
TO: THE SENATE H.E.S.S. COMMITTEE
RE: THE REPEAL OF AS 47.40 PER HB 357 WITH ATTACHED CONTRACTING
PROVISIONS.

1. Repeal of AS 47.40 shall be effective as of July 1, 1983.
2. Contracts for Residential Child Care services shall be negotiated for two (2) year periods beginning July 1, 1983.
3. Contracts shall be for a designated number of beds as opposed to a per diem rate.
4. Contracts shall continue with the same provider except for termination for cause. "Termination for cause" shall be considered to be the loss of State licensure or noncompliance with contract stipulations.
5. Contracts shall be awarded only to those institutions who, within two (2) years after initial contract, have received accreditation from the nationally recognized accrediting agency stipulated in the regulations.
"Institutions" shall be defined as any provider licensed to care for ten (10) or more children in a residential setting.

FROM: THE ALASKA ASSOCIATION OF HOMES FOR CHILDREN

TO: THE SENATE H.E.S.S. COMMITTEE

RE: ARGUMENTS FOR THE REPEAL OF AS 47.40 PER HB 357 WITH
ATTACHED CONTRACTING PROVISIONS

1. Delay of effective date until July 1, 1983
 - A. Delaying the effective date of the repeal of AS 47.40 provides the time necessary to responsibly prepare for the resulting administrative, programmatic and financial adjustments.
 - B. This allows for the Department of Health and Social Services to promulgate carefully enunciated regulations.
2. Two year Contracts
 - A. This provides continuity for children in placement and staff.
 - B. This provides opportunity for capital, program, and financial planning.
 - C. Yearly renegotiations would cause excessive administration costs for both the Providers and the State.
 - D. Institutional licensing is done biannually.
3. Contracting for the designated number of beds.
 - A. This provides for steady and prospective financial management for the State and the Providers.
 - B. This insures that each year's unit rate is based upon the State's prospective census estimates. Currently new rates are determined solely by prior expenditures divided by census. Therefore, forcing the State to compensate the Provider for beds they purchased last year as well as beds they did not.
4. Continuation of Providers
 - A. It is not in the best interest of the child to be regulated to the status of a negotiable commodity.
 - B. The established practice for residential services has set this precedent.
5. Accreditation of Providers
 - A. Provides a measure of objectivity when reconciling financial constraints with the program needs of the child.
 - B. This insures that the contracts denied are done so for cause rather than due to personality conflicts between contractor and provider, or personal bias regarding treatment modalities.

COMPROMISE LANGUAGE TO
CS FOR HOUSE BILL NO. 357 (RULES) am
REGARDING FULL COST OF CARE STATUTE

For An Act entitled: "An Act relating to public assistance; and providing for an effective date."

*Sec. 19. AS 47.40.040(b) is amended by adding a new subsection to read:

(6) costs of services funded by sources other than the department, including, but not limited to, donations, interest, dividends, investment income, and other public sources.

Sec. 20. AS 47.25.480, 47.25.510, 47.25.620 - 47.25.710, 47.25.730 - 47.25.880, and 47.25.905 - 47.25.970 [, AND AS 47.40] are repealed.

Sec. 21. This Act takes effect on July 1, 1982.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

June 29, 1981

JAY S. HAMMOND, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811RECEIVED
JUN 29 1981

John O'Meara
Office of Internal Audit
Office of the Governor

Office of the Governor
Division of Internal Audit

Dear Mr. O'Meara:

The following comments refer to the findings in the preliminary report of June 5, 1981, addressing the problem of payment of public assistance funds to ineligible persons:

Page 17 "Quality Control Responsibility".

The Quality Control Unit was housed in the Commissioner's Office prior to 1979. As the audit report states on page 18-B, the unit was reassigned to the Division of Public Assistance in 1979 and a number of actions were immediately taken by the Division to reduce the level of error in Alaska's programs. The Division error reduction strategy was based on the following three stages; 1) isolating the primary causes of error in the programs, 2) moving quickly to implement corrective action designed to correct these problems and 3) monitoring the corrective actions at appropriate intervals to determine their effectiveness.

The audit report states that the Division has made significant progress in isolating the reasons for error and implementing actions to correct these errors. However, the audit recommends that greater emphasis be placed on monitoring.

The Division agrees with the recommendation to expand monitoring efforts now that initial corrective actions have been in place long enough to have potentially reduced errors. However, full scale monitoring prior to this time would not have been beneficial as there was insufficient data from which to judge the effectiveness of any specific corrective action.

In summary, the Division feels it has acted quickly and responsibly to implement an effective quality control/corrective action program since assuming this unit in 1979. Further monitoring has and will continue to be a major element of the Division's efforts.

Page 20 "Collection Efforts Have Limited Success".

The audit report is generally accurate in its conclusion that very little recovery of program benefits is actually realized on a monthly basis. However, the Department believes this poor showing stems primarily from Federal regulations which prohibit the State from imposing mandatory repayment on Foodstamp and AFDC households.

John O'Meara

-2-

The States must advise recipients that repayment is voluntary for all non-fraud claims. Given this requirement coupled with these families' income situation, it is not surprising that less than 1% of all outstanding collectibles are recovered in any particular month. Officials from this Department and from the Governor's Office have met with officials from the U.S. Department of Agriculture on the issue. Changes were included in President Reagan's FY 82 legislative proposals to make repayment of non-fraud losses in Foodstamps mandatory effective October 1, 1981. With this change in Federal rules, the State will see a dramatic increase in recovery of Foodstamp losses.

At page 21 the audit report finds inadequate the Fiscal Section's follow-up efforts on cases for which the section assumed collection responsibility in July, 1980. These cases involve payback agreements arising from fraud investigations. The Fiscal Section concurs, in principle, with this finding, and is instituting procedures which will produce automatic mail follow-up, in an attempt to obtain repayment. The section points out the following:

1. The section was assigned the collection responsibility without funds or staff to carry it out. Work on collection activity must be done by staff who are authorized to accomplish other, higher priority tasks.
2. Efforts beyond mail follow-up are not feasible, as funds for such action are not available. Offset of collection fees or expenses against receipts is not allowed.
3. To expect substantial success in collecting on these cases may be unrealistic from a universe of people without much money to pay.

Page 5 and 28 "More Effective Fraud Controls are Needed".

So much as reads "...Because the Department does not consider fraud control a priority effort the Fraud Unit does not receive the resources needed to operate effectively..." would be more apt if it read "Because the Department prioritizes its resources to: (1) cope with rising caseloads, (2) assure timely delivery of eligibility and payment services, (3) provide effective quality controls to minimize underpayments and overpayments through error, and (4) provide fraud control, the fraud unit falls in last priority to receive the resources needed to operate effectively..."

Page 28 The "...federal report [showing that] a minimum of 10 per cent of the public assistance cases are fraudulent on a national average..." has not been made available to DHSS. Inquiry with respect to the "Federal report" revealed that the Chief Investigator made reference to it to State Internal Audit staff, but has been unable to produce a copy of the report as of June 19, 1981. Further discussion between staff members of this department and State Internal Audit left the issue of percentage of fraud in public assistance as unsubstantiated and, unless the "Federal report" referred to is located, the statement concerning the percentage of fraud would be deleted.

John O'Meara

-3-

Page 35 "Fraudulently Received Payments are seldom recovered".

The Chief Fraud Investigator states that of the 17 cases closed by "payback" 13 have, in fact, signed "payback" agreements. Of the remaining four cases, two were concluded by recovery action, one by lump sum payment and one by negotiation by the Fairbanks Attorney General's Office. Consequently, "payback" agreements were not necessary in those cases.

Page 38 "Recommendations".

The following actions will be taken or are already underway to make the Fraud Investigation Unit more effective:

On July 1, 1981 the Unit will be assigned under the line and technical supervision of the South Central Region Deputy Commissioner. This re-assignment will provide for on-site supervision of Fraud Investigation Unit staff and activities and permit direct application of management expertise that is unavailable in the Unit.

An incremental increase will be requested in the DHSS FY 83 Policy Budget for one investigator and one part-time clerk typist for NRO, one investigator and one part-time clerk typist for SERO, and one additional investigator for SCRO.

The monthly and quarterly reports submitted by the Chief Fraud Investigator will be expanded upon to better depict the effectiveness of public assistance fraud control.

The Deputy Commissioner, Southcentral Region will direct the Fraud Investigation Unit in the preparation of its plan for more effectively controlling and deterring public assistance fraud.

Sincerely,



Helen D. Beirne, Commissioner

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC ASSISTANCE

JAY S. HAMMOND, GOVERNOR

POUCH H-07
JUNEAU, ALASKA 99811

PHONE: (907) 465-3355

DOCUMENT NO. 139-82

April 12, 1982

The Honorable Albert Adams
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Adams:

During testimony before House Finance on Wednesday, April 17, I recommended several modifications to Section 6 of CSHB357 (Finance) which were not adopted prior to passage of the bill from the committee. The changes needed are as follows:

- Page 2, Line 12 - Delete wording "Unless otherwise provided by law,".
- Page 2, Line 13 - Delete word "local" preceding "government".
- Page 2, Line 23 - Add wording "with a person or local government" immediately after the phrase "under this section".

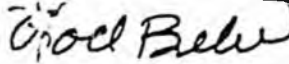
Department of Law legal counsel advises me that these changes are crucial for these reasons:

- (1) Line 12: Make it clear that the Department can enter into service delivery contracts. The wording "unless otherwise provided by law" sets up a potential catch 22 where the Department might be prevented from contracting due to the specificity of language found elsewhere in the present statutes calling for the Department to perform certain functions.
- (2) Line 13: Make it clear that the Department may contract with federal agencies to deliver departmental services. Current wording of CSHB357 restricts this flexibility to local governments only. Of particular concern is our intent to transfer the Adult Public Assistance programs to the federal government during FY83.
- (3) Line 23: Make it clear the Department may contract directly with the federal government to deliver departmental services without publishing a request for proposals. Where the Department might exercise this option, "Request for Proposals" would be inappropriate because there is only one federal government. Appropriate federal and state staff would simply negotiate the terms of any such contractual arrangement under the legal guidance of the Department of Law.

April 12, 1982

The Department of Health and Social Services and the Department of Law continue to support the need for the above referenced changes. Any assistance you may be able to offer in this regard will be greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Rod Betit". The signature is written in dark ink and is positioned below the word "Sincerely,". A horizontal line is drawn across the signature.

Rod Betit
Director

cc: Thomas H. Robertson,
Assistant Attorney General

Allen Korhonen,
Deputy Commissioner

Alice Farnan

practical means of supervision of the broad delegation of legislative powers required by the complexities of modern society, should not be hastily voided.

I conclude that the legislature's annulment of the cash prize regulation, pursuant to AS 44.62.320(a), does not violate the principle of separation of powers, does not provide a means by which the legislature can enact laws without passage of a bill, and does not unconstitutionally encroach on the power of the executive.



ALASKA CHILDREN'S SERVICES,
INC., Appellant,

v.

Francis S. L. WILLIAMSON, Commissioner,
Department of Health and Social
Services, and State of Alaska, Appellee.

No. 4155.

Supreme Court of Alaska.

Feb. 21, 1980.

Nonprofit corporation owning or operating residential child care facilities brought suit challenging ruling of Department of Administration that Department of Health and Social Services was not required to reimburse corporation for amounts by which actual cost increases in providing child care had exceeded predicted increases. The State of Alaska Superior Court, Third Judicial District, J. Justin Ripley, J., affirmed the ruling below, and corporation appealed. The Supreme Court, Connor, J., held that: (1) under statute providing that Department of Health and Social Services pay private, nonprofit corporation for child care services for children who have become wards of the state for expenses related

sometimes, recommend statutory action by the legislature.

directly to "full cost" of services and that "full cost" shall be determined by per person, per day cost in preceding fiscal year plus a proportionate share of anticipated living and staff salary increment increases for upcoming fiscal year, corporation was not entitled to reimbursement for amounts by which actual cost increases exceeded predicted increases, and (2) statute did not deprive corporation of due process or deny it equal protection.

Affirmed.

1. Statutes \Leftrightarrow 223.2(1)

Two statutes enacted at same time and dealing with same subject matter are in pari materia and should be construed so as to be consistent with one another and in such manner as to give maximum effect to each.

2. Infants \Leftrightarrow 19.4

Under statute providing that Department of Health and Social Services pay private, nonprofit corporation for child care services for children who have become wards of the state for expenses related directly to "full cost" of services and that "full cost" shall be determined by per person, per day cost in preceding fiscal year plus a proportionate share of anticipated living and staff salary increment increases for upcoming fiscal year, such nonprofit corporation was not entitled to reimbursement for amounts by which actual cost increases exceeded predicted increases. AS 47.40.010(a)(3), 47.40.040(a).

3. Constitutional Law \Leftrightarrow 242.3(2), 278.7(1)
Infants \Leftrightarrow 12

Statute providing that Department of Health and Social Services pay private, nonprofit corporation for child care services for children who have become wards of the state for expenses related directly to "full cost" of services and that "full cost" shall be determined by per person, per day cost in preceding fiscal year plus a proportionate share of anticipated living and staff salary

For a discussion of federal laws on the subject, see note 8 *supra*.

increment increases for upcoming fiscal year did not deprive such a nonprofit corporation of due process and equal protection even though statute allowed DHSS to pay for only predicted cost increases when actual cost increases had been much greater. AS 47.40.010(a)(3), 47.40.040(a); U.S.C.A. Const. Amend. 14.

Charles K. Cranston, Gallagher, Cranston, Snow, Walters & Dahl, Anchorage, for appellant.

Thomas H. Robertson, Asst. Atty. Gen., Avrum M. Gross, Atty. Gen., Juneau, for appellee.

Before RABINOWITZ, C. J., and CONNOR, BOOCHEVER, BURKE and MATTHEWS, JJ.

OPINION

CONNOR, Justice.

This case presents issues of statutory interpretation.

Appellant Alaska Children's Services, Inc. (hereinafter ACS) is a private, non-profit corporation¹ that owns or operates residential child care facilities in Anchorage and

1. ACS's letterhead indicates that it was founded jointly by the American Baptist, American Lutheran, and the United Methodist Churches.
2. The full text of AS 47.40.010 provides:

Purchase of Services (a) When the department [DHSS] purchases services for persons for whom the state has assumed responsibility under the laws of the state, the department shall

 - (1) adopt regulations establishing the levels of care to be provided,
 - (2) determine the rates of payment for the full cost of services required,
 - (3) pay all expenses related directly to the full cost of services at the levels of care required;
 - (4) make the placement of persons in accordance with the levels of care provided for in the regulations.

(b) Services of jails and other penal institutions may not be included in services purchased by the state in this chapter.
3. AS 47.40.040 reads in full:

Determination of full cost of services (a) In this chapter, "full cost" of services shall be determined by the per person, per day cost in

Unalaska. Since 1971, ACS has provided full-time child care services for children who have become wards of the state by "agreement" with the Department of Health and Social Services (hereinafter DHSS). There has been no written contract between these parties. Rather, a working relationship developed that purported to follow statutory and administrative guidelines for state placement and support of these children.

The controversy that has arisen concerns the amount the state must pay ACS for its child care services. The focus is upon two related statutes. The first, AS 47.40.010(a)(3),² states that when the DHSS purchases services for persons for whom the state has assumed responsibility, it shall "pay all expenses related directly to the full cost of services at the levels of care required." The second statute, AS 47.40.040(a),³ provides that the "full cost" of services shall be determined by the per person, per day cost⁴ in the preceding fiscal year plus a proportionate share of anticipated cost of living and staff salary increment increases" for the upcoming fiscal year.

DHSS has been paying ACS in accordance with this second statute; that is, pay-

the preceding fiscal year plus a proportionate share of anticipated cost of living and staff salary increment increases for the fiscal year for which the full cost of services, determined to be necessary by the department, is being determined. Child care costs for foster homes shall be computed in the same manner as for child care and nursing home institutions except that no salary costs may be considered.

(b) Full cost of services does not include the following:

- (1) expenses, including salaries and fees, incurred in raising funds;
- (2) funds expended for construction, major equipment and other capital expenditures;
- (3) depreciation and replacement costs of, and costs of additions to, major property and equipment;
- (4) religious training and education; and
- (5) services provided which are substandard to, or exceed, the requirements of the department.

4. The per person, per day cost in each institution is referred to as the "unit cost."

ment has been determined by calculating the "unit cost"⁵ in the past year for each institution and adding to this a percentage based upon the rise in costs predicted at the beginning of each fiscal year. ACS claims this has been insufficient because actual cost increases have generally been much greater⁶ than the predicted increases, and that therefore the DHSS has not in fact paid "all expenses related directly to the full cost of services" as required by AS 47.40.010(a)(3). As a result, according to ACS, it lost over \$200,000 in variable costs⁷ by providing child care services for the state between 1971 and 1976. This case arose from ACS's attempts to secure reimbursement from the state for these extra expenses and for an additional \$350,000. The latter figure represents alleged depreciation of its facilities and equipment stemming from the care of state-placed children between 1971 and 1976 and variable costs for child care provided after 1976.

No findings of fact have yet been made as to the correctness of ACS's cost figures or accounting methods, since that issue was preempted by the decision below. It is clear, however, that ACS is not seeking payment for any extravagances or other expenses that were not necessary to maintain those standards of care which have been established by statute or DHSS regulations.

The record reflects that for a number of years prior to 1976 ACS had informally attempted to get full reimbursement from the DHSS on the basis of its actual costs as established by year-end audits. Some lobbying efforts were undertaken in the legislature, and the executive director of ACS, John Garvin, wrote numerous letters to DHSS officials explaining its position. These efforts proved unsuccessful and, as a result, on October 19, 1976, ACS filed suit against the Commissioner of DHSS, Francis

Williamson, seeking reimbursement for all of its actual, permissible expenses allegedly incurred in providing child care for the state from 1971 to 1976. The suit was subsequently held in abeyance by stipulation and order dated January 10, 1977, to allow ACS to pursue its administrative remedies.

ACS then formally applied to Commissioner Williamson for relief, claiming that AS 47.40.010 required DHSS to reimburse it for all expenses actually incurred in providing child care services for the state at acceptable standards. ACS contended that year-end audits done by both state and private agencies demonstrated that it had not been paid for all such expenses, and that therefore "cost-settling" was required between the state and the provider.

Commissioner Williamson rejected these arguments, holding that ACS was entitled only to payments calculated on the basis of AS 47.40.010(a). Since that statute specifically provided for the method of calculating the "full cost" of services, the DHSS was bound to authorize payments only for those amounts predicted at the beginning of each fiscal year.

ACS appealed the Commissioner's decision to the Department of Administration, and a hearing was held on June 23, 1977. ACS presented its facts and figures, and urged that the two statutes, when read together, required cost-settling. On July 20, 1977, the Department of Administration ruled against ACS, holding that the statutes had been properly construed by DHSS. The decision was subsequently appealed to the superior court and, following briefing and argument, it summarily affirmed the ruling below by order on June 14, 1978. The appeal to this court followed.

5. See fn. 4, *supra*.

6. In one year, 1974, ACS admits to have actually made a profit of about \$6,800 on providing care for state-placed children. For other years, however, its figures show it suffered rather substantial losses.

7. "Variable costs" in this sense refers to those costs relating to daily maintenance, such as food, clothing, medical expenses, wages, etc. As will be noted *infra*, the actual "variability" of these costs is relatively limited by the prescribed standards of care which such child care institutions are required to provide.

[1] The two statutes at issue here were enacted at the same time and deal with the same subject matter. They are *in pari materia* and should be construed so as to be consistent with one another and in such a manner as to give maximum effect to each. D. Sands, *Sutherland Statutory Construction*, § 51.03 (4th ed. 1973).

[2] Although ACS does not claim that these statutes, on their face, give rise to any ambiguity, its argument implies that a type of functional ambiguity arises whenever predicted cost increases do not equal actual cost increases. When this occurs, according to ACS, the method for determining payment under AS 47.40.040(a) does not satisfy the requirement of AS 47.40.010(a)(3), which requires the DHSS to "pay all expenses related directly to the full cost of services at the levels of care required." [emphasis added] In support of this argument, ACS contends that the legislature recognized the need to furnish providers with operating capital during the year, rather than paying them a lump sum at the end of the year. As a result, ACS claims the legislature enacted AS 47.40.040(a) as a means for providing current payments that follow a formula intended to reimburse providers for their full costs, as required by AS 47.40.010(a)(3). While those payments may satisfy the requirements of AS 47.40.010(a)(3) in years when the cost increases are correctly predicted, in years where actual cost increases exceed the predicted increases the promise of the statute is unfulfilled. Therefore, according to ACS, cost-settling must be done at the end of each fiscal year in order to give full effect to both statutes.

The state responds that the wording of the statutes is clear and, regardless of the actual operational effect of AS 47.40.010(a), ACS is entitled to payment only for ex-

8. By contrast, cost settling is expressly permitted as to providers of medical care. AS 47.07.070. This undercuts the ACS argument that the legislature intended retroactive cost settling under AS 47.40.010 and AS 47.40.040.

9. There are several rational reasons for treating institutions providing child care differently from those providing medical care:

penses which have been estimated pursuant to the statute.

AS 47.40.010(a)(3) states that "all" the expenses to be paid must relate to the "full cost" of services. AS 47.40.040(a) sets forth how the "full costs" of services are to be determined by the DHSS. There is nothing provisional about the manner in which "full cost" of services must be determined under the statute. The statute evinces a legislative intention to place in the hands of administrative officials the task of predicting cost increases each year. Whether they do this well or poorly, there is nothing in the statutory language which permits cost-settling at the end of each year. While we think it unfortunate that ACS, which must observe high standards of child care, must lose money in some years when the costs exceed the predicted amounts, we can find no basis for reading the statute in the manner urged by ACS. The remedy lies with the legislative branch of government, not the courts. We hold that the superior court correctly construed the statute. Accordingly, there was no error.

[3] ACS asserts that the statute, as here construed, deprives ACS of due process and denies to it the equal protection of the laws. We are unpersuaded. First, the analogy to the regulation of public utility rates is incomplete, for there are many aspects of ACS's activities which do not compare with that of a public utility. Most prominently, ACS is free to decline to provide child care services for the state. Second, as to equal protection, ACS has not convinced us that the different statutory treatment given to providers of medical services does not bear a fair and substantial relationship to a legitimate government objective.⁹ See *State v. Erickson*, 574 P.2d 1, 12 (Alaska 1978).

AFFIRMED.

(1) The need for medical care is more immediate than the need for child care. Cost settlement is, therefore, justified as a means of attracting medical providers and insuring that needy Alaskans will have immediate access to necessary medical care.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 11, 1982

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

Hon. Mike Beirne, Chairman
Health, Education, & Social
Services Committee
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: HB 357 (adult public assistance)
Our file no.: J77-095-81

Dear Mike:

Your committee's assistant, Barbara Wilkins, met with Director of Public Assistance Rod Betit and me this morning regarding possible amendments to this bill. We tentatively agreed upon the following:

Page 2, lines 15 and 16:

Delete "the conditions in the state" and insert in its place "appropriations made by law [THE CONDITIONS IN THE STATE]."

Page 3, lines 12--15:

Delete all material and insert the following in its place: "who is [(1)] a patient in a public or private institution for [TUBERCULOSIS OR] mental diseases [, OR (2) DIAGNOSED AS HAVING TUBERCULOSIS OR PSYCHOSIS AND IS A PATIENT IN A MEDICAL INSTITUTION AS A RESULT OF THE DIAGNOSIS]."

Page 4, lines 24 and 25

Put a period after "applicant" on line 24 and delete the rest of the sentence.

Page 10, line 6:

Delete "tuberculosis or" and insert "[TUBERCULOSIS OR]" in its place.

As I mentioned to Barbara, I would like to have Assistant Attorney General Rick Robertson review these amendments before firmly committing the Department of Law to

March ~~22~~, 1982
11

them. In addition, Gordon Landes, in the Division of Public Assistance, should have a look at them.

An alternative to the third amendment, above, would be to insert after "important" something like "as soon as reasonably possible." This would convey the idea that promptness is important, while not tying the department to an arbitrarily set time limit that might be impossible to meet in some instances.


I should add that none of us at this morning's meeting was certain about why the current statutes contain special exclusions of institutions for tuberculosis or mental disease. Rod suggested that, at the time our statute was enacted, it probably tracked the relevant federal law. It no longer appears to do so. See, for example, 42 U.S.C., sec. 1382, especially sec. 1382(e). We may well want to make a further or different change in HB 357's AS 47.25.430(c) and 47.25.615(7).

Thanks for your consideration of this matter.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By:


Arthur H. Peterson
Assistant Attorney General

AHP:gr

cc: Rod Betit, Director
Division of Public Assistance
Department of Health & Social
Services

Keith Specking
Legislative Assistant
Governor's Office

Thomas H. Robertson
Assistant Attorney General
Juneau

AGREEMENT

AGREEMENT made _____ 19____ between

PRESBYTERIAN HOSPITALITY HOUSE,
INC. (PHH) an Alaska non-profit
corporation, hereinafter referred
to as PHH,

and

_____ and _____,
hereinafter referred to as Specialized Foster
Parents (SFP),

I.

PURPOSE OF AGREEMENT

The purpose of this agreement is to enable PHH and SFP to coordinate efforts under a program known as EXTENDED SUPERVISION PROGRAM (ESP). ESP is designed to assist youths ranging in ages from eight (8) years of age to and including eighteen (18) years of age, who have been participants in PHH's residential program.

The further purpose of this agreement is to provide the child, placed with SFP by PHH, with adequate care and guidance to promote the moral, emotional, mental, and physical welfare of the child and the best interests of the community. The intention is to prepare the child for a return home or movement to a lower level of care, in accordance with the placement plan developed for the child by PHH and the Division of Family and Youth Services.

II.

ANNUAL FOSTER HOME LICENSE

SFP shall apply for and receive an annual license from the State of Alaska Department of Health and Social Services, Division of Family and Youth Services, in accordance with the Foster Homes Licensing Provisions 7AAC 50.310-620. While conducting its own interviews, PHH may act as an agent for the Division. In such cases the required State forms shall be used, and the completed study will be submitted for licensing approval to the Regional Manager of the Division.

Prior to placement of a child, SFP must possess a current license and be in compliance with the above named provisions. If SFP's license is revoked for cause, this agreement terminates by operation of law.

III.

ACCESS TO RECORDS

SFP shall have access to records in PHH's possession pertaining directly to the child placed under SFP's care and guidance and which will enable them to provide appropriate care. These records include but are not limited to the child's admission form, verifying the legal custody of the child, the child's social history, the child's school records, the child's medical reports, any evaluation reports concerning the child and any written signed medical and religious consent forms concerning the child. However, information regarding other members of the child's family which does not pertain to the child will not be shared with SFP.

IV.

REQUIRED RECORDS

SFP shall be required to keep a daily log of events concerning the child in a manner to be specified by PHH. SFP shall also be required to keep the medical and school records of the child current and updated.

SFP shall also keep any other records as required by PHH or the State now or at any future time while the child is under SFP's care and guidance.

V.

CONFIDENTIALITY

SFP shall safeguard and keep confidential all records and reports regarding the child under SFP's care and guidance.

VI.

TRANSPORTATION OF CHILD

SFP shall receive and transport the child placed under SFP's care and guidance at 1401 Kellum Street, Fairbanks, Alaska to SFP's residence.

SFP shall provide transportation consistent with the child's needs, including but not limited to the child's medical, dental, educational, and recreational needs. All vehicles will be operated by licensed drivers in a safe and prudent manner.

The child in care is not permitted to operate a vehicle without prior permission of the Director of the Division of Family and Youth Services.

VII.

COST OF CARE RATE

PHH and SFP agree that PHH shall pay and SFP shall receive the amount of _____ dollars and _____ cents (_____) for each day or part of a day that a child placed by PHH is under SFP's care and guidance.

PHH and SFP agree that this daily amount represents the amount necessary to reimburse SFP for the child's proper care and guidance which includes but is not limited to the child's nutritional needs, clothing needs, medical and dental needs, educational needs, religious needs, recreational needs, and transportation needs.

PHH shall pay SFP the above daily amount at the end of each calendar month during which a child is under SFP's care and guidance.

VIII.

PERIODIC CONSULTATIONS

PHH, SFP, and the child placed under SFP's care and guidance shall conduct periodic consultations consistent with the purposes of this agreement. Such consultations which shall occur no less than once a week shall be designed to provide a structured time for mutual information sharing.

IX.

COUNSELLING SERVICES

PHH shall provide the SFP and the child with individual and family counselling and crisis intervention services as the need is expressed by any one of the previously mentioned parties. Notwithstanding PHH's providing individual and family counselling services, SFP shall be responsible for and will supervise the performance of SFP's duties under this agreement.

X.

INDEPENDENT CONTRACTOR STATUS

PHH and SFP intend that the relationship under this agreement shall be that of PHH as employer and SFP as independent contractor. SFP shall not be deemed to be the employee or agent of PHH or the Department of Health and Social Services. None of the benefits provided by PHH to its employees, including but not limited to fire insurance, vandalism and malicious mischief insurance, bodily injury liability insurance, automobile liability insurance, and group health and welfare insurance, is available from PHH to SFP.

SFP shall be solely responsible for the performance of SFP's duties under this agreement.

SFP are expected to provide, at their own expense, property, personal liability and automobile insurance adequate to cover personal losses and personal liability of at least \$100,000/300,000.

PHH is not liable for damages to the SFP's person or property by the child.

XI.

RIGHT OF INSPECTION

In the performance of SFP's duties under this agreement, SFP has the authority to control and direct the details of SFP's performance. However, the results of SFP's performance must meet the approval of PHH. PHH has a general right of inspection of SFP's residence in order to monitor and secure SFP's satisfactory performance of duties under this agreement.

Additional and separate monitoring for the purpose of licensing review may also be conducted through the Department of Health and Social Services.

XII.

MAINTENANCE OF FAMILY TIES

SFP shall abide by the family contact and visitation plan agreed upon in the placement case plan, with prior approval from PHH for any deviations. Absent such a plan, the SFP shall make reasonable efforts to maintain meaningful family ties between the child placed under SFP's care and guidance and the natural family of the child. The term "reasonable efforts" includes permission for correspondence to and from the child and parental visits to SFP's residence to visit the child. Only PHH, and not SFP, has the authority to determine when and if the child placed under SFP's care and guidance shall visit the residence of the child's parent or parents.

SFP shall maintain the given name of the child placed under SFP's care and guidance.

XIII.

TERMINATION OF AGREEMENT

Either PHH or SFP can terminate this agreement at any time by providing sufficient notice of termination to the other party. Sufficient notice of termination is that which enables post placement plans to be made and carried out with minimum disruption to the child.

XIV.

OTHER PROVISIONS

SFP agrees to be bound by the legal policy of PHH not to discriminate with reference to race, color, national origin, or religion concerning the child under SFP's care and guidance.

SFP further agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now or may in the future become applicable to SFP or to SFP's duly licensed foster home.

SFP agrees to accept no other children into their care, either as foster children or for any other types of care, including day care.

XV.

WHEN AGREEMENT EFFECTIVE

This agreement becomes effective when PHH and SFP execute this agreement. PHH must sign this agreement by and through its duly authorized Executive Director and a duly authorized supervisor of ESP. SFP must sign individually.

Dated and signed at Fairbanks, Alaska this _____ day of _____, 19_____.

PRESBYTERIAN HOSPITALITY HOUSE

SPECIALIZED FOSTER PARENT

by: _____

by: _____

Executive Director of
Presbyterian Hospitality
House (PHH)

Individually

PRESBYTERIAN HOSPITALITY HOUSE

SPECIALIZED FOSTER PARENT

by: _____

by: _____

A Duly Authorized Supervisor
of Presbyterian Hospitality
House (PHH) for the Extended
Supervision Program (ESP)

Individually

ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss.
FOURTH JUDICIAL DISTRICT)

THIS IS TO CERTIFY that before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____ on the _____ day of _____, 19_____, at Fairbanks, Alaska. I know _____ to be the Executive Director of Presbyterian Hospitality House, who said that she knows the contents of the foregoing Agreement, and acknowledged the same to be the act of said corporation, done by the authority of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 19_____.

Notary Public in and for Alaska.
My commission expires:

STATE OF ALASKA)
) ss.
FOURTH JUDICIAL DISTRICT)

THIS IS TO CERTIFY that before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____ on the _____ day of _____, 19_____, at Fairbanks, Alaska. I know _____ to be a duly authorized Supervisor of Presbyterian Hospitality House for the Extended Supervision Program, who said that he knows the contents of the foregoing Agreement, and acknowledged the same to be the act of said corporation, done by the authority of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 19_____.

Notary Public in and for Alaska.
My commission expires:

EXTENDED SUPERVISION PROGRAM

Projected Budget
FY 81-82

	<u>Per Child Per Month</u>	<u>Per Year</u>	<u>5 Children Per Month</u>	<u>Per Year</u>
Fee to ESP Parent	1033.23 (33.33 per day)	12165.45	5166.15	60827.25
Counseling (To child & family)	240.00 (60.00/hr)	2880.00	1200.00	14400.00
Crisis Intervention	30.00	360.00	150.00	1800.00
Staff Meeting (In home once/month)	32.25	387.00	161.25	1935.00
Transportation & Mileage	20.00	240.00	100.00	1200.00
School (Inhouse, GED prep, supervision of public school performance)	43.50	522.00	217.50	2610.00
Administrative Overhead (10%)	<u>121.50</u>	<u>1458.00</u>	<u>607.50</u>	<u>7290.00</u>
	1520.48	18012.45	7602.40	90062.25

Figuring on average 60% residency this first year, while we finish recruiting and get a better feel for the children who can make best use of this program:

\$54037.35

COMPROMISE LANGUAGE TO
CS FOR HOUSE BILL NO. 357 (RULES) am
REGARDING FULL COST OF CARE STATUTE

For an Act entitled: "An Act relating to public assistance and other assistance provided on behalf of the state to individuals; and providing for an effective date."

* Sec. 19. FINDINGS. The legislature finds that the methods for establishing payment rates for assistance provided on behalf of the state by residential child care facilities set out in AS 47.40 is not adequate. The legislature further finds that during the period of study operation of AS 47.40 should be suspended. Between June 30, 1982 and July 1, 1984, the Department of Health and Social Services shall conduct a study of alternatives to AS 47.40. The study shall include, among other matters determined by the department, redefining the manner in which the rate is calculated, allowable reimbursement for capital costs, and utilization of other than departmental sources of funds to finance services and construction of such institutions.

* Sec. 20. The operation of AS 47.05.010(14), AS 47.40.010, AS 47.40.040, and AS 47.40.050 is suspended from July 1, 1982 through June 30, 1984. During the period of suspension, payment for services provided by residential child care facilities shall be made in accordance with the provisions of Sec. 21 and 22 of this Act.

* Sec. 21. For fiscal year 1983, the payment per day for each child placed by the Department of Health and Social Services in residential child care is:

ALASKA CHILDRENS SERVICES RECEIVING HOME (ANCHORAGE)	\$149.85
ALASKA CHILDRENS SERVICES JESSE LEE HOME (ANCHORAGE)	165.46
ALASKA CHILDRENS SERVICES RABBIT CREEK GROUP HOME (ANCHORAGE)	166.40
ALASKA CHILDRENS SERVICES NORTH STAR HOME (ANCHORAGE)	103.55
ALASKA CHILDRENS SERVICES AQUARIUS HOUSE (ANCHORAGE)	107.60
ALASKA CHILDRENS SERVICES COLLETTI HOUSE (ANCHORAGE)	117.51
ALASKA BAPTIST FAMILY SERVICE CENTER (ANCHORAGE)	117.02
BOOTH MEMORIAL HOME (ANCHORAGE)	146.90
HILLTOP HOME, INC. (ANCHORAGE)	85.53
KENAI PENINSULA COMMUNITY CARE CENTER (KENAI)	91.74
KODIAK BAPTIST MISSION (KODIAK)	61.61
TURNING POINT BOYS RANCH (WILLOW)	105.37
NORTH STAR CHILDRENS HOME (DOT LAKE)	62.25
PRESBYTERIAN HOSPITALITY HOUSE (FAIRBANKS)	111.98
JUNEAU RECEIVING HOME (JUNEAU)	106.17
ST. JUDE CENTER, INC. RECEIVING HOME (JUNEAU)	72.33
NOME RECEIVING HOME (NOME)	116.97
NORTH SLOPE BOROUGH CHILDRENS RECEIVING HOME (BARROW)	168.35
KETCHIKAN TEEN HOME I (KETCHIKAN)	74.26
KETCHIKAN TEEN HOME II (KETCHIKAN)	81.61
KETCHIKAN CHILDRENS HOME INTENSIVE TREATMENT UNIT (KETCHIKAN)	152.56
SITKA RECEIVING HOME (SITKA)	40.66
BETHEL RECEIVING HOME (BETHEL)	75.52
BETHEL GROUP HOME (BETHEL)	59.06
COVENANT HIGH SCHOOL (UNALASKLEET)	51.16

* Sec. 22. During fiscal year 1984 the Department of Health and Social Services shall offer to pay for assistance provided on behalf of the state by a residential child care facility in the amount not to exceed the rate established under Section 21 for that facility for fiscal year 1983, plus five percent.

* Sec. 23. This Act takes effect July 1, 1982.

HB 357

[To be added to AS 47.25.590 in
existing Sec. 16 of the Act]

(d) The department may enter into an agreement under 42 U.S.C. sec. 1382e through which funds made available to the department under AS 47.25.430-47.25.615 are transferred to the federal government and spent by the federal government in accordance with AS 47.-25.430-47.25.615.

Changes to HB 357:

H HESS: CS incorporated amendments as listed in AG memo.

H Finance: 47.40 repealer

H Rules: 3 amendments proposed by DHSS (see letter)

Floor: repealers discussed, passed.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC ASSISTANCE

JAY S. HAMMOND, GOVERNOR

POUCH H-07
JUNEAU, ALASKA 99811

PHONE: (907) 465-3355

DOCUMENT NO. 139-82

April 12, 1982

The Honorable Albert Adams
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Adams:

During testimony before House Finance on Wednesday, April 17, I recommended several modifications to Section 6 of CSHB357 (Finance) which were not adopted prior to passage of the bill from the committee. The changes needed are as follows:

- Page 2, Line 12 - Delete wording "Unless otherwise provided by law,".
- Page 2, Line 13 - Delete word "local" preceding "government".
- Page 2, Line 23 - Add wording "with a person or local government" immediately after the phrase "under this section".


Department of Law legal counsel advises me that these changes are crucial for these reasons:

- (1) Line 12: Make it clear that the Department can enter into service delivery contracts. The wording "unless otherwise provided by law" sets up a potential catch 22 where the Department might be prevented from contracting due to the specificity of language found elsewhere in the present statutes calling for the Department to perform certain functions.
- (2) Line 13: Make it clear that the Department may contract with federal agencies to deliver departmental services. Current wording of CSHB357 restricts this flexibility to local governments only. Of particular concern is our intent to transfer the Adult Public Assistance programs to the federal government during FY83.
- (3) Line 23: Make it clear the Department may contract directly with the federal government to deliver departmental services without publishing a request for proposals. Where the Department might exercise this option, "Request for Proposals" would be inappropriate because there is only one federal government. Appropriate federal and state staff would simply negotiate the terms of any such contractual arrangement under the legal guidance of the Department of Law.

April 12, 1982

The Department of Health and Social Services and the Department of Law continue to support the need for the above referenced changes. Any assistance you may be able to offer in this regard will be greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rod Betit", with a horizontal line drawn through it.

Rod Betit
Director

cc: Thomas H. Robertson,
Assistant Attorney General

Allen Korhonen,
Deputy Commissioner

Alice Farnan

4/20/82

SSI CLAIMS REPORT - PROCESSING TIME FOR OCTOBER 1981 THROUGH MARCH 1982

ALL ACTIVE FIELD OFFICES IN THE NATION

Award

Blind Disabled

AGED	RD	BD	AWARD	RD	BD	M DENY	BD	M DENY
MPT	MPT	COUNT	MPT	MPT	COUNT	MPT	MPT	MPT

SF-SUTTER SI CA	MAR2	26.5	113.0	71.0	413.0	83.0
LOS ANGELES CA	MAR2	14.4	186.0	111.0	404.0	90.1
FRESNO CA	MAR2	29.9	74.0	64.5	204.0	60.8
PAKLAND-D/T CA	MAR2	21.1	153.0	69.6	406.0	80.4
SAN DIEGO CA	MAR2	21.9	144.0	76.0	347.0	92.3
SACRAMENTO CA	MAR2	25.0	98.0	85.8	305.0	99.7
EUREKA CA	MAR2	16.3	82.0	93.6	130.0	96.8
PASADENA CA	MAR2	13.0	90.0	71.0	306.0	91.7
LONG BEACH CA	MAR2	16.0	105.0	72.1	403.0	97.4
SAN BERNARDINO CA	MAR2	26.1	162.0	64.0	273.0	86.6
SAN JOSE CA	MAR2	27.4	131.0	76.3	390.0	63.3
SANTA BARBARA CA	MAR2	27.8	76.0	64.7	109.0	71.8
STOCKTON CA	MAR2	27.0	174.0	80.8	454.0	94.5
BAKERSFIELD CA	MAR2	23.7	113.0	54.7	307.0	64.6
SANTA ROSA CA	MAR2	24.9	105.0	75.9	257.0	99.6
GLENDALE CA	MAR2	13.6	95.0	64.1	243.0	79.0
MONTGOMERY PARK CA	MAR2	17.6	126.0	84.1	501.0	76.0
SAN MATEO CA	MAR2	27.7	47.0	73.8	80.0	78.8
HOLLYWOOD CA	MAR2	16.4	92.0	80.5	377.0	85.0
REDDING CA	MAR2	28.3	118.0	73.0	221.0	104.2
L.A. WESTWOOD CA	MAR2	15.7	75.0	67.7	176.0	72.0
INGLEWOOD CA	MAR2	22.0	143.0	68.0	528.0	79.6
SANTA ANA CA	MAR2	32.4	131.0	78.3	172.0	80.4
VALLEJO CA	MAR2	36.9	41.0	90.0	105.0	111.4
VENTURA CA	MAR2	15.4	65.0	47.9	140.0	63.4
VAN NUYS CA	MAR2	15.9	152.0	50.9	324.0	70.4
BERKELEY CA	MAR2	19.6	67.0	72.2	125.0	84.0
SAN FRAN-PARKSIDE CA	MAR2	20.1	64.0	56.7	40.0	76.4
MODESTO CA	MAR2	16.7	130.0	79.2	391.0	100.8
CHICO CA	MAR2	25.1	47.0	68.0	124.0	106.0
VISALIA CA	MAR2	20.5	69.0	64.0	267.0	67.3
PUMONA CA	MAR2	33.1	126.0	87.0	350.0	90.0
WHITTIER CA	MAR2	16.6	48.0	65.0	142.0	85.6
TORRANCE CA	MAR2	22.0	155.0	77.5	279.0	73.9
SALINAS CA	MAR2	18.2	91.0	74.5	151.0	82.4
EL CENTRO CA	MAR2	25.6	51.0	87.2	102.0	111.1
SAN LUIS OBISPO CA	MAR2	18.7	54.0	67.1	133.0	71.2
OCEANSIDE CA	MAR2	24.1	67.0	75.1	127.0	85.5
SAN RAFAEL CA	MAR2	25.6	45.0	71.5	80.0	95.3
MARYSVILLE CA	MAR2	31.6	48.0	65.6	162.0	99.5
HONOLULU HI	MAR2	17.2	148.0	62.7	223.0	66.4
HILU HI	MAR2	24.4	25.0	72.8	94.0	72.1
LIIUHI HI	MAR2	30.4	9.0	54.3	7.0	87.7
JUNEAU AK	MAR2	21.6	12.0	93.4	27.0	81.7
ANCHORAGE AK	MAR2	21.5	74.0	78.2	142.0	74.2
FATNBANKS AK	MAR2	37.0	34.0	80.6	71.0	85.9
LONG BEACH NY	MAR2	17.5	30.0	56.4	85.0	64.4
CULLMAN AL	MAR2	15.7	56.0	70.6	164.0	60.9
SCOTTSHORO AL	MAR2	14.9	34.0	50.5	104.0	55.4

*Follows Reporting
Requirements*

MEMORANDUM OF AGREEMENT

between

DIVISION OF PUBLIC ASSISTANCE,
ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES

and

DIVISION OF VOCATIONAL REHABILITATION,
ALASKA DEPARTMENT OF EDUCATION

I. PURPOSE

The purpose of this Agreement is to set forth the terms and conditions under which the Division of Public Assistance and the Division of Vocational Rehabilitation shall cooperate to promptly and accurately establish the eligibility of certain applicants for Aid to the Blind, Aid to the Disabled, Medicaid, and General Relief - Medical Assistance.

II. EFFECTIVE DATE

This Agreement shall be effective June 1, 1982, between the Division of Vocational Rehabilitation (DVR) and the Division of Public Assistance (DPA) and shall remain in effect until amended or terminated. This Agreement may be modified in writing at any time by mutual consent. This Agreement may be terminated by either party upon 30 days written notice.

III. Responsibilities of the Division of Public Assistance (DPA)

The Division of Public Assistance agrees to:

- (1) Furnish to the Division of Vocational Rehabilitation all applications and supporting documentation relating to a) the physical, mental, and social condition of applicants; and b) their work history. For purposes of this

agreement an "applicant" is a person who has applied for either Aid to the Blind or Aid to the Disabled (APD) assistance and who has:

(a) Been found eligible by DPA for APD or ABL for assistance in all respects except for the condition of blindness or disability; and

(b) Been determined to be unqualified to receive either Social Security disability payments or Supplemental Security Income disability assistance on grounds other than lack of disability or blindness.

(2) Pay to DVR (DDU) all necessary costs related directly to obtaining evidence for DVR in order to assess disability or blindness, including such costs as medical or psychological examinations, necessary transportation of the applicant (and escort, if this is required) to and from the place of examination, and food and lodging expenses of the applicant (and escort, if required). The terms, conditions, and procedures governing such payment should be those specified in 7AAC 43 and 7AAC47, 42CFR, and relevant state and federal statutes governing the Medicaid and General Relief - Medical assistance programs.

(3) Pay to DVR the sum of \$200.00 for each completed determination of disability or blindness, and such lesser

sum as the divisions shall jointly agree is appropriate for each determination which has been begun but cannot be completed because of conditions beyond the control of either division. Payment shall be by a Reimbursable Services Agreement in accordance with approved State accounting practices.

- (4) Provide notice to each applicant of the disability or blindness determination made by DVR, or take action denying any application from a person who fails without good cause to cooperate as necessary to complete the determination process.
- (5) Conduct all activities related to appeals in accordance with 7AAC 49, including compensating DVR for any costs incurred as a result of an appeal.

IV. Responsibilities of the Division of Vocational Rehabilitation (DVR)

The Division of Vocational Rehabilitation agrees to:

- (1) Determine the disability or blindness of each applicant referred by the Division of Public Assistance, in accordance with definitions and the requirements of Titles II and XVI of the Social Security Act, as amended; 20 CFR 400 ff, as amended, and 7AAC 40, as amended; and notify DPA of this decision in writing within 30 days of such referral.
- (2) Insure that notice to the Division of Public Assistance

will contain the degree of detail required under existing agreements between the Division of Vocational Rehabilitation and the Social Security Administration. Such notices will also include a determination of whether or not the applicant can perform work which does not exist in Alaska, but which exists elsewhere in the national economy.

- (3) Notify the Division of Public Assistance when, in its opinion, an applicant has failed to fulfill his or her responsibility to cooperate fully in providing evidence essential to the determination, or a medical or psychological examiner has failed to provide information for which DPA has made arrangements to pay.
- (4) Cooperate fully in all activities required of DPA under 7AAC 49, including providing upon written request all evidence in its possession relating to an eligibility decision which is being appealed.

V. Joint Responsibilities

Both the Division of Public Assistance and the Division of Vocational Rehabilitation jointly agree to:

1. Provide for the confidentiality of information in accordance with AS47.05.010-AS47.05.030 and 7AAC 37.
2. Establish detailed procedures for the interchange of necessary documents and information without delay, and without disruption of activities not relating to this

agreement, and jointly or separately instruct staff in these procedures.

3. Formally and jointly review at least once each calendar quarter the provisions of this Agreement, the performance under it and the procedures established to carry out the purposes of the Agreement, in order to promptly identify and remove any impediments to the timely and accurate determination of eligibility.

Approved for the Division of Public Assistance this _____ day
of _____, by _____

Director, Division of Public Assistance

Approved for the Division of Vocational Rehabilitation this _____ day
of _____, by _____

Director, Division of Vocational Rehabilitation

(10) "intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol;

(11) "office" means the office of alcoholism within the Department of Health and Social Services;

(12) "treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care which may be extended to alcoholics and intoxicated persons, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling. (§ 1 ch 207 SLA 1972; am § 4 ch 116 SLA 1978)

Effect of amendment. — The 1978 amendment inserted "or through a grant awarded under AS 47.30.475" in paragraph (3).

Quoted in Peter v. State, Sup. Ct. Op. No. 1112 (File No. 2185), 531 P.2d 1263 (1975).

Chapter 40. Purchase of Services.

Section	Section
10. Purchase of services	50. Services
20. Licensing and supervision	60 — 70. [Repealed]
30. Required accounting procedures	80. Definitions
40. Determination of full cost of services	

Sec. 47.40.010. Purchase of services. (a) When the department purchases services for persons for whom the state has assumed responsibility under the laws of the state, the department shall

- (1) adopt regulations establishing the levels of care to be provided;
- (2) determine the rates of payment for the full cost of services required;
- (3) pay all expenses related directly to the full cost of services at the levels of care required;
- (4) make the placement of persons in accordance with the levels of care provided for in the regulations.

(b) Services of jails and other penal institutions may not be included in services purchased by the state in this chapter. (§ 1 ch 136 SLA 1970)

Sec. 47.40.020. Licensing and supervision. Anyone providing services which are purchased by the department under this chapter shall, if required by the department, be licensed and supervised in the same manner as boarding homes, foster homes and other institutions as provided for in AS 47.35.010 — 47.35.080. (§ 1 ch 136 SLA 1970)

Sec. 47.40.030. Required accounting procedures. Anyone who solicits or receives funds from the department for the cost of services provided under this chapter shall

- (1) meet accepted standards of fiscal accountability for public funds and shall, upon request, submit a complete financial statement by an independent, certified public accountant to the department and to the division of legislative audit;

(2) upon request before the meetings provided for in AS 47.05.010 (14), demonstrate the actual cost of services offered using cost accounting procedures as provided for by the department;

(3) upon request, furnish the division of legislative audit all fiscal information, books, records, and accounts pertaining to services paid for under this chapter. (§ 1 ch 136 SLA 1970)

Sec. 47.40.040. Determination of full cost of services. (a) In this chapter, "full cost" of services shall be determined by the per person, per day cost in the preceding fiscal year plus a proportionate share of anticipated cost of living and staff salary increment increases for the fiscal year for which the full cost of services, determined to be necessary by the department, is being determined. Child care costs for foster homes shall be computed in the same manner as for child care and nursing home institutions except that no salary costs may be considered.

(b) Full cost of services does not include the following:

- (1) expenses, including salaries and fees, incurred in raising funds;
- (2) funds expended for construction, major equipment and other capital expenditures;
- (3) depreciation and replacement costs of, and costs of additions to, major property and equipment;
- (4) religious training and education; and
- (5) services provided which are substandard to, or exceed, the requirements of the department. (§ 1 ch 136 SLA 1970)

Sec. 47.40.050. Services. When determining the levels of service to be required the department shall consider program services as outlined within the Catalogue of Functional or Program Service Categories published by the United Funds and Councils of America, September 1967. (§ 1 ch 136 SLA 1970)

Sec. 47.40.060. Temporary placement.
Repealed by § 1 ch 210 SLA 1970.

Editor's note. — The repealed section derived from § 1, ch. 136, SLA 1970.

Sec. 47.40.070. Permanent placement.
Repealed by § 1 ch 210 SLA 1970.

Editor's note. — The repealed section derived from § 1, ch. 136, SLA 1970.

Sec. 47.40.080. Definitions. In this chapter

- (1) "anyone" means any person, city, organized borough and private or voluntary institution or agency;
- (2) "services" means family, child welfare and nonprofit nursing home services but does not include health, hospital, profit-making nursing homes or medical services;

COMPARISONS OF DEPARTMENTAL ALLOWANCES FOR IN STATE CHILD CARE INSTITUTIONAL INCREASES
AND ACTUAL INSTITUTIONAL RATE INCREASES OVER DEPARTMENTAL ALLOWANCES

AVERAGE DAILY RATE INCREASES: FISCAL YEAR 1979 - 1982 (SIX MONTHS)

FISCAL YEAR	DEPARTMENTAL DECISIONS	ACTUAL RATE INCREASE	INSTITUTIONAL EXCESS RATE INCREASE OVER DEPARTMENTAL PERCENTAGE ALLOWANCES	AVERAGE DAILY RATES (ALL INSTITUTIONS)
1979	5% SALARY INCREASE 6% COST-OF-LIVING INCREASE 5.4% AVERAGE INCREASE	28.2%	+22.8%	\$ 61.95
1980	7% SALARY INCREASE 10% OTHER EXPENSE INCREASE 8.5% AVERAGE INCREASE	20.3%	+11.8%	74.52
1981	12% ACROSS-ALL-EXPENSES INCREASE INCLUDING SALARIES	13.8%	+ 1.8%	84.84
1982 - (6 MONTHS) JULY 1, 1981 - DEC 31, 81	14% ACCROSS-ALL-EXPENSES INCREASE INCLUDING SALARIES	29.6%	+15.6%	109.96

ATTACHMENT 1
 . IN-STATE INSTITUTIONAL CARE
 ESTIMATED RATES AND COSTS

	Base FY 82 Provisional Avg. Daily Rate x	Adjustments for Allowable Expendi- tures not Included in Base Rate x	Cost of Living For FY 83 =	Estimated Provisional Average Daily Rate For FY 83 x	264 FTE's x 365 days = FY 83 Costs for In-State Care
1. Governor's Budget (Based on 02/81 Rate Hearings)	\$101.50 Est.	5% Est.	6% Est.	\$112.96	\$10,884,825
2. FY 82 Actual Avg. Daily Rate	\$109.50	5% Est.	0%	\$115.46	\$11,125,726
3. FY 82 Actual Avg. Daily Rate	\$109.96	15% (Increase over FY 81 Avg. Rate)	0%	\$126.45	\$12,184,722
4. FY 82 Actual Average Daily Rate	\$109.96	8%	0%	\$123.74	\$11,923,767
5. FY 82 Actual Average Daily Rate	\$109.96	8%	11% requested at 02/82 Rate Hearings	\$137.36	\$13,235,806

Out-of- + State Care +	Other Costs: Travel, Medical Special Needs =	Total FY 83 Est. Costs	FTEs at Gov. Level \$10,884,825 +Rate + 365 Days	Reduction From Gov. Level	FTEs After \$943,700 Reduction Level; \$9,941,125 + Rate + 365 Days	Reduction From Gov. Level
\$674,666 Est. 20 FTE's @ \$92.42)	\$380,234 Est.	\$11,939,725	264	N/A	241	23
\$674,666	\$380,234	\$12,180,626	258	6	236	28
\$674,666	\$380,234	\$13,239,622	236	28	215	49
\$674,666 Est.	\$380,234	\$12,978,667	241	23	220	44
\$674,666	\$380,234	\$14,290,706	217	47	198	66

Review of Full Cost of Care
Method for Financing Institutional Child Care

The total cost for institutional care of juveniles in Alaska has risen dramatically in recent years. The reasons for this cost rise are due, first, to an increase in the number of children in the institutions and, second, to an increase in the rates to keep a child in an institution. The purpose of this short paper is to examine the daily costs to keep a child in an institution and the effect of the full cost of care method of calculating rates in raising costs.

The State of Alaska does not run institutions for children - it pays local non-profit corporations to provide the services. The full cost of care statute, enacted in 1970 and appearing in AS 47.40.040, was designed to establish the method of calculating how the State would pay for services. The full cost of care method has created serious financial problems. The method makes accurate budgeting virtually impossible - the history of the institutional care program has been riddled with budget amendments and supplementals. Briefly, the following is how the method works.

Hearings are conducted by the Department of Health and Social Services in February of each year to receive information from institutions on the daily rates the State should pay and the levels of service to be provided. This information is submitted to the Legislature accompanied by the Department recommendations. The daily rates the State will pay per child in each institution is calculated based on last year's financial experience. For the prior year the total allowable expenditures (non-allowable expenses are listed in the statute) for operating the institution is divided by the number of days of care provided by the institution. The figure serves as a base daily rate upon which to increase rates further by an inflation factor. The full cost of care statute requires the Department of Health and Social Services to review salary levels for all institution staff and to approve establishment of individual positions associated with new programming. This requires in-depth involvement of the Department in institution affairs, creating difficulties for both institutions and the Department.

Several features of the full cost of care system need to be highlighted. First, when calculating the total cost for the institution in the prior year, no consideration is given to the vacancy rate in the institution. If the institution is licensed for 10 children, but cares for only 5, the overhead costs must be paid for by 5 rather than 10 individuals thereby effectively increasing rates. Because the State must pay at the higher rates if the institution is only half full, the institutions are not encouraged to maintain occupancy at the most cost effective levels. In FY 81, for example, the average occupancy rate over all institutions was only 70%, yet the State was paying overhead costs (included in the daily rate calculation) as if institutions were 100% filled.

In addition, the vacancy rate problem is made even worse by the fact that the State has no control over the total number of institutional child care beds licensed. Under current regulations the State must license institutions if they meet basic criteria - there is no provision for denying an institution licensed beds because the total number of beds in the State is greater than is currently needed. To raise the total average rate of occupancy by limiting the number of beds available would allow for more efficient utilization of the facilities remaining. This would have a long range effect of reducing daily cost of caring for children.

The full cost of care method of calculating rates for this year based on last year's experiences also can create problems of cycles of feast and famine for institutions should their occupancy rate rise and fall. If occupancy last year was, say, 50%, the overhead costs built into the daily rate is relatively high. Should the addition of children raise the rate of occupancy in the current year, then the institution will receive more money than the daily rates intended. Similarly, if occupancy rates were high in the prior year upon which rates for this year were calculated, and the number of children decreased, this year's rates would not adequately cover overhead expenses. In short, the full cost of care system of calculating costs (and therefore revenues to the institutions) tend to create greater uncertainty for institutions and often results in the daily rates the State pays for care not accurately reflecting the actual services provided.

Second, because the daily rates the State must pay to institutions this year is based on total expenditures from last year, the State picks up the tab in future years for any other income (non-State income) received by the institution, be it private donation, community contributions, and even federal sources of funds. This means that the cost to the State can rise dramatically in a cumulative fashion. In addition, communities are not encouraged to provide on-going support for institutions benefiting the community. Donations and community support become not a source of basic continuing resources but a lever to increase State contributions in future years. Figures presented below indicate increases in rates the State must pay for picking up the obligation this year to pay institutions whatever other revenues they received last year.

Third, the sequence of events involved in setting rates under the full cost of care method results in inaccurate budgeting, leading to budget amendments and supplementals. Determining total expenditures for the prior year, upon which current rates are calculated, requires audits. The time involved in completing audits after the fiscal year has passed means that daily rates per child cannot be established in time for budget preparation (October at the very latest). Rate setting hearings, scheduled in February, therefore fix rates that are only guessed at in the Governor's budget. And, of course, if more kids are referred to institutions by the courts in the course of the fiscal year, greater total expenses may result. Rate setting hearings and the yearly schedule of events, essential features of the full cost of care method, contribute to the financial unpredictability of the institutional care program.

In short, the full cost of care method of calculating how much the State will pay to local institutions to meet the cost of caring for children has the following undesirable effects. First, there is very little State control over either the costs of caring for children or the quality of care given to children. Second, this lack of control has contributed to dramatic increase in costs per child over the years without necessarily an increase in quality of care. Third, there is no incentive in the payment system for institutions to operate efficiently or effectively. Fourth, the full cost of care method makes responsible annual budgeting very difficult.

There is an alternative to the full cost of care method of calculating and paying for care of children in institutions: that is, simply contracting with institutions (based on a Request for Proposal selection process) for a certain number of beds for a given fiscal year. The major benefits for the State would be purchasing services the Department of Health and Social Services desires and describes in a contract document as opposed to accepting what is available from child-care agencies. (This would result in some agencies revising and adjusting programs now being offered). The Department would also be able to contract for the number of beds to meet their needs thus eliminating the payments for a large number of empty beds. Also, the Request for Proposal selection method will encourage institutions to focus on what they do best and lower costs through the competitive process.

Contracting for services, as a substitute for the full cost of care method paying for services, has major advantages which will lead to lower costs to the State and to better control over the quality of care for children. But contracting directly for services is not possible without the repeal of the full cost of care statute.

David Gentry
Budget and Management
3-3-82

Budget History - Institutional Care

<u>Fiscal Year</u>	<u>Authorized</u>	<u>% Change from Authorized Previous year</u>	<u>Actual</u>	<u>Budget Amendment</u>	<u>Supplemental</u>
83	11,939.7 (proposed)	+ 8.6%		(Minimum 1,000.0 forthcoming)	
82	10,996.0	+49.9%			
81	7,333.6	+49.7%	7,243.8	2,482.0	
80	4,898.8	+ 3.8%	5,558.8		
79	4,719.5	+24.2%	5,002.4		314.8
78	3,799.8	+75.3%	4,217.4		415.8
77	2,168.0	+19.7%	2,955.9		295.4
76	1,811.3	+26.1%	2,264.8		260.0
75	1,436.4		1,955.0		

32.2% Average Annual Increase

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Attachment

Rate Increases FY79-83: Institutional Care

	<u>FY79</u>	<u>FY80</u>	<u>FY81</u>	<u>FY82</u>	<u>Estimated FY83</u>
Daily rate	\$61.95	\$74.52	\$84.84	\$109.96	\$142.89
Cost of Living Increases; Salary Increases	5.4%	8.5%	12.0%	14.0%	13.0%
Increase due to other revenue sources in prior year	22.8%	11.8%	1.8%	15.6%	15.0%
Total increases	28.2%	20.3%	13.8%	29.6%	28.0%

Facility	INSTITUTION RATES						Provisional Rate FY 82	Estimated Rate FY 83
	Audited Rates							
	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81		
Alaska Children's Services Inc.								
Jesse Lee	42.03	61.55	81.59	91.16	100.43	124.47	147.70	160.99
North Star House	33.91	39.88	67.01	40.56	57.69	79.99	103.55	112.87
Aquarius	27.43	36.26	47.61	47.01	85.72	89.90	107.60	117.28
Colletti	27.16	36.94	50.42	38.98	56.12	81.24	117.51	128.09
Anchorage Receiving Home								
Youth Services Center	45.99	54.26	71.76	109.99	99.51	115.32	179.68	195.85
Bunnell Home				60.77	-0-	-0-	-0-	-0-
Mary Johnson Home				109.99	122.33	142.30	1) 166.40	181.38
Rabbit Creek Group Home								
Alaska Baptist Family Service Center					51.51	60.35	117.02	127.55
Alaska Youth Village <i>wait first closing?</i>	31.17	37.19	57.93	67.40	75.27	72.30	77.40	84.37
Barrow Receiving Home								
(North Slope Children's Home)			110.19	110.19	106.05	106.05	168.35	183.50
Bethel Group Home	24.68	44.09	36.04	46.96	42.32	42.01	59.06	64.38
Bethel Receiving Home					55.63	64.02	75.52	82.32
Booth Memorial Home	50.30	60.65	75.63	92.26	109.08	113.60	146.90	160.12
Covenant High School		14.89	18.42	16.52	-0-	28.17	51.16	55.76
Hillcrest Receiving Home	35.32	33.55	46.30	56.61	-0-	-0-	-0-	-0-
Hilltop Home	35.47	42.43		51.00	59.70	74.32	85.53	93.23
Juneau Receiving Home	26.76	47.81	62.04	66.03	71.64	76.89	85.47	93.16
Juneau Teen Home								
Boys	22.52	39.67	39.57	46.12	-0-	-0-	-0-	-0-
Girls	32.71	39.67	39.57	46.12	-0-	-0-	-0-	-0-
Kenai Peninsula Community Care Center	36.58	48.06	51.54	58.23	64.79	81.84	89.14	97.16
Ketchikan Children's Home			48.50	60.52	#1 54.74	59.55	74.26	80.94
					#2 58.86	68.12	81.61	88.95
Kodiak Baptist Mission and Group Home	14.89	20.56	20.72	18.19	38.24	54.42	61.61	67.15

AGENCY Health & Social Services

Social & Economic Assistance
PROGRAM for the General Population

BRU Juvenile Custody

COMPONENT Institutional Care

REVISED

Page 4 of 5 DATE _____

FY 83

23 10 CONTINUED

Facility	INSTITUTION RATES						Provisional Rate FY 82	Estimated Rate FY 83
	FY 76	FY 77	Audited FY 78	Rates FY 79	FY 80	FY 81		
Nome Group Home					-0-	-0-	-0-	-0-
Nome Receiving Home	42.87	43.67	62.25	59.97	83.56	105.99	116.97	127.50
North Star Home	18.94	22.92	42.45	40.83	51.07	54.02	66.20	72.16
Presbyterian Hospitality House	61.48	62.36	65.52	64.86	85.75	98.34	*112.11	2) 122.20
"R" House					85.75	98.34	*112.11	2) 122.20
Sitka Receiving Home			42.26	57.32	45.31	38.39	*43.76	2) 47.70
St. Judes			68.71	68.71	72.33	72.33	*82.46	2) 89.88
Turning Point Boys Ranch	44.92	43.31	46.81	68.71	73.09	84.33	*96.14	2) 104.79

* No FY 82 rate available at this time. This rate reflects FY 81 rate + 14%.

1) Mary Johnson Home now called Rabbit Creek Group Home.

2) Based on FY 81 rate + 14% for FY 82 and 9% for FY 83.

AGENCY Health & Social Services

PROGRAM Social & Economic Assistance
for the General Population

23 18 CONTINUED

BRU Juvenile Custody

FY 83

COMPONENT Institutional Care

REVISED

Page 5 of 5 DATE

* Section 1. AS 14.30 is amended by adding a new section to read:

Sec. 14.30.075. VISION AND HEARING SCREENING EXAMINATIONS. (a)

A vision and hearing screening examination shall be given to each child attending ~~public~~ school in the state. The examination shall be made when the child enters school or as soon thereafter as is practicable, and at regular intervals specified by regulation by the governing body of the district.

(b) The Department of Health and Social Services shall

- (1) set standards for the performance of vision and hearing screening;
- (2) train and certify public health nurses and school district employees to conduct hearing and vision screening tests;
- (3) assist with referral and follow-up of children needing professional examination or treatment; and
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THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

KANIILAQ GROUP HOME
a FY-83 Proposal

The KaniilAQ Group Home is being planned to open as a eight bed co-educational residence for children in the P.R. Ferguson/Human Services Complex in Kotzebue. Of the eight beds, two are tentatively to be reserved for emergency shelter (length of stay ninety days or less) and six for long term residents. The intent is to provide a home for adolescents (12 to 17 years of age) in the NANA region who are determined by the state to need a foster home as well as serving the need in the region for shelter for children above toddler age that the state has taken into emergency custody.

Currently the region relies on individual foster home placement, or placement in institutions in urban areas for children who cannot remain in their own homes. Individual placement has been found to be particularly difficult for adolescents often ending in institutional placement outside the NANA Region. In addition emergency situations have sometimes resulted in children spending the night in jail. Both of these situations are unacceptable in the NANA region and are the inspiration of this proposal.

The group home will be used to bring the family back together again, thus reducing the amount of time an adolescent is institutionalized. This will be accomplished by indepth counseling with the adolescent and his/her parents. The children will be enrolled in the Kotzebue Public Schools and they will be kept in a home atmosphere with live-in house parents. The home will offer a structured living environment and goals will be established for every child in placement.

This is a new program for the NANA Region therefore the start up cost will run high for the first year.

Some day;
I like it!
Don Gilman, Bally Lake Dam

MANILA ASSOCIATION
 PROPOSED GROUP HOME PROGRAM
 FY83

<u>PERSONNEL</u>	\$240,552	
Human Services Director (share of salary)		\$ 6,600
Program Manager/Counselor		30,000
Counselor		28,000
Youth Workers 3@ 23,500		70,500
House Parents 3@ 23,500		70,500
Total Salaries		<u>205,600</u>
Fringe @ 17%		34,952
<u>SUPPLIES</u>	29,300	
Recreational/Program		500
Office		500
Food		26,000
Allowance		1,000
Housekeeping		500
Linens		800
<u>COMMUNICATIONS</u>	1,800	
Telephone		1,200
Postage		600
<u>TRAVEL AND PER DIEM</u>		
Staff for training and business	3,400	
<u>MISCELLANEOUS</u>	4,300	
Professional Fees		
Training Consultants		1,500
Psychiatric and Psychological		2,500
Subscriptions		300
<u>EQUIPMENT</u>	1,680	
<u>INDIRECT</u> 53% of salaries	<u>108,968</u>	
<u>TOTAL BUDGET</u>	\$390,000	

5/25/82

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Page 2 lines 4, 5

* Sec. 3. For fiscal year 1983, the payment authorized per day for each child placed by the Department of Health and Social Services in existing residential care facilities is:

Page 2 between lines 22 and 23, add a new line as follows and renumber lines accordingly:

"Mannilaq Group Home \$167.⁰⁰78"

Page 3 line 2, add:

~~This does not preclude the Department from contracting with~~
~~new facilities not listed above at a rate to be determined~~
~~by the department.~~
may
above

Page 3 line 4, add:

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Sec. 14.30.075. VISION AND HEARING SCREENING. (a) Vision and hearing screening shall be conducted for each child attending school in the state. Screening shall be done when the child enters school or as soon thereafter as is practicable, and at regular intervals in accordance with regulations established by the Department of Health and Social Services.

(b) The Department of Health and Social Services shall train and certify public health nurses and school district employees to conduct hearing and vision screening tests, assist with referral and follow-up of children needing professional examination or treatment, and assist with maintenance and repair of screening equipment.

Original sponsor: Rules/Governor

Offered: 4/16/82
For Calendar, Saturday
4/17/82

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 CS FOR HOUSE BILL NO. 357 (Rules) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public assistance."

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

8 * Section 1. AS 44.29.020 is amended to read:

9 Sec. 44.29.020. DUTIES OF DEPARTMENT. The Department of Health
10 and Social Services shall administer the state programs of public health
11 and social services, including: (1) maternal and child health services;
12 (2) preventive medical services; (3) public health nursing services; (4)
13 (repealed) (5) nutrition services; (6) health education; (7) labora-
14 tories; (8) mental health treatment and diagnosis; (9) management of
15 state institutions; (10) medical facilities; (11) adult public [OLD AGE]
16 assistance; (12) aid to dependent children; (13) [AID TO THE BLIND];
17 (14) child welfare services; (15) general relief; (16) licensing and
18 supervision of child care facilities; and (17) probation and parole
19 supervision.

20 * Sec. 2. AS 47.05.010(1) is amended to read:

21 (1) administer adult public [OLD AGE] assistance, aid to
22 dependent children, [AID TO THE BLIND,] and all other assistance pro-
23 grams, and receive and spend funds made available to it;

24 * Sec. 3. AS 47.05.010(2) is amended to read:

25 (2) adopt regulations necessary for the conduct of its busi-
26 ness and for carrying out federal and state laws granting adult public
27 [OLD AGE] assistance, aid to dependent children, [AID TO BLIND PERSONS]
28 and other assistance;

29 * Sec. 4. AS 47.05.010(5) is amended to read:

1 (5) cooperate with the federal government in matters of
2 mutual concern pertaining to adult public [OLD AGE] assistance, aid to
3 dependent children, [AID TO BLIND PERSONS] and other forms of public
4 assistance;

5 * Sec. 5. AS 47.05.050 is amended to read:

6 Sec. 47.05.050. POLICY. ~~It is the public policy of the state to~~
7 ~~cooperate and coordinate with the United States government and its~~
8 ~~agencies in providing for and administering federal and state laws for~~
9 ~~adult public [OLD AGE] assistance and the other assistance which is~~
10 ~~provided for or extended to the people of the state.~~

Senator
Parr
wants to
delete. I
agree

11 * Sec. 6. AS 47.25.430 is repealed and reenacted to read:

12 ARTICLE 4. ADULT PUBLIC [OLD AGE] ASSISTANCE.

13 Sec. 47.25.430. ADULT PUBLIC ASSISTANCE. (a) Financial assis-
14 tance shall be given under AS 47.25.430 - 47.25.615, so far as practic-
15 able under appropriations made by law to every aged, blind, or disabled
16 needy resident who has not made a voluntary assignment or transfer of
17 property to qualify for assistance, ~~and who has been determined eligible~~

18 ~~under regulations adopted by the department.~~ As used in this subsection,
19 "resident" means a person who is living in the state voluntarily with
20 the intention of making the state (his) home and is not living in the
21 state for a temporary purpose.

22 (b) The department shall determine the amount of assistance with
23 due regard to the resources and needs of the person and the conditions
24 existing in each case. Assistance shall be in an amount which will
25 provide the applicant with reasonable subsistence compatible with
26 decency and health in accordance with standards established by the
27 department and with the standards established under Title XVI of the
28 Social Security Act. When benefit amounts under Title XVI of the Social
29 Security Act are increased as a result of an increase in the cost of

Delete!
Gives dept
too much
discretion

1 living, the state shall pass along the increase to recipients, and shall
2 increase the amount of the state contribution to recipients by a percent-
3 age of the state contribution equal to the percentage increase in the
4 benefit amounts under Title XVI. Direct payments for medical services
5 and remedial care may not be considered in determining the maximum
6 amount payable.

7 (c) No payment under AS 47.25.430 - 47.25.615 may be made to a
8 person who is a resident of a public institution (except as a patient in
9 a public medical institution) or a person who is a patient in a public
10 or private institution for treatment of a mental disease.

11 (d) A resident of an institution may, ^{or in anticipation of leaving the} upon leaving the institution, ^{institution}
12 apply for assistance under AS 47.25.430 - 47.25.615 instead of the
13 support and maintenance provided in the institution.

14 * Sec. 7. AS 47.25.435 is amended to read:

15 Sec. 47.25.435. EXCLUSION OF INCOME. Notwithstanding the provi-
16 sions of AS 47.25.430 - 47.25.615 [47.25.610], if the applicable provi-
17 sions of the federal Social Security Act, as amended, permit, in deter-
18 mining the need of an applicant for, or a recipient of, an [OLD AGE]
19 assistance grant under AS 47.25.430 - 47.25.615 [47.25.610], the de-
20 partment shall exclude from the computation of the applicant's or
21 recipient's income the amounts specified in 42 U.S.C. sec. 1382a(b),
22 as amended, amounts specified in regulations adopted to implement the
23 supplemental security income provisions of federal law, and any amounts
24 specified by the department by regulation so long as exclusion of those
25 amounts is not in conflict with federal law [A SUM NOT TO EXCEED \$65 A
26 MONTH PLUS ONE-HALF OF THE BALANCE OF THE INCOME THAT IS EARNED IN ANY
27 MANNER, UNTIL FINANCIAL INELIGIBILITY IS REACHED. THE DEPARTMENT MAY
28 PROMULGATE REGULATIONS IT CONSIDERS APPROPRIATE TO CARRY OUT THE PROVI-
29 SIONS OF THIS SECTION].

1 * Sec. 8. AS 47.25.450 is amended to read:

2 Sec. 47.25.450. INVESTIGATION OF APPLICANT. Upon application, the
3 [THE] department shall investigate promptly and record the circumstances
4 of each applicant [PERSON APPLYING FOR OLD AGE ASSISTANCE] to determine
5 the facts supporting the application and other information required by
6 the department.

7 * Sec. 9. AS 47.25.460 is repealed and reenacted to read:

8 Sec. 47.25.460. AWARD, REDUCTION, TERMINATION, AND APPEAL. (a)
9 Upon completion of the investigation, the department shall promptly
10 decide whether the applicant is eligible for and should receive adult
11 public assistance, the amount of it, the manner of paying it, and the
12 date on which it starts. The department may make additional investiga-
13 tion which it considers necessary, and shall make its decision as to the
14 granting of assistance and the amount and nature of it ~~as in its opinion~~
15 ~~is justified~~ and in conformity with AS 47.25.430 - 47.25.615. The
16 department shall notify the applicant of its decision in writing.

17 (b) Assistance under AS 47.25.430 - 47.25.615 is subject to review
18 ~~every three months~~ and at such ~~other~~ times as circumstances warrant. If
19 a recipient of adult public assistance or the spouse of a recipient with
20 whom the recipient is living acquires nonexempt property exceeding
21 resource limitations, or income sufficient to maintain the recipient
22 properly, then the assistance granted to the recipient must either be
23 terminated or reduced to an amount reflecting the reduced need as deter-
24 mined by the department in accordance with applicable regulations. Upon
25 review, the department may, after having provided opportunity for a
26 hearing under (c) of this section, change the assistance granted or
27 terminate it entirely if it finds that the circumstances are changed
28 sufficiently to warrant this action.

29 (c) A recipient whose award is proposed to be modified or termi-

Gives dept. too much discretion

Dept. now doesn't have enough staff to conduct review every 3 months

1 nated, or an applicant whose application is denied by the department
2 shall be granted an opportunity for a hearing before a representative of
3 the department, appointed for that purpose. The hearing shall be held
4 promptly after request for it is made. ~~The representative designated to~~
5 ~~conduct the hearing shall be governed by the regulations prescribed for~~
6 that purpose by the department. *conducted in accordance with*

7 (d) Each award shall be paid on a monthly basis. In case it is
8 impracticable by reason of slow or interrupted means of communication
9 for a warrant covering a month's assistance to reach the recipient in
10 due course, the department may transmit warrants covering assistance for
11 ~~more than one month~~ *future months* and may deliver all of them to the recipient at one
12 time.

13 * Sec. 10. AS 47.25.470 is amended to read:

14 Sec. 47.25.470. PAYMENT WHEN RECIPIENT INCAPACITATED. If a person
15 receiving assistance is incapable of taking care of himself or of the
16 funds granted under AS 47.25.430 - 47.25.615 [47.25.610], the department
17 may direct the payment of the funds to his legally appointed guardian or
18 to another person as designated by the department for his benefit.

19 * Sec. 11. AS 47.25.500 is amended to read:

20 Sec. 47.25.500. RECOVERY OF ASSISTANCE [ALLOWANCES] IMPROPERLY
21 GRANTED. (a) If the department ~~believes~~ *has reasonable grounds for believing* that assistance [FINDS THAT AN
22 OLD AGE ALLOWANCE] was ~~improperly granted,~~ *document the grounds in the case file,* it shall investigate and, if
23 it appears as a result of the investigation that assistance was improper-
24 ly granted, it may, ~~after providing an opportunity for a hearing,~~ *and continued benefits pending a hearing decision* termi-
25 nate or reduce assistance [CANCEL THE ALLOWANCE] and notify the recipient
26 to that effect. The [, AND THE] state [THEN] has a claim against a
27 [THE] person who received an [THE] improper amount of assistance [ALLOW-
28 ANCE]. The claim may [SHALL] be enforced by an action instituted in the
29 name of the state by the attorney general to recover the amount paid to

1 the person, with interest, together with the necessary costs of the
2 action.

3 (b) If the department finds that recovery would work a financial
4 hardship on the recipient to the extent that his health and well-being
5 would be threatened or that the costs of recovery would exceed the amount
6 of assistance improperly granted, it ~~may~~ ^{shall} waive recovery or reduce the
7 amount to be recovered [THE UNITED STATES SHALL, IF IT REQUIRES, BE
8 REIMBURSED OUT OF THE MONEY ON A PRO RATA BASIS IN PROPORTION TO THE
9 AMOUNT IT EXPENDED IN THE CASE, AND THE REMAINING AMOUNT SHALL BE PAID
10 TO THE STATE FOR THE OLD AGE ASSISTANCE FUND].

11 * Sec. 12. AS 47.25.515 is amended to read:

12 Sec. 47.25.515. CANCELLATION OF WARRANTS. (a) Warrants issued to
13 a recipient of [AN OLD AGE] assistance under AS 47.25.430 - 47.25.615
14 [RECIPIENT] after the date of death of the recipient shall be returned
15 to the Department of Administration and canceled.

16 (b) Assistance [OLD AGE ASSISTANCE] warrants issued before the
17 death of the recipient but not negotiated at death shall be returned to
18 the Department of Administration, and shall be canceled, unless claimed
19 by the authorized representative of the estate of the recipient within
20 90 days of the date of death.

21 (c) The state is [SHALL] not [BE] liable to the estate, heirs, or
22 creditors of the deceased [OLD AGE] assistance recipient for payment on
23 warrants canceled under (a) or [AND] (b) of this section.

24 * Sec. 13. AS 47.25.520 is amended to read:

25 Sec. 47.25.520. LEAVING THE [REMOVAL FROM] STATE. A person re-
26 ceiving assistance who leaves [REMOVES FROM] the state may not there-
27 after receive assistance unless the department otherwise directs, *or the person returns to Alaska to reside*

28 * Sec. 14. AS 47.25.550 is amended to read:

29 Sec. 47.25.550. ALIENATION AND ATTACHMENT. Assistance granted

1 under AS 47.25.430 - 47.25.615 [47.25.610] is inalienable by an assign-
2 ment or transfer and is exempt from garnishment, levy, or execution
3 under the laws of this state.

4 * Sec. 15. AS 47.25.580 is amended to read:

5 Sec. 47.25.580. ACTION AGAINST PERSON LIABLE FOR CARE OF RECIP-
6 IENT. If during the continuance of assistance [AN ALLOWANCE] the depart-
7 ment finds that a person liable for the support of the recipient of
8 assistance is able to provide the necessary care and support of the
9 recipient, and the person liable for the care and support of the reci-
10 pient fails or refuses to support and care for the recipient then the
11 state has a cause of action for the assistance against the person liable
12 for it. The action may [SHALL] be brought in the name of the state by
13 the attorney general against the person liable for the recovery of the
14 amount of money, with interest, paid to the recipient, together with the
15 costs and disbursements of the action. The [UNITED STATES SHALL, IF IT
16 REQUIRES, BE REIMBURSED OUT OF THE MONEY COLLECTED ON A PRO RATA BASIS
17 IN PROPORTION TO THE AMOUNT IT EXPENDED IN THE CASE, AND THE REMAINING]
18 amount collected shall be paid to the Department of Revenue [FOR THE OLD
19 AGE ASSISTANCE FUND].

20 * Sec. 16. AS 47.25.590 is amended to read: *repeal 47.25.590*

21 Sec. 47.25.590. POLICY AND PURPOSE. (a) It is ~~the~~ policy of the
22 state and ~~the~~ purpose of AS 47.25.430 - 47.25.615 [47.25.610] to cooper-
23 ate and coordinate with the United States government and its agencies in
24 providing for and administering the laws of the federal and state govern-
25 ments having for their purpose adult public [OLD-AGE] assistance for
26 residents of this state.

27 (b) The purpose of AS 47.25.430 - 47.25.615 [47.25.610] is to
28 furnish financial assistance as far as practicable to needy [,] aged,
29 blind, and disabled persons [INDIVIDUALS], and to help them attain

See
Sec. 5
Pg. 2, lines
6-10

1 self-support or self-care.

2 (c) The department may enter into contracts or arrangements with
3 any federal agency, department, or official under which funds made
4 available to the federal agency, department, or official may be trans-
5 ferred to the department and spent in accordance with AS 47.25.430 -
6 47.25.615.

7 * Sec. 17. AS 47.25.600 is amended to read:

8 Sec. 47.25.600. OBTAINING ASSISTANCE BY FRAUD. A person is guilty
9 of a class B misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY A FINE
10 OF NOT MORE THAN \$500, OR BY IMPRISONMENT IN A JAIL FOR NOT MORE THAN
11 SIX MONTHS, OR BY BOTH,] if he (1) by a false statement, representation,
12 or impersonation, or other fraudulent device, obtains or attempts to
13 obtain or aids or abets another to obtain (A) assistance to which he is
14 not entitled, (B) greater assistance than he is entitled to, (C) payment
15 of a forfeited grant or allowance; or (2) aids and abets in buying or
16 otherwise disposing of the property of the recipient of assistance for
17 the purpose of avoiding liability for the assistance granted.

18 * Sec. 18. AS 47.25.610 is amended to read:

19 Sec. 47.25.610. VIOLATIONS. A person who violates a provision of
20 AS 47.25.430 - 47.25.615 [47.25.610] or a regulation adopted under any
21 of those sections is guilty of a class B misdemeanor [AND IF NO OTHER
22 PENALTY IS PROVIDED, THE PERSON, UPON CONVICTION, IS PUNISHABLE BY A
23 FINE OF NOT MORE THAN \$500, OR BY IMPRISONMENT IN A JAIL FOR NOT MORE
24 THAN SIX MONTHS, OR BY BOTH].

25 * Sec. 19. AS 47.25 is amended by adding a new section to read:

26 Sec. 47.25.615. DEFINITIONS. In AS 47.25.430 - 47.25.615

27 (1) "aged" means 65 or more years of age;

28 (2) "assistance" means money payments to or medical care on
29 behalf of, or any type of remedial care recognized by the department on

*Policy
decision!
Do you
want to
hold someone
guilty of
a crime for
violating a
regulation*

1 behalf of needy aged, blind, or disabled persons who are 18 or more
2 years of age and residents of the state;

3 (3) "blind" means having no vision or having vision that is
4 so defective as to prevent the performance of ordinary activities for
5 which eyesight is essential;

6 (4) "department" means the Department of Health and Social
7 Services;

8 (5) "disabled" means being unable to engage in substantial
9 gainful activity by reason of a medically determinable physical or
10 mental impairment that can be expected to result in death or that has
11 lasted or can be expected to last for a continuous period of not less
12 than 12 months;

13 (6) "public institution" means a governmentally owned estab-
14 lishment that furnishes food, shelter, and some additional treatment or
15 services to 16 or more persons;

16 (7) "public medical institution" means a public hospital or a
17 public institution providing medical care, except an institution for the
18 treatment of mental disease.

19 * Sec. 20. AS 47.25.480, 47.25.510, 47.25.620 - 47.25.710, 47.25.730 -
20 47.25.880, 47.25.905 - 47.25.970, and AS 47.40 are repealed.

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Alaska State Legislature
House

Lusa

MESSAGE TO THE SENATE

Date May 18, 1982

MR. PRESIDENT:

The House has failed to concur in the Senate amendment to CSHB 357(Rls)am (relating to public assistance), namely, SCS CSHB 357(HESS)amS (relating to public assistance and other assistance provided by the state; eff. date) and respectfully requests the Senate to recede from its amendment.

In the event the Senate does not recede, the Speaker has appointed the following members to a CONFERENCE COMMITTEE to meet with a like committee from the Senate:

Representative Martin, Chairman

Representative Carney

Representative Clocksin

*Perr
Gilman
Sackett*

(2-31-3-4)

Emylow Lloyd

Chief Clerk of the House

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

NOV 16 1981

JAY S. HAMMOND, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

November 12, 1981

The Honorable Charlie H. Parr
Alaska State Senate
545 Third Avenue
Suite D
Nerland Building
Fairbanks, Alaska 99701

Dear Senator Parr:

Following our meeting of two weeks ago, we have attempted to delineate the process the Division of Public Assistance follows with SSI and the State Supplement to SSI. We have also started a review of the system with DVR to see if the state can streamline their part to some extent.

The most cumbersome procedures involve adults who feel they are disabled, so the following discussions are built around a client under 65 years of age who is applying for SSI/APA due to disability.

Frequently, an applicant contacts an office of the state's Division of Public Assistance and is given an APA application and an interview appointment. At the time of the interview, a referral form is prepared and sent to Social Security, alerting them to the applicant's situation, and triggering their (SSI's) application process.

The Division of Public Assistance eligibility technician then makes a preliminary disability decision, and predicts what SSI would give the client monthly if they were to determine him eligible. The DPA technician then calculates the amount of state assistance required to bring the client up to the state's need standard and establishes a case.

The typical case would look something like this:

Single adult, rent over \$35/month
Disabled under parameters established by Social Security
No income
Very few resources
APA need standard = 526
SSI grant, if eligible = 265
APA grant amount = 261 = monthly benefit from the state

November 12, 1981

If the client is ultimately determined eligible for SSI by the Social Security District Office, DPA then double checks the actual SSI grant and insures that our supplemental payment is correct.

The main difficulty in such cases is in determining whether or not an applicant meets the medical definition of being "disabled".

The enclosed booklet specifically describes the physical characteristics of disability.

Disability determinations are made in four situations, and by different methods:

- 1) If the client is below the SSI income level, then the medical exams and disability decision are the responsibility of the Division of Vocational Rehabilitation, which is under contract for this purpose with SSI. Voc Rehab handles these actions as administrative decisions, based on comparisons of medical data with the federal specifications.
- 2) If the client is above the SSI income level, but below the state APA income level, (potentially eligible for state-only assistance) then a Division of Public Assistance review team makes the disability decision. The Division of Public Assistance is presently negotiating a memo of agreement with DVR to provide "standard" DVR disability determinations for our AD clients as well as for SSI.
- 3) If a fair hearing is requested of SSI based on a negative finding, a federal administrative judge travels to Alaska to conduct the hearing and render a decision. The state always abides by the federal decision.
- 4) On state-only cases, the Public Assistance staff conducts the fair hearing and makes the decision.

As you are aware, this dual system involves much inefficiency, confusion and program loss.

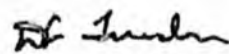
Yesterday we met with the Division of Vocational Rehabilitation and have identified some issues and procedures that require further attention. We will be pursuing these through meetings of our program people in the immediate future.

Also, enclosed is a federal summary of SSI service levels in Alaska which was provided at our request and which is fairly specific.

There are several issues in the APA-SSI relationship, and I would be happy to discuss these program issues with you further if you wish.

I hope this information has been helpful, and I thank you for your interest.

Sincerely,


for Helen D. Beirne
Commissioner

Enclosures

contrast, the Alaska legislature has chosen not to give any aid, under the AFDC program, to children between the ages of 18 and 21. Congress expressly left to the states the option not to participate in the program of aid for that age group. *Horace v. McGinnis*, Sup. Ct. Op. No. 767 (File No. 1448), 494 P.2d 534 (1972).

Design. — AFDC is designed to preserve in the parents "the maximum of self-support and personal independence consistent with the maintenance of continuing parental care and protection." *Henry v. Betit*, 323 F. Supp. 418 (D. Alas. 1971).

Incentives to seek employment may be maximized. — To effectuate the goal of self-support and personal independence, the state may structure its AFDC program to maximize incentives to seek employment as an alternative to welfare. *Henry v. Betit*, 323 F. Supp. 418 (D. Alas. 1971).

Constitutionality of classifications. — In the area of economics and social welfare, a state does not violate the equal protection clause merely because the classifications made by its laws are imperfect. *Henry v. Betit*, 323 F. Supp. 418 (D. Alas. 1971).

If a classification has some reasonable basis, it does not offend the Constitution simply because the classification is not

made with mathematical necessity or because in practice it results in some inequality. *Henry v. Betit*, 323 F. Supp. 418 (D. Alas. 1971).

Classifications which are unrelated to, or which detract from, the fundamental purposes of AFDC as defined in AS 47.25.400 have been stricken as arbitrary and violative of equal protection. *Henry v. Betit*, 323 F. Supp. 418 (D. Alas. 1971).

Involuntary unemployment of father as valid classification. — Classification of families as ineligible to receive benefits under the Alaska AFDC program solely because the need of their children is caused by the involuntary unemployment, as opposed to the death, absence, or incapacity of the father, is a valid classification. *Henry v. Betit*, 323 F. Supp. 418 (D. Alas. 1971).

42 U.S.C. § 607 (1969), which made additional grants available to states wishing to provide assistance to children whose need is due to the unemployment of the father, although it purports to amend the definition of needy child contained in § 606(a), is optional and not applicable unless described in the plan submitted by the state to the Secretary of Health, Education and Welfare. *Henry v. Betit*, 323 F. Supp. 418 (D. Alas. 1971).

Sec. 47.25.420. Short title. AS 47.25.310 — 47.25.420 may be cited as the Aid to Families with Dependent Children Act. (§ 51-2-41 ACLA 1949; am § 7 ch 73 SLA 1963)

Article 4. Old Age Assistance.

Section	Section
430. Persons entitled to old age assistance	520. Removal from state
435. Exclusion of income	530. Reports by department
440. Application for assistance	540. Annual reports
450. Investigation of applicant	550. Alienation and attachment
460. Award and appeal	560 — 570. [Repealed]
470. Payment when recipient incapacitated	575. Property taken under eminent domain powers
480. Cancellation or reduction of assistance	580. Action against person liable for care of recipient
490. Imprisoned recipients	590. Policy and purpose
500. Recovery of allowances improperly granted	600. Obtaining assistance by fraud
510. Modification of assistance	610. Violations
515. Cancellation of warrants	

Sec. 47.25.430. Persons entitled to old age assistance. (a) Financial assistance shall be given under AS 47.25.430 — 47.25.610, so far as practicable under the conditions in the state, to every aged, needy resident of the state who has attained the age of 65 years, who has not

made a voluntary assignment or transfer of property to qualify for assistance. Assistance shall be in an amount which will provide the applicant with reasonable subsistence compatible with decency and health in accordance with standards established by the department and with the standards established under Title XVI of the Social Security Act. When benefit amounts under Title XVI of the Social Security Act are increased as a result of an increase in the cost of living, the state shall pass along the increase to recipients, and shall increase the amount of the state contribution to recipients by a percentage of the state contribution equal to the percentage increase in the benefit amounts under Title XVI. Direct payments for medical services and remedial care may not be considered in determining the maximum amount payable.

(b) No payment under AS 47.25.430 — 47.25.610 may be made to an individual who is a resident of the Alaska Pioneers' Home or another public institution (except as a patient in a public medical institution) or an individual who is (1) a patient in a public or private institution for tuberculosis or mental diseases, or (2) diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result of the diagnosis.

(c) A resident of the Alaska Pioneers' Home or other institution may, at any time he wishes to leave the institution, apply for assistance under AS 47.25.430 — 47.25.610 instead of the support and maintenance provided in the home or institution. (§ 51-2-51 ACLA 1949; am § 1 ch 33 SLA 1949; am § 1 ch 49 SLA 1951; am § 1 ch 101 SLA 1953; am § 1 ch 110 SLA 1959; am ch 154 SLA 1962; am § 2 ch 105 SLA 1967; am § 1 ch 11 FSSLA 1967; am § 1 ch 234 SLA 1970; am § 1 ch 172 SLA 1975)

Effect of amendment. — The 1975 amendment, in subsection (a), substituted "and with the standards established under Title XVI of the Social Security Act" for "but may in no case exceed \$250 a calendar month" at the end of the second sentence, and added the present third sentence.

Editor's note. — Section 4, ch. 172, SLA 1975, as amended by § 1, ch. 23, SLA 1976, provides: "For purposes of determining the state contribution to recipients under AS 47.25.430(a), 47.25.640, and 47.25.810 as of July 1, 1976, the Department of Health and Social Services shall establish levels of need not exceeding \$334 a month for an individual recipient."

Legislative history reports. — For report on ch. 234, SLA 1970 (FCCS HCS CSSB 386), see 1970 House Journal, p. 1478.

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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 laws. *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969).

ALR and C.J.S. references. — Constitutionality of old age assistance acts, 37 ALR 1524; 86 ALR 912; 101 ALR 1215.

Requisite residence for purpose of old age assistance, 143 ALR2d 1427.

81 C.J.S. Social Security and Public Welfare, §§ 17 to 21.

Sec. 47.25.435. Exclusion of income. Notwithstanding the provisions of AS 47.25.430 — 47.25.610, if the applicable provisions of the federal Social Security Act, as amended, permit, in determining the need of an applicant for, or a recipient of, an old age assistance grant

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Editor's note. — Section 1, ch. 172, SLA 1975, as amended by § 1, ch. 83, SLA 1976, provides: "For purposes of determining the state contribution to recipients under AS 47.25.430(a), 47.25.640, and 47.25.810 as of July 1, 1976, the Department of Health and Social Services shall establish levels of need not exceeding \$334 a month for an individual recipient."

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\$65 a month plus one-half of the balance of the income that is earned in any manner, until financial ineligibility is reached. The department may promulgate regulations it considers appropriate to carry out the provisions of this section. (§ 1 ch 64 SLA 1973; am § 3 ch 149 SLA 1975)

Revisor's note. — In ch. 64, SLA 1973, this section was incorrectly designated AS 47.25.885.

Effect of amendment. — The 1975 amendment, in the first sentence,

substituted "\$65" for "\$85," inserted "plus one-half of the balance of the income," and added "until financial ineligibility is reached" to the end.

Sec. 47.25.440. Application for assistance. A person requesting assistance shall apply for it, either for himself or by another in his behalf, upon forms furnished and under regulations prescribed by the department. (§ 51-2-52 ACLA 1949)

Sec. 47.25.450. Investigation of applicant. The department shall investigate promptly and record the circumstances of each person applying for old age assistance to determine the facts supporting the application and other information required by the department. (§ 51-2-53 ACLA 1949)

Sec. 47.25.460. Award and appeal. (a) Upon completion of the investigation, the department shall decide whether the applicant is eligible for and should receive old age assistance, the amount of it, the manner of paying it and the date on which it starts. The department may make additional investigation which it considers necessary, and shall make its decision as to the granting of assistance and the amount and nature of it as in its opinion is justified and in conformity with AS 47.25.430 — 47.25.610. The department shall notify the applicant of its decision in writing.

(b) An applicant whose application is denied, discontinued or modified by the department shall be granted an opportunity for fair hearing before the department or before an agent of the department, appointed for that purpose. The hearing shall be held within a reasonable time after demand for it is made. If an agent is designated to conduct the hearing, the agent shall be governed by the regulations prescribed for that purpose by the department.

(c) Each allowance shall be paid monthly. In case it is impracticable by reason of slow or interrupted means of communication for a warrant covering a month's benefit to reach the beneficiary in due course, the department may transmit warrants covering payments for more than one month and may deliver all of them to the beneficiary at one time. All warrants shall be registered in a book kept for that purpose and when registered shall in the order of their registration take priority over all other warrants against the Old Age Assistance Fund. (§ 51-2-54 ACLA 1949)

granted under AS 47.25.430 — 47.25.610, the department may direct the payment of the funds to his legally appointed guardian or to another person as designated by the department for his benefit. (§ 51-2-55 ACLA 1949)

Sec. 47.25.480. Cancellation or reduction of assistance. If the recipient of assistance or the husband or wife of a recipient acquires property or income sufficient to maintain the recipient properly, then the aid or assistance granted to the recipient shall either be cancelled or reduced to an amount which the department determines is sufficient. (§ 51-2-56 ACLA 1949)

Sec. 47.25.490. Imprisoned recipients. If a recipient is convicted of a crime or offense, and punished by imprisonment, no payment may be made during the period of imprisonment, and the department may, in its discretion, declare the assistance forfeited. (§ 51-2-57 ACLA 1949)

Sec. 47.25.500. Recovery of allowances improperly granted. (a) If the department finds that an old age allowance was improperly granted, it shall investigate and, if it appears as a result of the investigation that assistance was improperly granted, it may cancel the allowance and notify the recipient to that effect, and the state then has a claim against the person who received the improper allowance. The claim shall be enforced by an action instituted in the name of the state by the attorney general to recover the amount paid to the person, with interest, together with the necessary costs of the action.

(b) The United States shall, if it requires, be reimbursed out of the money on a pro rata basis in proportion to the amount it expended in the case, and the remaining amount shall be paid to the state for the Old Age Assistance Fund. (§ 51-2-58 ACLA 1949; am § 2 ch 33 SLA 1949)

Sec. 47.25.510. Modification of assistance. Assistance under AS 47.25.430 — 47.25.610 is subject to reconsideration as often as the department requires. The department may change the assistance granted or cancel it entirely if it finds that the circumstances are changed sufficiently to warrant this action. (§ 51-2-59 ACLA 1949)

Sec. 47.25.515. Cancellation of warrants. (a) Warrants issued to an old age assistance recipient after the date of death of the recipient shall be returned to the Department of Administration and canceled.

(b) Old age assistance warrants issued before the death of the recipient but not negotiated at death shall be returned to the Department of Administration, and shall be canceled, unless claimed by the authorized representative of the estate of the recipient within 90 days of the date of death.

(c) The state shall not be liable to the estate, heirs, or creditors of the deceased old age assistance recipient for payment on warrants canceled under (a) and (b) of this section. (§ 2 ch 52 SLA 1964)

who removes from the
unless the department otherwise directs. (§ 51-2-60 ACLA 1949)

Sec. 47.25.530. Reports by department. The department shall make reports in detail which are required of it by the governor of the state or by the federal government or a federal agency. (§ 51-2-61 ACLA 1949)

Sec. 47.25.540. Annual reports. Within 90 days after the close of each calendar year the department shall make a report to the governor for the preceding year stating

- (1) the total number of recipients;
- (2) the total amount disbursed in cash;
- (3) the total number of applications;
- (4) the number granted;
- (5) the number denied;
- (6) the number cancelled during the year; and
- (7) other information which it considers advisable. (§ 51-2-62 ACLA 1949)

47.25.550. Alienation and attachment. Assistance granted under AS 47.25.430 — 47.25.610 is inalienable by an assignment or transfer and is exempt from garnishment, levy, or execution under the laws of this state. (§ 51-2-63 ACLA 1949)

Sec. 47.25.560. Government and state's claim for assistance.

Repealed by § 7 ch 234 SLA 1970.

Editor's note. — The repealed section derived from § 51-2-64, ACLA 1949; § 3, ch. 33, SLA 1949.

Legislative history report. — For report on ch. 234, SLA 1970 (FCCS HCS CSSB 386), see 1970 House Journal, p. 1478.

Sec. 47.25.570. Security and lien.

Repealed by § 7 ch 234 SLA 1970.

Editor's note. — The repealed section derived from § 51-2-65, ACLA 1949; § 4, ch. 33, SLA 1949; § 1, ch. 26, SLA 1957.

Sec. 47.25.575. Property taken under eminent domain powers. If a recipient's property is taken for urban renewal or other public purposes and the recipient expresses his intent to purchase a personal dwelling, the proceeds which are paid the recipient as a result of the taking shall be paid by the taking authority into an escrow account under escrow instructions approved by the department. If the proceeds are paid into such an account and are applied by the recipient within one year to the purchase of a personal dwelling, the proceeds may not cause a reduction of the amount of assistance to which the recipient would otherwise be

SLA 1970)

Legislative history reports. — For report on ch. 60, SLA 1968 (CSHB 583 am), see 1968 House Journal, p. 540. For report on ch. 234, SLA 1970 (FCCS HCS CSSB 386), see 1970 House Journal, p. 1478.

Sec. 47.25.580. Action against person liable for care of recipient. If during the continuance of an allowance the department finds that a person liable for the support of the recipient of assistance is able to provide the necessary care and support of the recipient, and the person liable for the care and support of the recipient fails or refuses to support and care for the recipient then the state has a cause of action for the assistance against the person liable for it. The action shall be brought in the name of the state by the attorney general against the person liable for the recovery of the amount of money, with interest, paid to the recipient, together with the costs and disbursements of the action. The United States shall, if it requires, be reimbursed out of the money collected on a pro rata basis in proportion to the amount it expended in the case, and the remaining amount shall be paid to the Department of Revenue for the Old Age Assistance Fund. (§ 51-2-66 ACLA 1949; am § 5 ch 33 SLA 1949)

Sec. 47.25.590. Policy and purpose. (a) It is the policy of the state and the purpose of AS 47.25.430 — 47.25.610 to cooperate and coordinate with the United States government and its agencies in providing for and administering the laws of the federal and state governments having for their purpose old age assistance for residents of this state.

(b) The purpose of AS 47.25.430 — 47.25.610 is to furnish financial assistance as far as practicable to needy, aged individuals, and to help them attain self-care. (§ 51-2-69, ACLA 1949; § 51-2-50 ACLA 1949; added by § 2 ch 133 SLA 1957)

Sec. 47.25.600. Obtaining assistance by fraud. A person is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500, or by imprisonment in a jail for not more than six months, or by both, if he (1) by a false statement, representation, or impersonation, or other fraudulent device, obtains or attempts to obtain or aids or abets another to obtain (A) assistance to which he is not entitled, (B) greater assistance than he is entitled to, (C) payment of a forfeited grant or allowance; or (2) aids and abets in buying or otherwise disposing of the property of the recipient of assistance for the purpose of avoiding liability for the assistance granted. (§ 51-2-67 ACLA 1949)

Sec. 47.25.610. Violations. A person who violates a provision of AS 47.25.430 — 47.25.610 is guilty of a misdemeanor and if no other penalty is provided, the person, upon conviction, is punishable by a fine of not

Article 5. Aid to the Blind.

Section	Section
620. Eligibility for aid to the blind	720 — 725. [Repealed]
630. Application for assistance	730. Action against person liable for care of recipient
640. Amount of assistance	740. Recovery of allowances improperly granted
650. Residence in institutions	745. Cancellation of warrants
660. Investigation of applicant	750. Purpose
670. Granting of assistance	760. Obtaining assistance by fraud
680. Appeal	770. Penalty for violation
690. Payment when recipient incapacitated	780. Definitions
700. Review of eligibility	
710. Alienation and attachment	

Sec. 47.25.620. Eligibility for aid to the blind. Financial assistance, so far as practicable, shall be given under AS 47.25.620 — 47.25.780 to a needy blind resident of the state who is eligible under regulations established by the department. All regulations of the department shall be made available to all interested persons. However, no application for aid to the blind may be approved until a physician skilled in diseases of the eye or a registered optometrist, whichever the individual selects, examines the applicant and certifies his findings in the manner and form required by the department. (§ 2 ch 126 SLA 1951)

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 laws. *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969).

Sec. 47.25.630. Application for assistance. A person requesting assistance shall apply for it, either for himself or by another in his behalf, upon forms furnished by the department and under regulations prescribed by the department. (§ 3 ch 126 SLA 1951)

Sec. 47.25.640. Amount of assistance. The department shall determine the amount of assistance granted for a needy blind person with due regard to the resources and needs of the person and the conditions existing in each case. Assistance shall be sufficient to provide the applicant with reasonable subsistence compatible with decency and health, and according to the standards of assistance established by the department and with the standards established under Title XVI of the Social Security Act. When benefit amounts under Title XVI of the Social Security Act are increased as a result of an increase in the cost of living, the state shall pass along the increase to recipients, and shall increase the amount of the state contribution to recipients by a percentage of the state contribution equal to the percentage increase in the benefit

amount payable. (§ 4 ch 126 SLA 1951; am § 1 ch 40 SLA 1953; am § 1 ch 62 SLA 1963; am § 1 ch 6 FSSLA 1967; am § 3 ch 234 SLA 1970; am § 2 ch 172 SLA 1975)

Effect of amendment. — The 1975 amendment added the language beginning "and with the standards established" to the end of the second sentence, and rewrote the third sentence.

Editor's note. — Section 4, ch. 172, SLA 1975, as amended by § 1, ch. 83, SLA 1976, provides: "For purposes of determining the state contribution to recipients under AS

47.25.430(a), 47.25.640, and 47.25.810 as of July 1, 1976, the Department of Health and Social Services shall establish levels of need not exceeding \$334 a month for an individual recipient."

Legislative history report. — For report on ch. 234, SLA 1970 (FCCS HCS CSSB 380), see 1970 House Journal, p. 1478.

Sec. 47.25.650. Residence in institutions. No payment under AS 47.25.620 — 47.25.780 may be made to or in behalf of an individual who is an inmate of the Alaska Pioneers' Home or another public institution, except as a patient in a public medical institution, or an individual who is a patient in a public or private institution for tuberculosis or mental diseases; or has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result of the diagnosis. An inmate of the Alaska Pioneers' Home or other institution may, at any time he wishes to leave the institution, apply for assistance under AS 47.25.620 — 47.25.780 instead of the support and maintenance provided in the home or institution. (§ 5 ch 126 SLA 1951)

Sec. 47.25.660. Investigation of applicant. Upon an application the department shall promptly investigate each applicant's eligibility. (§ 6 ch 126 SLA 1951)

Sec. 47.25.670. Granting of assistance. On completion of its investigation, the department shall decide whether the applicant is eligible for assistance under AS 47.25.620 — 47.25.780, the amount of assistance, and the date on which it starts. The department shall notify the applicant of its decision. (§ 7 ch 126 SLA 1951)

Sec. 47.25.680. Appeal. An applicant whose application is not acted upon, or is denied, discontinued, or modified by the department shall be granted an opportunity for a fair hearing before a representative of the department appointed for that purpose. The hearing shall be held within a reasonable time after demand for it is made. If a representative is designated to conduct the hearing, the representative shall be governed by the regulations prescribed for that purpose by the department. (§ 8 ch 126 SLA 1951)

Sec. 47.25.690. Payment when recipient incapacitated. If the department finds that a person receiving assistance is incapable of taking care of himself or the funds granted to him under AS 47.25.620

Sec. 47.25.700. Review of eligibility. Assistance under AS 47.25.620 — 47.25.780 shall be reconsidered by the department as often as it considers necessary. After further investigation, the department may change the amount of assistance or withdraw it entirely if the department finds that the circumstances are changed sufficiently to warrant this action. (§ 10 ch 126 SLA 1951)

Sec. 47.25.710. Alienation and attachment. Assistance granted under AS 47.25.620 — 5.780 is inalienable by assignment or transfer and is exempt from garnishment, levy, or execution under the laws of the state. (§ 11 ch 126 SLA 1951)

Sec. 47.25.720. State's claim for assistance.

Repealed by § 7 ch 234 SLA 1970.

Editor's note. — The repealed section derived from § 12, ch. 126, SLA 1951.

Legislative history report. — For report on ch. 234, SLA 1970 (FCCS HCS CSSB 386), see 1970 House Journal, p. 1478.

Sec. 47.25.725. Security and lien.

Repealed by § 7 ch 234 SLA 1970.

Cross reference. — See Editor's note to AS 47.25.720.

Editor's note. — The repealed section derived from § 2, ch. 62, SLA 1963.

Sec. 47.25.730. Action against person liable for care of recipient. If during the continuance of an allowance the department finds that a person liable for the support of the recipient of assistance is able to provide the necessary care and support of the recipient, and the person liable for the care and support of the recipient fails or refuses to support and care for the recipient, the state has a cause of action for the assistance against the person liable. The action shall be brought in the name of the state by the attorney general against the person liable for the recovery of the amount of money, with interest, paid to the recipient, together with the costs and disbursements of the action. (§ 13 ch 126 SLA 1951)

Sec. 47.25.740. Recovery of allowances improperly granted. If the department finds that aid to a blind person has been improperly granted, it shall investigate and, if it appears that the assistance was improperly granted, the department may cancel the allowance and notify the recipient. The state then has a cause of action against the person who received the improper allowance. The action may be instituted in the

the person, with interest, together with the necessary costs of the action. (§ 14 ch 126 SLA 1951)

Sec. 47.25.745. Cancellation of warrants. (a) Warrants issued to a recipient of aid to the blind after the date of death of the recipient shall be returned to the Department of Administration and canceled.

(b) Aid to the blind assistance warrants issued before the death of the recipient but not negotiated at death shall be returned to the Department of Administration, and shall be canceled, unless claimed by the authorized representative of the estate of the recipient within 90 days of the date of death.

(c) The state shall not be liable to the estate, heirs, or creditors of the deceased recipient of aid to the blind for payment on warrants canceled under (a) and (b) of this section. (§ 3 ch 52 SLA 1964)

Sec. 47.25.750. Purpose. The purpose of AS 47.25.620 — 47.25.780 is to furnish financial assistance as far as practicable to needy blind persons, and to help them attain self-support or self-care. (§ 1 (e) ch 126 SLA 1951; added by § 3 ch 133 SLA 1957)

Sec. 47.25.760. Obtaining assistance by fraud. A person is guilty of a misdemeanor, and upon conviction is punishable as provided in AS 47.25.770, if he (1) by a statement, representation, or impersonation which he knows is false, or by another fraudulent device, obtains or attempts to obtain or aids or abets a person to obtain (A) assistance to which he is not entitled, (B) greater assistance than he is entitled to, or (C) payment of a forfeited grant or allowance; or (2) aids or abets in buying or otherwise disposing of the property of the recipient of assistance for the purpose of avoiding liability for the assistance granted. (§ 15 ch 126 SLA 1951)

Sec. 47.25.770. Penalty for violation. A person who violates a provision of AS 47.25.620 — 47.25.780 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500 or by imprisonment in a jail for not more than six months, or by both. (§ 16 ch 126 SLA 1951)

Sec. 47.25.780. Definitions. In AS 47.25.620 — 47.25.780

(1) "assistance" means monthly money payments to or on behalf of a needy blind resident;

(2) "blind person" is one who has no vision or whose vision is so defective as to prevent the performance of ordinary activities for which eyesight is essential;

(3) "department" means the Department of Health and Social Services;

(4) "needy blind resident" means a needy blind person 18 years of age or over, who is residing in the state. (§ 1(a) — (d) ch 126 SLA 1951; am § 1 ch 105 SLA 1967; am § 63 ch 32 SLA 1971; am § 6 ch 104 SLA 1971)

on ch. 52, SLA 1971 (117 111 am), see 1971 House Journal, p. 138.
A statutory prohibition of welfare benefits to residents of less than a year

invidious discrimination denying such residents equal protection of the laws. Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969).

Article 6. Aid to the Permanently and Totally Disabled Act.

Section	Section
790. Eligibility for assistance	910. Action against person liable for care of the recipient
800. Application for assistance	920. Recovery of allowances improperly granted
810. Amount of assistance	925. Cancellation of warrants
820. Residence in institutions	930. Agreements with federal government
830. Investigation of applicant	940. Purpose
840. Granting of assistance	950. Obtaining assistance by fraud
850. Appeal	960. Definitions
860. Payment when recipient incapacitated	970. Short title
870. Review of eligibility	
880. Alienation and attachment	
890 — 900. [Repealed]	
905. Property taken under eminent domain powers	

Sec. 47.25.790. Eligibility for assistance. Financial assistance may be given under AS 47.25.790 — 47.25.970, so far as practicable under the conditions in this state, to a permanently and totally disabled person who is eligible under the regulations of the department. All regulations of the department shall be made available to all interested persons. (§ 1 ch 63 SLA 1963)

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 laws. Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969).

Sec. 47.25.800. Application for assistance. A person requesting assistance shall apply for it, either for himself or by another in his behalf, upon forms furnished under the regulations prescribed by the department. (§ 1 ch 63 SLA 1963).

Sec. 47.25.810. Amount of assistance. The amount of assistance for a permanently and totally disabled person shall be determined by the department with regard to the resources and needs of the person and the conditions existing in each case. Where possible, assistance shall be sufficient to provide reasonable subsistence compatible with decency and health and according to the standards of assistance established by the department and with the standards established under Title XVI of the Social Security Act. When benefit amounts under Title XVI of the Social Security Act are increased as a result of an increase in the cost of living, the state shall pass along the increase to recipients, and shall

percentage of the state contribution equal to the percentage increase in the benefit amounts under Title XVI. Direct payments for medical services and remedial care may not be considered in determining the maximum amount payable. (§ 1 ch 63 SLA 1963; am § 1 ch 9 FSSLA 1967; am § 4 ch 231 SLA 1970; am § 3 ch 172 SLA 1975)

Effect of amendment. — The 1975 amendment, effective June 26, 1975, and retroactive to July 1, 1974, added the language beginning "and with the standards established" to the end of the second sentence, and rewrote the third sentence.

Editor's note. — Section 4, ch. 172, SLA 1975, as amended by § 1, ch. 83, SLA 1976, provides: "For purposes of determining the state contribution to recipients under AS 47.25.430(a), 47.25.640, and 47.25.810 as of

July 1, 1976, the Department of Health and Social Services shall establish levels of need not exceeding \$334 a month for an individual recipient."

Legislative history reports. — For report on ch. 234, SLA 1970 (FCCS HCS CSSB 386), see 1970 House Journal, p. 1478.

For report on ch. 172, SLA 1975 (CSHB 393 [Finance]), see 1975 House Journal, p. 1195.

Sec. 47.25.820. Residence in institutions. (a) No payment under AS 47.25.790 — 47.25.970 may be made to or in behalf of an individual who is

(1) a patient of a public institution, except as a patient in a public medical institution or an individual who is a patient in a public or private institution for tuberculosis or mental diseases; or

(2) has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result of the diagnosis.

(b) A patient or guest of an institution may, at any time he wishes to leave the institution, apply for assistance under AS 47.25.790 — 47.25.970 instead of the support and maintenance provided in the institution. (§ 1 ch 63 SLA 1963)

Sec. 47.25.830. Investigation of applicant. The department shall promptly investigate each applicant to determine the applicant's eligibility. (§ 1 ch 63 SLA 1963)

Sec. 47.25.840. Granting of assistance. Upon the completion of its investigation, the department shall decide promptly whether or not the applicant is eligible for and should receive assistance under AS 47.25.790 — 47.25.970, the amount of assistance, the manner of paying or providing it, and the date on which the assistance shall begin. The department shall notify the applicant of its decision. (§ 1 ch 63 SLA 1963)

Sec. 47.25.850. Appeal. An applicant whose application is not acted upon, or is denied, discontinued, or modified by the department shall be granted an opportunity for fair hearing before a representative of the department appointed for that purpose. The hearing shall be held within a reasonable time after demand for it is made. If a representative is designated to conduct the hearing, the representative shall be governed by the regulations prescribed for that purpose by the department. (§ 1 ch 63 SLA 1963)

receiving assistance is incapable of taking care of himself or the funds granted under AS 47.25.790 — 47.25.970, the department may direct the payment of the funds to his legally appointed guardian or to another person designated by the department for his benefit. (§ 1 ch 63 SLA 1963)

Sec. 47.25.870. Review of eligibility. Assistance grants under AS 47.25.790 — 47.25.970 shall be reviewed by the department as frequently as it considers necessary, and the amount of assistance may be changed or entirely withdrawn if the review of the circumstances warrants this action. (§ 1 ch 63 SLA 1963)

Sec. 47.25.880. Alienation and attachment. Assistance granted under AS 47.25.790 — 47.25.970 is inalienable by assignment or transfer and is exempt from garnishment, levy, or execution under the laws of this state. (§ 1 ch 63 SLA 1963)

Sec. 47.25.890. State's claim for assistance.

Repealed by § 7 ch 234 SLA 1970.

Editor's note. — The repealed section derived from § 1, ch. 63, SLA 1963.

Legislative history report. — For report on ch. 234, SLA 1970 (FCCS HCS CSSB 386), see 1970 House Journal, p. 1478.

Sec. 47.25.900. Security and lien.

Repealed by § 7 ch. 234 SLA 1970.

Cross reference. — See Editor's note to AS 47.25.890.

Editor's note. — The repealed section derived from § 1, ch. 63, SLA 1963.

Sec. 47.25.905. Property taken under eminent domain powers. If a recipient's property is taken for urban renewal or other public purposes and the recipient expresses his intent to purchase a personal dwelling, the proceeds which are paid the recipient as a result of the taking shall be paid by the taking authority into an escrow account under escrow instructions approved by the department. If the proceeds are paid into such an account and are applied by the recipient within one year to the purchase of a personal dwelling, the proceeds may not cause a reduction of the amount of assistance to which the recipient would otherwise be entitled. The department shall inform the recipient of the provisions of this section at the time of the taking. (§ 1 ch 60 SLA 1968; am § 5 ch 234 SLA 1970)

Legislative history reports. — For report on ch. 60, SLA 1968 (CSHB 583 am), see 1968 House Journal, p. 540. For report

on ch. 234, SLA 1970 (FCCS HCS CSSB 386), see 1970 House Journal, p. 1478.

recipient. If, during the continuance of an allowance, the department finds that a person liable for the support of the recipient of assistance is able to provide the necessary care and support of the recipient and the person liable for the care and support of the recipient fails or refuses to support and care for the recipient, the state has a cause of action for the assistance against the person liable. The action shall be brought in the name of the state by the attorney general against the person liable for the recovery of the amount of money, with interest, paid to the recipient together with the costs and disbursements of the action. (§ 1 ch 63 SLA 1963)

Sec. 47.25.920. Recovery of allowances improperly granted. If the department finds that aid to a permanently and totally disabled person has been improperly granted, it shall investigate and, if it appears that the assistance was improperly granted, the department may cancel the allowance and notify the recipient. The state then has a cause of action against the person who received the improper allowance. The action may be instituted in the name of the state by the attorney general to recover the amount paid to the person, with interest, together with the necessary cost of the action. (§ 1 ch 63 SLA 1963)

Sec. 47.25.925. Cancellation of warrants. (a) Warrants issued to a recipient of aid to the permanently and totally disabled after the date of death of the recipient shall be returned to the Department of Administration and canceled.

(b) Aid to the permanently and totally disabled warrants issued before the death of the recipient but not negotiated at death shall be returned to the Department of Administration, and shall be canceled, unless claimed by the authorized representative of the estate of the recipient within 90 days of the date of death.

(c) The state shall not be liable to the estate, heirs, or creditors of the deceased recipient of aid to the permanently and totally disabled for payment on warrants cancelled under (a) and (b) of this section. (§ 4 ch 52 SLA 1964)

Sec. 47.25.930. Agreements with federal government. The department may enter into agreements, arrangements or contracts with any federal agency, department or official under which funds made available to the federal agency, department or official may be transferred to the department and spent in accordance with AS 47.25.790 — 47.25.970 for aid to the permanently and totally disabled. (§ 1 ch 63 SLA 1963)

Sec. 47.25.940. Purpose. The purpose of AS 47.25.790 — 47.25.970 is to furnish financial assistance so far as practicable to needy

self-support or self-care. (§ 1 ch 63 SLA 1963)

Sec. 47.25.950. Obtaining assistance by fraud. A person is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500, or by imprisonment in a jail for not more than six months, or by both, if he

(1) by statement, representation or impersonation which he knows is false, or by another fraudulent device, obtains or attempts to obtain or aids or abets a person to obtain

- (A) assistance to which he is not entitled;
- (B) greater assistance than he is entitled to; or
- (C) payment of a forfeited grant or allowance; or

(2) aids or abets in buying or otherwise disposing of the property of the recipient of assistance for the purpose of voiding liability for the assistance granted. (§ 1 ch 63 SLA 1963)

Sec. 47.25.960. Definitions. In AS 47.25.790 — 47.25.970

(1) "assistance" means money payments to, or medical care in behalf of, or any type of remedial care recognized by the department in behalf of needy individuals 18 years of age or older who are totally and permanently disabled;

(2) "department" means the Department of Health and Social Services;

(3) "permanently and totally disabled person" means a needy resident of the state who is not eligible for assistance from another public agency or department providing similar services in the state;

(4) "public medical institution" means a public hospital or medical institution, except an institution for the treatment of tuberculosis or mental disease. (§ 1 ch 63 SLA 1963; am § 3 ch 105 SLA 1967; am § 64 ch 32 SLA 1971; am § 6 ch 104 SLA 1971)

Legislative history report. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

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 laws. *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969).

Sec. 47.25.970. Short title. AS 47.25.790 — 47.25.970 may be cited as the Aid to the Permanently and Totally Disabled Act. (§ 1 ch 63 SLA 1963)

Article 7. Food Stamp Program.

Section	Section
975. Food stamp program	985. Penalties
980. Duties of department	990. Definitions
983. Reporting change of status	

authorized to implement the food stamp program.

(b) Householders determined by the department to be eligible for assistance under the food stamp program may obtain food coupons.

(c) Food coupons shall be used to purchase food from retail food stores which have been approved for participation in the food stamp program. Eligible households living in certain remote areas shall be permitted to purchase certain items of hunting and fishing equipment for the purpose of procuring food for the household, except firearms, ammunition and other explosives, in accordance with rules and regulations that the Secretary of Agriculture may prescribe. (§ 1 ch 113 SLA 1965; am § 151 ch 127 SLA 1974)

Legislative history report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 47.25.980. Duties of department. (a) The department shall

(1) adopt rules and regulations necessary to carry out the food stamp program;

(2) cooperate with the federal government and do all things necessary to continue state eligibility under the food stamp program;

(3) comply with the requirements of the Federal Food Stamp Act of 1964 (P.L. 88-525).

(b) The department may designate and change areas in the state in which the food stamp program shall be carried out. (§ 1 ch 113 SLA 1965)

Sec. 47.25.983. Reporting change of status. A person receiving assistance under AS 47.25.975 — 47.25.990 who wilfully fails to report to the department a change in his status which affects his eligibility or the amount of payment for which he is eligible, within 10 days of that change, is guilty of a misdemeanor and upon conviction is subject to the penalties set out in AS 47.25.985(b). (§ 5 ch 116 SLA 1975)

Legislative history report. — For report on ch. 116, SLA 1975 (CSHB 422), see 1975 House Journal, p. 1456.

Sec. 47.25.985. Penalties. (a) A person is guilty of a misdemeanor if he:

(1) knowingly acquires, possesses, uses, alters or transfers food coupons or authorization to purchase food coupons in violation of AS 47.25.975 — 47.25.980 or the regulations adopted under AS 47.25.980;

(2) presents food coupons or causes them to be presented for payment or redemption knowing them to have been transferred, received, altered or used in a manner violating AS 47.25.975 — 47.25.980 or the regulations adopted under AS 47.25.980; or



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

JAN 22 1982

RECEIVED
JAN 23 1982

GOVERNORS OFFICE

Honorable Jay S. Hammond
Governor of Alaska
Juneau, Alaska 99801

Dear Governor Hammond:

Review of the Medicaid quality control error rate for the April - September 1980 period shows that Alaska has not attained its target quality control error rate for this period. Federal regulations, 42 CFR 431.801(e), require that your State be subject to a reduction in Federal funding. Your target error rate for April - September 1980 is 5.0 percent. The actual error rate is 5.1 percent; therefore, the amount of the potential reduction in Federal funding is approximately \$3,000.

The State may request suspension of the disallowance by demonstrating its commitment to the reduction of errors through the development and implementation of a sound corrective action plan. The plan must be submitted within 30 days of the date of this letter. Enclosed is a guide to assist you in developing and submitting your State's plan.

I am concerned that Alaska's error rate has exceeded the target. I want to emphasize, however, that disallowance for failure to meet the target for the next quality control period will be governed by the statutory provisions of the Michel amendment as reflected in 42 CFR 431.802. I do not anticipate a continuation of this current practice of suspensions under the Michel amendment. I trust that the corrective actions already implemented and those planned will enable the State to achieve its target error rates.

As you are aware, David Stockman, Director of the Office of Management and Budget, notified you of a meeting of selected States to be held in Washington, D.C., on January 29, 1982, to discuss error reduction and management improvement. Each State was asked to designate two representatives to attend that session. We hope State officials will be present.

Sincerely,

Richard S. Schweiker
Secretary

ENCLOSURE



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB 357

March 18, 1981

The Honorable Jim Duncan
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which would revise and consolidate existing statutes dealing with adult public assistance. The primary purpose of this bill is to recognize the existence of supplemental security income (SSI) and the elimination of separate aged, blind, and disabled programs on the federal level. (See 42 U.S.C. 1381 et seq.; and P.L. 92-603, sec. 303(a) and (b), which repealed 42 U.S.C. 301 et seq. [old age], 1201 et seq. [blind], and 1351 et seq. [disabled].)

This bill would eliminate duplication and make incidental corrections and other technical improvements. This should increase clarity, efficiency of administration, and the ease of future amendments. Substantive changes are minimal. This bill would not alter the amounts to be paid recipients of adult public assistance.

A section-by-section description is attached for your convenience.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Jay S. Hammond".

Jay S. Hammond
Governor

MEMORANDUM

TO: Helen D. Beirne
Commissioner
Department of Health
and Social Services

DATE: September 6, 1979

FILE NO: J-66-087-80

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Payment for Institutional
Care of Delinquent and
Dependent Children.

By: ^{THR}
Thomas H. Robertson
Assistant Attorney General

You have asked this office to review two means of controlling expenditures made under AS 47.40 for the institutional care of delinquent and dependent children. You have asked (1) whether the Department of Health and Social Services may deny cost of living and staff salary increases when setting payment rates for fiscal year 1980, and (2) whether the Department of Health and Social Services may negotiate payment rates for fiscal year 1980 with institutions that have expressed an interest in doing so.

The short answer to these questions is that the Department of Health and Social Services may not disregard the mandatory terms of AS 47.40 even when faced with an anticipated shortfall in appropriated funds. The agency must provide appropriate institutional services, and pay for those services, for as long as available funds permit it to do so.

AS 47.40, entitled "Purchase of Services", was enacted in 1970. Under the terms of AS 47.40.010(a)(2) the Department of Health and Social Services is required to "determine the rates of payment for the full cost of services required" when purchasing services on behalf of persons for whom it has assumed responsibility under state law. AS 47.40.010(a)(3) requires, in particular, that it pay all

expenses related directly to the full cost of services at the levels of care required." 1/

In determining what constitutes the "full cost" of services, AS 47.40.040(a) directs that two elements be included:

In this chapter, "full cost" of services shall be determined by the per person, per day cost in the preceding fiscal year plus a proportionate share of anticipated cost of living and staff salary increment increases for the fiscal year for which the full cost of services, determined to be necessary by the department, is being determined. 2/

i/ The agency's basic responsibilities when purchasing services are described in AS 47.40.010 which reads as follows:

Purchase of services. (a) When the department purchases services for persons for whom the state has assumed responsibility under the laws of the state, the department shall

(1) adopt regulations establishing the level of care to be provided;

(2) determine the rates of payment for the full cost of services required;

(3) pay all expenses related directly to the full cost of services at the levels of care required;

(4) make the placement of persons in accordance with the levels of care provided for in the regulations.

(b) Services of jails and other penal institutions may not be included in services purchased by the state in this chapter.

2/ According to AS 47.40.040(b), the "full cost" of services does not include:

(1) expenses, including salaries and fees, incurred in raising funds;

(2) funds expended for construction, major equipment and other capital expenditures;

(3) depreciation and replacement costs of, and costs of additions to, major property and equipment;

(4) religious training and education; and

(5) services provided which are substandard to, or exceed, the requirements of the department."

Each February the Department of Health and Social Services is directed to hold public meetings to "review, study, and propose, the necessary levels and rates" for the succeeding fiscal year. Before their adoption the proposed levels of care and rates of payment must be reviewed by the legislature. See, AS 47.05.010(14).

The legislature has, by statute, recognized its own responsibility to provide sufficient funds to meet the needs of delinquent and dependent children who have been committed to the custody of the Department of Health and Social Services under AS 47.10. Pursuant to AS 47.10.270, "[f]unds to carry out this chapter shall be provided for in the general appropriation act of the legislature." This provision is complemented by regulations of the Department of Health and Social Services, found at 7 AAC 50.102, which provide that the agency will pay the "full cost" of services only "when legislative appropriations permit" it to do so.

We are informed that after conducting hearings in February, 1979, the Department of Health and Social Services proposed that institutional providers be given 10% cost of living and 7% salary increases over the per person per day rates paid in fiscal year 1979. At that time the agency cautioned legislators that it might have to refrain from purchasing services from some providers in order to avoid exceeding the dollar amount which had been requested. See, 1979 House Journal Supp. No. 37 (March 31, 1979).

In its general appropriation, however, the legislature provided funds for institutional child care in an amount substantially below that sought by the Department of Health and Social Services. You have informed us that, as a result, the agency does not have sufficient funds on hand to award full cost of living and salary increases while continuing present placement practices for the entire fiscal year. 3/

3/ The general appropriation measure for fiscal year 1980 was enacted as FCCSSB 53.

Perhaps by way of explanation for this reduction, the Free Conference Committee included two statements of "legislative intent" in its report on the operating budget of the Division of Social Services:

The department shall develop the necessary regulations to control the annual increases being experienced in the institutional care daily rates. This will include developing specific guidelines for allowable costs and requiring that the auditors disallow wasteful and unnecessary costs associated with the program.

The department should operate the program at the full statutory level and if caseload or other cost increases will generate total payments which exceed the amount of the appropriation, the department will not reduce the program without prior legislative approval. 4/

No comparable statement was included in the committee's report on the operating budget of the Division of Corrections. 5/

4/ Alaska Legislature, FY 1980 Free Conference Committee Report -- Social Services Operating Budget, p. 48 (1979).

5/ Institutional child care is provided through either the Division of Corrections or the Division of Social Services as a function of whether the child has been adjudicated a delinquent or a child in need of aid under AS 47.10.

These circumstances place the Department of Health and Social Services in a difficult position. Article IX, Sec. 13, of the Alaska Constitution clearly prohibits it from expending funds which have not been appropriated in accordance with law. 6/ It is therefore apparent that without an additional appropriation either institutional services or the rates paid for those services must be reduced. The problem is that passage of future legislation cannot be guaranteed and each means of limiting expenditures is arguably prohibited by existing law.

The legislative mandate embodied in the report of the Free Conference Committee does not of itself resolve the issues you have raised. The cost saving devices described by the committee cannot provide relief in fiscal year 1980. The attempted proscription of program reductions "without prior legislative approval" is invalid except insofar as it restates existing law.

Under AS 47.40 the Department of Health and Social Services is required to base current payment rates on the "per person per day cost" in the proceeding fiscal year. The restrictions on allowable costs sought by the Free Conference Committee can thus have no effect on payment rates until 1981. This result derives from the operation of exist. statutes the violation of which cannot be sanctioned by mere expressions of legislative design.

Three reasons lead us to conclude that the committee's attempted prohibition of program reductions is invalid. 7/ First, a committee report does not rise to the level of legislation. Second, Article II, Sec. 13, of the Alaska

6/ Article IX, Sec. 13, provides: No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.

7/ It is not particularly clear whether the committee intended to proscribe reductions in institutional services in addition to the rates paid for those services.

Constitution bars the amendment of substantive law by way of an appropriation. 8/ Third, the committee's language can be construed as a sweeping attempt to limit the exercise of executive discretion and, as such, runs afoul of the constitutional doctrine of separation of powers.

The means of controlling expenditures which you have proposed must, consequently, be examined in light of existing statutes and regulations addressing both payment rates and the ongoing responsibilities of the Department of Health and Social Services with respect to the care of children in its custody.

The Department of Health and Social Services has profound obligations toward delinquent and dependent children whom the courts have committed to its custody under AS 47.10.080. Subject to certain qualifications not relevant here, AS 47.10.230(a) provides that it "shall arrange for the care of every child committed to its custody by placing him in a foster home or in the care of an agency or institution providing care for children inside or outside the state." The custodial relationship between the agency and these children is described in AS 47.10.084(a):

This relationship imposes on the department and its authorized agents . . . the responsibility of physical care and control of the child, the determination of where and with whom the child shall live, the right and duty to protect, train and discipline the child, and the duty of providing the child with food, shelter, education, and medical care. These obligations are subject to any residual parental rights and responsibilities and rights and responsibilities of a guardian if one has been appointed.

8/ Article II, Sec. 13, provides: Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

An argument can be made that these responsibilities provide authority for the Department of Health and Social Services to take reasonable steps which would assure that it is not forced to forego the institutional placement of children, as appropriate in individual cases, in the event of legislative inaction. 9/ We note in this regard that AS 47.10.150(7) directs the agency to "do all acts necessary to carry out the purposes" of AS 47.10.

This argument is not unassailable. It is premised on the notion that a possibility of legislative inaction can justify executive implementation of an immediate remedy designed to mitigate its impact. The remedies you have proposed, however, fly in the face of the mandatory terms of AS 47.40. 10/

Your inquiry thus goes to the very structure of our political system: can an executive agency violate one statutory mandate in order to assure that it is not later forced to violate another? The answer to this question is clear. An executive agency is a creature of statute and, as such, is charged with legislatively prescribed responsibilities. It must discharge those responsibilities for as long as it has funds with which to do so. See, 7 AAC 50.102.

Your first proposal is to simply deny the statutory cost of living and salary increases. 11/ This course of action would unquestionably do violence to the rate determination scheme set out in AS 47.40.040 and, consequently, it cannot be undertaken if funds for these increases are presently available.

9/ We assume that institutional placement under AS 47.10 is accomplished only as "a last resort" for the purposes of treatment or rehabilitation. See, AS 47.05.060, AS 47.10.080.

10/ By memorandum of advice dated October 11, 1971, we advised the Department of Health and Social Services that AS 47.40 is couched in mandatory terms.

11/ This proposal appears to assume that there exist institutions which are willing to provide services without, at least for the time being, receiving cost of living and salary increases.

Your second proposal, that of negotiating payment rates with institutions that are willing to do so, must be considered in light of AS 47.40.040 which mandates that rates be determined "by the per person per day cost in the preceeding fiscal year" plus the lesser cost of living and salary increases. 12/ Its implementation could lead to the wholesale breakdown of this method of rate determination by leading to the under-utilization of competing, more expensive institutions. Those institutions, presumably, would be forced to either accept comparable reductions or institute litigation to force the adoption of rates based upon prior year costs. 13/

Although we have strong misgivings as to the wisdom of a statute which mandates payment of higher rates than an institution is willing to accept, we cannot sanction the direct negotiation of payment rates. AS 47.40 was clearly intended to provide a simple, mechanistic method of rate determination. Compliance with that method is mandatory. 14/

12/ We are informed that this proposal was originally suggested by institutions which experienced high per person per day costs in fiscal year 1979 as a result of low occupancy or other factors. These institutions apparently fear that rates based on prior year costs will discourage the agency from utilizing their services.

13/ The courts would not necessarily hold that an institution has standing to contest the rates applied to competitors since the protection of occupancy levels does not appear to be a benefit which AS 47.40.040 was designed to confer. See, U.S. v. SCRAP, 412 U.S. 669, 687 (1972).

14/ It is important to recognize that while specific institutions might waive entitlement to additional funds, the language of AS 47.40.010-040 appears to address the actions of the Department of Health and Social Services.

We observe, in conclusion, that the circumstances you have outlined place the agency's ongoing responsibilities toward children in direct competition with the established method of computing the rates to be paid for institutional services. We have indicated that existing statutes preclude agency action which would assure that the needs of these children are met throughout the fiscal year. We wish to emphasize, however, that the Department of Health and Social Services is under an obligation to provide appropriate services until funds are exhausted. 15/ The next step, in short, is up to the legislature. 16/

THR:jal

15/ We note that the Governor's contingency fund may be available for temporary relief. Recourse to that fund would clearly be appropriate if funds are depleted before the legislature has had an opportunity to enact curative legislation.

16/ Accordingly, we strongly urge that the Department of Health and Social Services bring this matter to the attention of the legislature at its earliest opportunity.

COMPROMISE LANGUAGE TO
CS FOR HOUSE BILL NO. 357 (RULES) am
REGARDING FULL COST OF CARE STATUTE

PROVIDER
Compromise
Language

For an Act entitled: "An Act relating to public assistance and other assistance provided on behalf of the state to individuals; and providing for an effective date."

* Sec. 19. FINDINGS. The legislature finds that the methods for establishing payment rate: for assistance provided on behalf of the state by residential child care facilities set out in AS 47.40 is not adequate. The legislature further finds that during the period of study, operation of AS 47.40 should be suspended. Between June 30, 1982 and July 1, 1984, the Department of Health and Social Services shall conduct a study of alternatives to AS 47.40. The study shall be conducted by a committee of 5 members to be appointed by the Commissioner of the Department of Health and Social Services; 3 shall be employees of the Department of Health and Social Services and 2 shall be providers. The study shall include, among other matters determined by the department, redefining the manner in which the rate is calculated, allowable reimbursement for capital costs, and utilization of other than departmental sources of funds to finance services and construction of such institutions.

* Sec. 20. The operation of AS 47.05.010(14), AS 47.40.040, and AS 47.40.050 is suspended from July 1, 1982 through June 30, 1984. During the period of suspension, payment for services provided by residential child care facilities shall be made in accordance with the provisions of Sec. 21 and 22 of this Act.

* Sec. 21. For fiscal year 1983, the payment per day for each child placed by the Department of Health and Social Services in residential care is:

ALASKA CHILDRENS SERVICES RECEIVING HOME (ANCHORAGE)	\$149.85
ALASKA CHILDRENS SERVICES JESSE LEE HOME (ANCHORAGE)	165.46
ALASKA CHILDRENS SERVICES RABBIT CREEK GROUP HOME (ANCHORAGE)	166.40
ALASKA CHILDRENS SERVICES NORTH STAR HOME (ANCHORAGE)	103.55
ALASKA CHILDRENS SERVICES AQUARIUS HOUSE (ANCHORAGE)	107.60
ALASKA CHILDRENS SERVICES COLLETTI HOUSE (ANCHORAGE)	117.51
ALASKA BAPTIST FAMILY SERVICE CENTER (ANCHORAGE)	117.02
BOOTH MEMORIAL HOME (ANCHORAGE)	146.90
HILLTOP HOME, INC. (ANCHORAGE)	85.53
KENAI PENINSULA COMMUNITY CARE CENTER (KENAI)	91.74
KODIAK BAPTIST MISSION (KODIAK)	61.61
TURNING POINT BOYS RANCH (WILLOW)	105.37
NORTH STAR CHILDRENS HOME (DOT LAKE)	62.25
PRESBYTERIAN HOSPITALITY HOUSE (FAIRBANKS)	111.98
JUNEAU RECEIVING HOME (JUNEAU)	106.17
ST. JUDE CENTER, INC. RECEIVING HOME (JUNEAU)	72.33
NOME RECEIVING HOME (NOME)	116.97
NORTH SLOPE BOROUGH CHILDRENS RECEIVING HOME (BARROW)	158.35
KETCHIKAN TEEN HOME I (KETCHIKAN)	74.26
KETCHIKAN TEEN HOME II (KETCHIKAN)	81.61
KETCHIKAN CHILDRENS HOME INTENSIVE TREATMENT UNIT (KETCHIKAN)	152.56
SITKA RECEIVING HOME (SITKA)	40.66
BETHEL RECEIVING HOME (BETHEL)	75.52
BETHEL GROUP HOME (BETHEL)	59.06
COVENANT HIGH SCHOOL (UNALAKLEET)	51.16

* Sec. 22. During fiscal year 1984 the Department of Health and Social Services shall offer to pay for assistance provided on behalf of the state by a residential child care facility in the amount established under Section 21 for that facility for fiscal year 1983, plus five percent.

* Sec. 23. This Act takes effect July 1, 1982.

March 24, 1982

DOCUMENT NO. 109-82

The Honorable Patrick J. Carney
Representative
Alaska State Legislature
Pouch V
Juneau Alaska 99811

Dear Representative Carney:

The purpose of this letter is to describe to you the approach this Department will take to reduce funding for institutional care. As you are aware, residential care is only used as a placement resource for children who cannot be served in foster family care due to their behavioral problems or need for specialized treatment. Therefore, the Department has reviewed the existing child care facilities within the State and grouped them according to the types of children they are able to serve and the services they provide. The three groupings the Department identified are emergency shelter care facilities (receiving homes) and two levels of ongoing residential child care, each of which are described in the following paragraphs.

Residential Child Care I

The children served by Level I facilities are children who are unable to live in foster care due to their behavioral problems. There is a wide range of behavioral problems which can be managed in a Level I facility, including children who have disruptive acting out behavior (such as temper outbursts, destruction of property, unwillingness to comply with requests of parents, teachers, or other authority figures, and intimidation of peers); children who have been involved in delinquent activities; teenagers who are struggling to emancipate themselves from their parents or who have been rejected by their parents; youth with seductive, provocative or promiscuous sexual behavior; youth who abuse alcohol, drugs, or other substances; youth who have an inability to form close attachments to close parental figures; and runaways.

A Level I facility provides structure, control, and guidance to these youths. Most often such a facility emphasizes the importance of the group in guiding and shaping the behavior of children in care, rather than a more formal "treatment" modality, since these types of behavior problems respond well to "peer pressure."

Level I care may be provided in small group homes or cottages, or in a large campus setting. The facilities may either be community-based and emphasize involvement in community activities or may create a more self-contained environment. For the most part, children attend community school programs.

J.M.C.

Residential Child Care II

Residential II facilities serve seriously emotionally disturbed youth who need professional treatment services. Examples of the types of problems these youth manifest include psychosis or borderline psychosis, seriously aggressive and assaultive behavior, bizarre behavior, severe depression, self-mutilation, hallucinations, or self-destructive behavior. Many of the youth need psychiatric medication and many also require special education programs.

A Level II facility provides professional treatment services, including professional social work staff who provide individual and group counseling to the residents and their families. Social work staff also help to design and coordinate the other treatment services these youth need. Child care or cottage staff who work with these youth in their daily living activities must have special training and skills to provide the structure, guidance, and supervision these youth need in order to prevent injury to themselves or others. These facilities must have the services of a consulting psychiatrist to provide appropriate medical and psychiatric supervision, and often a consulting clinical psychologist is used to provide diagnostic evaluations of children and to consult with staff regarding appropriate treatment strategies. A Level II facility must have arrangements with a school district to provide special education, often in the form of a self-contained educational program within the facility. Level II facilities generally offer specialized recreational programs as well. All of these additional treatment services result in higher per diem costs for Level II youth.

Emergency Shelter

An emergency shelter facility provides short-term care (no longer than 60 days, but often less than one week) for children or youth who must be placed on an emergency basis due to a family or personal crisis. Emergency shelter facilities can operate a "simpler" program in that they do not have to provide some of the services Level I facilities require. However, they must be able to provide services on an emergency basis, which often results in peaks of service. That is, there are periods of time (weekends, for example) when there is a great demand for emergency shelter care, whereas other periods may be slack. Emergency shelter facilities must be operated in such a way that they can respond to these peak loads. Therefore, they are assumed to require the same funding level as Level I facilities.

Attachments

See budget figures
Rates were developed using three possible budget figures and assuming the repeal or amendment of AS 47.40: Attachment 1 shows base rates which were established using the FY 83 Governor's Budget for in-state institutions of \$10,884,825; Attachment 2 is based on a total of the Governor's Budget minus \$943,700 and was computed with approximately 9% reduction of all base rates; Attachment 3 is based on the Governor's

JK
Jan

Home figure

Budget minus \$2,000,000 and was computed with approximately 18.5% reduction of all base rates; Attachment 4 shows the comparison of rate structures at all three projected FY 83 budget levels to the FY 82 rate structure. In addition, regional rate differences were computed as follows: ★

Southcentral, Southeastern, and Southern Regions	0 Base
Northern Region	Base +15%
Western Region	Base +32%
Northwestern Region	Base +37%

If you, or your staff have further questions, please contact Marsha Hubbard, Director of the Division of Management and Budget within this Department.

Sincerely,



Helen D. Beirne
Commissioner

Enclosures

bcc: DFYS

HDB:JRP:kk

JRP

ATTACHMENT I

Base Rates at the Governor's Budget Level = \$10,884,825

<u>Region/Facility</u>	<u>Negotiated Rate</u>	x	<u>Estimated Census (FTE's)</u>	=	<u>FY 83 Estimated Cost</u>
<u>RESIDENTIAL CARE II</u>					
<u>Southcentral</u>					
Jesse Lee	140.00		13,323	36.5	1,865,200
Rabbit Creek	140.00		2,957	8.1	413,980
Booth Memorial Home	140.00		4,818	13.2	674,520
<u>Southern</u>					
Ketchikan Int.	140.00		1,460	4.0	204,400
			<u>22,558</u>	<u>61.8</u>	<u>\$3,158,120</u>
<u>RESIDENTIAL CARE I</u>					
<u>Southcentral</u>					
Turning Point	98.50		13,140	36.0	1,294,290
Kodiak Baptist	98.50		4,709	12.9	463,836
Aquarius	98.50		1,825	5.0	179,762
Colletti	98.50		1,679	4.6	165,381
North Star	98.50		1,679	4.6	165,381
Alaska Baptist	98.50		3,139	8.6	309,191
Hilltop	98.50		5,986	16.4	589,621
Kenai	98.50		2,519	6.9	248,121
<u>Southeastern</u>					
Juneau Receiving	98.50		4,271	11.7	420,693
<u>Southern</u>					
Ketchikan I & II	98.50		5,476	15.0	539,386
<u>Northern</u>					
North Star	114.00		4,234	11.6	482,676
Presbyterian	114.00		3,103	8.5	353,742
<u>Western</u>					
Bethel Group Home	131.00		1,351	3.7	176,981
			<u>53,111</u>	<u>145.5</u>	<u>\$5,389,061</u>
<u>EMERGENCY SHELTER</u>					
<u>Southcentral</u>					
ACS Receiving	98.50		5,146	14.1	506,881
Kodiak Baptist	98.50		1,533	4.2	151,000
<u>Southeastern</u>					
Sitka Receiving	98.50		1,679	4.6	165,381
St. Judes	98.50		73	1.2	7,190
<u>Northern</u>					
"R" House	114.00		5,256	14.4	599,184
<u>Western</u>					
Bethel Receiving	131.00		1,314	3.6	172,134
<u>Northwestern</u>					
Nome Receiving	135.30		1,241	3.4	167,907
North Slope	135.30		2,372	6.5	320,932
Kotzebue	135.30		1,825	5.0	246,923
			<u>20,439</u>	<u>56.0</u>	<u>\$2,537,532</u>
					<u>\$10,884,713</u>

ATTACHMENT II

Base Rates at the Governor's Budget Level Less (-943,700)

Region/Facility	Negotiated Rate	x	Estimated Census (FTE's)	=	FY 83 Estimated Cost
<u>RESIDENTIAL CARE II</u>					
<u>Southcentral</u>					
Jesse Lee	127.00		13,323 36.5		1,692,021
Rabbit Creek	127.00		2,957 8.1		375,539
Booth Memorial Home	127.00		4,818 13.2		611,886
<u>Southern</u>					
Ketchikan Int.	127.00		1,460 4.0		185,420
			<u>22,558</u> <u>61.8</u>		<u>\$2,864,866</u>
<u>RESIDENTIAL CARE I</u>					
<u>Southcentral</u>					
Turning Point	90.50		13,140 36.0		1,189,170
Kodiak Baptist	90.50		4,709 12.9		426,164
Aquarius	90.50		1,825 5.0		165,162
Colletti	90.50		1,679 4.6		151,949
North Star	90.50		1,679 4.6		151,949
Alaska Baptist	90.50		3,139 8.6		284,079
Hilltop	90.50		5,986 16.4		541,733
Kenai	90.50		2,519 6.9		227,969
<u>Southeastern</u>					
Juneau Receiving	90.50		4,271 11.7		386,525
<u>Southern</u>					
Ketchikan I & II	90.50		5,476 15.0		495,578
<u>Northern</u>					
North Star	103.50		4,234 11.6		438,219
Presbyterian	103.50		3,103 8.5		321,160
<u>Western</u>					
Bethel Group Home	119.50		1,351 3.7		161,444
			<u>53,111</u> <u>145.5</u>		<u>\$4,941,101</u>
<u>EMERGENCY SHELTER</u>					
<u>Southcentral</u>					
ACS Receiving	90.50		5,146 14.1		465,713
Kodiak Baptist	90.50		1,533 4.2		138,736
<u>Southeastern</u>					
Sitka Receiving	90.50		1,679 4.6		151,949
St. Judes	90.50		73 .2		6,606
<u>Northern</u>					
"R" House	103.50		5,256 14.4		543,996
<u>Western</u>					
Bethel Receiving	119.50		1,314 3.6		157,023
<u>Northwestern</u>					
Nome Receiving	123.50		1,241 3.4		153,263
North Slope	123.50		2,372 6.5		292,942
Kotzebue	123.50		1,825 5.0		225,387
			<u>20,439</u> <u>56.0</u>		<u>\$2,135,615</u>
					<u>\$9,941,582</u>

ATTACHMENT III

Base Rates at the Governor's Budget Level Less (-2,000,000)

<u>Region/Facility</u>	<u>Negotiated Rate</u>	x	<u>Estimated Census (FTE's)</u>		= <u>FY 83 Estimated Cost</u>
<u>RESIDENTIAL CARE II</u>					
<u>Southcentral</u>					
Jesse Lee	114.50		13,323	36.5	1,525,483
Rabbit Creek	114.50		2,957	8.1	338,576
Booth Memorial Home	114.50		4,818	13.2	551,661
<u>Southern</u>					
Ketchikan Int.	114.50		1,460	4.0	167,170
			<u>22,558</u>	<u>61.8</u>	<u>\$2,582,890</u>
<u>RESIDENTIAL CARE I</u>					
<u>Southcentral</u>					
Turning Point	80.50		13,140	36.0	1,057,770
Kodiak Baptist	80.50		4,709	12.9	379,074
Aquarius	80.50		1,825	5.0	146,912
Colletti	80.50		1,679	4.6	135,159
North Star	80.50		1,679	4.6	135,159
Alaska Baptist	80.50		3,139	8.6	252,689
Hilltop	80.50		5,986	16.4	481,873
Kenai	80.50		2,519	6.9	202,779
<u>Southeastern</u>					
Juneau Receiving	80.50		4,271	11.7	343,815
<u>Southern</u>					
Ketchikan I & II	80.50		5,476	15.0	440,818
<u>Northern</u>					
North Star	92.00		4,234	11.6	389,528
Presbyterian	92.00		3,103	8.5	285,476
<u>Western</u>					
Bethel Group Home	107.00		1,351	3.7	144,537
			<u>53,111</u>	<u>145.5</u>	<u>\$4,395,609</u>
<u>EMERGENCY SHELTER</u>					
<u>Southcentral</u>					
ACS Receiving	80.50		5,146	14.1	414,253
Kodiak Baptist	80.50		1,533	4.2	123,406
<u>Southeastern</u>					
Sitka Receiving	80.50		1,679	4.6	135,159
St. Judes	80.50		73	.2	5,876
<u>Northern</u>					
"R" House	92.00		5,256	14.4	483,552
<u>Western</u>					
Bethel Receiving	107.00		1,314	3.6	140,598
<u>Northwestern</u>					
Nome Receiving	111.00		1,241	3.4	137,751
North Slope	111.00		2,372	6.5	263,292
Kotzebue	111.00		1,825	5.0	202,575
			<u>20,439</u>	<u>56.0</u>	<u>\$1,906,462</u>
					<u>\$8,884,961</u>

ATTACHMENT IV

INSTITUTIONAL RATE COMPARISONS

Senate figure

House fig

<u>Region/Facility</u>	<u>FY 82</u>	<u>FY 83 Gov. Budget</u>	<u>FY 83 Gov. (943.7)</u>	<u>FY 83 Estimated Cost</u>
<u>RESIDENTIAL CARE II</u>				
<u>Southcentral</u>				
Jesse Lee	165.46	140.00	127.00	114.50
Rabbit Creek	166.40	140.00	127.00	114.50
Booth Memorial	146.90	140.00	127.00	114.50
<u>Southern</u>				
Ketchikan Int.	152.56	140.00	127.00	114.50
<u>RESIDENTIAL CARE I</u>				
<u>Southcentral</u>				
Turning Point	105.37	98.50	90.50	80.50
Kodiak Baptist	61.61	98.50	90.50	80.50
Aquarius	107.60	98.50	90.50	80.50
Colletti	117.51	98.50	90.50	80.50
North Star	103.55	98.50	90.50	80.50
Ak. Baptist	117.02	98.50	90.50	80.50
Hilltop	85.53	98.50	90.50	80.50
Kenai	91.74	98.50	90.50	80.50
<u>Southeastern</u>				
Jureau Rec.	106.17	98.50	90.50	80.50
<u>Southern</u>				
Ketchikan	74.26			
I and II	81.61	98.50	90.50	80.50
<u>Northern</u>				
North Star	62.25	114.00	103.50	92.00
Presbyterian	111.98	114.00	103.50	92.00
<u>Western</u>				
Bethel Group	59.06	131.00	119.50	107.00
<u>EMERGENCY SHELTER</u>				
<u>Southcentral</u>				
ACS Receiving	149.85	98.50	90.50	80.50
Kodiak Baptist	61.61	98.50	90.50	80.50
<u>Southeastern</u>				
Sitka Rec.	40.66	98.50	90.50	80.50
St. Judes	72.33	98.50	90.50	80.50
<u>Northern</u>				
"R" House	111.98	114.00	103.50	92.00
<u>Western</u>				
Bethel Rec.	75.52	131.00	119.50	107.00
<u>Northwestern</u>				
Home Rec.	116.97	135.30	123.50	111.00
North Slope	168.35	135.30	123.50	111.00
Kotzebue	NEW	135.30	123.50	111.00

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

March 24, 1982

DOCUMENT NO. 111-82

The Honorable Mike Beirne
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

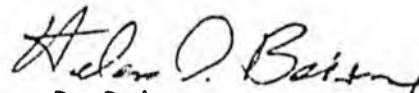
Dear Representative Beirne:

You recently inquired about the probable effects of a reduction of \$2 million in the proposed budget for residential care in the Division of Family and Youth Services. This reduction has been proposed by the HESS Subcommittee of the House Finance Committee.

I am enclosing for your information a letter which was sent to Representative Carney describing the types of care and reimbursement levels which would be considered with budgets set at the Governor's level, at a reduction of \$943,700 as submitted by this Department at the Subcommittee's request and at a reduction of \$2 million as proposed by the Subcommittee. All three levels assume the repeal or amendment of the full cost of care provisions of AS 47.40.

If there is no change in AS 47.40, we would expect to have to close about 44 beds with a reduction of \$943,700 and about 67 beds at the \$2 million reduction level.

Sincerely,



Helen D. Beirne
Commissioner

Enclosure

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 12, 1982

SUBJECT: Effect of SCS HB 357 (HESS) on pending litigation

TO: Senator Vic Fischer
Attn: Nancy Groszek

FROM: Thomas A. Sofo *AS*
Legislative Counsel

You have inquired concerning the effect of SCS HB 357 (HESS) on pending litigation. Although SCS HB 357 (HESS) involves revisions to the state law concerning the payment of public assistance, the question is one which can be answered generally. AS 01.10.100(a) provides:

The repeal or amendment of any law does not release or extinguish any penalty, forfeiture, or liability incurred or right accruing or accrued under such law, unless the repealing or amending act so provides expressly. The law shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture or liability.

The Alaska statutory rule comports with the general common law rule to the effect that ~~rights and liabilities are not affected by the passage of subsequent legislation unless that legislation expressly provides for such effect.~~ A review of the effective date clause for SCS HB 357 (HESS) reveals that the act is to take effect on July 1, 1982. The ~~act makes no overt attempt to be retroactive~~ and therefore is subject to the general rule. Litigation concerning issues which are addressed by the amendments to the state public assistance laws stands or fails on its own merits based on those laws at the time the litigation was instituted rather than being subject to later legislative action. However, on a practical level, ~~when faced with~~

Senator Vic Fischer
Page 2
May 12, 1982

~~statutes which are ambiguous a number of courts will look to recent legislative activity as an interpretative tool in trying to ascertain the legislature's original intent.~~

Where a former statute is amended, or a doubtful meaning of a former statute rendered certain by subsequent legislation, a number of courts have held that such amendment or subsequent legislation is strong evidence of what the legislature intended by the first statute. But, a subsequent legislative construction of a statute is not conclusive of the meaning of the former statute. Sutherland, Sec. 49.11.

Whether or not a court will decide to look to recent law in litigation that is ostensibly controlled by prior statutes seems to depend upon a number of circumstances. The types of circumstances which seem to bear most heavily on the propensity of a court to review recent legislative action are reflected by the statement in an old New York case.

The force which should be given to subsequent, as affecting prior legislation, depends largely upon the circumstances under which it takes place. If it follows immediately and after controversies upon the use of doubtful phraseology therein have arisen as to the true construction of the prior law, it is entitled to great weight . . . if it takes place after a considerable lapse of time and the intervention of other sessions of the legislature, a radical change of phraseology would indicate an intention to supply provisions not embraced in the former statute. People ex rel. Westchester Fire Insurance Co. v. Daveport, 91 N.Y. 574, 591 - 592 (N.Y. 1883)

Strictly speaking, ~~the enactment of SCS HB 357 (HESS) should have no effect on pending litigation. Realistically speaking, a court in this state may consider the content of that bill if an issue in the current litigation is the ambiguity of or the legislative intent behind the current law.~~ It would be merely a guess as to the amount of weight which the court would give to this bill. But it would be impossible to state with certainty that the passage of SCS HB 357 (HESS) would have completely no effect on court cases under the former law.

TAS:ljb



STATE OF ALASKA
OFFICE OF THE GOVERNOR
DIVISION OF INTERNAL AUDIT

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
SHOULD TAKE ADDITIONAL ACTIONS TO REDUCE PAYMENT
OF PUBLIC ASSISTANCE FUNDS TO INELIGIBLE PERSONS

SUMMARY

Public Assistance programs provide financial aid, food purchasing assistance, and medical payment assistance to eligible individuals. Over \$100 million is spent on public assistance programs in Alaska each year. The Department of Health and Social Services administers these programs through their Division of Public Assistance. To prevent erroneous payments of public assistance money, the Department has established a Quality Control Unit and a Fraud Investigation Unit.

ERRONEOUS PAYMENTS ADD TO THE COST OF THE PROGRAMS

Erroneous payments occur through the payment of public assistance benefits to persons who do not meet the eligibility criteria, or through overpayments to persons who are eligible, but for a lesser amount.

In a recent twelve month period over \$7 million of Public Assistance funds were paid in error in the State of Alaska. Errors in Public Assistance cases could also add to the state's cost through a reduction of federal assistance that will occur if federally established target error rates are not met. The Division of Public Assistance estimates that federal assistance could be reduced by \$716,000 if the state error rates are not reduced to federally mandated levels for the October 1980 - March 1981 review period.

EFFORTS TO REDUCE ERRORS NEED CLOSER MONITORING

The Department's Quality Control Unit is responsible for controlling unnecessary expenditures of Public Assistance funds. The Quality Control Unit has not controlled unnecessary expenditures because their time is essentially taken up in performing federal reporting requirements.

The Department has taken other action to control unnecessary expenditures by forming a corrective action committee that is coordinated by the Chief of the Quality Control Unit. This committee has developed an error reduction plan that is now being implemented, but monitoring of the plans implementation has been limited.

To assure the success of this plan the Department should better monitor implementation and impact on error rates. In addition, the Department needs to improve efforts to collect overpayments and efforts to refer potential fraud cases to the proper authorities.

MORE EFFECTIVE FRAUD CONTROLS ARE NEEDED

Available evidence indicates that public assistance fraud is a significant problem in Alaska. The Department established a Fraud Investigation Unit to investigate fraud cases and recover money

erroneously paid as a result of fraud. Because the Department does not consider fraud control a priority effort the Fraud Unit does not receive the resources needed to operate effectively. Few cases result in prosecution and little money is recovered. In addition, the Fraud Unit does not meet the federal requirements.

RECOMMENDATIONS

The Commissioner of Health and Social Services should take the following actions.

To assure that the error rate is reduced:

- more closely monitor the implementation of the error reduction plan,
- obtain periodic reports on the plan's impact on error rates, and
- If the error rate is not reduced, take additional action to reduce the rate to an acceptable level.

To improve efforts to collect overpayments of public assistance:

- notify clients of their obligations in a timely manner,
- strengthen efforts to collect on past due accounts, and
- implement a mandatory payback system for fraud related overpayments.

To assure that all potential fraud cases are referred to the Fraud Investigation Unit:

- provide prompt feedback to employees making the referrals.

To assure effective control of fraud in public assistance programs:

- develop a plan to provide the state with an effective means of controlling and deterring public assistance fraud,
- provide the resources necessary to implement this plan, and
- obtain periodic reports showing how the effectiveness of the program is being improved.

DEPARTMENT COMMENTS

The Commissioner of Health and Social Services generally agreed with the conclusions and recommendations and outlined corrective actions that are being taken to address the conditions described. However, the need for additional corrective action in the area of collections is discussed on page 11. A complete copy of the Commissioner's response is provided as Appendix I.

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PUBLIC ASSISTANCE IN THE
STATE OF ALASKA

Public Assistance programs are State or state-federal programs providing temporary or long-term financial aid, food purchasing assistance, or medical payment assistance to eligible individuals. These programs are intended to assist deprived, disabled, or low-income individuals in maintaining a reasonable living standard.

Financial Aid programs like Aid to Families with Dependent Children (AFDC), provide assistance to needy children because of an absent, disabled or deceased parent. Adult Public Assistance provides assistance to disabled, blind, or adults over 65 years old who are unable to provide for their own basic needs.

The Food Stamp program provides assistance to low-income household with the objective of raising the nutrition level of recipients.

Medical payment assistance is implemented through programs like Medicaid, a joint federal-state program providing payments to providers of medical care for eligible low-income residents of the State.

The State of Alaska, through the Division of Public Assistance, provides aid to about 6,100 families each month through the AFDC program. Each month an estimated 36,600 individuals receive aid through the food stamp program, and about 4,600 through the medical program.

STATE FINANCIAL INVOLVEMENT

In Fiscal Year 80 about \$103,128,300 was spent on public assistance programs in Alaska. About 43 percent, or \$43,910,000 of this was provided by the State of Alaska with the balance coming from the Federal government. Funding for individual public assistance programs is shown below:

Cost of Public Assistance Programs
in Alaska for Fiscal Year 80
(in thousands)

<u>Program</u>	<u>Federal Funding</u>	<u>State Funding</u>	<u>Total Cost</u>
AFDC	\$12,005.9	\$12,005.9	\$24,011.9
Medicaid	16,649.9	14,347.9	30,997.8
Food Stamps	28,036.8		28,036.8
Energy Assistance	2,525.7		2,525.7
Aid to the Blind		119.8	119.8
Aid to the Disabled		3,743.2	3,743.2
General Relief - Cash		797.7	797.7
General Relief - Medical		9,513.3	9,513.3
Old Age Assistance		3,382.2	3,382.2
TOTAL	<u>\$59,218.3</u>	<u>\$43,910.0</u>	<u>\$103,128.3</u>

Public Assistance programs in Alaska have increased dramatically in recent years. In fiscal year 1980 the total cost and average number of cases for the two major public assistance programs (AFDC and Food Stamps) was more than double what it had been in fiscal year 1978, as shown below:

Growth in Major Public Assistance Programs
(dollars in thousands)

<u>Program</u>	<u>FY 1978</u>		<u>FY 1979</u>		<u>FY 1980</u>	
	<u>Total Cost</u>	<u>Average Cases</u>	<u>Total Cost</u>	<u>Average Cases</u>	<u>Total Cost</u>	<u>Average Cases</u>
AFDC	\$16,018	4,672	\$21,277	5,502	\$24,011	6,122
Food Stamps	<u>7,741</u>	<u>3,376</u>	<u>11,304</u>	<u>5,854</u>	<u>23,871</u>	<u>11,110</u>
TOTAL	<u>\$23,759</u>	<u>8,048</u>	<u>\$32,581</u>	<u>11,356</u>	<u>\$47,882</u>	<u>17,232</u>

STATE RESPONSIBILITY FOR
PROGRAM MANAGEMENT AND CONTROL

Alaska Statute 47.05.010 authorizes the Department of Health and Social Services to administer public assistance programs. The statutes also provide that the department "cooperate with the federal government in adopting state plans to make the state eligible for federal matching in appropriate categories of assistance, and in all matters of mutual concern, including adoption of the methods of administration which are found by the federal government to be necessary for the efficient operations of welfare programs."

Federal regulations require that the Department of Health and Social Services submit a state plan for public assistance programs receiving federal matching funds. The Federal regulations require that the state plan provide for both quality control and fraud control. To comply, the Department has established the Quality Control Unit in the Division of Public Assistance, and the Fraud Investigation Unit in the Division of Administrations Services, as shown on the organization chart on the following page:

DEPARTMENT OF HEALTH
AND SOCIAL SERVICES

DIVISION OF PUBLIC
ASSISTANCE

DIVISION OF ADMINIS-
TRATIVE SERVICES

CASH/FOOD
PROGRAMS

FIELD OPERATIONS

MEDICAL PROGRAMS

QUALITY CONTROL/
CORRECTIVE ACTION

FRAUD INVESTIGA-
TION SECTION

FOOD STAMP POLICY

REGIONAL OFFICES

MEDICAL PROGRAM
POLICY

SPECIAL REVIEW
SECTION

ADMINISTRATION

AFDC/APA POLICY

SOUTHEAST-JUNEAU

SOUTHCENTRAL-ANCH

SOUTHWEST-BETHEL

NORTHERN-FAIRBANKS

NORTHWEST-KOTZEBU

STAFF TRAINING

QC FIELD OFFICES

JUNEAU

ANCHORAGE

FAIRBANKS

*
OTHER COMMITTEE
DIVISIONS OR
SECTIONS

APA: ADULT PUBLIC ASSI
TANCE

ERRONEOUS PAYMENTS ARE A SIGNIFICANT
COST OF STATE'S PUBLIC ASSISTANCE PROGRAM

Erroneous payments occur through the payment of public assistance benefits to persons who do not meet the eligibility criteria, or through overpayments and underpayments to eligible persons.

In a recent twelve month period over \$7 million of Public Assistance funds were paid in error in the State of Alaska. Errors in Public Assistance cases could also add to the state's cost through a reduction of federal assistance that will occur if federally established target error rates are not met. The Division of Public Assistance estimates that federal assistance could be reduced by \$716,000 if the state error rates are not reduced to federally mandated levels for the October 1980 - March 1981 review period.

EXPLANATION OF ERROR RATES

Error rates are derived from quality control data that is gathered in accordance with the prescribed federal regulations. An erroneous payment is the payment of public assistance benefits to persons who do not meet the program eligibility criteria or an underpayment or overpayment to eligible program participants.

According to officials in the Division of Public Assistance error statistics are defined as follows:

- (1) Case Error Rate - Total number of incorrect cases for a review period in relation to total cases reviewed in that period.
- (2) Payments Error Rate - Total dollars errors in relation to the total dollars expended in review sample.
- (3) Client Error - Those errors attributable to non-reporting or incorrect reporting of actual circumstances by the client. This includes intentional as well as unintentional failure to report circumstances.
- (4) Agency Error - Those errors attributable to mistakes made by the eligibility technician. For example, a math error made in calculating a clients benefits.

PAYMENT ERRORS

Payments in error are a significant cost to the Public Assistance programs. Based on data for a recent twelve month period, it was projected that 26.5 percent of AFDC cases and 32.3 percent of food stamp cases contained errors which effected payment. These errors effected 13.3 percent and 14.6 percent of the total dollars spent in AFDC and food stamps respectively. The projected dollar loss of these two programs for the twelve month period was \$7 million, as shown below:

Error Rates and Projected Dollar Loss
October 1979 through September 1980

	<u>Case Error Rate</u>	<u>Payment Error Rate</u>	<u>Total Program Dollar</u>	<u>Projected Dollar Loss</u>
AFDC	26.5%	13.3%	\$25,578,000	\$3,401,874
Food Stamps	32.3%	14.6%	\$26,351,757	\$3,834,180
				<u>\$7,236,054</u>

These rates reflect both intentional and unintentional errors. They are not a measure of the loss caused by public assistance fraud since only intentional errors are fraudulent.

FISCAL SANCTIONS

To encourage states to reduce error rates, the Federal government establishes target payment error rates for each six month review period. If a state fails to meet the established rate, federal matching funds will be reduced in proportion to the difference between the targeted rate and the actual rate.

A Quality Control Official told us that to date no fiscal sanctions have been imposed on the State of Alaska. However, the likelihood of a fiscal sanction in excess of \$700,000 for the October 1980 - March 1981 review period was addressed in a recent memo of the Director of Division of Public Assistance as a very real possibility if the present payment error rate for the food stamp program remains constant. The target error rate for the October 1980 - March 1981 period is 12.6 percent but with 63 percent of the sample data completed the error rate is projected at 19.2 percent. The state would therefore be liable for 6.6 percent of the total dollar issuance for food stamps during the six month review period. This potential sanction is presently estimated at \$716,000.

EFFORTS TO REDUCE ERRORS
NEED CLOSER MONITORING

The Department's Quality Control Unit is responsible for controlling unnecessary expenditures of Public Assistance funds. The Quality Control Unit has not controlled unnecessary expenditures because their time is essentially taken up in performing federal reporting requirements.

The Department has taken other action to control unnecessary expenditures by forming a corrective action committee. This committee has developed an error reduction plan that is now being implemented, but monitoring of the plans implementation has been limited.

To assure the success of this plan the Department should better monitor implementation and impact on error rates. In addition, the Department needs to improve efforts to collect overpayments and efforts to refer potential fraud cases to the proper authorities.

QUALITY CONTROL RESPONSIBILITY

The Department developed a state plan and established a Quality Control Unit as required by federal regulations.

According to the Executive Budget it is the role of the Quality Control Unit to monitor and evaluate the appropriateness of payments to public assistance clients in order to reduce unnecessary and unauthorized expenditures of state and federal funds. The Budget also states that when quality control activities disclose areas in which expenditures are being inappropriately made or denied one or more corrective actions are initiated, such as:

- recommendations for procedural changes,
- collection actions for cases where funds are judged to be recoverable, or
- referral to the proper authorities when there is an indication of willful misrepresentation.

According to the Quality Control Supervisor, present efforts of the Quality Control Unit are limited to complying with federal sampling and reporting requirements. Quality Control case reviews are performed only on programs receiving federal funding and according to federally prescribed methods. Federal forms are completed for each of these cases and periodic reports are submitted to the federal government.

According to the Quality Control Supervisor, the present workload does not allow them to perform corrective actions.

CORRECTIVE ACTIONS ARE IN PROCESS

The Department has taken action to reduce errors. According to the Director of Public Assistance the following actions have been taken since 1979:

- The Quality Control Unit was transferred to the Division of Public Assistance, placed directly under the Director, and the Quality Control Manager's role was expanded to include development and monitoring of corrective action;
- Federal agencies were invited to participate in the Alaska error reduction effort;
- An ad hoc Corrective Action Committee was created;
- Division staff were advised that error levels were a serious problem that everyone should work to solve;
- Primary error reduction efforts were focused on the AFDC program;
- Eligibility worker and managerial positions were reclassified;
- Funding was secured for a computer system, and
- Steps were taken to assure that client records included social security numbers.

Payment error rates in the AFDC program decreased significantly when client records were corrected to include social security numbers. During the period 10/78 - 3/79 all AFDC cases that did not have a social security number were technically ineligible according to federal regulations, and were counted as payment errors. After client records were corrected they were no longer counted as errors and the payment error rate dropped substantially in the next reporting period (4/79 - 9/79) as shown below:

	<u>10/78 - 3/79</u>	<u>4/79 - 9/79</u>
State-calculated error rate	22.7%	13.1%
Federally- calculated error rate	28.8%	16.5%

Federally calculated error rates are not yet available for periods subsequent to 9/79, but the state calculated rate has declined from 13.1 percent to about 12 percent for the period ending 3/81.

The Corrective Action Committee is chaired by the Director of Public Assistance, with the Quality Control Supervisor serving as the coordinator. The committee is responsible for developing an error reduction plan designed to identify reasons for errors and corrective actions needed.

The plan is developed primarily from the result of Quality Control reviews. Other sources include weekly management reports, federal reviews and input/feedback from Field Office Staff. The Committee is responsible for reviewing and updating the plan at least quarterly.

The error reduction plan identifies problems contributing to the error rate and indicates a corresponding corrective action to reduce or eliminate the problem.

BETTER MONITORING IS NEEDED

The Corrective Action Coordinator has delegated responsibility for implementation of corrective actions specified in the error reduction plan to individuals in the Division of Public Assistance. We discussed monitoring efforts with these individuals and found that their efforts to monitor implementation are generally quite limited. For example, one official stated that monitoring efforts are limited to weekly phone calls to the Regional Assistance Payment Managers and a monthly narrative report.

For several of the problems noted the plan indicates that the Quality Assurance or Quality Control staff will monitor and evaluate the corrective action. But, we found that while they do consider this in their normal course of duty, they are taking no specific action to monitor implementation of the corrective action.

The organization chart for the Quality Control Unit includes a special review group, and according to the Corrective Action Coordinator, this group will be responsible for monitoring the implementation of corrective action. But, at the present time there is no staff assigned to this group. The Director of Public Assistance said that one staff was assigned to this group, but was reassigned to a higher priority area.

COLLECTION EFFORTS HAVE LIMITED SUCCESS

Present efforts to collect overpayments of public assistance funds are divided between the Food Stamps section in the Division of Public Assistance and the Fiscal Section in the Division of Administrative Services. The Food Stamps section is responsible for collecting overpayments on those cases where there was no fraud involved, and the Fiscal section handles those cases that result from fraud investigations.

Clients are not advised in a timely manner that they are expected to pay back the money that was erroneously paid to them. For example, as of April 2, 1981 there were forty AFDC claim determinations dating as far back as January 1981 that had been reviewed and determined to be overpayments, but no letters had been sent to the client demanding repayment. Food stamp claim determination was about two months behind schedule, with about fifty claims pending.

Collection efforts are limited to processing payments received. Follow-up letters for outstanding AFDC payback agreements were last sent in November 1980. The Fiscal section has made no follow-up efforts on delinquent accounts since they assumed the responsibility in July 1980.

Collections are limited. At the time of our review no payment had been received on 76 percent of the outstanding payback agreements, as shown below.

Type of Payback Agreement	Number of Cases	Cases With No Payment Received	% Cases With no Payment Received
Non-Fraud	304	254	84
Fraud	<u>100</u>	<u>54</u>	54
Total	<u>404</u>	<u>308</u>	<u>76</u>

These 404 cases represent \$391,400 owed to the state. Only 10.7 percent of this, or \$22,600 had been collected as of February 1981.

Some clients continue to receive public assistance even after defaulting on payback agreements, as shown below.

	Amount to Payback	Amount Paid	Date of Payback Agreement	Date Last Public Asst. Benefits Rec'd
Client A	\$ 542	\$ 114	1978	April 1981
Client B	524	35	1978	April 1981
Client C	2,729	650	1979	April 1981
Client D	6,099	10	1980	April 1981

Public Assistance officials said part of this problem could be solved by instituting a mandatory payback agreement. Under this type of regulation any client who willfully withholds information concerning their income or resources would be required to have future assistance payments reduced by a specific amount until the debt was paid. This method of collecting payments of fraud claims is optional under federal regulations for the AFDC and Food Stamps programs, but Alaska uses a voluntary payback system.

FRAUD REFERRALS ARE LIMITED

Division of Public Assistance Employees have been instructed to report all suspected fraud cases. A Fraud Complaint form has been established for this purpose. According to Chief Fraud Investigator, about 90 percent of their cases come from referrals by the Division of Public Assistance employees. However, it appears that potential fraud cases are not always reported.

For example, a January 1981 quality control review of an AFDC case found a client had been ineligible for over nine months because of a change in

income status, but had not reported the change to the Division of Public Assistance. The quality control review also disclosed that:

- The client was receiving Social Security checks that were being deposited directly to a bank in Florida,
- The clients AFDC checks were being sent to a post office box in Alaska, and then being deposited in a local bank without signature,
- The residence address shown by the client had been occupied by someone else for over one year, and the current occupant had never heard of the client, and
- The local school district had no record of a school age child shown in the case file.

According to the quality control investigator, this case had not been referred to the Fraud Unit as a potential fraud case.

Employees in the Division of Public Assistance are sometimes reluctant to report potential fraud cases because of a concern that no action will be taken anyway. A recent federal review on the Alaska AFDC program found that:

"There was concern expressed in nearly every office visited that once a fraud referral was made there was never any feedback. As a result, local office personnel are almost always unsure of the status of their fraud referrals that had been referred to the investigative unit. This creates a severe attitudinal problem for workers. If workers feel the state is indifferent to their fraud referrals, they are less apt to continue making them."

This review also found that:

- A worker in Sitka had never received a response on suspected fraud cases that had been referred to Juneau.
- The Wasilla office had sent fraud reports to the regional office, but no response was received and they were told that the fraud investigators are too busy; and
- The Juneau Office staff was neither aware of cases brought to prosecution, nor were they aware of the disposition of any cases that had been referred to the Fraud Investigation Unit.

CONCLUSIONS

The Department has taken action to reduce erroneous public assistance payments by developing an error reduction plan, but monitoring the implementation of specific actions to reduce errors is limited. A Special Review group will be responsible for monitoring implementation of the corrective actions, but the unit has not been staffed. Because the error rate is still very significant, it is important to monitor

implementation of the actions. Closer monitoring of corrective actions is needed so the Department can determine whether the action is properly implemented, and whether any additional actions are needed.

The Department's efforts to collect overpayments of public assistance funds have limited success because clients are not being advised of their obligation in a timely manner, efforts to collect past due accounts are almost non-existent, and there is no mandatory payback agreement.

The Department has instructed employees to refer potential fraud cases to the Fraud Investigation Unit, but the employees often do not make the referrals because they get little feedback on the results of their referrals.

RECOMMENDATIONS

The Commissioner of Health and Social Services should take the following action to assure that the error rate is reduced:

- more closely monitor the implementation of the error reduction plan, and
- obtain periodic reports on the plans impact on error rates, and
- if the error rate is not reduced, take additional action to reduce the rate to an acceptable level.

The Commissioner should take the following action to improve efforts to collect overpayments of public assistance:

- notify clients of their obligations in a timely manner,
- strengthen efforts to collect on past due accounts, and
- implement a mandatory payback system for fraud related overpayments.

The Commissioner should take the following action to assure that all potential fraud cases are referred to the Fraud Investigation Unit by:

- provide prompt feedback to employees making the referrals.

DEPARTMENT COMMENTS

The Commissioner agreed with the recommendation to expand monitoring efforts. However, the Commissioner's response did not fully address the recommendations concerning collection of overpayments and fraud referrals.

Collection of Overpayments

Our report points out three problems in the Department's collection

efforts--not notifying clients of their obligation to repay in a timely manner, not adequately attempting to collect on past due accounts, and not having a mandatory payback system for fraud-related overpayments.

The Commissioner's response does not address the problem of notification of clients of their obligations in a timely manner. We believe the clients must be notified of their obligation in a timely manner, if there is to be timely recovery of overpayments.

The Commissioner stated that the Department is instituting a mail follow-up procedure in an attempt to obtain more repayments of fraud-related overpayments. We believe a mandatory repayment system should be implemented for collection of fraud-related overpayments. We believe the mail follow-up procedure will improve collections, and should also be instituted for non-fraud overpayments.

Fraud Referrals

The Commissioner stated that the Department is preparing a plan for more effectively controlling and deterring public assistance fraud. However, the Commissioner did not specifically address our recommendation that action be taken to assure that all potential fraud cases are referred to the Fraud Investigation Unit. To assure effective fraud control, we believe it is important that all potential fraud cases are referred to the Fraud Unit.

MORE EFFECTIVE FRAUD CONTROLS ARE NEEDED

Available evidence indicates that public assistance fraud is a significant problem in Alaska. The Department established a Fraud Investigation Unit to prosecute fraud cases and recover money erroneously paid as a result of fraud. Because the Department does not consider fraud control a priority effort, the Fraud Unit does not receive the resources needed to operate effectively. Few cases result in prosecution and little money is recovered. In addition, the Fraud Unit does not meet federal requirements.

PUBLIC ASSISTANCE FRAUD IN ALASKA

The Department does not maintain statistics on the estimated total loss through public assistance fraud.

We discussed the significance of the fraud problem with officials in the Fraud Unit and the Division of Public Assistance. While their estimates of the exact extent of the problem varied considerably, the consensus was that public assistance fraud is a significant problem in Alaska.

Department error rate data provides another indication of the significance of the fraud problem. For a recent twelve month period the data shows that 68 percent of the errors in the AFDC program and 54 percent of the errors in the food stamps program were the result of client errors. Client errors are those attributable to non-reporting or incorrect reporting of actual circumstances by the client. These error rates include both intentional and unintentional failure to report circumstances. The errors are not fraudulent unless the incorrect reporting is intentional, and some Department officials believe that most client errors are unintentional, but this data provides an indication of the potential significance of the problem.

RESPONSIBILITY FOR CONTROLLING PUBLIC ASSISTANCE FRAUD

Federal regulations require that the "state plan" must provide:

- Methods and entries for identifying situations in which a question of fraud in the program may exist.
- Procedures developed in cooperation with State's legal authorities for referring to law enforcement officials.

The Department has established a Fraud Investigation Unit in the Division of Administrative Services and has charged them with the investigation and administrative adjudication of recipient and provider fraud cases.

According to their policy statement, the Department is committed to:

- removing all ineligibles from the public assistance rolls
- prosecuting fraud to the fullest extent of the law, and
- recovering all monies erroneously paid as a result of fraud.

The unit consists of a Chief Investigator, two Fraud Investigators, and one secretary. All are located in Anchorage.

FRAUD CONTROL IS A
LOW PRIORITY

To allocate limited resources the Department must prioritize their efforts. The Department prioritizes its resources to: (1) cope with rising caseloads; (2) assure timely delivery of eligibility and payment services; (3) provide effective quality controls to minimize underpayments and overpayments through error; and, (4) provide fraud control. The Fraud Unit falls in the last priority and operates with limited resources.

The staff of the Fraud Unit has remained constant for the past five years while the programs they monitor and the staff level in the Division of Public Assistance have increased significantly, as shown on the chart on the following page. The fraud investigators stated that they cannot handle the existing caseload with current staffing, and we noted that many of the potential fraud cases are never investigated because there is no staff available to conduct the investigation.

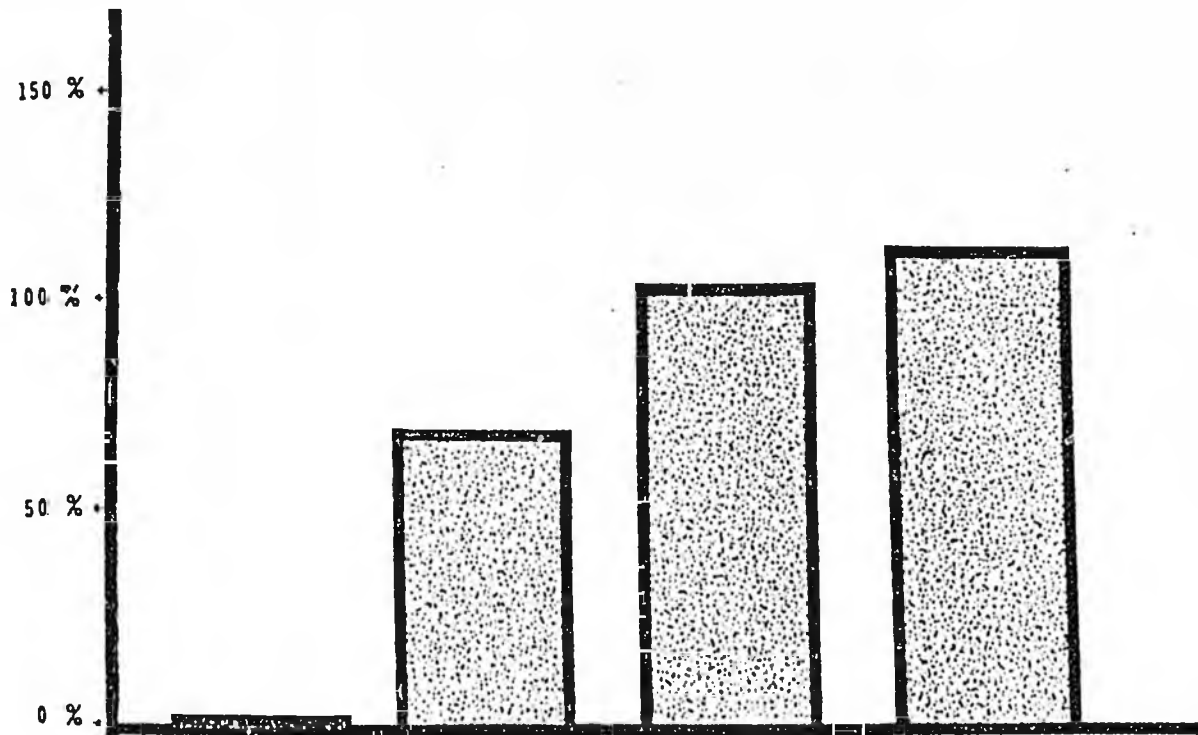
The Fraud Unit is responsible for the entire state, but because of limited travel funds they seldom do fraud investigations outside of Anchorage. The Units total travel budget for fiscal year 1981 was \$9,200. Fraud investigators say there is welfare fraud throughout the state, but because they have limited travel funds they seldom investigate cases outside of the Anchorage area.

When travel funds are available the units effort appear to be productive. The major out-of-town effort in fiscal year 1981 was a four week investigation in the Fairbanks area conducted by two investigators. The results of this effort are summarized below:

- 5 cases prepared for the District Attorney	\$40,064
- 1 lump sum payment in lieu of prosecution	20,975
- 15 payback agreements	<u>36,400</u>
	<u>\$97,439</u>

Another indication of the Unit's lack of resources is the absence of basic equipment needed to conduct fraud investigations. For example, the Assistant District Attorney suggested that they obtain and utilize a camera in their investigative efforts, but they have no photographic equipment and no funds of the purchase of photographic equipment. In another instance the District Attorney advised the fraud investigators that in order to prove fraud in court they must be able to identify in a evidentiary way persons who have committed fraud. He suggested that they have documents fingerprinted and they keep the documents and fingerprints in plastic or other ways in a manner consistent with good law enforcement practice. But, the Unit's total annual budget for supplies is \$400.00 and according to the fraud investigators this does

**FIVE YEAR GROWTH PATTERN FOR DPA / FRAUD STAFFING
AND RELATED PROGRAM GROWTH**



FRAUD
POSITION
GROWTH

0 %

DPA
FULLTIME
POSITION
GROWTH

74 %

DPA
PARTTIME
POSITION
GROWTH

112 %

PA
CASELOAD
GROWTH

128 %

not allow them to purchase the plastic containers referred to by the District Attorney.

FRAUD UNIT IS NOT EFFECTIVE

When potential fraud cases are reported to the Fraud Unit most of the cases are not investigated. In addition, the cases investigated by the Unit usually do not result in payback of overpayment or prosecution.

Cases Closed by the Fraud Unit in 1980

During 1980 the Fraud Unit closed 195 cases, as shown in the following table:

FRAUD CASES CLOSED IN 1980

	<u>No. of Cases</u>	<u>Percent of Total</u>
Closed by Review	102	52.3
Closed by Admin. Action	53	27.2
Closed as Unfounded	19	9.7
Payback Agreement*	17	8.7
Prosecuted	<u>4</u>	<u>2.1</u>
TOTAL	<u>195</u>	100.0

* Only indicates a payback agreement, not actual payback.

Most Fraud Cases Are Closed Without Being Investigated

In 1980, 52 percent of the fraud cases referred to the Fraud Unit were closed by review. Cases closed by review are not investigated but are sent back to the Division of Public Assistance.

The Chief Fraud Investigator told us that the criteria used to determine which cases can be closed by review are as follows:

- The loss is less than \$400
- The information does not substantiate the allegation, or
- The case is more than one year old.

We reviewed 23 fraud cases that were closed by review and found that 20 should have been investigated based on the above criteria. These 20 cases alone represented an alleged loss of \$66,200.

Most Fraud Cases Investigated are Closed Without Obtaining a Payback or Prosecution

In 1980 the Fraud Unit investigated 93 cases, but 72 or 77 percent were

closed by "Administrative Action," or were closed as "Unfounded".

A case is closed by Administrative Action when, after investigation, it is determined that the case does not have fraud potential. A case is closed as Unfounded when, after investigation, it is determined that there is no support for the allegation of fraud. In 1980 the Fraud Unit closed 53 cases by Administrative Action and 19 cases as Unfounded.

Fraudulently Received Payments are Seldom Recovered

In 1980 there were 17 cases closed by "payback". These are cases where the client agreed to pay back to the state money that was received fraudulently. In some cases a lump sum payment was received. In some cases the client signed an agreement to pay back the amount owed on an installment basis, but these agreements were seldom honored. Installment payback agreements were signed for nine of the seventeen cases mentioned above, but only one client had complied with the terms of the agreement.

Few Cases are Prosecuted

In 1980, the Fraud Investigation prosecuted four fraud cases or 2.1 percent of the cases closed that year. The result of these cases are as follows:

- Case No. 1 - The client pleaded "no contest" to 15 counts of welfare fraud. The client was sentenced to 10 days in jail on two counts, with seven days suspended on each count. Client was ordered to make restitution of \$4,599 within 180 days, and to make restitution of \$1,500 within one year.
- Case No. 2 - Client did not appear for trial, was subsequently arrested and trial has been rescheduled.
- Case No. 3 - Client pleaded guilty to 3 counts of welfare fraud. Sentenced to 120 days in jail on each count, with 99 days suspended on each count - sentenced to run concurrently. Ordered to pay restitution of \$993 within two years.
- Case No. 4 - Client pleaded "no contest" to 2 counts of welfare fraud. Ordered to pay \$236 to the state and pay a fine of \$300. Sentenced to 60 days in jail with all suspended.

FRAUD UNIT DOES NOT MEET FEDERAL REQUIREMENTS

The federal regulations that the State has agreed to comply with specify that the State will have established procedures and methods for the prevention and control of program fraud and abuse.

A recent federal examination of Alaska's fraud and abuse program, as it relates to the Medicaid program, concluded that the State's program is not in compliance with federal regulations. A summary of the findings of this report is shown below.

<u>Criteria</u>	<u>Finding</u>
The State Agency must have procedures and methods for detection of fraud situations.	The State does not meet this requirement.
The State must have a method for verifying with recipients whether services billed by providers were received.	The State does not meet this requirement.
The State must have methods for investigating situations of fraud and abuse.	The State partially meets this requirement.
The State must have procedures for the referral of fraud and abuse cases for criminal and civil action.	The State does not meet this requirement.
The State must resolve all full-scale investigations.	The State partially meets this requirement.
Fraud and abuse information must be reported to the appropriate federal official.	The State partially meets this requirement.
The State must include a fraud on all provider claims forms or on the claimant endorsement block of the reverse of all checks.	The State meets this statement requirement.
Providers and recipients must be informed of penalties for Fraud.	The State partially meets this requirement.

CONCLUSIONS

The Department's Fraud Investigation Unit is not effective. The Unit prosecutes few fraud cases and recovers little of the money erroneously paid as a result of fraud. Department priorities focus on providing direct service to clients so only limited resources have been available for fraud control. Because there is a significant amount of fraud in public assistance programs, the Department needs to place more emphasis and resources on fraud control.

RECOMMENDATIONS

The Commissioner of Health and Social Services should take the following action to assure effective control of fraud in public assistance programs:

- develop a plan to provide the state with an effective means of controlling and deterring public assistance fraud,
- provide the resources necessary to implement this plan, and
- obtain periodic reports showing how the effectiveness of the program is being improved.

DEPARTMENT COMMENTS

The Commissioner outlined several actions planned or in process that are consistent with our recommendations for improving the effectiveness of the Fraud Investigation Unit.

PURPOSE AND SCOPE OF REVIEW

Because public assistance programs are rapidly growing this review was conducted to determine what actions the Department of Health and Social Services is taking to prevent misuse of public assistance funds. Specifically, we conducted the review to determine what actions are being taken to reduce erroneous public assistance payments, and what impact these actions are having on the error rate. We also sought to determine what actions are being taken to reduce fraud in public assistance programs.

The following review steps and procedures were used:

- Review of applicable statutes, regulations, codes and administrative procedures;
- Interviews with Department personnel, and with appropriate Federal officials;
- Examination and analysis of Department reports, documents, and statistical data.

Proposed APA regulations August 1979 -

not yet been validly promulgated pursuant to Administrative Procedures Act, but Dept. uses these proposed regulations: Count As Available income SSI payments during the time of eligibility determination & appeals process (6 mos. to 2 yrs.) even though this is not real income

AS 47.05.010 (a) states: "... the amount of assistance is sufficient... to provide the individual with a reasonable subsistence compatible with health and well being..."

the Social Security Administration developed a program to provide interim payment reimbursement to States (20 C.F.R. 55 416.525 AND .1901 et seq.) but the Department does not participate in the program.

Sec. 5

New Section 47.25.252 DISCRETIONARY
RELIEF

Full Cost of Care

Carney called all providers - all agreed they were for
the compromise.

with suspension require the legislature to pay raises
that would have been incurred in 83-84?

* no retroactive clause.

1981 audited rates.

APA

move to adopt Senate CS for working document (Gilman)
Section 9 - Contracting - deleted on House floor, added on

line 4, page 4 - take out "local"