

COMMITTEE REPORT  
SENATE

FURTHER:

3/25/83

Date: \_\_\_\_\_

Mr. President:

The Committee on FINANCE has had CSHA 182725

*regarding participation in residential drug abuse and alcoholism treatment programs from Alaska's minimum wage provisions.*

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 \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- 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:

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CHAIRMAN

STATE OF ALASKA  
FISCAL NOTE

Revision Date 5/12, 1983

*Rep'd 5-12-83*

I. REQUEST

II. FISCAL DETAIL

Bill/Resolution No.: CS FOR HOUSE BILL 182(L&C) Agency Affected: \_\_\_\_\_  
 Title: "An Act exempting participants in Program Category Affected: \_\_\_\_\_  
 Sponsor: Barnes, Clocksin, Bussell, Liska, Larson BRU, Program of Subprogram(s) Affected: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

residential drug abuse and alcoholism treatment  
 EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL						
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

*George E. Mundell*  
 Prepared By: George E. Mundell, Acting Coordinator *[Signature]* Phone: 586-6201  
 Division: Office of Alcoholism/Drug Abuse Date: 5/12/83  
 Approved by Commissioner: Robert Landon Smith, Ph.D. Date: 5/16/83  
 Department: Dept. of H & SS

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

POSITION PAPER

CS FOR HOUSE BILL 182 (L&C)

"An Act exempting participants in residential drug abuse and alcoholism treatment programs from Alaska's minimum wage provisions, and providing a wage scale."

The Department of Health and Social Services is supportive of this legislation.

The issues and remedies surrounding this proposed legislation arose with the advent of a long term care program for the chronic and significantly debilitated alcoholic. The individuals to be served by these programs have long histories of unemployment, skill depreciation, loss of positive employment experiences and loss of positive life experiences. Long term care is defined as treatment lasting from a minimum 120 days to a maximum of 2 years with an average length of 1 year.

One of the intents of long term care treatment program is to have clients engage in a form of work therapy as part of their overall treatment regime. Such work therapy will be designed to help the client re-establish or re-learn basic learning, life and employment skills. It is the intent of the long term care treatment program to be more than a warehouse for the most severely afflicted casualties of the disease alcoholism.

This legislation will permit eligible programs to apply for exemption from the minimum wage while protecting the clients rights.

Recommended by:

George E. Mundell

George E. Mundell  
Acting Coordinator  
Office of Alcoholism/  
Drug Abuse

Date:

5/12/83

Approved by:

Robert London Smith

Robert London Smith, Ph.D.  
Commissioner  
Dept. of Health &  
Social Services

Date:

5/16/83

STATE OF ALASKA  
FISCAL NOTE

Revision Date May 10, 1983

I. REQUEST

Bill/Resolution No.: CS for HB 182 (L&C)  
Title: "...residential drug abuse..."  
Sponsor: House Labor & Commerce  
Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Labor  
Program Category Affected: Worker Protection  
BRU, Program of Subprogram(s) Affected:  
Labor Standards & Safety, Wage and Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		26.3	27.9	29.6	31.4	33.3
200 TRAVEL		0				
300 CONTRACTUAL		10.9	11.6	12.3	13.0	13.8
400 COMMODITIES		1.5	1.6	1.7	1.8	1.9
500 EQUIPMENT		2.5	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		41.2	41.1	43.6	46.2	49.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		41.2	41.1	43.6	46.2	49.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Robert J. Bacolas, Sr. *R. Bacolas*  
Division: Labor Standards and Safety

Phone: 465-4870

Date: May 10, 1983

Approved by Commissioner: Jim Robison *Jim Robison*  
Department: Labor

Date: May 10, 1983

LEG:A:50

Distribution:

Original to Legislative Finance  
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Copy to Department (for Governor introduced bills)  
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Copy to Requestor (if different from Sponsor)

3/8/83

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE

TITLE: "An Act relating to residential drug abuse..."

AGENCY AFFECTED: Department of Labor

Page 2

Under this Bill participants in work therapy in long term residential drug abuse or alcoholism treatment programs may be paid less than the minimum wage prescribed in AS 23.10.050 - 23.10.150, if the rate has been approved by the Commissioner and is in compliance with Federal Law.

The Department will require a Clerk Typist III to provide a focal point between the treatment agency and the Department to insure processing of applications for waiver; routing and clerical assistance for approvals and denials; maintenance of central records system to insure monitoring and periodic review of program residents; answer and route inquiries and complaints for review, and provide clerical support to professional staff. Currently, only two programs - Akeela House and Nugent's Ranch provide long term residential programs.

Assumptions:

Effective date of July 1, 1983

6% per annum inflation rate.

Equipment costs in FY '84 is a one time item.

Limited to long term residential treatment for not more than 180 participants over a two year period.

1.	POSITION TITLE Clerk Typist III				RANGE/STEP 8B	BARG. UNIT G	FORM 12	PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER CS HB 182	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT		LEG.		
3.	CONTINUATION LEVEL		ADDITION	X	JUSTIFICATION						
4.	TYPE OF EXPENDITURE			AMOUNT	<p>This position will provide a focal point (liason) between, alcohol and drug abuse treatment agencies and the department: Duties will include processing applications for waivers; routing and clerical assistance for approvals and denials; maintenance of central records system for monitoring, and review of program residents; answer and route inquiries and complaints for review; and provide clerical support to professional staff.</p> <p>Contractual Services includes \$3,400 in rent, \$2,527 for indirect support services, and \$5,000 for other normal operating costs.</p> <p>The equipment line item consist of \$2,500 to purchase basic office equipment for this position.</p>						
	1		2	3							
	PERSONAL SERVICES*										
5.	Salary		19,188								
6.	Benefits		3,045								
7.	Supplemental Benefits		1,176								
8.	Fixed Benefits		2,880								
9.	TOTAL PERSONAL SERVICES	01		26,286							
10.	Travel	02		0							
11.	Contractual	03		10,927							
12.	Commodities	04		1,500							
13.	Equipment	05		2,500							
14.	Other										
15.	TOTAL COST			41,216							
	RECEIPT CODE	FUNDING SOURCE									
16.		Federal Receipts 1002									
17.		G.F. Match 1003									
18.	100	General Funds 1004		41,216							
19.		I-A Receipts 1005									
20.		Program Receipts 1028									
21.		Other									
FOR B&M USE ONLY											
4A KEY NUMBER _____											

**13** REQUEST FOR  
NEW POSITION

AGENCY Labor

PROGRAM Worker Protection

BRU Labor Standards & Safety

COMPONENT Wage and Hour

Page 1 of 1

Revised Date \_\_\_\_\_

**FY 84**

Offered: 5/17/83  
Referred: Rules

Original sponsors: Barnes, Clocksin,  
Bussell, et al

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 182 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act exempting participants in residential drug  
7 abuse and alcoholism treatment programs from Alaska's  
8 minimum wage provisions, and providing a wage scale."

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

10 \* Section 1. AS 23.10 is amended by adding a new section to read:

11 Sec. 23.10.071. WAGES FOR WORK THERAPY. (a) For work therapy,  
12 as defined in AS 47.37.270, a participant in a residential drug abuse  
13 or alcoholism treatment program designed to extend more than 120 days  
14 may be paid less than the minimum wage prescribed in AS 23.10.050 -  
15 23.10.150 if the rate has been approved by the commissioner under this  
16 section and is in compliance with federal law.

17 (b) The commissioner shall adopt regulations regarding the  
18 payment of wages for work therapy. In adopting the regulations, the  
19 commissioner shall consider whether the work performed by the patient

20 (1) is solely for the benefit of the patient and is that  
21 which is ordinarily carried on by patients in a residential treatment  
22 program;

23 (2) would ordinarily be performed by full-time employees of  
24 the program;

25 (3) is work that may produce income to the patient, other  
26 than wages;

27 (4) produces goods or services the proceeds of which will  
28 economically or otherwise benefit the owners, operators, or businesses  
29 of the rehabilitation program; and

1           (5) creates an unfair competition with private enterprise  
2 because of lower wage standards.

3 \* Sec. 2. AS 47.37 is amended by adding a new section to read:

4           Sec. 47.37.245. WAGES OF PATIENTS. (a) A participant in a  
5 residential drug abuse or alcoholism treatment program may be paid  
6 wages for work therapy. The payment of wages for work therapy by a  
7 drug or alcoholism treatment program shall be considered an allowable  
8 cost under the department's regulations governing costs a grantee may  
9 pay with money received from a grant.

10           (b) No part of the wage earned by the patient worker may be  
11 deducted for the cost of room, board or services. The program, how-  
12 ever, after the payment of wages, may assess and collect the reason-  
13 able cost of treatment according to rates established under AS 47.37.-  
14 240, and on the same basis it assesses and collects from non-working  
15 patients.

16           (c) Wages earned by the patient worker may be held in trust by  
17 the program for the benefit of the patient, and, except as provided in  
18 (d) of this section, may be disbursed by the program only with the  
19 patient's consent

20                   (1) for the support of the patient's dependents;

21                   (2) to pay a civil judgment;

22                   (3) for the purchase of gifts, clothing, and items of  
23 personal use;

24                   (4) to pay restitution or a fine;

25                   (5) for other purposes considered appropriate by the treat-  
26 ment program.

27           (d) Wages earned by the patient worker may be disbursed without  
28 the patient's consent in accordance with a final court order.

29 \* Sec. 3. AS 47.37.270 is amended by adding a new paragraph to read:

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(14) "work therapy"

(A) means an activity that involves a patient in basic employment skills and assists the patient in reintegration into a community;

(B) does not include

(i) activities such as personal housekeeping chores or cooperative responsibilities expected of each patient in the program; or

(ii) work that produces goods or services for sale or distribution, the proceeds of which would be returned to the owners, operators, or businesses of the rehabilitation program.



POSITION PAPER

HOUSE BILL 182

HB 182

"An Act exempting participants in residential drug abuse and alcoholism treatment programs from Alaska's minimum wage provisions, and providing a wage scale."

The Department of Health and Social Services is supportive of this legislation.

The issues and remedies surrounding this proposed legislation arose with the advent of a long term care program for the chronic and significantly debilitated alcoholic. The individuals to be served by these programs have long histories of unemployment, skill depreciation, loss of positive employment experiences and loss of positive life experiences. Long term care is defined as treatment lasting from a minimum 120 days to a maximum of 2 years with an average length of 1 year.

One of the intents of long term care treatment program is to have clients engage in a form of work therapy as part of their overall treatment regime. Such work therapy will be designed to help the client re-establish or re-learn basic learning, life and employment skills. It is the intent of the long term care treatment program to be more than a warehouse for the most severely afflicted casualties of the disease alcoholism.

The Department is also concerned that clients' rights be protected. The Department is also concerned that short term treatment programs provide intensive therapy to appropriate clients. To this end the Department of Health and Social Services would recommend the following.

House Bill No. 182, lines 12 through 14 be amended to read:

(b) Participants in residential drug and alcoholism treatment programs [designed to exceed 120 days in length,] may be paid less than the minimum wage prescribed in AS 23.10.050-23.10.150 for work therapy, as defined in AS 47.37.270.

House Bill No. 182, lines 16 through 19 be amended to read:

Sec. 47.37.245. Wages of Patients. Participants in residential drug abuse and alcoholism treatment programs, [designed to exceed 120 days in length,] shall be paid for work therapy, as defined in AS 47.37.270, at the rates established under AS 33.32.050. [AS 33.32.050(a)].

These recommended changes would have the effect of limiting the applicability of the exemption from the minimum wage law. It is the Department's position that only long term care treatment programs (designed to exceed 120 days) be exempted.

**POSITION PAPER/Department of Health & Social Services**

Recommended by:

George E. Mundell  
George E. Mundell  
Acting Coordinator  
Office of Alcoholism/  
Drug Abuse

Date:

3/1/83

Approved by:

Robert London Smith  
Robert London Smith, Ph.D.  
Commissioner  
Dept. of Health &  
Social Services

Date:

3/4/83

STATE OF ALASKA  
FISCAL NOTE

Revision Date 5/12, 1983

*Rec'd 5-19-83*

I. REQUEST

II. FISCAL DETAIL

Bill/Resolution No.: CS FOR HOUSE BILL 182(L&C) Agency Affected: \_\_\_\_\_  
 Title: "An Act exempting participants in Program Category Affected: \_\_\_\_\_  
 Sponsor: Barnes, Clocksin, Russell, Liska, Larson BRU, Program of Subprogram(s) Affected: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

residential drug abuse and alcoholism treatment  
 EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 98
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
<b>TOTAL OPERATING</b>						
<b>CAPITAL</b>						
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

*George E. Mundell*  
 Prepared By: George E. Mundell, Acting Coordinator *AS* Phone: 586-6201  
 Division: Office of Alcoholism/Drug Abuse Date: 5/12/83  
 Approved by Commissioner: Robert Landon Smith, Ph.D. Date: 5/16/83  
 Department: Dept. of H & SS

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POSITION PAPER

CS FOR HOUSE BILL 182 (L&C)

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This legislation will permit eligible programs to apply for exemption from the minimum wage while protecting the clients rights.

Recommended by: George E. Mundell  
George E. Mundell  
Acting Coordinator  
Office of Alcoholism/  
Drug Abuse

Date: 5/12/83

Approved by: Robert London Smith  
Robert London Smith, Ph.D.  
Commissioner  
Dept. of Health &  
Social Services

Date: 5/16/83

STATE OF ALASKA  
FISCAL NOTE

Revision Date May 10, 1983

I. REQUEST

Bill/Resolution No.: CS for HB 182 (L&C)  
Title: "...residential drug abuse..."  
Sponsor: House Labor & Commerce  
Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Labor  
Program Category Affected: Worker Protection  
BRU, Program of Subprogram(s) Affected:  
Labor Standards & Safety, Wage and Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		26.3	27.9	29.6	31.4	33.3
200 TRAVEL		0				
300 CONTRACTUAL		10.9	11.6	12.3	13.0	13.8
400 COMMODITIES		1.5	1.6	1.7	1.8	1.9
500 EQUIPMENT		2.5	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		41.2	41.1	43.6	46.2	49.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		41.2	41.1	43.6	46.2	49.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Robert J. Bacolas, Sr. *R. Bacolas* Phone: 455-4870  
Division: Labor Standards and Safety Date: May 10, 1983

Approved by Commissioner: Jim Robison *Jim Robison* Date: May 10, 1983  
Department: Labor

LEG:A:5U

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3/8/83

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

TITLE: "An Act relating to residential drug abuse..."

AGENCY AFFECTED: Department of Labor

Page 2

Under this Bill participants in work therapy in long term residential drug abuse or alcoholism treatment programs may be paid less than the minimum wage prescribed in AS 23.10.050 - 23.10.150, if the rate has been approved by the Commissioner and is in compliance with Federal Law.

The Department will require a Clerk Typist III to provide a focal point between the treatment agency and the Department to insure processing of applications for waiver; routing and clerical assistance for approvals and denials; maintenance of central records system to insure monitoring and periodic review of program residents; answer and route inquiries and complaints for review, and provide clerical support to professional staff. Currently, only two programs - Akeela House and Nugent's Ranch provide long term residential programs.

Assumptions:

Effective date of July 1, 1983

6% per annum inflation rate.

Equipment costs in FY '84 is a one time item.

Limited to long term residential treatment for not more than 180 participants over a two year period.

1.	POSITION TITLE Clerk Typist III				RANGE/STEP 8B	BARG. UNIT G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER CS HB 182	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				ADDITION	X	JUSTIFICATION			
4.	TYPE OF EXPENDITURE			AMOUNT		<p>This position will provide a focal point (liason) between alcohol and drug abuse treatment agencies and the department: Duties will include processing applications for waivers; routing and clerical assistance for approvals and denials; maintenance of central records system for monitoring, and review of program residents; answer and route inquiries and complaints for review; and provide clerical support to professional staff.</p> <p>Contractual Services includes \$3,400 in rent, \$2,527 for indirect support services, and \$5,000 for other normal operating costs.</p> <p>The equipment line item consist of \$2,500 to purchase basic office equipment for this position.</p>				
	1	2	3							
	PERSONAL SERVICES*									
5.	Salary	19,188								
6.	Benefits	3,045								
7.	Supplemental Benefits	1,176								
8.	Fixed Benefits	2,880								
9.	TOTAL PERSONAL SERVICES	01	26,286							
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11.	Contractual	03	10,927							
12.	Commodities	04	1,500							
13.	Equipment	05	2,500							
14.	Other									
15.	TOTAL COST		41,216							
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.	100	General Funds 1004		41,216						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
4A KEY NUMBER _____										

**13** REQUEST FOR  
NEW POSITION

AGENCY Labor  
PROGRAM Worker Protection  
BRU Labor Standards & Safety  
COMPONENT Wage and Hour

Page 1 of 1

Revised Date \_\_\_\_\_

**FY 84**

POSITION PAPER

HOUSE BILL 182

HB 182

"An Act exempting participants in residential drug abuse and alcoholism treatment programs from Alaska's minimum wage provisions, and providing a wage scale."

The Department of Health and Social Services is supportive of this legislation.

The issues and remedies surrounding this proposed legislation arose with the advent of a long term care program for the chronic and significantly debilitated alcoholic. The individuals to be served by these programs have long histories of unemployment, skill depreciation, loss of positive employment experiences and loss of positive life experiences. Long term care is defined as treatment lasting from a minimum 120 days to a maximum of 2 years with an average length of 1 year.

One of the intents of long term care treatment program is to have clients engage in a form of work therapy as part of their overall treatment regime. Such work therapy will be designed to help the client re-establish or re-learn basic learning, life and employment skills. It is the intent of the long term care treatment program to be more than a warehouse for the most severely afflicted casualties of the disease alcoholism.

The Department is also concerned that clients' rights be protected. The Department is also concerned that short term treatment programs provide intensive therapy to appropriate clients. To this end the Department of Health and Social Services would recommend the following.

House Bill No. 182, lines 12 through 14 be amended to read:

(b) Participants in residential drug and alcoholism treatment programs [designed to exceed 120 days in length,] may be paid less than the minimum wage prescribed in AS 23.10.050-23.10.150 for work therapy, as defined in AS 47.37.270.

House Bill No. 182, lines 16 through 19 be amended to read:

Sec. 47.37.245. Wages of Patients. Participants in residential drug abuse and alcoholism treatment programs, [designed to exceed 120 days in length,] shall be paid for work therapy, as defined in AS 47.37.270, at the rates established under AS 33.32.050. [AS 33.32.050(a)].

These recommended changes would have the effect of limiting the applicability of the exemption from the minimum wage law. It is the Department's position that only long term care treatment programs (designed to exceed 120 days) be exempted.

**POSITION PAPER/Department of Health & Social Services**

Recommended by:

George E. Mundell  
George E. Mundell  
Acting Coordinator  
Office of Alcoholism/  
Drug Abuse

Date:

3/1/83

Approved by:

Robert London Smith  
Robert London Smith, Ph.D.  
Commissioner  
Dept. of Health &  
Social Services

Date:

3/4/83

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y. STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 16, 1983

SUBJECT: Minimum wages  
(HB 182)

TO: Representative Albert P. Adams

FROM:  Russ Josephson  
Legislative Counsel

Following is the comparative sectional analysis you have requested for the three versions of HB 182 (the original and the committee substitutes by the Health, Education and Social Services Committee and the Labor and Commerce Committee):

Section 1

In the introduced version of HB 182, sec. 1 amends AS 23.-10.070, "Exemptions from minimum wage", by adding a new subsection (b) that says that the participants in residential drug and alcoholism treatment programs may be paid less than the minimum wage for work therapy.

In the two committee substitutes, sec. 1 creates a new section, AS 23.10.071, "Wages for work therapy". Subsection (a) of this section is identical in the two committee substitutes except that the Labor and Commerce version has added the phrase "designed to extend more than 120 days" on page 1, line 13. Subsection (b) differs in that paragraph (1) has been rewritten in the Labor and Commerce version for perhaps more clarity, and paragraphs (4) and (5) have been changed.

In the Health, Education and Social Services version, the factors in (b)(4) are "the therapeutic benefit of the work to the patient, the skill required to perform the work, and the role work therapy plays in the patient's treatment plan". The Labor and Commerce version substitutes "whether the work performed by the patient produces goods or services the proceeds of which will economically or otherwise benefit the owners, operators, or businesses of the rehabilitation program".

In the Health, Education and Social Services version, the factors in (b)(5) are "the impact of the wage scale on the program, considering its size, level of funding, and the therapeutic treatment services to be provided". In the Labor and Commerce version, the factor is "whether the work produced by the patient creates an unfair competition with private enterprise because of lower wage standards".

## Section 2

In all three versions of HB 182, sec. 2 creates a new section, AS 47.37.245, "Wages of patients". In the introduced version of HB 182, the section simply says that the participants in these programs may be paid wages for work therapy, referring to definitions of work therapy and rates for wages.

In the Health, Education and Social Services and Labor and Commerce versions of HB 182, sec. 2 has been greatly expanded, but the text is identical. In this version, subsection (a) specifies that the wages are an allowable cost, that is, payable with grant money. Subsection (b) provides protection of the wages earned by preventing deductions for the cost of room, board or services. Subsection (c) provides for holding wages earned in trust, and if the patient consents, for the disbursement for several enumerated purposes.

## Section 3

In all three versions of HB 182, sec. 3 amends AS 47.37.270 by adding a definition of work therapy. The introduced version of the bill defined work therapy as "an activity that trains a patient in minimal employment skills and assists the patient in reintegration into a community". The Health, Education and Social Services version instead defines work therapy as "an activity that involves a patient in basic employment skills and assists the patient in reintegration into a community, but does not include such activities as personal housekeeping chores or cooperative responsibilities expected of each patient in the program". In essence, the Health, Education and Social Services version added one new factor to the original version: those activities not included in "work therapy".

The Labor and Commerce version of the definition is the same as the Health, Education and Social Services version except

Representative Albert P. Adams

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for the addition of another item not included in "work therapy":  
"work that produces goods or services for sale or distribution,  
the proceeds of which would be returned to the owners, opera-  
tors, or businesses of the rehabilitation program".

RJ:ljb

20/004

# MEMORANDUM

State of Alaska

TO: Robert L. Cole  
Coordinator

DATE: April 12, 1982

Office of Alcoholism/Drug Abuse FILE NO: J66-484-82

TELEPHONE NO: 465-3603

FROM: WILSON L. CONDON  
ATTORNEY GENERAL

SUBJECT: Payment of Wages  
in Therapeutic  
Work Program

By: *LS*

Linda Scoccia  
Assistant Attorney General

You have asked several questions regarding payment of wages to clients of Nugen's Ranch, a long-term alcohol treatment facility, for work that they do while residing at the Ranch. You state that a component of the program at Nugen's Ranch is work therapy, and that the program will develop a farm, with the clients engaging in such activities as harvesting crops, tending a greenhouse, and doing general housekeeping at the Ranch, as well as assisting nearby farmers with their crops. You also state that any proceeds in food or money will go back into facility operations.

You pose a series of questions regarding coverage of the client-workers for the above-mentioned activities under state and federal law; essentially, three issues are raised by your questions: (1) are the clients employees?; (2) if yes, are they working in covered employment?; and (3) if yes, are they exempt by virtue of their disability?

The state and federal laws which cover questions of minimum wage and overtime are, respectively, the Alaska Wage and Hour Act, AS 23.10.050-.150, and the Federal Labor Standards Act (FLSA), 29 USC §§201-219, and the regulations adopted thereunder. AS 23.10.065 /1 provides in pertinent part:

MINIMUM WAGES. An employer shall pay to each of his employees wages at a rate of not less than 50 cents an hour greater than the prevailing Federal Minimum Wage Law or \$2.60 an hour, whichever is greater, for hours worked in a pay period, whether the work is measured by time, piece, commission or otherwise.

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/1 The federal counterpart is 29 USC §206. Since both federal and state law seem to apply, and state law is based on the federal law, see *McGinnis v. Stevens*, 543 P.2d 1221 (Alaska 1975), and, for purposes of this inquiry, they are virtually interchangeable, I shall not focus exclusively on either.

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Office of Alcoholism/Drug Abuse

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Both state and federal law have provisions exempting certain categories of workers from payment of the minimum wage /2 and providing, instead, for payment of less than the minimum wage. AS 23.10.070 provides in pertinent part:

Sec. 23.10.070. EXEMPTIONS FROM MINIMUM WAGE. To the extent necessary to prevent curtailment of opportunities of employment, the commissioner may by regulations or orders provide for the employment at wages lower than the minimum wage prescribed in AS 23.10.050--23.10.150 of

(1) an individual whose earning capacity is impaired by physical or mental deficiency, age, or injury, at the wages and subject to the restrictions and for the period of time which is fixed by the commissioner . . . /3

Under state regulation, however, persons participating in alcohol rehabilitation are specifically excluded /4 from the application of this statute. /5

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/2 AS 23.10.070 and 29 USC §214, respectively.

/3 The federal exemption is similar, applying to those "whose earning capacity or productive capacity is impaired by age or physical or mental deficiency or injury", 29 USC §214(c)(1).

/4 Federal regulations, 29 CFR 529.1-529.17, discussed below, exclude such persons if their earning or productive capacity is so impaired that they are not able to earn the statutory minimum wage.

/5 8 AAC 15.120 provides in part:

MINIMUM WAGE EXEMPTION FOR HANDI-  
CAPPED PERSONS.

. . .  
(f) Persons undergoing rehabilitation treatment or therapy relating to narcotics or alcoholism are not considered handicapped for the purposes of AS 23.-10.070 and this section.

Nor is the characterization of the work as "therapeutic" determinative; the question is whether the patient/client is an employee, that is, whether he or she is employed by the program. The FLSA simply defines "employ" /6 as "to suffer or permit to work". 29 USC §203(g). The test adopted by the federal courts looks to the "economic reality" of the situation in determining the existence of an employment relationship. In Souder v. Brennan, 367 F. Supp. 808 (D.C. Cir. 1973), patient-workers in state hospitals for the mentally ill and mentally retarded sought a determination that the provisions of the FLSA applied to them. The court found in their favor, and stated:

[T]he reality is that many of the patient-workers perform work for which they are in no way handicapped and from which the institution derives full economic benefit. So long as the institution derives any consequential economic benefit the economic reality test would indicate an employment relationship rather than mere therapeutic exercise. To hold otherwise would be to make therapy the sole justification for thousands of positions as dishwashers, kitchen helpers, messengers and the like.

367 F. Supp. at 813 (footnotes omitted).

After this decision, the U.S. Department of Labor promulgated, in 1975, new regulations /7 implementing the holding of this case. The regulations expressly apply to "patient-workers" in "residential centers for drug addicts or alcoholics". /8 The regulations define "employment relationship" as follows:

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/6 The Alaska Wage and Hour Act does not define "employ", but AS 23.10.145 provides:

DEFINITIONS. Terms used in AS 23.10.050--23.10.150 shall be defined, where applicable, as they are defined in the federal Fair Labor Standards Act of 1938, as amended, or the regulations adopted under it.

/7 29 CFR 529.1-529.17

/8 29 CFR 529.2(b) and (c)

"Employment relationship" generally arises whenever a patient is suffered or permitted to work. The total facts surrounding a given situation, other than those factors specifically excluded in this subsection, determine whether the test is satisfied. A major factor in determining whether or not an employment relationship exists under this Part is whether the work performed is of any consequential economic benefit to the institution. Generally, work shall be considered to be of consequential economic benefit if it is of the type that nonhandicapped workers normally perform, in whole or in part, in the institution or elsewhere. A patient does not, however, become an employee merely if he or she performs personal house-keeping chores, such as maintaining his or her own quarters, or receives a token remuneration for his or her services. Nor does the patient become an employee if engaged in such activities as making craft products, where the patient voluntarily engages in such activity and the products become the property of the patient making them, or the funds resulting from the sale of the products are divided among the patients participating in that program or are used for purposes of purchasing materials consumed in making the craft products. On the other hand, determination of an employment relationship does not depend on the level of performance of the patient or whether the work is of therapeutic value to the patient. /9

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Thus, the critical factor in determining the existence of an employment relationship is whether the program derives any "consequential economic benefit" from the work done by the clients or patients. As the regulation further states, such a benefit usually is found if the work is of the type that is usually performed by nonhandicapped workers. In the context of your program and the therapeutic purpose of the activities enumerated above, this question is not quite as susceptible of an easy answer as it is in the case of an institution such as a mental hospital which employs its patient as "dishwashers, kitchen helpers, messengers and the like". It does not seem as likely that at Nugen's Ranch a client tending a garden, for example, would be displacing or impairing the employment opportunities of another potential employee that the program would otherwise hire to perform that task. However, this question need not be decided, with respect to the activities you have described, because the final issue raised (I have saved the best for last) resolves the problem.

AS 23.10.055 lists employees who are exempt from the provisions of the Alaska Wage and Hour Act. Subsections (1) and (2) are dispositive. Subsection (1) provides:

(1) an individual employed in agriculture which includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including forestry and lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market;

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Coordinator  
Office of Alcoholism/Drug Abuse

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Subsection (2) provides:

(2) an individual employed in the catching, trapping, cultivating or farming, netting or taking of any kind of fish, shellfish, or other aquatic forms of animal and vegetable life;

Thus under Alaska law, Nugen's Ranch is not required to pay minimum wages to individuals engaged in general house-keeping /10, harvesting crops /11, tending a greenhouse, caring for animals, or fishing; nor is it required to do so under federal law. /12 It must be emphasized, however, that the inquiry is a factual one, and therefore each situation must be individually examined to determine whether the minimum wage laws apply. If clients of Nugen's Ranch were to engage in activities other than those you have described, the questions regarding applicability of the minimum wage laws would have to be looked at anew.

LS/jf

cc: Don Wilson  
Wage & Hour Division  
Department of Labor

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/10 see 29 CFR 2(d), quoted above.

/11 Whether they perform this activity for the Ranch or for other farmers.

/12 29 USC 213(a)(5) and (6).

Employer and, where appropriate, the apprenticeship agency or responsible school official, setting out that representative's findings of specific pertinent facts and conclusions and that representative's order concerning the proposed annulment or withdrawal. In proceedings instituted for annulment, the order may provide for withdrawal instead of annulment if the proof warrants such withdrawal but fails to support adequately the annulment. Such an order shall be deemed issued and effective according to its terms when mailed.

(Secretary's Order No. 10-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 70-2, dated Feb. 23, 1970 (41 FR 9010))

[43 FR 28409, June 30, 1978]

#### § 528.6 Review.

Any employer and, when appropriate, any apprenticeship agency or responsible school official, who expressed timely objection to the proposed action prior to issuance of an order of annulment or withdrawal may obtain review, limited to the question of whether the findings of fact support the order under the regulations in this part. Application for such review shall be in writing addressed to the Administrator and mailed within 15 days after the order is issued. The Administrator may affirm, modify, or reverse the order, or may remand it for further proceedings. The order under review shall not be stayed in effect pending such review. Any aggrieved person may obtain such review of an order entered in proceedings instituted under paragraph (c) of § 528.3.

[21 FR 5310, July 17, 1950, as amended at 22 FR 5603, July 10, 1957]

#### § 528.7 Effect of order of annulment or withdrawal.

Except as otherwise expressly provided in such order, any order of annulment or withdrawal under paragraph (a) or (b) of § 528.3 shall be effective to terminate all certifications to which the regulations in this part apply in effect at the establishment where the cause for withdrawal arose or where the annulled certificate had effect. After such annulment or with-

drawal, such employer shall be ineligible to obtain or exercise the privileges granted in such a certificate until he satisfies the issuing officer that he will not again give cause for annulment or withdrawal if a certificate is issued.

(Secretary's Order No. 10-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 70-2, dated Feb. 23, 1970 (41 FR 9010))

[43 FR 28409, June 30, 1978]

### PART 529—EMPLOYMENT OF PATIENT WORKERS IN HOSPITALS AND INSTITUTIONS AT SUBMINIMUM WAGES

- Sec.
- 529.1 Statutory language and scope of regulations.
  - 529.2 Definitions.
  - 529.3 Advisory Committee on Sheltered Workshops.
  - 529.4 Wage payments.
  - 529.5 Application for certificates.
  - 529.6 Criteria for consideration in issuance of certificates.
  - 529.7 Issuance of certificates.
  - 529.8 Terms and conditions of certificates.
  - 529.9 Renewal of certificates.
  - 529.10 Records to be kept.
  - 529.11 Cancellation of a certificate.
  - 529.12 Review.
  - 529.13 Submission of information, investigations, and hearings.
  - 529.14 Relation to other laws.
  - 529.15 Issuance of certificates for experimental purposes.
  - 529.16 Amendment of this part.
  - 529.17 Review of regulations.

Authority: Sec. 14, 52 Stat. 1000, as amended (29 U.S.C. 214).

Source: 40 FR 6776, Feb. 7, 1975, unless otherwise noted.

#### § 529.1 Statutory language and scope of regulations.

(a) The Fair Labor Standards Act as amended, among other things, makes provision for the employment of handicapped persons at subminimum wages under certificate. This provision is now designated as section 14(c) of the Act. It reads as follows:

(c) (1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment

under special certificates of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age or physical or mental deficiency or injury at wages which are lower than the minimum wage applicable under section 6 of this Act but not less than 50 per centum of such wage and which are commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

(2) The Secretary, pursuant to such regulations as he shall prescribe and upon certification of the State agency administering or supervising the administration of vocational rehabilitation services, may issue special certificates for the employment of—

(A) handicapped workers engaged in work which is incidental to training or evaluation programs, and

(B) multihandicapped individuals and other individuals whose earning capacity is so severely impaired that they are unable to engage in competitive employment, at wages which are less than those required by this subsection and which are related to the worker's productivity.

(3) (A) The Secretary may by regulation or order provide for the employment of handicapped clients in work activities centers under special certificates at wages which are less than the minimum applicable under section 6 of this Act or prescribed by paragraph (1) of this subsection and which constitute equitable compensation for such clients in work activities centers.

(B) For purposes of this section, the term "work activities centers" shall mean centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

(b) Authority to promulgate the regulations and issue the certificates referred to in section 14(c) has been delegated by the Secretary to the Administrator of the Wage and Hour Division (Secretary's Orders 13-71 and 15-71 (31 FR 8755 and 8756)).

(c) Patient workers whose earning or productive capacity is not impaired shall be paid at least the statutory minimum wage. For patient workers whose earning or productive capacity is impaired to the extent that they are not able to earn the statutory minimum wage, the regulations in this Part 529 govern certificates authorizing special minimum wages for patient workers in hospitals and institutions for the sick, the aged, and the mentally ill or defective with the fol-

lowing exceptions which are governed by Parts 524 and 525 of this chapter, as appropriate:

(1) Patients of hospitals or institutions working for employers other than hospital or institution.

(2) Patients working in sheltered workshops, including work activities centers, as defined in Part 525, operated by the hospital or institution.

#### § 529.2 Definitions.

(a) "Administrator" means the Administrator of the Wage and Hour Division, U.S. Department of Labor, or the Administrator's authorized representative.

(b) "Patient worker" or "resident worker," hereafter referred to as "patient worker," means a sick, aged or mentally ill or defective individual who receives treatment or care by a hospital or institution, whether he or she is a resident or not, and has an employment relationship with such establishment, other than in a sheltered workshop program.

(c) "Hospital or institution," hereinafter referred to as "institution," is a public or private, nonprofit or profit facility primarily engaged in (i.e., more than 50 percent of the income is attributable to) providing residential care for the sick, the aged, or the mentally ill or defective, including but not limited to nursing homes, intermediate care facilities, rest homes, convalescent homes, homes for the elderly and infirm, halfway houses, residential centers for drug addicts or alcoholics, and the like, whether licensed or not licensed.

(d) "Employment relationship" generally arises whenever a patient is suffered or permitted to work. The total facts surrounding a given situation, other than those factors specifically excluded in this subsection, determine whether the test is satisfied. A major factor in determining whether or not an employment relationship exists under this Part is whether the work performed is of any consequential economic benefit to the institution. Generally, work shall be considered to be of consequential economic benefit if it is of the type that nonhandicapped workers normally perform, in whole or

In part, in the institution or elsewhere. A patient does not, however, become an employee merely if he or she performs personal housekeeping chores, such as maintaining his or her own quarters, or receives a token remuneration for his or her services. Nor does the patient become an employee if engaged in such activities as making craft products, where the patient voluntarily engages in such activity and the products become the property of the patient making them, or the funds resulting from the sale of the products are divided among the patients participating in that program or are used for purposes of purchasing materials consumed in making the craft products. On the other hand, determination of an employment relationship does not depend on the level of performance of the patient or whether the work is of therapeutic value to the patient.

(e) "Evaluation and training" means a program, authorized pursuant to section 14(c)(2)(A) of the Act, which provides competent instruction and supervision and is designed to determine a working patient's potential and to teach adjustment to a work environment or the skills related to one or more types of work. The duration of the evaluation and training depends on the total facts of the situation, but in no case shall exceed 12 months. Time spent in an employment relationship in the institution prior to the effective date of these regulations shall be counted in determining the duration a patient worker is in evaluation and training. (Any workweek during which there was regular and recurrent engagement in work, even though small in amount, which gave rise to an employment relationship, shall be considered as a week spent in evaluation and training.)

(f) "Group minimum wage" means the minimum wage authorized pursuant to section 14(c)(1) of the Act which shall apply to all patient workers who have completed the evaluation and training program, if one has been authorized for the institution under this part (where no such program has been authorized, the group minimum wage applies immediately upon a patient's entering into an employment relationship with the insti-

tution), except for patient workers who are: Entitled to a commensurate wage higher than the group minimum wage; subject to an individual exception; or subject to a work activities center certificate, as defined in this part.

(g) "Individual exception" means authorization, pursuant to section 14(c)(2)(B) of the Act, to pay a particular patient worker whose earning or productive capacity is severely impaired less than the group minimum wage.

(h) "Work activities center" is an administrative classification given to a facility which has an approved program (other than a work activities center program as defined in Part 525), authorized pursuant to section 14(c)(3) of the Act, which is planned and designed exclusively to provide work activities for patients whose physical or mental impairment is so severe as to render their productive capacity inconsequential. The work activities shall be part of a recorded plan of therapy or care for such patients. Such activities need not, however, be restricted to a particular physical or program area of the institution, nor to a particular type of work. No program shall qualify for a work activities center certificate under this part unless the productive capacity of each individual in the program is so severely impaired as to make that person incapable of earning as commensurate pay at least 25 percent of the minimum wage under section 6 of the Act, and the patient workers are participating in the program as a part of planned therapy.

(i) "Commensurate pay" (the term used in these regulations) is intended to have the same meaning as "equitable compensation" and "wages related to the worker's productivity," which terms are used in the statute, and means wages which are commensurate with those paid nonhandicapped workers in the institution or in industry maintaining acceptable labor standards in the vicinity for essentially the same type, quality, and quantity of work. So for example, the commensurate pay of a patient worker who is 75 percent as productive, considering quality and quantity, as the average

nonhandicapped worker performing essentially similar work in the institution would be at least 75 percent of the wage paid to such nonhandicapped worker.

(j) "State agency" means the agency within the State which administers or supervises the administration of vocational rehabilitation services in any State of the United States, the District of Columbia, or any territory or possession of the United States.

(k) "The Act" means the Fair Labor Standards Act of 1938, as amended.

#### § 529.3 Advisory Committee on Sheltered Workshops.

(a) The Advisory Committee on Sheltered Workshops, appointed periodically by the Secretary of Labor, shall advise and make recommendations to the Administrator concerning the administration and enforcement of this part and the need for amendments thereto and for such other purposes as may be desired by the Administrator.

(b) The Administrator may consult with the Advisory Committee on Sheltered Workshops prior to any action taken under this part and may afford the Committee 15 days, or such additional time as may be allowed, to present its views. The Administrator may also afford the Committee an opportunity to present its views in connection with any petition for review filed, any hearing held, and any petition for amendment of these regulations, or any proposed legislation by the Secretary of Labor pertaining to the problems dealt with in these regulations.

#### § 529.4 Wage payments.

(a) A patient worker whose earning or productive capacity is not impaired shall be paid at least the statutory minimum wage. A patient worker whose earning or productive capacity is impaired to the extent that the individual is unable to earn at least the statutory minimum wage may be paid a subminimum wage but only after a certificate authorizing payment of such lower wage has been obtained from the Wage and Hour Division.

(b) Four types of certificates authorizing subminimum wages are available for patient workers in institutions:

Evaluation and training, group minimum wage, individual exception, work activities center. All but the individual exception are group certificates. Under a group certificate, the pay is certified and not the individual patient worker. In the case of the individual exception, authority to set subminimum wage must be obtained for each individual.

(c) Evaluation and training: Patient workers subject to an evaluation and training certificate shall receive at least commensurate pay; no minimum wage guarantee is required unless the Administrator, shall determine it is the best interest of the patient workers that a minimum wage guarantee set.

(d) Group minimum wage: Patient workers subject to a group minimum wage certificate shall receive at least the minimum wage authorized in certificate or commensurate whichever is higher. The group minimum wage shall not be less, and may be more, than 50 percent of the minimum wage under section 6 of the Act.

(e) Individual exception: A patient worker subject to an individual exception shall receive not less than the minimum wage authorized in the individual exception certificate issued to that patient worker or commensurate pay, whichever is higher. An individual exception shall not be less, and may be more, than 25 percent of the minimum wage under section 6 of the Act.

(f) Work activities center: Patient workers subject to a work activities center certificate shall receive at least commensurate pay; no minimum wage guarantee is required unless the Administrator, shall determine it is the best interest of the patient workers that a minimum wage guarantee set.

(g) Compensable time for a patient worker starts when the individual begins to perform work involving an employment relationship.

(h) Each patient worker's work performance shall be reviewed by the institution at three month intervals during the first 6 months in an employment relationship, and at least every 6 months thereafter and his or her wages adjusted accordingly. The review shall relate the patient work-

er's quantity and quality of performance to that of nonhandicapped workers receiving the prevailing wage in the institution for similar work or work requiring similar skills. If similar work or work requiring similar skills is not performed by nonhandicapped workers in the institution the prevailing wage paid nonhandicapped workers in the vicinity in industry maintaining acceptable labor standards shall be used. The review shall be made by a staff member or members who observe the patient worker(s) being rated on a continuing basis and who are familiar with appropriate nonhandicapped production standards.

(1) No part of the minimum wage and overtime earned by a patient worker can be deducted for the cost of room, board or services. The patient worker must receive his or her wages free and clear, except for legal payroll deductions. It is not the intention of these regulations, however, to preclude the institution thereafter from assessing or collecting the reasonable cost of room, board and other services actually provided to a patient worker to the extent permitted by applicable Federal or State law and on the same basis as it assesses and collects from nonworking patients.

#### § 529.5 Application for certificates.

(a) Application for a certificate for an evaluation and training program, a group minimum wage, an individual exception, or a work activities center may be filed by any institution with the Regional Office or Caribbean Director of the administrative region or area of the Wage and Hour Division, U.S. Department of Labor, in which the institution is located. Application forms may be obtained from the appropriate Office.

(b) An application for an evaluation and training certificate and for an individual exception certificate for payment of a wage below 50 percent of the minimum wage under section 6 of the Act shall also be filed with the State agency. Before the Wage and Hour Division can act on such an application, the State agency must certify that the evaluation and training program meets the standards defined

in § 529.2 or, in the case of an individual exception, that the individual's earning capacity is so severely impaired that he or she is unable to earn at least 50 percent of the minimum wage under section 6 of the Act.

(c) An institution initially applying for a certificate, other than an individual exception certificate, which does not have the information called for in the application, may be issued a temporary certificate if it meets the requirements of, and provides assurance of compliance with, this Part.

(d) Application for an individual exception certificate may be filed at the time of applying for a group minimum wage certificate or during the life of the certificate. The application must show, among other things, that the patient worker is unable to earn the minimum wage authorized in the group minimum wage certificate.

(e) An application for an individual exception filed before the patient worker has completed evaluation and training shall be considered timely. In such case, if action on the application is not completed before the expiration of the evaluation and training period, the minimum wage requested in the application by the institution (not less than 25 percent of the minimum wage) shall be the interim minimum wage.

#### § 529.6 Criteria for consideration in issuance of certificates.

The following criteria will be considered by the Administrator in determining the necessity of issuing a certificate or certificates and the conditions to be specified therein:

(a) The present and previous earnings of the patient workers.

(b) Whether the patient workers are receiving commensurate pay.

(c) The nature and extent of the disabilities of the patient workers and the degree to which these factors affect earning or productive capacity of the patient workers.

(d) Whether the conditions required for certification under this part have been met.

(e) Whether the certification by the State agency has been made in accordance with this part.

### Chapter V—Wage and Hour Division

#### § 529.7 Issuance of certificates.

(a) Upon consideration of criteria specified in § 529.6, the Administrator may issue a certificate or certificates, as appropriate.

(b) If a certificate is issued, a copy shall be sent to the institution. If denied, the institution shall be notified in writing of the denial and the reasons therefor.

(c) A group minimum wage certificate may be issued for the entire institution or a department or departments of the institution.

#### § 529.8 Terms and conditions of certificates.

(a) A certificate shall specify the terms and conditions under which it is granted.

(b) A certificate shall apply to every patient worker in the program for which the certificate is granted.

(c) A certificate shall be effective for a period to be designated by the Administrator, generally for a period of 1 year. Patient workers may be paid wages lower than the statutory minimum only during the effective period of a certificate.

(d) A group minimum wage certificate shall set a special minimum wage of not less than 50 percent of the minimum wage under section 6 of the Act. An individual exception certificate shall set a special minimum wage not less than 25 percent of the minimum wage under section 6 of the Act.

(e) An evaluation and training certificate and a work activities center certificate need not set a special minimum wage other than that required by paragraph (f) of this section or provided for by § 529.4.

(f) All patient workers subject to a certificate shall be paid wages commensurate with those paid nonhandicapped workers in the institution in which they are patients or in the vicinity in industry maintaining acceptable labor standards for essentially the same type, quality, and quantity of work, but not less than the certificate rate applicable if such a rate has been authorized.

(g) Patient workers shall be paid not less than one and one-half times the regular rate for all hours worked in

excess of the maximum workweek applicable under section 7 of the Act.

(h) No patient worker shall be newly-employed under a certificate issued under these regulations while abnormal labor conditions, such as a strike, a lock-out, or other similar condition, exist in the institution.

(i) Each patient worker and his or her parent or guardian shall be informed promptly orally and in writing of his or her rights under the Act.

(j) The terms of any certificate may be amended for cause, upon request of the institution, or a patient worker or his or her parent or guardian, or upon the initiative of the Administrator.

#### § 529.9 Renewal of certificates.

(a) Application may be filed for renewal of any certificate.

(b) If an application for renewal has been properly and timely filed prior to the expiration date of a certificate, the certificate shall remain in effect until the application for renewal has been granted or denied.

(c) Patient workers may be paid wages less than the statutory minimum after notice that the application for renewal has been denied, if review of such denial is requested in accordance with § 529.12: *Provided, however,* That if the denial is affirmed on review, the institution shall reimburse any person covered by the certificate in an amount equal to the difference between the applicable minimum wage and any lower wage paid such person subsequent to the effective date of denial.

#### § 529.10 Records to be kept.

Every institution shall maintain and have available for inspection by the Administrator records of:

(a) Disability, which show the nature of each patient worker's disability.

(b) Productivity, which show the productivity of each patient worker on a continuing basis or at periodic intervals as defined in § 529.4(h).

(c) Prevailing wage, which show the prevailing wages paid nonhandicapped workers in the institution or in industry in the vicinity for essentially simi-

lar work to that performed by the patient workers.

(d) Production standards for an average nonhandicapped worker for each job being performed by a patient worker in the institution (for use as a norm in measuring patient worker productivity.)

(e) When an evaluation and training program is authorized by certificate, records showing which patient workers are in the evaluation and training program, and the total period of time each worker has been in such a category.

(f) When an institution holds both a work activities center certificate and a group minimum wage certificate, records showing which patient workers are under each certificate.

Records showing the patient workers who have been authorized.

(h) In addition, the records required under all the applicable provisions of Part 516 of this chapter.

(i) Every institution having patient workers who are entitled to benefits under the Act shall at all times display a poster, as prescribed by the Administrator, in a conspicuous place in the institution where it may be observed readily by the patient workers and other workers in the institution.

(j) Records required by this section shall be kept for the periods specified in Part 516 of this chapter.

§ 529.11 Cancellation of a certificate.

(a) The Administrator may cancel any certificate for cause. A certificate may be canceled (1) as of the date of issuance, if it is found that fraud has been utilized in obtaining the certificate or in permitting a patient worker to be employed thereunder; (2) as of the date of violation, if it is found that any of the provisions of the Act or of the terms of the certificate have been violated; or (3) as of the date of notice of cancellation, if it is found that the certificate is no longer necessary in order to prevent curtailment of opportunities for employment, or that the requirements of this part have not been complied with.

(b) If a petition for review is filed under § 529.12, the effective date of the cancellation shall be postponed

until action is taken thereon: *Provided, however,* That if the cancellation order is affirmed on review, the institution shall reimburse any person covered by the certificate in an amount equal to the difference between the applicable minimum wage and any lower wage paid such person subsequent to the effective date of cancellation.

(c) Except in cases of willfulness or those in which the public interest requires otherwise, before any certificate shall be canceled, facts or conduct which may warrant such action shall be called to the attention of the institution in writing and it shall be afforded an opportunity to demonstrate or achieve compliance with all lawful requirements.

Any person aggrieved by any action of an authorized representative of the Administrator taken pursuant to this part may, within 60 days or such additional time as the Administrator may allow, file with the Administrator a petition for review. Such review, if granted shall be made either by the Administrator or by an authorized representative who took no part in the action under review, who may, to the extent it is deemed appropriate, afford other interested persons an opportunity to present data and views.

§ 529.13 Submission of information, investigations, and hearings.

The Administrator may require at any time the submission of such information, other than that specified elsewhere in this part, as is deemed appropriate, or may conduct an investigation, which may include a hearing, prior to taking any action pursuant to this part. To the extent it is deemed appropriate, the Administrator may provide an opportunity to other interested persons to present data and views.

§ 529.14 Relation to other laws.

No provision of this part, or of any certificate issued under this part, shall excuse noncompliance with any other Federal or State law or municipal ordinance establishing higher standards

§ 529.15 Issuance of certificates for experimental purposes.

In addition to the issuance of certificates as provided in §§ 529.1 to 529.14, the Administrator may authorize the issuance of certificates to permit employment of patient workers in institutions at less than the applicable minimum wage under section 6 of the Act as part of experimental programs to increase employment opportunities for such persons. Such certificates shall be issued in such types of cases and on such terms and conditions within the scope of section 14 of the Act as the Administrator shall determine will best further any such experimental programs. Certificates issued under this section shall be limited to an effective period of not more than 1 year.

§ 529.16 Amendment of this part.

The Administrator may at any time amend his or her own action or upon written request of any interested person setting forth reasonable grounds therefor, and after opportunity has been given to interested persons to present their views, amend or rescind any of the terms of this part.

§ 529.17 Review of regulations.

Approximately six months after the effective date of this part, the Wage and Hour Division will undertake a review of its program for administration and enforcement of this Part in cooperation with the Advisory Committee on Sheltered Workshops.

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

- 530.1 Definitions.
- 530.2 Description of homework.
- 530.3 Application on official forms.
- 530.4 Terms and conditions for the issuance of certificates.
- 530.5 Investigation.
- 530.6 Termination of certificates.
- 530.7 Cancellation and cancellation.
- 530.8 Revocation of certificates.
- 530.9 Hearings and reports.
- 530.10 Delegation of authority to grant, amend or cancel certificates.
- 530.11 Petition for review.
- 530.12 Special provisions.

§ 530.13 Petition for amendment of regulations.

Authority: Sec. 11, 52 Stat. 1066; 2 U.S.C. 211, unless otherwise noted.

Source: 24 FR 729, Feb. 3, 1959, unless otherwise noted.

§ 530.1 Definitions.

(a) The meaning of the terms "person," "employ," "employer," "employee," "goods," and "production," as used in this part, is the same as in the Fair Labor Standards Act of 1938, as amended.

(b) "Industrial homemaker" and "homeworker," as used in this part, mean any employee employed or suffered or permitted to perform industrial homework for an employer.

"Industrial homemaker," as used in this part, means the production by any person in or about a home, apartment, tenement, or room in a residential establishment of goods for an employer who suffers or permits such production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homemaker in such production.

(d) The women's apparel industry is defined as follows: The production of women's, misses' and juniors' dresses, washable service garments, blouses, and neckwear from woven or purchased knit fabric; women's, misses', children's and infants' underwear, nightwear, and negligees from woven fabrics; corsets and other body supporting garments from any material; other garments similar to the foregoing; and infants' and children's outerwear.

(e) The jewelry manufacturing industry is defined as follows:

(1) (i) The manufacturing, processing, or assembling, wholly or partially from any material, of jewelry, commonly or commercially so known. Jewelry as used herein includes without limitation, religious, school, college, and fraternal insignia; articles of ornament or adornment designed to be worn on apparel or carried on or about the person, including, without limitation, cigar and cigarette cases, holders, and lighters; watch cases; metal mesh bags and metal watch bracelets; and chain, mesh, and parts for use in the

STATE OF ALASKA  
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill No. 182 Date on Bill: 2/9/83  
 Title: "An Act exempting participants in residential drug abuse and alcoholism treatment  
 Sponsor: Barnes, Clocksin, Bussell, Liska, Larson  
 Requestor: \_\_\_\_\_

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			-0-	-0-	-0-	-0-		

b. Revenues:

Revenue			-0-	-0-	-0-	-0-		
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2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It do not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: George E. Mundell, Acting Coordinator  
 Division: Office of Alcoholism/Drug Abuse

Phone: 586-6201  
 Date: 3/1/83

Approved by Commissioner: Robert Larson, M.D.  
 Department: 3/1/83

Date: 3/1/83

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/8/83