

HB5 1 1

(11)

Date Referred: March 25, 1992

HOUSE COMMITTEE REPORT
FURTHER REFERRALS:

Date of Committee Action: 4/15/92

The FINANCE Committee considered:

HB 511

HOUSE BILL NO. 511

REGULATION OF HOME CARE PROVIDERS

"An Act relating to public home care providers; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 511 (JLD) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact DHSS

fiscal note(s) _____

zero fiscal note AK Court System

zero fiscal note(s) 3/25/92 3/19/92
DPS; LAW

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Ed McLean</u> <u>McLean</u>	<input checked="" type="checkbox"/>	<u>Donna Harris</u> <u>BURNS</u>		<input checked="" type="checkbox"/>	
<u>Mary Boyer</u> <u>Boyer</u>	<input checked="" type="checkbox"/>	<u>Shirley Sharp</u> <u>Sharp</u>		<input checked="" type="checkbox"/>	
<u>Kay Brown</u> <u>Brown</u>	<input checked="" type="checkbox"/>	<u>Robert Phillips</u> <u>Phillips</u>		<input checked="" type="checkbox"/>	
<u>John Koponen</u> <u>Koponen</u>	<input checked="" type="checkbox"/>	<u>Paul Larson</u> <u>Larson</u>		<input checked="" type="checkbox"/>	
<u>John Umm</u> <u>Umm</u>	<input checked="" type="checkbox"/>	<u>George Jack</u> <u>JACK</u>		<input checked="" type="checkbox"/>	
<u>Mike Navarre</u> <u>NAVARRE</u>	<input checked="" type="checkbox"/>				

Mike Navarre NAVARRE Ed McLean McLean

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. CS HB 511 (JUD)

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to public home care BRU: Trial Courts
providers Components: _____
 Sponsor: Mackie
 Requestor: House HESS COMPONENT SERIAL NO. 000 | 000 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 254-8228
 Division: Alaska Court System Date: 03/02/92

Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System Date: 03/02/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 1/92

Page 1 of

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 511 (IUD)

Revision Date: April 13, 1992
Title: "An Act relating to public home care providers..."
Sponsor: Representative Mackie
Requestor: House Finance

Department Affected: Department of Law
BRU: Legal Services
Component: Operations and Medicaid Provider
Fraud
COMPONENT SERIAL

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Expenditures/Revenues: (Thousands of Dollars)

93 and 1410

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: April 13, 1992
Date: April 13, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 511 (JUD)

Among other changes, the Judiciary Committee Substitute differs from the original version of Section 2 to require that the Department of Health and Social Services adopt regulations that address circumstances under which the department will, or will require a contractor or grantee to, reassign, suspend, or terminate a person alleged to have perpetrated harm. The section also requires that the regulations include appropriate safeguards to protect the due process rights of public home care providers who may be reassigned, suspended, or terminated under the foregoing provision. As it is currently written, the section implies that the Department of Health and Social Services has the power to directly reassign, suspend, or terminate employees of contractors or grantees. This is not the case, and we recommend that the section be modified to simply state that, "the department will require a contractor or grantee to reassign," etc.

None of the other changes require comment. Although we cannot predict a fiscal impact, we do note that the Department of Law would be called upon to represent the Department of Health and Social Services in any administrative proceedings that may arise from disputes taken under the regulations required in Section 2. We caution that the addition of new duties at a time when budgets and staff are being drastically reduced should be avoided. It is doubtful that the Department of Law, which faces the loss of several civil division attorneys in the House Finance budget plan, will be able to respond to any, but the most minor of disputes under this bill.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. ~~100~~: CSHB 511

Revision Date: _____ Dept. Affected Health and Social Services
 Title: An act relating to Public Home Providers BRU: Division of Family and Youth Services
 Component: Central Office
 Sponsor: Reps. Mackie, Ellis, Lincoln, Larson, Gonzales, Jacko
 Requestor: Representative Mackie COMPONENT SERIAL NO. 0259

Expenditures/Revenues (Thousands of Dollars)

	FY93	FY94	FY95	FY96	FY97	FY98
OPERATING						
PERSONAL SERVICES	0.0					
TRAVEL	0.0					
CONTRACTUAL	20.0					
SUPPLIES	0.0					
EQUIPMENT	0.0					
LAND & STRUCTURES	0.0					
GRANTS, CLAIMS	0.0					
MISCELLANEOUS	0.0					
TOTAL OPERATING	20.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	20.0					
FEDERAL FUNDS						
OTHER						
TOTAL	20.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Section 2 of this bill requires that the Department develop regulations on circumstances requiring reassignment, suspension, or termination of a home care provider alleged to have perpetrated harm and on the appeal rights and due process for such an individual. Section 9 requires that the regulations be adopted by March 15, 1993. A contract will be obtained to draft, conduct public hearings, and finalize the regulations. The contractor will revise the Adult and the Child Protective Services staff manuals to implement the changes, and will work with data processing to plan protective services data collection on home care providers under Section 4 of the bill.

Prepared by: Brian Saylor, Deputy Commissioner
 Division: Division of Family and Youth Services

Phone: 465-3030
 Date: March 17, 1992

Approved by Commissioner: Theodore A. Mala, MD, MPH
 Agency: Department of Health and Social Services

Date: 3/20/92

Distribution (by preparer):
 Legislative Finance OMB
 Legislative Sponsor Impacted Agency(ies)
 Requestor

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. ~~511~~: CSHB 511

Revision Date: _____ Dept. Affected Health and Social Services
 Title: An act relating to Public Home Providers BRU: Division of Family and Youth Services
 Component: Central Office
 Sponsor: Reps. Mackie, Ellis, Lincoln, Larson, Gonzales, Jacko
 Requestor: Representative Mackie COMPONENT SERIAL NO. 0259

Expenditures/Revenues (Thousands of Dollars)

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES	0.0					
TRAVEL	0.0					
CONTRACTUAL	20.0					
SUPPLIES	0.0					
EQUIPMENT	0.0					
LAND & STRUCTURES	0.0					
GRANTS, CLAIMS	0.0					
MISCELLANEOUS	0.0					
TOTAL OPERATING	20.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	20.0					
FEDERAL FUNDS						
OTHER						
TOTAL	20.0	0.0	0.0	0.0	0.0	0.0

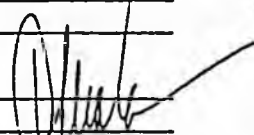
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Section 2 of this bill requires that the Department develop regulations on circumstances requiring reassignment, suspension, or termination of a home care provider alleged to have perpetrated harm and on the appeal rights and due process for such an individual. Section 9 requires that the regulations be adopted by March 15, 1993. A contract will be obtained to draft, conduct public hearings, and finalize the regulations. The contractor will revise the Adult and the Child Protective Services staff manuals to implement the changes, and will work with data processing to plan protective services data collection on home care providers under Section 4 of the bill.

Prepared by: Brian Saylor, Deputy Commissioner Phone: 465-3030
 Division: Division of Family and Youth Services Date: March 17, 1992
 Approved by Commissioner: Theodore A. Mala, MD, MPH  Date: 3/20/92
 Agency: Department of Health and Social Services

Distribution (by preparer):
 Legislative Finance OMB
 Legislative Sponsor Impacted Agency(ies)
 Requestor

CS FOR HOUSE BILL NO. 511 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/25/92
Referred: Finance

Sponsor(s): REPRESENTATIVES MACKIE, Ellis, Lincoln, Larson, Gonzales, Jacko

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to public home care providers; and providing for an effective date."

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

3 * Section 1. AS 13.26 is amended by adding a new section to article 5 to read:

4 Sec. 13.26.358. POWERS OF ATTORNEY HELD BY PUBLIC HOME CARE
5 PROVIDERS. (a) A public home care provider may not accept a designation as attorney-in-fact
6 or agent by general or special power of attorney for an individual to whom the provider furnishes
7 services unless the designation is held jointly with another individual who is not a public home
8 care provider.

9 (b) In this section, "public home care provider" has the meaning given in
10 AS 47.05.017(c).

11 * Sec. 2. AS 47.05 is amended by adding a new section to read:

12 Sec. 47.05.017. HOME CARE PROVIDERS. (a) State money may not be used for a
13 home care provider unless records under AS 12.62.035(a) are requested for the provider within
14 10 business days after the provider is hired to provide the care and are reviewed within five

1 business days after they are received. The department shall require the grantee or contractor to
2 do the records request and review required under this subsection for a home care provider
3 employed by a person who has a grant or contract from the department to provide home care
4 services.

5 (b) The department shall adopt regulations identifying actions that it will take, in addition
6 to those otherwise required under AS 47.17 and AS 47.24, when a report of harm is made under
7 AS 47.17 or AS 47.24 that might relate to harm caused by actions or inactions of a public home
8 care provider. The regulations must

9 (1) address circumstances under which the department will, or will require a
10 contractor or grantee to, reassign, suspend, or terminate a person alleged to have perpetrated
11 harm; and

12 (2) include appropriate procedural safeguards to protect the due process rights of
13 public home care providers who may be reassigned, suspended, or terminated under the
14 circumstances described in (1) of this subsection.

15 (c) In this section, "public home care provider" means a person who is paid by the state,
16 or by an entity that has contracted with the state or received a grant from state funds, to provide
17 homemaker services, chore services, personal care services, home health care services, or similar
18 services in or around a client's private residence or to provide respite care in either the client's
19 residence or the caregiver's residence or facility.

20 * Sec. 3. AS 47.10.230 is amended by adding a new subsection to read:

21 (h) The department may not pay for respite care, as defined in (d) of this section, unless
22 the department or the entity that has contracted with the department to provide the respite care
23 requests records under AS 12.62.035(a) for the individual who provides the respite care within
24 10 business days after the individual is hired to provide respite care and reviews the records
25 within five business days after receiving them.

26 * Sec. 4. AS 47.24.050(b) is amended to read:

27 (b) The department shall disclose a report of harm if the elderly person who is the
28 subject of the report consents in writing. The department shall, upon request, disclose the
29 number of verified reports of harm that occurred at an institution for care of the elderly or that
30 were the result of actions or inactions of a public home care provider.

31 * Sec. 5. AS 47.24.100 is amended by adding a new paragraph to read:

1 (13) "public home care provider" has the meaning given in AS 47.05.017(c).
2 * Sec. 6. AS 47.65.050 is amended by adding a new subsection to read:
3 (b) The commission may not make payments to a sponsor whose program includes
4 family respite care services or home care services unless the sponsor has agreed to request
5 records under AS 12.62.035(a) for the individual who will provide the services within 10 business
6 days after the individual is hired to provide the services and review the records within five
7 business days after receiving them.
8 * Sec. 7. AS 47.65.100 is amended by adding a new subsection to read:
9 (f) The commission may not award a grant under this section for family respite care
10 services or for adult day care services that include home care services unless the grantee has
11 agreed to request records under AS 12.62.035(a) for the individual who will provide the services
12 within 10 business days after the individual is hired to provide the services and review the
13 records within five business days after receiving them.
14 * Sec. 8. AS 47.65.290 is amended by adding a new paragraph to read:
15 (8) "home care services" means homemaker services, chore services, personal care
16 services, home health care services, or similar services in or around the residence of an older
17 Alaskan or of a frail older person or similarly disabled adult, as defined in AS 47.65.100.
18 * Sec. 9. REGULATIONS. The Department of Health and Social Services shall adopt the regulations
19 required under AS 47.05.017(b), enacted by sec. 2 of this Act, by March 15, 1993. By February 1,
20 1993, the department shall report to the legislature on the status of the regulations process.
21 * Sec. 10. This Act takes effect immediately under AS 01.10.070(c).

HOUSE BILL 511

"An Act relating to public home care providers; and providing for an effective date."

This bill recognizes the intimate relationship between those needing help and those providing it. Alaska is fortunate to have so many caring and kind helpers. Almost all home care providers are moral people, but the demands and dynamics of the caregiving relationship often result in extraordinary temptations and dilemmas for the caregiver. This bill would set legal limits on the relationship and reduce risk to vulnerable populations through requiring protective action on reports of harm and through requiring criminal background checks on public home care providers. The Department of Health and Social Services supports this bill with amendments.

Applicability

The Department notes that this bill excludes private arrangements for care even if there are state funds involved. The Department supports the exclusion as practical.

Section 1

This section limits the relationship between a home provider and person requiring care by prohibiting public home care providers from accepting sole responsibility under a Power of Attorney. The Department believes this is an appropriate limitation. We are concerned with a potential problem that might occur when a home care provider has a friend or relative co-sign a power of attorney. Perhaps an additional clause such as "and who is not a relative of and has no previous association with the home care provider" could be added.

Sections 2 and 3

Sections 2 and 3 require the Department to notify the employer upon receiving a report of harm to either a child or to an elderly person, when the harm may have been caused by a public home care provider. The employer agency must immediately assign a new care provider to give the care. The assignment of a new care provider is critical to free concerned persons to report. Frequently individuals will not report for fear of retaliation and of losing the care upon which the elderly person or child depends. There are personality conflicts in the caring relationship, and not all reports will be founded, but removal and assignment of a new care provider when there are allegations of abuse or neglect is prudent state policy. The Department has had a similar requirement in its non-medical care facility regulations for more than 10 years. Investigation may move a concern from suspicion to evidence.

We suggest that an amendment be added to the effect that the employer must cooperate with department officials and may not hamper the investigation.

Sections 2 and 3 will potentially have significant impact on the Division of Family and Youth Services (DFYS). Depending on the nature of an allegation, the care provider employee may need to be removed from all caregiving situations until the investigation can be completed, and then the results of the investigation may have a negative effect on the future employment of the care provider. Since this is very similar to our previous experience in licensed facilities, we know that two elements are necessary in the DFYS response to the report of harm: first.

it must be timely; and second, DFYS must be prepared to participate in any employee appeal proceeding, if the finding results in dismissal of the employee.

Alaska, like many states in the early 80's, passed but failed to fund a Protection of the Elderly statute. Ten years after Alaska's law was passed, the Department still is not adequately funded for this mandate. We believe there will be few reports under this proposed statutory provisions, however, given inadequate numbers of existing staff, need for a timely investigative response and involvement in any employment appeals, the Department is concerned that investigative response will not be able to meet expectations.

Section 4

Section 4 is important in that it will require tracking the number of reports of harm by public home care providers. While we believe the number will be small, statewide computer information is critical to our better understanding of the nature of abuse and neglect.

Sections 5 and 11

The definition of a public home care provider in Section 5 should be amended to read....."in or around the client's [A PRIVATE] residence." This clarification will make the definition consistent with the definition in Sec.11 by clarifying that it applies to the residence of the person receiving the care. The amendment would further clarify that the definition does not broadly include the care given in private residences by licensed foster parents and licensed family child care providers. Foster care providers and family child care home providers not exempt from AS 47.35 are regulated through licensing. The committee should consider adding the term "respite" to the list of services in both Sections 5 and 11, to ensure inclusion.

Section 6

The Department supports Section 6 on disabled adults as consistent with other sections of the bill. As a practical matter DFYS, as the protective services agency, investigates some reports of harm to individuals included in AS 46.24 (Article 2) in coordination with law enforcement.

Sections 7, 8 and 12

The Department recommends deletion of all reference to Chapter 66, SLA 1991. Under the Weiss litigation in the Mental Health Trust lawsuit, there is an unstated understanding between the state and the attorneys for the plaintiff that there would be no amendments to Chapter 66 without the agreement of both sides. An amendment at this time would create an additional complication in settling this litigation, so we believe it would be best to delete reference to Chapter 66 until after a settlement has been reached.

Perhaps the best location for the criminal history background searches required in Section 8 would be AS 12.62. Criminal history searches are currently required in department grants and are in the draft regulations for home care in final review in the Department of Law. The phrase in Section 8, "before the care is provided," would prevent care providers from entering the system prior to criminal history clearance. Our experience in child foster care is that clearance can take months. This is especially true in rural communities where unacceptable fingerprint rolling results in reprocessing delays.

In drafting any amendment, we suggest that the language of Section 9 be used as it does not contain the phrase, "before the care is provided." We believe it is possible to protect the recipient while a criminal background check is being completed on a new hire; our home care regulations require extensive reference checks and an applicant's affidavit of their record, among other precautions. We think that the risks of "conditional hires" must be balanced against the recipient's need for care. Almost anywhere outside of Anchorage, there is no "pool" of home care providers, so requiring completion of a criminal background check before service is begun could have devastating effects on the client, far beyond the risks of using an uncleared provider.

Task Force

The Department recommends that an Adult Protective Services (APS) Task Force be created, preferably with legislative sponsorship, to address issues which this bill and HB 510 address. DFYS has carried the APS role, since before statehood. About 2/3 of their caseload are over age 65 (with 3 over 100 years old) and about 1/3 of the caseload are younger disabled adults, often just below criteria that could get them help in other systems. These are street people and frail elderly, and persons who are physically handicapped, mentally ill or developmentally disabled. Reports of harm include self-neglect, neglect by a person responsible for their care, financial exploitation, and abuse.

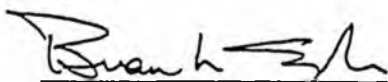
Division activity in APS is so understaffed that community members including neighbors of victims do not know that help is possible and professionals fail to report, assuming an inadequate investigative response. When DFYS does get reports, they have been termed as non-responsive on all but the worst cases. In 1982, the Elder Abuse reporting statute was passed, but not funded. Ten years later

- We don't have a full Adult Protective Services system
- We don't provide the same level of protection to elderly and disabled adults as we do to children.
- We know that we don't have an adequate system.
- We want to do better.
- So how do we do that?

We strongly believe the department with legislative support has a responsibility to bring this problem out of the closet. This state has people qualified to address an APS System. We think that it is time for a small task force of experts and selected community professionals to address APS issues and make recommendations to the Governor and to the legislature. We would be pleased to participate in a legislative sponsored task force.

Position

The Department supports House Bill 511 with amendments.



Brian Saylor, PhD, MPH,
Deputy Commissioner/Acting Director
Division of Family and Youth Services

Date: 3/4/92



Theodore A. Mala, MD, MPH, Commissioner
Department of Health and Social Services

Date: 4 March 1992

S P O N S O R S T A T E M E N T

CS HB 511 (Jud) "An Act relating to public home care providers; and providing for an effective date"

HB 511 will mandate quality assurances within the home care provider industry. Services providing protection, intervention and investigation of crimes against the elderly and disabled are presently inadequately funded and facing additional cutbacks.

The legislature and the Department of Health and Social Services are fast pursuing Medicaid waivers and options for home and community based care.

Additionally, the Department of Health and Social Services recently launched a new home care services program. This program is a collaborative effort of the Divisions of Public Health, Medical Assistance and Mental Health and Developmental Disabilities.

All of these factors push Alaska to the precipice of an explosion in home and community based care when combined with a burgeoning aging population and a staggering unmet demand for home and community based care.

In anticipation of the expected growth in the home care services industry I am seeking to legislate quality assurances and enhanced protections for the clients of these services.

HB 511 restricts the assumption of powers of attorney by a public home care provider over the client to whom the care-giver provides in-home services. We must remove any opportunities for abuse and exploitation by care-givers placed in the private residences of these persons who are least able to protect themselves.

HB 511 will mandate criminal background checks for home care providers. This will include both state and federal

Sponsor Statement
CSHB 511 (Jud), Home Care Providers
April 13, 1992

criminal histories. The Judiciary CS will require the employer agency to request records under AS 12.62.035 within two weeks of the first day of employment. The employer will be allowed one week to review these records upon receipt.

HB 511 will require the Department of Health and Social Services to promulgate regulations that will provide an established procedure or protocol between the Department and the home care services agency when a care giver is charged with abusing or exploiting a client. These regulations shall provide for a grievance procedure that will allow the alleged abuser due process. These regulations shall protect the due process and constitutional rights of the alleged abuser as well as the alleged victim. These regulations will also require the department to address these concerns in the due course of the grantor/grantee relationship with contract agencies. Contracts shall include provisions ensuring the State of Alaska that the contracting agency employer will not interfere in the course of any investigation of an allegation of abuse of a client.

These regulations shall be adopted by March 15, 1993 with a report to the legislature by February 1, 1992. This report shall not be elaborate, simply a report of departmental findings with an update on the status of the regulations and their expected date of completion.

Additionally, HB 511 will require that the Department of Health and Social Services shall, upon request, disclose the number of verified reports of harm that were the result of actions or inactions of a public home care provider. Currently, the Department is required to furnish information as to the number of verified reports of harm occurring at an institution for care of the elderly. This added requirement will provide access by family members to information that is critical to making informed decisions regarding care arrangements.

Please note that the term "respite care" is not referred to in section 8. This is because "family respite care" is a term already defined for the Older Alaskans Commission programs covered by section 8. Instead, "family respite care" is added to section 6 and section 7, therefore it does not need to be part of the definition of "home care services" in section 8.

CS FOR HB 511 (JUDICIARY)

SECTIONAL ANALYSIS

Section # 1 - AS 13.26 (Decedents Estates, Guardianships and Trusts: Protection of Persons Under Disability and Their Property; Statutory form power of attorney) - Amended

--Amended to prohibit a public home care provider from accepting a designation as attorney in fact or agent by general or special power of attorney for an individual to whom the provider furnishes in-home services unless the designation is held jointly with another individual who is not employed by the same entity.

Section # 2 - AS 47.05 (Welfare, Social Services and Institutions: Administration of Welfare, Social Services and Institutions) - Amended

--Amended to require criminal background checks for home care providers. Criminal records shall be requested under AS 12.62.035(a) (Code of Criminal Procedure: Criminal Justice Information Systems Security and Privacy; Access to certain crime information) within 10 business days after the provider is hired and are to be reviewed within five business days of receipt. Any entity, grantee or contractor would be precluded from receiving state money for the provision of home care services unless records for previous criminal history are requested.

NOTE: This criminal history will include records of all felony convictions, convictions involving contributing to the delinquency of a minor, and convictions involving any sex crimes of a person who holds or applies for a position of employment in which the person will have supervisory or disciplinary power over a minor or dependent adult. A copy of the information will also be provided to the person who is the subject of the request.

--The Department of Health and Social Services will be required to adopt regulations that identify actions that it will take when reports of harm are received and the harm is caused by the actions or inactions of a public home care provider. Additionally, the regulations will address circumstances under which the department

CS HB 511 (Judiciary)
Sectional Analysis
April 14, 1992

will require a contractor or grantee to reassign, suspend or terminate a person alleged to have perpetrated harm. The regulations will include procedural safeguards to protect the due process rights of the care giver.

Section # 3 - AS 47.10.230 (Welfare, Social Services & Institutions: Delinquent Minors and Children in Need of Aid; Powers and duties of department over care of child)
- Amended

--Amended to address criminal background checks for respite care service providers.

Section # 4 - AS 47.24.050(b) (Protection of Elderly Persons and Disabled Adults: Confidentiality of reports)
- Amended

--Amended to provide disclosure of the number of verified reports of harm caused by a public home care provider; similar to the current law's requirement relating to institutions.

Section # 5 - AS 47.24.100 (Protection of Elderly Persons and Disabled Adults: Definitions) - Amended

--Amended to provide a definition for the purposes of sections 2 - 4.

Section # 6 - AS 47.65.050 (Protection of Elderly Persons and Disabled Adults: Service Programs for Older Alaskans; Administrative requirements) - Amended

--Amended to prohibit the Older Alaskans Commission from making payments to a sponsor of programs determined to directly benefit older Alaskans unless the sponsor or grantee has agreed to request records of criminal history for the individual who will provide the services within 10 business days after the individual is hired. The records will have to be reviewed within five business days after receiving them.

Section # 7 - AS 47.65.100 (Protection of Elderly Persons and Disabled Adults: Service Programs for Older Alaskans; Adult Day Care and Family Respite Care) - Amended

--Amended to prohibit the Older Alaskans Commission from making payments to a sponsor whose program includes family respite care services or home care services or from awarding a grant for family respite care services or for adult day care services that include home care services, unless the sponsor or grantee has agreed to request records of criminal convictions.

Section # 8 - AS 47.65.290 (Protection of Elderly Persons and Disabled Adults: Service Programs for Older Alaskans; Definitions) - Amended

--Amended to add a definition of "home care services." "Home care services" means homemaker services, chore services, personal care services, home health care services or similar services in or around the residence of the client of the services.

NOTE: Respite care is not referred to in this section because "family respite care" is a term already defined for the Older Alaskans Commission programs. "Family respite care" is covered by this CS in sections 6 and 7. Therefore, it does not need to be part of the definition of "home care services" in section 8.

Section # 9 - Regulations

--The Department of Health and Social Services shall adopt the regulations enacted by section 2 of this Act, by March 15, 1993. The department shall report to the legislature by February 1, 1993 on the status of the regulations process.

REPRESENTATIVE
JERRY MACKIE

P. O. BOX 73
CRAIG, ALASKA 99921
(907) 826-3008 OFFICE
(907) 826-2930 HOME

CHAIRMAN,
COMMUNITY & REGIONAL AFFAIRS COMMITTEE

VICE CHAIRMAN,
TRANSPORTATION COMMITTEE

Alaska State Legislature



House of Representatives

WHILE IN JUNEAU
P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4925

NOTES ON PROPOSED JUDICIARY COMMITTEE CS FOR HB511

The proposed Judiciary Committee CS for HB 511 is necessary to accommodate the HESS Committee amendment adding respite care to the definition of home care providers. Different wording is necessary because, unlike the other services covered, respite care services are often provided outside of the clients home, such as in the respite caregivers home or facility. The HESS CS ~~is~~ limited respite care to only that provided in the clients home. Please note that respite care is not referred to in the sections regarding the Older Alaskan's Commission. This is because "family respite care" is a term already defined for the OAC programs. Instead "family respite care" is added by this CS in two separate sections.

This CS also added a new bill section to address criminal background checks for respite care service providers. The purpose of the CS is to clarify, not alter, the substance of the HESS committee changes with respect to respite care services. In this regard, it removes opportunity for significant delays in hiring home care providers. Hiring delays can be a substantial impediment in rural Alaska where, for example, finger printing errors can delay the acquisition of criminal records for up to 120 days.

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 5, 1992

REPLY TO:

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- P.O. BOX K--STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295
465-3603

The Honorable Jerry Mackie
Alaska House of Representatives
P.O. Box 113100
Juneau, Alaska 99811

Re: SB 511

Dear Representative Mackie:

Thank you for asking the Department of Law to review SB 511. I have talked with your staff and with staff of legislative affairs, division of legal services, regarding the bill. We specifically discussed those sections of the bill that require the Department of Health and Social Services to notify an employer of a report of harm and for the employer to assign a new home care provider based solely on the report. The narrative portion of our department's fiscal note refers to these legal concerns regarding the due process rights of the employee and the possibility of difficulties with reporting requirement conflicting with criminal investigations.

The new draft version of SB 511 dated March 2, 1992, addresses the legal problems identified. The Department of Health and Social Services would be delegated the responsibility of developing regulations which would insure both the safety of the individual receiving services and the home care provider's due process rights regarding the employment. Of course, this department cannot speak for the position which the Department of Health and Social Services may wish to take in relation to the new responsibilities that its workers will take on in relation to home care providers.

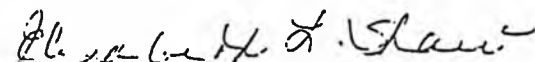
The Honorable Jerry Mackie
Alaska House of Representatives
SB 511

March 5, 1992
Page

If there are further questions, please feel free to
contact my office.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
Elizabeth L. Shaw
Assistant Attorney General

ELS:jh



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4th and Main Street
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February 1, 1992

Mr. Ted Mala, Commissioner
State Department of Health and Social Services
Box 110601
Juneau, AK 99811-0601

Dear Mr. Mala:

At the request of Representative Jerry Mackey, I am writing to bring to your attention an experience that has greatly angered and embarrassed me as a citizen of the state of Alaska. The situation involves an elderly lady who has been a prominent figure of our community for over 40 years. Unfortunately her age has progressed and disabilities have set in. Recently, I was amazed to learn that, irregardless of preliminary estate and financial planning done by this lady through her own lawyer, she has been subjected to financial, as well as physical and mental abuse from a healthcare giver employed on a full-time basis. Friends in the community have worked desperately to try and assist, as much as society will allow.

To our consternation, however, reality has shown us the extremely fragile position our state allows these elderly people to be in. Within the last year, any and all attempts to correct this situation have been accomplished after great expenditure of time and personal assistance from only her close friends within this community.

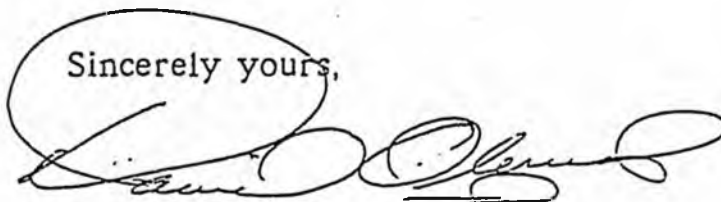
In order to protect our elderly and otherwise incapacitated population, and to keep this incredible scenario from happening again, I feel that the state should take two simple steps by way of new or existing legislation, as follows:

- 1) All doctors or healthcare givers are required to become cognizant of and report any signs of physical or mental abuse to appropriate authorities.
- 2) Anyone providing legal counsel must be required to likewise report to proper authorities their knowledge of any attempt to gain or to take someone's financial resources.

We look forward to continuing our work with Representative Mackey to correct this problem, and hopefully by the end of the current legislative session it will be passed into law. This case is not isolated, and you may well be aware of similar ongoing instances in which this legislation would be very important and beneficial.

Thank you.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "David L. Olerud", written in black ink.

David L. Olerud

/lao

ELDER ABUSE FUNDING IN HEALTH & SOCIAL SERVICES

In FY80 approximately 80% of the homemakers services were related to the protection of the elderly. This translates into an estimated budget of \$1,012,300. Also in that year \$340,100 was included in the component Adult Supportive Services to provide adult residential care. Staff within the Division of Family and Youth Services were assigned to assist adults with protective services, but the actual number can not be identified in our budget documents nor within the agency's records.

FY81 saw an increase in Adult Supportive Services to help with the costs of care in an adult residential care facility. This was accomplished through 1) supplementing SSI payments of SSI eligible individuals, or 2) providing full payment for residential care for those elderly, developmentally disabled or handicapped individuals who do not meet the state and federal eligibility criteria for SSI and cannot afford residential care. In FY82 the Division of Adult & Aging Services was created and then disbanded with the transfer of programs to Dept. of Administration (OAC) and Dept. of Public Safety (Domestic Violence).

In FY87 during the budget reduction exercises the number of hours of adult protective homemaker services was reduced (\$262,700). In FY90 the adult homemaker services was transferred to the Division of Public Health.

Adult Services was increased by \$100,000 in FY89 for adult protection residential care for levels I and II. In FY89 Adult Services was funded at \$372,100 and homemaker services at \$1,488,600 and has remained at that level until FY92. At that time the homemaker services program sustained a reduction of \$388,600. In the governor's FY93 budget submission, the adult homemaker and the home health aide programs are transferred to a new component entitled Home Health Services. This is to find efficiencies in the coordinated administration of these programs and will make the identification of funds specific to elder care even more difficult to identify.

There are currently between 3 and 3.5 social worker positions that specialize in the elder programs. Most other social workers spend some time dealing with the elderly but it is not possible to determine how many positions that actually translates into.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
 Division of Family & Youth Services

General Funds	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92	FY93 (Gov)
Elder Programs	1,352.4	1,462.3	2,050.0	2,050.0	1,760.7	1,760.7	1,060.7	1,860.7	1,060.7	1,472.1	1,472.1

Positions-PFT	FY83	FY84	FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92	FY93 (Gov)
Elder Programs	11	10	8	8	3	3	3	3	3	3	3

	FY83	FY85	FY88	FY89	FY90
Population 65+	15,149	18,133	20,397	21,085	22,459
Population 18+			369,446	374,618	380,609