

HB

353

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 26, 1998

FURTHER REFERRALS:

Date of Committee Action: 3/10/98

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 353

HOUSE BILL NO. 353

REFER IN HSS REGS TO OTHER DOCUMENTS

"An Act relating to adoption by reference in regulations; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 353 (HES) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) H+SS zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
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<i>[Signature]</i>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE *Car Bunde*

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 353

Revision Date: _____
Title: Adoption by reference
Sponsor: Kelly
Requestor: HESS

Dept. Affected: Health and Social Services
BRU: Administrative Services
Component: Commissioner's Office
COMPONENT SERIAL NO. 317
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1017 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY98) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 47.05, general authority for the Department of Health and Social Services, to allow the adoption by reference of federal and state laws and regulations and those specific items listed in the bill in their most current form. The current adoption by reference standard employed by the Department of Law requires a regulation change every time the reference material is changed. Most of the items listed in this bill are used for purposes of billing the Medicaid Program for services rendered, and are annually updated. Delays in the regulation process prevent the department's regulations from remaining current with standards as they are changed, so adoption of this legislation will reduce the administrative work related to regulations for more efficient operations.

1/28/98
Prepared by: Nancy Weller
Division: Medical Assistance
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3355
Date: 01/27/98
Date: 1/28/98

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Alaska State Legislature

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House District 31

House Of Representatives

February 27, 1998

Memorandum

To: Representative Con Bunde, Chair
House Health, Education and Social Services Committee

From: Representative Pete Kelly

A handwritten signature in black ink, appearing to read "Pete Kelly".

Re: House Bill 353, Regulations by Reference

House Bill 353 is ready to come back before your committee for consideration.

As you will recall, the CS for HB 353 generated a memo from Leg Legal alerting us to a possible due process concern. Following this memo, I have asked the Department of Law to review the issue more fully and get back to us. The Department of law has followed though on this request diligently. They have reviewed all of the reference books in question.

Yes, there is a small risk of a challenge regarding this new process. However they are willing to accept this risk, considering the benefit the process will generate.

Please schedule HB 353 for another hearing at your earliest convenience.

0-LS1395\B
Lauterbach
2/11/98

CS FOR HOUSE BILL NO. 353(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES KELLY, Dyson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to adoption by reference in regulations; and providing for an
2 effective date."

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

4 * Section 1. AS 44.62 is amended by adding a new section to read:

5 **Sec. 44.62.245. Material incorporated by reference.** (a) In adopting a
6 regulation that incorporates a document or other material by reference, a state agency
7 may incorporate future amended versions of the document or other material if the
8 adopted regulation identifies or refers to the document or other material followed by
9 the phrase "as may be amended," the phrase "as amended from time to time," or a
10 similar provision and

11 (1) the document or other material consists of

12 (A) a federal statute or regulation;

13 (B) a regulation of another agency of the state; or

14 (C) the product of the adopting state agency, another agency of

1 the state, or a federal agency, and if the document or other material, and
2 amendments to the document or other material, are created in a manner that
3 provides for public notice and an opportunity for public review and comment;

4 or

5 (2) the incorporation of a future amended version of the document or
6 other material is explicitly authorized by a statute.

7 (b) When the amended version of a document or other material incorporated
8 by reference in a regulation as described in (a) of this section becomes available, the
9 state agency shall

10 (1) make the amended version of the document or other material
11 available to the public for review; and

12 (2) publish in the Alaska Administrative Journal, not later than 15 days
13 after the amended version of the document or other material becomes available, a
14 notice that describes the affected regulation, the effective date of the amended version
15 of the document or other material, and how a copy of the amended version may be
16 obtained or reviewed.

17 (c) The state agency shall also send the notice described in (b)(2) of this
18 section to

19 (1) a person who has placed the person's name on a distribution list
20 kept by the agency that lists persons who want to receive the notice; the agency may
21 allow a person to request that distribution of the notice be by electronic means and
22 shall honor that request if appropriate means are available; and

23 (2) the regulations attorney in the Department of Law.

24 (d) A change in the form, format, or title in a future amended or revised
25 version of a document or material incorporated by reference in a regulation under this
26 section does not affect the validity of the regulation or the state agency's ability to
27 enforce or implement the regulation. The state agency shall notify the regulations
28 attorney in the Department of Law if the title of the document or other material
29 changes. The regulations attorney shall correct the title in the Alaska Administrative
30 Code under AS 44.62.125.

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

1 **Sec. 47.05.012. Material incorporated by reference.** Under
2 AS 44.62.245(a)(2), in adopting or amending a regulation that incorporates a document
3 or other material by reference, the department may incorporate future amended
4 versions of the document or other material if the document or other material is one of
5 the following:

6 (1) a document that is published, compiled, or prepared by the United
7 States Department of Health and Human Services and is included in the following list:

8 (A) the international classification of diseases, clinical
9 modifications;

10 (B) the common procedure coding system;

11 (C) the specifications for national uniform billing data elements;

12 (D) the federal poverty guidelines for the state; or

13 (E) the Indian Health Service encounter rates;

14 (2) the current procedural terminology for physicians published by the
15 American Medical Association;

16 (3) the diagnostic and statistical manual of mental disorders published
17 by the American Psychiatric Association;

18 (4) the length of stay in hospitals by diagnosis and operation for the
19 western region of the United States, published by HCIA, Inc.

20 (5) the relative value guide published by the American Society of
21 Anesthesiologists;

22 (6) the consumer price index published by the United States
23 Department of Labor;

24 (7) the health plan employer data and information set published by the
25 National Committee for Quality Assurance;

26 (8) practice standards adopted by the American Academy of Pediatrics,
27 American College of Obstetricians and Gynecologists, American Diabetes Association,
28 American Cancer Society, American Academy of Family Physicians, American College
29 of Physicians, United States Centers for Disease Control and Prevention, Agency for
30 Health Care Policy and Research, or the National Asthma Education and Prevention
31 Program;

1 (9) the compendium of animal rabies control published by the United
2 States Centers for Disease Control and Prevention;

3 (10) the control of communicable diseases manual published by the
4 American Public Health Association;

5 (11) the standards manual and interpretative guidelines for behavioral
6 health, employment and community support services, and for medical rehabilitation
7 published by the Commission on Accreditation of Rehabilitative Facilities;

8 (12) the accreditation manual for mental health, chemical dependency,
9 and other health care facilities published by the Joint Commission on Accreditation of
10 Healthcare Organizations;

11 (13) standards for accreditation of managed care organizations,
12 standards for accreditation of managed behavioral health organizations, and standards
13 for certification of credentials verification organizations published by the National
14 Committee on Quality Assurance;

15 (14) consumer assessment of health plans published by the Agency for
16 Health Care Policy and Research; or

17 (15) resources for optimal care of the injured patient published by the
18 Committee on Trauma, American College of Surgeons.

19 * Sec. 3. This Act takes effect July 1, 1998.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 11, 1998

SUBJECT: Adoption of future amendments to other material cited in regulations (CSHB 353(HES))

TO: Representative Con Bunde, Chair
House Health, Education and Social Services Committee
Attn: Lynne

FROM: Terri Lauterbach *TLauterbach*
Legislative Counsel

Enclosed is the CS you requested for HB 353. It expands the authority to adopt future amendments of governmental and nongovernmental documents by reference in regulations. The original bill gave this authority only to the Department of Health and Social Services. The enclosed CS gives that authority to all state agencies.

I wish to alert you that there is a constitutional issue involved with this bill. It exists in both the original bill and in the CS. The issue involves the delegation of legislative authority to nongovernmental entities. By allowing regulations to include future amendments to documents prepared by private groups, such as the American Medical Association (just as one example of a private group named in the bill), the legislature would be giving the AMA the authority to change the substance of a regulation. The AMA proceedings that lead to the change will not necessarily be a proceeding that has public notice or public review. While HB 353 allows for notice of the AMA change to be given to persons in Alaska after the AMA change is adopted by the AMA, there is no avenue that allows a person in Alaska to provide input before the AMA change takes effect in Alaska. The bill allows the AMA change to go into effect automatically.

The Alaska Supreme Court has not ruled definitively on this issue, but has stated in dicta that "the due process problem is a serious one." *Northern Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176 (Alaska 1977), *reh. den.*, 563 P.2d 256. This case involved an attempt by an agency to incorporate by reference into its regulations any future amendments of the Uniform Building Code. The court wound up ruling on other grounds and did not rule on the delegation issue, but the court did say

One reason for the prohibition against delegation to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize the amendments, as it does when they are adopted by the legislature

Representative Con Bunde
February 12, 1998
Page 2

or promulgated under the Alaska Administrative Procedure Act...While the adoption of future amendments has been upheld in certain cases, we recognize that the due process problem is a serious one. (Northern Lights, at 1181.)

Based on this language from the Alaska Supreme Court, there is some risk that, to the extent that sec. 44.62.245(a)(2) and sec. 45.05.012 allow incorporation by reference of future amendments made by private groups, the bill may be constitutionally flawed.¹

I have attached the two pages of the Northern Lights decision that are relevant to this issue. Please let me know if I can be of further assistance.

TML:glc
98-081.glc

Enclosure

¹ There might also be a delegation problem with respect to incorporating future amendments made by governmental entities, too, but even more so with respect to private groups.

"INSTRUCTION No. 21

You are instructed that the Alaska Administrative Code in effect at the time the second wing was added to the Northern Lights Motel required compliance with certain requirements of the 1955 edition of the Uniform Building Code. The requirements of said code, as they concern this case, read as follows:

Sec. 1301 Group H occupancies shall be: Hotels, apartment houses, dormitories, lodging houses

Sec. 1302(b) Group H occupancies—having more than three thousand square feet (3000 sq ft) of floor area above the first floor shall be of not less than one-hour fire-resistant construction throughout."

"INSTRUCTION No. 22

If you find from a preponderance of the evidence that the defendant violated any of the provisions of the law just read to you and that any such violation legally caused the accident in question, you are instructed that the party who has proven this has established a prima facie case that the other party was negligent. This prima facie case of negligence is not conclusive. It may be overcome by the evidence showing that under all the circumstances surrounding the event in question that that party's conduct was excusable or justifiable.

To show that a violation of law was excusable or justifiable, so as to overcome this prima facie case of negligence, in the event you find the defendant violated any of the foregoing provisions of law, such party must convince you, the jury, that any such violation of law resulted from causes or things beyond the control of such party and that he was not negligent.

If, in accordance with these instructions you find that the defendant has violated the law and that any such violation legally caused the accident in question, and you further find that defendant has failed to so excuse or justify such violation of law, then you must find that the defendant was negligent."

Defendant asserts that these instructions were erroneous on a number of grounds. Since the heart of plaintiff's case concerned negligence *per se* and the Uniform Building Code, any error would require reversal.

I.

Incorporation of the Uniform Building Code in Alaska Law

13 AAC § 50.020(a) (1971), in effect at the time of the fire, provided:

"Codes and standards contained in U.B.C. Volumes 1 through 4, AIA Article 11, and NFPA Volume 4 are adopted to regulate area, height, fire resistant construction, maintenance, and number, size, type, location and marking of exits for all occupancies."

13 AAC § 02.400(b) (1959), effective during the period in which the motel was built provided:

"Compliance with the 1955 Edition of the Uniform Building Code of the Pacific Coast Building Officials Conference and all future amendments thereto shall be minimum requirements for height, fire resistant construction, installed fire extinguishing and fire alarm systems, number, size, type and arrangements of exits for all _____ roadhouses, hotels, motor courts, _____ or similar places of assemblage of any capacity."

Defendant contends that 13 AAC § 2.400(b), the predecessor to 13 AAC § 50.020(a), is ineffective for two reasons: (a) the reference to future amendments is an unconstitutional delegation of power to a private, nongovernmental organization, and hence invalidates the entire section; and (b) the Administrative Code did not and does not provide the public with any information on how to obtain copies of the 1955 Uniform Building Code (U.B.C.), or its amendments, and hence is invalid. If the U.B.C. was not properly incorporated into the regulations, defendant contends, it should not have been used to provide a negligence *per se* standard.

[1.2] Defendant argues that it was not permissible to adopt the U.B.C. with "all future amendments thereto" as 13 AAC

NORTHERN LIGHTS MOTEL, INC. v. SWEANEY Alaska 1181

Cite as: Alaska, 561 P.2d 1178

§ 02.400(b) purported to do because this in effect delegates the future lawmaking power of the state to a private organization, the Pacific Coast (now International) Building Officials Conference,³ in violation of the constitutional doctrine of nondelegation to private parties.⁴

One reason for the prohibition against delegation to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize the amendments, as it does when they are adopted by the legislature or promulgated under the Alaska Administrative Procedure Act. See AS 44.62.190; AS 44.62.210(a); *Agnew v. Culver City*, 147 Cal. App.2d 144, 304 P.2d 788, 796 (1956).⁵ While the adoption of future amendments has been upheld in certain cases,⁶ we recognize that the due process problem is a serious one.⁷

3. Adopting a code written by a private national organization generally does not raise delegation of authority problems as long as the code, organization and edition are clearly specified, and no attempt is made to adopt future amendments. *Richardson, Building Codes: Reducing Diversity and Facilitating the Amending Process*, 1A Sutherland Statutes and Statutory Construction 549, 555 (4th ed. Sands 1972)

4. The non-delegation doctrine is virtually dead in the federal courts. K. Davis, *Administrative Law Treatise* § 2.17, at 77 (Supp. 1970). State courts, however, adhere to this doctrine, although not uniformly. Compare, e.g., *People v. Barkdale*, 8 Cal.3d 320, 105 Cal.Rptr. 1, 503 P.2d 257, 269-70 (1972), with *Blumenthal v. Board of Medical Examiners*, 57 Cal.2d 225, 19 Cal.Rptr. 501, 368 P.2d 101 (1962) (*Traxler*). See other cases discussed in K. Davis, *Administrative Law Treatise*, § 2.11, 2.14, 2.17 (1958 & Supp. 1970).

5. Both the majority and concurring opinions in *Ara Dispatch, Inc. v. City of Anchorage*, 540 P.2d 1024, 1026 n.10, 1027 n.5 (Alaska 1976), reserved the question of the constitutionality of adopting future amendments. However, in *Kingers v. Chapple*, 304 P.2d 831, 836-37 & n.13 (Alaska 1972), we upheld a regulation which incorporated the motorcycle helmet and face-ear quality standards of the United States Standards Institute Safety Code, but indicated that had the Institute been empowered to adopt standards in the future, the provisions would have been invalid.

This does not mean that the jury instructions based on the Uniform Building Code were necessarily invalid. It is undisputed that the only difference in language between the 1955 and 1970 editions of the Code in the relevant sections was that the words "first floor" were changed to "first story" in § 1302(h).

[3] We affirm the trial court's holding that the future amendments clause of the regulation is separable from the rest of the administrative regulation, leaving the 1955 U.B.C. provisions applicable. Because there was no significant change in the U.B.C. provisions as they pertain to this case, it follows that the trial court properly instructed the jury on this issue. This also means that we need not determine the constitutional questions presented.

[4] Defendant also argues that the failure to specify in the regulation where cop-

6. For example, in *United States v. Sharpnack*, 355 U.S. 286, 78 S.Ct. 291, 2 L.Ed.2d 282 (1958), the Supreme Court upheld the 1948 Federal Assimilative Crimes Act, adopting for federal enclaves all criminal laws of the adjoining states, including those to be passed after 1948. The court found a conscious congressional policy to make the criminal law of the enclave conform to that of the adjoining state, and noted that Congress could exclude a new state law if it disapproved of it. *Id.* at 294, 78 S.Ct. 291. See generally Liebmann, "Delegation to Private Parties in American Constitutional Law," 50 Ind. L.J. 620 (1975); Hayes, "Effect of Changes in Legislation Incorporated by Reference," 43 Minn. L. Rev. 89 (1958).

7. Since 1960, administrative agencies have been required to conform their administrative regulations to the drafting manual prepared by the Legislative Affairs Agency, AS 44.62.060(a). The manual states:

"Under presently controlling court decisions, an agency may not adopt by reference a code or set of standards from another state, the federal government, or a private organization and provide that future amendments as they become effective are being adopted also. Of course, when a particular code or set of standards is changed, an agency may adopt the amended version. (Emphasis in original.) Legislative Affairs Agency, Drafting Manual for Administrative Regulations at 12-13 (4th ed. 1971).

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STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

February 27, 1998

The Honorable Pete Kelly
Alaska State House of Representatives
State Capitol
Juneau, Alaska 99811

RE: House Bill 353 and draft CSHB 353(HES)
[OLS-1395\B], relating to the adoption of future
amendments to material adopted in regulations.

Dear Representative Kelly:

The Department of Health and Social Services has a particular interest in this bill. Nancy Weller of the department has asked me to respond to a request from Bruce Campbell of your staff for a reply to the objection to the bill raised by Legislative Counsel Terri Lauterbach's February 11 memo to House Health, Education and Social Services Committee Chair Con Bunde.

I agree with Terri's observation about the nature of the constitutional issue she has identified and with her assessment that the approach does present "some risk" that the procedure outlined in the bill "may be constitutionally flawed." The approach, as you well recall, is derived from Governor Knowles Senate Bill 155, offered during the 1997 session. As I understand, the administration appreciated the constitutional question that the bill it sponsored might present but thought the approach defensible against a possible due process-based challenge. I don't know of anything that has changed that assessment.

With respect to this measure, the agency is asking that it be allowed to make use of later-adopted standard references that are commonly used in one or another of the health professions or as standard references. The nature of the subject matter suggests that either the public would have had an opportunity to respond to and comment on the material in the later-adopted amendment or that the nature of the material set out in the later-adopted amendment would not elicit public comment that would qualitatively change the agency's determination to use a later-adopted version. Moreover, please appreciate that, in the event that the content of a later-adopted amendment might elicit public comment that could not be expressed to the agency before the agency made the substitution, the interested members of the public would continue to enjoy the right to petition under AS 44.62.220 - 44.62.230 in order to initiate a review of the matter.

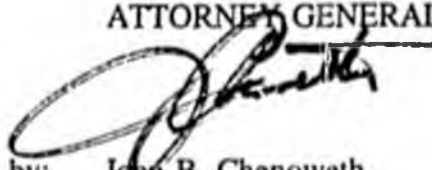
Hon. Pete Kelly
House Bill 353 &
Draft CSHB 353(HES) [OLS-1395/B]

February 27, 1998
Page 2

Under the circumstances, while the due process objection is not insignificant, the approach outlined appears to be one worth considering.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL



by: John B. Chenoweth
Assistant Attorney General and
Regulations Attorney

JBC:ng
JCHENOWETHPKELLY LET

cc: Elmer Lindstrom, Special Assistant
Department of Health and Social Services

Alaska State Legislature

REPRESENTATIVE
PETER KELLY

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House District 31

House Of Representatives

Sponsor Statement HB 353

Medical regulations by reference

House Bill 353 streamlines the state's adoption of the current version of standardized federal medical codes. The speed and efficiency gained by this bill is important for all health workers who must describe their work in standardized numerical codes, using the latest in federal medical references.

Federal codes are updated annually. Once a federal code is adopted as a state regulation, this bill allows the state to use the latest, updated version of the federal regulation.

The bill applies to:

- 1) International classification of diseases.
- 2) Common procedure coding system.
- 3) National uniform billing data.
- 4) Federal poverty guidelines.
- 5) Indian Health Service encounter rates.
- 6) Current American Medical Association procedural terminology.
- 7) American Psychiatric Association diagnostic and statistical manual of mental disorders.
- 8) HCIA, Inc. length of stay in hospitals, by diagnosis.
- 9) American Society of Anesthesiologists relative value guide.
- 10) U.S. Dept. of Labor consumer price index.
- 11) National Committee for Quality Assurance health plan employer data and information set.
- 12) Practice standards.
- 13) The compendium of animal rabies control.
- 14) Control of communicable diseases manual.
- 15) Standards manual for behavioral health.
- 16) Accreditation manual for mental health.
- 17) Standards for accreditation of managed care organizations.
- 18) Consumer assessment of health plans.
- 19) Resources for optimal care of the injured patient.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAL ASSISTANCE

P.O. BOX 110660
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January 22, 1998

The Honorable Pete Kelly
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Kelly:

You have asked me to briefly explain the substance of the adoption by reference Legislation that you intend to introduce on behalf of the Department of Health and Social Services.

This bill, if enacted, would allow the department to adopt within its regulations standards set out in federal or state law or regulation, or the specific national standards itemized in subsection (a)(2), without adopting a new regulation every time that these standards are changed. The procedure for notifying the public of adoption of a changed standard would be a notice published in the Alaska Administrative Journal.

The Department of Law, under current law and legal interpretation of the reference standard made through court decisions, require agencies to adopt by reference any material with a specific citation and date. Any time these materials are changed, the state agency must adopt a new regulation adopting the citation change; as the regulation adoption process is so lengthy, it is impossible for a state agency to remain current with standards adopted by reference.

The Medicaid Program is particularly hard hit by the adoption by reference requirement, as we operate like an insurance company and there is an expectation by health care providers that they can do business with us in the same manner as Blue Cross, Aetna or any other insurance company. The health care industry has adopted numerous standardized codes related to billing for services to assure that all providers and payers are "speaking" the same language. All of these standards are updated annually to keep pace with medical practice standards. If the Medicaid Program cannot consistently use current standards, providers will simply cease doing business with us and it will create an access problem for the 90,000 people who depend on Medicaid for health care coverage.

The standards listed in this bill are mostly related to Medicaid; I am attaching a list of the standards with a brief explanation of their use for your reference. None of these standards should be controversial.

The Honorable Pete Kelly
January 22, 1998
Page 2

Thank you for your assistance with this important Legislation, and please contact me at any time if you need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Nancy".

Nancy Weller,
Medical Assistance Administrator

International Classification of Diseases, Clinical Modifications - ICD - this book establishes a numerical code for each clinical diagnosis/disease. These codes are required on all medical claim forms.

Common Procedure Coding System - This system of numerical codes is maintained by the Health Care Financing Administration, and are uniformly used by all insurers. The coding system includes CPT codes and HCFA created codes for special procedures not included in other coding systems.

Specifications for National Uniform Billing Data Elements - Commonly known as revenue codes, this numerical coding system describes the services rendered in hospitals. These codes are required on all medical claim forms for hospital services.

Federal Poverty Guidelines - These guidelines are published annually, adjusted by the consumer price index, and are used to determine program eligibility. Many DHSS programs refer to the federal poverty level in their grants, as grantees are required to have a sliding fee schedule based on income.

Indian Health Service Encounter Rates - these rates are negotiated annually by the Health Care Financing Administration, Office of Management and Budget, and the Indian Health Service to be used as reimbursement for IHS and tribal health facilities by the Medicaid Program.

Current Procedural Terminology for Physicians - CPT - these numerical codes describe each treatment rendered by physicians and other providers. The CPT codes are required on all insurance claim forms and are updated January 1st of every year.

Diagnostic and Statistical Manual of Mental Disorders - DSM - Similar to the ICD, this manual contains a system of numerical codes that describes mental disorders for use on claim forms.

Length of Stay in Hospitals by Diagnosis and Operation for the Western Region of the US - LOS These two manuals describe the average length of inpatient hospital admission in the western US. Some percentage of this standard is ordinarily used by an insurer as the limit on length of stay they will reimburse, although LOS can usually be extended if there are complications.

Relative Value Guide - This book creates standards for the administration and billing of anesthesia procedures.

Consumer Price Index - CPI - Used by the federal government and the state to annually update a number of standards for needs based programs.

Health Plan Employer Data and Information Set - HEDIS - These standards are commonly used to evaluate how well providers and plans meet managed care standards of practice.

Practice Standards - practice standards adopted by many national organizations are routinely used in managed care as the purchaser's expectations for patient outcomes that are evaluated with HEDIS.

Compendium of Animal Rabies Control - This publication serves as the basis for animal rabies control programs throughout the United States and facilitates standardization of procedures among jurisdictions. Immunization procedure recommendations are contained in Part 1; all animal rabies vaccines licensed by the United States Department of Agriculture (USDA) and marketed in the US are listed in Part 2; Part 3 details the principles of rabies control.

Control of Communicable Diseases Manual - This manual furnishes public health administrators with a source of reliable information for preparing regulations and legal requirements for the control and management of communicable diseases and for developing programs for the health education of the public.

Standards Manual and Interpretive Guidelines for Behavioral Health, Employment and Community Support Services and for Medical Rehabilitation - The Divisions of Mental Health and Developmental Disabilities and Alcoholism and Drug Abuse uses these standards for accreditation of psychiatric or substance abuse rehabilitation programs that are grantees of the state.

Accreditation Manual for Mental Health, Chemical Dependency, and Other Health Care Facilities - This manual is used by the Divisions of Mental Health and Developmental Disabilities and Alcoholism and Drug Abuse for accreditation of general psychiatric or substance abuse treatment programs that are grantees of the department.

Standards for Accreditation of Managed Care Organizations, Standards for Accreditation of Managed Behavioral Health Organizations, and Standards for Certification of Credentials Verification Organizations - These accreditation standards will be used by the department for the certification of managed care organizations under contract.

Consumer Assessment of Health Plans - This consumer assessment of managed care is a tool created by the federal government for use with government health care programs required to complete such annual assessments.

Resources for the Optimal Care of the Injured Patient - This national evaluation tool establishes comprehensive guidelines for the care of the injured patient, including standards for different levels of trauma centers. The State of Alaska uses compliance with the standards in the document as one of the qualifications for certification as a trauma center (7 AAC 26.010 - 7 AAC 26.999).