

HB

259

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 27, 2008

SUBJECT: Sectional Analysis of SB 259, Special Revisor's Bill relating to ch. 96, SLA 2006 (medical assistance program) (Work Order No. 25-LS1339\C)

TO: Representative Peggy Wilson
Chair of the House Health, Education & Social Services Committee

FROM: Kathryn L. Kurtz *KK*
Assistant Revisor

The following is a sectional summary of SB 259.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Bill section 1 repeals AS 47.07.020(j), (k), and (n) because those subsections require changes to the state plan, the department has submitted amendments to the plan to reflect those changes, and the federal government has disapproved of the amendments. Rather than give effect to sections that have proven unacceptable at the federal level, this section repeals them.

Bill section 2 would make section 6 and two subsections of AS 47.07.020 enacted in section 7 of ch. 96, SLA 2006, retroactive to October 1, 2006. Those sections required amendments to the state plan for which the department has received federal approval. Bill section 2 would also make sec. 11 of ch. 96, SLA 2006, the section requiring a report to the legislature, retroactive to the date the report was made, March 2, 2007. This section addresses the requirement in AS 01.10.090, which provides: "No statute is retrospective unless expressly declared therein."

Bill section 3 repeals sec. 16, ch. 96, SLA 2006, the section with the effective date provision that gives rise to the uncertainty of the status of the affected sections.

Bill section 4 of the bill gives an immediate effective date to secs. 2 - 7 and 9 - 11 of ch. 96, SLA 2006, those sections covered by the effective date provision in sec. 16 of that Act.

Bill section 5 gives the bill an immediate effective date.

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TEXT OF REPEALED PROVISION

* **Sec. 16.** Except as provided in secs. 14 and 15 of this Act, this Act takes effect July 1, 2006, or on the date of notification under sec. 13 of this Act of federal approval of a revised state plan for medical assistance coverage incorporating the changes made by secs. 1 - 7 and 9 of this Act, whichever is later.

KLK:ljw
08-181.ljw

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TO: Representative Peggy Wilson
Chair of the House Health, Education & Social Services Committee

FROM: Kathryn L. Kurtz 
Assistant Revisor

Introduction

Enclosed is a sectional analysis of SB 259, a special revisor's bill relating to the effective date of changes made to the medical assistance program in ch. 96, SLA 2006. This bill is in addition to the regular revisor's bill. The changes proposed are presented in a special revisor's bill because the effective date and retroactivity issues involved are somewhat complex. This memo explains the situation that precipitated the need for this bill. I would appreciate it if the House Health, Education and Social Services Committee would hear the bill at your earliest convenience.

Situation Analysis

In 2006, the legislature passed an act amending the medical assistance program. Of the thirteen substantive sections in the Act, only four have clearly taken effect. The status of the remaining sections is uncertain because of the wording of a special effective date section in the Act. This section provided that the nine sections in question would take effect on July 1, 2006, or on the date of notification to the revisor of federal approval of "a revised state plan for medical assistance coverage" incorporating the changes made in the Act, whichever is later. This language assumed that there would be one plan submitted, and one approval received. This is not what has happened.

The Department of Health and Social Services determined that several of the statutory changes included under this special effective date did not require amendment of the state plan. The department submitted other changes to the federal authorities; some were approved on February 28, 2007, retroactive to October 1, 2006, others were disapproved.

Because not all of the changes made in secs. 1 - 7 and 9 of the Act (the sections specified in sec. 16) were submitted to the federal authorities for approval, and because not all of those that were submitted received approval, under the language of sec. 16 of ch. 96, SLA 2006, it appears to us that the bill sections subject to the effective date in sec. 16 have not and will not take effect without further legislative action. We are aware that this

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view may not be universal; one could certainly argue that the sections that required no change, or those that have been approved by the federal government, or both, have already taken effect. The situation is not clear, and can not be made clear through independent editorial action by the revisor.

The inconclusivity of sec. 16 of ch. 96, SLA 2006, is a deficiency in the statutes. Also, the disapproval of certain amendments in ch. 96, SLA 2006, arguably makes those provisions obsolete. Under AS 01.05.036, the revisor of statutes is empowered to prepare for submission to the legislature legislation that would correct deficiencies in the statutes and remove obsolete provisions.

Please call me if you have any questions.

KLK:ljw
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Enclosure