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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE
WASHINGTON, D.C. 20201

ASSISTANCE PAYMENTS
ADMINISTRATION

SRS-APA-FS
January 6, 1970

State Letter No. 1073

TO STATE AGENCIES ADMINISTERING APPROVED PUBLIC ASSISTANCE PLANS

Subject: Interpretation of Section 1118 of the Social Security Act--Alternate Method of Computing the Federal Share of Assistance Payments

The 1965 amendments to the Social Security Act (Public Law 89-97) which added title XIX (Medicaid) and specified a method (section 1903(c)) for determining the Federal share of medical assistance expenditures under that title, also added section 1118. Section 1118 provides that when a State makes medical assistance payments under an approved plan for title XIX, it has the option of using the Federal medical assistance percentage for determining the Federal share of assistance expenditures under the other public assistance titles (title I, X, XIV, or XVI and IV-A).

Because all federally aided medical assistance payments (except for emergency assistance) must be made under title XIX after December 31, 1969, (section 121 of Public Law 89-97), and because the average payments to recipients have been increasing in all States, more and more States are finding it advantageous to elect the optional method for determining the Federal share of maintenance assistance payments.

Consequently the following interpretation is provided to answer questions as to how States may exercise this option.

1. If the option is elected, it must be applied to <u>all</u> of the maintenance assistance programs, not just the ones where the alternate Federal share is larger.

2. The maintenance assistance expenditures to which the alternate formula is applied will be all maintenance payments computable for Federal funds, except that the alternate method may not be used for emergency assistance, nor for payments made under section 1119 of the Social Security Act for repairs to homes owned by recipients.

3. In applying the alternate formula, the Federal medical assistance percentage will be applied to the total computable payments under each program (with no maximum) including money payments, foster care payments, payments for institutional services in intermediate care facilities, and protective payments. The computable payments may encompass the needs of essential persons, if provided for under the approved State plan.

4. The computable payments must exclude all payments ineligible for Federal financial participation even though they may be proper under the State law. Also excluded are any other payments outside the approved State plan such as local agency supplementary payments to cover needs in excess of the State standards or maximums in the State plan or expenditures for items not provided in the approved State plan.

Also non-computable are protective payments or non-medical vendor payments in excess of the 10 percent limit on such recipients in section 403(a), last paragraph. Although recipient count is not used as a basis for claiming Federal financial participation under section 1118 for assistance expenditures under public assistance titles (title I, X, XIV, or XVI, and IV-A), the State must determine the correct recipient count for title IV-A in order to comply with the 10 percent limitation for protective and non-medical vendor assistance payments subject to Federal financial participation.

To compute the 10 percent limitation by taking 10 percent of the total recipient count as allowed under SRS Program Regulation 20-2, page 2, the State must first exclude from the total recipient count those persons who received both a money and a non-medical vendor payment and those receiving protective payments. The excluded persons would constitute the group to which the 10 percent limitation would be applied.

All assistance expenditures for those recipients in excess of the 10 percent limitation must be excluded from the assistance expenditures claimed for Federal financial participation at the Federal medical assistance percentage.

5. The law provides that if the State chooses to exercise the option of using the alternate method of computing the Federal share of assistance expenditures for any quarter, the alternate formula must be used for all succeeding quarters of that fiscal year (ending June 30). For the next fiscal quarter, the choice will be made anew in the same way. This means that the State has five options for computing the Federal share for any fiscal year:

   a. Regular formula for all four quarters
   b. Alternate formula for all four quarters
   c. Regular formula for first quarter, alternate formula for the last three quarters.
   d. Regular formula for first two quarters, alternate formula for the last two quarters.
   e. Regular formula for first three quarters, alternate formula for the last quarter only.

6. It has been pointed out that there are factors that are unknown in advance that may affect the average payments later in the year. Thus, a State may be "penalized" if it makes the choice to use the alternate formula for any quarter and consequently is committed to use it for the rest of the year, if the actual average payment later in the year decreases below the "breaking point." The breaking point is the average payment above which it becomes advantageous to use the alternate method. Therefore, a State will not be required to make the final commitment as to which of the five options above will be elected until the actual expenditures for the entire year are known.

   On the basis of this interpretation, if there is any doubt whether the option will be elected, the regular formula should be used for the quarterly estimates and for the expenditure statements for the early quarters. Then when it is definitely established that the alternate formula will be used in computing the Federal share for the last quarter or quarters, the Federal share may be recomputed retroactively for the next preceding quarter or quarters and the Federal share differences should be shown as adjustments in Schedule B (Form PS-1:2.3) of the last quarterly expenditure statements, and footnoted to indicate the amounts and quarters covered by the alternate method adjustment.

   It should be noted that election of the option may show a decrease in the Federal share for some programs and an increase in others even though a total net gain results. Therefore, the retroactive adjustments may be "minus" in some programs and included in item 4

of FS-142, the quarterly expenditure statement Summary Sheet and "plus" in others and claimed as an increase in item 11A.

If you have any questions not covered by this interpretation please communicate them to our regional office.

Sincerely,

John J. Whitley
Acting Commissioner

of FS-142, the quarterly expenditure statement Summary Sheet and "plus" in others and claimed as an increase in item 11A.

If you have any questions not covered by this interpretation please communicate them to our regional office.

Sincerely,

John J. Kurley
Acting Commissioner

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE
WASHINGTON, D.C. 20201

PROGRAM INSTRUCTION
MSA-PI-72-3
November 9, 1971

TO: STATE AGENCIES ADMINISTERING MEDICAL ASSISTANCE PROGRAMS

SUBJECT: State plan amendment - Requirement pertaining to early and periodic screening, diagnosis and treatment of individuals under age 21.

CONTENT: Enclosed is a preprinted statement for use in amending State plans to meet the requirements of SRS Program Regulation 40-11(C-4), November 9, 1971, (45 CFR 249.10(a)(3)), Early and Periodic Screening, Diagnosis and Treatment of Individuals under Age 21. This amendment should be included in Section D-5100-A Amount, Duration and Scope of Assistance.

The statement should be submitted to the SRS Regional Commissioner in the usual manner.

INQUIRIES TO: SRS Regional Commissioners.

Howard Glueckman
Commissioner
Medical Services Administration

SRS ROUTING STAMP

RC Secy EO AA
DRC Secy AO
FILES
GM STAT
DRC #1 AG AP CS MS RS YD TMD RD
DRC #2 AG AP CS MS RS YD TMD RD

STATE PLAN FOR
MEDICAL ASSISTANCE UNDER TITLE XIX
OF THE SOCIAL SECURITY ACT

STATE OF _____

Plan Amendment: Early and Periodic Screening, Diagnosis and Treatment of Individuals under Age 21; 45 CFR 249.10(a)(3); SRS Program Regulation 40-11(C-4), November 9, 1971

With respect to the early and periodic screening and diagnosis of eligible individuals under 21 years of age and treatment of conditions found, as specified in 45 CFR 249.10(b)(4)(ii), the State agency will:

1. establish administrative mechanisms to identify available screening and diagnostic facilities, to assure that eligible individuals under 21 years of age may receive the services of such facilities, and to make available such services as may be included under the State plan;

2. identify those eligible individuals in need of medical or remedial care and services furnished through title V grantees, and assure that they are informed of the services and referred to such grantees for care and services, as appropriate;

3. enter into agreements to assure maximum utilization of existing screening, diagnostic and treatment services provided by other appropriate public and voluntary agencies;

4. make available to all eligible individuals under 21 early and periodic screening and diagnosis to ascertain physical and mental defects, and treatment of conditions discovered within the limits of this State plan on amount, duration and scope of care and services; and will make available, in addition, eyeglasses, hearing aids, and other kinds of treatment for visual and hearing defects, and at least such dental care as is necessary for relief of pain and infection and for restoration of teeth and maintenance of dental health, whether or not such additional treatment is included under this plan, subject to any utilization controls imposed by the State agency.

☐ Such screening, diagnosis and additional treatment will be made available to all eligible individuals under 21 years of age by the effective date of 45 CFR 249.10(a)(3): February 7, 1972 .

☐ Such screening, diagnosis and additional treatment will be made available to all eligible children under 6 years of age by the effective date of 45 CFR 249.10(a)(3): February 7, 1972 and progressively to all other eligible individuals under 21 years of age by July 1, 1973. Attached is a statement specifying the progressive steps for achieving such coverage.

SOCIAL AND REHABILITATION SERVICE
WASHINGTON, D.C. 20201

PROGRAM INSTRUCTION
APA-PI-72-5
MSA-PI-72-7
January 10, 1972

TO: STATE AGENCIES ADMINISTERING APPROVED MEDICAL OR PUBLIC ASSISTANCE PROGRAMS

SUBJECT: Intermediate Care Facilities Under P.L. 92-223

CONTENT: This will advise that Public Law 92-223 repeals section 1121 of the Social Security Act relating to "assistance in the Form of Institutional Services in Intermediate Care Facilities," and amends title XIX to provide for inclusion of care in intermediate care facilities under Medicaid, instead of under the cash assistance program.

Within the Social and Rehabilitation Service, Federal responsibility for implementation of the Intermediate Care Facilities program is transferred to the Medical Services Administration from the Assistance Payments Administration.

Revised Federal regulations reflecting the provisions of Public Law 92-223 will be issued by the Social and Rehabilitation Service.

Enclosed are (a) a copy of relevant parts of P.L. 92-223, (b) a description of the new legislation, and instructions to title XIX agencies with respect to claiming Federal financial participation for such services under the State medical assistance plan for an interim period pending the promulgation of the revised regulations, and (c) a preprint statement for use by States that have ICF programs under title I, X, XIV or XVI in amending their title XIX plans to include such services.

EFFECTIVE DATE: January 1, 1972

INQUIRIES TO: SRS Regional Commissioners

SRS ROUTING STAMP

RC	Secy	EO	AA
DRC	Secy	AO	
GM	STAT	FILES	
DRC #1	AG	AP	CS MS RS YD TMD RD
DRC #2	AG	AP	CS MS RS YD TMD RD

Enclosures

Commissioner
Assistance Payments Administration

Commissioner
Medical Services Administration

ADVANCE MAILING

An Act

To amend title II of the Social Security Act to permit the payment of the lump-sum death payment to pay the burial and memorial services expenses and related expenses for an insured individual whose body is unavailable for burial.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * *

INCLUSION UNDER MEDICAID OF CARE IN INTERMEDIATE CARE FACILITIES

SEC. 4. (a)(1) Section 1905(a) of the Social Security Act as amended— 79 Stat. 351. 42 USC 1396d.

(A) by striking out "and" at the end of clause (14),

(B) by striking out the semicolon at the end of clause (15) and inserting in lieu thereof "; and", and

(C) by inserting after clause (15) the following new clause:

"(16) intermediate care facility services (other than such services in an institution for tuberculosis or mental diseases) for individuals who are determined, in accordance with section 1902(a)(31)(A), to be in need of such care;". Infra.

(2) Section 1905 of such Act is amended by adding at the end thereof the following new subsections:

"(c) For purposes of this title the term 'intermediate care facility' means an institution which (1) is licensed under State law to provide, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing home is designed to provide, but who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, (2) meets such standards prescribed by the Secretary as he finds appropriate for the proper provision of such care, and (3) meets such standards of safety and sanitation as are established under regulation of the Secretary in addition to those applicable to nursing homes under State law. The term 'intermediate care facility' also includes any skilled nursing home or hospital which meets the requirements of the preceding sentence. The term 'intermediate care facility' also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to institutional services deemed appropriate by the State. With respect to services furnished to individuals under age 65, the term 'intermediate care facility' shall not include, except as provided in subsection (d), any public institution or distinct part thereof for mental diseases or mental defects. "Intermediate care facility."

"(d) The term 'intermediate care facility services' may include services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions if— "Intermediate care facility services."

"(1) the primary purpose of such institution (or distinct part thereof) is to provide health or rehabilitative services for mentally retarded individuals and which meet such standards as may be prescribed by the Secretary;

"(2) the mentally retarded individual with respect to whom a request for payment is made under a plan approved under this title is receiving active treatment under such a program; and

"(3) the State or political subdivision responsible for the operation of such institution has agreed that the non-Federal expenditures with respect to patients in such institution (or distinct part thereof) will not be reduced because of payments made under this title."

(b) Section 1902(a) of such Act is amended— 79 Stat. 344; 81 Stat. 911. 42 USC 1396a.

(1) by striking out "and" at the end of paragraph (29);

(2) by striking out the period at the end of paragraph (30) and inserting in lieu thereof "; and"; and

Independent professional review program.

(3) by inserting after paragraph (30) the following new paragraph:

"(31) provide (A) for a regular program of independent professional review (including medical evaluation of each patient's need for intermediate care) and a written plan of service prior to admission or authorization of benefits in an intermediate care facility which provides more than a minimum level of health care services as determined under regulations of the Secretary; (B) for periodic on-site inspections to be made in all such intermediate care facilities (if the State plan includes care in such institutions) within the State by one or more independent professional review teams (composed of physicians or registered nurses and other appropriate health and social service personnel) of (i) the care being provided in such intermediate care facilities to persons receiving assistance under the State plan, (ii) with respect to each of the patients receiving such care, the adequacy of the services available in particular intermediate care facilities to meet the current health needs and promote the maximum physical well-being of patients receiving care in such facilities, (iii) the necessity and desirability of the continued placement of such patients in such facilities, and (iv) the feasibility of meeting their health care needs through alternative institutional or non-institutional services; and (C) for the making by such team or teams of full and complete reports of the findings resulting from such inspections, together with any recommendations to the State agency administering or supervising the administration of the State plan."

Repeal. 81 Stat. 930. 42 USC 1320a.

(c) Section 1121 of such Act is repealed.

Effective date. 84 Stat. 2059. 42 USC 415 note.

(d) The amendments made by this section shall become effective January 1, 1972.

SEC. 5. Section 1007 of the Social Security Amendments of 1969, as amended, is further amended by striking out "1972" where it appears and inserting in lieu thereof "1973".

Approved December 28, 1971.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 92-500 (Comm. on Ways and Means) and No. 92-747 (Comm. of Conference).
SENATE REPORT No. 92-552 (Comm. on Finance).
CONGRESSIONAL RECORD, Vol. 117 (1971):
Nov. 17, considered and passed House.
Dec. 4, considered and passed Senate, amended.
Dec. 14, Senate and House agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 8, No. 1:
Dec. 28, Presidential statement.

Instructions for Participation Pending Issuance of New Regulations

I. Description of the Statute:

A. On December 28, 1971, the President signed into law P.L. 92-223. Section 4 of the Act (attachment A) provides for the inclusion as an optional service under the Medicaid program of care provided in intermediate care facilities, effective January 1, 1972. Section 1121 of the Social Security Act, providing for intermediate care under the various cash assistance programs (title I, X, XIV, or XVI), is repealed by the Act.

B. The Act defines an intermediate care facility as an institution offering health related care and services to individuals who do not require the care and treatment which a hospital or skilled nursing home provides, but who do require institutional care above the level of room and board. To be approved for participation in the Medicaid program, an institution must:

a) be licensed under applicable State law;
b) meet standards of care prescribed by the Secretary of HEW;
c) meet standards of safety and sanitation established under regulation of the Secretary in addition to those applicable to nursing homes under State law.

C. Intermediate care facility services may include services provided in a public institution for the mentally retarded if:

a) the primary purpose of the institution is to provide health or rehabilitative services;
b) the patient is receiving active treatment under such a program;
c) the appropriate public agency agrees that non-Federal expenditures for patients in the institution will not be reduced because of the Medicaid payments.

D. The law requires that the need of individuals for care in intermediate care facilities be determined by independent professional review, including medical evaluation, which must be provided for in the State plan. The State plan provision also requires individual service plans and on-site inspections of ICFs.

E. In transferring the ICF program from title XI to title XIX of the Social Security Act, the legislation extends eligibility for care in an ICF to include the medically indigent (if the State plan so provides), in addition to cash recipients under public assistance programs.

II. Applicable Regulations:

A. Federal regulations covering institutional assistance in intermediate care facilities were published in the Federal Register on June 10, 1970 (45 CFR 234.130) (SRS PR 40-10(C-2)). New regulations, including those relating to the requirements in section 1902(a)(31) of the Act, will be promulgated as rapidly as possible. Until such regulations and supporting standards are issued, the existing ICF programs approved under the various cash assistance programs will be accepted for Federal financial participation under title XIX.

B. For intermediate care facilities now approved and facilities which apply for certification during the interim period, a determination of provider eligibility made pursuant to existing regulations in 45 CFR 234.130 will be accepted as meeting the requirements set forth in section 4 of P.L. 92-223. Similarly, determination of need of individuals for care in ICFs may be made for the interim period in accordance with 45 CFR 234.130.

C. Also, during this interim period, States which do not now have approved ICF programs, may apply for approval under the regulations provided in 45 CFR 234.130.

III. State Plan Amendments:

A. States which had an approved plan for ICF services under title I, X, XIV or XVI, and wish to continue the program under title XIX, should immediately submit an amendment to the title XIX plan. Attachment B is a preprinted plan amendment which can be used for this purpose.

B. States which had no approved plan for ICF services under title I, X, XIV or XVI, and which wish to initiate an ICF program under title XIX, should submit their plan amendment material in the usual manner.

C. Both under A and B above, an approvable title XIX plan amendment must be submitted no later than March 31, 1972 if Federal matching is to be provided for the period January 1 - March 31, 1972.

D. Upon issuance of revised Federal regulations, all States with ICF programs will have to amend their title XIX plans to remain in compliance.

E. We regret that it will be necessary for States to amend their title XIX plans twice: (1) by March 31, 1972 to obtain Federal matching for ICF care under title XIX in accordance with the current regulations in 45 CFR 234.130, and the provisions of P.L. 92-223, and (2) subsequently, to comply with revised Federal regulations. However, this two-step procedure is necessary because of the

January 1, 1972 transfer of the IC program to title XIX, the need to have a currently effective plan amendment under title XIX on an interim basis, and the obligation of HEW and the States to implement the new statutory provisions in all respects as soon as this can be done.

STATE PLAN FOR MEDICAL ASSISTANCE UNDER TITLE XIX
OF THE SOCIAL SECURITY ACT

STATE OF _____

Plan Amendment: Payment for Care in Intermediate Care Facilities; P.L. 92-223, December 28, 1971

1. Effective January 1, 1972, the State plan provides for Intermediate Care Facility services in accordance with the provisions relating to such services under the State plans under titles I, X, and XIV, or under title XVI, of the Social Security Act, as in effect on December 31, 1971.

2. The State agency will comply with the provisions of section 4 of P.L. 92-223.

3. Intermediate Care Facility services in institutions for the mentally retarded or persons with related conditions are included under the plan.

☐ Yes

☐ No

4. (Applicable only if the State title XIX plan includes the medically needy)

The State plan includes Intermediate Care Facility services for the medically needy.

☐ Yes

☐ No

MEDICAID REIMBURSEMENT

Effective with July 1, 1967, states participating in titles V and XIX are required to reimburse hospitals on a reasonable cost basis. In implementing the applicable provisions of the Social Security Act (sections 503(a) and 1902(a)), the Welfare Administration has adopted the title XVIII reasonable cost reimbursement program. Hospitals participating under title XVIII will be expected to use the same reimbursement method for titles V and XIX as for title XVIII.

Hospitals, therefore, will be reimbursed under title XIX in accordance with the following:

Costs Related to Patient Care.--Included in costs related to patient care are all costs which are necessary and proper for developing and maintaining patient care facilities and activities. Examples of such costs would be depreciation, interest expenses, nursing costs, administrative costs, and costs of employee pension plans. Costs not related to patient care are those which are not necessary and proper for developing and maintaining patient care facilities and activities. These costs, of course, are not allowable.

Television and Communication Systems Costs.--Where telephone and television services are used exclusively for the convenience or entertainment of patients, the costs of these services are not allowable. However, if a nurse-patient communications system has no capability other than nurse and patient communication, the costs for this service are allowable.

Costs of Provider-Based Physicians.--Costs of physician services not directly related to medical and surgical services provided to individual patients are allowable costs of providers. Examples of these services would be teaching, administration, supervision of technical or professional personnel, and laboratory activities.

Billing Costs.--Insofar as billing costs are concerned, they are included in administrative costs and are allocated in the cost finding process to the various cost centers as part of such costs.

Services of Nonphysician Anesthetists as Hospital Services.--Services furnished by a nonphysician anesthetist who is a salaried member of a hospital's staff are covered in the same manner as the services of other nonphysician hospital employees.

Cost of Services Furnished "Under Arrangements".--The term "under arrangements" refers to situations where a provider has contracted with an outside organization to perform services for the provider. The amount charged by the organization and paid by the provider for the services rendered is a cost to the provider, and is included in the latter's allowable costs, providing the charges are reasonable.

Reimbursement for Cost of Interns and Residents.--Insofar as services performed by interns and residents are concerned, the costs of these services are included in a hospital's allowable costs if the teaching program with which the interns and residents are connected is one that has been approved.

Taxes.--As a general rule, taxes assessed against a provider in accordance with the laws of the several States and lower levels of government are allowable costs. There are a number of taxes levied on providers which are not allowable. Included among these are federal, state or local income taxes, and excess profits taxes at the federal, state, or local levels.

Oxygen.--Oxygen is considered to be a medical supply and providers are reimbursed for it on the basis of reasonable cost.

Utilization Review Costs.--Reimbursement to a provider for utilization review is made on the basis of the provider's reasonable costs.

On-the-Job Training and Life Insurance Premiums.--Costs relating to orientation and on-the-job training are considered to be normal operating costs and are allowable.

Start-Up Costs.--Prior to admitting patients, a new provider incurs costs in developing its ability to care for patients which may not be allocated to patient care activities. Examples of such costs would be obtaining and organizing a staff, plus additional operating or maintenance costs. These expenses are commonly referred to as "start-up costs," and are considered as deferred charges which are allocated over a number of cost reporting periods benefiting from such costs. As a general rule, start-up costs which have been properly capitalized are allowable if they are amortized in compliance with the time periods set forth in the rules covering various factual situations.

Organization Costs--Cost Treatment.--As is the case with start-up costs the general rule with respect to reimbursement of organization costs is: they are allowable providing they have been properly capitalized and have been amortized in compliance with the time periods set forth in the rules covering various factual situations.

Allowable Advertising Costs.--Included in allowable advertising costs are expenses incurred in connection with a provider's public relations activities, if the advertising is basically concerned with presenting a good public image and is directly or indirectly related to patient care. Advertising costs designed to recruit medical and paramedical personnel for a provider's staff are allowable, as are advertising costs directed toward recruiting administrative and clerical personnel involved in patient care activities or the development and maintenance of the provider's facilities.

Deferred Compensations.--The costs of deferred compensation plans are allowable if certain requirements are met. The plan must be a formal, written agreement made known to all eligible employees. In addition, the plan must provide for (1) the method for calculating the contributions to the fund of both the provider and the employees, (2) the protection of the plan's assets, (3) the specific conditions under which the benefits become vested, and (4) the basis for computing the amount of benefits to be paid.

Pension Plans.--In general, the pension fund rules parallel those on deferred compensation plans.

ALASKA STATE HOSPITAL ASSOCIATION

1135 W. 8th, SUITE 3
PHONE 277-3922

ANCHORAGE, ALASKA 99501

7 June 1972

Finance Committee
House of Representatives
State of Alaska

SB 56 - Medicaid

Dear Legislator:

The Alaska State Hospital Association cannot support SB 56 as amended by the Health, Welfare and Education Committee of the House of Representatives.

The bill as passed by the Senate protected hospitals from a loss of revenue that would occur through the Medicaid reimbursment formula. The HWE committee amendment cancelled this protection by the following change:

"Page 3, lines 7 and 8: At beginning of sentence delete "Subject to requirements of", and insert "If required by".

This simple change reinstituted the Medicaid reimbursement formula. The loss of revenue will have to be passed on to the other paying patients to insure that hospitals will have sufficient funding for growth and development.

We earnestly request that the HWE committee amendment be deleted.

Respectfully,

James R Burns

James R. Burns, Chairman
Legislative Committee

JRB:nbr

COMMENTS FROM GARY WANGSMO ON MEDICAID

Medicaid implications upon providers of health services in the State of Alaska:

1. Reimbursement to providers would be on the cost basis of services similar to Medicare provisions now in effect.

2. Medicaid reimbursement would not include:

   a. An allowance for generation of excess of revenues over expenses to provide funds for future growth and development of facilities or services

   b. An allowance for charity service and bad debts;

   c. An allowance for educational and research programs for the institution;

   d. An allowance for accelerated depreciation to provide funding for new replacement of buildings and equipment.

3. Medicaid reimbursement, then, would not allow sufficient funds for new facilities, services and equipment, the repayment of long-term financing or even replacement of worn-out and out-of-date equipment.

4. This means that non-Medicaid patients would have to pay the cost of services not covered by Medicaid reimbursements. This would significantly increase the cost of health care to other patients. It would significantly limit the potential for new services and programs to be developed and provided, thus limiting the continuance of high quality patient care that each institution strives to provide.

5. Additional personnel would be required in the provider's business office to handle additional reporting requirements.

6. Pending legislation on prospective rate setting (which establishes a rate setting commission to approve rates fixed in advance for a period of time) would provide a more equitable means of reimbursement to providers of health services. This legislation is currently before Congress, and it is anticipated that it will be a Federal requirement within the immediate future.

ARTHUR ANDERSEN & CO.

501 NORTON BUILDING
SEATTLE, WASHINGTON 98104

May 16, 1972

Mr. Gary Wangsmo, Controller
Providence Hospital
3200 Providence Drive
Anchorage, Alaska 99504

Re: Medicaid for Alaska

Dear Mr. Wangsmo:

You have asked me to comment on the proposed program in Alaska for reimbursing hospitals under a Medicaid program rather than charges for the care of all Welfare or indigent patients.

Some of the significant disadvantages to a Medicaid program in Alaska for your hospital would be as follows:

1) The Medicaid program would probably reimburse your hospital on the cost basis of services rendered to these patients; the principles of determining the cost of services would generally conform to the Medicare principles of reimbursement, unless amended by HR-1. These Medicare principles of reimbursement do not reimburse hospitals their full cost of services because of-

a) Nonallowance of charity, bad debts and contractual adjustment expenses;

b) Nonallowance of accelerated depreciation for new replacement of buildings and equipment; as a consequence, the hospital would not have sufficient funds for the eventual replacement of your facilities.

c) Nonallowance of excess revenues to generate growth and development funds to provide new services and equipment for the hospital.

d) Nonallowance of accelerated depreciation to provide adequate cash for funding of the cash required for your proposed development program; as a consequence, the private and insurance-covered patients would bear the brunt of high rates to service your debt.

c) Nonallowance of approved educational and research programs for the hospital.

2) The proposed Medicaid program provides a further discrimination among all purchasers of care from your hospital; the private and insurance-covered patients must pay the costs of services not covered by the Medicare and now proposed Medicaid patients outlined above.

3) The proposed Medicaid program would not provide excess funds for the development of your new hospital building, your new hospital equipment and your new hospital services. As a consequence, the proposed development program should be re-evaluated.

4) Proposed requirements by H.E.W. for providing minimum levels of charity care on hospitals imposes additional burdens of generating funds from the rate or charge structure; the proposed Medicaid program would not be paying its pro rata share of this charity service.

5) The proposed Medicaid cost reimbursement program does not provide the cost control incentives.

6) The proposed Medicaid program would impose additional billing and reporting requirements which would increase the number of people in your administrative departments.

The proposed Medicaid program should include a reimbursement on the basis of fair rates of services to include:

1) Patient care, approved educational programs and patient care related research programs.

2) Charity and credit losses for those unable to pay.

3) Preservation, improvement and expansion of buildings and equipment.

4) Debt services for amortization of principal and interest payments.

5) Operating cash needs for additional working capital requirements.

The Phase II program and prospective rate setting legislation now pending provides the guidelines for a fair and equitable reimbursement of hospitals for the care of patients.

Very truly yours,

ARTHUR ANDERSEN & CO.

By _____
Lloyd A. Dunn

EXHIBIT II

ARTHUR ANDERSEN & Co.

QUALIFICATIONS AND EXPERIENCE

LLOYD A. DUNN

Education:

B.S., Accounting, University of Idaho, 1952

C.P.A., State of Washington and seven other states

Professional Experience:

Partner, Health Services and Small Business Division, Arthur Andersen & Co., Seattle, Washington

Fifteen years' experience in health services accounting, reimbursement, cost finding, budgeting, rate setting, consulting and systems

In charge of hospital accounting for the Firm in the States of Washington, Oregon, Montana and Alaska; supervising hospital auditing, consulting and systems work for fifty hospitals, including two in Southern California

In charge of other health services accounting for Washington; supervising auditing, consulting and systems work for nursing homes, medical clinics, physician and dentist groups and related associations and research centers

Developed coding, cost finding, rate setting, etc., techniques for the Medicare and Medicaid reimbursement programs

Professional Societies:

American Institute of Certified Public Accountants

Washington State Society of Certified Public Accountants

Member of Washington Chapter of Hospital Financial Management Association; past state chairman responsible for instigating and conducting state cost finding and rate setting workshops; uniform coding committee

6-7-72

NIGHT LETTER TO: Senators Hammond, Miller, Butrovich, Koslosky, Groh, Merdes, Palmer, Poland, Thomas, Young, Josephson, Lewis, Meland, Rettig, Croft, Rader

RE: SENATE BILL 56

On May 19, SB 56 was passed by the Senate with an amendment which was offered by Senators Josephson, Merdes, Miller & Groh which identified the legislative intent to reimburse hospitals at fair rates for the reasonable cost of services rendered. This amendment was specifically included to protect the hospitals from financial loss which they would otherwise realize given the Medicaid legislation is enacted.

This amendment has been effectively nullified by the House HWE Committee by its introduction of a new amendment.

Should SB 56 be passed in its present form Providence Hospital will suffer a loss in excess of $400,000 annually.

The intent of the Senate amendment was to maintain as an act of the Legislature the responsibility of the state to pay fair rates for the reasonable cost of services rendered. Private, voluntary hospitals cannot provide service to their community if those responsible for making payment for services rendered do not pay the real cost. The net result would be eventual governmental operation of the private voluntary hospital industry.

We urge your support in defeating or appropriately amending SB 56.

DJM

Sister Evelyn

ALASKA STATE LEGISLATORS
JUNEAU, ALASKA

May 18, 1972

RE: SENATE BILL 56
FROM: Dan Meddleton, Sister Evelyn Bergamini

We urge your assistance in defeating SB 56. Passage of this legislation would effect insurmountable damage to Providence Hospital's ability to serve the people of our community.

If Medicaid legislation in the State of Alaska was in effect during the calendar year 1972 the financial loss in patient revenue at Providence Hospital would approximate $333,887 . This does not recognize additional loss which would be realized as a result of "recipient crossover" (USPHS beneficiaries that would utilize Providence Hospital as recipients of Title XIX financial assistance).

Responsible reimbursement for services rendered is not part of the Medicaid program. A summary of deficiencies in this Federal program follows:

1. Reimbursement to providers would be on a "cost basis" for services rendered; the principles of determining the cost of services would generally conform to the Medicare principles of reimbursement. The Medicare principles of reimbursement do not reimburse hospitals their full cost for services provided.
2. Medicaid reimbursement would <u>not</u> include:
   a. An allowance for generation of an excess of revenues over expenses to provide funds for future growth and development of facilities or services;
   b. An allowance for charity service and bad debts;
   c. An allowance for educational and research programs for the institution;

d. An allowance for accelerated depreciation to provide funding for new replacement of buildings and equipment.

3. Medicaid reimbursement, then, would not allow sufficient funds for new facilities, services and equipment, the repayment of long-term financing or even replacement of worn-out and out-of-date equipment.

4. This means non-Medicaid patients would have to pay the cost of services not covered by Medicaid reimbursements. This would significantly increase the cost of health care to other patients. It would significantly limit the potential for new services and programs to be developed and provided, thus limiting the continuance of high quality patient care that each institution strives to provide.

5. Additional personnel would be required in the hospitals' business office to handle additional reporting requirements.

6. Pending legislation on prospective rate setting (which establishes a rate setting commission to approve rates fixed in advance for a period of time) would provide a more equitable means of reimbursement to providers of health services. This legislation is currently before Congress, and it is anticipated that it will be a Federal requirement within the immediate future.

The above comments are abstracted from the enclosed letter dated May 16, 1972, addressed to Mr. Gary Wangsmo, Controller, Providence Hospital, from Mr. Lloyd A. Dunn, Partner, Health Services Division, Arthur Andersen and Company, Seattle, Washington. Mr. Dunn has over 15 years' experience in health services financial management, is in charge of hospital accounting for the Arthur Andersen firm in the states of Washington, Oregon, Montana, and Alaska and is assisting in the financial management of 50 hospitals. Mr. Dunn is a Certified Public Accountant in the State of Washington and seven other states.

Mr. Dunn's comments regarding Medicaid legislation in the State of Alaska make apparent a very real threat to the current Providence Hospital expansion program. It will cost $17.5 million, and it cannot be completed if the full cost of care provided is not realized.

We respectfully request your support in defeating Senate Bill 56.

Fairbanks Memorial Hospital

1650 Cowles St.
FAIRBANKS, ALASKA 99701

OPERATED BY
LUTHERAN HOSPITALS AND HOMES SOCIETY
FARGO, NORTH DAKOTA 58102

May 26, 1972

Mr. Andrew S. Warwick
State Representative
ALASKA STATE HOUSE OF REPRESENTATIVES
Pouch V
Juneau, Alaska 99801

Dear Andy:

Please find enclosed information regarding some of the problems as I see them in regard to the Medicaid Program.

I think Gary Wangsmo, Controller for the Providence Hospital did a fine job spelling out the problems. His comments are included. Basically, my concerns are pretty much the same with emphasis on:

1. 1972 national election and an inevitable change in the health care financing system.

2. The Medicaid reimbursement method does not in fact, allow sufficient funds for development of new facility services and does not take into consideration those facilities with long term financing.

3. More of a burden is placed on the smaller group in the middle. What I mean by that is those people between Medicare (65 years and older) and Medicaid (a general classification of indigent) becomes smaller and smaller. Consequently, you and I are those people in the middle who do pay our bills and keep up the total responsibility of providing continuing health care programs, i.e., buildings, education, programs, etc., etc.

I would hope that the State of Alaska would spend one more year studying their position on this program and certainly not go into the Medicaid Program without the support of the State Medical Society and the Alaska State Hospital Association.

Thanks much, Andy.

Sincere regards,

Alvin D. Finneseth
Administrator

ADF:lw cc. Dan Waddleton, Assoc. Admin. Providence

CONFIRMATION COPY: 1972 MAY 24 PM 3 02

MAIL TO: 4R FAIRBANKS COMMUNITY HOSPITAL 1655 COWLES

FAIRBANKS ALASKA 99701

CJ

CWA050 PDF

FAIRBANKS ALASKA 24 212P ADT

STATE REP ANDREW WARWICK

JUN

WE UNDERSTAND THE MEDICAID PROGRAM IS CURRENTLY UNDER DISCUSSION IN THE FINANCE COMMITTEE OF WHICH YOU ARE A MEMBER. WE WOULD HOPE THAT THIS BILL WOULD RECEIVE LESS THAN ADEQUATE SUPPORT AS WE FEEL MEDICAID IN ALASKA AT THIS TIME IS PREMATURE. MORE STUDY AND ENVOLVMENT IS NECESSARY PARTICULARLY ON THE APART OF THE PROFESSIONALS INVOLVED AS THE MEDICAID PROGRAM IS NOT ONLY EXTREMELY COSTLY BUT AN ADMINISTRATIVE MONSTROSITY SINCERE REGARDS

ALVIN D FINNESETH ADMINISTRATOR WILLIAM TOWNDSEND MD

JOSEPH RIBAR MD FAIRBANKS MEMORIAL HOSPITAL

(14) .

CONFIRMATION COPY 1972 MAY 23 AM 10 21

MAIL TO: ALVIN D FINNESETH ADMINFAIRBANKS MEMORIAL HOSPITAL
1650 COWLES ST FAIRBANKS ALASKA

CJ

CWA010 PDF

FAIRBANKS ALASKA 23 1018A ADT

REP ANDY WARWICK

STATE LEGISLATURE JUN

THE MEDICAID BILL LOOKS GOOD ON THE SURFACE MORE FEDERAL DOLLARS ETC HOWEVER THE COSTS AND PROBLEMS OF ADMINISTERING THE PROGRAM ARE TREMENDOUS/ THE HOSPITAL ASSOCIATION HAS GONE ON RECORD IN OPPOSITION TO THIS BILL AT THIS TIME I BELIEVE THE MEDICAL ASSOCIATION OPPOSES TITLE 19 YOU WILL FIND THAT THE PROGRAM HAS BEEN CHASTIC IN 48 STATES IN SEVERAL STATES THE PROGRAM IS VIRTUALLY BANKRUPT I WOULD HOPE YOU WOULD PROCEED CAREFULLY AND RECCOMEND THAT T[illegible] BILL BE KILLED UNTIL NEXT YEAR SO MORE DETAILED STUDY CAN BE MADE YOU MIGHT LIKE TO CALL HARRY (RED) PORTER IN FAIRBANKS AS HE COULD FILL YOU IN ON THE POSITION OF THE FAIRBANKS MEMORIAL HOSPITAL BOARD

ALVIN D FINNESETH ADMINISTRATOR FAIRBANKS MEMORIAL HOSPITAL

19 48

(20) .

FOR SENATOR F R

SENATOR CO ROGERS

CHAIRMAN FAIRBANKS DELEGATION

BARNOFF HOTEL

JUNEAU ALASKA

RE: SENATE BILL 56

MEDICAID PROGRAMS HAVE BEEN EXPENSIVE FAILURES IN THE [illegible] STATES WITH SUCH PROGRAMS, IN PART, BECAUSE OF MISCONCEPTIONS COSTS. ESTIMATES MADE BY COMMITTEES OF THE STATE MEDICAL ASSOCIATION HAVE SUGGESTED THAT IN CONTRAST TO CONCLUSIONS MADE RECENTLY BY THE OFFICE OF THE COMMISSIONER OF HEALTH AND AN INDEPENDENT STUDY AGENCY, THE INCREASE IN THE AMOUNT OF MONEY TO BE SPENT BY THE STATE WOULD BE THE MONEY RECEIVED FROM THE FEDERAL GOVERNMENT BY AT LEAST ONE HUNDRED PERCENT; IN OTHER WORDS, IT COULD COST THE STATE EIGHT MILLION DOLLARS ADDITIONAL COST TO GAIN FOUR MILLION DOLLARS FROM THE FEDERAL GOVERNMENT. APART FROM MONETARY CONSIDERATIONS, IT IS VERY UNWISE FOR ALASKA TO INVOLVE ITSELF IN AN EXPENSIVE AND FAILING PROGRAM WHEN IT IS LIKELY THAT THE CONGRESS OF THE UNITED STATES WILL SHORTLY ENACT A NATIONAL COMPULSORY HEALTH INSURANCE PROGRAM WHICH WOULD PROVIDE BETTER SERVICE FOR FAR LESS COST TO THE STATE AND FEDERAL GOVERNMENTS.

~~STRIKE LAST SENTENCE.~~

~~APART FROM MONETARY CONSIDERATIONS, IT IS VERY UNWISE FOR ALASKA~~ TO INVOLVE ITSELF IN AN EXPENSIVE AND FAILING PROGRAM WHEN IT IS LIKELY THAT THE CONGRESS OF THE UNITED STATES WILL SHORTLY ENACT A NATIONAL COMPULSORY HEALTH INSURANCE PROGRAM WHICH WOULD PROVIDE BETTER SERVICE FOR FAR LESS COST TO THE STATE AND FEDERAL GOVERNMENTS.

IN SPITE OF THE FACT THAT ALASKA'S PARTICIPATION IN MEDICAID WOULD INCREASE THE PHYSICIANS' PERSONAL INCOMES, WE ARE TOTALLY OPPOSED TO THAT PARTICIPATION.

MEDICAL STAFF OF THE FAIRBANKS REGIONAL HOSPITAL

BY UNANIMOUS VOTE AT REGULAR STAFF MEETING

BARNOFF:JMJ

ALASKA STATE HOSPITAL ASSOCIATION

1135 W. 8th, SUITE 3
PHONE 277-3922

May 18, 1972

ANCHORAGE, ALASKA 99501

Dear Senator:

SB 56 - MEDICAID

The Alaska State Hospital Association is opposed to the MEDICAID legislation for the following reasons.

1. LOSS OF REVENUE - The cost reimbursement formula to hospitals will mean a significant loss of revenue. This will in most cases require further revenue sharing by the State and local governments.

2. LACK OF INPUT - The Department of Health and Social Services has not approached the hospitals regarding this matter that will so definitely affect all community hospitals.

3. PAST HISTORY - All of the 49 states that have implemented MEDICAID have had a constant problem of financing the program.

4. ALASKA NATIVE LOSS - In those states where the Public Health Service was formerly assisting American Indians in their health care, there has been a movement to cover these persons under MEDICAID and to reduce the PHS budget for health care to American Indians. In Alaska, this could seriously curtail the health care of Alaska Natives.

5. FEDERAL MATCHING PROGRAMS: Most matching programs tend to increase expenditures by constantly adding new requirements that expand beyond the original program. This usually far exceeds any original savings!

6. NATIONAL HEALTH INSURANCE: There are currently three (3) major national health insurance proposals before Congress. Some action is assured after this election year. Why implement a program now that will probably require a whole new program in a year or two?

7. NO DATA: The program being developed by the State Department of Health and Social Services is as yet uncompleted. Therefore, you have no financial data until the program has been fully developed and analyzed as to how it will affect the persons and institutions that must provide the care.

We earnestly request that this legislation be deferred until proper cost figures and the effects on the health care industry have been determined.

Respectfully,

James R Burns

James R. Burns, Chairman
Legislative Committee

JRB:jt

Ketchikan General Hospital

3100 TONGASS AVE.
Ketchikan, Alaska 99901

May 18, 1972

Dr. Frederick McGinnis, Commissioner
Department of Health and Social Services
Pouch H
Juneau, Alaska 99801

Dear Dr. McGinnis

Thank you for responding so promptly to our request through Representative Genie Chance for information regarding the effect which the impending Medicaid legislation might have on Ketchikan General Hospital. Our request for clarification centers around three basic issues, as follows:

1. How would the Medicaid legislation affect the reimbursement to providers of services currently being funded under the "full-cost-of-care concept"? You indicated, on a preliminary basis, that the Department of Health and Social Services has not yet had an opportunity to review how these two pieces of legislation would intermesh. In view of the reimbursement limitations apparently inherent in a Medicaid Program (see below), this would be of particular interest to us in that we are very probably one of the largest providers of service to the state under the full-cost-of-care legislation via our nursing home, Island View Manor.

2. We have not yet had an opportunity to review the Medicaid reimbursement formula; however, we believe it to be the same as the Medicare reimbursement program. If that is the case, there does appear to be some shortcomings in the reimbursement method. For instance, the Medicaid reimbursement formula would apparently not pay a proportionate share of bad debts incurred by the health provider while serving various "self-pay" patients. The Medicaid reimbursement formula apparently does not provide for a proportionate share of reimbursement for charity cases... those patients who may not qualify for the Medicaid Program but who are actually "medically indigent", the cost for whom must

be absorbed by someone. Although not affecting our institution, we understand the Medicaid reimbursement formula would not provide for principal payments on debt or interest on debt and that the funds for this category of necessary health provider expense would necessarily, therefore, come out of the net income of the health provider, according to Medicaid. We understand that the Medicaid reimbursement formula would not provide funds for capital items; such as, equipment and major remodeling. We understand that the State, under the Medicaid Program, can limit the number of acute-care days of care payable under Medicaid as has recently been done in the State of Oregon (limit of twenty-one days), thus resulting in a significant amount of charity write-offs while serving the otherwise qualified Medicaid patient after the fixed number of days has been exhausted. Finally, we understand that there either is a proposal or a current guideline which would allow the State to determine the reasonable costs which should be reimbursed to the health provider under the Medicaid Program and in view of the budgetary limitations experienced by the State of Alaska and other states, this would be a somewhat frightening prospect for health providers in Alaska. In summary on this point, it appears that there are many shortcomings to the Medicaid reimbursement formula and potentially many more which would result in higher charges to the remaining general public.

3. It is our understanding that in a number of other jurisdictions, the Public Health Service has interpreted the reimbursement guidelines under the Medicaid Program to indicate that the Public Health Service would bill Medicaid for any services rendered by the Public Health Service to a patient who could qualify for both Public Health Service and Medicaid. If this is the case, the savings to the State on participation in a Medicaid Program would appear to be significantly lessened.

As you are no doubt aware, Ketchikan General Hospital currently has one of the lowest room fee schedules in the state and the country and has not had a room rate increase nor any other significant ancillary rate increase since the fall of 1969 and has had one room rate decrease since that time. We are proud of this record; however, we do have an obligation to the citizens of Ketchikan to attempt to provide for the reimbursement which will fully meet the financial obligations of the community's hospital. We realize that your goal and ours is to provide for a strong, viable health care

system in Alaska. This is the reason we felt it worthwhile to bring these concerns to Representative Chance prior to the final consideration of Medicaid.

We look forward to your response to our concerns. Thank you for your continued cooperation.

Sincerely

Sister Monica Heeran
Administrator

Patrick R. Mahoney
Assistant Administrator

SMH:PRM:skf

cc: Representative Genie Chance
Senator Robert Ziegler
Representative Richard Whittaker
Marion Lampman, ASHA

Telegram to Senator C. R. Lewis May 18, 1972
From: Bob Byrnes, Administrator,
Anchorage Community Hospital

I am opposed to the passage of S. B. 56 for the following reasons:

1. It ties Hospital Health Providers to a cumbersome complex cost reimbursement formula that does not provide revenue sufficient to maintain an economically viable institution. It will inevitably increase the cost of care to the private patients - cost reimbursement formulas have proved unworkable in all the 48 states that have adopted Title XIX - The basic financial needs for Health Care Institutions, as outlined in the American Hospital Associations's Statement on the Financial Requirements of Health Care Institutions and Services, must, as a minimum, be met.

2. Reimbursement to Hospital Health Providers will be inadequate.

3. The passage of National Health Insurance in the next 12 to 24 months appears to be inevitable. With the passage of National Health Insurance, the Medicare Title XVIII and Medicaid Title XIX programs in all probability will be scrapped. I object to the State of Alaska spending all the money needed to gear up for administration of a new health program that will be obsolete about the time it becomes operational. -more administrative costs for both the purchaser and the provider with less revenue for the provider.

4. I do not oppose the State of Alaska participating in Federal-State matching programs that will allow more Federal dollars to flow to the State. However, I must be opposed to programs that increase the administrative cost of providers. provide insufficient revenues to maintain an economically viable institution and which could threaten the quality of patient care.

TELEGRAM

RCA ALASKA COMMUNICATIONS INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

V

CRA195 NL PDF

1972 JUN 13 AM 8 48

ANCHORAGE ALASKA 12

REP E. L. BOGGS
1007
JUN

GIVEN THAT S956 IS LIKELY TO BE PASSED BY COMMITTEE,
WE URGE THAT SECTION 47.37.070 BE AMENDED TO DELETE
FROM THE FIRST SENTENCE QUOTE SUBJECT TO THE REQUIREMENTS
OF FEDERAL LAW OR REGULATION UNQUOTE. SECTION
47.37.076 WOULD THEN READ QUOTE REIMBURSEMENT TO PROVIDERS
OF SERVICES SHALL BE ON THE BASIS OF FAIR RATES FOR THE
REASONABLE COST OF SERVICE RENDERED, TO INCLUDE THE PROVISIO'
FOR 1. PATIENT CARE 2. CHARITY AND
CREDIT LOSSES IN ACCORDANCE WITH THE FEDERAL DEPARTMENT
OF HEW REGULATIONS 3. PRESERVATION, IMPROVEMENT AND
EXPANSION OF BUILDINGS AND EQUIPMENT 4. DEBT SERVICES
FOR AMORTIZATION OF PRINCIPLE AND INTEREST PAYMENTS.
UNQUOTE. THE BILL SO AMENDED WOULD PROVIDE THE FINANCIAL
PROTECTION REQUIRED BY HOSPITALS THROUGHOUT THE STATE.
WE APPRECIATE YOUR SUPPORT AND ASSISTANCE.

DAN MIDDLETON, SISTER EVELYN BERGAMINI
PROVIDENCE HOSPITAL

S956 47.37.070 47.37.076 1 2 3 4.

RECORDS
CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James D. Smith
Signature of Camera Operator

4/4/89
Date

02-519 (REV 8/78)

Committee Report

H O U S E O F R E P R E S E N T A T I V E S

_____
Date

Mr. Speaker:

The Committee on _____ has had _____ under consideration. A majority of the members of the Committee

/ / recommends it do pass

/ / recommends it do not pass

/ / recommends it do pass with attached amendment(s)

/ / recommends it be replaced with CS for _____ and that CS for _____ do pass

/ / (and) recommends it be referred to the _____ committee

/ / reports it back without recommendation

/ / (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____
CHAIRMAN

Offered: 1/22/71
Referred: Finance

IN THE SENATE BY THE FINANCE COMMITTEE

SENATE BILL NO. 70

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the allotment to residents of the Pioneers' Home; and providing for an effective date."

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

* Section 1. AS 47.25.020(b) is amended to read:

(b) Every person admitted to the Pioneers' Home, except a person admitted under sec. 30 of this chapter, who receives income from any source in excess of $35 [$20] a month may be required by the Department of Administration to pay the excess to the Department of Administration immediately upon receipt of the money in payment, or part payment, of the cost of his maintenance.

* Sec. 2. AS 47.25.020(c) is amended to read:

(c) At the end of each month the payments made under (b) of this section shall be transmitted to the commissioner of revenue together with the names of the persons making them and the amount paid by each. The Department of Administration may pay the sum of $35 [$20] a month to a resident without funds.

* Sec. 3. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99801

February 2, 1971

To: Richard L. McVeigh, Chairman
State Affairs Committee
Alaska State House of Representatives

From: David Dean, Fiscal Analyst
Finance Committee
Alaska State Senate

Re: SB 70 "An Act relating to the allotment to residents of the Pioneers' Home; and providing for an effective date."

SB 70 is identical to HB 576 am in the 1970 legislative session. HB 576 was sponsored by Representatives Holm, Anderson, Eliason, Kerttula and Ray. HB 576 would have raised the allotment to residents of the Pioneers' Home from $20 to $30 per month. The House Finance Committee, the only house committee to which the bill was referred, unanimously recommended that the bill be amended to raise the allotment from $20 to $35 per month. The amendment was adopted by the house on voice vote on February 11, 1970, and HB 576 am passed the house on a vote of 38-0 and was transmitted to the senate on that date.

HB 576 am was read in the senate on February 12, 1970, and referred to the finance committee. It was reported out of the Senate Finance Committee on June 1 with a unanimous "do pass" and referred to the rules committee for placement on the calendar. HB 576 am died in the Senate Rules Committee.

The sum of $25,000 was appropriated by the legislature in the 1970-71 budget to fund HB 576 am. The money has not been expended and will lapse into the state general fund at the end of the current fiscal year. If SB 70, which has an immediate effective date, is passed by the house and signed into law by the governor this session, the portion of the $25,000 necessary to fund the bill during the remainder of the fiscal year will be expended and the balance will lapse.

The allowance furnished residents is their money and can be spent in any manner they please. The Pioneers' Home furnishes food, clothing and two or three cans of Prince Albert a week to the guests; Mr. Vernon Perry, Director of the Sitka Home, allows that the bulk of the allowance paid the guests goes for personal toilet articles, an occasional restaurant meal, candy, newspapers, liquor and tailor made cigarettes. If the allowance is raised Mr. Perry figures he will discontinue issuing Prince Albert to the guests; this is the only curtailment in goods he foresees.

SB 70

Form SA 06

REPLY MEMO

State of Alaska

MESSAGE	REPLY
TO Eugene A. Smith, Ass't. Dir. DATE 1/22/71	FROM Walt N. Norem DATE
Subject: Pioneers' Home Grant Costs	

The following tabulation of grant costs for the Pioneers' Homes should provide sufficient information for costing the new Senate bill

	Total Guests	Grant Recipients	Grants @ $20.00	Grants @ $35.00	Cost Difference
Sitka	170	130 est.*	$31,200	$45,500	$14,300
		118 act.**	28,320		
Fairbanks	63	35 est.*	8,400	14,700	6,300
		25 act.**	6,000		
Palmer	40***	20 est.*	4,800	8,400	3,600
					$24,200

* estimate for FY 71-72
** actuals as of December 31, 1970.
*** in excess of the 20 to come from Sitka

SIGNED

SIGNED

1. KEEP YELLOW COPY. 2. SEND WHITE AND PINK COPIES WITH CARBON INTACT.

1. WRITE REPLY. 2. DETACH STUB, KEEP PINK COPY. RETURN WHITE COPY TO SENDER.

Offered: 1/22/71
Referred: Finance

IN THE SENATE BY THE FINANCE COMMITTEE

SENATE BILL NO. 7[illegible]

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTH LEGISLATURE - FIRST SESSION

A BILL

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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

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Mr. Perry also allows that the raise will be a good thing for the guests as the allowance was set at $20 in 1965 when gum was 5¢ a pack and other luxuries were considerably cheaper than they are now.

There was no allowance provided for when the Alaska Pioneers' Home was established. The amounts of the allowance since its inception in 1955 are as follows:

1955	(b)	$15
	(c)	$ 5
1957	(b)	$15
	(c)	$10
1965	(b)	$20
	(c)	$20

SB 70 was introduced by the Senate Finance Committee and reported out of that committee, its only senate referral, with a unanimous "do pass." The bill passed the senate 20-0 on January 29, 1971. In the event that the bill is passed by the house and signed into law during the month of February, the residents will begin receiving the $35 per month allotment on March 1. As already mentioned, money is provided for this purpose in the current year's budget.

Please do not hesitate to contact me if there are any questions.

Attachments

SB 70

Form SA 06

REPLY MEMO

State of Alaska

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TO Eugene A. Smith, Ass't. Dir. DATE 1/22/71	FROM Walt N. Norem DATE
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* estimate for FY 71-72
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HOUSE FINANCE COMMITTEE REPORT

ON

SENATE BILL NO. 70

The committee on finance has had Senate Bill No. 70 under consideration. The majority of the members of the committee have recommended that it do pass. However, the committee wishes to make a brief analysis of the bill part of the record.

Senate Bill No. 70 is identical to House Bill No. 576 am which in the rush for adjournment died last session in the Senate Rules Committee. In anticipation of passage of the bill, the sum of $25,000 was appropriated to the Department of Administration for the Pioneers' Home Program. However, since the authorizing legislation -- increasing the allotment to residents of Pioneers' Home from $20 to $35 per month -- was not passed, the additional, funds appropriated could not be expended.

The passage of this legislation will enable the Department of Administration to commence paying the increased monthly allotments beginning in the latter part of the current fiscal year. It is anticipated that the major portion of the $25,000 appropriation will be unused and will lapse at the end of the current year.

Rep. George Hohman, Chairman
House Finance Committee

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James D. Smith
Signature of Camera Operator

4/4/89
Date

02-519 (REV 8/78)

To:

Finance Committee

Committee Report

S E N A T E

_____
Date

Mr. President:

The Committee on _____ has had _____ under consideration. A majority of the members of the Committee

☐ recommends it do pass

☐ recommends it do not pass

☐ recommends it do pass with attached amendment(s)

☐ recommends it be replaced with CS for _____ and that CS for _____ do pass

☐ (and) recommends it be referred to the _____ committee

reports it back without recommendation

☐ (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ _____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____
CHAIRMAN

Original sponsor: Rules Committee by request of Governor

Offered: 4/26/71
Referred: Finance

IN THE SENATE BY THE RESOURCES COMMITTEE

HOUSE CS FOR SENATE BILL NO. 75

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act creating a Department of Environmental Conservation; and providing for an effective date."

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

* Section 1. AS 44.15.010 is amended by adding a new paragraph to read:

(16) Department of Environmental Conservation

* Sec. 2. AS 44 is amended by adding a new chapter to read:

CHAPTER 46. DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

ARTICLE 1. ORGANIZATION.

Sec. 44.46.010. COMMISSIONER OF ENVIRONMENTAL CONSERVATION. The principal executive officer of the Department of Environmental Conservation is the commissioner of environmental conservation.

Sec. 44.46.020. DUTIES OF DEPARTMENT. The Department of Environmental Conservation shall

(1) have primary responsibility for the coordination and review of policies, programs and actions affecting the natural environment of the state;

(2) have primary responsibility for the promulgation and enforcement of regulations for the prevention and abatement of all water, land, subsurface land and air pollution, and other sources or potential sources of environmental degradation;

(3) plan and develop programs for the protection and control of the environment of the state.

* Sec. 3. AS 41 is amended by adding new chapters to read:

CHAPTER 35. DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

ARTICLE 1. DECLARATION OF POLICY.

Sec. 41.35.010. DECLARATION OF POLICY. It is the policy of the state to manage the development and use of its natural resources so as to improve the present and future quality of life for its citizens, by maintaining a natural environment conducive to human health, safety and happiness.

ARTICLE 2. COMMISSIONER OF ENVIRONMENTAL CONSERVATION.

Sec. 41.35.020. APPOINTMENT AND TERM OF OFFICE. The commissioner shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The commissioner serves at the pleasure of the governor.

Sec. 41.35.030. DUTIES OF THE COMMISSIONER. The commissioner shall

(1) supervise and control the department, and appoint and employ division heads, section heads, and the technical, clerical and other assistants necessary for the general administration of the department;

(2) establish divisions and sections in addition to those provided for under sec. 110 of this chapter, as may be necessary to carry out the responsibilities of the department;

(3) undertake any other actions necessary to carry out the provisions of this chapter.

ARTICLE 3. BOARD OF ENVIRONMENTAL REVIEW.

Sec. 41.35.040. CREATION AND TERM OF OFFICE. There is created in the Department of Environmental Conservation the Board of Environmental Review consisting of five members appointed by the governor without regard to political affiliation for overlapping five-year terms. The terms of the first board members shall be one, two, three, four and five years as determined by the drawing of lots. Initial terms

date from February 1, immediately following appointment.

Sec. 41.35.050. CONFIRMATION OF BOARD MEMBERS. Members of the board shall be confirmed by a majority of the members of the legislature in joint session.

Sec. 41.35.060. QUALIFICATIONS OF BOARD MEMBERS. Members of the board shall be citizens of the state who have demonstrated a continuing concern for the maintenance of a quality environment. In addition, one member of the board shall be appointed from each of the following occupational or professional categories:

(1) the life sciences, including medicine;

(2) the social sciences;

(3) the physical sciences, including engineering.

Sec. 41.35.070. ORGANIZATION OF THE BOARD. The board shall elect a chairman from among its members. Four members of the board constitutes a quorum. Actions of the board shall be by majority vote.

Sec. 41.35.080. BOARD MEETINGS. The board shall meet at least four times a calendar year and at least once every 120 days.

Sec. 41.35.090. COMPENSATION OF BOARD MEMBERS. Members of the board shall receive per diem and travel expenses as authorized for other boards and commissions.

ARTICLE 4. DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

Sec. 41.35.100. POWERS OF THE DEPARTMENT. The department may

(1) enter into contracts necessary or convenient to carry out the functions, powers and duties of the department;

(2) consult with and cooperate with

(A) officials and representatives of any nonprofit corporation or organization in the state;

(B) persons, organizations and groups, public and private, using, served by, interested in or concerned with the

environment of the state;

(3) appear and participate in proceedings before any state or federal regulatory agency involving or affecting the purposes of the department;

(4) undertake studies, inquiries, surveys or analyses it may consider essential to the accomplishment of the purposes of the department; these activities may be carried out by the personnel of the department or in cooperation with any public or private agencies, including educational, civic and research organizations, colleges, universities, institutes and foundations;

(5) at reasonable times enter and inspect any property or premises to investigate either actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with a regulation promulgated under this chapter and chs. 40 - 55 of this title; no person may refuse entry or access to an authorized representative of the department who requests entry for purposes of inspection and who presents appropriate credentials; nor may a person interfere with the inspection; inspection of private dwellings is not permitted without a search warrant; information relating to secret processes or methods of manufacture discovered during investigation is confidential;

(6) develop public awareness and understanding of the environment and environmental problems;

(7) conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books and documents by the issuance of a subpoena;

(8) advise and cooperate with municipal, regional and other local agencies and officials within the state, to carry out the purposes of this chapter;

(9) act as the official agency of the state in all matters

affecting the purposes of the department under any existing or future federal law or regulation;

(10) require the submission by any person of reports or other information of activities within areas of department concern.

Sec. 41.35.110. ORGANIZATION OF THE DEPARTMENT. The Department of Environmental Conservation shall have the following divisions:

(1) division of environmental review;

(2) division of enforcement.

Sec. 41.35.120. DIVISION OF ENVIRONMENTAL REVIEW. The division of environmental review shall

(1) make assistance available to the public in preparing and submitting applications for review under the provisions of secs. 140 - 230 of this chapter;

(2) receive and process the applications for the department;

(3) provide the commissioner, his designee, or the board, any staff reports and expert advice necessary to properly evaluate the environmental impact of actions and projects for which approval is requested under this chapter;

(4) have primary responsibility for the research activities of the department;

(5) study the continuing need for environmental standards, policies and regulations; report the results of the studies to the board, and assist the board, if it requests, in drafting standards, policies and regulations;

(6) provide staff support to the board in all matters that may come before it;

(7) assume other duties which the commissioner may assign.

Sec. 41.35.130. DIVISION OF ENFORCEMENT. The division of enforcement shall

(1) have primary responsibility for the enforcement of this chapter and chs. 40 - 55 of this title, and applicable regulations promulgated under those chapters, for the purpose of maintaining the quality of the environment;

(2) have primary responsibility for the conduct of all field investigations necessary to carry out the purposes of this chapter and chs. 40 - 55 of this title;

(3) enforce the review requirements of secs. 140 - 290 of this chapter, including compliance with the terms and conditions under which applications submitted under secs. 140 - 150 of this chapter are approved.

Sec. 41.35.140. ACTIONS OF STATE SUBJECT TO APPROVAL. (a) No agency of the state, including a quasi-judicial or regulatory agency, may, before review and approval of the department,

(1) construct highways, roads, airports, dams, waterworks, sewer systems, canals, oil and gas transportation facilities, power generation or transmission facilities, industrial installations, harbors, wharves, docks, railroads, waste disposal facilities, bridges or other major public works, or permit the construction of these facilities on land controlled by the state or grant permits or other authorization for this construction on land not controlled by the state;

(2) adopt any land use plan, classify land, or reclassify land;

(3) dispose of any beneficial interest in land or allow the use of public land for any purpose unless the disposal or use is permitted under a land use plan and land classification already approved by the department;

(4) alter or authorize the alteration or appropriation of

public waters or water flows, including ground water, unless the alteration or appropriation is consistent with a water use plan approved by the department.

(b) Nothing in this section limits or revokes an existing permit for or right to the use of land or waters controlled by the state or extinguishes a beneficial interest of a party in the land or waters, or prohibits the renewal of an existing lease or permit..

Sec. 41.35.150. ENVIRONMENTAL DEGRADATION PROHIBITED. No person may pollute or add to the pollution of the air, land, subsurface land or waters of the state, or cause the degradation of, or act in such a manner as to create a significant hazard of degradation to the quality of the environment unless

(1) the action does not violate an environmental quality standard as established in an environmental quality regulation promulgated by the board; or

(2) the action is approved or authorized by permit issued by the department.

Sec. 41.35.160. GRANTING OF PERMIT OR APPROVAL. (a) The department shall grant a permit for an act or acts which result or may result in pollution or degradation of the environment under sec. 150 of this chapter or any regulation promulgated under this chapter or chs. 40 - 55 of this title or shall approve actions prohibited under sec. 140 of this chapter only if it is demonstrated that the benefits accruing to the general public from such actions exceed their costs. The board shall establish standards concerning the measurement and evaluation of these costs and benefits. Costs in this context means the direct or indirect detriments or burdens placed on or affecting the interests of the general public, with reference to aesthetic and social values as well as purely economic loss, and not necessarily computed according

to the greatest dollar value.

(b) The department may specify in a permit the terms and conditions under which the rights granted by the permit may be exercised, and if the permit is for the disposal of wastes in the waters of the state, it may provide for the payment to the state of fees appropriate and necessary to allocate the limited waste carrying capacity of the waters in question among competing users or uses.

Sec. 41.35.170. APPLICATION FOR PERMIT OR APPROVAL. (a) A person who wishes to proceed with actions prohibited by secs. 140 - 150 of this chapter shall submit an application for authority to proceed, on forms prescribed by the commissioner. On receipt of an application, the commissioner shall publish notice in two newspapers of general circulation in the area to be affected by the proposed action or, if no newspaper exists in the area to be affected, post the notice in a public place and publish the notice in the nearest newspaper of general circulation, of (1) the location of the proposed action; (2) a description of the character and nature of the action; (3) a summary of the environmental quality standard or regulation which the action may violate, if any; and (4) a statement that the application may be administratively approved without a hearing unless a protest is received by the commissioner within 30 days from the date of first publication. Fees for publication of notice shall be paid by the applicant.

(b) The notice required in this section shall be mailed to every person who has filed a request for notice of applications for permits filed under secs. 140 - 150 of this chapter.

Sec. 41.35.180. ADMINISTRATIVE REVIEW OF APPLICATION. If no protests to the proposed action are received by the department within 30 days of the date of publication, the commissioner or his designee

may, with or without modifications, approve the application for authority under sec. 140 of this chapter or issue a permit under sec. 150 of this chapter. Unless the commissioner or his designee determines that a hearing is in the best interests of the state, an unprotested application shall be acted on by the commissioner within 60 days from the date it is received by the department.

Sec. 41.35.190. ADMINISTRATIVE HEARING. (a) If a protest has been received or the commissioner or his designee considers it to be in the best interests of the state to hold a hearing on the action, a hearing on the application shall be scheduled within a reasonable time and notices of the hearing published, and, if necessary, posted as provided in sec. 170 of this chapter, at least 10 days before the hearing date. The hearing shall be held in the population center nearest the area to be affected by the proposed action.

(b) Any party may testify or present written evidence and exhibits at a hearing held under this section if the testimony, written evidence, or exhibits are relevant in determining the costs and benefits of the project or actions under consideration. The commissioner or his designee shall render a decision on the application within 20 days after the close of the hearing.

(c) Rules of evidence applicable under the Administrative Procedure Act (AS 44.62) apply to a hearing held before the commissioner or his designee under this chapter.

(d) In the interest of expeditious handling of an application, the commissioner may conduct a hearing held under this section jointly with the hearing or similar proceeding of another state or federal agency on the same subject, provided the notice requirements of secs. 170 and 190 of this chapter are met and that the holding of a joint hearing will in no way limit the right of possible protestants to be

heard.

Sec. 41.35.200. BOARD REVIEW OF ADMINISTRATIVE DECISION. If an application against which protest is made is approved in whole or in part by the commissioner or his designee, notice of the decision shall be mailed to all board members within five days from the date of decision. An administrative decision by the commissioner or his designee becomes final after 30 days unless

(1) the applicant appeals the administrative decision to the board; or

(2) a majority of the board gives written notice to the commissioner of their desire to review the administrative decision; If review is initiated by the applicant's appeal, the board shall hear the applicant's case within 120 days of receiving his notice of appeal; if review is initiated by majority request of the board, the board shall meet to review the decision within 30 days from the date that a majority of its members have requested review.

Sec. 41.35.210. REVIEW PROCEDURES TO BE FOLLOWED BY BOARD. (a) In reviewing an application the board shall consider

(1) the original application;

(2) the record of the administrative hearing;

(3) the administrative decision of the commissioner or his designee;

(4) any additional testimony or exhibits that the applicant may wish to present.

(b) In addition, in reviewing an application the board may in its discretion consider any additional testimony or exhibits from other persons that is or may be relevant to an evaluation of the benefits and costs of the action or project proposed in the application.

(c) In making its decision the board may sustain, modify or

overturn the administrative decision of the commissioner or his designee, and shall render a decision sustaining, modifying or overturning the administrative decision within 20 days from the date it concludes its review of the administrative decision of the commissioner or his designee. Board action becomes final within 30 days from the date it renders its decision unless further appeal proceedings are initiated by the applicant.

Sec. 41.35.220. APPEAL TO THE GOVERNOR. Within 30 days from the date the board renders its decision, the applicant may notify the commissioner of his desire to appeal the decision to the governor. Upon receiving the notice of appeal, the commissioner shall forward the application together with a copy of the written record of the departmental proceedings on it to the governor for his consideration. The governor may sustain, modify or overturn the board's decision. If the governor modifies or overturns the board's decision he shall publish his reasons for doing so. Failure of the governor to act within 60 days after receiving the appeal constitutes final approval of the board's decision.

Sec. 41.35.230. RIGHT TO RESUBMIT APPLICATION. Nothing in this chapter shall be construed to prevent an applicant from withdrawing or resubmitting an application regardless of prior disposition of the application in the review process.

Sec. 41.35.240. TERMINATION OF PERMITS. No permit issued for an action prohibited under this chapter or chs. 40 - 55 of this title or applicable regulations promulgated under this chapter or chs. 40 - 55 of this title shall be

(1) valid for more than three years from the date it is issued;

(2) revoked, unless the division of enforcement finds

(A) that the permit was obtained by misrepresentation or that the applicant failed to disclose fully all facts within his knowledge, relevant to the application; or

(B) that the terms and conditions of the permit have been violated.

Sec. 41.35.250. PENALTIES AND LIABILITY FOR DAMAGE. (a) A person who commits an act prohibited under this chapter or chs. 40 - 55 of this title or applicable regulations promulgated under those chapters or violates the terms of a permit issued under sec. 160 of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $1,000, depending on the severity of the violation, or by imprisonment for not more than 30 days, or by both.

(b) Each day on which a violation of the provisions of this chapter and chs. 40 - 55 of this title or applicable regulations promulgated under those chapters occurs may be considered a separate and additional violation.

(c) In addition to the penalties imposed by this section, a person convicted of a violation under this chapter or chs. 40 - 55 of this title or applicable regulations promulgated under those chapters is liable to the state in a civil action for damages resulting from the action, and if the act was wilful, is liable to the state for treble damages.

(d) Liability for damages under (c) of this section shall include an amount equal to the sum of money required to restock injured land or waters, to replenish a damaged or degraded resource, or to otherwise restore the environment of the state to its condition before the injury, and may include costs associated with abatement and containment of a pollutant for which the person is responsible.

(e) This section shall not apply in cases where penalties are otherwise specified in this chapter and chs. 40 - 55 of this title.

Sec. 41.35.260. ENFORCEMENT. If the division of enforcement finds that a violation has occurred under this chapter or chs. 40 - 55 of this title or an applicable regulation promulgated under those chapters, the commissioner may notify the attorney general who, upon such notification, shall institute appropriate civil or criminal action, or both.

Sec. 41.35.270. EMERGENCY POWERS. (a) If the division of enforcement finds, after investigation, that a person is causing or maintaining a condition, or engaging in an activity which, in the judgment of its director, presents an imminent or present danger to the health or welfare of the people of the state or would result in or be likely to result in irreversible or irreparable damage to the natural environment, and it appears to be prejudicial to the interests of the people of the state to delay action until the action or activity can be proscribed by the promulgation of an environmental quality regulation by the board, the commissioner may, without prior hearing, declare an emergency and order the person by notice to discontinue, abate or alleviate the condition or activity. The person shall immediately discontinue the condition or activity.

(b) If a person, after receipt of adequate notice of the activity or condition, fails to promptly discontinue, abate or alleviate the condition or activity described in (a) of this section, he is punishable as specified in sec. 250 of this chapter.

(c) Upon the request of the department the attorney general may bring an action for an injunction against a person violating sec. 270 of this chapter or violating an order or determination of the department.

(d) An emergency order issued under this section shall remain in force only until the next meeting of the board, and shall be considered as the first order of business at the meeting.

Sec. 41.35.280. ACTIONABLE RIGHTS. The provisions of this chapter and chs. 40 - 55 of this title do not estop the state, persons or political subdivisions of the state in the exercise of their rights to suppress nuisances, to seek damages, or to otherwise abate or recover for the effects of pollution or other environmental degradation.

Sec. 41.35.290. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT. Except as otherwise specifically provided in this chapter and chs. 40 - 55 of this title, the Administrative Procedure Act (AS 44.62) governs the activities and the proceedings of the department.

CHAPTER 40. WATER POLLUTION CONTROL.

Sec. 41.40.010. DECLARATION OF PUBLIC POLICY. It is the public policy of the state to maintain reasonable standards of purity of the waters of the state consistent with public health and public enjoyment, the propagation and protection of fish and wildlife, including birds, mammals and other terrestrial and aquatic life, and the industrial development of the state, and to require the use of all known available and reasonable methods to prevent and control the pollution of the waters of the state.

Sec. 41.40.020. AUTHORITY OF DEPARTMENT. The department has jurisdiction to abate and prevent the pollution of the waters of the state. Its authority includes but is not limited to the authority set out in this chapter.

Sec. 41.40.030. WATER QUALITY AND PURITY STANDARDS. After consultation with the division of environmental review the board may

by regulation classify or reclassify the waters of the state, including ground waters, with respect to their present and prospective utilization, their geographic locale, and their natural characteristics, and establish by regulation minimum standards of quality and purity and determine the optimum characteristics and properties appropriate to the most beneficial utilization of waters so classified.

Sec. 41.40.040. PERMIT REQUIRED TO ALTER WATER QUALITY. No person shall, without a permit issued by the department under AS 41.35.160, act in such a manner as to reduce, create a significant hazard of reducing, or contribute to the reduction of the quality and purity of public waters, including ground waters, below the minimum standards established by board regulation for those waters. When optimum characteristics and properties appropriate to the most beneficial utilization of waters have been established in lieu of or in addition to quality and purity standards, any action which lessens the appropriateness, as defined by the board, of the characteristics and properties of the water is similarly prohibited, as is any action which creates a significant hazard of reducing or lessening of the appropriateness, as defined by the board under this section.

Sec. 41.40.050. GRANTS AND LOANS FOR WATER SUPPLY AND SEWERAGE SYSTEMS. (a) The department may pay, as funds are available, 25 per cent of the estimated reasonable cost, as determined by the appropriate federal authority, of each waste treatment works project approved for a federal grant by the Federal Water Quality Administration or its predecessor, the Federal Water Pollution Control Administration, and on which construction was initiated after June 30, 1967. As funds are available, the department may lend on an interest-free basis for a project approved after June 30, 1970 any part of an anticipated federal grant. Money received from the Federal Water Quality Administration

for the project after the loan is given must be used to repay the loan, but the loan need be repaid only to the extent of this federal assistance.

(b) The department may pay to any municipality, as funds are available, up to the lesser of 25 per cent of the estimated cost or 50 per cent of the estimated cost not borne by the federal government, if there is federal assistance, of water systems, including collection and impounding facilities, and of those portions of sewerage systems not covered by (a) of this section. The estimated cost of any part of a system will be as determined by the federal agency which gives the most monetary assistance or, if none, by the department. Systems shall be constructed according to plans and specifications approved by the federal agency which gives the most monetary assistance or, if none, by the department.

(c) There is a water supply and sewerage system fund created in the department to carry out the purposes of this section.

Sec. 41.40.060. CONSTRUCTION OF CERTAIN FACILITIES PROHIBITED. No person may construct, extend, install or operate a sewage system or treatment works, or any part of a sewage system or treatment works until plans for it are submitted to the department for review, and the department approves them in writing and issues a written permit. The department may waive the requirement that plans be submitted to it.

Sec. 41.40.070. POLLUTION PROHIBITED. It is unlawful for a person to deposit in, cause to be deposited in, permit to pass into, or place where it can pass into the waters of the state petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or a residuary product of petroleum in a manner so as to constitute pollution as defined in this chapter. Pollution caused by an act of

God or by circumstances beyond the control of the person in charge, shall be considered a defense to a charged violation.

Sec. 41.40.080. BALLAST WATER DISCHARGE. (a) No person may pollute or add to the pollution of waters of the state by discharging from any sea-going vessel ballast water, tank-cleaning waste water or other waste containing oil in excess of 50 parts per million of oily residue. This subsection does not apply to fishing vessels of less than 300 gross tons.

(b) Except as provided in (c) of this section, no vessel may take on oil, petroleum products, or their by-products as cargo unless it arrives in ports in the state without having discharged ballast at sea, and the master of the vessel certifies that fact on forms provided by the department.

(c) Vessels equipped with tanks used exclusively for ballast or capable of producing ballast with an oil content less than that provided for in (a) of this section may discharge that ballast at sea, including the waters of the state, if it meets the standards of (a) of this section and the master of the vessel certifies that fact on forms provided by the department.

(d) A person in charge of a sea-going vessel or of an onshore or offshore facility, as soon as he has knowledge of any discharge from the vessel or facility in violation of a provision of this chapter shall immediately notify the department of the discharge.

Sec. 41.40.090. PENALTIES. (a) A person who violates secs. 70 - 80 of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

(b) In addition to the penalties provided in (a) of this section, a person who violates secs. 70 - 80 of this chapter is liable, in a civil action, to the state for liquidated damages to be assessed by the court for an amount not less than $5,000 nor more than $100,000, depending on the severity of the violation.

(c) In addition to the penalties provided in (a) of this section, a person who violates a provision of sec. 80 of this chapter is liable to the state, in a civil action, in the case of a vessel, for damages in an amount not to exceed $100 per gross ton of the violating vessel or $14,000,000, whichever is less and in the case of an onshore or offshore facility $100 per every $500 evaluation of the violating facility or $14,000,000, whichever is less. However, if the state shows that a violation of sec. 80 of this chapter was the result of wilful negligence or wilful misconduct on the part of the person charged with the violation, the person is liable to the state for the full amount of damages caused. In the case of wilful negligence or wilful misconduct "damages", in this subsection, means costs associated with the abatement, containment or removal of a pollutant and reasonable restoration of the environment to its former state.

(d) A person who falsely certifies information required under sec. 80 of this chapter, upon conviction, is punishable by a fine of not more than $25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

(e) Nothing in this section affects an individual's right to recover damages under other applicable statutes or the common law.

Sec. 41.40.100. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY FOR DAMAGES. A vessel which is used in or in aid of a violation of secs. 70 - 80 of this chapter may be detained after a valid search

by the department, an agent of the department, a peace officer of the state, or an authorized protection officer of the Department of Fish and Game. Upon judgment of the court having jurisdiction that the vessel was used in or the cause of a violation of secs. 70 - 80 of this chapter with knowledge of its owner or under circumstances indicating that the owner should reasonably have had such knowledge, the vessel may be held as security for payment to the state of the amount of damages assessed by the court under sec. 90(b) of this chapter, and if the damages so assessed are not paid within 30 days after judgment or final determination of an appeal, the vessel shall be sold at public auction, or as otherwise directed by the court, and the damages paid from the proceeds. The balance, if any, shall be paid by the court to the owner of the vessel. The court shall permit the release of the vessel upon posting of a bond set by the court in an amount not to exceed $100,000. The damages received under this section shall be transmitted to the proper state officer for deposit in the general fund. A vessel seized under this section shall be returned or the bond exonerated if no damages are assessed under sec. 90(b) of this chapter.

Sec. 41.40.110. LIABILITY OF CORPORATE OFFICERS AND DIRECTORS. In an action brought against a corporation under secs. 70 - 90 of this chapter, the directors and officers of the corporation are jointly and severally liable for the fine imposed against the corporation.

Sec. 41.40.120. ENFORCEMENT. This chapter may be enforced by a peace officer in the state, an authorized protection officer of the Department of Fish and Game, an officer of the division of enforcement, or a person authorized by the commissioner.

Sec. 41.40.130. DEFINITIONS. In this chapter

(1) "other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, trimmings from logging operations, sand, lime,

cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, and other substances not sewage or industrial waste which may cause or tend to cause pollution of the waters of the state;

(2) "pollution" means the contamination or altering of waters of the state in a manner which creates a nuisance or makes waters unclean, or noxious, or impure, or unfit so that they are actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, or recreational use, or to livestock, wild animals, birds, fish, or other aquatic life;

(3) "sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, or other places, together with ground water infiltration and surface water as may be present; the admixture with sewage of industrial wastes or other wastes is "sewage";

(4) "sewer system" or "sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other appurtenant constructions, devices, and appliances used for conducting sewage, industrial waste, or other wastes to a point of ultimate disposal;

(5) "standard" means the measure of purity or quality for waters in relation to their reasonable and necessary use as established by the board;

(6) "treatment works" means a plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills, or other works installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste, or other wastes;

(7) "waters" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes

inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, within the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the state or under the jurisdiction of the state.

CHAPTER 45. AIR POLLUTION CONTROL.

Sec. 41.45.010. DECLARATION OF POLICY. (a) It is declared to be the policy of the state and the purpose of this chapter to achieve and maintain levels of air quality that will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of the state and facilitate the enjoyment of the natural attractions of the state.

(b) It is also declared that local and regional air pollution control programs shall be supported to the extent practicable as essential instruments for the securing and maintaining of appropriate levels of air quality.

(c) To these ends it is the purpose of this chapter to

(1) provide for a coordinated statewide program of air pollution prevention, abatement and control;

(2) provide for an appropriate distribution of responsibilities among the state and local units of government;

(3) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions;

(4) provide a framework within which all values may be balanced in the public interest.

Sec. 41.45.020. AIR POLLUTION AND EMISSION CONTROL STANDARDS.

After consultation with the division of environmental review, the board may by regulation classify air contaminant sources, including mobile sources, which may cause or contribute to air pollution, according to levels and types of emissions, geographic locale, and the effects of the emissions on the health and welfare of the surrounding community, and may establish by regulation quantity and quality standards for the emission of sources so classified.

Sec. 41.45.030. PERMIT REQUIRED TO EXCEED EMISSION STANDARDS. No person may, without a permit issued by the department under AS 41.35.160, operate an air contaminant source producing emissions which exceed the quantity and quality standards established by regulation by the board for the air contaminant source. In addition, the board may prohibit the operation of a facility or device which creates a significant hazard of these emissions.

Sec. 41.45.040. CONFIDENTIALITY OF RECORDS. Unless the owner or operator expressly agrees to their publication or availability to the general public, records and information in the possession of the department concerning a contaminant source, which relate to production or sales figures, or to processes or production unique to the owner or operator, or which would tend to adversely affect his competitive position, as certified by him, shall be treated as confidential by the department and used only on an incamera basis in the administration of this chapter. However, the department may use these records and information in compiling analyses or summaries relating to the general condition of the outdoor atmosphere if the owner or operator is not identified and the specific information specified in this section is not revealed.

Sec. 41.45.050. LOCAL AIR POLLUTION CONTROL PROGRAMS. (a) A municipality with a population in excess of 1,000 may, within five

years from August 5, 1969, establish and administer within its jurisdiction an air pollution control program. Organized boroughs may establish the air pollution control program on an areawide basis, and the exercise of powers with respect to the program is not subject to the restrictions on acquiring additional areawide powers specified in AS 07.15.350. However, the weighted vote shall apply to the exercise of powers as provided in AS 07.20.070(d). This program shall

(1) provide by ordinance for requirements compatible with, or stricter or more extensive than those imposed by or under secs. 20 - 30 of this chapter and applicable regulations issued under secs. 20 - 30 of this chapter;

(2) provide for the enforcement of the requirements by appropriate administrative and judicial process;

(3) provide for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out the program; and

(4) be approved by the department as adequate to meet the requirements of this chapter and applicable regulations.

(b) Other municipalities may establish and administer air pollution control programs if they meet the requirements of (a)(1) - (4) of this section.

(c) A municipality may administer all or part of its air pollution control program in cooperation with one or more municipalities.

(d) If the department finds that the location, character or extent of particular concentrations of population, air contaminant sources, or geographic, topographic or meteorological considerations, or a combination of these factors, makes the maintenance of appropriate levels of air quality impracticable without an areawide air pollution control program, the department may determine the boundaries within

which the program is necessary and require it as the only acceptable alternative to direct state administration.

Sec. 41.45.060. ABSENCE OF LOCAL PROGRAM. (a) If a municipality authorized to establish or participate in an air pollution control program under sec. 50(a) or (d) of this chapter fails to establish a program within the time specified, or if the department has reason to believe that an air pollution control program in force under that section is inadequate to prevent and control air pollution in the jurisdiction to which the program applies, or that the program is being administered in a manner inconsistent with the requirements of this chapter the department shall, following due notice, conduct a hearing on the matter.

(b) If, after the hearing, the department determines that any of the deficiencies enumerated in (a) of this section exist, it shall require that necessary corrective action be taken within a reasonable period of time, not to exceed 90 days.

(c) If the municipality or the district set up under sec. 50(a) or (d) of this chapter fails to take the necessary corrective action within the time specified the department shall administer in the municipality or district all of the regulatory provisions of this chapter. The department's air pollution control program shall then supersede municipal air pollution ordinances, regulations, and requirements in the affected jurisdiction.

(d) If the department finds that the control of a particular class of air contaminant source, because of its complexity or magnitude, is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the state level, it may assume and retain jurisdiction over that class of air contaminant source. Classifications under this subsection may