ALASKA LEGISLATURE 2093

HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000

A: Some frequent, long-term marijuana users show signs of a lack of motivation (amotivational syndrome). Their problems include not caring about what happens in their lives, no desire to work regularly, fatigue, and a lack of concern about how they look. As a result of these symptoms, some users tend to perform poorly in school or at work. Scientists are still studying these problems.

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Q: Can a person become addicted to marijuana?

A: Yes. While not everyone who uses marijuana becomes addicted, when a user begins to seek out and take the drug compulsively, that person is said to be dependent on the drug or addicted to it. In 1995, 165,000 people entering drug treatment programs reported marijuana as their primary drug of abuse, showing they needed help to stop using.

Some heavy users of marijuana show signs of dependence because when they do not use the drug, they develop withdrawal symptoms. Some subjects in an experiment on marijuana withdrawal had symptoms, such as restlessness, loss of appetite, trouble with sleeping, weight loss, and shaky hands.

According to one study, marijuana use by teenagers who have prior serious antisocial problems can quickly lead to dependence on the drug. That study also found that, for troubled teenagers using tobacco, alcohol, and marijuana, progression from their first use of marijuana to regular use was about as rapid as their progression to regular tobacco use, and more rapid than the progression to regular use of alcohol.

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Q: What is "tolerance" for marijuana?

A: "Tolerance" means that the user needs increasingly larger doses of the drug to get the same desired results that he or she previously got from smaller amounts. Some frequent, heavy users of marijuana may develop tolerance for it.

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Q: Are there treatments to help marijuana users?

A: Up until a few years ago, it was hard to find treatment programs specifically for marijuana users. Treatments for marijuana dependence were much the same as therapies for other drug abuse problems. These include detoxification, behavioral therapies, and regular attendance at meetings of support groups, such as Narcotics Anonymous.

Recently, researchers have been testing different ways to attract marijuana users to treatment and help them abstain from drug use. There are currently no medications for treating marijuana dependence. Treatment programs focus on counseling and group support systems. From these studies, drug treatment professionals are learning what

characteristics of users are predictors of success in treatment and which approaches to treatment can be most helpful.

Further progress in treatment to help marijuana users includes a number of programs set up to help adolescents in particular. Some of these programs are in university research centers, where most of the young clients report marijuana as their drug of choice. Others are in independent adolescent treatment facilities. Family physicians are also a good source for information and help in dealing with adolescents' marijuana problems.

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Q: Can marijuana be used as medicine?

A: There has been much debate in the media about the possible medical use of marijuana. Under U.S. law since 1970, marijuana has been a Schedule I controlled substance. This means that the drug, at least in its smoked form, has no commonly accepted medical use.

In considering possible medical uses of marijuana, it is important to distinguish between whole marijuana and pure THC or other specific chemicals derived from cannabis. Whole marijuana contains hundreds of chemicals, some of which are clearly harmful to health.

THC, manufactured into a pill that is taken by mouth, not smoked, can be used for treating the nausea and vomiting that go along with certain cancer treatments and is available by prescription. Another chemical related to THC (nabilone) has also been approved by the Food and Drug Administration for treating cancer patients who suffer nausea. The oral THC is also used to help AIDS patients eat more to keep up their weight.

Scientists are studying whether marijuana, THC, and related chemicals in marijuana (called cannabinoids) may have other medical uses. According to scientists, more research needs to be done on marijuana's side effects and potential benefits before it can be recommended for medical use.

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Q: How can I prevent my child from getting involved with marijuana?

A: There is no magic bullet for preventing teenage drug use. But parents can be influential by talking to their children about the dangers of using marijuana and other drugs, and remain actively engaged in their children's lives. Even after teenage children enter high school, parents can stay involved in schoolwork, recreation, and social activities with their children's friends. Research shows that appropriate parental monitoring can reduce future drug use, even among those adolescents who may be prone to marijuana use, such as those who are rebellious, cannot control their emotions, and experience internal distress. To address the issue of drug abuse in your area, it is important to get involved in drug abuse prevention programs in your community or your child's school. Find out what prevention programs you and your children can participate in together.

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Talking to your children about marijuana

As this booklet has shown, marijuana is clearly a dangerous drug which poses a particular threat to the health and well-being of children and adolescents at a critical point in their lives - when they are growing, learning, maturing, and laying the foundation for their adult years. As a parent, your children look to you for help and guidance in working out problems and in making decisions, including the decision not to use drugs. As a role model, your decision to not use marijuana and other illegal drugs will reinforce your message to your children.

There are numerous resources, many right in your own community, where you can obtain information so that you can talk to your children about drugs. To find these resources, you can consult your local library, school, or community service organization.

The National Clearinghouse for Alcohol and Drug Information (NCADI) offers an extensive collection of publications, videotapes, and educational materials to help parents talk to their children about drug use. For more information on marijuana and other drugs, contact:

National Clearinghouse on Alcohol and Drug Information,
P.O. Box 2345,
Rockville, MD 20847
1-800-729-6686
(TDD Number 1-800-487-4889)

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Resources

Center for Substance Abuse Prevention, U.S. Department of Health and Human Services. *Keeping Youth Drug Free: A Guide for Parents, Grandparents, Elders, Mentors, and Others Caregivers.* NCADI Stock No. PHD711, 1996.

Harrison, P.A.; Fullerson, J.A.; and Beebe, T.J. Multiple substance use among adolescent physical and sexual abuse victims. *Child Abuse and Neglect* 21(6):529-539, 1997.

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National Institute on Drug Abuse. *Marijuana: Facts Parents Need to Know.* NIH Publication No. 95-4036, 1995.

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Substance Abuse and Mental Health Services Administration, Office of Applied Sciences. *Preliminary Results From the 1996 National Household Survey on Drug Abuse.* DHHS No. (SMA) 97-3149. Rockville, MD: SAMHSA, July 1997.

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U.S. Department of Education. *Growing Up Drug Free: A Parent's Guide to Prevention*, Washington, D.C.: NCADI Publication No. PHD533, 1993. *(Note: This item is out of stock but can be viewed on the NCADI Web site at http://www.health.org.)*

University of Michigan. News and Information Services. *Drug use among American teens shows signs of leveling after a long rise*. December 18, 1997.

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Feel free to reprint this publication in any quantity you wish.

Marijuana: Facts Parents Need to Know is also available in a color graphic version.

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This page last updated Friday, January 8, 1999.

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Drugs are scheduled under Federal law according to their effects, medical use, and potential for abuse

DEA Schedule	Abuse Potential	Examples of Drugs Covered	Some of the Effects	Medical Use
I	Highest	heroin, LSD, hashish, marijuana methaqualone, designer drugs	Unpredictable effects, severe psychological or physical dependence, or death	No accepted use; some are legal for limited research use only
II	High	morphine, PCP, codeine, cocaine methadone, Demerol benezedrine, dexedrine	May lead to severe psychological or physical dependence	Accepted use with restrictions
II	Medium	codeine with aspirin or Tylenol, some amphetamines, anabolic steroids	May lead to moderate or low physical dependence or high psychological dependence	Accepted use
IV	Low	Darvon, Talwin phenobarbital, Equanil, Miltown, Librium diazepam	May lead to limited physical or psychological dependence	Accepted use
V	Lowest	Over-the-counter or prescription compounds with codeine, Lomotil Robitussin A-C	May lead to limited physical or psychological dependence	Accepted use

Source: Adapted from DEA, Drugs of Abuse, 1989

DRUGS are scheduled under Federal law according to their effects, medical use, and potential for abuse

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U.S. Department of Justice
Drug Enforcement Administration

DEA Congressional Testimony

Statement by:
Thomas A. Constantine
Administrator
Drug Enforcement Administration
United States Department of Justice

Before the:
Senate Committee on the Judiciary

Regarding:
The California & Arizona Medical Drug Use Initiatives

Location:
Senate Hart Office Building
Room 216
Washington, D.C.

Date:
December 2, 1996

Note: This document may not reflect changes made in actual delivery.

Mr. Chairman, Members of the Committee: I appreciate this opportunity to appear before the Committee today and discuss the issues surrounding the two recently-passed ballot initiatives in California and Arizona which, in essence, legalize the possession of marijuana, and in Arizona, all Schedule I drugs, such as heroin and LSD for medical purposes by "seriously or terminally ill patients." I also wish to thank you, Mr. Chairman, for calling this hearing in such a timely manner. Most Americans have not yet grasped the consequences of what happened last month in California and Arizona, and it is critical that Congress provide factual information about these initiatives. It is also critical that Americans understand that these legalization initiatives were not local, grass-roots efforts, but part of a well-orchestrated, well-financed national movement, not for the compassionate medical use of marijuana, but to legalize drugs. These efforts will have a profound impact on our children, as they struggle to grow up against the backdrop of increased drug use among young people.

Today we are faced with more questions than answers as we examine the impact of these initiatives. It is fair to say that both propositions were well-crafted and well-thought out, and their authors fully intended to mask their true agenda in the guise of drug "medicalization," while keeping the medical conditions for

which controlled substances can be used extremely vague. The passage of these propositions raises important legal and law enforcement issues which we are currently assessing. But there are two very basic facts that have not changed: first, that the Clinton Administration is unequivocally opposed to the legalization of drugs, and second, that the Drug Enforcement Administration will continue to target and arrest the most significant drug traffickers operating domestically and internationally.

What the Propositions Do:

Voters who supported Proposition 215 in California were led to believe that this initiative would simply allow medical doctors to treat terminally ill and suffering patients with marijuana for the relief of pain symptoms. In reality, the proposition allows anyone who receives a doctor's "recommendation" to possess and use marijuana for cancer, AIDs, glaucoma and "any other illness for which marijuana provides relief." It allows doctors to verbally "recommend" marijuana use to minors, prisoners, individuals in sensitive positions --- simply anyone who claims to have a medical condition. The proposition, by extension, also allows individuals to smoke and cultivate marijuana openly, on the premise that marijuana has been recommended for the individual's "medical condition."

In Arizona, voters were asked to approve the "Drug Medicalization, Prevention and Control Act of 1996." Packaged as a truth-in-sentencing and drug prevention measure, proponents masked the true agenda of Proposition 200. Buried within the proposition was a provision which allows a physician to prescribe controlled substances included in Schedule I to terminally ill patients and to seriously ill patients suffering pain.

The Arizona propositic is more restrictive than the California version in that a physician must cite a study confirming the proven medical benefits of a Schedule I drug and provide a written prescription which is kept in the patient's medical file, and the patient is required to obtain a written opinion from a second physician confirming that the prescription for the Schedule I substance is "appropriate to treat a disease or to relieve the pain and suffering of a seriously ill patient or terminally ill patient." However, the Arizona proposition also provided for other actions which erode effective, tough drug policies, including the release of prisoners "previously convicted of personal possession or use of a controlled substance."

Despite the differences between the two ballot initiatives, there is an indisputable similarity: both states now allow individuals to possess substances which have no legitimate medical use. Both California and Arizona, despite what the proponents claim, have taken the first steps towards the proponents' ultimate goal of legalizing drugs.

Who Supported the Proposition

Proposition 215 in California and Proposition 200 in Arizona were drafted, financed and supported by legalization proponents using the compassionate pain argument as a guise for their drug legalization agenda. Billionaire financier and legalization advocate, George Soros, provided hundreds of thousands of dollars in California alone to garner support for the proposition. In Arizona, Soros almost doubled his California donations, a significant portion of which were made through organizations, such as the Drug Policy Foundation, with which he is affiliated. Other donors included representatives from the Progressive Corporation, the Men's Warehouse, and other pro- legalization groups.

Proponents waged a sophisticated, misleading campaign which led voters to believe that the initiatives were simply limited to compassionate pain relief. Opponents of the propositions, including the American Cancer Society, the California Medical Association, the Glaucoma Research Foundation, the National Multiple Sclerosis Society, the California Narcotics Officers Association and many family groups concerned about the impact of drug legalization on the nation's children, were outspent and

out-campaigned by the well-orchestrated effort to legalize drugs on a national basis. These individuals cynically used the suffering and illness of vulnerable people to further their own agenda.

Those of us who fought against the initiative, including General McCaffrey, myself, HHS Secretary Shalala and former Presidents Ford, Carter and Bush, found it extremely difficult to engage the media in California and Arizona and discuss the real issues underlying these propositions. Even the fact that 13,000 members of the International Association of Chiefs of Police, meeting in Phoenix, Arizona in late October, passed a resolution strongly opposing these initiatives, received little attention.

Before discussing the practical implications that these two propositions will have on law enforcement and ultimately on American children, I would like to take a moment to discuss the DEA's position on the medical use of marijuana.

The Medical Use Issue

In March, 1992, DEA Administrator Robert Bonner, re-affirmed the DEA's position that there is "no currently accepted medical use" for marijuana, and denied the petition of the National Organization for Reform of Marijuana Laws (NORML) to re- schedule marijuana from Schedule I to Schedule II. After a lengthy hearing process, the DEA made this conclusion based on testimony and comments from numerous medical doctors who had conducted detailed research and were widely considered experts in their respective fields. Briefly, the decision states among other things that:

- Marijuana has been rejected as medicine by the American Medical Association, the National Multiple Sclerosis Society, the American Glaucoma Society, the American Academy of Ophthalmology and the American Cancer Society.
-
- No medicine prescribed by physicians is smoked.
-
- Marijuana is likely to be more cancer-causing than tobacco; damages brain cells; causes lung problems, such as bronchitis and emphysema; may weaken the body's antibacterial defenses....and impairs motor skills.
-
- No medical study has indicated that marijuana is significantly effective in controlling nausea and vomiting.
-
- Each of the doctors testifying on behalf of NORML claimed that his opinion was based on scientific studies, yet with one exception, none could identify, under oath, the scientific studies they relied on.

It is common knowledge that the active ingredient in marijuana, known as THC, is available in pure form, manufactured pharmaceutically in capsules as Marinol. There have been no medical studies indicating that any property in marijuana other than THC has any beneficial medical effect. There have been dramatic advances made in relieving the side effects of cancer treatment during the past decade, and drugs such as Zofran and Kytril are available to physicians. Many medical experts consider these new drugs far more effective than Marinol. In the DEA's opinion in 1992, and in 1996, there is no scientific information which supports re-classifying marijuana as a Schedule II substance, making it available for medical use.

To say that marijuana should be used for pain relief is similar to saying that cigarettes should be prescribed as an appetite suppressant to those seeking to lose weight. Our research shows definitively that smoking causes lung cancer and emphysema, and our society acknowledges the dangers of tobacco. Why, then, should we believe, simply on the word of those who seek to normalize their own behavior, that marijuana should be widely available for all to smoke? Why should we allow a few individuals, who write checks in

the comfort of their upper-class homes, to dictate policies which we know are harmful?

Implications for Law Enforcement

Perhaps the most complex questions we are facing today as a result of these propositions pertain to law enforcement. As representatives on the panel of state and local experts will testify, the passage of these initiatives raises important law enforcement issues in both states. Earlier this month, General McCaffrey convened a meeting of representatives from state and local law enforcement to discuss the practical implications of these propositions, and how federal law enforcement together with their state and local task force partners will continue to target and arrest major drug traffickers.

I would like to discuss a few scenarios which raise questions and graphically illustrate the practical issues which face law enforcement in light of these developments.

- Can state and local law enforcement officers seize marijuana in California, and in Arizona, marijuana and other Schedule I drugs from individuals claiming to have received them as a result of a doctor's recommendation or prescription?
- Are these substances medicines under state law or contraband?
- Are police officers liable if they let individuals with marijuana, who claim a medical condition, drive off and later injure or kill someone?
- Are state and local officers able to detain individuals possessing Schedule I drugs, and call federal officials to come and arrest them on federal charges? How will the federal government meet the burdens of charging and prosecuting cases previously handled on a state level --- without any additional resources and with already staggering workloads?
- How will law enforcement officers respond to large marijuana plots when the owners claim that they are "caregivers" who must cultivate marijuana for their customers suffering from AIDS, cancer, or whatever medical conditions they identify?
- Can inmates in prison claim that they are suffering from a medical condition requiring treatment with Schedule I substances? Are prison officials obligated to allow the inmates to use these drugs? If so, how are prison officials in Arizona expected to maintain order and discipline with the inmates high on heroin, marijuana, LSD or other Schedule I drugs?
- How will law enforcement handle prescriptions or recommendations from doctors or caregivers from other states, or from Mexico and Canada?
- These are serious questions which now face California and Arizona law enforcement officials on a daily basis. There are also significant issues which face the citizens of both states. Parents should ask how these propositions will impact on the safety of their children; will workplaces, including schools and transportation, maintain drug-free requirements? How will parents be assured that their child's Little League Coach or scoutmaster is not using drugs? Perhaps the biggest question of all, however, is what impact the liberalization of drug policy will have on our children at a time when drug use has increased. The mixed messages we are sending will most likely have a terrible effect on parents' ability to provide unequivocal information about drugs to their young children.

What the Federal Government Can Do

The California and Arizona initiatives do nothing to change federal drug enforcement policy. The DEA will continue to target major drug traffickers, including major marijuana growers and

distributors. We also can take both administrative and criminal actions against doctors who violate the terms of their DEA drug registrations that authorize them to prescribe controlled substances. Doctors are registered with the DEA to prescribe only Schedule II-IV substances. Technically, those doctors who prescribe or recommend Schedule I substances are violating federal law. The licenses of over 900 physicians have either been surrendered or revoked in the last two years for fraudulent prescription practices.

The DEA is working with the Department of Justice and the Office of National Drug Control Policy to ensure close coordination between the federal government, and state and local law enforcement agencies. We have met with officials from California and Arizona in an effort to ensure that they have the necessary support from the federal government, but there are still many issues to be worked out. Although there are no guarantees, the DEA is hopeful that continuing consultations with state and local officials will ensure that the citizens of both states will be protected from major drug traffickers and unscrupulous medical practitioners. In some cases, they will be one and the same.

Conclusion

Mr. Chairman, it is important for us to recognize that the proponents of drug legalization will not stop with California and Arizona. They intend to support and finance initiatives in many other states. Citizens of California can overturn this proposition in 1998 through another ballot initiative. It is possible for the Arizona legislature to overturn Proposition 200 within a shorter period of time.

We should keep our attention focused on the next tier of states targeted by the legalizers, and should learn from the California and Arizona experiences. I firmly believe that the legalizers will pour millions of dollars into legalization campaigns, and will work diligently to disguise the legalization issue as a compassionate pain relief issue. However, we must continue to educate Americans about the true nature of the debate, and ensure that they have the facts necessary for them to make a sound decision.

It is instructional to look at what happened in Alaska after marijuana was decriminalized between 1975 and 1990. Marijuana abuse among teenagers doubled during that time period, and parents recognized the need to re-criminalize marijuana. In 1990, Alaskans voted to re- criminalize marijuana after a grass-roots effort educated voters in that state about the consequences of a liberalized drug policy. With marijuana use among 12-17 year olds dramatically increasing, and with surveys indicating that 35% of our children list drugs as their number one concern, we need to provide our next generation with the leadership necessary to reverse the current trends. We need to put our energies and limited resources into reducing the demand for drugs, not legalizing them. I firmly believe that most Americans recognize how dangerous and counterproductive these propositions are, and with encouragement and a fair airing of the pros and cons of the issue, they will stand up to the legalizers and their millions of dollars.

Thank you for the opportunity to speak today, and I look forward to answering any questions you may have.

(This testimony was not coordinated through the interagency clearance process and reflects the views of the Drug Enforcement Administration.)

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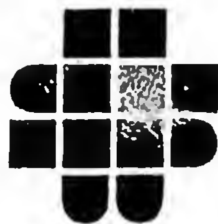

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Medical Marijuana

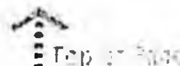
The use of Marijuana for medical purposes was recently approved by voters in Alaska and four other states. What does this mean to Alaskan employers who have drug-testing programs?

WorkSafe, Inc has summarized the information in two segments including how the USDOT views the medical use of marijuana and secondly, how employers with non-regulated drug testing programs should approach the change in Alaska law. This information should be used as a tool only and all policy changes to any workplace drug program should be reviewed by an attorney.

- U.S. Department of Transportation
- Recent Drug Initiatives in California And Arizona
- Claims of Ingestion of Hemp Food Products
- Non-Regulated Drug Testing, How Medical Marijuana Effects Alaskans
- Policy Amendment
- January 27, 1999 Meeting Minutes

U.S. Department of Transportation

Re-typed from original U.S. DOT Document 1996



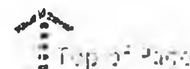
On December 12, 1996, following the election when Arizona and California voters approved the medical use of marijuana, a joint press release was developed by General Berry McCaffery, Director of the Office of National Drug Control Policy, and Federico Pena, U.S. Secretary of Transportation. The press release clarified that smoking marijuana is prohibited in safety sensitive jobs as defined by the USDOT.

"In the transportation world, safety is the highest priority. The welfare and confidence of the American public using our airplanes, railroads, and highways depend on transportation workers' unwavering commitment to safety. The use of marijuana and other illicit drugs is incompatible with transportation safety. Since 1988, the USDOT has required drug testing of employees in transportation industries to deter drug use. This is similar to the drug testing programs the Armed Forces have used for more than a decade and to the federal employees drug testing program mandated since 1986.

Under USDOT's drug and alcohol testing program rules, if you are a truck driver, airline pilot, railroad engineer, or other safety sensitive transportation employee, and you test positive for drugs, you will not continue to perform that function. If the laboratory finds drugs in your

system, you have the opportunity to discuss the test with a doctor or a Medical Review Officer (MRO). If the MRO finds that there is a legitimate medical explanation for the presence of the drug, the MRO declares the test to be negative. The use, however, of marijuana under California Proposition 215 or of any Schedule I drugs under Arizona Proposition 200 is not a legitimate medical explanation. As a matter of fact and a matter of federal law, marijuana and other drugs listed on schedule I of the Controlled Substance Act do not have a legitimate medical use in the United States. Thus, if you test positive for marijuana, and tell the MRO that a doctor recommended or prescribed the use of marijuana for you, the MRO will verify the test positive. You will have to stop performing your safety sensitive transportation function."

Recent Drug Initiatives in California And Arizona



Q How should Medical Review Officers respond to recent California and Arizona initiatives concerning the medical use of marijuana and other drugs?

Background

On November 5, 1996, California voters passed an initiative (Proposition 215) authorizing physicians to recommend the use of medical marijuana for the treatment of cancer, AIDS, anorexia, chronic pain, spasticity, glaucoma, arthritis, migraine, "or any other illness for which marijuana provides relief." A prescription or other written record of the recommendation for marijuana is not required to authorize its use under the new state law.

In Arizona, voters passed an initiative (Proposition 200) regarding the medical use of drugs. It is in some ways broader and in some ways narrower than the California initiative. It is broader because it applies to all drugs identified on Schedule I of the Controlled Substances Act, not just marijuana. It is narrower because it requires a physician's prescription for legal use of Schedule I drugs, following a second opinion from another physician. Such a drug may be prescribed "to treat a disease, or to relieve the pain and suffering of a seriously ill patient or terminally ill patient".

DOT Policy

The use of Schedule I drugs, whether for recreational or medicinal purposes, is inconsistent with the performance of safety-sensitive transportation functions. The initiatives do not affect Department of Transportation rules concerning the use of these drugs by employees performing safety-sensitive duties. For example, Federal motor carrier safety rules prohibiting the use of controlled substances by commercial motor vehicle drivers continue to apply to the use of these Schedule I drugs, without change.

Guidance to MROs

When the laboratory test of an employee's specimen shows the requisite amount of any of the substances for which the Department

requires testing, the Department's rules impose the consequences of a positive test unless the MRO determines that there is a legitimate medical explanation for the presence of the substance. A legitimate medical explanation must include documentation that the employee obtained the substance in a manner consistent with the requirements of Federal law, including the Controlled Substances Act. These requirements include, with a few specific expectations set forth in federal rule (1), a prescription or other valid order issued by an authorized practitioner and filled by a licensed pharmacist.

What should the MRO do if an employee documents that a physician prescribed or recommended marijuana under California Proposition 215 or prescribed marijuana or any other Schedule I drug under Arizona Proposition 200?(2) The MRO must in every case determine that there is not a legitimate medical explanation for the presence of the drug.

This result is required by Federal Law. Under the Controlled Substances Act, a Schedule I drug is one which 'has no currently accepted medical use in treatment in the United States [and] there is a lack of accepted safety for the use of the drug...under medical supervision."(3) A drug which, as a matter of Federal Law, has no currently accepted medical use in treatment cannot form the basis of a legitimate medical explanation in a federally-mandated drug testing program. Moreover, the Controlled Substances Act authorizes physicians to prescribe only drugs in Schedules II-V.(4) This means that a physician cannot, under Federal Law, legitimately prescribe a Schedule I drug to a patient. A prescription unauthorized by federal law cannot form the basis of a legitimate medical explanation in a Federally-mandated drug-testing program.

The Department's drug testing program is national in scope. Its objective is to foster nationwide transportation safety by ensuring that safety sensitive transportation employees everywhere in the country do not abuse drugs. One of the bases on which the Department's rules pre-empt state law is that "compliance with the state or local requirement is an obstacle to the accomplishment or execution of any requirement" of the Department's rules.(5)

To the extent that the California or Arizona initiatives were construed to authorize or require MROs to determine that a legitimate medical explanation exists when Schedule I drugs are prescribed under state law, the Department would view them as pre-empted by creating a serious obstacle to the implementation of the Department's nationwide safety rules.

For example, MROs nationwide would be asked to verify marijuana positive tests differently depending on whether the employee obtained marijuana after a physician's recommendation in California or through other means in other states. MROs would be asked to act at variance with Federal Law in the context of a Federally-mandated program. This result is unacceptable. When a specimen is positive for THC (the marijuana metabolite the presence of which laboratory tests confirm in the DOT program), the only legitimate medical explanation for its presence in the Department's drug testing program is a prescription for marinol.

It should also be pointed out that an employee can obtain marijuana under California Proposition 215 without a prescription, or even a written recommendation from a physician. There are no circumstances under which it is appropriate for an MRO to accept, as a legitimate

medical explanation for the presence of THC in an employee's specimen, the verbal or written recommendation of a physician for the use of the marijuana. If the employee presents documentation of a "recommendation" that is not a prescription, or does not produce any documentation at all, the MRO has no basis to determine that there is a legitimate medical explanation for the presence of THC in an employee's specimen.

We would also remind MROs that the Department's rules authorize MROs to provide medical information learned during the verification process to employers when the information would result in the medical disqualification of an employee under DOT rules or the information indicates that the continued performance of safety-sensitive functions could pose a significant safety risk. The use of any Schedule I substance by an employee performing safety-sensitive functions in transportation meets these criteria.

Footnotes:

1. For example, a physician may administer a narcotic to a patient to relieve acute withdrawl symptoms while treatment is being arranged (21 CFR 1306.07(b); an individual practitioner may dispense a Schedule II substance directly in the course of his professional practice (21 CFR1306.11(b); and a pharmacist may dispense a Schedule II substance in an emergency with the oral approval of a practitioner (21 CFR 1306.11(d).

2. This guidance also applies with respect to any other state in which a statute or court decision may authorize the allegedly medical use of marijuana or other Schedule I drugs or make "medical necessity" an affirmative defense to a change of possession of a controlled substance. See for instance Rev. code Wash Section 869.51.020 - 040; Ohio Revised Code Annotated 2925.11(I) lenks v. Florida. 582 So.2D 676 (1991); Idaho v. Hastings, 801 P.2d 563 (1990); Washington v. Diana, 604 P.2d 1312 (1979).

3. - 21 U.S.C. 812(b)(1). Schedule I drugs for requires testing are marijuana, heroin, and PCP. Cocaine, amphetamines, methamphetamines, marinc., and many opiates are in Schedule II or other schedules.

4. - 21 U.S.C. 823(f). The only exception is a prescription that is part of a research project approved by the Secretary of Health and Human Services.

5. - This language is from the Federal Highway Administration rule, 49 CFR 382.109(a)(2). There is parallel language in other modal rules.

Claims of Ingestion of Hemp Food Products

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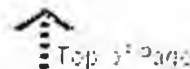
Q How should MROs respond to an assertion by an individual with a confirmed drug test for marijuana that the legal ingestion of food products containing hemp accounts for the presence of THC in the specimen?

A. Recently, some manufacturers have begun to market food products containing hemp seeds or extracts. Some news reports have suggested that eating one of these products may produce levels of THC (the marijuana metabolite the presence of which laboratory tests confirm in the DOT program), high enough to result in a confirmed positive test in the Department's drug testing program. An individual with a confirmed positive test for marijuana might assert to an MRO that the test should be verified negative because the THC in his or her specimen came from a legally obtained hemp food product.

It is not clear, at this time, whether the reports that one or more hemp food products can result in a confirmed THC positive are accurate. The Department of Health and Human Services (DHHS) is conducting research aimed at answering this question. In addition, the Drug Enforcement Agency (DEA) is currently considering whether to determine that hemp snack bars are illegal, on the basis that they contain a controlled substance.

Regardless of the outcome of the DHHS and DEA actions, MROs must never accept an assertion of consumption of a hemp food product as a basis for verifying a marijuana test negative. Whatever else it may be, consuming a hemp food product is not a legitimate medical explanation for a prohibited substance or metabolite in an individual's specimen. When a specimen is positive for THC, the only legitimate medical explanation for its presence in the Department's drug testing program is a prescription for marinol.

Non-Regulated Drug Testing, How Medical Marijuana Effects Alaskans


Top of Page

In November 1998, Alaskan voters approved an initiative (Ballot Measure 8) allowing for the medical use of marijuana by persons suffering from a debilitating medical condition. See AS 17.35.010-.070. The new law is called the Medical Uses of Marijuana For Persons Suffering from Debilitating Medical Conditions Act.

Pursuant to the new law, no patient or primary care giver may be found guilty of, or penalized in any way for, a violation of any provision of law related to the medical use of marijuana where:

1. the patient has been diagnosed by a physician as having a debilitating medical condition;
2. the patient was advised by his/her physician, in the context of a bona fide physician-patient relationship, that the patient might benefit from the medical use of marijuana in connection with a debilitating medical condition; and
3. the patient and his/her primary care-giver are collectively in possession of not more than one ounce of marijuana and/or no more than six marijuana plants (of which not more than three are mature and producing marijuana in usable form).

"Debilitating medical condition" is defined as: (a) cancer, glaucoma positive status for HIV, or acquired immune deficiency syndrome, or treatment for any of these conditions; (b) any chronic or debilitating disease (or treatment for such diseases) which produce one or more of the following conditions which the patient's physician believes may be alleviated by marijuana: cachexia (physical wasting and malnutrition), severe pain or nausea, seizures (including those characteristic of epilepsy), or persistent muscle spasms (including those characteristic of multiple sclerosis); and © and other medical condition (or treatment for such condition) which has been approved by the Department of Health and Human Services via its regulatory authority.

"Physician" is defined as a person licensed to practice medicine in Alaska or an officer in the regular medical service of the U.S. armed forces or the U.S. Public Health Service.

Under the new law, starting June 1, 1999, a patient may apply for a registry identification card with the Department of Health and Human Services. To receive such a card, the patient must provide: (1) written documentation stating that s/he has been diagnosed with a debilitating medical condition and the physician's conclusion that s/he might benefit from the medical use of marijuana; (2) the name, address, date of birth and social security number of the patient; (3) the name, address and telephone number of the patient's physician; and (4) the name and address of the patient's primary care-giver. This information is treated as confidential and is not subject to release to the public.

If the information presented is verified, it will then issue a registry identification card to the patient stating that the patient has been certified to the state health agency as a person who has a debilitating medical condition which the patient may address with the medical use of marijuana.

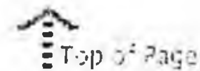
Questions have arisen regarding the effect this new law may have on employers and their drug testing programs. As this is a new law that has not yet been interpreted by the courts, there are no definitive answers. Moreover, each case will vary depending upon the particular facts. However, the following is a reasonable interpretation of an employer's rights under the new law:

1. The law specifically states that nothing in the law requires any accommodation of any medical use of marijuana in any place of employment. This can reasonably be interpreted to mean that an employer may lawfully prohibit an employee from using or being under the influence of medical marijuana while in the workplace or on work time. However, the Alaska Human Rights Commission (charged with enforcing the state law prohibiting disability discrimination) has informally indicated that qualified persons suffering from a protected disability who have a valid recommendation for the medical use of marijuana should be permitted to be under the influence while on the job unless that use poses a direct safety threat or renders the person unable to perform the essential functions of their job. With that in mind, each case must be evaluated individually. If an employee is under the use of medical marijuana while at work, whether it's revealed by the employee or discovered by the employer, it is advisable to contact your attorney.
2. An employee lawfully using medical marijuana may not automatically be terminated for testing positive for marijuana as part of the employer's drug testing program. It is likely that medical marijuana use will be treated the same as a prescription drug. Therefore, an employee who tests positive should be allowed to explain that positive test and provide evidence (i.e., registration card) that s/he is lawfully using marijuana for medical purposes. If the employee provides sufficient evidence, and there is otherwise no evidence of on-the job use or impairment, the employee should not be disciplined or terminated based upon the positive test result.

If you have questions concerning DOT and Non-regulated drug programs after reviewing this guidance tool please call our office. The WorkSafe staff is available to assist employers in understanding this

new statute as it applies to your drug-testing program.

Policy Amendment



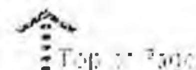
List as Prohibited Conduct:

> Failing to notify the employee's supervisor, before beginning work, that the employee is taking medications or drugs which may interfere with the safe and/or effective performance of duties.

Discipline after positive test result from prescriptive or legal drug use:

> In the case of prescriptive or legal drug use that results in a positive test, the employee may be subject to disciplinary action when:
>
> 1. The employee failed to notify the employee's supervisor, before beginning work, that the employee was taking medications or drugs which might interfere with the safe and/or effective performance of duties;
> 2. Verification of valid current prescription or legal use of such drug is not provided upon request by the next scheduled work day; or
> 3. Misuse of the prescription or recommended drug.

January 27, 1999 Meeting Minutes



Summary of Meeting on Impact of Medical Marijuana in Workplace

Katie Tank with Perkins Coie presented information on the effects of the medical marijuana legislation approved by Alaska voters in the November 1998 general election. Similar laws have been passed in California, Arizona, Oregon, and Washington State. Katie Tank detailed the potential effects of the legislation on the workplace, especially on non-regulated drug testing programs. Use of medical marijuana is still prohibited under federal law and, therefore, will not affect Department of Transportation drug testing programs.

The legislation will take effect on June 1, 1999. To implement the law, there will be an exemption inserted in the criminal statutes.

Elements of the legislation discussed: No legislative history or regulations exist on the intent of the law.

- Use allowable for persons with chronic debilitating diseases like cancer, AIDS, and glaucoma. Even though the law was designed to help people who are, in most cases, unable to work, other people who do not have life threatening diseases will be able to use the drug legally. The definition of debilitating

disease in the legislation also includes persons suffering from nausea, seizures, and muscle spasms. The law does not address where marijuana can be obtained or purchased.

- Use must be ***recommended*** by a physician. Currently it is not legal for a physician to issue a ***prescription*** for marijuana.
- Law makes no accomodation for workplace use. A narrow interpretation would mean that an employee can not smoke marijuana at work. A broader interpretation of this section might prohibit an employee from coming to work "under the influence" of the drug.

Protections for employees in Alaska

- ***State Disability Discrimination Law*** provides protection to employees who self-disclose a disability. The employer would have to make an accommodation such as allowing the employee to smoke and remain in his or her existing job or transfer to another job.
- ***Alaska Human Rights Commission*** would consider a person protected unless the use of medical marijuana poses a direct threat to safety or renders them unable to perform job functions, which the employer would have to prove. The commission will investigate complaints. The commission will also be releasing regulations in the near future.

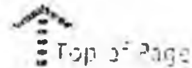
According to Katie Tank, AHRC is taking the view that employers will have to accommodate use until there is a court decision that says an employer can prohibit smoking. For example, if an employee is in a safety sensitive position, the employer could make a case for why smoking is prohibited.

Employer Rules to Follow: Advise from Katie Tank

- ***Do not terminate employees who test positive.*** Use has been authorized and a registry card issued by the State. However, the employer could legitimately ask the employee to disclose use as in the case of disclosure of a prescription drug. The Alaska State Law on drug testing requires:
    - Employees to provide explanation of prescription use.
    - The availability of a Medical Review Officer to determine legitimate prescription drug use. Because there is no prescription drug to account for the positive drug test, the MRO will report a positive result.
- ***Incorporate into policies how legal use should be reported.*** A positive test would not be grounds for termination in situations of legal use.
- ***Evaluate whether use impairs job performance as this relates to safety concerns.*** If the employee can not perform the mental functions of the job, he or she is no longer protected under the law.
- ***Educate supervisors*** to withhold employment action and engage in discussions with employees who are discovered to be using medical marijuana.

What the Legislation Does not Affect:

Applicants who test positive in a pre-employment test. The negative test is a condition of employment. If, in the course of the interview, the applicant volunteers information on the use of medical marijuana, the employer can discuss whether use will affect the ability to effectively and safely perform the job function. If it is determined that the job function will not be negatively impacted, do not take use of medical marijuana into account in making hiring decision.



WorkSafe, Inc. is a subsidiary of Nana Development Corporation.

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Phone: (907) 563-8378 / Fax: (907) 563-8380

04/29/99 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
09:33:30 PARTICIPANT LIST (TESTIFIERS ONLY) BY:JNU
TCN:90653 SCHEDULED FOR:04/29/99 09:00 TO 11:00 FOR:ALL
PUBLIC HEARING SENATE FINANCE

LOCATION:ANCHORAGE

SB 29		EYAL	HERZOG	M.D.	TESTIFY
SB 133		JUDY	BRADY	AOGCC	TESTIFY
SB 133		MARK	WORESTER	ARCO	TESTIFY
SB 133		TIM	COOK	APUC	TESTIFY
SB 133		STEVE	MULDER	ANS ?	TESTIFY
HB 94		DOUG	GRIFFIN	ABC	TESTIFY

LOCATION:GLENNALLEN

SB 133	MR.	DOUGLAS SY	NEELEY		TESTIFY
SB 133	MRS.	SHARON	DANIEL		TESTIFY

LOCATION:OFFNET 1 VANCOUVER, WA

LOCATION:OFFNET 2 PORTLAND OR

SB

95

SFIN

FILE

SB 95

was referred to the Senate Finance Committee

Hearing(s) were held

The bill did not move from Committee

Adopted

1-LS0602\I
Ford
4/2/99

CS FOR SENATE BILL NO. 95( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): **SENATORS PHILLIPS, Halford, Donley**

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to school construction grants and to municipal school**
2 **construction debt reimbursement."**

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

4 *** Section 1.** AS 14.11.013(a) is amended to read:
5 (a) With regard to projects for which grants are requested under AS 14.11.011,
6 the department shall
7 (1) annually review the six-year plans submitted by each district under
8 AS 14.11.011(b) and recommend to the board a revised and updated six-year capital
9 improvement project grant schedule that serves the best interests of the state and each
10 district; in recommending projects for this schedule, the department shall verify that
11 each proposed project meets the criteria established under AS 14.11.014(b) and
12 qualifies as a project required to
13 (A) avert imminent danger or correct life-threatening situations;
14 (B) house students who would otherwise be unhoused; for

1 purposes of this subparagraph,

2 (i) students are considered unhoused if the students

3 attend school in temporary facilities; **and**

4 **(ii) sixth grade students shall receive the space**

5 **allocation given to secondary students when the sixth grade students**

6 **are housed in a middle school, junior high school, or high school**

7 **that includes the sixth grade;**

8 (C) protect the structure of existing school facilities;

9 (D) correct building code deficiencies that require major repair

10 or rehabilitation in order for the facility to continue to be used for the

11 educational program;

12 (E) achieve an operating cost savings;

13 (F) modify or rehabilitate facilities for the purpose of improving

14 the instructional program;

15 (G) meet an educational need not specified in (A) - (F) of this

16 paragraph, identified by the department;

17 (2) prepare an estimate of the amount of money needed to finance each

18 project;

19 (3) provide to the governor, by November 1, and to the legislature

20 within the first 10 days of each regular legislative session, a revised and updated six-

21 year capital improvement project grant schedule, together with a proposed schedule of

22 appropriations.

23 * **Sec. 2.** AS 14.11.100(j) is amended to read:

24 (j) Except as provided in (l) of this section, the state may not allocate money

25 to a municipality for a school construction project under (a)(5), (6), (7), or (9) of this

26 section unless the municipality complies with the requirements of (1) - (4) of this

27 subsection, the project is approved by the commissioner before the local vote on the

28 bond issue for the project or, for bonds authorized after March 31, 1990, but on or

29 before April 30, 1993, the bonds are approved by the commissioner before

30 reimbursement by the state, and the local vote occurs before July 1, 1987, or after

31 June 30, 1988. In approving a project under this subsection, and to the extent required

1 under (a)(8) of this section, the commissioner shall require
2 (1) the municipality to include on the ballot for the bond issue, for
3 bonds authorized on or before March 31, 1990, or after April 30, 1993, the estimated
4 total cost of each project including estimated total interest, estimated annual operation
5 and maintenance costs, the estimated amounts that will be paid by the state and by the
6 municipality, and the approximate amount that would be due in annual taxes on
7 $100,000 in assessed value to retire the debt;
8 (2) that the bonds may not be refunded unless the annual debt service
9 on the refunding issue is not greater than the annual debt service on the original issue;
10 (3) that the bonds must be repaid in approximately equal annual
11 principal payments or approximately equal debt service payments over a period of at
12 least 10 years;
13 (4) the municipality to demonstrate need for the project by establishing
14 that the school district has
15 (A) projected long-term student enrollment that indicates the
16 district has inadequate facilities to meet present or projected enrollment **or has**
17 **unhoused students; for purposes of this subparagraph,**
18 **(i) students are considered unhoused if the students**
19 **attend school in temporary facilities; and**
20 **(ii) sixth grade students shall receive the space**
21 **allocation given to secondary students when the sixth grade students**
22 **are housed in a middle school, junior high school, or high school**
23 **that includes the sixth grade;**
24 (B) facilities that require repair or replacement in order to meet
25 health and safety laws or regulations or building codes;
26 (C) demonstrated that the project will result in a reduction in
27 annual operating costs that economically justifies the cost of the project; or
28 (D) facilities that require modification or rehabilitation for the
29 purpose of improving the instructional program.

SENATE FINANCE COMMITTEE

1999 COMMITTEE ACTION

Bill Number	SB 95
Amendment	"I" CS
Motion	adopt
Motion by	Phillips
Objection	
Objection by	Adopt
Removed	
Second Objection by	
Committee Member	***Vote***
Senator Gary Wilken	y
Senator Pete Kelly	y
Senator Lyda Green	y
Senator Randy Phillips	y
Senator Dave Donley	y
Senator Loren Leman	—
Senator Al Adams	N
Co-Chair Sean Parnell	y
Co-Chair John Torgerson	y
Tally	
Yea	0 7
Nay	0 1
Absent	0 1
MOTION	adopt

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CS SB 95(FIN)

Revision Date/Time: 3/2/00
Title: An Act relating to school construction grants and to municipal construction debt reim.
Sponsor: Phillips
Requester: Senate HESS

Dept. Affected: Education
BRU: School Finance
Component: Educational Facilities Support
Component Serial No. 1957

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	4,599.9	18,491.3	**	**	**
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY00) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This update to the fiscal note for CS SB 95 estimates the cost to the state and is based on additional space eligibility for schools that currently incorporate 6th graders in a secondary educational program. FY2002 lists the estimated cost of known projects and FY2003 shows costs for increased eligibility in current middle school programs. The analysis does not consider the potential increase in costs associated with implementation should all districts move to a middle-school model.

Prepared by: Eddy Jeans, School Finance Manager
Phone: 465-8679
Division: Education Support Services
Date/Time: 3/2/00 4:10 PM
Approved by Commissioner: Richard S. Cross, Commissioner
Date: 3/2/00
Agency: Department of Education & Early Development

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CS SB 95 - School Grade Levels - Cost Impact Summary

Funding Areas	Projected 6th Grade Class	CS SB 95 Additional Net SF per 6th grader	CS SB 95 Net SF Increase	State Share/SF Project Cost	CS SB 95 Estimated Cost Increase
FY2002					
Total Eagle River Area	601	43.75 SF	26,285 SF	$175	$4,599,875
FY2003					
Total Mat-Su Area	886	43.75 SF	38,749 SF	$175	$6,781,153
Total Juneau Area	450	43.75 SF	19,705 SF	$178	$3,503,530
Total Kenai Area	162	43.75 SF	7,105 SF	$173	$1,225,894
Total Fairbanks Area	263	43.75 SF	11,502 SF	$184	$2,113,438
Remaining Municipalities/Cities/Boroughs	428	43.75 SF	18,746 SF	$211	$3,964,204
REAAs	70	43.75 SF	3,074 SF	$334	$903,094
FY2002 Total	601				**$4,599,875**
FY2003 Total	2260				**$18,491,312**
Estimated Cost to the State of Alaska for Increased Space Eligibility per CS SB 95					**$23,091,187**

The estimated cost to the state for CS SB 95 is based on additional space eligibility for schools that currently incorporate 6th graders in a secondary educational program.

STATE OF ALASKA

Department of Education & Early Development

Education Support Services

TONY KNOWLES, GOVERNOR

Goldbelt Place
801 West 10th Street, Suite 200
Juneau, Alaska 99801-1894
(907) 465-8679
(907) 463-5279 Fax
Eddy_Jeans@eed.state.ak.us

March 15, 2000

file 95
SB

The Honorable Sean Parnell, Co-Chair
The Honorable John Torgerson, Co-Chair
Senate Finance Committee
State Capitol, Room 518 and 516
Juneau, AK 99801-1182

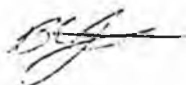
Dear Senators Parnell and Torgerson:

The following information is in response to questions asked during the Senate Finance Committee hearing on March 3 relating to SB95.

Senator Wilken asked if the new language in AS 14.11.100(j) on page 3, lines 16 and 17 regarding unhoused students would change the Department of Education & Early Development's procedure for evaluating and prioritizing school construction projects. The short answer is "no." The new language is consistent with the department's current practice for evaluating school construction projects and mirrors the language under AS 14.11.013(a) for the grant program.

Please do not hesitate to contact me if you have further questions or concerns.

Sincerely,



Eddy Jeans
School Finance Manager

Cc: Members of the Senate Finance Committee

Richard S. Cross, Commissioner,
Education & Early Development

Annalee McConnell, Director
Office of Management & Budget

ASD Memorandum

To: Senator Rick Halford
Senator Randy Phillips.

Cc: Anchorage Caucus Co-Chairs:
Senator Dave Donley
Representative Andrew Halcro

From: Larry Wiget, Executive Director, Public Affairs

Subject: Proposed Changes/Additions to State Statute

Date: March 2, 1999

Attached please find per your request suggested changes to state statute to accommodate the following ASD Legislative priorities:

(1) Definition of a Secondary Student

(2) Flexibility in State Capital Improvement Grants and School Debt Reimbursement

(3) Charter School Space Allocation

Please do not hesitate to contact me if you need further information.

Lawrence A. Wiget, Ed.D., Executive Director, Public Affairs
Anchorage School District
4600 Debarr Rd.
Anchorage, Alaska 99519
(w) 907 - 269-2255 (f) 907 - 269-2340

Anchorage School District Legislative Priority

Definition of a Secondary Student

The Anchorage School Board supports changing education regulations or state statute to expand the definition of junior high to include the words "middle school" and include the option of sixth grade in the configuration of the junior high/middle school. It is also requested that the square footage allowable for 6th graders housed in a middle school be calculated at the secondary allowance of 150 square feet per student, rather than the elementary calculation of 106 square feet per student.

ASD Intent/Suggested Language

The following suggested revisions to statute are provided to assist in the development of a bill to meet the intent of the ASD legislative priority regarding the definition of a secondary student.

"An Act relating to the combination of grades that constitute junior high, middle, or high school."

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

* Section 1. AS 14.03.060(b) is amended to read:

(b) A secondary school consists of grades <u>six</u> [SEVEN] through 12 or any appropriate combination of grades within this range. The establishment of one or two grades beyond the 12th grade is optional with the governing body of the school district.

* Sec. 2. AS 14.03.060(c) is amended to read:

(c) Grades <u>six</u> [SEVEN] through 9 [EIGHT AND NINE] or any appropriate combination of grades within this range may be organized as a junior high school, <u>a middle school. Middle schools are a</u>

<u>**separate funding component from elementary and secondary schools for purposes of calculating square footage.**</u>

Add a new (d) to read:

(d) <u>**Grades 9 through 12, or any appropriate combination of grades within this range may be organized as a high school.**</u>

Currently, under 4 AAC 31.020, School Construction Guidelines, no mention is made of "Allowable Square Feet Per Elementary Student."

Rationale: Many junior high schools statewide have been converted to middle schools for instructional purposes. All Anchorage junior highs have been converted to middle schools.

The way that the law and current regulations are written, however, the middle school model is not addressed. Many sixth grade students across the state are in middle school programs. Sixth grade is not given approval to be included in the junior high/middle school mix. The grade configuration of middle schools varies but may include 6, 7, 8 or 9th grades in various combinations. Several districts, including Anchorage, already have configurations ranging from 6th grade to ninth grade and are therefore out of compliance with Department of Education regulations.

Inclusion of sixth grade in the middle school configuration also has an impact on facilities planning. All students in the middle school program require the same programs and space allocation. The current elementary square foot allowance for sixth graders hinders a district's ability to properly plan and design a middle school facility to meet the educational needs of the students it serves.

ALASKA STATE LEGISLATURE

SENATOR RANDY PHILLIPS

SENATE DISTRICT L

Session (Jan-May)
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Sponsor Statement

SB 95

Senate Bill 95 amends the current definition of secondary school student to include the grade 6 to 8 middle school concept. Currently only junior high school students in grades 7 to 9 are considered secondary students.

Many junior high schools statewide have been converted to middle schools for instructional purposes. All Anchorage junior high schools have been converted to middle schools. This change seeks to expand Department of Education regulations in a manner that conforms with the middle school concept chosen by many local school boards.

Inclusion of sixth grade in the middle school configuration also has an impact on facilities planning. All students in the middle school program require the same facilities and space allocation. Changing this definition allows 6th grade students enrolled in a middle school program to be counted at the secondary school allowance of 150 square feet per student rather than the 106 square feet per student allowance.

The current elementary square foot allowance for sixth grade students hinders a local school board's ability to properly plan and design a middle school facility to meet the educational needs of the students it serves.

March 29, 1999

MEMO TO FILE

TO: Finance Committee

BILL/RES. NO.: **SENATE BILL NO. 95**

ATTENTION: Nancy, Heidi, Vicki
Senate Secretary's Office

This bill/resolution has not yet received a **do pass** recommendation.

Please leave this note in the file.

Thank you.

Teleconference Participants

TCN: 10472

Participant Lists

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Participants

Unidentified Testifiers: 0 Unidentified Observers: 0

ANCHORAGE (ANC)

1 Name:Ms. Nancy Davis Phone: 694 3556
Address: 17508 Toakana Way Affiliation: PTA Leg Te
City /St /Zip:Eagle River AK 99577 Type: Testifier
Bill: SB 95: SCHOOL GRADE LEVELS

DELTA JCT. (DJT)

1 Name:Mr. Dan Beck Phone:
Address: Super, Delta/Greely Sch Affiliation:
City /St /Zip: Type: Testifier
Bill: SB 105: PUBLIC SCHOOL FUNDING

2 Name:Mr. Art Griswold Phone:
Address: Affiliation:
City /St /Zip: Type: Testifier
Bill: SB 105: PUBLIC SCHOOL FUNDING

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2 Name:Mr. Royce Chapman Phone: 488-8450
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Bill: [illegible] INCREASE BASE ALLOCATION FOR EDUCATION

4 Name:Ms. Cynthia Henry Phone: 452-8477
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5 Name:Ms. Carter Crawford Phone: 452-2125
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Bill: [illegible] INCREASE BASE ALLOCATION FOR EDUCATION

6 Name:Ms. Debbie Cook [illegible] Phone: 457-1725
Address: 2290 Yankovich Rd Affiliation: ChinokChtr
City /St /Zip:Fairbanks AK 99709 Type: Testifier
Bill: SB 105: PUBLIC SCHOOL FUNDING

7 Name:Ms. Mika Mach Phone: 479-0239
Address: 322 Ketchikan Ave Affiliation: ChinokCh
City /St /Zip:Fairbanks AK 99701 Type: Testifier
Bill: SB 105: PUBLIC SCHOOL FUNDING

GLENNALLEN (GLN)

HOMER (HOM)

Homer

1 Name:Mr. Scot Wheat — Phone: 235-6840
Address: Also testify on S[illegible] amd SB 244 — Affiliation: Mental Hea
City /St /Zip:Homer AK 99603 — Type: Testifier
Bill: SB 105: PUBLIC SCHOOL FUNDING

---

2 Name:Mr. Rick Harness — Phone: 235-0603
Address: Also testify on [illegible] — Affiliation: self
City /St /Zip:Homer AK 99603 — Type: Testifier
Bill: SB 105: PUBLIC SCHOOL FUNDING

KENAI (KEN)

1 Name:Mr. Patrick Hickey [illegible] SB244) — Phone: 2622446
Address: 148 N Binkley — Affiliation: KPBSD
City /St /Zip:Soldotna Ak 99669 — Type: Testifier
Bill: SB 105: PUBLIC SCHOOL FUNDING

---

2 Name:Ms. Catherine DeLacee — Phone: 262-1538
Address: 37035 Nicholas Lane — Affiliation:
City /St /Zip:Soldotna Ak 99669 — Type: Testifier
Bill: [illegible] INCREASE BASE ALLOCATION FOR EDUCATION

MATSU (MAT)

NOME (NOM)

1 Name:Ms. Karen Ligon — Phone: 9074432231
Address: Nome Public Schools, PO Box 131 — Affiliation: NPS
City /St /Zip:Nome AK 99762 — Type: Testifier
Bill: SB 105: PUBLIC SCHOOL FUNDING

Debbie Ossiander (OF1) SB95 Eagle River

PETERSBURG (PSG)

1 Name:Mrs. Elizabeth Bacom — Phone: 772-3090
Address: PO Box 683 — Affiliation:
City /St /Zip:Petersburg AK 99833 — Type: Testifier
Bill: SB 105: PUBLIC SCHOOL FUNDING

---

2 Name:Mrs. Elizabeth Bacom — Phone: 772-3090
Address: PO Box 683 — Affiliation:
City /St /Zip:Petersburg AK 99833 — Type: Testifier
Bill: SB 198: INCREASE BASE ALLOCATION FOR EDUCATION

SEWARD (SEW)

1 Name:Mr. Malcolm Fleming — Phone:
Address: PO Box 302 — Affiliation: SEWARD HS
City /St /Zip:Seward AK 99664 — Type: Testifier
Bill: [illegible] INCREASE BASE ALLOCATION FOR EDUCATION

SENATE FINANCE COMMITTEE

SIGN-IN

SB 95-SCHOOL GRANT/DEBT REIMBURSEMENT

NAME: Michael Morgan Subject/Bill No: ______

Co./Dept./Title: Dept of Educ., Facilities Manager Phone: 465-1858

Address: ______ Zip: ______

Do you wish to testify? ___Yes ___No ✓ Respond To Questions

NAME: ______ Subject/Bill No: ______

Co./Dept./Title: ______ Phone: ______

Address: ______ Zip: ______

Do you wish to testify? ___Yes ___No ___Respond To Questions

NAME: ______ Subject/Bill No: ______

Co./Dept./Title: ______ Phone: ______

Address: ______ Zip: ______

Do you wish to testify? ___Yes ___No ___Respond To Questions

NAME: ______ Subject/Bill No: ______

Co./Dept./Title: ______ Phone: ______

Address: ______ Zip: ______

Do you wish to testify? ___Yes ___No ___Respond To Questions

04/27/99 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
09:15:30 PARTICIPANT LIST (TESTIFIERS ONLY) BY:JNU
TCN:90652 SCHEDULED FOR:04/27/99 09:00 TO 11:00 FOR:ALL
PUBLIC HEARING SENATE FINANCE

LOCATION:ANCHORAGE

SB 95	✓DEBBIE	OSSIANDER	ANCH SCHOOL DISTTESTIFY
HJR 13	MOLLY	MCCAMMON	EV TRUSTEE CNCL TESTIFY

SB

97

HFIN

FILE

Alaska State Legislature

SENATOR
PETER KELLY
Mailing Address:
119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
Senator_Pete_Kelly@legis.state.ak.us
(907) 456-8161

While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-2327

Senate District P

Senate

SENATE BILL 97

SPONSOR STATEMENT

"An Act relating to mental health services and programs; relating to liability for payment for mental health evaluation and treatment services; and providing for an effective date."

DHSS reimburses private community hospitals (Designated Evaluation and Treatment Facilities) throughout Alaska to provide emergency mental health inpatient evaluation and treatment services. Hospitals provide these services to individuals who are at risk of harming themselves or others, or who are so severely impaired by mental health symptoms that they are unable to care for themselves. Often these individuals are experiencing severe psychiatric symptoms, such as depressive or psychotic symptoms, and need intensive inpatient mental health services.

Senate Bill 97 seeks to clarify the state's responsibility for payment for services and the responsibility of the state to determine the ability of patients to pay for those services. The proposed legislation clarifies client eligibility for these services. Additionally, it establishes procedures for determining eligibility, processing applications, and paying claims. SB 97 creates an entitlement for eligible clients, thus allowing payment for serving those individuals whose mental illness increases their danger to themselves or others. The following are criteria for eligibility:

- A patient is determined to be "suffering from a mental illness, and as a result is likely to cause serious harm to themselves or others, or is gravely disabled." and;
- The patient's gross monthly household income falls below 185% of the federal poverty guideline.

SB 97 amends current statutes defining the state's responsibility for payment for inpatient psychiatric service for those patients needing intensive services. Historically the Department of Health and Social Services (DHSS) has reimbursed hospitals for only those patients who are committed by the courts for evaluation and treatment services. This legislation would require the department to reimburse hospitals for individuals who meet the commitment criteria, but who voluntarily admit themselves into the hospital. These individuals are therefore, not court ordered into care, but could be held under court order if they attempted to leave the hospital.

(11)

..OUSE COMMITTEE REPC .T

Date Referred to Committee: May 14, 1999 FURTHER REFERRALS:

Date of Committee Action: 5\15\99

The FINANCE Committee considered: CSSB 97(FIN) am

CS FOR SENATE BILL NO. 97(FIN) am MENTAL HEALTH; RECORDS; TREATMENT

"An Act relating to mental health services and programs; relating to liability for payment for mental health evaluation and treatment services; and providing for an effective date."

recommends it be replaced with the following committee substitute ______ [ ] the same title [ ] a new title

[ ] additional referral to ______ Committee

[ ] attached amendment(s)

ADOPTS: ______ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal note(s) ______

[ ] zero fiscal note(s) ______

APPROVES PREVIOUS: (Dept/Date)

[x] fiscal note(s) Senate DHSS 4/21/99

[ ] zero fiscal note(s) ______

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
[signature] Bunde	✓			
[signature] Kohring	X			
[signature] Austerman	X			
[signature] Davies	X			
[signature] Grussendorf	X			
[signature] Moses	X			
[signature] Davis	X			
[signature] Williams	X			
[signature] Foster	X			

CHAIR'S SIGNATURE [signature] V.C.

STATE OF ALASKA
1999 LEGISLATIVE SESSIC

No. 1
Bill Ver. 1: SB97
(S) Publish Date: 4-21-99

Revision Date:
Title: Mental Health Evaluation and Treatment and confidential mental health records
Sponsor: Senator Pete Kelly
Requestor: (Senate) HESS

Dept. Affected: Health and Social Services
BRU: Community Mental Health Grants
Component: Designated Evaluation and Treatment
COMPONENT SERIAL NO. 1014
See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY00	FY01	FY02	FY03	FY04	FY05
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		150.0	150.0	150.0	150.0	150.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS		1,544.7	2,641.7	2,641.7	2,641.7	2,641.7
MISCELLANEOUS						
TOTAL OPERATING	0.0	1,694.7	2,791.7	2,791.7	2,791.7	2,791.7

CAPITAL EXPENDITURES						
CHANGES IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

	FY00	FY01	FY02	FY03	FY04	FY05
1002 Federal Receipts		1,544.7				
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health		150.0	2,791.7	2,791.7	2,791.7	2,791.7
Other (please specify)						
TOTAL	0.0	1,694.7	2,791.7	2,791.7	2,791.7	2,791.7

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY99) cost: $0.0

ANALYSIS: (Attach a separate page if necessary)

Fiscal Assumptions:
SB 97 serves two functions: It clarifies the client eligibility for Designated Evaluation and Treatment (DET) Services and establishes procedures for determining that eligibility, processing applications, and paying claims; it also creates an entitlement to those services for eligible clients.

These clarifications are necessary due to a current lawsuit related to these services and due to the downsizing of the Alaska Psychiatric Institute (API). The plaintiff in the current litigation requests that the court interpret current statutes to mean that the department must determine every patient's ability to pay; and, that if it is detrimental to the patient's rehabilitation, the department has to relieve the patient of their obligation to pay. If the court agreed with this interpretation, the department would pay for a far greater number of people than are currently eligible for this program. Additionally, the downsizing of API will require that these services be provided in Anchorage beyond those currently provided in other communities throughout Alaska. This necessary expansion will require explicit eligibility and payment procedures to maintain consistent administration of the program.

3/12/99

Prepared by: Leonard Abel,Ph.D./Gina Macdonald
Division: Mental Health and DD
Phone: 907-465-3370
Date: 03/12/99

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services
Date: 3/15/99

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SB97 #1

ANALYSIS (cont.):

As stated above, current plans to downsize API require that private hospitals in Anchorage provide some inpatient psychiatric services through the Designated Evaluation and Treatment program. This results in impending additional costs regardless of legislation. The lawsuit also has implications for undetermined costs as eligibility for the program could be determined (and possibly expanded) through the courts. This legislation will allow reasonable expansion of the program while establishing program controls through setting clear criteria and formalizing payment procedures. New costs to the program will be covered transitionally by federal grant funds in FY 2000. An increment will be required to enable this program to become an entitlement beginning FY 2001.

Existing Program

There is $1046.3 GF/MH in the base for the DET program. These funds provide a limited amount of 72-hour psychiatric evaluations in eight hospitals in Alaska, up to 30 days of psychiatric treatment in two hospitals, physicians' services, and transportation to the hospitals. In addition, it pays for enhanced detoxification at two facilities for persons who are intoxicated and expressing suicidal ideation. Historically, client eligibility for this program has been budget driven. The definition of an eligible client was chosen so that all eligible clients could be served within the existing budget. The law suit has demanded that, among other things, the definition of eligibility be expanded to a larger population.

Eligibility Expansion

Payment for DET services will be expanded to all persons who are a danger to themselves or others or gravely disabled due to a mental illness, who are at or below 185% of the federal poverty guidelines, and who have no other source of payment.

The FY2000 Governor's Budget includes a request of $1097.0 in federal receipt authority for a Substance Abuse and Mental Health Services Administration (SAMHSA) grant as a part of the Community Mental Health/API 2000 project. Prior experience with a larger population indicated that the expanded eligibility would result in increased cost of at least $300.0. Part of the SAMSHA federal grant will cover these increased costs and another portion would allow limited expansion of the current program. The total cost of these changes is $582.1. None of these costs are reflected in the fiscal note, but are critical to its understanding. Hospital costs are based on a rate of $930 per day, and detox costs are based on a cost of $275 per day.

Community Mental Health/API 2000 (related to downsizing API)

The Community Mental Health/API 2000 project depends upon a fully functional DET program. The current DET program operates outside of Anchorage. For the Community Mental Health/API 2000 project related to the downsizing of the Alaska Psychiatric Institute to work, the DET program must include Anchorage hospitals. The final portion of the $1097.0 in the FY2000 Governor's Budget, $514.9, expands DET services to Anchorage. Services in Anchorage will not begin until the last quarter of FY 2000 as they will coincide with the adjustment of the emergency service system to accommodate a smaller API. The annualized cost in Anchorage assumes the passage of SB 97 that establishes the entitlement and clarifies procedures by which the department pays for these services.

DET Payments

	FY99	FY00	FY01	FY02
GF/MH				
Base	1,046.3	1,046.3	1,046.3	1,046.3
SB97	0.0	0.0	0.0	2,641.7
Federal (SAMSHA)				
Governor's FY2000 Req	0.0	1,097.0	1,097.0	0.0
SB97	0.0	0.0	1,544.7	0.0
	1,046.3	2,143.3	3,688.0	3,688.0
DET Eligibility Determination	0.0	0.0	150.0	150.0
DET Program Total	1,046.3	2,143.3	3,838.0	3,838.0

ANALYSIS (cont.):

Costs of Expansion

For FY2001, the costs in the Grants/Claims line reflect the cost of annualized DET services in Anchorage. These costs are directly related to the passage of SB 97. The costs assume full implementation of the new definition of eligibility, and serving all eligible clients as an entitlement. In addition, there is a related cost of $150.0 in GF/MH funds for the purchase of eligibility determination. A more complex eligibility process will be necessary, based on the procedures used by the DHSS Division of Public Assistance to process welfare applications. The cost assumes a large volume of applications. The costs in the "Contractual" line will be necessary to process the applications and pay the cost of processing the bills. For FY2001, all new costs are funded through federal receipts.

The expansion of DET services to Anchorage will purchase an additional 2,984.8 bed days per year, or an average of 8.2 DET patients per day. The eligibility expansion is projected to require an additional 843.6 bed days per year or an average additional 2.3 patients per day.

The costs in FY2002 and beyond are all GF/MH due to the SAMSHA grant expiration.

If SB 97 does not pass, the FY2000 funds in the Governor's Budget would cover the anticipated service demands of the new eligibility definition outside of Anchorage, and permit limited services to remain in Anchorage indefinitely. However, there would not be sufficient funds to meet the demand to allow the Community Mental Health/API 2000 project to work. Services would be suspended at the point funds were exhausted, probably in mid-spring of FY2001. The department could anticipate additional litigation regarding the responsibility of the department to pay for these services. Court action could include further expansion of the definition of the population eligible to receive services under this program.

Denali Center
Fairbanks Memorial Hospital

Denali Center
1510 19th Avenue
Fairbanks, AK 99701
(907) 458-5100

Fairbanks Memorial Hospital
1650 Cowles Street
Fairbanks, AK 99701-5998
(907) 452-8181
Fax (907) 458-5324

May 11, 1999

Senator Pete Kelly
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Senator Kelly,

This letter is to provide you with an update on the progress of our expansion plans of our facility's Mental Health Unit, and some overall information on the mental health picture in our community.

We were notified last week by the Health and Social Services Commissioner's office that our Certificate of Need has been approved. This is good news indeed, and now we can focus on finishing the new unit.

At this time we are anticipating a September-October time line for completing the project. All demolition work is complete; now it's a matter of putting the new unit together. We had the local members of NAMI (National Alliance for the Mentally Ill) come for a tour last week to provide input and to hear about the plans we have for the new unit. They are excited and supportive about the expanded capacity.

In the past it has been necessary to transfer individuals to Alaska Psychiatric Institute in Anchorage. Unfortunately, in many cases where transfer could not take place immediately, a stay in the Fairbanks Correctional Center (FCC) was required in order to provide a safe environment prior to transfer. Though not eliminated, we are glad to report that during the past few months the number of referrals to API via FCC has dropped due to work done in conjunction with FCC, Fairbanks Community Mental Health Center, Probate Office, State Troopers, Fairbanks Police Department, and the FMH Emergency Department.

While all of this activity is having positive results, we are currently working with many of you on Senate Bill 97 involving Designated Evaluation and Treatment (DET) of the mentally ill. The legislation would put in law a statutory framework for reimbursement for DET services. We continue to support SB 97 (and companion HB 187) and appreciate your assistance in bringing about it's passage.

Should you have any questions, please call me, Rick Solie, or Karl Sanford at 458-5300. Thank you for your help and interest in these important health care issues.

Sincerely,

Mike Powers
Administrator

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

RECEIVED
MAY 05 1999
Senate Finance
Committee

May 4, 1999

Senator John Torgerson
Senate Finance Committee
State Capitol Building, Room 516
Juneau, AK 99801-1182

Dear Senator Torgerson:

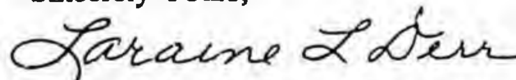
Senate Bill 97 has been referred to the Senate Finance Committee. The bill clarifies the reimbursement policy for psychiatric treatment of indigent individuals at local hospitals.

On behalf of the Alaska Association of Hospitals and Nursing Homes, I am writing in support of SB 97. Alaska has moved forward during the last decade by providing care for the mentally ill in settings that are less restrictive and closer to the patients' homes. Alaska has initiated development of local hospitalization through the Designated Evaluation and Treatment Program (DET). Access to local hospitalization, for treatment of acute, short-term episodes, is required to provide care for the mentally ill individuals within our communities. The proposed downsizing of the state hospital also makes ensuring access to local hospitals critical.

SB 97 clarifies the existing DET program and provides safeguards to both the mentally ill and local health facilities. A predictable and reliable funding source is necessary to provide a safety-net for those individuals who formerly would have been admitted to API.

Thank you for your consideration of our letter of support.

Sincerely Yours,



Laraine Derr
President/CEO

426 Main Street
[illegible] JUNEAU, AK 99801 • (907) 586-1790 • FAX (907) 463-3573

SB

97

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/21/99

FURTHER: 5/11/99

DATE TURNED IN TO OFFICE: 12 May 1999

Finance Committee considered SENATE BILL NO. 97

"An Act relating to confidential mental health records; relating to mental health services and programs; relating to liability for payment for mental health evaluation and treatment services; and providing for an effective date."

and recommends:

[X] be replaced with ______ CS SB 97 (FIN)

[ ] adopt previous ______ CS CS Forthcoming (______)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by ______ Committee

[ ] further referral to the ______ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR# ______

SIGNING DO PASS	DP	*OTHER RECOMMENDATIONS*	NR	DNP	AM
[signature]	✓				
[signature]	✓				
[signature]	✓				
[signature]	X				
[signature]	✓				
[signature]	✓				
Co-Chair: [signature]	✓	*Co-Chair:*			
Co-Chair:		*Co-Chair:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
HSS	3/15/99		$

[ ] APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

STATE OF ALASKA
1999 LEGISLATIVE SESSIC

No. 1 5/11/99
Bill Ver: n: SB97
(S) Publish Date: 4-21-99

Revision Date:
Title: Mental Health Evaluation and Treatment and confidential mental health records
Sponsor: Senator Pete Kelly
Requestor: (Senate) HESS

Dept. Affected: Health and Social Services
BRU: Community Mental Health Grants
Component: Designated Evaluation and Treatment
COMPONENT SERIAL NO. 1014
See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY00	FY01	FY02	FY03	FY04	FY05
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		150.0	150.0	150.0	150.0	150.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS		1,544.7	2,641.7	2,641.7	2,641.7	2,641.7
MISCELLANEOUS						
TOTAL OPERATING	0.0	1,694.7	2,791.7	2,791.7	2,791.7	2,791.7
CAPITAL EXPENDITURES						
CHANGES IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

	FY00	FY01	FY02	FY03	FY04	FY05
1002 Federal Receipts		1,544.7				
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health		150.0	2,791.7	2,791.7	2,791.7	2,791.7
Other (please specify)						
TOTAL	0.0	1,694.7	2,791.7	2,791.7	2,791.7	2,791.7

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY99) cost: $0.0

ANALYSIS: (Attach a separate page if necessary)

Fiscal Assumptions:
SB 97 serves two functions: It clarifies the client eligibility for Designated Evaluation and Treatment (DET) Services and establishes procedures for determining that eligibility, processing applications, and paying claims; it also creates an entitlement to those services for eligible clients.

These clarifications are necessary due to a current lawsuit related to these services and due to the downsizing of the Alaska Psychiatric Institute (API). The plaintiff in the current litigation requests that the court interpret current statutes to mean that the department must determine every patient's ability to pay; and, that if it is detrimental to the patient's rehabilitation, the department has to relieve the patient of their obligation to pay. If the court agreed with this interpretation, the department would pay for a far greater number of people than are currently eligible for this program. Additionally, the downsizing of API will require that these services be provided in Anchorage beyond those currently provided in other communities throughout Alaska. This necessary expansion will require explicit eligibility and payment procedures to maintain consistent administration of the program.

3/12/99
Prepared by: Leonard Abel,Ph.D./Gina Macdonald — Phone: 907-465-3370
Division: Mental Health and DD — Date: 03/12/99

Approved by Commissioner: Karen Perdue, Commissioner — Date: 3/15/99
Agency: Department of Health & Social Services

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(Rev 10/96)fisnote.xls/DAS_DHSS

SB 97 #1

ANALYSIS (cont.):

As stated above, current plans to downsize API require that private hospitals in Anchorage provide some inpatient psychiatric services through the Designated Evaluation and Treatment program. This results in impending additional costs regardless of legislation. The lawsuit also has implications for undetermined costs as eligibility for the program could be determined (and possibly expanded) through the courts. This legislation will allow reasonable expansion of the program while establishing program controls through setting clear criteria and formalizing payment procedures. New costs to the program will be covered transitionally by federal grant funds in FY 2000. An increment will be required to enable this program to become an entitlement beginning FY 2001.

Existing Program

There is $1046.3 GF/MH in the base for the DET program. These funds provide a limited amount of 72-hour psychiatric evaluations in eight hospitals in Alaska, up to 30 days of psychiatric treatment in two hospitals, physicians' services, and transportation to the hospitals. In addition, it pays for enhanced detoxification at two facilities for persons who are intoxicated and expressing suicidal ideation. Historically, client eligibility for this program has been budget driven. The definition of an eligible client was chosen so that all eligible clients could be served within the existing budget. The law suit has demanded that, among other things, the definition of eligibility be expanded to a larger population.

Eligibility Expansion

Payment for DET services will be expanded to all persons who are a danger to themselves or others or gravely disabled due to a mental illness, who are at or below 185% of the federal poverty guidelines, and who have no other source of payment.

The FY2000 Governor's Budget includes a request of $1097.0 in federal receipt authority for a Substance Abuse and Mental Health Services Administration (SAMHSA) grant as a part of the Community Mental Health/API 2000 project. Prior experience with a larger population indicated that the expanded eligibility would result in increased cost of at least $300.0. Part of the SAMSHA federal grant will cover these increased costs and another portion would allow limited expansion of the current program. The total cost of these changes is $582.1. None of these costs are reflected in the fiscal note, but are critical to its understanding. Hospital costs are based on a rate of $930 per day, and detox costs are based on a cost of $275 per day.

Community Mental Health/API 2000 (related to downsizing API)

The Community Mental Health/API 2000 project depends upon a fully functional DET program. The current DET program operates outside of Anchorage. For the Community Mental Health/API 2000 project related to the downsizing of the Alaska Psychiatric Institute to work, the DET program must include Anchorage hospitals. The final portion of the $1097.0 in the FY2000 Governor's Budget, $514.9, expands DET services to Anchorage. Services in Anchorage will not begin until the last quarter of FY 2000 as they will coincide with the adjustment of the emergency service system to accommodate a smaller API. The annualized cost in Anchorage assumes the passage of SB 97 that establishes the entitlement and clarifies procedures by which the department pays for these services.

DET Payments

	FY99	FY00	FY01	FY02
GF/MH				
Base	1,046.3	1,046.3	1,046.3	1,046.3
SB97	0.0	0.0	0.0	2,641.7
Federal (SAMSHA)				
Governor's FY2000 Req	0.0	1,097.0	1,097.0	0.0
SB97	0.0	0.0	1,544.7	0.0
	1,046.3	2,143.3	3,688.0	3,688.0
DET Eligibility Determination	0.0	0.0	150.0	150.0
DET Program Total	1,046.3	2,143.3	3,838.0	3,838.0

ANALYSIS (cont.):

Costs of Expansion

For FY2001, the costs in the Grants/Claims line reflect the cost of annualized DET services in Anchorage. These costs are directly related to the passage of SB 97. The costs assume full implementation of the new definition of eligibility, and serving all eligible clients as an entitlement. In addition, there is a related cost of $150.0 in GF/MH funds for the purchase of eligibility determination. A more complex eligibility process will be necessary, based on the procedures used by the DHSS Division of Public Assistance to process welfare applications. The cost assumes a large volume of applications. The costs in the "Contractual" line will be necessary to process the applications and pay the cost of processing the bills. For FY2001, all new costs are funded through federal receipts.

The expansion of DET services to Anchorage will purchase an additional 2,984.8 bed days per year, or an average of 8.2 DET patients per day. The eligibility expansion is projected to require an additional 843.6 bed days per year or an average additional 2.3 patients per day.

The costs in FY2002 and beyond are all GF/MH due to the SAMSHA grant expiration.

If SB 97 does not pass, the FY2000 funds in the Governor's Budget would cover the anticipated service demands of the new eligibility definition outside of Anchorage, and permit limited services to remain in Anchorage indefinitely. However, there would not be sufficient funds to meet the demand to allow the Community Mental Health/API 2000 project to work. Services would be suspended at the point funds were exhausted, probably in mid-spring of FY2001. The department could anticipate additional litigation regarding the responsibility of the department to pay for these services. Court actior could include further expansion of the definition of the population eligible to receive services under this program.

adopted

1-LS0545\K
Lauterbach
4/30/99

CS FOR SENATE BILL NO. 97( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR PETE KELLY

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to mental health services and programs; relating to liability for**
2 **payment for mental health evaluation and treatment services; and providing for**
3 **an effective date."**

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

5 * **Section 1.** AS 47.30.910 is repealed and reenacted to read:
6 **Sec. 47.30.910. Liability for expense of placement in a facility.** (a) A
7 patient, the patient's spouse, or the patient's parent if the patient is under 18 years of
8 age shall pay the charges for the care, transportation, and treatment of the patient when
9 the patient is hospitalized under AS 47.30.670 - 47.30.915 at a state-operated facility,
10 an evaluation facility, or a designated treatment facility providing services under
11 AS 47.30.670 - 47.30.915. The patient, the patient's spouse, or the patient's parent if
12 the patient is under 18 years of age shall make arrangements with a state-operated
13 facility, an evaluation facility, or a designated treatment facility for payment of
14 charges, including providing income information necessary to determine eligibility for

1 benefits under AS 47.31. Charges assessed for services provided under AS 47.30.670 -
2 47.30.915 when a patient is hospitalized at a state-operated facility may not exceed the
3 actual cost of care and treatment. The department may, when assessing charges for
4 services provided at a state-operated facility, consider the ability to pay of a patient,
5 a patient's spouse, or a patient's parent if the patient is under 18 years of age. In order
6 to impose liability for a patient's cost of care at a state-operated facility, the department
7 shall issue an order for payment within six months after the date on which the charge
8 was incurred. The order remains in effect unless modified by subsequent court order
9 or department order. The department may not impose liability for a patient's cost of
10 care at a state-operated facility if the patient would otherwise meet the eligibility
11 criteria, other than location of service, in AS 47.31.010.
12 (b) The department, the evaluation facility, or a designated treatment facility
13 shall make reasonable efforts to determine whether the patient, the patient's spouse, or
14 the patient's parent if the patient is under 18 years of age has a third-party payor or has
15 the available means to substantially contribute to the payment of charges, or whether
16 the patient is eligible for assistance under AS 47.31.
17 (c) If a patient is hospitalized at a state-operated facility and the patient, the
18 patient's spouse, or the patient's parent if the patient is under 18 years of age fails to
19 provide to the department information necessary to determine whether there is a third-
20 party payor or available means to substantially contribute to the payment of charges,
21 or whether the patient would, if not hospitalized at a state-operated facility, be eligible
22 for assistance under AS 47.31, the department may issue an administrative order
23 imposing full liability for the patient's actual cost of care on the patient, the patient's
24 spouse, or the patient's parent if the patient is under 18 years of age. The order
25 remains in effect unless modified by subsequent court order or department order.
26 (d) If a person who is hospitalized under AS 47.30.670 - 47.30.915 at an
27 evaluation facility or a designated treatment facility cannot pay or substantially
28 contribute to the payment of charges described under this section, the patient may
29 apply for assistance under AS 47.31.
30 (e) The department may charge or accept money or property from a person for
31 the care or treatment of a patient at a state-operated facility.

1 (f) Money paid by the patient or on the patient's behalf to the department
2 under this section shall be deposited in the general fund.
3 * **Sec. 2.** AS 47.30.915(4) is amended to read:
4 (4) "designated treatment facility" **or "treatment facility"** means a
5 hospital, clinic, institution, center, or other health care facility that has been designated
6 by the department for the treatment or rehabilitation of mentally ill persons **under**
7 **AS 47.30.670 - 47.30.915** [AND FOR THE RECEIPT OF THESE PERSONS BY
8 COURT-ORDERED COMMITMENT,] but does not include correctional institutions;
9 * **Sec. 3.** AS 47 is amended by adding a new chapter to read:
10 **Chapter 31. Mental Health Treatment Assistance Program.**
11 **Sec. 47.31.005. Applicability.** This chapter applies only to those patients who
12 have received evaluation or treatment at an evaluation facility or a designated treatment
13 facility that is not a state-operated hospital.
14 **Sec. 47.31.010. Eligibility for assistance.** (a) The department shall provide
15 financial assistance under this chapter to a patient who
16 (1) does not have the available means to pay or substantially contribute
17 to the payment of charges assessed by a facility;
18 (2) has no other third party to pay for the evaluation or treatment
19 provided under AS 47.30; and
20 (3) meets the criteria in this chapter.
21 (b) To be eligible for assistance under this chapter, a patient must have
22 (1) been admitted for inpatient evaluation or treatment at an evaluation
23 facility or a designated treatment facility other than a state-operated hospital after
24 either
25 (A) an involuntary commitment under AS 47.30.700 -
26 47.30.915; or
27 (B) a voluntary admission chosen by the patient after a
28 determination by the patient's treating physician that the patient meets the
29 involuntary commitment criteria in AS 47.30.700 - 47.30.915 and that
30 involuntary commitment proceedings would be initiated if the patient did not
31 choose to be admitted voluntarily; and

1 (2) a gross monthly household income that does not exceed 185 percent
2 of the federal poverty guideline for this state for the calendar month in which service
3 was provided.
4 **Sec. 47.31.015. Application for assistance.** (a) To receive assistance under
5 this chapter, a patient or a patient's legal representative must apply in writing on a
6 form provided by the department. A patient must apply for assistance within 180 days
7 after the date of discharge from the facility.
8 (b) A patient is considered to have applied for assistance under (a) of this
9 section if the evaluation facility or designated treatment facility notifies the department
10 on a form provided by the department that there is good cause to believe that the
11 patient would be eligible for assistance under this chapter and
12 (1) the patient, the patient's spouse, or the patient's parent if the patient
13 is under 18 years of age failed within 150 days after the date of discharge from the
14 facility to make arrangements to pay the evaluation facility or designated treatment
15 facility; or
16 (2) the patient lacks the mental capacity to apply for benefits under this
17 chapter.
18 (c) A patient who applies or is considered to have applied for assistance under
19 this chapter, the patient's spouse, the patient's parent if the patient is under 18 years
20 of age, or a person in the patient's household shall release records and information to
21 the department necessary to verify eligibility for the assistance.
22 (d) If a patient, the patient's spouse, the patient's parent if the patient is under
23 18 years of age, or a person in the patient's household fails to provide records and
24 information to the department necessary to verify eligibility, the department may issue
25 an administrative order imposing full liability for the patient's cost of care and
26 treatment to the evaluation facility or designated treatment facility.
27 **Sec. 47.31.020. Decision on eligibility.** (a) Within 30 days after receiving
28 a complete application, the department shall give notice in writing of an eligibility
29 determination to the patient or the patient's legal representative. If the patient is found
30 ineligible, the notice must contain the reason for the denial and an explanation of the
31 patient's right to an administrative appeal of the denial.

1 (b) The department shall provide a copy of the notice of eligibility or
2 ineligibility to the facility at which the patient was treated.
3 **Sec. 47.31.025. Eligible services; rates.** The department shall identify the
4 type and level of services for which assistance is available under this chapter. An
5 evaluation facility or a designated treatment facility shall be reimbursed at a rate
6 established by the department that is equivalent to the Medicaid rate for that facility
7 at the time service was rendered as determined under AS 47.07.070.
8 **Sec. 47.31.030. Payment.** If the department determines that a patient is
9 eligible for assistance under this chapter, the department shall provide for payment of
10 assistance directly to the facility. By endorsing the check received from the
11 department or authorizing the endorsement by the facility's agent, the facility certifies
12 that the claim for which the check is payment is true and accurate unless written notice
13 of an error is sent to the department by the facility within 30 days after the date the
14 check is presented by the facility for payment.
15 **Sec. 47.31.035. Appeals.** (a) A patient or the patient's legal representative
16 may appeal a denial of assistance by sending written notice of objection to the
17 department within 30 days after the date of the notice of denial. The written notice
18 of objection must include an explanation of the reasons for the objection and may
19 include documentation supporting the objection. AS 44.62 (Administrative Procedure
20 Act) does not apply to the appeal.
21 (b) The commissioner or the commissioner's designee shall review the notice
22 of objection and issue a decision within 90 days after its receipt. The commissioner
23 or the commissioner's designee may request additional information on the appeal from
24 either the patient, the evaluation facility or designated treatment facility, or department
25 staff. A request for additional information suspends the time period for the appeal
26 until the department determines that the additional information has been received. If
27 more than 180 days have passed from the date of submission of a notice of appeal and
28 the additional information requested by the commissioner or the commissioner's
29 designee has not been received from a patient, the evaluation facility, the designated
30 treatment facility, or the department, the appeal shall be considered denied.
31 (c) The decision on the appeal under (b) of this section, including an appeal

1 denied for failure to submit additional information, is a final agency decision and may
2 be appealed to the superior court under the Alaska Rules of Appellate Procedure.
3 **Sec. 47.31.900. Regulations.** The department shall, after consultation with the
4 Alaska Mental Health Trust Authority, adopt regulations to interpret or implement this
5 chapter.
6 **Sec. 47.31.990. Definitions.** In this chapter, unless the context otherwise
7 requires,
8 (1) "commissioner" means the commissioner of health and social
9 services;
10 (2) "department" means the Department of Health and Social Services;
11 (3) "designated treatment facility" has the meaning given in
12 AS 47.30.915;
13 (4) "evaluation facility" means a health care facility that has been
14 designated by the department to perform the evaluations described in AS 47.30.670 -
15 47.30.915, including a facility licensed under AS 18.20.020 or operated by the federal
16 government;
17 (5) "gross monthly household income" means all earned or unearned
18 income from any source of a member of the patient's household;
19 (6) "household" means a patient and each person
20 (A) residing with the patient; and
21 (B) related to the patient by marriage or other legal relationship
22 giving rise to a duty of support and maintenance;
23 (7) "mental illness" has the meaning given in AS 47.30.915.
24 * **Sec. 4.** APPLICABILITY. This Act applies to expenses incurred for mental health
25 services received on or after the effective date of this Act.
26 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

SENATOR
PETER KELLY
Mailing Address:
119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
Senator_Pete_Kelly@legis.state.ak.us
(907) 456-8161

While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-2327

Senate District P

Senate

SENATE BILL 97

SPONSOR STATEMENT

"An Act relating to confidential mental health records; relating to mental health Services and programs; relating to liability for payment for mental health evaluation and treatment services; and providing for an effective date."

DHSS reimburses private community hospitals (Designated Evaluation and Treatment Facilities) throughout Alaska to provide emergency mental health inpatient evaluation and treatment services. Hospitals provide these services to individuals who are at risk of harming themselves or others, or who are so severely impaired by mental health symptoms that they are unable to care for themselves. Often these individuals are experiencing severe psychiatric symptoms, such as depressive or psychotic symptoms, and need intensive inpatient mental health services.

Senate Bill 97 seeks to clarify the state's responsibility for payment for services and the responsibility of the state to determine the ability of patients to pay for those services. The proposed legislation clarifies client eligibility for these services. Additionally, it establishes procedures for determining eligibility, processing applications, and paying claims. SB 97 creates an entitlement for eligible clients, thus allowing payment for serving those individuals whose mental illness increases their danger to themselves or others. The following are criteria for eligibility:

- A patient is determined to be "suffering from a mental illness, and as a result is likely to cause serious harm to themselves or others, or is gravely disabled." and;
- The patient's gross monthly household income falls below 185% of the federal poverty guideline.

SB 97 amends current statutes defining the state's responsibility for payment for inpatient psychiatric service for those patients needing intensive services. Historically the Department of Health and Social Services (DHSS) has reimbursed hospitals for only those patients who are committed by the courts for evaluation and treatment services. This legislation would require the department to reimburse hospitals for individuals who meet the commitment criteria, but who voluntarily admit themselves into the hospital. These individuals are therefore, not court ordered into care, but could be held under court order if they attempted to leave the hospital.

Post-It™ brand fax transmittal memo 7671	# of pages ▸
To Lorna	From Gwen
Co.	Co.
Dept.	Phone #
Fax #	Fax #

SB 97 / HB 162

Payment for mental health evalu

(Designated evaluation ar

High Priority of DHSS

Establishes consistent methods for the department to pay for inpatient psychiatric services for individuals who pose a danger to themselves or others because of mental illness, or who are severely impaired by mental health symptoms, and who have no method of paying for their hospitalization.

This clarifies in statute an existing program that pays for these inpatient psychiatric services. It establishes consistent:

- Eligibility criteria—both for clinical status and income levels
- Payment practices
- Authority of department to establish services and reimbursement rates

These clarifications will become more critical as we downsize the state psychiatric hospital (API) from 79 to 54 beds and the private sector begins to provide more of these emergency mental health services.

The Department has been paying hospitals to provide evaluation and treatment services for people experiencing acute psychiatric symptoms that endanger themselves or others through the DESIGNATED EVALUATION AND TREATMENT program.

- All hospitals are reimbursed for evaluation services for individuals who have no income and no other method of payment.
- Additionally, two hospitals are reimbursed for treatment services (up to 30 days) for this same population (those who have no other method of payment).

Lorna— I marked section below that we spoke about — G—

There has been dispute related to the Department's responsibility to pay for services and who is eligible to receive assistance from the department for these inpatient psychiatric services. This bill is intended to clarify both the responsibilities of the department and the eligibility criteria for assistance for hospital care.

It is necessary to clarify these issues at this time because we are implementing plans to downsize our state hospital. The plans include an expansion of community-based hospitalization under this assistance program to replace the emergency response function now provided by API.

Under API 2000 private sector hospitals will be reimbursed by the department for providing inpatient psychiatric emergency care to individuals with low incomes who have no insurance.

As we expand the scope of this program to accommodate API 2000 it is important to have clear and consistent expectations about who is eligible to receive assistance, and about how the department pays for those services.

SB 97 / HB 162:

- Establishes who is eligible for assistance for inpatient services:
  - Clinical criteria:
    Involuntary
    Admitted voluntarily and would be committed if they did not admit themselves. These individuals meet criteria for commitment under current statutes (i.e. danger of harming self or others or gravely disabled as a result of mental illness, and is likely to improve with treatment).
  - Income Criteria:
    Individuals whose household income is below 185% of federal poverty guidelines for Alaska and who have no other third party to pay for these services

- Describes application, application review, and appeal procedures

- Authorizes the department to establish eligible services and reimbursement rates.

- Describes procedures for payment for the services provided.

***** The department has been meeting with the Board, the Trust, hospitals and consumer representatives to develop proposed amendments to SB 97. The group developed by consensus a number of changes are needed to make the bill more effective in meeting the goals of all parties involved with this program. Many of the changes clarify language and definitions to more accurately reflect the intent of the bill.**

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

RECEIVED
MAY 0 5 1999
Senate Finance
Committee

May 4, 1999

Senator John Torgerson
Senate Finance Committee
State Capitol Building, Room 516
Juneau, AK 99801-1182

Dear Senator Torgerson:

Senate Bill 97 has been referred to the Senate Finance Committee. The bill clarifies the reimbursement policy for psychiatric treatment of indigent individuals at local hospitals.

On behalf of the Alaska Association of Hospitals and Nursing Homes, I am writing in support of SB 97. Alaska has moved forward during the last decade by providing care for the mentally ill in settings that are less restrictive and closer to the patients' homes. Alaska has initiated development of local hospitalization through the Designated Evaluation and Treatment Program (DET). Access to local hospitalization, for treatment of acute, short-term episodes, is required to provide care for the mentally ill individuals within our communities. The proposed downsizing of the state hospital also makes ensuring access to local hospitals critical.

SB 97 clarifies the existing DET program and provides safeguards to both the mentally ill and local health facilities. A predictable and reliable funding source is necessary to provide a safety-net for those individuals who formerly would have been admitted to API.

Thank you for your consideration of our letter of support.

Sincerely Yours,

Laraine L Derr

Laraine Derr
President/CEO

426 Main Street
XXXXXXXXXXXXXXXX JUNEAU, AK 99801 • (907) 586-1790 • FAX (907) 463-3573

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Finance Committee
Committee Name

Committee on Mental Health Appropriations Dated 5/5/99
Bill / Subject

Senators —

It is important to fund the appropriation which provides for the implementation of SB97 - "Payment for Mental Health Evaluation & Treatment Services", a.k.a. DET (Designated Evaluation & Treatment).

A.P.I. (Alaska Psychiatric Institute) will shortly be downsized from 79 beds to 54. Inpatient Services for persons who meets the criteria of being in danger of harming themselves or others will be shifted in many cases to private hospitals in local communities instead of A.P.I. SB97 clarifies, with consistent eligibility criteria & payment practices, who should receive state aid & the procedures for ~~[illegible]~~ Reimbursing hospitals for provision of services.

SIGNED: Don GRAY
Testifier

Alaska Mental Health Board
Representing

399 Hillside Dr. — Fbks. 99712 (907) 457-5737
Address / Phone Number

SENATE FINANCE COMMITTEE

SIGN-IN

SB 97-MENTAL HEALTH; RECORDS; TREATMENT

NAME: Gina MacDonald Subject/Bill No: 97

Co./Dept./Title: DHSS Phone: 465-4852

Address: Juneau Zip:

Do you wish to testify? ___Yes ___No X Respond To Questions

NAME: Shannon O'Fallon Subject/Bill No: 97

Co./Dept./Title: Dept. of Law Phone: 6720

Address: Juneau Zip:

Do you wish to testify? ___Yes ___No ✓ Respond To Questions

NAME: Pat Clasby Subject/Bill No: SB 97

Co./Dept./Title: Alaska State Hospital & Nursing Home Assoc Phone: 463-6753

Address: Zip:

Do you wish to testify? ___Yes ___No ✓ Respond To Questions

NAME: Subject/Bill No:

Co./Dept./Title: Phone:

Address: Zip:

Do you wish to testify? ___Yes ___No ___Respond To Questions

SENATE FINANCE COMMITTEE

SIGN-IN

SB 97-MENTAL HEALTH; RECORDS; TREATMENT

NAME: Gina Macdonald Sub./Bill No: 97

Co./Dept./Title: DHSS - MH & Developmental Disabilities Phone:

Address: Juneau Zip:

Do you wish to testify? __Yes __No X Respond to Questions

NAME: Shannon O'Fallon Sub./Bill No: 97

Co./Dept./Title: Dept. of Law Phone: 6720

Address: Juneau Zip:

Do you wish to testify? __Yes __No ✓ Respond to Questions

NAME: Bob Briggs Sub./Bill No: 97

Co./Dept./Title: Disability Law Center Phone: 586-1627

Address: Zip:

Do you wish to testify? __Yes __No X Respond to Questions

NAME: Sub./Bill No:

Co./Dept./Title: Phone:

Address: Zip:

Do you wish to testify? __Yes __No __Respond to Questions

SENATE FINANCE COMMITTEE

SIGN-IN

SB 97-MENTAL HEALTH; RECORDS; TREATMENT

NAME: Gina Macdonald Sub./Bill No: SB 97

Co./Dept./Title: DHSS Phone: ____

Address: DMHDD - DHSS Juneau Zip: ____

Do you wish to testify? ___Yes ___No _X_Respond to Questions

NAME: Shannon O'Fallon Sub./Bill No: SB 97

Co./Dept./Title: Dept. of Law Phone: 6720

Address: Juneau Zip: 99811

Do you wish to testify? ___Yes ___No _✓_Respond to Questions

NAME: Pat Clasby / Lorraine Derr Sub./Bill No: SB 97

Co./Dept./Title: Alaska State Hospital & Nursing Home Assoc Phone: 463-6153

Address: 211 Fourth St. Suite 114 Juneau Zip: 99801

Do you wish to testify? ___Yes ___No _✓_Respond to Questions

NAME: Walter Majoros Sub./Bill No: SB 97

Co./Dept./Title: Alaska Mental Health Bd Exec Dir Phone: 465-3072

Address: 431 N Franklin Juneau Zip: 99801

Do you wish to testify? ___Yes ___No _✓_Respond to Questions

NAME: Janet Clarke Sub./Bill No: SB 97

Co./Dept./Title: DHSS - Director Admin Phone: 465-1630

Address: DHSS Main Street. Zip:

Do you wish to testify?___Yes ___No _L_Respond to Questions on Fiscal note

NAME: Bob Briggs Sub./Bill No: SB 97

Co./Dept./Title: Disability Law Center - JNU Phone: 586-1627

Address: Zip:

Do you wish to testify?___Yes ___No _X_Respond to Questions

NAME: Sub./Bill No:

Co./Dept./Title: Phone:

Address: Zip:

Do you wish to testify?___Yes ___No ___Respond to Questions

NAME: Sub./Bill No:

Co./Dept./Title: Phone:

Address: Zip:

Do you wish to testify?___Yes ___No ___Respond to Questions

NAME: Sub./Bill No:

Co./Dept./Title: Phone:

Address: Zip:

Do you wish to testify?___Yes ___No ___Respond to Questions

SB

99

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/18/99

FURTHER: REPORTED STC 3/22/99

DATE TURNED IN TO OFFICE: 3/22/99

Finance Committee considered SENATE BILL NO. 99

"An Act to clarify the meaning of 'decennial census of the United States' in Article VI, Constitution of the State of Alaska, and to prevent discrimination in the redistricting of the house of representatives and the senate."

and recommends:

[✓] be **replaced** with ______ CS SB 99 (FIN)

[ ] adopt **previous** ______ CS ______ (______)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by ______ Committee

[ ] further referral to the ______ Committee

Senate Bill:
[ ] same title
[✓] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR# ______

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
[signature]	✓	[signature]	X		
[signature]	✓				
[signature]	✓				
[signature]	✓				
Co-Chair: [signature]	✓	***Co-Chair:***			
Co-Chair: [signature]	✓	***Co-Chair:***			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
Law	3/11/99	Ø	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

3/22/99

1-LS0380\K
Kurtz
3/19/99

moved by Sen. Phillips
w/o obj. ADOPTED

CS FOR SENATE BILL NO. 99(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act to clarify the meaning of 'decennial census of the United States' in**
2 **art. VI, Constitution of the State of Alaska, to prevent discrimination in the**
3 **redistricting of the house of representatives and the senate, and to prohibit**
4 **expenditures of public funds for population surveys or sampling for certain**
5 **purposes relating to legislative redistricting without an appropriation."**

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

7 *** Section 1.** FINDINGS. The legislature finds that
8 (1) the United States Bureau of the Census has traditionally conducted an
9 actual enumeration of the American people and reported the results of that actual enumeration,
10 without statistical adjustment, to the states for purposes of redistricting;
11 (2) the United States Bureau of the Census has announced plans to use
12 sampling and estimates to adjust the actual population counts in the 2000 census;
13 (3) the United States Supreme Court, in Department of Commerce v. United

1 States House, 119 S.Ct. 765 (1999), has interpreted existing federal law to prohibit the use of
2 adjusted or estimated figures in reapportioning the seats in the United States House of
3 Representatives among the states;
4 (4) the United States Supreme Court, in Department of Commerce v. United
5 States House, 119 S.Ct. 765 (1999), declined to address the constitutionality of the use of
6 sampling and estimates by the census bureau in developing decennial census counts;
7 (5) the United States Supreme Court's decision in Department of Commerce
8 v. United States House, 119 S.Ct. 765 (1999), did not resolve the issue of whether the census
9 bureau may supply states with adjusted or estimated census figures for use in redistricting;
10 (6) each decade since statehood, Alaska's redistricting plan has been the
11 subject of expensive litigation;
12 (7) Alaska's redistricting plans are subject to ongoing review by the United
13 States Department of Justice under the Voting Rights Act;
14 (8) in the past, Alaska's redistricting boards have sometimes relied on surveys
15 and population estimates in order to remove Alaska's military population from the decennial
16 census figures in order to comply with the former wording of art. VI, secs. 3 and 5,
17 Constitution of the State of Alaska, which referred to the "civilian population";
18 (9) although recent amendments to the Constitution of the State of Alaska have
19 removed the reference to "civilian" population, court precedent regarding the exclusion of non-
20 resident military personnel and civilian "transients" remains (see Egan v. Hammond, 502 P.2d
21 856, 869 (Alaska 1972); Groh v. Egan, 526 P.2d 863, 869-874 (Alaska 1974); Carpenter v.
22 Hammond, 667 P.2d 1204, 1210-1213 (Alaska 1983); Hickel v. Southeast Conference, 846
23 P.2d 38, 54-56 (Alaska 1992)).
24 *** Sec. 2.** INTENT. It is the intent of the legislature to eliminate confusion in the event
25 the census bureau's report of the decennial census includes more than one population figure
26 for Alaska, to facilitate the work of the redistricting board by identifying the appropriate
27 census figures to be used in developing a redistricting plan, to avoid litigation over the board's
28 redistricting plan, and to prevent discrimination against any segment of Alaska's population.
29 *** Sec. 3.** AS 15.10 is amended by adding new sections to read:
30 **Article 2. Census and Population.**
31 **Sec. 15.10.200. Definition of "decennial census of the United States" and**

1 **use of census numbers by redistricting board.** (a) In art. VI, Constitution of the
2 State of Alaska, reference to the official decennial census of the United States is a
3 reference to the census enumeration used to establish apportionment among the several
4 states.
5 (b) The redistricting plan adopted under art. VI, Constitution of the State of
6 Alaska, may not use census numbers that are estimates or that have been adjusted
7 based on sampling, nor may the redistricting plan exclude or discriminate among
8 persons counted based on race, religion, color, national origin, sex, age, occupation,
9 military or civilian status, or length of residency.
10 **Sec. 15.10.210. Expenditures for population surveys or sampling**
11 **prohibited.** An expenditure of public funds may not be made for a population survey
12 or sampling conducted for purposes of redistricting the legislature without an express
13 appropriation by the legislature for that purpose.

SPONSOR STATEMENT

SENATE BILL 99

"An Act to clarify the meaning of 'decennial census of the United States' in Article VI, Constitution of the State of Alaska, and to prevent discrimination in the redistricting of the house of representatives and the senate."

This legislation was introduced to end discrimination against members of the Armed Forces in legislative redistricting and insure that future redistricting plans are based on census figures derived from an actual count of every Alaskan.

Senate Bill 99 will eliminate confusion by placing in our statutes clear answers to two major questions as we prepare for the United States census in the year 2000 and the subsequent redrawing of legislative district boundaries. It will end the discriminatory practices of previous redistricting boards and direct that census numbers derived from estimates or adjustments based on statistical sampling will not be used to redraw district lines.

The 1959 Alaska Constitution directed that only the "civilian" population be considered when the boundaries for State House and State Senate districts were drawn. During the 1960s, reapportionment boards ignored the presence of members of the Armed Forces completely, while later boards assigned various percentage values to service members.

In 1970, each soldier, sailor, airman, marine and coast guardsman in Alaska was counted as 11% of a resident, while in the 1980 redistricting they were counted as 35% of other Alaskans. That's even worse discrimination than used before the Civil War when slaves were counted at only 60% of a person for Congressional apportionment. The redistricting board of 1990 was the only one to count members of the military equally with other residents.

Today, Alaskans recognize that occupational discrimination is just as wrong as discrimination based on race, religion, sex, age, color, or national origin and that is why the voters removed the word "civilian" from the Alaska Constitution at the 1998 election. But, court decisions from old legal challenges to previous redistricting boards might still be used as an excuse to undercount our neighbors in the military. Senate Bill 99 will establish a

statutory bar to future redistricting discrimination and insure the men and women serving here in our Armed Forces will not be treated as second-class Alaskans.

SB 99 will also clarify questions regarding which numbers from the United States Bureau of the Census will be used by future redistricting boards to reapportion Alaska's Legislature.

Some people have been actively arguing that statistical sampling and estimates replace the actual head count of every American in the decennial census. Earlier this year, the U.S. Supreme Court prohibited the use of adjusted or estimated figures in reapportioning the seats in the U.S. House of Representatives among the states. But that decision left the door open for the Census Bureau to develop figures through sampling and estimates and make them available to the states along with the results of the traditional count. This bill will close that door in Alaska for purposes of Legislative reapportionment.

If the Census Bureau's report of the decennial census includes more than one set of figures for Alaska, SB 99 will facilitate the work of the redistricting board and avoid litigation over the plan they they produce . SB 99 would prohibit them from using any numbers produced by estimates or sampling adjustments and directs them to use only the results of the actual count of Alaska population, just as the nation has been doing for 210 years.

SB 99

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Military Population and Reapportionment in Alaska Following the U.S. Censuses of 1970, 1980, and 1990

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SUMMARY

You wished to know how military personnel and their dependents in Alaska were treated for the purposes of reapportionment following the U.S. censuses in 1970, 1980, and 1990. As you may know, Alaska is among the few states that have in the past excluded certain nonresidents from population statistics used to reapportion and redistrict their state legislatures.[1]

Based on state constitutional provisions, Governor Egan and his advisory board excluded the military population from the reapportionment considerations following the 1970 census. The Alaska Supreme Court held that excluding the military as a class was unconstitutional and, thereby, nullified the provision in the state constitution that required reapportionment to be based on the civilian population of the state. Following the 1980 census, Governor Hammond and his advisory board devised a statistical method for determining the nonresident military/dependent population and subsequently excluded that population for the purposes of reapportionment. In the ensuing case, the state Supreme Court held both the method and the outcome to be constitutional. Governor Hickel and his advisory board did not attempt to exclude nonresident military personnel and dependents who were included in the state population data generated by the 1990 census.

REAPPORTIONMENT FOLLOWING THE 1970 CENSUS

Governor William Egan's 1971 reapportionment plan excluded all military personnel. This exclusion was a result of the state's constitutional requirement that reapportionment be based upon the state's *civilian* population as reported by the census. The Alaska Supreme Court held that the exclusion of the military as a class was a denial of equal protection guaranteed by the 14th amendment to the U.S. Constitution and the plan was, therefore, unconstitutional. The court also declared the plan unconstitutional in that the populations of some districts deviated excessively from the norm. The court's decision in *Egan v. Hammond* nullified the requirement in Article VI, Section 3 of the Constitution that reapportionment be based on civilian population.[2]

Late in 1973, Governor Egan adopted a subsequent plan, which excluded the *nonresident* military population. As they had done with the original, Republicans challenged the plan. Although the

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[1] According to the Council of State Governments, *State Profiles: Reapportionment Information Service*, 1981, Alaska, Hawaii, Kansas, Massachusetts, New Hampshire, and Washington excluded nonresident students and/or military personnel and their dependents from reapportionment calculations after the 1980 census.

[2] *Egan v. Hammond*, 502 P.2d 856 (Alaska 1972).

court again struck down the plan for excessive variations in population among districts, the justices upheld the exclusion of nonresident military personnel. In *Groh v. Egan*, the court held as follows:

> It is not offensive to notions of equal protection to exclude from the population base even military personnel who have lived in Alaska for substantial periods of time, so long as those people have exercised their option to remain residents and domiciliaries of other states. . . . There is every reason to believe that military personnel who desire to be Alaska residents and domiciliaries will register to vote because voter registration is a prime index of intention to become a resident or domiciliary. For like reason, we think that those who do not want to become Alaskans demonstrate that intention by refusing to register to vote.[3]

Although the court noted that the plan made no attempt to similarly exclude nonresident civilians, it considered the selective treatment of the military as justified. In this regard, the court reasoned that significant numbers of civilian transients had not been present in the state during the census; that those who had been present probably were not counted as residents; and that the voluntary nature of their presence made them distinguishable from nonresident military personnel, who were in the state because of duty assignments.

Although the plan excluded only military personnel, the court made the following statement about counting military dependents:

> Dependents of military persons may be assumed, for the most part, to have the same residential characteristics as the uniformed personnel upon whom they are dependent.[4]

Following the court's decision in *Groh*, the governor's advisory board revised the plan again. The court upheld that version of the reapportionment plan against further objection.

Reapportionment Following the 1980 Census

In its 1974 decision on the count of the military population in *Groh*, the Alaska Supreme Court referred to comments in *Egan v. Hammond*. The court noted as follows:

> We indicated in *Egan v. Hammond*, that in the absence of a constitutional amendment reestablishing specific guidelines, the governor has the power to select alternative bases for reapportionment purposes. We referred to the permissibility of a registered voter, state citizenship or state residency base.[5]

In light of the court's opinion, Governor Jay Hammond and his advisory board relied on a survey of several military bases to estimate the number of resident military personnel and dependents to be counted for the next decennial reapportionment. The Alaska Supreme Court held this method

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[3] *Groh v. Egan*, 526 P.2d 863, 873 (Alaska 1974).

[4] *Groh*, at 874.

[5] *Groh*, at 868, citing *Egan v. Hammond*, at 870-871.