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on a group practice or individual practice basis shall not by virtue of such contracts or arrangements be deemed to have entered into a "conspiracy in restraint of trade" in violation of (insert proper State law citation) the State's antitrust laws.

(c) No law or regulation of this State shall be applied to prohibit or unreasonably interfere with the ability of any health maintenance organization or provider or group of providers, under arrangements with a health maintenance organization to provide any health care service to the enrolled participants of such health maintenance organization, from employing or otherwise associating with any provider of such health care service.

SECTION XII - MULTIPLE CHOICE

(a) Every public or private employer or employee benefit fund within this State having more than 25 employees or members must make available to every employee to which it offers a health benefit program of any kind the opportunity in accordance with regulations promulgated by the Administrator (1) to participate in a plan which does not restrict an employee's choice of physician or hospital and (2) to obtain health care services from health maintenance organizations which are representative of all significantly different health maintenance organization delivery systems available in the employment area; provided that no employer or fund may be required to select more than one health

...organization of any single type. No employer or fund shall be required to pay any health maintenance organization an amount in excess of payments required under the applicable collective-bargaining agreement or any other agreement providing health care benefits.

(b) The provision of this section may be enforced by the Administrator or by any aggrieved party in civil litigation.

SECTION XIII - IMPLEMENTING REGULATIONS

The Administrator may, after notice and hearing, promulgate reasonable rules and regulations as are necessary or proper to carry out the provisions of this Act. Nothing in this Act shall be construed to prohibit the Administrator from requiring changes in procedures previously approved by him.

SECTION XIV - SEVERABILITY

If any section, term or provision of this Act shall be adjudged invalid for any reason, such judgment shall not affect, impair, or invalidate any other section, term, or provision of this Act, but the remaining section, terms, and provisions shall be and remain in full force and effect.

SECTION XV - FEDERAL LEGISLATION

Nothing in this Act shall prohibit any health maintenance organization from meeting the requirements of any federal law which would authorize such health maintenance organization to receive federal financial assistance or enroll beneficiaries assisted by federal funds.



OFFICE OF THE SECRETARY
file # 481

TO : Assistant General Counsel, Legislation
THROUGH: Assistant Secretary for Health _____
FROM : Deputy Assistant Secretary for Health Policy Development
SUBJECT: HMC Model State Legislation

We hereby request that the attached model State HMO Enabling Act be included as an addendum to the Department's model State law submissions to OMB and the Council of State Governments. The bill has been developed pursuant to the mandate contained in the President's 1971 Health Message and subsequent policy directives issued by former Secretary Richardson. It was drafted by the staff of the HMO Service with assistance from Interstudy, a private, non-profit policy development center on contract to the HMO Service, and the staff of the Office of the Deputy Assistant Secretary for Health Policy Development. Informal review sessions have been held with representatives of the Office of the General Counsel and the Assistant Secretary for Legislation (Health).

The bill represents non-restrictive HMO Enabling Legislation which would encourage a full range of HMO models to compete both with each other and with the fee-for-service sector. It provides basic authority for HMO organization and regulation, while at the same time invalidating a number of the traditional State legal barriers to HMO development and growth.

The bill does not address the issues of comprehensive health planning, personnel licensure or Medicaid contracting, which are more easily addressed in other legislation, or the issues of medical claims subrogation and coordination of benefits which can be handled in enrollee contracts, at least in most States. Nor does it address specifically the issues of special tax benefits for "charitable" non-profit HMOs or premium taxes for HMOs. In principle we oppose provisions

that discriminate against certain kinds of HMOs, or against HMOs as a class. (We have included provisions for licensure fees to help finance regulatory activities.)

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The regulatory style utilized in the bill focuses, wherever possible, on public disclosure and information as opposed to government control. In this regard, it differs from the model bill developed by the National Association of Insurance Commissioners which relies more heavily on government action rather than private competition, made effective through public disclosure, as a means of assuring product adequacy.

There are several significant specific differences between our bill and the NAIC bill which are as follows:

(1) Exclusivity.

The NAIC bill is designed to be the exclusive regulatory vehicle. No pre-paid health delivery system which does not meet the regulatory standards described in the bill, or implementing regulations, would be permitted to exist. In contrast, our bill would provide only that a organization which does not meet standards imposed by the bill could not be called an HMO. Whether the State would choose to permit such organizations to exist, or to regulate them through other means, would be left to State by State determination.

(2) Delegation of regulatory authority to the Insurance Commissioner.

The NAIC bill delegates regulatory responsibility to the Insurance Commissioner.

Our bill says nothing on this issue. Again, we believe that the choice of a regulatory vehicle should be a determination of the State, not the Federal government. In some States, it may be best to select the Health Department, or an entirely new agency rather than delegate authority to the Insurance Commissioner.

(3) Approval of rates.

The NAIC bill includes insurance type rate approval. In contrast, we believe it would be more appropriate to rely on the free market. It is doubtful whether rate regulation would provide an effective control on costs. Indeed, it may be -- because of limited HMO experience -- that rate regulation would actually promote rate uniformity, and thus stifle price competition. (Of course, the financial responsibility requirements of our bill would insure that any rate chosen by an HMO would be adequate to pay incurred costs.)

(4) Definition.

The definition contained in the NAIC bill does not make clear that the HMO is responsible for the provision or arrangement for medical care services rather than simply payment for such services. Our bill does.

(5) Benefit package.

The benefit package contained in the

NAIC bill is overly rigid and comprehensive and, thus, may make HMOs uncompetitive with traditional insurance.

(6) Different standards for insurance run HMOs.

Under the NAIC bill, HMOs controlled by insurance companies are subject to different standards than other kinds of HMOs. Our bill makes no such distinction.

(7) Open enrollment.

The NAIC bill contains open enrollment provisions which could make it more difficult for HMOs to compete with traditional insurers which, typically, are not subject to such requirements.

(8) Restrictions on investments.

The NAIC bill contains insurance type restrictions on HMO investments. Our bill contains no such restrictions. We would prefer to rely solely on disclosure and general financial responsibility standards.

(9) Approval of contract changes.

The NAIC bill would require advance approval of any contract changes. In contrast, our bill requires only notification. Of course, the regulatory authority would remain free to subsequently

challenge any modification which adversely and materially alters a contract.

(10) Insurance liquidation provisions.

The NAIC bill includes complex insurance type liquidation and rehabilitation provisions which we believe may encourage unwarranted government incursions into the internal affairs of HMOs. Our bill includes no specific liquidation or rehabilitation provisions. We would rely more heavily on HMO management, and on the general bankruptcy law where HMOs do fail.

(11) Liquid reserve requirement.

The NAIC bill includes liquid reserve requirements which are inappropriate, ineffective, and inhibiting to certain kinds of HMOs. In contrast, our bill utilizes a variety of different criteria for determining financial responsibility.

(12) Multiple Choice.

While the NAIC bill includes no mandatory multiple choice provision, our bill currently does. It may be, however, that this provision is not consistent with present Administration policy. The arguments in favor of the provision are:

- (1) that mandatory multiple choice is essential to rapid HMO development and,
- (2) that in this case it is the State rather than the Federal government which is levying the requirement.

The arguments against the provision are:

- (1) that it is inappropriate until the results of Federal demonstration efforts are evaluated and,
- (2) that, as it applies only to companies presently offering health insurance coverage, it is discriminatory in its impact. Moreover, it could be argued that such discrimination will encourage employers, and particularly small employers, presently offering coverage to cease to do so because of the added administrative burdens, or alternatively, inhibit employers who would otherwise begin to offer coverage.

On balance, we would prefer to retain this provision.

We believe that the Department's posture toward the NAIC bill should be basically supportive as that bill also adopts a non-restrictive, competitive approach. However, for the foregoing reasons, we believe that our bill is substantially superior to the bill developed by the NAIC. Moreover, we do not believe that the

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SUGGESTED HEALTH MAINTENANCE ORGANIZATION ACT

Assistant General Counsel, Legislation
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introduction of our bill will harm chances of passage of meaningful HMO legislation. Existing experience suggest that it would simply improve the quality of the bills which are finally enacted.

Scott Fleming

Attachment (1)

cc: Mr. Rubel
Dr. Zapp
DR. MACLEOD

THE HEALTH MAINTENANCE ORGANIZATION ACT

Sections:

I Definitions

II Application for Certificate of Authority

III Issuance of Certificate of Authority

IV Powers of Health Maintenance Organizations

V Contract Form

VI Annual Disclosure

VII Reports to the Administrator

VIII Examinations

IX Sanctions

X Fees

XI Statutory Construction and Relationship to other Laws

XII Multiple Choice

XIII Implementing Regulations

XIV Severability

XV Federal Legislation

STATEMENT OF FINDINGS AND DECLARATION OF PURPOSE

(a) The legislature finds that --

- (1) The medical care system in this State is not organized in a manner which encourages the provision of medical care at reasonable costs.
- (2) The medical care system in this State is oriented toward providing care once a health need has occurred rather than towards providing health maintenance and preventive health services.
- (3) Experience of prepaid group health organizations operating in various areas across the Nation indicates that such organizations have great potential for reducing the inefficiencies in the present system.

(b) It is therefore the purpose of this Act to authorize and facilitate the establishment of Health Maintenance Organizations, and to regulate their operation to insure that high quality health services are provided to all enrolled participants of such organizations throughout the State.

THE HEALTH MAINTENANCE ORGANIZATION ACT

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file HB 491



Public Law 93-222
93rd Congress, S. 14
December 29, 1973

An Act

87 STAT. 914

To amend the Public Health Service Act to provide assistance and encouragement for the establishment and expansion of health maintenance organizations, and for other purposes.

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

Health Maintenance Organization Act of 1973.

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act, with the following table of contents, may be cited as the "Health Maintenance Organization Act of 1973".

TABLE OF CONTENTS

- Sec. 1. Short title and table of contents.
- Sec. 2. Health maintenance organizations.

"TITLE XIII—HEALTH MAINTENANCE ORGANIZATIONS

- "Sec. 1301. Requirements for health maintenance organizations.
- "Sec. 1302. Definitions.
- "Sec. 1303. Grants and contracts for feasibility surveys.
- "Sec. 1304. Grants, contracts, and loan guarantees for planning and for initial development costs.
- "Sec. 1305. Loans and loan guarantees for initial operation costs.
- "Sec. 1306. Application requirements.
- "Sec. 1307. Administration of assistance programs.
- "Sec. 1308. General provisions relating to loan guarantees and loans.
- "Sec. 1309. Authorizations of appropriations.
- "Sec. 1310. Employees' health benefits plans.
- "Sec. 1311. Restrictive State laws and practices.
- "Sec. 1312. Continued regulation of health maintenance organizations.
- "Sec. 1313. Limitation on source of funding for health maintenance organizations.
- "Sec. 1314. Program evaluation.
- "Sec. 1315. Annual report."

- Sec. 3. Quality assurance.
- Sec. 4. Health care quality assurance programs study.
- Sec. 5. Reports respecting medically underserved areas and population groups and non-metropolitan areas.
- Sec. 6. Health services for Indians and domestic agricultural migratory and seasonal workers.
- Sec. 7. Conforming amendments.

HEALTH MAINTENANCE ORGANIZATIONS

Sec. 2. The Public Health Service Act is amended by adding after title XII the following new title:

1973, p. 536.

"TITLE XIII—HEALTH MAINTENANCE ORGANIZATIONS

"REQUIREMENTS FOR HEALTH MAINTENANCE ORGANIZATIONS

"Sec. 1301. (a) For purposes of this title, the term 'health maintenance organization' means a legal entity which (1) provides basic and supplemental health services to its members in the manner prescribed by subsection (b), and (2) is organized and operated in the manner prescribed by subsection (c).

Definitions.

Basic health services.

"(b) A health maintenance organization shall provide, without limitations as to time or cost other than those prescribed by or under this title, basic and supplemental health services to its members in the following manner:

"(1) Each member is to be provided basic health services for a basic health services payment which (A) is to be paid on a periodic basis without regard to the dates health services (within the basic health services) are provided; (B) is fixed without regard to the frequency, extent, or kind of health service (within the basic health services) actually furnished; (C) is fixed under a community rating system; and (D) may be supplemented by additional nominal payments which may be required for the provision of specific services (within the basic health services), except that such payments may not be required where or in such a manner that they serve (as determined under regulations of the Secretary) as a barrier to the delivery of health services. Such additional nominal payments shall be fixed in accordance with the regulations of the Secretary.

"(2) For such payment or payments (hereinafter in this title referred to as 'supplemental health services payments') as the health maintenance organization may require in addition to the basic health services payment, the organization shall provide to each of its members each health service (A) which is included in supplemental health services (as defined in section 1302(2)), (B) for which the required health manpower are available in the area served by the organization, and (C) for the provision of which the member has contracted with the organization. Supplemental health services payments which are fixed on a prepayment basis shall be fixed under a community rating system.

"(3) The services of health professionals which are provided as basic health services shall be provided through health professionals who are members of the staff of the health maintenance organization or through a medical group (or groups) or individual practice association (or associations), except that this paragraph shall not apply in the case of (A) health professional services which the organization determines, in conformity with regulations of the Secretary, are unusual or infrequently used, or (B) any basic health service provided a member of the health maintenance organization other than by such a health professional because it was medically necessary that the service be provided to the member before he could have it provided by such a health professional. For purposes of this paragraph, the term 'health professionals' means physicians, dentists, nurses, podiatrists, optometrists, and such other individuals engaged in the delivery of health services as the Secretary may by regulation designate.

"(4) Basic health services (and supplemental health services in the case of the members who have contracted therefor) shall within the area served by the health maintenance organization be available and accessible to each of its members promptly as appropriate and in a manner which assures continuity, and which, medically necessary, be available and accessible twenty-four hours a day and seven days a week. A member of a health maintenance organization shall be reimbursed by the organization for his expenses in securing basic or supplemental health services other than through the organization if it was medically necessary that the services be provided before he could secure them through the organization.

"Health professionals."

"(c) Each health maintenance organization shall—

"(1) have a fiscally sound operation and adequate provision against the risk of insolvency which is satisfactory to the Secretary;

"(2) assume full financial risk on a prospective basis for the provision of basic health services, except that a health maintenance organization may obtain insurance or make other arrangements (A) for the cost of providing to any member basic health services the aggregate value of which exceeds \$5,000 in any year, (B) for the cost of basic health services provided to its members other than through the organization because medical necessity required their provision before they could be secured through the organization, and (C) for not more than 90 per centum of the amount by which its costs for any of its fiscal years exceed 115 per centum of its income for such fiscal year;

"(3) enroll persons who are broadly representative of the various age, social, and income groups within the area it serves, except that in the case of a health maintenance organization which has a medically underserved population located (in whole or in part) in the area it serves, not more than 75 per centum of the members of that organization may be enrolled from the medically underserved population unless the area in which such population resides is also a rural area (as designated by the Secretary);

"(4) have an open enrollment period of not less than thirty days at least once during each consecutive twelve-month period during which enrollment period it accepts, up to its capacity, individuals in the order in which they apply for enrollment, except that if the organization demonstrates to the satisfaction of the Secretary that—

"(A) it has enrolled, or will be compelled to enroll, a disproportionate number of individuals who are likely to utilize its services more often than an actuarially determined average (as determined under regulations of the Secretary) and enrollment during an open enrollment period of an additional number of such individuals will jeopardize its economic viability, or

"(B) if it maintained an open enrollment period it would not be able to comply with the requirements of paragraph (3), the Secretary may waive compliance by the organization with the open enrollment requirement of this paragraph for not more than three consecutive twelve-month periods and may provide additional waivers to that organization if it makes the demonstration required by subparagraph (A) or (B);

"(5) not expel or refuse to re-enroll any member because of his health status or his requirements for health services;

"(6) be organized in such a manner that assures that (A) at least one-third of the membership of the policymaking body of the health maintenance organization will be members of the organization, and (B) there will be equitable representation on such body of members from medically underserved populations served by the organization;

"(7) be organized in such a manner that provides meaningful procedures for hearing and resolving grievances between the health maintenance organization (including the medical group or groups and other health delivery entities providing health services for the organization) and the members of the organization;

"(8) have organizational arrangements established in accordance with regulations of the Secretary, for an ongoing quality assurance program for its health services which program (A) stresses health outcomes, and (B) provides review by physicians

and other health professionals of the process followed in the provision of health services;

"(9) provide medical social services for its members and encourage and actively provide for its members health education services, education in the appropriate use of health services and education in the contribution each member can make to the maintenance of his own health;

"(10) provide, or make arrangements for, continuing education for its health professional staff; and

"(11) provide, in accordance with regulations of the Secretary (including safeguards concerning the confidentiality of the doctor-patient relationship), an effective procedure for developing, compiling, evaluating, and reporting to the Secretary, statistics and other information (which the Secretary shall publish and disseminate on an annual basis and which the health maintenance organization shall disclose, in a manner acceptable to the Secretary, to its members and the general public) relating to (A) the cost of its operations, (B) the patterns of utilization of its services, (C) the availability, accessibility, and acceptability of its services, (D) to the extent practical, developments in the health status of its members, and (E) such other matters as the Secretary may require.

"DEFINITIONS

"Sec. 1302. For purposes of this title:

"(1) The term 'basic health services' means—

"(A) physician services (including consultant and referral services by a physician);

"(B) inpatient and outpatient hospital services;

"(C) medically necessary emergency health services;

"(D) short-term (not to exceed twenty visits), outpatient evaluative and crisis intervention mental health services;

"(E) medical treatment and referral services (including referral services to appropriate ancillary services) for the abuse of or addiction to alcohol and drugs;

"(F) diagnostic laboratory and diagnostic and therapeutic radiologic services;

"(G) home health services; and

"(H) preventive health services (including voluntary family planning services, infertility services, preventive dental care for children, and children's eye examinations conducted to determine the need for vision correction).

If a service of a physician described in the preceding sentence may also be provided under applicable State law by a dentist, optometrist, or podiatrist, a health maintenance organization may provide such service through a dentist, optometrist, or podiatrist (as the case may be) licensed to provide such service. For purposes of this paragraph, the term 'home health services' means health services provided at a member's home by health care personnel, as prescribed or directed by the responsible physician or other authority designated by the health maintenance organization. A health maintenance organization is authorized, in connection with the prescription of drugs, to maintain, review, and evaluate (in accordance with regulations of the Secretary) a drug use profile of its members receiving such service, evaluate patterns of drug utilization to assure optimum drug therapy, and provide for instruction of its members and of health professionals in the use of prescription and non-prescription drugs.

"(2) The term 'supplemental health services' means—

"(A) services of facilities for intermediate and long-term care;

"(B) vision care not included as a basic health service under paragraph (1)(A) or (1)(H);

"(C) dental services not included as a basic health service under paragraph (1)(A) or (1)(H);

"(D) mental health services not included as a basic health service under paragraph (1)(D);

"(E) long-term physical medicine and rehabilitative services (including physical therapy); and

"(F) the provision of prescription drugs prescribed in the course of the provision by the health maintenance organization of a basic health service or a service described in the preceding subparagraphs of this paragraph.

If a service of a physician described in the preceding sentence may also be provided under applicable State law by a dentist, optometrist, or podiatrist, a health maintenance organization may provide such service through an optometrist, dentist, or podiatrist (as the case may be) licensed to provide such service. A health maintenance organization is authorized, in connection with the prescription or provision of prescription drugs, to maintain, review, and evaluate (in accordance with regulations of the Secretary) a drug use profile of its members receiving such services, evaluate patterns of drug utilization to assure optimum drug therapy, and provide for instruction of its members and of health professionals in the use of prescription and non-prescription drugs.

"(3) The term 'member' when used in connection with a health maintenance organization means an individual who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into, with the organization under which the organization assumes the responsibility for the provision to such individual of basic health services and of such supplemental health services as may be contracted for.

"(4) The term 'medical group' means a partnership, association, or other group--

"(A) which is composed of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals (including dentists, optometrists, and podiatrists) as are necessary for the provision of health services for which the group is responsible;

"(B) a majority of the members of which are licensed to practice medicine or osteopathy; and

"(C) the members of which (i) as their principal professional activity and as a group responsibility engage in the coordinated practice of their profession for a health maintenance organization; (ii) pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other plan; (iii) share medical and other records and substantial portions of major equipment and of professional, technical, and administrative staff; (iv) utilize such additional professional personnel, allied health professions personnel, and other health personnel (as specified in regulations of the Secretary) as are available and appropriate for the effective and efficient delivery of the services of the members of the group; and (v) arrange for and encourage continuing education in the field of clinical medicine and related areas for the members of the group.

"(5) The term 'individual practice association' means a partnership, corporation, association, or other legal entity which has entered into a services arrangement (or arrangements) with persons who are licensed to practice medicine, osteopathy, dentistry, podiatry, optome-

try, or other health profession in a State and a majority of whom are licensed to practice medicine or osteopathy. Such an arrangement shall provide—

“(A) that such persons shall provide their professional services in accordance with a compensation arrangement established by the entity; and

“(B) to the extent feasible (i) that such persons shall utilize such additional professional personnel, allied health professions personnel, and other health personnel (as specified in regulations of the Secretary) as are available and appropriate for the effective and efficient delivery of the services of the persons who are parties to the arrangement, (ii) for the sharing by such persons of medical and other records, equipment, and professional, technical, and administrative staff, and (iii) for the arrangement and encouragement of the continuing education of such persons in the field of clinical medicine and related areas.

“(6) The term ‘section 314(a) State health planning agency’ means the agency of a State which administers or supervises the administration of a State’s health planning functions under a State plan approved under section 314(a) (hereinafter in this title referred to as a ‘section 314(a) plan’); and the term ‘section 314(b) areawide health planning agency’ means a public or nonprofit private agency or organization which has developed a comprehensive regional, metropolitan, or other local area plan or plans referred to in section 314(b) (hereinafter in this title referred to as a ‘section 314(b) plan’).

“(7) The term ‘medically underserved population’ means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services. Such a designation may be made by the Secretary only after consideration of the comments (if any) of (A) each section 314(a) State health planning agency whose section 314(a) plan covers (in whole or in part) such urban or rural area or the area in which such population group resides, and (B) each section 314(b) areawide health planning agency whose section 314(b) plan covers (in whole or in part) such urban or rural area or the area in which such population group resides.

“(8) The term ‘community rating system’ means a system of fixing rates of payments for health services. Under such a system rates of payments may be determined on a per-person or per-family basis and may vary with the number of persons in a family, but except as otherwise authorized in the next sentence, such rates must be equivalent for all individuals and for all families of similar composition. The following differentials in rates of payments may be established under such system:

“(A) Nominal differentials in such rates may be established to reflect the different administrative costs of collecting payments from the following categories of members:

“(i) Individual members (including their families),

“(ii) Small groups of members (as determined under regulations of the Secretary),

“(iii) Large groups of members (as determined under regulations of the Secretary).

“(B) Differentials in such rates may be established for members enrolled in a health maintenance organization pursuant to a contract with a governmental authority under section 1079 or 1086 of title 10, United States Code, or under any other governmental program (other than the health benefits program authorized by chapter 89 of title 5, United States Code) or any health

50 Stat. 1261.
42 USC 246.

50 Stat. 447.

5 USC 8501.

benefits program for employees of States, political subdivisions of States, and other public entities.

"(9) The term 'non-metropolitan area' means an area no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget and which does not contain a city whose population exceeds fifty thousand individuals.

"GRANTS AND CONTRACTS FOR FEASIBILITY SURVEYS

"SEC. 1303. (a) The Secretary may make grants to and enter into contracts with public or nonprofit private entities for projects for surveys or other activities to determine the feasibility of developing and operating or expanding the operation of health maintenance organizations.

"(b) An application for a grant or contract under this section shall contain—

"(1) assurances satisfactory to the Secretary that, in conducting surveys or other activities with assistance under a grant or contract under this section, the applicant will (A) cooperate with the section 314(b) area-wide health planning agency (if any) whose section 314(b) plan covers (in whole or in part) the area for which the survey or other activity will be conducted, and (B) notify the medical society serving such area of such surveys or other activities; and

"(2) such other information as the Secretary may by regulation prescribe.

"(c) In considering applications for grants and contracts under this section, the Secretary shall give priority to an application which contains or is supported by assurances satisfactory to the Secretary that at the time the health maintenance organization for which such application or proposal is submitted first becomes operational not less than 30 per centum of its members will be members of a medically underserved population.

"(d)(1) Except as provided in paragraph (2), the following limitations apply with respect to grants and contracts made under this section:

"(A) If a project has been assisted with a grant or contract under subsection (a), the Secretary may not make any other grant or enter into any other contract under this section for such project.

"(B) Any project for which a grant is made or contract entered into must be completed within twelve months from the date the grant is made or contract entered into.

"(2) The Secretary may make not more than one additional grant or enter into not more than one additional contract for a project for which a grant has previously been made or a contract previously entered into, and he may permit additional time (up to twelve months) for completion of the project if he determines that the additional grant or contract (as the case may be), or additional time, or both, is needed to adequately complete the project.

"(e) The amount to be paid by the United States under a grant made, or contract entered into, under subsection (a) shall be determined by the Secretary, except that (1) the amount to be paid by the United States under any single grant or contract for any project may not exceed \$50,000, and (2) the aggregate of the amounts to be paid by the United States for any project under such subsection under grants or contracts, or both, may not exceed the greater of (A) 90 per centum of the cost of such project (as determined under regulations of the Secretary), or (B) in the case of a project for a health maintenance organization which will serve a medically underserved

80 Stat. 1191;
84 Stat. 1304.
42 USC 245.

Limitations.

population, such greater percentage (up to 100 per centum) of such cost as the Secretary may prescribe if he determines that the ceiling on the grants and contracts for such project should be determined by such greater percentage.

"(f) Payments under grants under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretary finds necessary.

"(g) Contracts may be entered into under this section without regard to sections 3645 and 3769 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

Post, p. 930.

"(h) Payments under grants and contracts under this section shall be made from appropriations made under section 1309(a).

"(i) Of the sums appropriated for any fiscal year under section 1309(a) for grants and contracts under this section, not less than 20 per centum shall be set aside and obligated in such fiscal year for projects (1) to determine the feasibility of developing and operating or expanding the operation of health maintenance organizations which the Secretary determines may reasonably be expected to have after their development or expansion not less than 65 per centum of their membership drawn from residents of non-metropolitan areas, and (2) the applications for which meet the requirements of this title for approval. Sums set aside in the fiscal year ending June 30, 1974, or June 30, 1975, for projects described in the preceding sentence but not obligated in such fiscal year for grants and contracts under this section because of a lack of applicants for projects meeting the requirements of such sentence shall remain available for obligation under this section in the succeeding fiscal year for projects other than those described in clause (1) of such sentence.

"GRANTS, CONTRACTS, AND LOAN GUARANTEES FOR PLANNING AND FOR INITIAL DEVELOPMENT COSTS

"Sec. 1301. (a) The Secretary may—

"(1) make grants to and enter into contracts with public or nonprofit private entities for planning projects for the establishment of health maintenance organizations or for the significant expansion of the membership of, or areas served by, health maintenance organizations; and

"(2) guarantee to non-Federal lenders payment of the principal of and the interest on loans made to private entities (other than nonprofit private entities) for planning projects for the establishment or expansion of health maintenance organizations to serve medically underserved populations.

Planning projects assisted under this subsection shall include development of plans for the marketing of the services of the health maintenance organization.

"(b) (1) The Secretary may—

"(A) make grants to and enter into contracts with public or nonprofit private entities for projects for the initial development of health maintenance organizations; and

"(B) guarantee to non-Federal lenders payment of the principal of and the interest on loans made to any private entity (other than a nonprofit private entity) for a project for the initial development of a health maintenance organization which will serve a medically underserved population.

"Initial development."

"(2) For purposes of this section, the term 'initial development' when used to describe a project for which assistance is authorized by this subsection includes significant expansion of the membership of, or the area served by, a health maintenance organization. Funds under

grants and contracts under this subsection and under loans guaranteed under this subsection may only be utilized for such purposes as the Secretary may prescribe in regulations. Such purposes may include (A) the implementation of an enrollment campaign for such an organization, (B) the detailed design of and arrangements for the health services to be provided by such an organization, (C) the development of administrative and internal organizational arrangements, including fiscal control and fund accounting procedures, and the development of a capital financing program, (D) the recruitment of personnel for such an organization and the conduct of training activities for such personnel, and (E) the payment of architects' and engineers' fees.

"(3) A grant or contract under this subsection may only be made or entered into for initial development costs in the one-year period beginning on the first day of the first month in which such grant or contract is made or entered into. The number of grants made for any initial development project under this subsection when added to the number of contracts entered into for such project under this subsection may not exceed three. A loan guarantee under this subsection may only be made for a loan (or loans) for such costs incurred in a period not to exceed three years.

"(c)(1) An application for a grant, contract, or loan guarantee under subsection (a) for a planning project shall contain assurances satisfactory to the Secretary that in carrying out the planning project for which the grant, contract, or loan guarantee is sought, the applicant will (A) cooperate with the section 311(b) areawide health planning agency (if any) whose section 311(b) plan covers (in whole or in part) the area proposed to be served by the health maintenance organization for which the planning project will be conducted, and (B) notify the medical society serving such area of the planning project.

80 Stat. 1181;
84 Stat. 1304.
42 USC 246.

"(2) If the Secretary makes a grant or loan guarantee or enters into a contract under subsection (a) for a planning project for a health maintenance organization, he may, within the period in which the planning project must be completed, make a grant or loan guarantee or enter into a contract under subsection (b) for the initial development of that health maintenance organization; but no grant or loan guarantee may be made or contract entered into under subsection (b) for initial development of a health maintenance organization unless the Secretary determines that (A) sufficient planning for its establishment or expansion (as the case may be) has been conducted by the applicant for the grant, contract, or loan guarantee, and (B) the feasibility of establishing and operating, or of expanding, the health maintenance organization has been established by the applicant.

"(d) In considering applications for grants and contracts under this section, the Secretary shall give priority to an application which contains or is supported by assurances satisfactory to the Secretary that at the time the health maintenance organization for which such application is submitted first becomes operational not less than 30 per centum of its members will be members of a medically underserved population.

"(e)(1) Except as provided in paragraph (2), the following limitations apply with respect to grants, loan guarantees, and contracts made under subsection (a) of this section:

itations.

"(A) If a planning project has been assisted with grant, loan guarantee, or contract under subsection (a), the Secretary may not make any other planning grant or loan guarantee or enter into any other planning contract for such project under this section.

"(B) Any project for which a grant or loan guarantee is made or contract entered into must be completed within twelve months

from the date the grant or loan guarantee is made or contract entered into.

"(2) The Secretary may not make more than one additional grant or loan guarantee or enter into not more than one additional contract for a planning project for which a grant or loan guarantee has previously been made or a contract previously entered into, and he may permit additional time (up to twelve months) for completion of the project if he determines that the additional grant, loan guarantee, or contract (as the case may be), or additional time, or both, is needed to adequately complete the project.

"(f)(1) The amount to be paid by the United States under a grant made, or contract entered into, under subsection (a) for a planning project, and (except as provided in paragraph (3) of this subsection) the amount of principal of a loan for a planning project which may be guaranteed under such subsection, shall be determined by the Secretary, except that (A) the amount to be paid by the United States under any single grant or contract, and the amount of principal of any single loan guaranteed under such subsection, may not exceed \$125,000, and (B) the aggregate of the amounts to be paid for any project by the United States under grants or contracts, or both, under such subsection, and the aggregate amount of principal of loans guaranteed under such subsection for any project, may not exceed the greater of (i) 50 per centum of the cost of such project (as determined under regulations of the Secretary), or (ii) in the case of a project for a health maintenance organization which will serve a medically underserved population, such greater percentage (up to 100 per centum) of such cost as the Secretary may prescribe if he determines that the ceiling on the grants, contracts, and loan guarantees (or any combination thereof) for such project should be determined by such greater percentage.

"(2) The amount to be paid by the United States under a grant made, or contract entered into, under subsection (b) for an initial development project, and (except as provided in paragraph (3) of this subsection) the amount of principal of a loan for an initial development project which may be guaranteed under such subsection, shall be determined by the Secretary, except that the amounts to be paid by the United States for any initial development project under grants or contracts, or both, under such subsection, and the aggregate amount of principal of loans guaranteed under such subsection for any project, may not exceed the lesser of--

"(A) \$1,000,000, or

"(B) an amount equal to the greater of (i) 90 per centum of the cost of such project (as determined under regulations of the Secretary), or (ii) in the case of a project for a health maintenance organization which will serve a medically underserved population, such greater percentage (up to 100 per centum) of such cost as the Secretary may prescribe if he determines that the ceiling on the grants, contracts, and loan guarantees (or any combination thereof) for such project should be determined by such greater percentage.

"(3) The cumulative total of the principal of the loans outstanding at any time with respect to which guarantees have been issued under this section may not exceed such limitations as may be specified in appropriation Acts.

"(g) Payments under grants under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretary finds necessary.

"(h) Contracts may be entered into under this section without regard to sections 3618 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

"(i) Payments under grants and contracts under this section shall be made from appropriations under section 1309(a). Post, p. 930.

"(j) Loan guarantees under subsection (a) (2) for planning projects may be made through the fiscal year ending June 30, 1976; and loan guarantees under subsection (b) (1) (B) for initial development projects may be made through the fiscal year ending June 30, 1977.

"(k) (1) Of the sums appropriated for any fiscal year under section 1309(a) for grants and contracts under subsection (a) of this section, not less than 20 per centum shall be set aside and obligated in such fiscal year for projects (A) to plan the establishment or expansion of health maintenance organizations which the Secretary determines may reasonably be expected to have after their establishment or expansion not less than 66 per centum of their membership drawn from residents of non-metropolitan areas, and (B) the applications for which meet the requirements of this title for approval. Sums set aside in the fiscal year ending June 30, 1974, or June 30, 1975, for projects described in the preceding sentence but not obligated in such fiscal year for grants and contracts under subsection (a) of this section because of a lack of applicants for projects meeting the requirements of such sentence shall remain available for obligation under such subsection in the succeeding fiscal year for projects other than those described in clause (A) of such sentence.

"(2) Of the sums appropriated for any fiscal year under section 1309(a) for grants and contracts under subsection (b) of this section, not less than 20 per centum shall be set aside and obligated in such fiscal year for projects (A) for the initial development of health maintenance organizations which the Secretary determines may reasonably be expected to have after their initial development not less than 66 per centum of their membership drawn from residents of non-metropolitan areas, and (B) the applications for which meet the requirements of this title for approval. Sums set aside in the fiscal year ending June 30, 1974, or in either of the next two fiscal years for projects described in the preceding sentence but not obligated in such fiscal year for grants and contracts under subsection (b) of this section because of a lack of applicants for projects meeting the requirements of such sentence shall remain available for obligation under such subsection in the succeeding fiscal year for projects other than those described in clause (A) of such sentence.

"LOANS AND LOAN GUARANTEES FOR INITIAL OPERATION COSTS

"Sec. 1305. (a) The Secretary may—

"(1) make loans to public or nonprofit private health maintenance organizations to assist them in meeting the amount by which their operating costs in the period of the first thirty-six months of their operation exceed their revenues in that period;

"(2) make loans to public or nonprofit private health maintenance organizations to assist them in meeting the amount by which their operating costs, which the Secretary determines are attributable to significant expansion in their membership or area served and which are incurred in the period of the first thirty-six months of their operation after such expansion, exceed their revenues in that period which the Secretary determines are attributable to such expansion; and

"(3) guarantee to non-Federal lenders payment of the principal of and the interest on loans made to any private health maintenance organization (other than a private nonprofit health maintenance organization) for the amounts referred to in paragraph (1) or (2), but only if such health maintenance organization will serve a medically underserved population.

Non-Federal
lenders,
guaranteed
payment,
condition.

87 STAT. 925

No loan or loan guarantee may be made under this subsection for the operating costs of a health maintenance organization unless the Secretary determines that the organization has made all reasonable attempts to meet such costs.

Limitations.

"(b) (1) Except as provided in paragraph (2), the principal amount of any loan made or guaranteed under subsection (a) in any fiscal year for a health maintenance organization may not exceed \$1,000,000 and the aggregate amount of principal of loans made or guaranteed, or both, under this section for a health maintenance organization may not exceed \$2,500,000.

"(2) The cumulative total of the principal of the loans outstanding at any time which have been directly made, or with respect to which guarantees have been issued, under subsection (a) may not exceed such limitations as may be specified in appropriation Acts.

Post, p. 930.

"(c) Loans under this section shall be made from the fund established under section 1303(e).

"(d) A loan or loan guarantee may be made under this section through the fiscal year ending June 30, 1978.

"(e) Of the sums used for loans under this section in any fiscal year from the loan fund established under section 1303(e), not less than 20 per centum shall be used for loans for projects (1) for the initial operation of health maintenance organizations which the Secretary determines have not less than 66 per centum of their membership drawn from residents of nonmetropolitan areas, and (2) the applications for which meet the requirements of this title for approval.

"APPLICATION REQUIREMENTS

"Sec. 1306. (a) No grant, contract, loan, or loan guarantee may be made under this title unless an application therefor has been submitted to, and approved by, the Secretary.

"(b) The Secretary may not approve an application for a grant, contract, loan, or loan guarantee under this title unless--

Auto, pp. 930,
931.

"(1) in the case of an application for assistance under section 1303 or 1304, such application meets the application requirements of such section and in the case of an application for a loan or loan guarantee, such application meets the requirements of section 1305;

"(2) he determines that the applicant making the application would not be able to complete the project or undertaking for which the application is submitted without the assistance applied for;

"(3) the application contains satisfactory specification of the existing or anticipated (A) population group or groups to be served by the proposed or existing health maintenance organization described in the application, (B) membership of such organization, (C) methods, terms, and periods of the enrollment of members of such organization, (D) estimated costs per member of the health and educational services to be provided by such organization and the nature of such costs, (E) sources of professional services for such organization, and organizational arrangements of such organization for providing health and educational services, (F) organizational arrangements of such organization for an ongoing quality assurance program in conformity with the requirements of section 1301(c), (G) sources of prepayment and other forms of payment for the services to be provided by such organization, (H) facilities, and additional capital investments and sources of financing therefor, available to such organization to provide the level and scope of services proposed, (I) administrative, managerial, and financial arrangements and capabilities

Auto, p. 934.

of such organization, (J) role for members in the planning and policymaking for such organization, (K) grievance procedures for members of such organization, and (L) evaluations of the support for and acceptance of such organization by the population to be served, the sources of operating support, and the professional groups to be involved or affected thereby;

"(4) contains or is supported by assurances satisfactory to the Secretary that the applicant making the application will, in accordance with such criteria as the Secretary shall by regulation prescribe, enroll, and maintain an enrollment of the maximum number of members that its available and potential resources (as determined under regulations of the Secretary) will enable it to effectively serve;

"(5) the section 314(b) areawide health planning agency whose section 314(b) plan covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted, or if there is no such agency, the section 314(a) State health planning agency whose section 314(a) plan covers (in whole or in part) such area, has, in accordance with regulations of the Secretary under subsection (c) of this section, been provided an opportunity to review the application and to submit to the Secretary for his consideration its recommendations respecting approval of the application or if under applicable State law such an application may not be submitted without the approval of the section 314(b) areawide health planning agency or the section 314(a) State health planning agency, the required approval has been obtained;

80 Stat. 1101;
84 Stat. 1304.
42 USC 246.

"(6) in the case of an application made for a project which previously received a grant, contract, loan, or loan guarantee under this title, such application contains or is supported by assurances satisfactory to the Secretary that the applicant making the application has the financial capability to adequately carry out the purposes of such project and has developed and operated such project in accordance with the requirements of this title and with the plans contained in previous applications for such assistance; and

"(7) the application is submitted in such form and manner, and contains such additional information, as the Secretary shall prescribe in regulations.

An organization making multiple applications for more than one grant, contract, loan, or loan guarantee under this title, simultaneously or over the course of time, shall not be required to submit duplicate or redundant information but shall be required to update the specifications (required by paragraph (3)) respecting the existing or proposed health maintenance organization in such manner and with such frequency as the Secretary may by regulation prescribe.

Multiple applications.

"(c) The Secretary shall by regulation establish standards and procedures for section 314(b) areawide health planning agencies and section 314(a) State health planning agencies to follow in reviewing and commenting on applications for grants, contracts, loans, and loan guarantees under this title.

"ADMINISTRATION OF ASSISTANCE PROGRAMS

"Sec. 4307. (a) (1) Each recipient of a grant, contract, loan, or loan guarantee under this title shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of the grant, contract, or

Record-keeping.

loan (directly made or guaranteed), the total cost of the undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(2) The Secretary, or any of his duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of a grant, contract, loan, or loan guarantee under this title which relate to such assistance.

Report to
Secretary of
H.E.W.

"(b) Upon expiration of the period for which a grant, contract, loan, or loan guarantee was provided an entity under this title, such entity shall make a full and complete report to the Secretary in such manner as he may by regulation prescribe. Each such report shall contain, among such other matters as the Secretary may by regulation require, descriptions of plans, developments, and operations relating to the matters referred to in section 1305(b)(3).

Arts, p. 925.

Part, p. 930.

"(c) If in any fiscal year the funds appropriated under section 1309 are insufficient to fund all applications approved under this title for that fiscal year, the Secretary shall, after applying the applicable priorities under sections 1303 and 1304, give priority to the funding of applications for projects which the Secretary determines are the most likely to be economically viable.

79 Stat. 291;
86 Stat. 1370.
42 USC 1395.
42 USC 1396.

"(d) An entity which provides health services to a defined population on a prepaid basis and which has members who are entitled to insurance benefits under title XVIII of the Social Security Act or to medical assistance under a State plan approved under title XIX of such Act may be considered as a health maintenance organization for purposes of receiving assistance under this title if—

"(1) with respect to its members who are entitled to such insurance benefits or to such medical assistance it (A) provides health services in accordance with section 1301(b), except that (i) it does not furnish to those members the health services (with in the basic health services) for which it may not be compensated under such title XVIII or such State plan, and (ii) it does not fix the basic or supplemental health services payment for such members under a community rating system, and (B) is organized and operated in the manner prescribed by section 1301(c), except that it does not assume full financial risk on a prospective basis for the provision to such members of basic or supplemental health services with respect to which it is not required under such title XVIII or such State plan to assume such financial risk; and

"(2) with respect to its other members it provides health services in accordance with section 1301(b) and is organized and operated in the manner prescribed by section 1301(c).

"(e) In any fiscal year no loan guarantee may be made under this title if the making of such guarantee would cause the cumulative total of the principal of the loans guaranteed under this title in such fiscal year to exceed the amount of grant and contract funds obligated under this title in such fiscal year; except that this subsection shall not apply if the amount of grant and contract funds obligated under this title in such fiscal year equals the sums appropriated under section 1309 for grants and contracts for such fiscal year.

"GENERAL PROVISIONS RELATING TO LOAN GUARANTEES AND LOANS

"Sec. 1308. (a) (1) The Secretary may not approve an application for a loan guarantee under this title unless he determines that (A) the terms, conditions, security (if any), and schedule and amount of repayments with respect to the loan are sufficient to protect the finan-

cial interests of the United States and are otherwise reasonable, including a determination that the rate of interest does not exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States, and (B) the loan would not be available on reasonable terms and conditions without the guarantee under this title.

"(2)(A) The United States shall be entitled to recover from the applicant for a loan guarantee under this title the amount of any payment made pursuant to such guarantee, unless the Secretary for good cause waives such right of recovery; and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

"(B) To the extent permitted by subparagraph (C), any terms and conditions applicable to a loan guarantee under this title (including terms and conditions imposed under subparagraph (D)) may be modified by the Secretary to the extent he determines it to be consistent with the financial interest of the United States.

"(C) Any loan guarantee made by the Secretary under this title shall be incontestable (i) in the hands of an applicant on whose behalf such guarantee is made unless the applicant engaged in fraud or misrepresentation in securing such guarantee, and (ii) as to any person (or his successor in interest) who makes or contracts to make a loan to such applicant in reliance thereon unless such person (or his successor in interest) engaged in fraud or misrepresentation in making or contracting to make such loan.

"(D) Guarantees of loans under this title shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this title will be achieved.

"(b)(1) The Secretary may not approve an application for a loan under this title unless—

Application requirements.

"(A) the Secretary is reasonably satisfied that the applicant therefor will be able to make payments of principal and interest thereon when due, and

"(B) the applicant provides the Secretary with reasonable assurances that there will be available to it such additional funds as may be necessary to complete the project or undertaking with respect to which such loan is requested.

"(2) Any loan made under this title shall (A) have such security, (B) have such maturity date, (C) be repayable in such installments, (D) bear interest at a rate comparable to the current rate of interest prevailing, on the date the loan is made, with respect to loans guaranteed under this title, and (E) be subject to such other terms and conditions (including provisions for recovery in case of default), as the Secretary determines to be necessary to carry out the purposes of this title while adequately protecting the financial interests of the United States.

"(3) The Secretary may, for good cause but with due regard to the financial interests of the United States, waive any right of recovery which he has by reason of the failure of a borrower to make payments of principal and interest on a loan made under this title, except that if such loan is sold and guaranteed, any such waiver shall have no effect upon the Secretary's guarantee of timely payment of principal and interest.

Right of recovery, waiver.

"(c)(1) The Secretary may from time to time, but with due regard to the financial interests of the United States, sell loans made by him under this title.

Sale of loans.

"(2) The Secretary may agree, prior to his sale of any such loan, to guarantee to the purchaser (and any successor in interest of the purchaser) compliance by the borrower with the terms and conditions of such loan. Any such agreement shall contain such terms and conditions as the Secretary considers necessary to protect the financial interests of the United States or as otherwise appropriate. Any such agreement may (A) provide that the Secretary shall act as agent of any such purchaser for the purpose of collecting from the borrower to which such loan was made and paying over to such purchaser, any payments of principal and interest payable by such organization under such loan; and (B) provide for the repurchase by the Secretary of any such loan on such terms and conditions as may be specified in the agreement. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this paragraph.

"(3) After any loan under this title to a public health maintenance organization has been sold and guaranteed under this subsection, interest paid on such loan which is received by the purchaser thereof (or his successor in interest) shall be included in the gross income of the purchaser of the loan (or his successor in interest) for the purpose of chapter 1 of the Internal Revenue Code of 1954.

"(4) Amounts received by the Secretary as proceeds from the sale of loans under this subsection shall be deposited in the loan fund established under subsection (e).

"(d) (1) There is established in the Treasury a loan guarantee fund (hereinafter in this subsection referred to as the "fund") which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts, to enable him to discharge his responsibilities under loan guarantees issued by him under this title. There are authorized to be appropriated from time to time such amounts as may be necessary to provide the sums required for the fund. To the extent authorized in appropriation Acts, there shall also be deposited in the fund amounts received by the Secretary in connection with loan guarantees under this title and other property or assets derived by him from his operations respecting such loan guarantees, including any money derived from the sale of assets.

"(2) If at any time the sums in the funds are insufficient to enable the Secretary to discharge his responsibilities under guarantees issued by him under this title, he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations issued under this paragraph and for that purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the 2^d and Liberty Bond Act, and the purposes for which the securities may be issued under that Act are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations required by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this paragraph shall be deposited in the fund

63A Stat. 3.
26 USC 1
et seq.

Loan guarantee
fund.
Establishment.

40 Stat. 288.
31 USC 174.

and redemption of such notes and obligations shall be made by the Secretary from the fund.

"(e) There is established in the Treasury a loan fund (hereinafter in this subsection referred to as the 'fund') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts, to enable him to make loans under this title. There shall also be deposited in the fund amounts received by the Secretary as interest payments and repayment of principal on loans made under this title and other property or assets derived by him from his operations respecting such loans, from the sale of loans under subsection (c) of this section, or from the sale of assets.

Loan fund.
Establishment.

"AUTHORIZATIONS OF APPROPRIATIONS

"Sec. 1303. (a) For the purpose of making payments under grants and contracts under sections 1303, 1304(a), and 1304(b), there are authorized to be appropriated \$25,000,000 for the fiscal year ending June 30, 1974, \$55,000,000 for the fiscal year ending June 30, 1975, and \$85,000,000 for the fiscal year ending June 30, 1976; and for the purpose of making payments under grants and contracts under section 1304(b) for the fiscal year ending June 30, 1977, there is authorized to be appropriated \$85,000,000.

"(b) There is authorized to be appropriated to the loan fund established under section 1308(c) \$75,000,000 in the aggregate for the fiscal years ending June 30, 1974, and June 30, 1975.

"EMPLOYEES' HEALTH BENEFITS PLANS

"Sec. 1310. (a) Each employer which is required during any calendar quarter to pay its employees the minimum wage specified by section 6 of the Fair Labor Standards Act of 1938 (or would be required to pay his employees such wage but for section 13(a) of such Act), and which during such calendar quarter employed an average number of employees of not less than twenty five, shall, in accordance with regulations which the Secretary shall prescribe, include in any health benefits plan offered to its employees in the calendar year beginning after such calendar quarter the option of membership in qualified health maintenance organizations which are engaged in the provision of basic and supplemental health services in the areas in which such employees reside.

"(b) If there is more than one qualified health maintenance organization which is engaged in the provision of basic and supplemental health services in the area in which the employees of an employer subject to subsection (a) reside and if—

"(1) one or more of such organizations provides basic health services through professionals who are members of the staff of the organization or a medical group (or groups), and

"(2) one or more of such organizations provides such services through an individual practice association (or associations), then of the qualified health maintenance organizations included in a health benefits plan of such employer pursuant to subsection (a) at least one shall be an organization which provides basic health services as described in clause (1) and at least one shall be an organization which provides basic health services as described in clause (2).

"(c) No employer shall be required to pay more for health benefits as a result of the application of this section than would otherwise be required by any prevailing collective bargaining agreement or other legally enforceable contract for the provision of health benefits between the employer and its employees. Failure of any employer to

52 Stat. 1062;
77 Stat. 56;
80 Stat. 838.
29 USC 201.
75 Stat. 71;
80 Stat. 833;
86 Stat. 375.
29 USC 213.

52 Stat. 1029;
63 Stat. 919.
29 USC 215.
"Qualified
health
maintenance
organization."

comply with the requirements of subsection (a) shall be considered a willful violation of section 15 of the Fair Labor Standards Act of 1938.

"(d) For purposes of this section, the term 'qualified health maintenance organization' means (1) a health maintenance organization which has provided assurances satisfactory to the Secretary that it provides basic and supplemental health services to its members in the manner prescribed by section 1301(b) and that it is organized and operated in the manner prescribed by section 1301(c), and (2) an entity which proposes to become a health maintenance organization and which the Secretary determines will when it becomes operational provide basic and supplemental health services to its members in the manner prescribed by section 1301(b) and will be organized and operated in the manner prescribed by section 1301(c).

"RESTRICTIVE STATE LAWS AND PRACTICES

"Sec. 1311. (a) In the case of any entity—

"(1) which cannot do business as a health maintenance organization in a State in which it proposes to furnish basic and supplemental health services because that State by law, regulation, or otherwise—

"(A) requires as a condition to doing business in that State that a medical society approve the furnishing of services by the entity,

"(B) requires that physicians constitute all or a percentage of its governing body,

"(C) requires that all physicians or a percentage of physicians in the locale participate or be permitted to participate in the provision of services for the entity, or

"(D) requires that the entity meet requirements for insurers of health care services doing business in that State respecting initial capitalization and establishment of financial reserves against insolvency, and

"(2) for which a grant, contract, loan, or loan guarantee was made under this title or which is a qualified health maintenance organization for purposes of section 1310 (relating to employees' health benefits plans);

such requirements shall not apply to that entity so as to prevent it from operating as a health maintenance organization in accordance with section 1301.

"(b) No State may establish or enforce any law which prevents a health maintenance organization for which a grant, contract, loan, or loan guarantee was made under this title or which is a qualified health maintenance organization for purposes of section 1310 (relating to employees' health benefits plans), from soliciting members through advertising its services, charges, or other nonprofessional aspects of its operation. This subsection does not authorize any advertising which identifies, refers to, or makes any qualitative judgment concerning, any health professional who provides services for a health maintenance organization.

"CONTINUED REGULATION OF HEALTH MAINTENANCE ORGANIZATIONS

"Sec. 1312. (a) If the Secretary determines that an entity which received a grant, contract, loan, or loan guarantee under this title as a health maintenance organization or which was included in a health benefits plan offered to employees pursuant to section 1310—

"(1) fails to provide basic and supplemental services to its members,

Study.

"(b) The Comptroller General shall also conduct a study of the economic effects on employers resulting from their compliance with the requirements of section 1310. The Comptroller General shall report to the Congress the results of such study not later than thirty-six months after the date of the enactment of this title.

Report to Congress.

"(c) The Comptroller General shall evaluate (1) the operations of distinct categories of health maintenance organizations in comparison with each other, (2) health maintenance organizations as a group in comparison with alternative forms of health care delivery, and (3) the impact that health maintenance organizations, individually, by category, and as a group, have on the health of the public. The Comptroller General shall report to the Congress the results of such evaluation not later than thirty-six months after the date of the enactment of this title.

"ANNUAL REPORT

Review, report to Congress.

"Sec. 1315. (a) The Secretary shall periodically review the programs of assistance authorized by this title and make an annual report to the Congress of a summary of the activities under each program. The Secretary shall include in such summary—

"(1) a summary of each grant, contract, loan, or loan guarantee made under this title in the period covered by the report and a list of the health maintenance organizations which during such period became qualified health maintenance organizations for purposes of section 1310;

"(2) the statistics and other information reported in such period to the Secretary in accordance with section 1301(c)(11);

"(3) findings with respect to the ability of the health maintenance organizations assisted under this title—

"(A) to operate on a fiscally sound basis without continued Federal financial assistance,

"(B) to meet the requirements of section 1301(c) respecting their organization and operation,

"(C) to provide basic and supplemental health services in the manner prescribed by section 1301(b);

"(D) to include indigent and high-risk individuals in their membership, and

"(E) to provide services to medically underserved populations; and

"(4) findings with respect to—

"(A) the operation of distinct categories of health maintenance organizations in comparison with each other,

"(B) health maintenance organizations as a group in comparison with alternative forms of health care delivery, and

"(C) the impact that health maintenance organizations, individually, by category, and as a group, have on the health of the public.

Review.

"(b) The Office of Management and Budget may review the Secretary's report under subsection (a) before its submission to the Congress, but the Office may not revise the report or delay its submission, and it may submit to the Congress its comments (and those of other departments or agencies of the Government) respecting such report."

Comments, submission to Congress.

QUALITY ASSURANCE

58 Stat. 691;
65 Stat. 63.
42 USC 241.

Sec. 3, Title III of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART K—QUALITY ASSURANCE

"QUALITY ASSURANCE

"Sec. 395c. (a) (1) The Secretary, through the Assistant Secretary for Health, shall conduct research and evaluation programs respecting the effectiveness, administration, and enforcement of quality assurance programs. Such research and evaluation programs shall be carried out in cooperation with the entity within the Department which administers the programs of assistance under section 304.

Research and
evaluation
programs.

"(2) For the purpose of carrying out paragraph (1), there are authorized to be appropriated \$1,000,000 for the fiscal year ending June 30, 1974, \$8,000,000 for the fiscal year ending June 30, 1975, \$9,000,000 for the fiscal year ending June 30, 1976, \$9,000,000 for the fiscal year ending June 30, 1977, and \$10,000,000 for the fiscal year ending June 30, 1978.

81 Stat. 534.
42 USC 242b.
Appropriation.

"(b) The Secretary shall make an annual report to the Congress and the President on (1) the quality of health care in the United States, (2) the operation of quality assurance programs, and (3) advances made through research and evaluation of the effectiveness, administration, and enforcement of quality assurance programs. The first annual report under this subsection shall be made with respect to calendar year 1974 and shall be submitted not later than March 1, 1975. The Office of Management and Budget may review the Secretary's report under this subsection before its submission to the Congress, but the Office may not revise the report or delay its submission to the Congress, and it may submit to the Secretary and the Congress its comments (and those of other departments and agencies of the Government) with respect to such report."

Annual report
to President
and Congress.

HEALTH CARE QUALITY ASSURANCE PROGRAMS STUDY

Sec. 4. (a) The Secretary of Health, Education, and Welfare shall contract, in accordance with subsection (b), for the conduct of a study to—

- (1) analyze past and present mechanisms (both required by law and voluntary) to assure the quality of health care, identify the strengths and weaknesses of current major prototypes of health care quality assurance systems, and identify on a comparable basis the costs of such prototypes;
- (2) provide a set of basic principles to be followed by any effective health care quality assurance system, including principles affecting the scope of the system, methods for assessing care, data requirements, specifications for the development of criteria and standards which relate to desired outcomes of care, and means for assessing the responsiveness of such care to the needs and perceptions of the consumers of such care;
- (3) provide an assessment of programs for improving the performance of health practitioners and institutions in providing high-quality health care, including a study of the effectiveness of sanctions and educational programs;
- (4) define the specific needs for a program of research and evaluation in health care quality assurance methods, including the design of prospective evaluations protocols for health care quality assurance systems; and
- (5) provide methods for assessing the quality of health care from the point of view of consumers of such care.

(b) The Secretary shall contract for the conduct of the study required by subsection (a) with a nonprofit private organization which—

Contract with
private organi-
zation.

(1) has a national reputation for objectivity in the conduct of studies for the Federal Government;

(2) has the capacity to readily marshal the widest possible range of expertise and advice relevant to the conduct of such study;

(3) has a membership and competent staff which have backgrounds in government, the health sciences, and the social sciences;

(4) has a history of interest and activity in health policy issues related to such study; and

(5) has extensive existing contracts with interested public and private agencies and organizations.

The Secretary shall enter into such contract within 90 days of the date of the enactment of the first Act making an appropriation under subsection (d).

Reports to congressional committees.

(c) An interim report providing a plan for the study required by subsection (a) shall be submitted by the organization conducting the study to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Public Welfare of the Senate by June 30, 1974; and a final report giving the results of the study and providing specifications for an effective quality assurance system shall be submitted by such organization to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Public Welfare of the Senate by January 31, 1976.

Appropriation.

(d) There is authorized to be appropriated \$10,000,000, which shall be available without fiscal year limitation, for the conduct of the study required by subsection (a).

REPORTS RESPECTING MEDICALLY UNDERSERVED AREAS AND POPULATION GROUPS AND NON-METROPOLITAN AREAS

Reports to Congress.

Sec. 5. Within three months of the date of the enactment of this Act, the Secretary of Health, Education, and Welfare shall report to the Congress the criteria used by him in the designation of medically underserved areas and population groups for the purposes of section 1302(7) of the Public Health Service Act. Within one year of such date, the Secretary shall report to the Congress (1) the areas and population groups designated by him under such section 1302(7) as having a shortage of personal health services, (2) the comments (if any) submitted by State and area-wide comprehensive health planning agencies under such section with respect to any such designation, and (3) the areas which meet the definitional standards under section 1302(9) of such Act for non-metropolitan areas. The Office of Management and Budget may review the Secretary's report under this section before its submission to the Congress, but the Office may not revise the report or delay its submission beyond the date prescribed for its submission, and it may submit to Congress its comments (and those of other departments and agencies of the Government) respecting such report.

Ante, p. 917.

Review.

Comments, submitted to Congress.

HEALTH SERVICES FOR INDIANS AND DOMESTIC AGRICULTURAL, MIGRATORY AND SEASONAL WORKERS

68 Stat. 674.

Sec. 6. (a) The first section of the Act of August 5, 1954 (42 U.S.C. 2601), is amended by inserting "(a)" after "That" and by adding at the end thereof the following new subsection:

"(b) In carrying out his functions, responsibilities, authorities, and duties under this Act, the Secretary is authorized, with the consent of the Indian people served, to contract with private or other non-

Federal health agencies or organizations for the provision of health services to such people on a fee-for-service basis or on a prepayment or other similar basis."

(b) The Secretary of Health, Education, and Welfare, in connection with existing authority (except section 310 of the Public Health Service Act) for the provision of health services to domestic agricultural migratory workers, to persons who perform seasonal agricultural services similar to the services performed by such workers, and to the families of such workers and persons, is authorized to arrange for the provision of health services to such workers and persons and their families through health maintenance organizations. In carrying out this subsection the Secretary may only use sums appropriated after the date of the enactment of this Act.

76 Stat. 542.
42 USC 247h.

CONFORMING AMENDMENTS

SEC. 7. (a) Section 1 of the Public Health Service Act is amended to read as follows:

58 Stat. 692;
86 Stat. 137.
42 USC 201 note.

"SHORT TITLE

"SECTION 1. This Act may be cited as the 'Public Health Service Act.'"

(b) Title XIII of the Act of July 1, 1914 (58 Stat. 682) (as so designated by section 2(b) of the Emergency Medical Services Systems Act of 1973 (Public Law 93-154)) is repealed.

Repeal.

Ante, p. 604.

(c) Section 306(g) of the Federal National Mortgage Association Act (12 U.S.C. 1721(g)) is amended by inserting "or which are guaranteed under title XIII of the Public Health Service Act" after "chapter 37 of title 38, United States Code".

82 Stat. 542.

38 USC 1801.

Approved December 29, 1973.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 93-451 accompanying H. R. 7974 (Comm. on Interstate and Foreign Commerce) and No. 93-714 (Comm. of Conference).

SENATE REPORTS: No. 93-129 (Comm. on Labor and Public Welfare) and No. 93-621 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 119 (1973):

May 14, 15, considered and passed Senate,

Sept. 12, considered and passed House, amended, in lieu of H. R. 7974.

Dec. 10, House agreed to conference report.

Dec. 19, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 10, No. 1 (1974):

Dec. 29, 1973, Presidential statement.

Health Maintenance Organizations

Calif Health & Safety Code 11-75 et seq
 Colorado Rev Code 1963 72-37-1
 Florida Statutes 1971 641.17
 Kentucky Revised Statutes 1971 304.38-010
 Minnesota Statutes 1971 62D.01
 Nevada Rev Statutes 1973 reprint 695a 010
 New Jersey Rev. Statute 1937 26:211
 Tennessee Code Annotated 1955 56-4101
 South Dakota Laws 1974 Chap 321
 Utah Code Annotated 1953 31-42-1

state

Place in Title 21

Age/Health considerations shouldn't be prohibited

Inadequate capitalization

HMO's should be regulated like other similar programs.

Do we really need it?

Who is testifying Wed night? (St. Pats day!)

H B

4 8 7

COMMITTEE REPORT

5/7/75

HOUSE

FINANCE

Mr. Speaker:

Date 5/7/75

The Committee on HESS has had HB 487

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR _____ AND THAT

CS FOR _____ DO PASS

"and" recommends it BE REFERRED TO THE _____

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

<u>Susan Sullivan</u>	_____	_____
<u>James H. ...</u>	_____	_____
<u>...</u>	_____	_____
<u>Kathryn ...</u>	_____	_____

Members NOT concurring in the Majority report:

<u>James H. ...</u>	recommends: <u>NO REC</u>
_____	recommends:
_____	recommends:
_____	recommends:
_____	recommends:

Susan Sullivan Chairman



JUNEAU ALASKA

Alaska State Legislature

House

HESS COMMITTEE MEETING

May 8, 1975

HB 487

Members Present:

Beirne Ostrosky
Davis Sullivan
Hackney Swanson
Osterback

Chairman Sullivan called the meeting to order at 3:30pm. The first order of business was HB 415 & 419.

⁴¹⁵
HB ~~514~~ & HB 419

Dr. Price: These measures are urgently needed. The 1972 Council considered the number one need to be School Health Education. A survey was taken in 1973, on the elementary level it was taught by individual teachers as they see fit, the administration is not aware of the curricula. In Junior High and High School there is some curricula taught by the physical education teachers but they rarely have training in Health Education specifically to teach the subject. 90% of the PE teachers have never taken first aid courses. We presently have 12 candidates for the position of School Health Educator, the money is not available after July 1, the funds will be lost. Funded through Federal D14 monies. SB66 (Congressional Bill) if passed, would be taking new monies into consideration.

Swanson Line 18, is this just seed money or would this take care of the entire program?

Price This will take care of the program for the first year. We would like to see this as a collaboration between the two departments, H&SS and Education.

Jeffers One professional employee and one clerical, there will be contractual methods to do other things.

Swanson What to you class and Health Education in grades K-12?

Jeffers The intent is to structure so that the younger kids could benefit as well as the others. The more sophisticated problems are handled at a later age. These programs will be introduced when the students are old enough to benefit from them.

Hackney Couldn't we legislate something to insure that the individual school districts will hire trained Health Educational staff on the local level?

Jeffers We would provide some sort of training program so that they would get training as well. A Health Education Curriculum would be added for use on the local level.

Hackney Any Health Ed. taught today?

Page Two
HESS Meeting
5-8-75

Commissioner Lind Further explanation of the bills. Also expressed the Dept's concern and urged passage of these bills.

There was some discussion at this time as to the word "initial" development added to the bill.

Ostrosky Motion to add "Dept. of H&SS"

Swanson Objection.

Chairman Vote on the amendment, changing the bill back to its original form. (Unanimous)

Sullivan Move bill out with Individual recommendation.

No Objection , so ordered.

HB 447

Richard Dowling, Ak. Educ. Broadcasting Commission

Handed out material, here to answer questions. The reason for this legislation is that KAKM will serve to the areas on the map, Kenai Pen., Turnigan Arm, Talkeetna, Palmer etc.

Parr Who would do this, the State or a privately funded operation?

Dowling The Television Station itself would contract with some individual to do the work.

Parr Question, the pay of the project coordinator?

Dowling Explained what the position was to do, prepare spec. for equipment; hire two man crew for installation; performance tests; system tests, and document the system so that it can be maintained, this has to all be completed in four months of work.

PBS, locally produced, KYUK-Bethel, KYAK-Fairbanks, Educational Programming coordinated with these stations. Most of these areas do not have commercial programming. 1/3 to 1/2 currently do not receive regular commercial television.

Sullivan Would like to hear Rep. Beirne's views on this bill before we take up a vote.

Ostrosky In favor of the program. Public television is an asset and quality of programs are quite beneficial in comparison with commercial television.

HB 487

Parr Motion to move bill out with 'do pass'

Chairman No objection, so ordered.

Adjourned at 5:00pm.

HB

500

"An Act making a special appropriation to the Department of Health and Social Services, division of corrections, to provide halfway house facilities for female prisoners; and providing for an effective date."

COMMITTEE REPORT

5/13/75

HOUSE

FINANCE

Mr. Speaker:

Date 5/19/75

The Committee on HESS has had HE 500

under consideration. A Majority of the members of the Committee

- () recommends it DO PASS
- () recommends it DO NOT PASS
- () recommends it DO PASS WITH ATTACHED AMENDMENT(S)
- () recommends it BE REPLACED WITH CS FOR _____ AND THAT
CS FOR _____ DO PASS
- () "and" recommends it BE REFERRED TO THE _____
COMMITTEE
- () reports it back WITHOUT RECOMMENDATION
- () "other"

Members signing the Majority report:

Susan Sullivan _____

Charles H. P. _____

John J. ... _____

Ruth ... _____

Members NOT concurring in the Majority report:

Charles H. P. recommends: no recommendation

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Susan Sullivan Chairman



JUNEAU ALASKA

Alaska State Legislature

House

HESS COMMITTEE MEETING

MAY 19, 1975

Members Present:

Bierne	Parr
Osterback	Sullivan
Ostrosky	

Testifying Guests:

Norris Johnson, Juneau Wastewater Operator
Jerry Reinwand, Dep. Commissioner, Dept. of Environmental Conservation
Gonald G. Hansen, Dept. of Environmental Conservation
Don Clocksin, Alaska Legal Services
Bob Cooksey, National Education Association
Alphie Newell, Legislative Staff member

HB 407 Certification of Wastewater Operators

Reinwand: The purpose of this bill is to make certain that once a facility is build, it will be possible to find a competent person to operate it. Our department supports this bill as it is.

Hansen: The bill would set up the requirement that all wastewater operators are certified. As public health is in the hands of these operators, we want to be sure that they are adequately trained. Last year, 170 million dollars was spent on sewerage treatment facilities in the State. 40 million of this was State funds. With so much spent on the facilities, we want them to be run properly. The hiring is presently done at the municipal level. (presents fiscal note) There is a large initial expense which would drop off.

Johnson: I am in charge of the Juneau Borough Wastewater Operators and would like to speak about how this bill would benefit operators. Presently, Alaska has no certification program for waterwater operators, and I believe we are the last state without one. Certification requirements would support the establishment of training programs within the State, and would assist in application for EPA (federal) grants.

The majority signed to pass the bill out with a "do pass" recommendation. As Mr Parr had arrived late, he chose not to sign until he had heard some testimony, so a quorum was not formed.

CSHB 402 Emancipation of Minors

Clocks: I support this bill as it is. It provides procedures for a minor to petition the court and become emancipated if he is self-supporting. It is presently not permitted for a minor to petition the court in his or her own name. Age restriction for voting, consumption of alcohol, and constitutional stipulations, however, cannot be waived by a court.

The bill was passed out with a "do pass" recommendation, with no objection.

CSSB 128am Transfer of Federal Agency Schools

Cooksey: This bill was drawn up to assist in the transfer of BIA schools to the State system. It provides for the transfer of BIA teachers so that they may receive the benefits currently enjoyed by State teachers, including the same pay scale, accumulated sick leave, tenure, and retirement. The original bill mandated the transfer; this one does not.

Bierne: What would happen in a case where a BIA teacher was not certified?

Cooksey: The bill specified Alaskan certification as a requirement in order to be transferred.

The bill was passed out with a "do pass" recommendation without objection.

HB 500 Halfway House for Female Prisoners

Newell: The 6th Avenue Annex, where female prisoners are presently kept in Anchorage, puts all women, pre-sentenced or post-sentenced into one big cell. This not only allows no privacy, but is not conducive to any rehabilitation program. There are constant interruptions as persons are brought in for such problems as drunk and disorderly conduct. This bill would provide funds to move sentenced prisoners to a half-way house operated by the Salvation Army.

Parr: In accordance with equal rights, why aren't the women sent to Eagle River? There should be no distinction made.

Adams: The present conditions are not equal. For men, there are separate facilities for sentenced and unsentenced persons. Facilities must be maintained for women in five places in the State, while they are awaiting trial, and there are not that many women.

Osterback: How many women could you take care of for this sum?

Adams: This would provide five beds in Anchorage.

Parr: You still have not answered why the women could not be sent to Eagle River.

Adams: Eagle River was designed specifically as a facility for men. There are no separate units for women, and so physical alterations would be required.

Parr: What does the Salvation Army charge?

Adams: \$22 per day.

Parr: What would be the legal responsibility of the Salvation Army under this set-up as they are not legal officials?

Adams: Under statute, we can furlough an individual, so we would be furloughing these individuals to the Salvation Army. If a problem should arise, the Salvation Army would notify us. We don't hold them legally liable.

Sullivan: There would be some sort of program provided for the inmates, is that right?

Adams: They would provide some counseling. Most of these women would be involved in outside activities.

Parr: Why couldn't we have one State facility for all sentenced women instead of having them in five places?

Adams: Particularly with short sentences, it would be a disservice to ship a woman far away from her community.

Bierne: I make a motion to pass the bill out.

The bill was passed out with a "do pass" recommendation, four signing in the majority, and one in the minority.

HB 501 Prisoner Relocation to Anchorage

Adams: This bill would provide for half-way house operations to be moved out of the 3rd Avenue Building so that we can use this as a maximum security facility. The estimated cost is \$167,700. This would allow more persons to be housed in the maximum security facility, and would allow some others to get into half-way houses.

Parr: We are not anticipating an increase in the number of prisoners, but will need five more positions. Is that right?

The bill was passed out with a "do pass" recommendation. Four signed in the majority, and one in the minority.

Sullivan: I would like to put together a calendar for the first two weeks of next session before we close. If any of you have any bills you would like to be included, please let me know.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF CORRECTIONS

JAY S. HAMMOND, Governor

Document# HHESS 8

Pouch H-03
Juneau, Alaska 99811

April 25, 1975

The Honorable Susan Sullivan, Chairwoman
House HESS Committee

Dear Ms. Sullivan:

Re: Prisoner Facilities; response
to your memo of April 18, 1975

To move the security prisoners from the Eagle River Center back to the Anchorage State Jail would require removing the Halfway House activity from the Anchorage State Jail and placing it back in the community. This cost estimate is based on the following shift in beds ---

Eagle River	-	18 Security
ASJ	-	30 Halfway House
	+	30 Security
Halfway House	+	30 Halfway House
Net increase	+	12 security beds

--- and the following shift in positions:

Eagle River	-	2 C.O. I's security
ASJ	+	5 C.O. I's security
	-	1 C.O. I Halfway House
Halfway House	+	1 C.O. I Halfway House
	+	1 Assoc. Halfway House
	+	1 P.O. II Halfway House
Net	+	5 positions

3 C.O. I's @ \$19,200	=	\$ 57,600
1 Associate @ \$21,200	=	21,200
1 P.O. II @ \$18,300	=	18,300
Net personnel cost at FY76 Budget Rates		\$ 78,800

--- and the following shift in bed maintenance costs:

Eagle River - 18 beds @ \$4,000	\$ 72,000
ASJ - net change	0
Halfway House + 30 beds @ \$8,030	240,900
	<u>\$169,900</u>

Less: Possible Recovery from Work Releases (1/3 wages)	80,000
Net maintenance cost	<u>\$ 89,900</u>

Therefore, the net cost of the total shift would be:

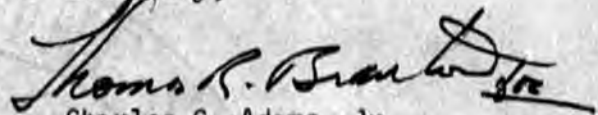
Personal Services	\$ 78,800
Non-Personal Service	89,900
	<u>\$168,700</u>

To provide adequate facilities for female prisoners would mean establishing halfway house capabilities for women, particularly in the Anchorage Area. We would like to contract for five beds @ \$22 per day, requiring \$40,150, with a possible recovery of 1/4 from work release wages. The net cost would, therefore, be \$30,000.

These estimates are based on a baseline of staffing and costs contained in the Division's FY76 Budget Request. The estimates provided here are incremental costs to that budget.

I am very sorry we could not respond to your memorandum sooner, however, we did not receive it until April 24th.

Sincerely,


Charles G. Adams, Jr.
Director

CGA:d1

Attn: Mr. Charles Adams -

We are sending you another
copy of the April 18 Amendment.



JUNEAU ALASKA

Alaska State Legislature
House

0100

42475

000.

MEMORANDUM

TO: Mr. Charles Adams, Director
Division of Corrections

DATE: April 18, 1975

FROM: Susan Sullivan, Chairwoman *SS*
House HESS Committee

SUBJECT: Prisoner Facilities

Please provide my office with your best estimate of the facilities and expense required to provide the following:

- a) adequate facilities for maximum security prisoners so that they will not have to be housed at the South Central Correctional Center at Eagle River, and
- b) adequate facilities for female prisoners in Alaska.

I would appreciate it if your response to (a) includes, but is not necessarily limited to, the re-creation of a halfway house in Anchorage and the refurbishing, as necessary, of the Anchorage Third Avenue jail.

Your expeditious response would be greatly appreciated.

cc: Rep. Sam Cotten

HB

501

"An Act making a special appropriation to the Department of Health and Social Services, division of corrections, for relocating security prisoners to the Anchorage state jail; and providing for an effective date."

COMMITTEE REPORT

5/13/75

HOUSE

FINANCE

Mr. Speaker:

Date 5/19/75

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under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR _____ AND THAT
CS FOR _____ DO PASS

"and" recommends it BE REFERRED TO THE _____
COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

<u>Susan Sullivan</u>	_____	_____
<u>James Thomas</u>	_____	_____
<u>Helga Boies</u>	_____	_____
<u>Edgar Ostrom</u>	_____	_____

Members NOT concurring in the Majority report:

<u>Blank</u>	recommends: <u>No recommendation</u>
_____	recommends:
_____	recommends:
_____	recommends:
_____	recommends:

Susan Sullivan Chairman



JUNEAU ALASKA

Alaska State Legislature

House

HESS COMMITTEE MEETING

MAY 19, 1975

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Ostrosky	

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HB

509

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

Sue Sullivan
333-6412

file 509
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JUNEAU, ALASKA 99801
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MEMORANDUM

November 20, 1975

SUBJECT: Meeting of Mortuary Science Subcommittee
TO: Interested Parties
FROM: Billy G. Berrier, Staff Attorney *BGB*

Senator Edward C. Willis, the Chairman of the Subcommittee on Mortuary Science, has announced a meeting of the subcommittee in Anchorage at the Legislative Information Office, Suite 701, 310 K Street, to be held December 2, 1975, commencing at 10:00 a.m. A further meeting will be held in Juneau at a date to be announced.

A copy of the revised CSHB 509 and a transcript of the previous workshop held on this bill is enclosed.

BGB:cb

Enclosures

cc: Sen. Willis
Rep. Beirne
Anchorage Legislative Information Office

MORTUARY SCIENCE SUBCOMMITTEE

MEETING

Anchorage, Alaska - September 27, 1975

Senator Willis: Well it's 2:00 p.m. We'll kick off this work session. I was appointed by the Legislative Council to start conducting work sessions and what other type of public information sessions that are needed on mortuary sciences. As you know, during the first session of the Legislature H.B. 509 was introduced by Representative Beirne at the request of a number of concerned people in the mortuary business. It was felt by the Legislative Council that some interim committee work should be done, and therefore I was assigned to handle it. Today we have just got to schedule it as a work session. There are a number of folks here, I guess quite candidly more than I expected that would be here. We will take the remarks of those of you that are prepared to let the committee share the benefit of your knowledge and experience and comments. So we will handle it more or less like we would a public hearing -- we'll let each and every one of you that want to testify, testify. Give us your name, perhaps a thumbnail sketch of your background, and whatever information that you feel would be beneficial to the Legislature. Now these testimonies from the work session will be transposed in the form of minutes. It will be made available to the other committee members. Representative Beirne in particular. She regrets she couldn't be here, she was detained outside. It will be made available to such of the legislative committees in the House and Senate that will probably conduct the formal hearings, if indeed we proceed to that particular point. Now this is an assignment that was made by the council. I'm not sitting here in a position of advocacy. I'm here to listen, take your testimony, and transmit it to the appropriate legislative committees for review. And with Mr. Berrier here, who is the attorney for the Legislative Council, together we will make our recommendations. Are there any questions before we proceed?

Bill Berrier: Could I make one procedural comment? Since this is being taped, each time you speak, not just the first time, if you could identify yourself so that the person transcribing will be able to tell who's talking. It makes things enormously easier.

Senator Willis: Okay, with that background, who would like to

be first? Shall we just start and proceed right around the table?

Lee Moeglein: My name is Lee Moeglein. I'm a graduate of the University of Minnesota in Minneapolis, Minnesota, class of 1964. I have a degree to practice mortuary science. I've been licensed to practice cremasorics in Minnesota since 1965, after one year of internship there. I moved to Alaska in 1970 after five years of practice with my father, who is also licensed and has two funeral homes in Minnesota. I've been at Evergreen Memorial Chapel since that time, for the past five and a half years. I'm the son of a funeral director, and I've spent all of my life living in or near a funeral home, and I think I'm accutely aware of some of the problems that exist in funeral service today.

My reason for being here this afternoon is that I'm here to answer questions and to testify to the best of my ability on H.B. 509. Since Richard Rome and I are largely responsible for its content, along with counsel. I'd like to confine my remarks to the licensing and the practice of mortuary science since I don't want to be redundant, and since Mr. Rome, who is on my left, is going to comment on some other aspects such as the pre-need trust agreements and disclosure of funeral costs. Since coming to Alaska in 1970 I've been aware of some of the shortcomings of the laws and the rules and the regulations that exist here because of some of the problems that come up here.

Such as the current law in embalming legislation which is on the books here in the state enables the Department of Health and Social Services to provide rules and regulations for the licensing of embalmers only. And there is a whole (inaudible) of funeral service which is left unregulated. The current law in the state enables the Department of Health and Social Services to provide rules and regulations. There is a Department of Revenue which issues the licenses, and there are no provisions for suspension or revocation of a license, only issuing them. The current law in the books establishes the lowest qualifications in the United States, even though the Alaska administrative codes sets other standards, 844.010 which is the current enabling legislation has a reciprocity cause which enables anyone from any other state in the union to receive an Alaskan license. While we in no way want to restrict competition, I think Alaskans deserve better than the lowest standards in the nation. And finally, there are currently no penalties for unethical practice in the current statutes.

The goals that we set when we sat down and began to work on this material were several. The first was that it be a single license. That it would be issued by the Department of Labor and administered and enforced by the Department of Health and Social Services, and that it cover all phases of funeral service and not just embalming. After some discussion with people in the Department of Health and Social Services and other people in the state government, since we wrote this I've become con-

vinced that perhaps the Department of Commerce, Division of Occupational Licensing would be the proper department to handle this sort of thing, since they are set up to do this sort of thing and they administer licenses in many other occupations.

Another of our goals was the issuance of that license to all current valid holders of Alaskan Embalmers Licenses and to others who can qualify under new regulations.

Our third goal was to protect the public interest and in no way attempt to restrain trade or restrict competition by qualified practitioners.

Another goal was the issuance of a funeral establishment permit by the state to qualified parties so that not only the people who are working in the establishment, but also the people who own the establishment, should come under regulation from the state.

And a final provision was for permits to handle human remains in those areas of the state not served by a funeral service practitioner excluding the practice of embalming. Many are doing so for hire or pay.

What we came up with is based on model legislation which is proposed by the National Funeral Director's Association and is patterned after laws in the states of Oregon and Minnesota, where the track record for such legislation is excellent, and it's tailored to meet some of Alaska's very unique problems. I think it's a good law, I think it's the best we could write with the limited experience that we have with such matters, and with the help of counsel. We had hoped a bill would be forthcoming from the administration and we were told last year that it would be. But as time went on we began to realize that nothing was going to happen in the last session of the legislature and probably would not in the next. We decided that if it was going to happen that we would have to do it ourselves. I'd like to thank you for your time this afternoon and for considering our proposal, and I'd be glad to try to answer any of your questions concerning it. Thank you.

Senator Willis: Thank you. I'd like to introduce Representative Susan Sullivan who is chairing the House Health, Education, and Welfare committee, and very likely a bill such as this would arise in her committee. Okay Mr. Moeglein, the bill then 509, as we probably have it, you support that bill pretty much as it's written then?

Lee Moeglein: Yes. There are a couple of small exceptions. It was rewritten slightly and there are a couple of small exceptions, but generally, yes.

Senator Willis: Susan do you have any questions at this time?

Representative Sullivan: I wondered if there was anyone here representing an (inaudible) who might explain why the Governor failed to introduce this legislation.

Lee Moeglein: I wasn't aware that the Governor would do it.

But we were told by the Department of Health and Social Services that they were working on it, and that they were going to do it -- and I don't know why it wasn't done.

Representative Sullivan: I had one other question. As far as regulation of the owners of establishments, what kind of regulations did you envision?

Lee Moeglein: Only that the establishment that they own be placed under regulations so that if there were violations of the ethical practices which led directly to the ownership of the establishment that the permit could be evoked.

Representative Sullivan: And so then it would just require that they abide by the ethics of the business. Not have any particular expertise other than that.

Senator Willis: Okay. Thank you very much Mr. Moeglein. Okay, would you in turn go?

Richard Rome: I'm Richard Rome. I'm a licensed embalmer in the State of Alaska, holding license number 117. I'm a graduate of the University of Minnesota, College of Mortuary Science, class of 1955. I received a license to practice mortuary science in the State of Minnesota in 1956 after serving a year of internship in that state. I currently hold a license to practice in Minnesota and in Alaska. I have been actively involved on a full time basis in the funeral profession in Alaska since March of 1959.

I wish to speak to section 3 of the Alaska Statute 455471, paragraph 22 of House Bill 509 as it relates to pre-need and pre-financed funerals. This section of House Bill 509 was a redraft of legislation that was proposed to me by the legislature. It comes from statutes currently in use in the State of Minnesota and is very similar to that in use in several other states throughout the country. Forty-three of our fifty-one (which includes the District of Columbia) states have seen the need to place control of some type on the sale of pre-need and pre-financed funerals. That alone says something about its need to be controlled. In December of 1974 at a general meeting of the Alaska Funeral Director's Association we were advised by the Consumer Protection Department of the Attorney General's Office that the state has concerns in this area and that they would be drafting legislation concerning pre-need funeral contracts. The State of Alaska is in boom times as you are all well aware. Many promoters of various and sundry schemes are in Alaska to try to glean some of the pipeline money. The uncontrolled sale of pre-need and pre-financed funerals is fraught with the possibilities of fraud by unethical promoters. Even those trying to provide a legitimate service could find that through mismanagement due to inexperience or for whatever reason, when they have the use of substantial sums of money over a period of several years with no requirements for entrusting that money, could find themselves unable to perform, and the public thereby the loser. Another reason for enactment of this type of legislation is economical also. It is only reasonable that any contract sold by a salesman on a commission basis would add to the cost of

providing the merchandise and services. The salesperson injects just another middle man into the traditional funeral director - client relationship. Any argument referencing restraint of trade by the enactment of this type of legislation is unfounded. The sale of pre-financed funerals cannot increase the number of funeral sales. As is obvious, funerals are directly controlled by the mortality rates, something no one has any control over. It is only a matter of when the public will pay for the funeral, no new business is available to be restrained.

Section 3 of this House Bill, the same section I am speaking of, is inadequate as written for the following reasons in my estimation. Number one: there is no clear specification as to what percentage of the money that must be entrusted. Secondly, there is no specification as to who receives the benefit of the accrued interest on that entrusted money. Thirdly, there is no specification on the availability of funds to the buyer wishing to terminate the plan, or as to what amount of the payments made and interest accrued may be returned to the buyer or retained by the seller. My fourth point is that nowhere does this section come under the suspension and revocation of licenses as set out in section 84290 of H.B. 509. If convicted under A.S. 455471 for breaking the law it is not a felony, so those in the funeral profession would not jeopardize their license by participating in any illegal acts covered by A.S. 455471. Revocation or suspension of a license to practice mortuary science must be jeopardized by the breaking of the law regarding pre-need and pre-financed funerals in my estimation. I will read the law as I feel it should be enacted with the admonition that it somehow fall under the jurisdiction of Chapter 42 Morticians. I'll title this "Pre-need Funeral Plans", and it reads as follows: "When prior to the death of any person, he or someone in his behalf makes or enters into a contract with any other person relating to the disposition of his body upon death whereby certain personal property will be furnished or the professional services of a mortician will be furnished, the person receiving money under such contract shall deposit all of such money within fifteen days after its receipt in a banking institution, the deposits of which are insured by an agency of the United States of America, as a separate trust account in the name of the person depositing such money as trustee for the person who will receive the benefit of the personal property and services upon his death. Such money and any interest accrued thereon shall be held in trust until such contract is performed according to its terms, or until such money is refunded to the person who will receive the benefit of the personal property and services upon his demand, and any portion of such money not used in the performance of such contract shall be paid to and become part of his estate." I'd like to give you a copy of that Senator. At this point I would be willing to answer any questions or clarify any statements made regarding my position on this. And I should indicate too that this is not only my own personal desire to see this law enacted, but it is that of about seven or eight funeral directors in the state who have read it and agree with it.

Senator Willis: I understand that Alaska is one of the few states that doesn't have a law governing this pre-need.....

Richard Rome: That is correct. I think one of seven states. Is that the correct figure? It is one of seven states in the United States that has no law with reference to pre-need control.

Joseph Ireton: Wouldn't the Securities and Exchange Commission have something to do with this?

Richard Rome: I don't believe that the Securities and Exchange Commission would be involved. I can't give you a positive answer on that.

Representative Sullivan: I'm sort of one step behind on some things I think, but when you were talking about there's always a finite amount of funerals, I'll agree with that, but in quantity you'd be finite, but in quality it might not. If a person had the foresight to purchase pre-need funeral services they might be able to afford more than the....

Richard Rome: Susan, I think that might be a fallacy in thinking. I don't know how anyone in the funeral business could pay a salesman a 15 or 20 or 30% commission, whatever it may be, out of the money that is paid for a funeral at a lesser rate than a funeral home that does not have to pay that 15 or 20 or 30% commission.

Representative Sullivan: I wasn't proposing that they might be able to get it cheaper, but just that there's obviously a great variety in the kinds of funerals that you can have. You can have a simple one or a quite elaborate one. If you had some foresight you might be able to afford an elaborate one.

Richard Rome: I think this would clarify that for you. This law does not eliminate or does not get rid of the possibilities of families pre-arranging or pre-financing funerals. We have in our files at our mortuary many pre-arranged funerals. Families who have come in and told us this is what they want, this is how they want it done. Some have given us money. That money is in trust in their names in local banking institutions. When they want to back out of that, if they move and go to the south 48 states, they come to us and say "We want to go." We say "Fine, let's go down to the bank and get your money and interest," and you go. They have paid for absolutely no service. I have provided no service for them other than sitting down for maybe thirty to forty-five minutes with them and talking about the funeral. And I think any funeral home or funeral director in the United States would be more than willing to spend an hour of his time with any family at no obligation to them to discuss future funeral needs. This does not eliminate that at all. Minnesota has a law almost exactly the same as this one is written. Pre-need or pre-arranged funerals are very common in that state. Most every funeral director in that state has a file of many pre-arranged funerals. So it does not eliminate the person who

wants to pre-arrange a funeral from going into a funeral home, sitting down and pre-arrangeing that funeral, saying "This is what I want."

Representative Sullivan: (Inaudible) incentives to a funeral home in offering this service.

Richard Rome: Well I think it's a matter of the funeral director is in a, I don't know how to exactly word this, but you're there serving people and the only thing that you have to offer those people is service. If you are willing to take time and talk to people and arrange funerals, pre-need or otherwise, the hope is of course that anyone who would pre-arrange a funeral with you would sometime at a later date, at the time of need, come in and make their funeral arrangements with you. Thereby you would have a funeral for which you could make a profit. Now I don't think there is anyone in this room that would say that pre-need sales or the funeral industry as such is not a profit making business, nor is it a business that's not -- that the incentive is profit, a portion of the incentive. That has really nothing to do with that law.

The gentleman there, did you have a question?

Bill Berrier: One of the points you raised Mr. Rome I think creates a definite technical problem with the bill. Let me point out that this section is put in 455471 because this is a consumer protection statute. The title 0842 would effect only persons who are licensed. It would appear that there's a possibility that such plans could be sold by persons other than licensed morticians if this were only in a mortician's licensing statute. And it would also appear that if you'll look at page five, line twenty-one, Violation of the state law, regulation or municipal ordinance or regulation effecting the disposition of dead bodies. A violation of 455471 would be grounds for revocation of a license. Do you feel that it's safe to have this pre-need thing apply only to morticians or should it be under consumer protection so that you could apply it against other people?

Richard Rome: Bill I think that this needs to apply outside of the funeral profession, but I am concerned that it apply also inside the funeral profession to say, to those of us who are in the funeral business, the funeral industry, the funeral profession. That if we are going to violate that statute, we are not only going to get a 90 day jail sentence and a \$5,000.00 fine, we are going to lose our license to practice, and that's what I want.

Bill Berrier: This is the case as the law is written. Look at 084209012. It is grounds for revocation of a license.

Richard Rome: Bill would that, that says, the concluding five or six words is "effecting the disposition of dead bodies" does

that relate on a pre-need basis?

Bill Berrier: I would read it as relating -- I can draft that that section stronger. But the basic point is, you had suggested moving it entirely back, and I feel that you might be losing a great gap if you did.

Richard Rome: My real concern, maybe I was not correct in the way I worded it, but my concern was that those in the funeral industry if they violate that statute A.S. 455471, are not only going to get the consumer protection sentence, so to speak, but they are also placing their license to practice in jeopardy. And that's what I'm concerned about, that it be somehow connected.

Senator Willis: Does anyone else have questions for Mr. Rome so we can...? Thank you very much. Okay, would you care to testify sir?

Tom Gregoire: My name is Tom Gregoire, and I was licensed in the State of California after attending California College of Mortuary Science in 1971. Since that time I've returned to Alaska which is my home state. I was born and raised here and I have currently an Alaska State License. I am in partnership with another gentleman in this city and we operate Gregoire-Neill Funeral Home. And at this time I'll reserve any further comment until a later time as we have many...

Senator Willis: All right sir, thank you very much. Yes?

Fred Witzleben: I'm Fred Witzleben, graduate of the Indiana College of Mortuary Science. Licensed in the State of Indiana, and associated with the funeral business since 1962. Today I'm going to be speaking as president of the Division of Funeral Directors, the Alaska Allied Funeral Services Association. The chairman of our association, Mr. Fred Kehl, is out of town and unable to attend today, and he asked me to bring this letter to Senator Willis.

Senator Willis: Thank you.

Fred Witzleben: It has been discussed and rediscussed many times with the members of our association regarding H.B.509 as it presently is written. Now we would like to make a statement to the effect that none of the members of our association, of which several are former members of the Alaska Funeral Director's Association were given the opportunity to review any proposed legislation which was submitted by Mr. Rome, which does affect every funeral director or embalmer in this state, or ultimately might. It is for this reason that the majority of all of our members, with the exception of Mr. Kehl, have come from great distances, from Juneau and Fairbanks, to be present today for this hearing. Our primary objection to H.B. 509 is the term "mortuary science". We feel that mortuary science suggests that one must be scientific, example: have a clinical background to function in funeral service. You do

not have to have a license to be a pharmacist to own or run a pharmacy, or to talk to the people. The skills required to be an embalmer and a funeral director vary greatly. And there are many embalmers who are excellent embalmers only, have no personality or capability of talking to a family and making arrangements. The same is true with funeral directors who are very capable of making arrangements and functioning in an administrative capacity but are lousy embalmers, and could care less if they ever embalmed. If this bill is enacted the way it is presently written, the cost to the consumer will be prohibitive if only school trained licensed embalmers from an accredited college of mortuary science will be allowed to practice in this field. At the present time, with the exception of one or two firms, we all find great difficulty in obtaining help in Alaska. We agree that the requirements need to be updated. There need to be some improvements, but we don't need to put ourselves out of the employment market by requiring what is presently written in H.B. 509. That primarily is in section 084220.

Also in going through H.B. 509 in section 40, where it's the applicant for license to practice mortuary science, in line 9 it had "by at least two reputable residents", at this particular point it is asking for a judgment by the legislature or by the department who is going to be administering this.

In section 50 where it goes on for qualifications to practice mortuary science, the legal age in Alaska was lowered to 19 years several years ago. If somebody has the educational background, and has completed the prescribed courses to meet the requirements by age 19 we feel they should be entitled to be licensed or to take the examination.

Also under section 50, subsection 6. This says "have completed at least one year apprenticeship as a resident trainee under a mortician licensed to practice mortuary science in this state." This is the only place in this bill that it brings out the word "apprenticeship". There is no place else in there setting up any requirements for apprenticeship, training agency for apprenticeship requirements, or anything having to do with apprenticeship, whether it be through embalming or a funeral director. This would be like walking on eggs, and there'd be nothing underneath you.

Under section 70 in here, reciprocity, it goes on to list the requirements for reciprocity. Subsection 2 "to prove satisfactorily to the department that he is over 21 years of age, of good moral character, and that he is licensed in another state, and that he has practiced mortuary science in another state for one year preceding the date of application." This again is going to restrict the funeral homes in this state from receiving help. If somebody has taken it upon themselves to take a leave of absence from practicing in the business and they hold a license in another state, or if they come up here to work on the pipeline as an example and they decide from the previous twelve months they have not worked in the state they can not be license under a reciprocal agreement. I don't know of any state that has an agreement like this, unless it would be Minnesota.

On section 90 "Grounds for refusal to issue or renew licenses and suspend or revoke revocation of licenses". It says "When the department has reason to believe that an applicant or licensee has

has been guilty of any of the following acts or omissions is filed with the department." This is leaving too much to the department to take it upon themselves at the complaint of one firm who might have sour grapes to close somebody down without the process of trying to hear what the complaint might be or to defend yourself. Additionally, in the same section you go to item number 8 where it says "solicitation of the dead human body by the licensee, his agents, servants, or employees when a solicitation occurs before or after death." There needs to be a more defined definition of "before death" than what there is here. Before death is any time. We're all before death at the present time.

The funeral establishment permit. It's our opinion, and the consensus of our group, that the funeral establishment permit is going to be another fee to increase the cost to the consumer. We would like to see this dropped because you do have a permit, you do have regulations covering grounds for revocation and suspension of a license.

We feel that under subsection 110 the definitions which they have are only four. We find this quite deficient in defining what presently might be. There is no definition of what a casket is. There is no definition of embalmer, embalming, funeral director, funeral directing, solicitation, or any other number of items which do need to be defined by a state to be able to appropriately enforce any regulations that would be adopted.

Going to the cost disclosure section. We find this totally lacking because it does not disclose anything to the consuming public. Additionally, it says "Every person performing services or providing merchandise relating to the disposition of a dead human body shall give to the arranging for the disposition at the time the arrangements are completed and before the time of rendering the service or providing the merchandise a written statement showing the extent then reasonably ascertainable the price of the services and what is included, the price of each supplemental item, the amount for each item, etc." The area here "at the time the arrangements are completed and before rendering service" -- the minute we answer our telephone we are rendering a service. Under this law it would make it illegal for us to even go out and make a removal of remains before we had a complete funeral arrangement for the family. It says "the price of the service and what is included" -- this is totally left up to the funeral home they are dealing with. It can be a unit price, it can be a bi-unit price, it can be a function or an itemized pricing system, there's no criteria set out. The only thing that's set out is supplemental items that would be done. Any cash advancements would be listed, and the method of payment. The association has tried to work to establish, and to write new sections if we could, to help bill 509 as it presently exists. We found the changes to be in such a multitude that we have drafted a proposed substitute to H.B. 509 which we would like to give to the chairman.

Senator Willis: Thank you.

Fred Witzleben: We feel that at the present time to avoid putting alaskan funeral homes out of the employment market for

outside help, where we all have to look for our resources for employment at the present time, we feel that dual licensing system in this state is a necessity. To license embalmers and to license funeral directors.

Additionally in our bill we have set up along the guidelines of H.B. 509 as it is presently written, requirements for practicing mortuary science and for practicing embalming, the educational requirements to apply for an apprenticeship program or practicum training in either funeral directing or embalment, the scope and examination of the licenses, and the exam or the test that would be given.

Reciprocity to be expanded and not to discriminate on a twelve month not working before the fact basis.

We have set up proposals for an apprenticeship training agency, for licensing permits, that will follow along the lines of the refusal to issue or renew licenses or permits.

We've adopted quite a few of the sections of the present administrative code to cover the requirements of the funeral establishment, the care of the remains, transportation of the dead, the requirements for the funeral establishment and what it must have. We went into quite length of defining definitions as to what there would be. To try to avoid any conflict or use of semantics. To spell it out as entirely as we could. There are a few areas in the proposed bills that there have been amendments and additions made this morning that we did not have time to totally incorporate into the body of the bill. And there is a section of the amendments listed on the back and it's notated where they would be. We have also put on a suggested amendment to the cost disclosure which would make it mandatory that there be some form of itemization breaking it down to three or four areas. One -- the professional services, second -- the use of the mortuary facilities and equipment, third -- the casket manufacturer's description, and the retail price listing all supplemental items, listing all cash advancements that you know at the present time, and the terms and methods of payment, and requirements for the contract which would be signed by the purchaser and the person providing the services, and for the amount of time that this would be retained in a file for state inspection.

If you have any questions I'll be glad to try to answer them.

Senator Willis: Bill do you have any questions from the legal or..

Bill Berrier: Yes, if I might. A couple questions, these are procedural. You realize I've just gotten this and I haven't had a chance to examine them. The one thing that I wondered, I noticed that in certain areas, I was thinking specifically of your 0842130 transportation of the dead...Would you feel, and this goes from time to time, would you feel that this should be statutory law or regulation? The difficulty that I'm thinking with putting these kind of details in the statutes is that you have great practical difficulty keeping up with the state of (inaudible) advances. So I'm not sure really if it doesn't, really I don't follow the idea of course, I just skimmed them,

but is this a matter of property, should this be in the statutes, a permanent law that you actually have to amend the statutes rather than just have the department issue regulations changing...

Fred Witzleben: These are pretty much standard, and they have been standard for quite a number of years.

Bill Berrier: This is not the kind of thing that's going to change drastically as the state of (inaudible) changes?

Fred Witzleben: No, it's not.

Not Identified: For those of us who are laymen, what procedures now involve a person to be able to practice mortuary science, if maybe that's a misnomer but to be an embalmer or...

Fred Witzleben: To be an embalmer you have to be a graduate of an accredited college of mortuary science and be licensed by the State of Alaska or practices (inaudible).

Representative Sullivan: And to be a funeral director?

Fred Witzleben: There are no requirements set forth at the present time for funeral directors.

Representative Sullivan: Do you feel that there should be?

Fred Witzleben: Yes I do.

Representative Sullivan: And they should be different from that of an embalmer?

Fred Witzleben: Correct they are two entirely different skills.

Representative Sullivan: Are embalmers bonded or anything like that?

Fred Witzleben: No they're not.

Representative Sullivan: Do you think funeral directors should be?

Fred Witzleben: Not if they're licensed. They'd be working for an establishment, they wouldn't necessarily be free lance.

Representative Sullivan: The establishments are bonded are they?

Fred Witzleben: They carry their professional liability insurance which would cover them for any wrong doing or omissions.

Senator Willis: Okay, Mr. Rome.

Richard Rome: I have a few comments on what has been said. A lot of what he's said is, we are in complete agreement with as far as I'm concerned. Some of it I think needs some clarification. I think when we look at H.B. 509 I have to say that this is not

the bill that we submitted to Helen Beirne to be drafted and to be placed into the legislature. I have a copy of the bill right here that we submitted. Now many of the things that are in the bill that we submitted to Helen Beirne were removed from H.B. 509 when it was rewritten, or were watered down or taken apart in one way or another, reworded so that our intent, original intent, was altered somewhat.

Speaking first to the statement that the funeral directors in the state did not have a chance to review this, I can only say that that's very true, they did not. But there were several reasons for that. We had decided at the Alaska Funeral Director's Association meeting that we wanted to do something on the licensing laws and we were told at that time by Consumer Protection that the Attorney General's Office will prepare a new licensing law which will incorporate many of the things that we've discussed here today, and that it would be forthcoming to the legislature. After two or three or four months, I've forgotten just the time schedule now, nothing had come from Juneau. I made several telephone calls to Theresa O'Connell, who was working for the Attorney General, who is a member of the Attorney General's staff, trying to find out the progress on the bill. She kept telling me "It's ready to come out, it's ready to come out, any day now, we're going to have it together and it's going to be there." "Well what's in it?" "Well we can't tell you anything, you can't see the bill until the bill's written." So as you know, Alaska's a large state. We stretch from funeral directors as far south as Wrangell and Petersburg to Fairbanks. It's great expense for these people to travel back and forth, to try to get together, to sit down, to put a bill together, the magnitude of which this bill is would have entailed I'm sure seven, eight, ten meetings before we could get down and say "Hey, this is what we finally want, this is what we want to put through." I went to Juneau to talk to Theresa O'Connell, could get no answers whatsoever. I talked to several legislators in Juneau, and the thing that I kept hearing from the legislators was "Look if you want a bill to get into this session, to get it out for the committee, do it yourself or it isn't going to get done." So I came back to Anchorage and I wrestled with this thought of trying to get everybody together and knowing procedures on bills of this magnitude they aren't something that you're going to railroad through the legislature. You're not going to put it in and say "Here it is -- it's in this committee today, tomorrow it's law." It just doesn't happen that way. So after talking with Lee and Dave Frank a little bit about it we decided that we would go to an attorney here in Anchorage at our own expense. We would tell him that these are the things that we feel should be in the law, and these are the things that are presently in the law that we feel are good, these are the things that the consumer protection people have told us we should have in a law if we're going to put out a new law, and we left it to him to draft. Now he took, as I mentioned before, Minnesota statutes, Oregon statutes, Alaska statutes, and the N.F.D.A. (that's the National Funeral Director's Association) model legislation on licensing. He tried to put them altogether into a package that would be a good package.

After working with him for some two or three weeks on this bill we finally came up with this draft of which I believe you have a copy Senator and I believe you also Mr. Berrier do you not? And we took it to Juneau and Helen Beirne. If you've been to Juneau you know what a mad house it is to try to get somebody to sit down and go through an eight or ten or twelve page bill with you step by step and piece by piece it's -- you don't do it, that's all. So I had to leave it to Helen to say, would you, you know, submit this bill for me? I did not say "Submit this bill for the Alaska Funeral Director's Association" I said "Will you submit this bill for me? A funeral director in the State of Alaska." She did that and I believe it was given to Mr. Berrier, if I am not mistaken, and he drafted it into the wording that the State of Alaska uses in drafting their legislation. In that translation, to my estimation, some things were left out and some things were improved. But that's the story on how the bill got to Juneau. So this is how H.B. 509 is not the house bill that I submitted to Juneau. That's number one.

Secondly, I have a couple of things that I would like to comment on. As far as section 40---applicant having two reputable persons sign the license, or sign for you. This is currently in the administrative code, in the State of Alaska it's fairly common practice throughout the United States to have two reputable people stand up and say "Hey, this guy is morally all right, I've known him, he's not a bad guy, and I think that he's well qualified." I would not be terribly upset if that were removed from the law. It's just something that we felt we felt was there and had some good points to it, so let's leave it in.

As far as the legal age is concerned I have drafted a letter to Billy Berrier some time ago in which I mentioned that the legal age had been changed in Alaska, and that as far as we were concerned if people could meet those qualifications set out in the licensing statutes by the time that they have reached the age of 18 or 19, whichever the legal age is, I'm not sure now, fine -- Give them a license. So I have no qualms about that whatsoever.

Resident training is a portion of the law in which translating it from what we submitted to what Billy Berrier finally wrote was completely left out. We had an entire section there as far as resident trainee which simply was an apprenticeship program that could be served following your schooling, come to Alaska right out of school, serve a year internship, get your license. And it was left that those rules and regulations concerning that license be promulgated by the Department of Health and Social Services or in this basically what we're concerned, what we've changed our tune to, is that it be done by the Department of Commerce, the Division of Occupational Licensing which has the staff, the attorneys, the investigators, the people to handle that type of thing.

Reciprocity -- Section 70, subsection 2 -- one year of work. The thinking on that was basically that rather than having a man come directly out of, no this I'm sorry, reciprocity was a licensed man. I have no qualms about having them come to work for funeral homes in Alaska if they hold a license in another state. I, to be very honest with you, I don't recall what our thinking was at

the time we put that into the law along with talking to our attorney.

Suspension and revocation, some comments made on that.... In Alaska we have no one except the State of Alaska, right now the Department of Health and Social Services, that can control in any way, shape or form, the people in the funeral industry. We felt that the state was too small to go to Juneau and ask that we have a board for morticians, funeral directors and embalmers who would establish and take under advisement certain problems within the funeral profession and make decisions on it. We're just too small a group to do that. We felt it would be best to leave it in the hands of the state who do not, you know, who can look at it objectively without saying "Hey, if I get this guy, there goes my competition." So we said "No, let's do it away from a board, let's leave it in the hands of the licensing people, who have investigators to look into things and take care of the problems that come about."

As far as solicitation before or after death from N.F.D.A., that particular item came from model legislation from the National Funeral Director's Association. I agree with Mr. Witzleben 100% --it should be defined, and that was one of the things in the translation again that was on definitions. There are just not enough definitions within the current H.B. 509 to keep us honest. And I think that there is a lot of room for definitions, and in my letter to Bill Berrier I said "Let's not worry about wasting a little paper defining things. Let's get the definitions down, let's get it down in black and white, and make sure that we know what we're doing."

The cost disclosure law, that's another ball of wax. As you all know, we're under great scrutiny by the Federal Trade Commission, a lot of it unjust, some of it just. I think for the most part funeral directors throughout the United States are honest and concerned people who are there to serve the public and take care of the needs that are required by them. I don't think we're there to get the last dollar that we can for the funeral, sell the big bronze casket in the corner, get the last buck, whatever way we can. And I doubt if there's anybody in this room that's a high pressure salesman, who would back a family into a corner and try to move them into something better. I just don't believe it. The cost disclosure law that is in this, again was given to us by the General Council of the National Funeral Director's Association recommending to us that this was a good itemization law---it leaves it open to the funeral director, leaves it open to the point that he can use some discretion in itemization.

Now itemization can be a real headache, not only for the funeral director, but for the person you're serving. And when you have to sit down and go through sixty-five items, one by one, and say "Do you want it? Don't you want it? Do you want it? Don't you want it? Do you want it? Don't you want it?" You're going to find that after about thirty minutes that person is going to go right through the roof. The people are in the minority who are extremely concerned. When they walk through the door that they say "How much for that? How much for that? How much for that?" Most people that come in want to know what the casket costs, how much are your services, and what are the casket outlays, and how do

I have to pay for it, and, you know, put it down on paper. We believe that that disclosure law does that. And it doesn't tie us down to itemizing each and every, you know, I used four flower racks rather than three, so that's fifty cents off, you know. It's just-- that's a bit far out, and I'm sorry for taking your time saying things like that, but that's the type of thing that itemization can lead to, and another thing itemization leads to is higher cost. Funeral directors have to cover their overhead costs one way or another. So if you're finding an item that isn't being used, you're going to have to charge much more for an item that is being used. Thereby those people who most generally use that item are going to pay more for it. I think that's all the comments I have. Thank you.

Senator Willis: Mr. Witzleben, would you care to...?

Fred Witzleben: Yes. I'd like to go back to the section 90 again, which covers the grounds for refusal to issue. The area there was leading up to the department of reason to believe, we believe is a violation of our due process. Before it goes to the administration to the (inaudible) procedures act and back to the cost disclosure bill, I have to disagree with Mr. Rome that it's going to cause higher prices. Possibly it might cause higher prices to an extent that what you're not using. But why should that family be charged for what they're not receiving under an itemization cost disclosure type of bill. If a family does not want to use a family car, they should not be charged for a family car. If they want to come to pick the remains up in their own station wagon or pickup truck, they should be entitled to do that, and not be charged for the use of a first call car or service car. The same way with chapel service, and number of things. Granted we have to meet our overhead, but if we have to hide our costs in meeting them then that's why we do need legislation to disclose the costs, to prevent families from being over charged.

Richard Rome: A point of information there, the law still reads that it has to go through the administrative procedures acts on the refusal to (inaudible), it's just that...

(Unidentified Person): Okay Mr. Witzleben did you have any...?

Fred Witzleben: Yes, again on that, on the administrative procedures act, that's correct it does utilize it. It's only after that the department can put a complaint by just anybody without having to prove that there has been some act, or gone through the due process to go into the administrative procedures act.

Representative Sullivan: What was your alternative to that?

Fred Witzleben: We deleted the area on the 0842090 where it says "plan the department has" to line 19 where it says "department column". We just deleted that section. And started out "It is the duty of the department to conduct an investigation."

Bill Berrier: I have a technical question. I looked at these because I was interested in the distinction you're making, and I think the distinction you're making -- I also think it's important drafting -- you have no precondition on the duty. It would seem that the problem which you are directing to is the language starting on lines 17, page four, starting with "or" and ending with a comma. Your sentence doesn't have an effect, a conditioning clause and it appears that the deletion of that is what you're, is the part where you're directing your remarks to, the deletion of that qualification, did I understand you correctly?

Fred Witzleben: Okay, that's right, I see your position on that.

Senator Willis: Okay, the gentleman on the end?

(Unidentified Person): I have a question to direct at Mr. Rome. You stated that after you had drawn your proposed bill you took it to someone in Consumer Protection who told you this was the type of law Alaska needed. Who was that person?

Richard Rome: Jim I don't think I said that I took my law after I drafted it to the consumer protection people, no, I did not take my proposed bill to the Attorney General's office, I did not. What I said was that at our meeting with the Attorney General's office the consumer protection people told us that a pre-need type of legislation is needed in Alaska. Not necessarily the one that I proposed, but this is the one that I did propose, and I did not take it to the consumer protection people, no.

Lee Moeglein: I have a question to ask Mr. Witzleben. Do you have any statistics which indicate that increased educational standards lead to increased cost in the funeral service? You made the statement earlier that it would lead to higher cost, do you have any statistics which would indicate that?

Fred Witzleben: That's one of the common sense factions Mr. Moeglein, in the fact that the more education you have, the more you're going to end up having to pay somebody.

Lee Moeglein: I don't think that's necessarily true, and I think that if that were researched I think that maybe the opposite would be found to be true, because there are other things that go into pricing and cost besides how much education you have. There are (inaudible) morality and ethics, and that sort of thing.

Senator Willis: Okay, are there...? The gentleman...

Ken Burton: My name is Ken Burton and I'm associated with the Bruce Funeral Home, and I'd like to direct a question to Mr. Rome. You mentioned that the bill that has been presented

here today is not exactly the one that you submitted.

Richard Rome: That is correct.

Ken Burton: Would I be right in assuming that you are in favor of the bill the way it is now? How it has been presented?

Richard Rome: You are not entirely correct. There are portions of that bill which we do not see eye to eye with as it is written, that we would not want written that way, and I think that from what Mr. Witzleben has brought out that on the majority of things that he has indicated, that we are very susceptible to working out something that's agreeable to all.

Senator Willis: Okay, are there any other questions?

Fred Witzleben: I have one. I would like to reiterate the fact that our proposed substitute, this does have the unanimous support of everybody involved in the Division of Funeral Directors and the Division of Memorial Parks of the Alaska Allied Funeral Services Association. Thank you.

Amos Neill: I would like to ask a question of Mr. Rome. You mentioned the seven or eight funeral directors agreed to this proposed legislation, could we have the names...

Richard Rome: Yes, you can. Myself, that's one, Dave Franke, Dale Rosenberg, Lee Moeglein, Bob Britt, Greg Jerrick, and Art Moll from Ketchikan. Is that at least seven? I'm in.

Amos Neill: This represents three funeral homes.

Richard Rome: Yes, it's very much like the Alaska Allied Funeral Services you know. There are what, one, two, three, four, four or five, maybe six or seven totally in the Alaska Allied -- it's kind of a toss up.

Amos Neill: That's seven firms.

Richard Rome: That's one, two, three, four, five.

Amos Neill: No, there are seven. There are two that are not represented.

Richard Rome: Okay. I stand corrected.

Senator Willis: Okay, are there no further questions? Sir, would you like to..?

Art Richmond: Art Richmond is my name, I'm the manager of the Valley Memory Gardens. The people who (inaudible) this particular bill is pre-need funeral sales and primarily cemetery. I've been in this business since approximately 1955. Throughout the country pre-need funeral or pre-need cemetery sales have been recognized since about 1908 starting with Forest Lawn in California.

Many people have benefited considerably by virtue of being able to purchase before need without being under the duress or shall I say the emotion of time. And the National Cemetary Association, of which we are members, and also the pre-arranging (inaudible), of which we also have members, very readily subscribe to what we refer to as the total pre-need concept. (Inaudible) the years when we first started out we sold cemetary lots. People appreciated the fact that they could do this without being under emotional strain, that they could take care of the things before the time to leave. Then there were other things that were necessary also. It was primarily required at the cemetary that some type of container, a vault or a liner or possibly even a (inaudible). We reached the point where we found in our pre-need sales -- now I'd like to exemplify the fact that this is something that has been done nation wide for many many years -- we reached the point where we felt that we, and speaking from the standpoint of our industry, we felt the necessity to provide the family with what I referred to earlier the total pre-need concept. And people appreciated it. As a matter of fact I used to be a salesman in the field, and in selling cemetary lots a lot of people would ask me "My that would be fine if we could take care of the cemetary lots, but what about the outer containment, what about the markers, what about even the funeral service? It would sure be nice if we could sit down today and get the whole thing taken care of, and save ourselves the emotion of going through this thing and exposing ourselves to possible exploitation at the time of emotional stress." Well as a result of that certain associations throughout the company and throughout the country developed the total pre-need concept which includes the sale of pre-need funerals. Now it is true, like Mr. Rome says, certain states have rules by means of certain influence in their state legislatures, a 100% law. Because this 100% law almost precludes the feasibility of selling funeral services before need. Now notwithstanding the comment that was made earlier that we have commissions to pay, we can sell at considerably less amount, and also pay the commissions. That is the person that we present this to. Not only that, but also to satisfy the family that the entire thing is being taken care of before the time of need which we find is one of the greatest desires.

Now our thought is this, and I'm speaking not only from our particular standpoint but from, let me put it this way, the standpoint of the Cemetary Association and the Funeral Association. The Cemetary Association are primarily dedicated to before arranged planning. Because we can provide the facilities when a person is not under emotional stress and we can provide it at a price considerably less, and also if you will, adequately funded. As a matter of fact it was suggested in the State of Hawaii when I worked for the legislature to show whereby a certain proper funding for funeral services even exceed that which is protected by the insurance funds. So we feel that as far as protecting the family is concerned that really is not the issue. I'd like to bring another point out. In 1966 (like I said, I have been in the cemetary business since '55) in 1966 I was approached by a gentleman from Denver who asked me "Look, will you give consideration to possibly approaching some of the local funeral homes and offering them a program whereby they will service pre-need funerals?"

The benefit to the thing would be it would put the funeral home on the map by means of pre-need funerals. Because it is very difficult to compete against pre-need salesmen or pre-need door-to-door salesmen." And so it becomes very obvious that it is very difficult for someone to compete. So therefore it would seem that if we could eliminate that type of competition, why we could save our position. So if we were to come up with say a 100% law to eliminate pre-arranged funeral sales, so that it is impractical for them to sell it, impractical for them to give it to the people, we would still be able to maintain our coveted position, if I may put it that way, so that at the time of death when people come to us we would be able to offer them the services we have available to them at the time of stress. Our associations are very strong on this and I am very strong on it. As a matter of fact I have in my file letters from persons who have written us that were very very satisfied. Since we've started selling pre-arranged funeral sales, I believe it was in about 1967, the families that we've serviced seem to be very happy with it. No one was ever cheated at anything, there has been adequate amounts of money funded. Not only that, but the amounts of money funded has by far exceeded the requirements to the point where it is not the issue. The point I'd like to bring to you gentlemen is this thought, is that what we're really looking at now, the question that we're looking at now is, is this really a matter of protecting the public, or is this really a matter of competition? Now I'd like to bring a point to bear. There was a court case in Milwaukee whereby there were certain funeral establishments that would price advertise. The Funeral Directors Association in that particular state and also the National Funeral Director's Association felt that they didn't think that it was proper for them to do so. That they professed to be a profession and not an industry. That an industry should by proper means compete with those who may be in competition with them. Well the court ruled, and also the Federal Court ruled, in favor that it was proper for them to advertise, that they were not a profession, but rather that they were an industry. And the fact that they were an industry that they should properly advertise their prices. We come to that point, that respecting the Federal Court decision on this matter we would come to the conclusion that it should be proper, let's say for the individual families to decide for themselves whether they decide before the time of need or whether they decide after after the time of need. The question is, what is the motive? For certain ones attempting the 100% law obviously it's to protect their individual interests. And I would like to say this, it's a case many times in our industry we have found to be the case. We find many times families come to us and they say "Well my goodness -- your prices at the cemetery, my goodness, it was only \$500.00 but we paid \$3,000.00 down at the funeral home, and we only had three days." And so, and yet we obligate ourselves to take care of them for a funeral on out by virtue of (inaudible). It is one of those things where we find ourselves engaged in shall we say possibly a conflict between the certain interests. And so the Allied Association has drawn ourselves together for the purpose of seeing if we can sit down like gentlemen and properly find out what we need to do in order to

provide the ultimate for all things involved, whether they want a pre-need, whether the cemetery's involved, the funeral home is involved, whatever it is, that these families are properly served without serving any particular interest group or without serving any particular competition. That's my comments.

Senator Willis: Mr. Richmond, so I'll understand. You represent the Valley Memorial Gardens. Is that just the cemetery part of it, or do you have a mortuary that goes with it?

Art Richmond: I have a mortuary. We are primarily a cemetery.

Senator Willis: Primarily a cemetery. Okay, Billy do you have any questions?

Bill Berrier: I don't have any questions.

Bob Britt: I have the Walsh Mortuary in Kenai and the Walsh Mortuary in Seward. In front of me I've got a pamphlet and it's printed by the N.F.D.A. In this pamphlet it has the basic data on the pre-need requirements of each state in the United States. Alaska isn't on here, we haven't gotten anything. This pamphlet I'd be glad to give to Mr. Berrier to take with him. It mentions in conclusion, it goes into explaining about pre-financed funerals etc. etc. But it says "If there are no such laws in the state where the pre-arrangement is made it is recommended that the pre-paid funeral payment or agreement including provision for a trust fund with the person making the payment maintain control of the account. The fund should include all monies paid in advance of need for services and merchandise including burial vaults. The agreement should also entitle the person in control of the trust to the interest earned with the option of applying it to the principle to offset any increase or inflationary cost. Such person making the payment should retain the right to terminate the contract at any time without forfeitures of any of the monies or interest paid on this account." All the states on the back here, and Senator they're all listed, have a control agency either banking or treasury department insurance in the state, or board of embalming, funeral directing, or none. Either permits required the amount of monies put in the trust, either 100% and the amount of monies, the income on the trust, all these monies in every one of these states are refunded in full to the families that make the arrangements. There's no sales commissions to the salesmen. There's no cemetery or funeral home that makes the pre-arrangements. They don't keep any funds for their paper work, this is something that they do, and the monies entirely go back to the family. They are not used to go out and be used as a working capital for some project or other than that they are intended for.

Senator Willis: Thank you. Mr. Richmond?

Art Richmond: In the states that have the 100% payments put in trust, are you saying that that eliminates your type of activity altogether?

Bob Britt: Yes.

Art Richmond: From the documents that I have seen, and apparently where the possibly six or seven states, this is the case.

Bob Britt: The few states that are not on there, such as New Hampshire, their associations have prohibited it. In Louisiana and Rhode Island participation in financing funeral programs in advance, it's a possible grounds for revocation of a license, on most of the other states around here.

Art Richmond: How about an 85% law state such as Colorado? How...what would happen? Suppose we had laws that allowed that? What position would it leave?

Bob Britt: Colorado and a couple of the other states that have that, the majority of the states all give the family back 100% of their monies, and I feel that's the way it should be.

Representative Sullivan: To get it back under what circumstances...

Bob Britt: Any time the family wants to withdraw those funds, whether they want to move out of the state, or they want to go to another funeral director, they've changed their mind, that money's the families. That's who it belongs to.

Representative Sullivan: And this is...

Bob Britt: And all the interest that's recorded on that and everything 100% to the family.

Representative Sullivan: And this is also true in the 85% states?

Bob Britt: And here's the documentation for you and the data for the states which I will give you to take with you.

Representative Sullivan: Now what is 85%...

Bob Britt: That is one state, Colorado, they say 85% of the moneys put into this account are refunded to the family, the other 15% are kept for making the arrangements, and so forth. But the majority of the states as you'll see on that when you look at the statistics, 100% of the monies are refunded to the family at any time the family requests. It's the family's money and it should be refunded to them.

Senator Willis: Mr. Richmond.

Art Richmond: You know you wonder if the motive...The thing that keeps coming back to me is the motive.

Bob Britt: The interests of the family are...

Art Richmond: Yeah, but if that's really the case, do you really have the family's interests at heart, you know? At the time of need, when they come in here emotionally upset, is it really not

the case that you try to sell them the most expensive service and put them in as cheap a cemetery as you can find? You know, it's not the protection of the family that is the reality. What we're speaking about here is really about economics. And it has been proven in the states that have like you say, and it's not just in that particular state 85%-15% law, but there's states, the state of Hawaii has a 25%-75% law (inaudible) a certain amount funded. No one to my knowledge in my industry has ever been defrauded on anything. The question always comes back to me is what constitutes the motive? If it has not been proven that the families have been defrauded, then what constitutes the motive? If it has not been a matter of competition.

Senator Willis: Okay. Dave Franke would like to respond to that.

Dave Franke: I would like to answer what constitutes the motive. (Inaudible) for the states, and the high percentage of the states as we see here, in all three columns that represent the 100% law, that if they did not see the need for it the law wouldn't be there. Evidently in the wisdom of an awful lot of people, legislatures in other states, also funeral associations, there perhaps have been abuse to create this. Now this isn't a new single idea that we have dreamed up by nine (inaudible). We speak with enough material behind us to support our stand, and the motives I would say would be that there has been evidence of both misuse in some areas, enough to create the laws. Now these laws generally were not created by funeral directors or funeral homes or necessary lobbying groups. The laws are enacted by people in government serving the people and the legislature. And no special group I don't believe can effect that many states to adopt the 100% law. Now if there's anything really intelligent that you can say about giving back any person his total amount of money so as not to lose money in any transaction, I don't know what you could say wrong against it.

Senator Willis: Yes?

(Unidentified Person): Along this line I'd like to make a few comments. I'll withhold them until tomorrow on the table here on the topic we're now on. However one thing I think that it's important to know right now, I have with me today a tape recording of the actual news release of the recent Federal Trade Program as it pertains to funeral practice. And I'll leave it here to be played as it was recorded at the time it was made. Although it has been pointed out, many states have laws that have been illustrated here today, by far the majority of the primary concerns of the recent Federal Trade probe was to prevent efforts to restrict memorial societies or to discourage the making of pre-need arrangements. Both of these techniques allow customers to save a substantial amount of money. The staff found a number of industry efforts within the funeral and some (inaudible) to prevent the use of these methods simply because they don't create that much profit for the industry. And I'd like to comment more

on that and the recording from the Federal Trade Bureau that (inaudible). One additional comment, they are going to extend this Federal Trade probe to (inaudible) override the various state laws that in any way would prohibit or prevent the (inaudible) to discourage making pre-need arrangements.

Representative Sullivan: Mr. Richmond could you tell me, you know down to the nitty gritty, how it is that the 100% law would not allow you to (inaudible) continue successfully in business, but I presume some alteration of that would be successful. Can you tell me how it handicaps you?

Art Richmond: We have salesmen in the field approaching families with the total pre-need concept that they (inaudible). They take care of the cemetery lots, the vaults, the markers, the funerals, the whole thing. And if we had to fund 100% of that money it would be impossible for us to pay sales commissions for one thing, or to let's say to maintain, or we should be entitled to a certain amount of overhead, to pay an office girl and to operate. But the 100% law is primarily designed to put the pre-need funeral sales out of business.

Representative Sullivan: So you would be able to continue in your at-need services, but not if...

Art Richmond: If we were to depend upon our at-need business we would have to wait considerably to say, paying our overhead and maintaining everything that we have to maintain until someone comes to us at the time of need. Because obviously we have found over a number of years we do not receive the type of support that we might expect from certain funeral establishments because naturally our prices are a little more expensive than let's say putting them in the city graveyard. We have a memorial park, we maintain it, we have a lot of money in it. So naturally it would be cheaper to let's say find an easier place, or let's say a more convenient place or less expensive place for the disposition of the remains.

Representative Sullivan: Mr. Richmond when you sell the cemetery services at pre-need do you also contract at that time for the other parts of the funeral services?

Art Richmond: Yes, if it is the families desire to do so.

Representative Sullivan: You make those arrangements too? And through any local...?

Art Richmond: Like I explained earlier, when we first started out in this, I mean our, and I'm speaking from an association standpoint, way back in 1918 we started selling cemetery lots, Forest Lawn started selling cemetery lots, we reached the point, okay we found it was necessary also that there had to be some kind of outer containment in order to keep the remains from crushing in the casket. Then also a memorial. The families thought "Well that would be nice if we could take care of the entire cemetery part of it." Then we finally reached the point where we said "My it would be nice if we could take care of the entire thing. It could all be taken care of." And so then a plan has been designed