THIS [X] BILL [ ] RESOLUTION

has been prepared by the staff of the Legislative Affairs Agency in response to the request and at the direction of the sponsoring member or committee. The staff has attempted to place the document in proper legal and clerical form, subject to any special limitations or instructions of the requestor.

Any staff questions or comments as to legality, constitutionality, and form have been included in the memorandum addressed to the requestor and kept in the work file. If we may be of further assistance in this matter, please contact the Director of Legal Services or the Director of Research Services, as appropriate.

Delivered to requestor 5-9-78

LA-L 40

Sec. analysis, Sec 8 of orig HB 204
Adoption, by Andrew Brown, Legis Affrs
Atty for Children's Code Task Force

the consent, when in fact that is not so. Consent only facilitates the adoption proceeding which terminates the parents' rights only after a hearing under AS 20.15.120. Voluntary relinquishment of parental rights and responsibilities is separate from adoption, and the Task Force has clarified this point by creating a separate section in AS 25.20 on relinquishment of parental rights and responsibilities (see section 18 of this bill).

Section 8 would amend AS 20.15.070(b) by allowing withdrawal of consent at any time before the first evidentiary hearing on the adoption. The withdrawal would have to be given to the court, rather than the person obtaining the consent, so that the court, which already has the adoption petition in its docket, will be adequately informed of the withdrawal of consent. The allowance of withdrawal at any time prior to the first evidentiary hearing permits more time for the consenting person to evaluate the meaning of his consent and to make sure that is what he wants to do. Since adoption terminates the consenting person's rights to the child, it would be preferable to give him time to retract his consent. The present 10 day limit in §.070(b) is too restrictive, especially for persons in rural areas who may find it difficult to contact the court within that period. Withdrawal would also be allowed once the adoption hearing has started if the consenting person petitions the court and the court finds that there is good cause to allow withdrawal. The reason for the good cause requirement is to eliminate the possibility of capricious withdrawals during a hearing. Withdrawal up to the evidentiary hearing can be done for any reason, but it was felt that once an adoption hearing has been started and the lawyers, parties, and judge brought together, that only a good cause should be allowed to withdraw the consent. It should be remembered that while consent may be given, the court does not have to grant the adoption petition. Under AS 20.15.120(c) the court must consider the child's best interests. If a consenting person wants to withdraw the consent after the hearing has started, but does not have good cause grounds, the court may still rule on other grounds that the adoption not be allowed.

Section 9 amends AS 20.15.100(b) by adding "of this chapter" in the first sentence. Also, "under Alaska law" is inserted in the fourth sentence so that it is clearer as to its meaning any service of process consistent with Alaska law is permissible; even out of state service would be alright if done according to Alaska law. The sentence "Notice by publication may not be given." is deleted for two reasons. First, since adoption proceedings vitally affect the basic parent and child relationship, due process of law requires

exerts legal custody over the child.

Adoption Bill

Sec. Analysis by Dr. Roberta Gottesman

XX. Section 1(1).

Findings — This section requires that all natural parents contemplating the placement of their children for adoption must specifically name the adopting person.

Apparently this section was written in an effort to assure native Alaskans that their children would be adopted by their own extended families, rather than by any other non-native persons wishing to adopt children in Alaska.

However, the section would have the effect of discouraging all non-native natural parents, who insist on confidentiality and who wish to place their children for adoption. In addition, the requirement would discourage all potential adoptive parents who do not wish to know the names of the child's natural parents.

Observation — When meeting with the Children's Task Force, Roberta Gottesman, emphasized the importance of allowing names of parties to the adoption be withheld if all parties so desire, while, at the same time, authorizing those natural parents who desire to know the name of the adoptive parents to insist on it as their right before relinquishing their children.

Conclusion — Since the December 15 meeting, Section I - How Consent is Executed - has been rewritten. It now reads:

(A) Consent which does not name or otherwise identify the adopting parents is valid if the consent is executed at any time after the birth of the child, in the presence of the court or in the presence of a person authorized to take acknowledgment.

Sec Analysis Dir Roberta Gottesman

treatment except in cases of emergency. Because a need for medical care could arise when parents are unavailable to give consent, there should be a distinction made between serious medical care (a decision best left to parents) and other necessary medical care, which should reside in the adult who has custody over the child.

XX - Adoption Bill - Section 1

It has been recommended that the Adoption Bill be revised to reflect the need for confidentiality of the parties where so desired, and the suggestion has been adopted. The new provision reads:

A. Consent which does not name or otherwise identify the adopting parent is valid if the consent is executed at any time after the birth of the child, in the presence of the court or in the presence of a person authorized to take acknowledgment.

XXI - Section 4

It is essential to ensure, by statutory language, that adequate funding is made available in cases involving subsidized adoptions. Thus, the word "adequate" must be inserted in order to provide sufficient financial assistance to families who are otherwise qualified to adopt and would provide good homes for hard-to-place children.

XXII - Best Interest of Child Bill

In determining the best interests of the child under this section, the following judicial considerations should be taken into account:

1. Emotional and physical health of each of the parents.
2. Comparative environments.
3. Age and sex of the child.

Minutes
House Judiciary Committee
Saturday, 3/26/77

The meeting commenced at 10:30 a.m. on HB 204. Present were Gardiner, Brown, Specking and Eliason. Testimony was taken from Andrew Brown of the Office of Child Advocacy. Testimony commenced on page 8 of the bill dealing with voluntary relinquishment of parental rights and responsibilities. Due to the apparent controversy over that section and the section of adoptions, the Committee moved to delete that from HB 204 and reintroduce it as a seperate bill. The Committee heard testimony from Mr. Brown on a section by section basis through the remainder of the bill.

The Meeting adjourned at 12:00 p.m.

May 5, 1978.

Testimony recommendations - Klein ~~Goff~~ Kay K

1. Sec 11 → move to front of bill
   (now on p. 5, l. 4)
2. 20.15.060 (a) → use language from orig draft for consent section

3. Delete Sec. 4

4. Delete Sec 6 - amended last year
   " " 7 - " " "
   " " 9 - " " "

5. Page 6, line 3:
   add "such legal custody carries the right to consent to adoption"

6. Transmit instrument to court for filing and issuing an order.
   Delete (b) ? - go to court

Art Holmburg

p. 4, l. 27 → correct citation - AS ?

p. 1, line 16 → define who is authorized

Peggy Berke

1. objects to changing 20.05.060
2. move Sec 11 up in bill

LAW OFFICES
WOHLFORTH & FLINT
A PROFESSIONAL CORPORATION
645 G STREET
ANCHORAGE, ALASKA 99501

ERIC E. WOHLFORTH
ROBERT B. FLINT
TIMOTHY G. MIDDLETON

PETER ARGETSINGER
SARAH FORBES

TELEPHONE
AREA CODE 907
274-2519
272-9489

March 15, 1978

Representative, Terry Gardiner
Chairman
HOUSE JUDICIARY COMMITTEE
Pouch V
Juneau, Alaska 99811

Re: House Bill 419

Dear Representative Gardiner:

On behalf of Catholic Social Services, Inc., I wish to make the agency's position known to the Committee on points that I understand were raised at the hearing on House Bill 419 by a representative of the Alaska Chapter of the National Association of Social Workers.

Catholic Social Services strongly supports the concept of a voluntary relinquishment as it now exists in AS 20.15.180 and in the Committee's bill on pages 6 and 7, lines 21 through 29 and 1-4 respectively. Under this concept, the relinquishment is made directly in writing to the agency. No court order or appearance of any kind is required. Our experience has been that this system works very well. We have had no problems with voluntary relinquishments and have never had the need for a court order. The agency feels that a court intervention at this point is unnecessary and indeed, potentially damaging to the parties involved. A judicial requirement at this time would only add to the complexities of the procedure as well as delay and expense. If a court appearance were required by the natural parent, additional hardship and embarrassment would result. It should be borne in mind that the court will always have the final say over the entire procedure in the adoption proceeding itself. There is thus, no reason at all for an earlier hearing. We therefore, oppose the position of the National Association of Social Workers in this regard.

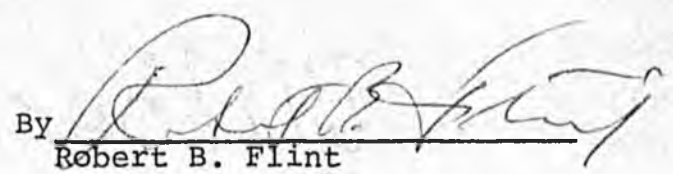
We support the concept of Section 7 of the Bill which allows a home study to be done by the state adoption

staff or by an authorized agency. Presently, this section is limited to handicapped minors. There should be no reason why flexibility could not be given to the Commissioner to contract with a private adoption agency if the state agency is over-burdened.

We appreciate the opportunity to present our views on House Bill 419.

Very truly yours,

WOHLFORTH & FLINT

By 
Robert B. Flint

RBF:vf

cc: Catholic Social Services

File HB419
Committee

LAW OFFICES
WOHLFORTH & FLINT
A PROFESSIONAL CORPORATION
645 G STREET
ANCHORAGE, ALASKA 99501

ERIC E. WOHLFORTH
ROBERT B. FLINT
TIMOTHY G. MIDDLETON

PETER ARGETSINGER
SARAH FORBES

TELEPHONE
AREA CODE 907
274-2519
272-9489

March 14, 1978

Representative Terry Gardiner
Chairman, House Judicial Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 419

Dear Representative Gardiner:

I am the president of the Board of Directors and attorney for Catholic Social Services, Inc. a licensed private adoption agency in Anchorage. I have been asked by Sister Clare, the Executive Director, to communicate the views of Catholic Social Services on House Bill 419 to the Committee.

Catholic Social Services is strongly opposed to Section 4 of the Bill which amends AS 20.15.100(b) to permit notice by publication in adoption proceedings. As it now reads notice of the hearing to those whose consent is not required is prohibited. We are opposed to this change for the following reasons:

1. Notice by publication does not accomplish anything as far as notifying the party intended. The person we are usually dealing with is the unmarried natural father of an infant. He has often left the community or has a very strong desire not to be involved. Notices in the newspaper simply do not reach such people.

2. The relinquishment, placement and adoption of illegitimate children is by its very nature an extremely sensitive process. It is most important to the mother as well as to the adoptive parents that confidentiality be preserved. The only thing notice by publication accomplishes is a breach of this confidentiality. The natural mother's personal life is detailed in the newspaper where the only likely people to read it are her family, friends, neighbors and the adoptive parents. In this way notice by publication serves only a negative purpose and indeed would be a cruel hardship on the parties involved. It is for this reason that the statute now prohibits notice by publication.

3. The proposed change would make the philosophy of subsection (b) conflict with subsection (c) of AS 20.15.100. Subsection (c) requires the investigation that must be made by the petitioners or someone on their behalf to be made in such a way as to respect the privacy of those involved.

4. There is no constitutional requirement yet laid down by courts for notice to an unmarried natural father. Such persons have no legal rights to a child unless paternity is established by legitimization proceedings or by court order. Only in Stanley v. Illinois did the Supreme Court declare that a father who actually had custody of his child had some parental rights. A recent Supreme Court case, Quilloin v. Walcott, held that those rights did not attach to an unmarried natural father who did not have the contacts with his child that Stanley did. Thus, we do not feel that there is any constitutional requirement that notice by publication be given especia ly in circumstances where the petitioner is required to attempt actual notice on the father. In this connection we do make such attempts in our adoption proceedings and have often succeeded in obtaining service.

As a minor change we would suggest deleting the word "proceeding" in section 11 of the Bill, page 5, line 6 at the end of that line. It is possible that someone might interprete the word proceeding as a court proceeding when in fact Chapter 35 will allow the voluntary relinquishment directly to an agency without a court proceeding. Since the word proceeding in this context does not add anything to the section and may be confusing we suggest that it be dropped.

Other than our strong feelings on Section 4 of House Bill 419 we have no objections to its passage.

Very truly yours,

WOHLFORTH & FLINT

By /s/ Robert B. Flint
Robert B. Flint

RBF/am

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

November 8, 1976

SUBJECT: The Adoption Bill

TO: Legislative Council

FROM: Andrew M. Brown

Alaska's current adoption statutes were enacted in 1974, based on the Revised Uniform Adoption Act. Although the statutes are of recent vintage, the Task Force saw some changes were necessary in order to better protect both parents' and children's rights.

Section 1 of the bill repeals and re-enacts AS 20.15.060 on how consent is executed. §.060(a) requires the consent to state the name of the person who is to adopt the child. This would allow the consenting parent to decide whether the adopting person would be a suitable parent for the child. §.060(b) would require that the consenting to adoption procedure be more informative of the parental rights involved. It was felt that persons who consent to adoption often do not fully understand their rights concerning the adoption process or the meaning of their consent. By requiring the consent to state specific things, it is hoped that consenting persons do not mistake the consent itself as relieving them of their rights and responsibilities toward the child, but that only the adoption decree terminates those rights and responsibilities. By specifying the consenting person can attend the adoption hearing and stating that the hearing will not take place less than 30 days after the consent has been signed, the consenting person has a chance for greater involvement in the adoption process and has more time to make sure that he really wants to consent to adoption. The current §.060(b) would be deleted, because it deals with permitting disclosure of the adopting person's name, while the proposed bill seeks to require disclosure.

Section 2 would amend AS 20.15.070(b) by allowing withdrawal of consent at any time before the first evidentiary hearing on the adoption. The withdrawal would have to be given to the court, rather than the person obtaining the consent, so that the court, which already has the adoption petition in its docket, will be adequately informed of the withdrawal of consent. The allowance of withdrawal at any time prior to

the first evidentiary hearing permits more time for the consenting person to evaluate the meaning of his consent and to make sure that is what he wants to do. Since adoption terminates the consenting person's rights to the child, it would be preferable to give him time to retract his consent. The present 10 day limit in §.070(b) is too restrictive, especially for persons in rural areas who may find it difficult to contact the court within that period. Withdrawal would also be allowed once the adoption hearing has started if the consenting person petitions the court and the court finds that there is good cause to allow withdrawal. The reason for the good cause requirement is to eliminate the possibility of capricious withdrawals during a hearing. Withdrawal up to the evidentiary hearing can be done for any reason, but it was felt that once an adoption hearing has been started and the lawyers, parties, and judge brought together, that only a good cause should be allowed to withdraw the consent. It should be remembered that while consent may be given, the court does not have to grant the adoption petition. Under AS 20.15.120(c) the court must consider the child's best interests. If a consenting person wants to withdraw the consent after the hearing has started, but does not have good cause grounds, the court may still rule on other grounds that the adoption not be allowed.

Section 3 amends AS 20.15.100(b) by adding "of this chapter" in the first sentence. Also, "under Alaska law" is inserted in the fourth sentence so that it is clearer as to its meaning any service of process consistent with Alaska law is permissible; even out of state service would be all right if done according to Alaska law. The sentence "Notice by publication may not be given." is deleted for two reasons. First, since adoption proceedings vitally affect the basic parent and child relationship, due process of law requires that the parents be entitled to as much notice as possible. Recent U.S. Supreme Court and Alaska Supreme Court decisions uphold the right to notice when one's interests are at stake. By deleting this sentence, the option of publication or posting is left for the court if other means of notice, such as personal service or certified mail, fail. The second reason for the deletion is that the sentence has no effect, because the legislative bill (HB 70) which became the present adoption law in 1974 did not expressly state that this sentence would change Children's Rule 10(g), which mandates publication in certain instances. Therefore, under Rule 40(e) of the Uniform Rules of the Alaska State Legislature the sentence would be ineffective. The added last sentence would require that the rights of notice applicable to adoption hearings also apply to termination proceedings under AS 47.10. Since both involve the termination of the parent-child relationship, the due process rights of notice should be applicable to both.

Sections 4 through 8 deal with the present adoption assistance law. AS 20.15.190 is the introductory section on adoption assistance. The Task Force has amended it so it reflects the purpose and extent of adoption assistance. The term "handicapped" has been replaced by "eligible for adoption," because "handicapped" implies a physical or mental condition of the child, while the Task Force thought that adoption assistance ought to apply not only to children with physical or mental problems, but also to those children whose adoptability is dependent on conditions of race, ethnic background, age, membership in a sibling group, color, or language. This assistance would also be applicable in cases where financial limitations impede families from adopting children. The Task Force found that the applicability of adoption assistance should be broadened, especially in view of the fact that for Fiscal Year 1976 assistance was given for only one child's adoption and for Fiscal Year 1977 assistance is being given for only eight "handicapped" children's adoptions.

Section 5 of the adoption bill eliminates some wording which is ambiguous. The deletion of "are caring for a handicapped minor on a foster parent basis and who" is to clarify that the assistance investigations shall apply to all applicants and not just those who are foster parents. This deletion also eliminates the implication that only foster parents are entitled to the adoption assistance. The word "handicapped" is deleted, because it is no longer relevant.

Section 6 involves a new section on information about availability of adoptable children and financial assistance to adoptive families. This amendment would require the Department of Health and Social Services to convey the information. The "special emphasis to rural communities" is inserted, because the Task Force felt that there could and should be more opportunities of adoption by Natives, but that a lack of information about the current assistance law thwarts the chances of the effective use of the law in rural areas.

Section 7 amends AS 20.15.210 by requiring the amount and duration of subsidy payments to be determined according to departmental regulations which have to be adopted. At the present time, the amount and duration is left to the department's discretion, and the Task Force thought this allowed for capacious and unregulated determinations, which were detrimental to implementing the adoption assistance law. The maximum amount of the subsidies would not be changed; it would not exceed the existing rate and benefits for foster care. There had been some concern over whether adoption assistance would affect state aid under other programs. To

remove this possibility a new sentence has been added to §.210 explicitly stating that a grant of adoption assistance subsidies would not affect eligibility or computation of resources and needs under the Aid to the Permanently and Totally Disabled Act in AS 47.25. It should be noted that adoption assistance is to help the whole family in the adoption process, while the assistance under the Aid to the Permanently and Totally Disabled Act aims to give financial aid to the disabled individual on the basis of his disability. Each kind of assistance has its own purpose and thus they should not offset each other. The final change to the adoption assistance law is repealing the definition of "handicapped child" in AS 20.15.240(7), because that term is unnecessary in light of the Task Force's recommendations on adoption assistance.

AMB:hjd

2730
11/5

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to adoption."

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

* Section 1. AS 20.15.060 is repealed and re-enacted to read:

Sec. 20.15.060. HOW CONSENT IS EXECUTED. (a) The required consent to adoption [shall specifically name the adopting person and] may be executed at any time after the birth of the child in the presence of the court or in the presence of a person authorized to take acknowledgments.

(b) All consents to adoption shall be executed in writing and shall give adequate notice that

(1) the person consenting to adoption has a right to appear at the adoption hearing;

(2) the hearing will not take place less than 30 days after the consent has been signed;

(3) the person consenting to adoption has the right to withdraw his consent at any time before the adoption hearing or after commencement of the adoption hearing upon a showing of good cause;

(4) the consent itself does not alter the consenting person's existing rights and responsibilities toward the child;

(5) the adoption decree terminates the consenting person's rights and responsibilities toward the child; and

(6) the person consenting must give his consent voluntarily.

* Sec. 2. AS 20.15.070(b) is amended to read:

(b) A consent to adoption may be withdrawn before the <u>first</u>

evidentiary adoption hearing [ENTRY OF A DECREE OF ADOPTION, WITHIN 10 DAYS,] by delivering written notice to the court. After commencement of the hearing and before entry of a decree, a consenting person must petition the court in order to withdraw his consent. The petition shall be granted only upon a showing of good cause [PERSON OBTAINING THE CONSENT, OR AFTER THE 10-DAY PERIOD, IF THE COURT FINDS, AFTER NOTICE AND OPPORTUNITY TO BE HEARD IS AFFORDED TO PETITIONER, THE PERSON SEEKING THE WITHDRAWAL, AND THE AGENCY PLACING A CHILD FOR ADOPTION, THAT THE WITHDRAWAL IS IN THE BEST INTEREST OF THE PERSON TO BE ADOPTED AND THE COURT ORDERS THE WITHDRAWAL].

* Sec. 3. AS 20.15.100(b) is amended to read:

(b) Notice to persons specified in sec. 50 of this chapter shall include a statement of the grounds under which consent to the adoption is not required. Notice given under this section shall be adequate to give actual notice of the proceedings, taking into account education and language differences which are known or reasonably ascertainable by the petitioner or the department. The notice of hearing shall contain all names by which the minor has been identified and shall state in summary form the effect of a decree of adoption. Notice shall be given in the manner appropriate under rules of civil procedure for the service of process in a civil action under Alaska law [IN THIS STATE] or in any manner the court by order directs. [NOTICE BY PUBLICATION MAY NOT BE GIVEN.] Proof of the giving of the notice shall be filed with the court before the petition is heard, subject to the time limitation in (e) of this section. The manner of notice specified in this section shall be applicable to termination proceedings under AS 47.10.080(c)(3).

* Sec. 4. AS 20.15.190 is amended to read:

Sec. 20.15.190. ADOPTION ASSISTANCE. A [HANDICAPPED] minor eligible for adoption [IN THE PERMANENT CUSTODY OF THE DEPARTMENT IN A

FOSTER HOME FOR NOT LESS THAN ONE YEAR] may not be denied the opportunity for a permanent home if an adoptive placement could be achieved through financial assistance as authorized by this section. It is the purpose of adoption assistance

(1) to encourage and promote the adoption of children who are hard to place due to the fact that they have special needs by reason of physical or mental condition, race, ethnic background, age, membership in a sibling group, color, language, or other conditions; or

(2) to assist financially those persons who otherwise qualify to adopt children but cannot due to a lack of financial resources [THE ACHIEVEMENT OF THIS DEPENDS ON CONTINUED SUBSIDY BY THE STATE].

* Sec. 5. AS 20.15.200 is amended to read:

Sec. 20.15.200. INVESTIGATION. Persons who [ARE CARING FOR A HANDICAPPED MINOR ON A FOSTER PARENT BASIS AND WHO] have applied to adopt the minor and to receive payments for the care and support of the [HANDICAPPED] minor shall be evaluated as to their suitability as adoptive parents by means of an adoptive home study. This home study shall be made by the commissioner's adoption staff or on his behalf by an authorized agency which provides adoption services.

* Sec. 6. AS 20.15 is amended by adding a new section to read:

Sec. 20.15.205. INFORMATION. The department shall disseminate information throughout the state with special emphasis to rural communities regarding the availability of adoptable children and financial assistance to adoptive families under this chapter.

* Sec. 7. AS 20.15.210 is amended to read:

Sec. 20.15.210. AMOUNT AND DURATION OF SUBSIDY PAYMENTS. Upon application by the prospective adoptive parents, the amount and duration of the subsidy shall be determined by the department according to regulations which the department shall adopt according to the

Administrative Procedure Act (AS 44.62) [THE MONTHLY PAYMENT AND THE LENGTH OF TIME FOR WHICH A SUBSIDY FOR A HANDICAPPED CHILD IS GRANTED ARE LEFT TO THE DISCRETION OF THE COMMISSIONER] and the subsidy may vary in [FROM A SMALL MONTHLY SUM TO AN] amount but may not exceed [NOT EXCEEDING] the existing rate and benefits for foster care until the child reaches the age of majority, if the need continues to exist. Subsidies shall be paid from the same public funds and in the same manner as foster care payments. The grant of subsidies made under this section shall not affect the eligibility of an adoptive child for aid under AS 47.25.790 - 47.25.970, and the amount of the subsidies made under this section shall not be used in any computation of resources and needs under AS 47.25.810.

* Sec. 8. AS 20.15.240(7) is repealed.

MEMO May 5, 1978

TO: Terry Gardiner, members of House Judiciary Comm.

FROM: Bob Speed, A.A.

RE: HB 419, Adoption and voluntary relinquishment of parental rights.

The only hearing held on this bill was conducted on March 14 this session. Below is a list of recommendations regarding the bill by Pudge Kleinkauf, Art Holmburg and Peggy Berck.

Cecilia Kleinkauf, National Association of Social Workers, member of the Children's Code Task Force:

1. Section 11 should be moved up nearer the top of the bill. A consent form should contain the name of adoptive parents. She also preferred the way the Children's Code Task Force dealt with consent in the original version of this legis. (Sec. 11 is now on page 5, line 4 of HB 419.) The consent The consent section leav es a vague status of a child's legal rights as currently written.
2. Section 4. (page 2 of bill) The putative father who has never established a relationship with a child does not need to be notified of relinquishment of parental rights or adoption. She suggested deletion of Section 4.
3. Delete Sections 6, 7 and 9; the definition section is satisfactory, although she later said she is "not comfortable" with the definition of "written instrument".
4. On page 6, line 3, add: "such legal custody carries the right to consent to adoption".
5. Sec. 12, Relinquishment. Relinquishment should not be tied to a child's adoptability.
6. Definition of "written instrument": Saying she was uncomfortable with this definition, she suggested adding a new subsection (c) to read "could be transmitted to court for an order allowing relinquishment" and relettering the following subsections.

Art Holmburg, Division of Social Services:

1. Suggested deletion of Sections 4, 6 and 7.
2. testified that the wrong statute citation may be given on page 4, lines 27-28.
3. P. 1, Line 16: define who is authorized to take acknowlegements

Margaret Berck, Alaska Legal Services:

1. Objects to changing 20.15.060 as advocated by Kleinkoff.
2. Has no problem with way bill is currently drafted although bush justice lawyers might "strongly object" to Sec. 2 of bill
3. Move Sec. 11 closer to top of bill

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 13, 1978

To: House Judiciary Committee

From: Bob Speed, A.A.

Re: HB 419

The director and attorney for Catholic Social Services of Anchorage intends to send a letter to the committee regarding Sec. 4 of this bill.

Catholic Social Services objects to deletion, on page 3, lines 7-8, to the restriction against notification by publication. The agency feels the section should be retained, arguing that notification by publication gives unnecessary embarrassment to the woman and family involved and serves no positive function. Public notification, they argue, is also inadequate notice of proceedings under this bill.

POSITION PAPER/Department of Health and Social Services

House Bill Number 419

"An Act relating to adoption and voluntary relinquishment of parental rights"

This Bill constitutes recommendations of the Children's Code Revision Task Force regarding certain statutes pertaining to adoption.

The changes proposed in the Bill are, in our judgement, appropriate both in the interest of children and their parents and in the interest of clarifying intent, roles and responsibilities.

It is recommended, however, that a section be added to the Bill to the effect that duly authorized officials of adoption placement agencies licensed under AS 47.35.100 are authorized to take acknowledgements as specified in Sec. 2 (AS 20.15.060 as re-enacted) of the Bill. In our judgement, this addition is proper and is in keeping with the safeguarding intent underlying the Children's Code Task Force recommendations. Protections provided through the licensing process will adequately ensure that parents are not misled in relinquishments.

The Department supports the Bill with the recommended additions.

Recommended By: _____ Date: 4-5-77
Director

Approved By: _____ Date: 4/5/1977
for Commissioner

Comments by Governor's Office:

Comments By: _____ Date: _____

PBob-Info on HB 419

TO: Alaska Legal Services, ATTN: Don Cloxsin
Bush Justice Conference
Alaska Division of Social Services, Faye Guthrie
Attorney General's Office, Dave LeBlond
Catholic Charities, Sister Mary Clare
Alaska Children Services, John Garvin
Alaska League of Women Voters, Jean Stassel

FROM: Alaska Chapter, National Association of Social Workers,
Cecilia Kleinkauf, Social Action Coordinator

RE: HB 419 - Adoption and Termination of Parental Rights

DATE: February 23, 1978

During a recent trip to Juneau, HB 419 regarding adoption was discussed with Representative Terry Gardiner in regard to preparing for a hearing on the Bill in March before the Judiciary Committee of the House. You will recall that HB 419 was originally part of the Children's Code Bill which passed last session. HB 419 was held back due to the need for more discussion and review of its contents. Revision of Alaska's Adoption Laws is a priority of Alaska Chapter, NASW during 1978.

This memo, therefore, is to invite you to join with NASW at 3:00 on Thursday, March 9, for a review of HB 419 and a discussion of areas of agreement-disagreement which may exist within our various groups and organizations.

Representative Gardiner is prepared to notify our organizations of his plans for hearing HB 419, and suggested we initiate some discussion prior to that time.

We will meet in Room 367 of the College of Arts and Sciences, University of Alaska - Anchorage (Consortium Library Building) and hope that you will be able to attend or send a representative and that you will be able to review HB 419 prior to the meeting.

If you need more information, you can reach me at 272-5522. Otherwise we will see you at 3:00 P.M., Thursday, March 9th.

CK/lw

cc: Senator Chancy Croft
Representative Terry Gardiner
Margaret Wolfe
Betsey McGuire

Child Welfare League of America

Standards

available if the court either needs additional information or desires to discuss the matter with the agency representative in private.

If the child is old enough to make his consent necessary or to understand what his adoption means even if his consent is not necessary, he should be present.

7.23 Confidentiality in court procedure

Court procedures should assure confidentiality for the parties concerned.

Hearings on adoptions should be closed to the public. The identity of the natural and adoptive parents should be protected from each other.

All records of the court concerning adoption should be sealed and should not be open to inspection except on court order.

Legal Protection Required for Adoption Service [24, 64] *

An adoption service should operate within a framework of law to protect the rights and interests of all parties involved in adoption. Such framework includes laws governing the adoption procedure itself, and related laws affecting relinquishment and termination of parental rights, determination of custody and guardianship of children, and regulation of child placing services. Legal protections required in adoption should assure that

- the best interests of the child are paramount
- parental rights and responsibilities are safeguarded
- the child will neither be unnecessarily deprived of his own parents nor of a permanent home of his own
- legal responsibility for the care and protection of the child will be clearly established at all times
- no child will be placed in a home that may be unsuitable for him or detrimental to his well-being and healthy development
- an adoptive placement will be secure and stable

7.24 Elements in adoptive process

The essential elements necessary to bring about an orderly adoption process should include

* It is not intended that this section should serve as comprehensive recommendations for adoption legislation. It does not include all the protections required for non-agency adoptions (stepparent, relative or independent adoptions), but merely indicates the legal protections which are required in order to assure that adoption service provided by social agencies should be consistent with these standards. (See *Legislative Guides for the Termination of Parental Rights and Responsibilities and The Adoption of Children*, Children's Bureau Publication No. 394, [1961].)

- legal separation of child from his natural parents (7.25)
- transfer of parental or custodial rights over a child through assignment of legal custody and guardianship (7.26, 7.29-7.31)
- provision for consent to a specific, proposed adoption (7.29)
- transfer of parental rights and responsibilities to adoptive parents after suitability of proposed adoption has been determined (7.34)

7.25 Legal separation of child from natural parents

No child should be considered legally free for adoption until parental rights have been terminated through proper legal procedures, prior to any steps being taken toward adoption.

In our culture and under our law, the biological parents, or, if they are not married to each other, the mother, have the right to custody and control of children born to them, and along with it the responsibility for their support, care and upbringing. In all states the responsibility of guardianship belongs to parents in the first instance. The rights of the parents must be exercised for the child's benefit and, if they are not, must yield to the child's interests.

A parent may not divest himself of his responsibility for the care of a child except through process of law and with full protection of the child.

The termination of parental rights is as important as the establishment of new parental ties through adoption and should be as securely safeguarded. Procedures regulating termination of parental rights should be covered in law and be separate from adoption. (7.26)

7.26 Legal sanction for relinquishment* and termination of parental rights

For the protection of the child, the natural parents, the adoptive parents, and the agency, legally binding termination of parental rights and the establishment of a recognized legal status between the child and the agency should take place prior to any steps being taken toward adoption.

Termination of parental rights and relationships involves and alters basic human and property rights. The full protection of those rights ideally requires court approval. The legal presumptions against fraud and duress created by court approval make judicial procedures clearly superior in principle.

Some states have statutory procedures which permit the relinquishment, without court approval, of a child by its parent or parents to a public welfare department or licensed child-placing agency. In those states such a relinquishment is deemed, in the absence of fraud or duress, to terminate the

* The terms 'surrender', 'release', and 'relinquishment' have essentially the same meaning in relation to law and represent instruments of voluntary giving up of parental rights. The term 'relinquishment' is used by preference, since the definition of 'relinquish' is "to renounce a claim to." These terms in relation to adoption should not be confused with 'consent'. (7.29).

parental right and to establish a legal relationship between the child and the department or agency sufficient to give exclusive power to the department or agency to consent to a later adoption of the child. This non-judicial procedure has worked successfully in many of the states in which it is authorized, and has certain practical advantages over a formal court-approved relinquishment which may entail either delay in placement of the child or recurrence of emotional conflicts in the parent who has come to the decision to relinquish a child.

Statutory provision for relinquishment of children to authorized social agencies presupposes that necessary protections are assured by the services offered by such agencies; by casework which gives the parents every opportunity to consider alternatives and to reach a decision that is right for them or in the best interests of the child; and by acceptance of the relinquishments only when parents are ready to give up their rights (as well as their responsibilities) forever, and to recognize that this is a final decision. (2.1-2.4, 2.20)

Agencies acting under these statutory procedures and without the protection afforded by court approval should, however, be fully aware that the adoption procedures may be attacked by the natural parent or parents for alleged fraud or duress in the procurement of the relinquishment, unless such attack is barred by the statute of limitations; and, even when it is unfounded, such attack may seriously damage the adoption process.

The use of informal relinquishment procedures, blank consents by the natural parents, or any other procedure which has the result of postponing the time of permanent termination of parental rights until actual entry of the adoption decree, is hazardous and fails to serve the interests of the parties to whom the child-placing agency has a major obligation.

When court approval is sought, it is essential that it be made available without undue delay. This is necessary so that the child may be legally free for adoption as early as possible, and particularly necessary so that early placement of infants may be expedited. (2.19, 3.8, 3.9)

The court should be in a position to proceed in the natural parents' absence and to finally terminate their rights, if, after due notice of the hearing, they either voluntarily waive their right or elect not to appear.

Termination of parental rights should as a rule be the result of recommendation by a qualified social agency. It is presumed that only through professional casework can there be adequate determination of the desirability of terminating parental rights. (2.2, 2.15)

The determination of adoptability of the child should not be a prerequisite to termination of parental rights and responsibilities where such termination is otherwise desirable. (1.3)

7.27 Finality of relinquishment

A relinquishment, whether with court approval or by statutory procedure, should be permanently binding and should be set aside only on proof of fraud

or duress, and even u
of limitations. A reli
ject to revocation by r

7.28 Deprivation of p

There should be legal
est of the child, throu
that, even with help o
not be able to perform
to relinquish the chil

Situations in
such cases of aba
clearly shown n
care, and protect
and cases in whi
resources in orde

These instan
others (includin
whose parents sh
give proper pare
(6.12, 7.6)

In such cas
the rights and v

7.29 Legal custody*

Concurrent with eith
should be legally bi
agency authorized by
and the right to cons

The furthe
not be required

* 'Legal custody' mean
rights and responsibil
(2) the right and dut
bility to provide the
provided that such ri
rights, duties and res
parental rights and re
(From: *Legislative G*
and the Adoption of

† 'Consent' means
term 'consent' in
or agency, having
is fully aware of
parents.

or duress, and even under these circumstances should be subject to a statute of limitations. A relinquishment to an authorized agency should not be subject to revocation by reason of minority of the parent. (7.26)

7.28 Deprivation of parental rights

There should be legal provision for termination of parental rights in the interest of the child, through proper judicial process, where it has been determined that, even with help of community agencies, the parents in all probability will not be able to perform their parental duties, and are either unable or unwilling to relinquish the child. (2.7)

> Situations in which it should be possible to request termination include such cases of abandonment, neglect, and mental illness in which parents have clearly shown no interest, desire or capacity for giving the child the love, care, and protection he needs, and in all probability will not be able to do so; and cases in which they are unable or unwilling to use help of community resources in order to do so.
>
> These instances also include children who have been left in the care of others (including foster care agencies) beyond a stated period of time, and whose parents show either a lack of continuing interest or lack of ability to give proper parental care, protection, and the security of a permanent home. (6.12, 7.6)
>
> In such cases, the rights of the child should take precedence over both the rights and wishes of the parents.

7.29 Legal custody* and right to consent to adoption†

Concurrent with either relinquishment or termination of parental rights, there should be legally binding action to transfer responsibility for the child to an agency authorized by law to assume both the power and duties of legal custody, and the right to consent to an adoption. (7.26)

> The further consent of the parents (or mother) to an adoption should not be required when parental rights have been terminated.

---

* 'Legal custody' means a status created by court order that embodies the following rights and responsibilities: (1) the right to have the physical possession of the child, (2) the right and duty to protect, train, and discipline the child, and (3) the responsibility to provide the child with food, shelter, education, and ordinary medical care, provided that such rights and responsibilities shall be exercised subject to the powers, rights, duties and responsibilities of the guardian of the person and subject to residual parental rights and responsibilities if these have not been terminated by judicial decree. (From: *Legislative Guides for the Termination of Parental Rights and Responsibilities and the Adoption of Children*, p. 38, 50)

† 'Consent' means voluntary agreement to or concurrence in some act or purpose. The term 'consent' in relation to child adoption is a written statement in which the person or agency, having the legal right to act, *consents to a specific, proposed adoption* and is fully aware of the contents of the document, including the names of the adopting parents.

care could arise when parents are unavailable to give consent, there should be a distinction made between serious medical care (a decision best left to parents) and other necessary medical care, which should reside in the adult who has custody over the child.

XX - Adoption Bill - Section 1

It has been recommended that the Adoption Bill be revised to reflect the need for confidentiality of the parties where so desired, and the suggestion has been adopted. The new provision reads:

A. Consent which does not name or otherwise identify the adopting parent is valid if the consent is executed at any time after the birth of the child, in the presence of the court or in the presence of a person authorized to take acknowledgment.

XXI - Section 4

It is essential to ensure, by statutory language, that <u>adequate</u> funding is made available in cases involving subsidized adoptions. Thus, the word "adequate" must be inserted in order to provide sufficient financial assistance to families who are otherwise qualified to adopt and would provide good homes for hard-to-place children.

XXII - Best Interest of Child Bill

In determining the best interests of the child under this section, the following judicial considerations should be taken into account:

1. Emotional and physical health of each of the parents.
2. Comparative environments.
3. Age and sex of the child.

HB
456

AMENDMENT

Offered in the HOUSE By the Judiciary Committee

TO: HOUSE BILL NO. 456

Page 1, lines 11-12:

Delete "Each justice, judge, or full-time magistrate" and insert the following:

(a) Except as provided in (b) of this section, each justice or judge

Page 1, line 12:

Delete "1977" and insert "1978"

Page 1, line 13:

After "ch. 25" insert "or ch. 28"

Page 1, lines 13-14:

Delete "justice, judge, or full-time magistrate" and insert "justice or judge"

Page 1, line 14:

Delete "accrues" and insert "and all full-time magistrates accrue"

Page 1, between lines 15 and 16:

Insert the following:

(b) A justice or judge appointed before July 1, 1978, who receives an increase or increases in salary after July 1, 1978, equivalent to or

greater than seven per cent of his salary as of July 1, 1978, accrues benefits under and is subject to the provisions of this chapter.

Page 5, line 15:

Delete "1978" and insert "1979"

Page 6, line 18:

Delete all material

Page 6, line 19:

Change "Sec. 3" to "Sec. 2"

Delete "1977" and insert "1978"

Alaska Court System
State of Alaska
303 "K" STREET
ANCHORAGE, ALASKA
99501
(907) 274-8611

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

March 3, 1978

The Hon. George Hohman, Chairman
Senate Judiciary Committee
Alaska Senate
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 461
Magistrate Retirement

Dear Senator Hohman:

This letter is intended to supplement our oral testimony on Senate Bill 461 by providing a written record of our views in opposition to this bill.

The inclusion of "full-time" magistrates in the judicial retirement provisions of AS 22.25 raises both philosophical concerns and technical problems. With respect to the philosophical concerns, we do not believe that including magistrates in the judicial retirement system is necessary or appropriate. The judicial retirement system is obviously more generous than the Public Employees Retirement System under which all magistrates now accrue benefits. However, there are particular purposes for providing the more generous system for judges. These purposes do not apply to magistrates.

The two primary purposes of the judicial retirement system are: 1) to attract lawyers of the highest possible qualifications at the peak of successful law careers and to keep them on the bench once appointed, and 2) to provide an inexpensive source of temporary judicial assistance by way of pro tem appointment of retired justices and judges. The field of recruitment for judges is limited to the practicing Bar. The field is even further reduced with respect to applicants for the Supreme and Superior Courts who must have five and eight years of active practice,

respectively, to qualify. A distinctive retirement system is simply not required to attract well-qualified applicants for magistrate positions. In this sense, magistrates are much more comparable to classified state employees. Experience demonstrates that we have not had difficulty attracting and keeping well-qualified persons as magistrates.

With reference to the second purpose of judicial retirement, a higher retirement benefit than provided to public employees generally is justified because retired justices and judges who are receiving retirement pay are subject to being recalled to judicial service on a temporary basis. (Compensation for such service is limited to the difference between full salary and retirement pay.) If temporary judicial assistance is required at the Supreme or Superior Court level, the only constitutionally permissible source of temporary assistance is retired justices and judges. The retirement benefits must be high enough to permit these justices and judges to avoid financial pursuits during retirement that will interfere with their impartiality when recalled to pro tem service. Any citizen over 21 years of age can be appointed as a magistrate on a temporary or acting basis, and the level of work performed by magistrates is not so specialized that temporary assistance cannot be obtained from sources other than retired magistrates. Typically, when temporary magistrate service is required, a classified employee is appointed on an acting basis.

It is Court System policy to treat all magistrates the same for purposes of retirement benefits. The workload and the type of duties typically required vary from one magistrate post to the next, depending upon a number of factors such as population served, the level of local law enforcement activity, and the availability of a District Court judge. Yet, all magistrates are empowered to exercise the same jurisdiction, and are on call 24 hours a day to hold arraignments, set bail and so forth. In part for this reason, and in part because of the difficulties of making distinctions among the magistrates, we consider all magistrates as full-time for purposes of eligibility for P.E.R.S. membership.

There are also several technical problems with Senate Bill 461 as written. The first is the difficulty in defining who is and who is not a "full-time" magistrate. Though we cannot suggest how this distinction could or should be drawn, we do wish to point out that there may be difficulties in establishing the criteria.

For example, we are currently required to apply statutory leave benefits under AS 39.20 to magistrates who serve "full-time." We make this distinction solely on the basis of the number of hours required to be spent on the job and not on the basis of the types or levels of duties performed, which tend to be a combination of clerical and judicial duties. The time required to be spent on the job at any given magistrate post may fluctuate over a period of time depending on the total volume of workload, and a magistrate post that is now "full-time" for application of leave benefits may become "part-time" for this purpose if workload requirements diminish. Thus, there may be shifting back and forth between "full-time" and "part-time" status if "full-time" is to be defined under the bill as working 37.5 hours a week. There is also a great deal of variance among all magistrate posts in the level and complexity of duties performed, and these may also fluctuate over time at a particular post.

Further, there are several full-time classified employees who also hold magistrate appointments. For example, the clerks of court in Bethel and Anchorage hold magistrate appointments, as do the coroner/public administrators and the law clerks in Ketchikan and Kodiak. Additionally, some full-time clerks of court are acting magistrates who are empowered to perform magistrate duties when the magistrate or District Court judge is absent from the post. It is not clear whether these full-time employees are intended to be included in the bill.

Obviously, it is important to be able to know clearly who is and who is not included in a retirement system, and it may be difficult to draw distinctions between magistrates that will be certain to remain applicable throughout the entire tenure of an individual magistrate.

Another technical difficulty with the bill is that it is unclear how benefits for magistrates would be calculated under AS 22.25.020. That section provides that retirement pay shall be equal to a certain percentage of the salary currently being paid for the level of court from which the justice or judge retired. This is a fairly simple calculation for Supreme Court justices, Superior Court judges, and District Court judges, since there is only one salary for each level of court. This is not the case with magistrate salaries.

At the present time, there are three basic salary levels for magistrates. In addition, incumbents of certain

posts are paid at salaries higher than the three basic levels primarily because of individual talents and capabilities. When the present incumbent resigns or retires from one of these posts, the salary for that post will be re-evaluated and may very likely be reduced. Workloads and conditions at magistrate locations will fluctuate over the years, and some posts may even be abolished if magistrate services are no longer required there. In addition, the salary for a post may fluctuate depending on current caseload. For example, the salary for the magistrate post at Nenana recently went from $21,000 annually to a Level II base salary of $13,972 annually. Thus, there is no single, stable salary base on which to calculate magistrate retirement on a current salary basis as is done with the justices and judges under AS 22.25.020. In addition, the bill does not address the question of how to deal with the magistrates' geographic cost-of-living salary differential in the calculation of retirement benefits.

In summary, we do not believe that the judicial retirement system should be extended to magistrates. If the Legislature determines that magistrates should be entitled to enhanced retirement benefits beyond those currently provided under P.E.R.S., it might wish to consider applying to magistrates provisions similar to those applicable to the peace officers and firemen under P.E.R.S. under which these employees make a higher contribution and receive a higher percentage benefit for each year of service credit.

We appreciate the opportunity to provide our comments on this bill.

Very truly yours,

Arthur H. Snowden, II

Arthur H. Snowden, II
Administrative Director

Contributory Judicial Retirement Sys.
HB 456

Jerry D

Mike Miller asked me to let you know that Carl Heinmiller of Haines is very interested in HB 456 & would like to be advised of proceedings re: this bill.

Thanks.

Stilo

Also - Jerry - Al says B. Ball @ 9 is at Floyd Dryden on Tues. nites - Hardly anyone in that gym, so it's fun.

March 8, 1978

Legislative Board of Retirement Benefits analysis and recommendations on:

House Bill No. 456

The board endorses the attached fiscal note as its fiscal analysis of HB 456.

The board unanimously recommends that HB 456 do not pass; one member was absent.

The board favors the creation of a contributory and funded judicial retirement system but questions whether magistrates should be included within the judicial system. SB 90 would accomplish the funding and contribution objectives without including magistrates, and is recommended.

A M E N D M E N T

IN THE HOUSE

TO: House Bill No. 456

Page 1, line 12:

change "1977" to "1978"

Page 5, line 15:

change "1978" to "1979"

Page 6, line 19:

change "1977" to "1978"

SUMMARY OF HOUSE BILL NO. 456

(assuming adoption of amendments suggested by Legislative Affairs Agency)

Retirement system affected: Contributory Judicial Retirement System (established by a bill)

Establishes a contributory judicial retirement system for supreme court justices, superior court judges, district court judges, and district court magistrates appointed after July 1, 1978 (hereinafter, members). Requires a member to contribute seven per cent of his salary to the system.

Directs the state to make contributions to the system in accordance with a rate established by the commissioner of administration. Requires that the rate be sufficient, in conjunction with employee contributions, to properly support the benefits of the system.

Establishes the contributory judicial retirement account for appropriations to fund the system. Directs that an individual account be maintained for each member to which his mandatory contributions are credited. Directs semi-annual crediting of interest to individual accounts. Authorizes a refund of the balance of a member's account on termination of judicial servie with forfeiture of rights to benefits. Provides that if a member who has withdrawn his balance returns to permanent service he shall receive credit for prior service only if he repays refunded contributions within one year after his return.

Enacts provisions identical to those of the present Judicial Retirement System with respect to retirement of members, retirement pay, survivor's benefits, tax exemption of benefits, and medical benefits. The only exception to this is that the present Judicial Retirement System provides for crediting service as a magistrate or deputy magistrate before July 1, 1967 while the Contributory Judicial Retirement System does not.

Takes effect July 1, 1978.

TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 456
Title Establishes A Contributory Retirement for Judges and "Full-Time" Magistrates
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected: Administration - Division of Retirement & Benefits
Program Category Affected: Retirement and Benefits
Budget Request Unit(s) Affected: Contributory Judicial/Full-Time Magistrates Retirement System

EXPENDITURES (Thousands of Dollars)

		FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
100	BENEFITS		259.7	300.9	345.5	393.9	446.3
	TOTAL	-0-	259.7	300.9	345.5	393.9	446.3

FUNDING (Thousands of Dollars)

GENERAL FUND		259.7	300.9	345.5	393.9	446.3
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS NONE

FULL TIME						
PART TIME						
TEMPORARY						

1. Fiscal note represents cost on a funded basis for the inclusion of past and future service for existing full-time magistrates under Non-Contributory Judicial Retirement System (AS 22.25).
2. Fiscal note includes costs on a funded basis for future full-time magistrates, judges and justices under HB 456.
3. Fiscal note does not include the cost on a funded basis for the existing Judicial System (AS 22.25) (these costs identified in fiscal note for SB 91--first year cost equals $1,832.7).
4. The Alaska Court System cannot provide a definition for "full-time" magistrate (see attachment), so for purposes of this fiscal note all magistrates earning $15,000 or more per year were considered full-time (16 out of 50) with an average salary of $24,939.
5. Assume that 3 new judges are appointed each year starting FY 79 at a salary of $46,061 per year (weighted average salary for Supreme, Superior and District Judges) and that 1 new full-time magistrate is appointed each year starting FY 79 at a salary of $24,939 per year (also assumes attrition of 1 full-time magistrate under AS 22.25).
6. Assume salaries are increased at 5% per year.
7. Employer contribution rate of 58.34% of covered payroll is required.

Paul B. Arnolet

IV. DATE 3/01/78 PREPARED BY Paul B. Arnolet
AGENCY Division of Retirement & Benefits
PHONE 465-4460

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) Representative Malone
Office of the Governor (Keith Specking)

33-001 (Rev. 12/77)

Alaska Court System
State of Alaska
303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

907 · 274-8611

April 12, 1978

Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 456, Judicial Retirement

Dear Representative Gardiner:

You have asked for written comments from us concerning the proposed committee substitute for House Bill 456. The proposed substitute would make essentially three changes in the existing judicial retirement system. First, it would provide that justices and judges appointed after the effective date would be required to contribute seven percent of salary toward retirement. Second, the proposed substitute would provide that sitting justices and judges would be required to commence contribution of seven percent of salary upon receiving a salary increase equal to or greater than seven percent. Third, the proposal would include "full time" magistrates in the contributory judicial retirement system established by the bill.

There are no constitutional prohibitions against imposing retirement contributions on newly appointed justices or judges. There are, however, substantial questions about the constitutionality of requiring contributions from justices and judges who are now accruing benefits under the non-contributory system. The constitutional problems arise from provisions of both the Alaska Constitution and the United States Constitution.

Article IV, section 13 of the Alaska Constitution provides, in part, "Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the state." Clearly this provision would prohibit the imposition of contributions from the present salaries of sitting justices and judges, as that would result in a direct diminution of salary applicable only to justices and judges. The question then is whether this prohibition can be successfully avoided by imposing the contribution simultaneously with an equivalent pay raise.

This prohibition on diminution of compensation was not intended as a private grant or benefit for justices and judges, but as a limitation imposed in the public interest to help secure an independent judiciary and help maintain the delicate balance of power between and among the separate branches of government. As such, it is not to be construed restrictively, but in accord with its spirit and purpose. Evans v. Gore, 64 L.Ed. 887, 892 (1919). In this light, then, giving a salary raise with one hand and taking it away with the other may be viewed as an indirect diminution that is nonetheless within the constitutional prohibition.

Apart from the question of whether it is permissible to impose on sitting justices and judges a contribution simultaneously with a salary increase, the proposal as drafted would still be subject to challenge under the diminution prohibition. A seven per cent contribution toward retirement would not, in fact, be offset by a seven per cent salary increase. This is because the portion of the judge's salary that goes toward the contribution is included in gross income for purposes of state and federal income tax. Thus, in order to make a seven per cent contribution to retirement, the judge must dip into other salary to pay the tax on the seven per cent contribution, resulting in a diminution. Thus, if the salary increase is to be truly equivalent to the contribution, it must be high enough to take the tax burden into account. Rough calculation would indicate that the salary increase would probably have to be in the neighborhood of ten to eleven per cent.

The most serious constitutional questions raised by imposing a contribution requirement on sitting justices and judges relate to article I, section 10 of the United States Constitution, which prohibits states from impairing contract rights. In Sylvestre v. State, 214 N.W.2d 658 (Minn. 1973), the Minnesota Supreme Court held that the legislature could not reduce existing retirement benefits even for sitting judges who had not yet retired. The basis for the court's holding was that when a judge took office he was promised by the state that he would receive certain retirement benefits in exchange for his services. Once having begun service, the judge had rendered sufficient performance to irrevocably bind the state to its original promise which could not later be altered.

In this situation, the State of Alaska has promised the justices and judges now in office that they will receive certain retirement benefits as provided in AS 22.25 merely by serving in office and without additional cash contribution. Justices and judges now in office have already provided partial performance of what the law requires as a condition of receiving the retirement benefits and that performance is sufficient under Sylvestre rationale to bind the state to that contract. Since there is now an irrevocable contract between the state and the sitting justices and judges with respect to their retirement, the state is constitutionally prohibited from impairing those rights. Contribution to the retirement plan was not part of the original contract, and would constitute a significant alteration or impairment of that contract.

Additionally, we believe that it would not be desirable or fair to require contributions from justices and judges who have already accrued maximum service credit under the existing retirement system. Even with a seven per cent contribution, the judicial retirement system is not going to be actuarially sound. Thus there is no actuarial purpose to be served by requiring contributions from a justice or judge once he or she has accrued full benefits. If anything, it may encourage such justices and judges to leave the bench after only fifteen years and thereby deprive the judiciary and the state of their experience and talent. We would therefore suggest that the Committee consider adding a

provision that would limit the contributions only to the years during which service credit is being accrued. (Under the present benefit formula, this would be fifteen years.)

Finally, the proposed draft does not cure the technical problems that are raised by including magistrates in the judicial retirement system. We have already pointed out these problems to the Committee during oral testimony on House Bill 727 and have provided the Committee with a copy of written comments on the identical Senate bill. Little can be added in this letter to augment our views on this aspect of the proposed draft except to emphasize that the retirement benefits for magistrates would be impossible to calculate under the provisions as currently proposed.

Thank you for allowing us the opportunity to comment on this legislation.

Very truly yours,

Arthur H. Snowden II
Administrative Director

AHS:bh

Paul Arnold

Use full-time throughout

Original sponsor: Malone

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 456

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act establishing a contributory judicial retirement system; and providing for an effective date."

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

* Section 1. AS 22 is amended by adding a new chapter to read:

CHAPTER 27. CONTRIBUTORY JUDICIAL RETIREMENT SYSTEM.

Sec. 22.27.010. APPLICATION. (a) Except as provided in (b) of this section, each justice or judge appointed before July 1, 1978 accrues benefits under the provisions of ch. 25 or ch. 28 of this title. New sentence Each justice ~~of~~ judge or ~~full-time~~ magistrate appointed after that date and all ~~full-time~~ magistrates accrue benefits under the system provided in this chapter.

(b) A justice or judge appointed before July 1, 1978, who receives an increase or increases in salary after July 1, 1978, equivalent to or greater than seven per cent of his salary as of July 1, 1978, accrues benefits under and is subject to the provisions of this chapter.

Sec. 22.27.020. ADMINISTRATION. The commissioner of administration is responsible for the administration of the system.

Sec. 22.27.030. REGULATIONS. The commissioner may adopt regulations to implement the provisions of this chapter. Regulations adopted by the commissioner under this chapter relate to the internal management of state agencies and their adoption is not subject to the Administrative Procedure Act (AS 44.62).

Sec. 22.27.040. EMPLOYEE CONTRIBUTIONS. While participating in the system each justice, judge, and magistrate shall contribute seven per cent of his compensation to the retirement system.

Sec. 22.27.050. RETIREMENT OF JUSTICES AND JUDGES. (a) A justice, judge, or magistrate shall be retired on the date that he reaches the age of 70. He is eligible for retirement pay if he has had five or more years of service at the time of retirement as a justice, judge, or magistrate.

(b) A justice, judge, or magistrate may be retired for incapacity as provided by law. He is eligible for retirement pay if he has had two or more years of service at the time of retirement for incapacity. The effective date of retirement under this subsection is the first day of the month coinciding with or after the date upon which the governor with respect to a justice, or the supreme court with respect to a judge or magistrate, files with the commissioner of administration a written declaration to the effect that a designated justice, judge, or magistrate was retired for incapacity. A duplicate copy of the declaration shall be filed with the judicial council.

(c) A justice, judge, or magistrate who served for a period of five years, and who believes that he has become so incapacitated as to prevent him from efficiently performing his judicial duties may file with the governor a written application for retirement which contains a sworn statement of his service and of his incapacity. When an application is filed, the governor shall appoint a board of three persons to inquire into the circumstances, and may, upon the board's recommendation, retire the justice, judge, or magistrate. The effective date of the retirement shall be as provided in (b) of this section.

(d) A justice, judge, or magistrate may voluntarily retire at any time and has a vested right to his accrued retirement pay if he has served five or more years. Retirement pay shall not commence until he has reached age 60, except that an actuarially equivalent retirement pay may be commenced after he has reached age 55 or upon his serving 20

years as a justice, judge, or magistrate. The provisions of (b) of this section are an exception to this rule. A justice, judge, or magistrate desiring to retire under this subsection shall file with the commissioner of administration a notice of his desire. If a justice, judge, or magistrate is eligible to receive retirement pay at the time of his retirement, his retirement pay shall ~~commence on~~ accrue from the first day of the month coinciding with or after the date the notice is filed with the commissioner of administration and is payable on the last day of the month. If a justice, judge, or magistrate is not eligible to receive retirement pay at the time of his retirement, his retirement pay shall ~~commence on~~ accrue from the first day of the month he reaches age 60 or the month he becomes eligible for an actuarial equivalent if he has applied for this option and is payable on the last day of the month.

(e) In the computation of service for retirement under this chapter, the time served by a justice, judge, or magistrate of any court of the state is added to the time served by him, if any, on any other court of the state.

Sec. 22.27.060. RETIREMENT PAY. A retired justice, judge, or magistrate eligible for retirement pay shall receive from the date of his eligibility until his death monthly compensation equal to five per cent per year of service, to a maximum of 75 per cent, of the monthly salary authorized for justices, judges, and magistrates, respectively, at the time each retirement payment is made.

Sec. 22.27.070. SURVIVORS' BENEFITS. (a) Upon the death of a justice, judge, or magistrate who has served for at least two years, the surviving spouse is entitled to receive monthly compensation equal to 50 per cent of the monthly retirement pay the justice, judge, or magistrate would thereafter have been entitled to receive if retired at the time of death. If at death the justice, judge, or magistrate was not yet entitled to retirement pay, or was or would have been entitled to less

than 60 per cent of the monthly salary authorized for his office, the surviving spouse is entitled to monthly compensation equal to 30 per cent of the salary authorized for justices, judges, or magistrates, respectively, at the time each monthly payment is made.

(b) To be eligible for the survivors' benefits, the surviving spouse must have been married to the justice, judge, or magistrate for at least two years immediately preceding the death of the justice, judge, or magistrate. The benefits continue until the remarriage or death of the surviving spouse.

(c) If there is no surviving spouse, or if the surviving spouse does not meet the requirements of (b) of this section, or upon the remarriage or death of the surviving spouse, the surviving dependent child or children of the justice, judge, or magistrate are entitled to receive in equal shares 50 per cent of the amount of the survivors' benefits specified under (a) of this section.

(d) The surviving child or children are entitled to the survivors' benefits under (c) of this section during the period of their dependency. Dependency exists with respect to any child of a justice, or judge, or magistrate who is either (1) a minor under the laws of Alaska, (2) under the age of 23 and is a student attending on a full-time basis an accredited educational or technical institution recognized by the Department of Education, or (3) so mentally or physically incapacitated as to be unable to provide for self-care.

(e) If there are both an eligible surviving spouse and surviving dependent children, but who reside in separate households, the surviving spouse and dependent children are entitled to share equally in the benefits payable under (a) of this section.

Sec. 22.27.080. TAX EXEMPTION. Benefits paid under this chapter are exempt from state and municipal taxes.

Sec. 22.27.090. EMPLOYER CONTRIBUTIONS. (a) The employer shall make contributions to the system in accordance with the rate established by the commissioner of administration. That rate shall be based upon the results of an actuarial valuation of the system. The results of the actuarial valuation shall be based upon actuarial methods and assumptions adopted by the commissioner.

(b) The contribution rate shall be a percentage which, when applied to the covered compensation of all active members of the system, will generate sufficient contributions to properly support, in conjunction with employee contributions, the benefits of the system.

Sec. 22.27.100. ACCOUNTING. (a) The contributory judicial retirement account is established to which all appropriations made for the purpose of funding the retirement system under this chapter shall be credited.

(b) An individual account shall be maintained for each justice, judge, or magistrate to which the amount of his mandatory contributions collected under this chapter shall be credited as of the date of deduction or payment, as the case may be. On June 30 and December 31 of each year, beginning with June 30, 1979, this account shall be credited with interest by applying one-half of the prescribed rate of interest to the balance in the account as of that date.

(c) Upon commencement of retirement pay to a justice, judge, or magistrate, the balance in his individual account shall be transferred to the contributory judicial retirement account.

Sec. 22.27.110. REFUNDS. Upon termination of judicial service, application may be made for a refund of the balance in the individual's account. Upon withdrawal of the balance, all rights to benefits terminate.

Sec. 22.27.120. PRIOR SERVICE CREDIT. If a justice, judge, or

magistrate who has withdrawn the balance of his individual account returns to permanent active service, he shall receive credit for his prior period or periods of service only if he repays within one year of the date of return all refunded contributions with interest at the prevailing prescribed rate.

Sec. 22.27.130. MEDICAL BENEFITS. Each person who is entitled to receive a monthly benefit from the retirement system under this chapter shall be provided with major medical insurance coverage. Coverage shall become effective on the same date as retirement benefits commence and cease when the retired employee or survivor is no longer eligible to receive a monthly benefit. The level of coverage for persons over age 65 shall be the same as that available before reaching age 65 except that the benefits payable shall be supplemental to those afforded under the federal old age survivor and disability insurance program, if any.

Sec. 22.27.900. DEFINITIONS. In this chapter, unless the context clearly indicates otherwise,

(1) "commissioner" means the commissioner of administration;

(2) "judge" means a superior court or district court judge;

(3) "justice" means a supreme court justice;

~~(4) "magistrate" means a district court magistrate;~~

(5) "~~full time~~ magistrate" means a district court magistrate who receives remuneration for his services as a magistrate on the basis of no less than 37.5 hours per week.

* Sec. 2. This Act takes effect July 1, 1978.

HB
484

House Judiciary
May 26, 1977

The meeting was called to order at 9:00 a.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Dankworth, Elaison, Carpenter, Rudd and Brown. All members were present!

HB 484 Medical Malpractice Insurance Coverage HB 484

Dick Block, Director of the Division of Insurance for the Department of Commerce and Economic Development, was here to speak in support of the bill. He explained the bill section by section. The committee had questions of Mr. Block.

Emmett Wilson, representing the Alaska Hospital and Medical Center, from Anchorage also spoke. He indicated that the Legislature had developed MICA to provide malpractice insurance because the insurance companies didn't want to write malpractice. He hoped that the Legislature would approach this issue with concern for the consumer.

Clark King from the Alaska State Medical Association indicated a consensus opinion of 350 doctors that were is support of the bill. Mr. Brown questioned whether this was a consensus opinion.

There were additional questionsof Mr. Block.

The meeting was adjourned at 10:25 when the members received the call to the House.

Sec. 08.64.215 is amended to read:

Sec. 08.64.215. FINANCIAL RESPONSIBILITY. (a) ~~Due~~ to be eligible for an active license under this chapter, a person shall maintain liability insurance in amounts equal to ~~provide coverage for~~ at least $200,000 per claim and $600,000 aggregate claims per year.

(b) A person need not maintain the insurance coverage required in (a) if

(1) the person posts a bond equal to provide the amounts stated in (a);

(2) evidences by proof satisfactory to the Division of Occupational Licensing that the person has sufficient assets to be able to pay an individual judgment of $200,000 and will probably be able to satisfy judgments totaling $600,000 for any individual year; or

(3) from a combination of (1) and (2) above, the person is able to provide an unencumbered source of funds adequate to cover judgments of $200,000 per judgment or total judgments of $600,000 for any ~~individual~~ year.

Sec. 08.64.217. REIMBURSEMENT. (a) A physician who procured a contract providing coverage for medical malpractice from the Medical Indemnity Corporation of Alaska prior to May 1, 1977 shall be entitled to reimbursement in the amount that (1) exceeds (2)

(1) the rate the physician is charged by the Medical Indemnity Corporation of Alaska for the two year period from the effective date of this Act;

(2) the rate that the physician would have been (was) charged for that two year period if the rates and rate plan in effect on May 1, 1977 were in effect during that two year period.

(b) In order to be eligible for reimbursement under (a) of this section, a physician must maintain coverage from the Medical Indemnity Corporation of Alaska for at least two years from the effective date of this Act. delete

See 08.64.219 - The Division shall promulgate regulations necessary to carry out AS 08.64.215 and AS 08.64.215.

Possible exception for pool practice performance by the physician

AMENDMENT TO HB 484

Sec. 18.80.285. DISCRIMINATION IN THE PROVISION OF HEALTH CARE. (a) It is unlawful for a health care provider to deny, discontinue or refuse to afford health care or access to a health care facility to any person on the basis of the person's race, color, national origin, age, sex, marital status or employment or professional status.

(b) It is unlawful for a health care provider to deny, discontinue or refuse to afford to a person health care or access to a health care facility in retaliation for or to deter

(1) exercise by the person of any right guaranteed or conferred by the Constitution or laws of the United States or the state, including but not limited to the right of access to the courts of the United States or any state, whether the person is a litigant, prospective litigant, or person acting on behalf of the litigant or prospective litigant;

(2) exercise by a third person of any right guaranteed under the Constitution or laws of the United States or the state, including but not limited to the right of access to the courts of the United States or the state, whether the third person is a litigant or prospective litigant.

(c) The provisions of (a) of this section do not apply to a practitioner or facility whose practice is limited, based upon a generally accepted category of medical specialization, to persons in a certain age, sex, marital, employment or professional category.

(d) A person who wilfully violates this section is guilty of a felony and, upon conviction, is punishable by a fine of not more than $, or by imprisonment for not less than one nor more than years, or by both.

(e) In this section,

(1) "assistance" means any medical diagnostic, treatment or similar aid for the cure, relief or reduction of disease or bodily injury;

(2) "health care provider" means a physician, chiropractor, dentist or dental hygienist, nurse, dispensing optician, optometrist,

--over--

physical therapist, pharmacist, psychologist, psychological associate or hospital or health care facility.

Sec. 08.64.380(3) is amended by adding a new subparagraph to read:

(G) conviction of an offense involving discrimination in the provision of health care under AS 18.80.285.

Malpractice File

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE POUCH D -- JUNEAU 99811

April 8, 1977

Dear Physican and Hospital Administrators:

The Medical Indemnity Corporation of Alaska, the medical malpractice insurer established by the 1976 Legislature is now an operating reality and insuring over 150 physicians and 19 hospitals.

Although the desirability of some provisions are being questioned by physicians, the administration continues to believe that total participation by all physicians is necessary if the kind of coverage provided by MICA and the kind of rate structure imposed by statute is to continue.

By the same token, if the physicians indicate that they would accept a different level of insurance and a more restrictive rate plan, total participation by all physicians would no longer be a requirement in the plan.

For the past two months I have met with the Ad Hoc Legislative Committee of the Alaska State Medical Society and with Dr. David Beal at their request to discuss which modifications to the coverage and rating provision would be necessary in order to have a voluntary plan.

As a result of these several meetings the members of the Ad Hoc Committee have agreed that they would accept certain changes in coverage and ratings and I have agreed that if the coverage and rating are changed as stipulated, the plan could operate on a voluntary basis.

I have participated with the Ad Hoc Committee in the draft of legislation which would accomplish this end. The proposed bill, a copy of which is attached, will be introduced on behalf of the ASMA Ad Hoc Committee. Provided no substantial changes are made to the language, the administration will not oppose the bill.

It is important that every person entitled to coverage under MICA review and understand the impact of the proposed changes. I have attached a comparis n page. If you have any questions concerning the proposal, I would be happy to have you call.

Sincerely,

Richard L. Block
Director

RLB/jag5/5

ALASKA MEDICAL MALPRACTICE INSURANCE

COMPARISON

QUESTION	PRESENT LAW	PROPOSED LEGISLATION
Must Physican have Insurance?	Yes - the plan is mandatory.	No -
Must it be procured from MICA?	Yes - it is exclusive.	No - participation in MICA is voluntary.
Must MICA sell the policy to any doctor who applies and pays the premium?	Yes	Yes
Type of coverage?	"Occurrence" - all claims occurring during policy period.	"Claims made" - all claims reported and occurring during period of continuous coverage.
Can tail protection (protection against the late reported claim) be purchased?	Not necessary.	Yes - for an additional premium.
Can the tail protection be procured at any time?	Not applicable.	No - only upon termination of coverage under MICA.
In Calculating Premium: a. Must premium be based upon medical revenue?	Yes	No
b. May medical revenue, or such items as retirement, new practice or bush practice be recognized in the rate?	It is automatically recognized when basing premiums on revenues.	Generally no - although some modest credits might be offered.
c. Will premium for one year be known in that year?	Yes	No - the plan calls for retroactive adjustments for up to three years after the end of the policy period.
d. Will premiums be based on Alaska medical malpractice experience?	To a large degree yes - however, the Alaska experience is not large enough to be fully credible, thus, other factors will have to be included. Overtime, through prospectively applied recognition of Alaska past actual experience, the long-term cost will reflect Alaska experience.	Yes, but because the plan is voluntary, the rates will give less prospective recognition to Alaska experience. Through retrospective rating and because of using a claim made form the recognition of actual MICA experience will be reflected in the insurance cost somewhat more quickly.
e. If insured terminates participation in the plan at the end of a policy period, does the premium obligation also terminate?	Yes - except that there will be a premium adjustment to reconcile actual gross receipts for the last period to estimated gross receipts for the last period.	No - since for three years there is a potential retrospective premium obligation.
Is the plan a permanent solution?	Yes	NO - THE PLAN WILL AUTOMATICALLY ~~It could be, however, if~~ participation falls below UNLESS the stipulation percentage AND the plan automatically TERMINATES TO PRIVATE INSURER THAT ASSUMES THIS BUSINESS.
Will statutory provisions for for management of MICA remain the same?	Yes	Yes - except two additional physicians will be included on the Board of MICA.

Prepared by:

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION
A BILL

For an Act entitled: "An Act Amending Medical Malpractice Insurance Law, Chapter 102 Alaska Statutes 1976, to repeal mandatory and exclusive provisions and create a state operated, competitive Medical Malpractice Insurance Fund."

*Section 1. AS 08.64.215 is deleted in its entirety.

*Section 2. AS 08.20.115 is deleted in its entirety.

*Section 3. AS 08.32.015 is deleted in its entirety.

*Section 4. AS 08.36.115 is deleted in its entirety.

*Section 5. AS 08.68.165 is deleted in its entirety.

*Section 6. AS 08.71.085 is deleted in its entirety.

*Section 7. AS 08.72.115 is deleted in its entirety.

*Section 8. AS 08.80.115 is deleted in its entirety.

*Section 9. AS 08.86.125 is deleted in its entirety.

*Section 10. AS 09.55.544 is amended by adding a new section to read:

Sec. 09.55.544. LIMITATION OF ACTION. (a) Except as provided in (b) of this section, no person may bring a malpractice action based on the negligence or wilful misconduct of a health care provider unless commenced within two years of the act or omission. However, if the plaintiff first has knowledge of the act complained of on a date within one year of the expiration of the period of limitation, the time limited for commencement of the action is extended one year from that date, but in no event may an action be commenced later than three years from the date of the act complained of.

(b) If the act complained of occurred before the plaintiff attains the age of six years, a malpractice action based on negligence or the wilful misconduct of a health care provider may be commenced at any time before the plaintiff attains the age of eight years, but no later.

*Section 11. AS 18.20.045 is deleted in its entirety.

*Section 12. AS 21.88.050(a)(1) is amended to read:

(1) in the form approved by the director, issue to all physicians and hospitals who pay the premiums for it a contract or contracts indemnifying physicians and hospitals and their employees who are health care providers against loss by reason of liability for [PROFESSIONAL SERVICES RENDERED IN THE STATE ON AN OCCURRENCE BASIS] <u>covered claims for an act or omission in the delivery of professional health care in this state</u>, and agreeing to

tender on behalf of the physicians and hospitals and their employees who are health care providers a defense in a covered claim brought under AS 09.55.530 - 09.55.560; [THE LIMITS OF LIABILITY SHALL BE NO LESS THAN THE MINIMUM LIABILITY COVERAGE REQUIREMENTS TO BE MAINTAINED UNDER AS 08.64.215 AND AS 18.20.045] the limit of liability provided in contracts issued to doctors shall be $200,000. per occurrence and $600,000. aggregate liability per year; the limit of liability provided in contracts issued to hospitals shall be $200,000. per occurrence, and an aggregate liability per year of $1,000,000. minimum, and an additional $20,000. for each bed over 50; the contract shall cover the defense against but need not indemnify a covered claim for punitive damages; at the option of the physician or hospital and for an additional premium the contract may cover claims against the physician or hospital that arise out of professional services performed by the physician or hospital for a period after December 31, 1974 except that coverage will not be provided for a claim already filed or of which the physician or hospital had or reasonably should have had notice at the time the retroactive insurance was purchased;

*Section 13. AS 21.88.050(a)(2) is deleted in its entirety.

*Section 14. AS 21.88.050(a)(7) is deleted in its entirety.

*Section 15. AS 21.88.050(b)(10) is added:

(10) in a form approved by the director and for an additional premium determined under sec. 80 of this chapter, issue endorsements which provide indemnity for claims not yet reported which arise out of professional services rendered during a period of continuous coverage under the originally issued contract, to physicians and hospitals who pay the premium for it and who are terminating their original covered claims contract with the corporation for a period of not less than one year.

*Section 16. AS 21.88.080(4) is amended to read:

(4) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for covered claims reported and unpaid, reserves for covered claims incurred during the policy period and not reported [PROVIDED THAT RESERVES FOR CLAIMS INCURRED DURING THE POLICY PERIOD AND REASONABLY EXPECTED TO BE REPORTED AFTER THREE YEARS AFTER THE INCIDENT MAY BE INCLUDED ON A DIFFERENT BASIS DUE TO THE ADDITIONAL FINANCIAL FLEXIBILITY PROVIDED BY THE CORPORATION] and reasonable expenses for the operation of the corporation.

*Section 17. AS 21.88.080(5) is amended to read:

(5) rates shall not be inadequate; rates are inadequate if, based on available data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including covered claims paid, reserves for covered claims reported and unpaid, reserves for covered claims incurred during the policy period and not

reported, [PROVIDED THAT RESERVES FOR CLAIMS INCURRED DURING THE POLICY PERIOD AND REASONABLY EXPECTED TO BE REPORTED AFTER THREE YEARS AFTER THE INCIDENT MAY BE INCLUDED ON A DIFFERENT BASIS DUE TO THE ADDITIONAL FINANCIAL FLEXIBILITY PROVIDED BY THE CORPORATION,] and reasonable expenses for the operation of the corporation;

*Section 18. AS 21.88.095 is added:

a) The corporation shall transfer all of its assets and liabilities to the company that meets all of the following qualifications:

1) Possesses a valid certificate of authority to transact casualty business in the State of Alaska. In evaluating the capital and surplus of the company for qualification for a certificate of authority the value of the assets and liabilities of the corporation shall not be considered.

2) Pays to the corporation the full value of any surplus in the corporation not represented by any unrepaid proceeds of loans by the loan fund to the corporation.

3) Executes a complete reinsurance and hold harmless agreement in form approved by the director covering all the corporation's obligations to its creditors and policyholders.

4) Executes modifications of loan agreements with the loan fund in which

i) the company agrees to assume the obligations.

ii) The loan provision shall be modified to provide a scheduled amortized repayment of the principal over a period not to exceed ten years if at any time the company writes less than premium levels provided in AS 21.88.050(a)(8).

iii) The provision for repayment provided in AS 21.88.210(b)(1) shall be modified to provide for annual installments of at least 25% of the excess of premium and investment income collected over the total of claims, reserves, and expenses on the medical malpractice book of business or 25% of the excess of premiums and investment income collected over the total of claims, reserves, and expenses on the corporation's total book of business, whichever is greater.

b) The company buying the business as provided in a) above shall enjoy the benefit of special provisions in c) below if the following provisions are met:

1) The company is an Alaskan domestic stock company.

2) The company continues to write premiums in excess of the levels provided in 21.88.050(a)(8).

c) The company meeting the qualifications in b) above shall

1) be entitled to carry forward and offset against its premium tax obligation the amount by which aggregate claims paid on reinsurance assumed pursuant to a)(3) of this section exceeds aggregate reserves on the same business.

2) the obligation to repay to the loan fund loans assumed at the time of transfer of the business shall not be shown as a liability on the books of the company.

*Section 19. AS 21.88.110 is deleted in its entirety.

*Section 20. AS 21.88.120 is deleted in its entirety.

*Section 21. AS 21.88.130 is deleted in its entirety.

*Section 22. AS 21.88.150 is deleted in its entirety.

*Section 23. AS 21.88.160 is deleted in its entirety.

*Section 24. AS 21.88.170 is deleted in its entirety.

*Section 25. AS 21.88.180 is deleted in its entirety.

*Section 26. AS 21.88.900(1) is deleted in its entirety.

*Section 27. AS 21.18.090(5) & (6) are deleted in their entirety.

*Section 28. AS 21.88.050(a)(8) is added:

(8) cease operation and terminate its affairs, if for two consecutive annual periods the corporation posts written premium in amounts less than 50 percent or if for one annual period posts written premium in an amount less than 35 percent, of the total written premium of all medical malpractice insurance for risks of physicians and hospitals in Alaska; but in any event the corporation shall cease operation and terminate its affairs by June 30, 1979.

*Section 29. AS 21.88.080(15) is added:

(15) if the corporation's collected premiums for any given year are less than its incurred claims, claim expense, underwriting expense, reserves for that year, and provision for repayment of any loans, it shall levy an assessment upon those insureds who held policies during that year; the assessment, which may be made in periodic installments, must be made within three years and may not exceed 150 percent of the physician's premium for that year. Termination of any policy does not relieve the insured of contingent liability for his proportionate share of the obligations to the corporation which accrued while the policy was in force.

*Section 30. AS 21.88.080(16) is added:

(16) if the corporation's collected premiums for any given year exceed its incurred claim expense, underwriting expense, reserves for that year, and provision for repayment of any loan, it may apportion and pay or credit its insureds, who held policies during that year, only out of the part of its surplus fund which represents net realized savings and net realized earnings in excess of the surplus required by law to be maintained; such payment or credit shall be proportionate to the insured's earned premium for that year.

*Section 31. As 21.88.900(16) is added:

(16) "covered claims" means claims by injured patients reported to the corporation during the period of continuous coverage by the corporation of the insured health care provider for an act or omission in the delivery of health care services during the same period of continuous coverage; continuous coverage is one or more successive policy periods which is uninterrupted by cancellation or failure to renew for any reason.

ANCHORAGE PEDIATRIC GROUP
3300 PROVIDENCE DRIVE - SUITE 206
ANCHORAGE, ALASKA 99504
PHONE 279-6461 AREA CODE 907

February 22, 1977

JOHN C. TOWER, M.D.
HARVEY F. ZARTMAN, M.D.
MARIAN WITT, M.D.
R.W. KELLER, M.D., APC.

PLEASE REPLY BY AIR MAIL

Representative Lisa Rudd
2827 Lore Road
Anchorage, Alaska 99507

Dear Mrs. Rudd:

I don't believe you actually are representative from our district (Indian Hills) but I feel that I can write to you as a friend, as well as a representative of the Anchorage area in Juneau, regarding my plight in the present malpractice situation. I am sure that all the legislators are fed up with various bickerings back and forth and especially with some of the less than refined language of certain of our spokesmen (in this particular instance one can take a certain pride in the fact that the women in the medical association have somewhat better control of their tongues). Until November of last year I and John Tower and Marian Witt had for a very reasonable price, all things considered, excellent malpractice coverage through Clyde Clary's association with an umbrella of a one million dollar coverage. For this our group paid, up until last year, approximately $1,600 a year, and last year $4,600. However, as of November 1, the company or companies through which Clyde obtained our insurance all stopped insuring doctors in Alaska and we have been "bare" ever since. Then along comes MICA with its mandatory provision which will decimate my finances and I can't speak with complete knowledge of my colleagues, and this for a coverage of only $200,000. We will each be expected to pay a basic $1,000 which comes to $4,000 for the group, and then will each be expected to pay another $2,600 which comes to another $10,400, bringing the grand total of our premiums for the first year for the Anchorage Pediatric Group to a rousing $14,400. And, as you know from the law, this is not the end since it is an open-ended agreement in which if there are enough adverse judgments the entire membership will be assessed for anything over and above this. The coverage that we will get is a mere $200,000.

With these alternatives I have no choice but to elect to go bare and as things stand now this would be breaking the law. I have lived in Alaska for 20 years so far, my children have all been raised here, our home is here, and we have no desire to live anywhere else. At my age it is very difficult to break away from a practice and re-establish in another area of the country and I feel it is rather unfair to be placed in that position by this kind of a law. Malpractice insurance was formerly thought to be insurance for the physician to protect him and his assets against a possibly adverse suit. Since we have essentially no assets other than our good health and good name (I hope) we can go "bare." I have no plans

to do malpractice and do not feel that I have done malpractice in the past though it took a harrowing five years and a vicious five weeks in court one time to demonstrate that fact to some attorneys who shall remain nameless. I cannot promise my patients that there will not be bad results from medical treatments and I have been more cautious since November to stay out of so-called dangerous situations now that there are other pediatricians in Anchorage. As you may have heard through the grapevine, the case in which I was sued for some three million dollars involved a patient with no previous medical contacts in the community who literally presented an emergency situation which we could not with any honesty decline to cover. But now with so many pediatricians, I feel that the others can cover the anonymous prematures and other risky pediatric emergencies, at least for the time being.

The mandatory nature of this malpractice coverage bothers me from another standpoint. If nothing else was settled in my trial, the Supreme Court did hand down a dictum which has been published in national medical periodicals (the A.M.A. Newspaper) that the presence or absence of malpractice insurance in the portfolio of the physician defendant is not a proper consideration by the jury or the courts at the time of a malpractice suit. And Judge Buckalew was upheld in his refusal to allow the plaintiff's attorneys to inform the juries of the amount of our malpractice coverage since it had nothing to do with the rightness or wrongness of the care I rendered to the baby. If the malpractice law is allowed to stand as is with the mandatory provision, then every juror, every bailiff, every judge, every attorney, every plaintiff in the entire state will know that every doctor is good for a $200,000 judgment once every year. This bit of evidence will unavoidably tarnish every civil suit and it has already been declared improper that the jury have this information. I doubt that Mr. Block has even considered this in making all of his claims for the necessity of this mandatory provision.

I must confess I am not actually sure what committees you serve on and what direct interests you may have in the changes in this malpractice law. However, I would urge, if it is at all possible, to at least let my feelings as a single practicing physician be known among all of the loud noises and confusion over the legislation. At the present time, 2-17-77, I have not paid the MICA insurance, I have not sent back Judge Ripley's court order, I have not taken part in any of the suits, and I am at a loss and quite disturbed about the future of myself and my family. I do not knowingly wish to go out and break the law but the alternative, unfortunately, for me would be bankruptcy. Any help that you could give in this matter would be greatly appreciated.

Sincerely yours,

Harvey F. Zartman, M. D.

HFZ:EM

John Thanks for your contribution.

Alaska State Legislature

Representative
CLARK GRUENING
940 Tyonek Drive
Anchorage, Alaska
99501

907-274-2446

Chairman
SPECIAL COMMITTEE ON
THE ALASKA PERMANENT FUND
Chairman
WAYS and MEANS SUBCOMMITTEE
Member
FINANCE COMMITTEE
LEGISLATIVE COUNCIL

House of Representatives

POUCH V JUNEAU 99811

April 28, 1977

Paul M. Worrell, M.D.
207 E. Northern Lights Boulevard
Anchorage, Alaska 99503

Dear Dr. Worrell:

Thank you for your letter expressing your views on the malpractice situation.

As you point out, malpractice insurance is not just an Alaskan problem, but a national one, and our sister states still seek a solution as well. The only provision in your postcript addressed by HB 484 is the statute of limitations.

We are looking closely into the entire problem and trying to reach an equitable solution. An equitable solution would in my view still contain provisions for compensation for patients injured by malpractice.

Enclosed for your information is a Ketchikan Medical Society's position paper on malpractice. I agree with their view that tort reform ought to apply to all professional liability, including limitation of personal liability.

Cordially,

Rep. Clark Gruening

OPHTHALMOLOGIST
WILLIAM F. KINN, M.D.
BRUCE J. WOLF, M.D.
SAMUEL A. McCONKEY, M.D.

OTOLARYNGOLOGIST
RONALD E. TINSLEY, M.D.
RICHARD P. RAUGUST, M.D.
BRUCE G. WHIPPLE, M.D.

PLASTIC AND RECONSTRUCTIVE SURGEON
WILLIAM W. WENNEN, M.D.

EYE, EAR, NOSE & THROAT CLINIC

April 26, 1977

Fairbanks Legislators
Pouch V
Juneau, Alaska 99811

ATT: Larry Carpenter, Don Bennett, Sally Smith, Fred Brown, Charlie Parr, John Butrovich, Glenn Hackney, Steve Cowper, John Huber

SUBJECT: Malpractice Legislation

Dear Legislators:

I feel it is timely and necessary that I make our Fairbanks Legislators aware of many of the physician's, in the Fairbanks area, disagreement with the recommendations of our recent leaders in the Alaska State Medical Society. We also vehemently disagree with the tactics in which they have employed to bring the issue to the attention of the legislators.

It is my opinion, after considerable involvement with the Malpractice Commission, that the mandatory provision in the law should not be discarded lightly and would urge you not to allow this to happen during this legislative session. If the mandatory requirement for malpractice insurance through the M.I.C.A. is eliminated, it would be my prediction that within a year or two we will be back to the same situation that we were two years ago, namely nonavailability of any insurance at what any of us could call reasonable cost. It would be my suggestion that the M.I.C.A. remain a mandatory requirement on the part of all practicing physicians in the state of Alaska, at least for one and probably two years until enough experience has been gained to make an intelligent nonemotional decision regarding its necessity.

There are several other changes that are being recommended, such as increased physician representation on the board, a more restrictive statute of limitations, none of which we obviously have any objection to. There are many other changes in the law that I see being required before we truly have a workable situation, but feel it is inappropriate at this time to urge these changes until a period of experience has been obtained. I would be happy to answer any questions regarding this subject and could even travel to Juneau should any of you feel it advisable.

Sincerely,

W. F. Kinn, M.D.

cc: Richard L. Block, Director of Insurance

1919 LATHROP STREET, P.O. 1248, FAIRBANKS, ALASKA 99707, PHONE 456-7767

WFK/dls

April 25, 1977

Mr. Richard L. Block
Director Division of Insurance
Department of Commerce &
Economic Development
Pouch D
Juneau, Alaska 99811

Dear Mr. Block:

We have reviewed your letter of April 8th and the proposed revisions of the malpractice law and wish to record our impressions.

The proposed revisions appear to abolish a malpractice insurance program which offers good insurance at reasonable cost and substitute an inadequate claims made program which will almost certainly fail to provide any satisfactory insurance. Because of this we strongly oppose the proposed revisions.

Prior to the passage of the Medical Malpractice Insurance Law and formation of MICA there was a malpractice insurance problem with many physicians unable to obtain insurance at any price and for many more inadequate claims made insurance available only at exorbitant cost. We prefer to have adequate insurance to protect ourselves and our patients and it is disturbing to see a potentially good and workable program for provision of insurance scuttled.

The reasons for and methods of arriving at the proposed changes in the law are also of concern. While the mandatory provision may cause an initially negative response, the possibility of any satisfactory program without total participation of all providers seems nonexistent. While costs for some groups may be greater now under the program, if the general trend persists rates will almost certainly be comparable in a short time. As for the methods of arriving at the recommended changes, we certainly do not feel that the ad hoc committee of the Alaska State Medical Association has represented us and doubt that it has represented the opinion of the majority of practicing physicians in the state. Rather, we feel it represents the feelings and recommendations of some members of the Anchorage medical community and we would question whether these views are consistent with the best interests of medical care statewide.

While the Medical Malpractice Insurance Law may not stand proposed court test, we feel it should have that chnace and accordingly should not be revised at this time.

Sincerely,

J. Paul Lunas, M.D.

Edward D. Spencer, M.D.

Donald D. Funk, M.D.

Paul D. White, M.D.

George H. Longenbaugh, M.D.

M. Theodore Silver, M.D.

cc: Governor Jay Hammond
Honorable Richard Eliason
Honorable Pete Meland
Arthur N. Wilson, M.D.
William F. Kinn, M.D.
Harriet Schirmer, M.D.

Fairbanks Family and General Practice
A Professional Corporation
Dr. Cammack Dr. Roth
Medical Dental Arts Building
1919 Lathrop, Suite 207
Fairbanks, Alaska 99701

May 2, 1977

Fairbanks Legislators
Pouch V
Juneau, Alaska 99811

ATTN:	Larry Carpenter	Fred Brown	Glenn Hackney
	Don Bennett	Charlie Parr	Steve Cowper
	Sally Smith	John Butrovich	John Huber

Dear Legislators:

Although we physicians in Fairbanks have not been as vocal as our counterparts in Anchorage and we may disagree with their tactics, the question of malpractice insurance is a concern of ours also. The issue does not appear to be any clearer here in Fairbanks however, with some physicians wanting mandatory insurance and others against it. We, at Fairbanks Family and General Practice, are against M.I.C.A. for the following reasons:

1. It is mandatory.
2. It is rediculously expensive.
3. It really doesn't address the problems of defining malpractice, setting amounts of awards, defining damages, and setting time limits.

At the present time, we do not have insurance coverage and haven't had coverage for almost 3 years. We feel that with the current situation, insurance coverage only invites lawsuits. Also, the expense could necessitate raising fees to patients 10% at least.

I don't have any easy solutions to this problem, but at the present, the placard "PROTECTED BY THE MAFIA" seems like an attractive alternative.

Sincerely,

David M. Cammack, M.D.

KETCHIKAN MEDICAL SOCIETY

3100 TONGASS AVENUE - KETCHIKAN, ALASKA 99901

POSITION PAPER ON MALPRACTICE
December 28, 1976

Few issues recently confronting medicine and the public interest have provoked more discussion, sentiment, legislative action and judicial review than the medical malpractice situation. We want to outline our position on several aspects of the medical malpractice situation in Alaska. First, we wish to present our evaluation of Alaska's current malpractice law. Second, we want to discuss implementation of the insurance provisions by the Medical Indemnity Corporation of Alaska (MICA). Finally, we wish to recommend legislation bringing tort reform.

I. EVALUATION OF ALASKA'S CURRENT MALPRACTICE LAW.

An enormous amount of work by physicians, attorneys, laypeople, state officials and particularly legislators culminated last May 28. On that date Governor Hammond signed Chapter 102 of Alaska Statutes 1976, commonly referred to as Alaska's Medical Malpractice Insurance Law. Nothing in our evaluation is intended to overlook or belittle this significant accomplishment.

A. Several strong points in Chapter 102.

We believe that Chapter 102 made several important changes. The advisory panels will bring relevant medical facts to the courts promptly. Definition of the necessary burden of proof in court and of the concept of informed consent in clinical settings will protect the orderly practice of medicine. Spelling out the place of advance payments, elimination of ad damnum clauses, inclusion of payment for damages by category of loss and consideration of collateral resources in judgements will restrict financial liability while protecting the plaintiff.

We welcome the expansion in Chapter 102 of the responsibilities of, and options available to, the State Medical Board. Addition of two consumer members to the board may well be of value, given that the majority remain physicians. We recognize that policing our profession is difficult, but believe that physicians are best qualified to oversee their ranks.

information JLS.

B. Chapter 102 does not include tort reform.

Any sort of insurance without meaningful tort reform promises to be an expensive venture, virtually certain to founder financially. While Chapter 102 does modify previous law in several significant particulars, it does not attack this major problem.

C. Chapter 102 creates MICA'S mandatory insurance.

Reaction to the mandatory aspects of MICA insurance by the medical profession throughout the state has been largely negative. We share philosophical reservations regarding mandatory participation in a state sponsored system of insurance. We do not share philosophical objection regarding required insurance for the protection of both our patients and our profession. Even though state sponsored insurance programs are new, the legal system has always recognized the responsibility of physicians for their patients. The fact that medical liability law has been seriously mishandled in contemporary society does nothing, in our view, to upset the tenability of requiring responsibility for professional actions.

D. We support MICA.

Question remains whether MICA is the single [illegible]opriate source of insurance. We reluctantly support MICA, se[illegible] o workable alternative at this time. In view of the re[illegible]ly small number of physicians statewide, this spreads the risk a[illegible] as possible. Further, it makes the composition of the group [illegible]nsistently predictable to the greatest possible degree.

Mandatory insurance with a single source avoids problems of adverse selection present in an open insurance program, and assures that insurance is available for everyone. A single source of insurance equalizes premium rates to the greatest possible degree.

Single source insurance permits the most complete data collection. It encourages the most vigorous possible defense against suits, since all physicians in practice in the state are involved in any legal action directly or indirectly.

Mandatory MICA insurance makes the medical malpractice insurance issue completely public. It renders information readily available to the legislature, which has responsibility to make necessary changes in the legal system.

E. Alternatives to MICA.

Possible alternatives to mandatory MICA insurance apparent to us include either permitting personal posting of resources in escrow

to the limits set by the legislature, or MICA signing a contract with some separate entity which would guarantee participation by a contracted minimum number of physicians and provide coverage to any physician needing it. We are concerned that the unavailability of reinsurance to MICA at a reasonable cost confirms that a viable voluntary, widely available insurance program in Alaska is most unlikely at this time. There appears to be no other alternative to MICA that would guarantee availability of insurance for all physicians, and protection for all patients.

II. IMPLEMENTATION OF THE INSURANCE PROVISIONS BY THE MICA BOARD.

A. Positive accomplishments by the MICA board.

We believe that the MICA board has worked hard and conscientiously. Two of the issues inciting most violent reaction, namely mandatory MICA insurance and consideration of medical revenues in setting premiums, were included in Chapter 102. To their individual credit, board members have dealt with unrestrained and at times unjustified criticism with equanimity. They have accomplished a great deal in a relatively short time.

At the point of proposed premium fees, we find the documentation of the actuarial process complex but defensible. We question the wisdom of including California, an exceedingly high risk state, in the calculations for Alaska, thought by most to be a low risk state. While we are admittedly in a position where self interest is served by a differentiation in premium rates between urban and rural communities, we find the fifteen percent differential granted well supported by actuarial data at a significantly higher level. The system of classification by specialty is complex, but seems to approximate others with which we are more familiar.

While we believe that MICA has been unnecessarily rigid in the primary basis of premiums in medical revenues, the concept of basis in revenues is not offensive. In fact, it provides safeguards for physicians beginning their practice, closing their practice, or in a low volume practice. The combination of a maximum fee by classification with an alternative rate for each classification based in revenues appears the most flexible and realistic option. Problems peculiar to specific practices with exceptionally high overhead expenses may well require broadening the discretionary powers of the board to individualize rates further.

B. Criticisms and suggestions for changes for the MICA board.

Unfortunately, the MICA board has distinguished itself with arbitrary action that has irritated many of us. The tone of many of their belated releases of information remains imperial. We

welcome dialogue between physicians and the MICA board, and urge opening of all MICA board meetings to any MICA-insured professional, except when particular case discussions require confidential proceedings.

We believe that the arbitrary time limitation for applications for retrospective coverage served no useful purpose, and should have been significantly more lenient.

We do not believe that the $200,000 per occurance limitation of liability claimed by MICA to include all physicians in a group satisfies the requirement of the law for $200,000 coverage per occurance for each physician. MICA's position seems particularly unreasonable, since each physician pays a separate premium for separate coverage.

With mandatory insurance available to well publicized limits, we believe that MICA must rigorously defend all claims where any questions of liability exists. MICA must function as a mutual defense organization, since its clientele is completely captive and its availability transparently public.

We remain extremely uncomfortable with the claimed prerogative of MICA to limit its liability below statutory limits in seeking settlement against the involved physician's wishes rather than pursuing defense. While we understand the rationale, we prefer that a clearly defined series of peer reviews take place prior to this step. Such a series might include a unanimous opinion against the physician by the expert advisory panel and similar opinion by another, uninvolved physician prior to MICA action. We believe that a MICA decision to settle against the involved physician's wishes should require unanimous board action.

We persist in protesting the obvious presumption of guilt in penalizing physicians for suits filed with increased premiums. The doublespeak of titling the penalty system a "merit rating plan" is ludicious. It should more properly be labeled a "claim penalty plan".

III. RECOMMENDED LEGISLATIVE TORT REFORM.

We believe that the key to solving the malpractice problem includes significant tort reform, and this requires further legislative action. This tort reform should apply in the broadest sense to all professional liability, rather than simply to medical malpractice. We believe that three specific reforms are necessary.

First, there must be some limitation of personal liability. With mandated insurance and thus mandated vulnerability for the professional, no feasible premium structure can cope with exponentially increasing settlements and awards.

Second, elimination of judgements for pain and suffering is similarly essential. Quantification of such loss in clearly impossible.

Third, there must be a rational statute of limitations. We firmly believe that two years from time of incident or age six years, which ever is later, would be the best alternative. Such a statute of limitations would protect the injured party, bring legal action while information and facts were more likely available and render rate setting for insurance considerably easier.

We are opposed to statutory limitations of legal fees, and consider it improper to intrude into a private matter between professional and client. Public notification of the settlement or verdict in any suit should include mention of court awarded attorney's fees. We urge continued evaluation and surveillance of the alleged benefits of the contingency fee system.

IV. SUMMARY.

In summary, we believe Alaska's Medical Malpractice Insurance law made several significant changes. We reluctantly support the current MICA program. We believe that for this or any other insurance program to remain viable tort reform is necessary. We believe a limitation of personal financial liability, elimination of awards for pain and suffering, and a statute of limitations of two years after incident or age six years, which ever comes last, are all urgently needed.

Pat copies in Members Mail Boxes

Charles P. Flynn
918 "R" Street
Anchorage, Alaska 99501

March 31, 1977

Honorable Lisa Rudd
House of Representatives
Juneau, Alaska 99811

Dear Lisa:

I would like to bend your ear for a few minutes on the subject of medical malpractice legislation, and some of the proposals that are currently being made. First, I should say that I have resigned from the Board of Governors of the Medical Indemnity Corporation of Alaska, for a variety of reasons, and the opinions expressed are purely my own. Second, a similar caveat, my understanding of the present proposals being made by the Medical Association is gleaned solely from newspaper accounts, and is therefore subject to whatever reporting error may be in those stories.

I think the point that most concerns me about the proposals which are now being made is that they involve what is apparently a hidden subsidy to the medical profession by the taxpayers of this state. You may recall that when the Governor appointed his task force on medical malpractice insurance, one of the most hotly debated issues before the task force was the question of whether or not the state should subsidize the doctors medical malpractice insurance premiums. The task force concluded that it should not, and I am confident that that was the correct decision. I think it is clear, however, that if the state sets up a malpractice insurance company which is not run on an economically sound basis, that there will be an indirect subsidy to the doctors, to the extent that their premiums are not truly reflective of the cost of providing the insurance. Setting medical malpractice insurance premiums is an extremely difficult job, as I can certainly attest from my experience with the Medical Indemnity Corporation of Alaska. There is a wide range of possibilities, and substantial judgment which must be exercised in determining what are the true comparables in establishing an appropriate cost for the insurance. In

addition, it is the nature of insurance, and particularly medical malpractice insurance, that the accuracy of your predictions will not be known for many years after the fact. Thus, if the state chartered corporation were to set its premiums significantly below the true cost of the insurance, I have been led to believe that it would be a minimum of five years before that fact would become apparent. Needless to say, this problem is a continuous one, in that you never really catch up with your experience. Thus, merely requiring that the corporation be managed on an actuarily sound basis does not necessarily assure that the state will not be subsidizing the doctors premiums, especially when you consider the extremely strong lobbying pressure that is applied to the members of the board by the medical profession. For example, the board originally adopted a plan of operation which called for closed meetings. The theory behind this was that it allowed a full and free and candid exchange of views between the members of the board as to the problems they faced. After receiving substantial criticism from the medical professional, and Governor Hammond, the board amended the plan of operation to provide that any member of the medical profession could attend meetings of the board, but that the meetings were to remain closed as to members of the general public. Although it is true that any person may request to be heard by the board, and I am sure such requests will be granted freely, the practical effect of such a distinction will be to create a extremely strong, and one-sided, lobbying force which is being applied to the Board of Governors. This would have the natural effect of minimizing the premium, and therefore maximizing the possibility of a state subsidy.

In addition, if the plan is not mandatory, any true correction of the premium level, if it is determined to be too low, will be extremely difficult. This is because if the corporation raises its rates to an economically sound level, or raises them even further to a level which will equalize for the prior undercharges, it will have a tendency to drive doctors out of the state corporation, and into the private market, which will be able to undersell the state, because it will be able to exercise underwriting judgment as to which doctors to accept as insureds. Thus, adverse selection will compound the problem of determining rates. Presumably one of the features of the state plan is that the state corporation will be required to accept any doctor as an insured. If that assumption is not correct, it seems to me

a legitimate question as to why the state is getting in the business of chartering a company which will perform just like any other insurance company, and may decline to write insurance for either specific doctors or specific groups or categories of doctors.

I have heard Dave Bickerstaff, an actuary who advises the M.I.C.A., testify at length that it would be very difficult, and perhaps impossible, to calculate a sound rate in the Alaska situation, if there were no mandatory and exclusive requirement. Thus, if the state sets up an insurance company as a last resort, I assume there is a very high chance that it will underprice the insurance. This would, in turn, mean that the taxpayers were picking up the difference, by putting up the capital which would be used to pay losses in excess of premiums.

All in all, it seems to me that the primary problem to be avoided is having the taxpayers subsidize premiums of the doctors. I think, in general, the medical community agrees with this proposition, and feels that if insurance premiums must be paid, that the doctors should pay their own way. While they properly point out that the system may be getting away from us in terms of the economic cost of maintaining our existing tort system, they are certainly not alone in suffering the consequences of that problem. Other professional groups, such as lawyers, are just beginning to feel the price escalation in malpractice insurance, and other groups, such as architects and engineers, have been under severe pressure even longer than the doctors. If it is appropriate to create an insurance company which will assure the doctors coverage, it seems to me at least equally appropriate to widen the jurisdiction of that company to include other professional groups such as lawyers, architects and engineers. The same analysis might well be used for problems such as automobile and homeowners insurance in the state, which I understand is becoming increasingly difficult to obtain, and increasingly expensive for more limited coverage. Thus, the point is not, to some extent, whether the doctors are entitled to this kind of treatment, but whether they are the only ones who are entitled to this kind of treatment.

Although the present statute certainly has defects, I do think it is significantly more fair to the taxpayers of the state than is the apparent proposal being made at the present time. I do think, however, that the present statute cannot realistically be expected to work, and accomplish its purposes, without the cooperation, or at least the acquiescence, of the medical community. Since that acquiescence is apparently not going to be forthcoming, I agree that it is appropriate to look for a realistic alternative. It seems to me that the alternative is not to place the state in an even more vulnerable position with respect to the cost of insurance, but to use the state's financial resources to make it possible for the doctors to solve their own problems. I would suggest that this might be accomplished by having the state loan to a mutual insurance company, which could be chartered by the medical community, a sufficient sum to capitalize the mutual insurance company. This loan would then be paid back over some reasonably short period of time, such as five or ten years, and during the same period of time the members of the mutual company would be required to make capital contributions sufficient to capitalize the company. These "bed pan mutuals" have had some success in other areas of the country, and it would seem to me to put the insurance problem back in its proper prospective. It gets the state out of the business, it allows the doctors full control over their own destiny, and it makes insurance available on the terms that the doctors themselves view as appropriate. While I have certainly not thought through this proposal in any great detail, it seems to me that it could be worked out in such a fashion that it would reasonably assure the return of the state's investment, and at the same time make it possible for the medical community to form an insurance company which would meet their needs, and in a way that there is not an immediate imposition of a large demand for a capital contribution.

I am sorry I have burdened you with this somewhat overlong letter, but it seemed to me that I should try to make some use of the accumulated information, if not wisdom, I have collected in the course of working with this problem.

Very truly yours,

Charles P. Flynn

CPF/lf

ANCHORAGE PEDIATRIC GROUP
3300 PROVIDENCE DRIVE - SUITE 206
ANCHORAGE, ALASKA 99504
PHONE 279-6461 AREA CODE 907

February 22, 1977

JOHN C. TOWER, M.D.
HARVEY F. ZARTMAN, M.D.
MARIAN WITT, M.D.
R.W. KELLER, M.D., APC.

PLEASE REPLY BY AIR MAIL

Representative Lisa Rudd
2827 Lore Road
Anchorage, Alaska 99507

Dear Mrs. Rudd:

I don't believe you actually are representative from our district (Indian Hills) but I feel that I can write to you as a friend, as well as a representative of the Anchorage area in Juneau, regarding my plight in the present malpractice situation. I am sure that all the legislators are fed up with various bickerings back and forth and especially with some of the less than refined language of certain of our spokesmen (in this particular instance one can take a certain pride in the fact that the women in the medical association have somewhat better control of their tongues). Until November of last year I and John Tower and Marian Witt had for a very reasonable price, all things considered, excellent malpractice coverage through Clyde Clary's association with an umbrella of a one million dollar coverage. For this our group paid, up until last year, approximately $1,600 a year, and last year $4,600. However, as of November 1, the company or companies through which Clyde obtained our insurance all stopped insuring doctors in Alaska and we have been "bare" ever since. Then along comes MICA with its mandatory provision which will decimate my finances and I can't speak with complete knowledge of my colleagues, and this for a coverage of only $200,000. We will each be expected to pay a basic $1,000 which comes to $4,000 for the group, and then will each be expected to pay another $2,600 which comes to another $10,400, bringing the grand total of our premiums for the first year for the Anchorage Pediatric Group to a rousing $14,400. And, as you know from the law, this is not the end since it is an open-ended agreement in which if there are enough adverse judgments the entire membership will be assessed for anything over and above this. The coverage that we will get is a mere $200,000.

With these alternatives I have no choice but to elect to go bare and as things stand now this would be breaking the law. I have lived in Alaska for 20 years so far, my children have all been raised here, our home is here, and we have no desire to live anywhere else. At my age it is very difficult to break away from a practice and re-establish in another area of the country and I feel it is rather unfair to be placed in that position by this kind of a law. Malpractice insurance was formerly thought to be insurance for the physician to protect him and his assets against a possibly adverse suit. Since we have essentially no assets other than our good health and good name (I hope) we can go "bare." I have no plans

to do malpractice and do not feel that I have done malpractice in the past though it took a harrowing five years and a vicious five weeks in court one time to demonstrate that fact to some attorneys who shall remain nameless. I cannot promise my patients that there will not be bad results from medical treatments and I have been more cautious since November to stay out of so-called dangerous situations now that there are other pediatricians in Anchorage. As you may have heard through the grapevine, the case in which I was sued for some three million dollars involved a patient with no previous medical contacts in the community who literally presented an emergency situation which we could not with any honesty decline to cover. But now with so many pediatricians, I feel that the others can cover the anonymous prematures and other risky pediatric emergencies, at least for the time being.

The mandatory nature of this malpractice coverage bothers me from another standpoint. If nothing else was settled in my trial, the Supreme Court did hand down a dictum which has been published in national medical periodicals (the A.M.A. Newspaper) that the presence or absence of malpractice insurance in the portfolio of the physician defendant is not a proper consideration by the jury or the courts at the time of a malpractice suit. And Judge Buckalew was upheld in his refusal to allow the plaintiff's attorneys to inform the juries of the amount of our malpractice coverage since it had nothing to do with the rightness or wrongness of the care I rendered to the baby. If the malpractice law is allowed to stand as is with the mandatory provision, then every juror, every bailiff, every judge, every attorney, every plaintiff in the entire state will know that every doctor is good for a $200,000 judgment once every year. This bit of evidence will unavoidably tarnish every civil suit and it has already been declared improper that the jury have this information. I doubt that Mr. Block has even considered this in making all of his claims for the necessity of this mandatory provision.

I must confess I am not actually sure what committees you serve on and what direct interests you may have in the changes in this malpractice law. However, I would urge, if it is at all possible, to at least let my feelings as a single practicing physician be known among all of the loud noises and confusion over the legislation. At the present time, 2-17-77, I have not paid the MICA insurance, I have not sent back Judge Ripley's court order, I have not taken part in any of the suits, and I am at a loss and quite disturbed about the future of myself and my family. I do not knowingly wish to go out and break the law but the alternative, unfortunately, for me would be bankruptcy. Any help that you could give in this matter would be greatly appreciated.

Sincerely yours,

Harvey F. Zartman, M. D.

HFZ:EM

HB
491

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM May 31, 197

SUBJECT: Use of Social Security Account Numbers as an Identifier on State Forms (W.O. 3499)

TO: The Honorable Charles Parr
Chairman
House HESS

FROM: Deborah Behr
Research Analyst

I recently received the delayed reply from the University of Alaska regarding the use of social security account numbers on its forms. I have revised the memorandum that I forwarded to you earlier this session to reflect the receipt of this material. Basically the University appears to use the social security account number as a key identifier for many of the University's computer programming systems.

This completes the study. If you have further requests for information on this topic, please do not hesitate to contact me at 465-4917.

DB:mo
Attachments