887 SHESS HB 802 - HJR 83

P.O. BOX 1330
FAIRBANKS, ALASKA 99701

April 7, 1980

Honorable Glenn Hackney
Pouch V
Juneau, Alaska 99811

RE: House Bill - 802
Passed - Nurse Mid-Wife Bill

Dear Senator Hackney:

Thank you for requesting medical society input on this bill. The Fairbanks Medical Association has the following concerns with this legislation.

1) The provision of hospital privileges for nurse mid-wives should not be tied to licensure. We understand that this feature has been removed from the House passed version, and we hope it will remain a "dead issue".

2) Insurance plans and health maintenance organization type plans should not be required to cover these services as a condition of being marketed in Alaska. We understand this also has been removed.

3) There must be provision for adequate physician supervision. This will be adequately covered if State Medical Board approval of a supervisory or collaborative relationship with a physician remains a condition of licensure for nurse practitioners, including nurse mid-wives. That state of affairs is threatened by the nurse practice bill which is also currently in the legislature, and you will be receiving comments from us on that bill separately.

I do not believe we have any problems with the requirement that Medicaid cover nurse mid-wife services, which we understand is the only significant provision remaining in the bill, except for our concern that adequate physician supervision be mandatory, preferably a condition of licensure as mentioned above.

Please contact me if you would like to discuss this further. Thank you for your interest.

Sincerely,

Donald E. Thieman, M.D.
President
Fairbanks Medical Association
1001 Noble Street
Fairbanks, Alaska 99701

DET:mb

cc: Douglas Smith, M.D., President
Alaska State Medical Association

Winthrop Fish, M.D., Chairman
Alaska State Medical Association Legislative Committee

Martha MacDermaid, Executive Secretary
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April 21, 1980

The Honorable Glenn Hackney
Chairman, Senate Health,
Education & Social Services
Committee
Pouch V
Juneau, Alaska 99811

ReP House Bill 802

Dear Senator Hackney:

This letter is written on behalf of the American Council of Life Insurance and its sister trade association, the Health Insurance Association of America.

There are technical problems with the bill, as set out in the enclosed letter from Mr. Kuhnen of the HIAA. His suggested amendments are also enclosed. Any questions about these suggested changes can be answered, through me, by Mr. Kuhnen.

Thank you for your consideration.

Very truly yours,

M. T. Thomas

MTT/pl

cc: Mr. Bill Lincoln
Mr. Charles Kuhnen

HEALTH INSURANCE ASSOCIATION OF AMERICA

CHICAGO NEW YORK WASHINGTON

LEGAL DEPARTMENT
Charles D. Kuhnen, *Counsel*

Chicago Office
332 South Michigan Avenue
Chicago, Illinois 60604
(312) 322-0800

April 8, 1980

Mr. M. T. Thomas
Attorney at Law
Robertson, Monagle, Eastaugh, & Bradley
200 National Bank of Alaska Building
P.O. Box 1211
Juneau, Alaska 99802

Re: Alaska HB 802 - Services of Nurse Midwives

Dear Mike:

We need to secure an amendment to this bill. We do not oppose covering these services of nurse midwives in lieu of physicians' services for pregnancy and childbirth, provided: (1) the policy covers physicians' services for pregnancy and childbirth, (2) the nurse midwife is licensed as a registered nurse and certified as a nurse midwife, (3) the services performed by the nurse midwife are within the scope of the nurse midwife's certification and license, and (4) any bill requiring this is drafted properly.

We do object most strongly to the provision of the bill which mandate maternity benefits.

Section 2 of the bill is imporperly drafted in that: (1) it speaks of "health" insurance instead of "disability" insurance; (2) we provide benefits for the maternity coverage that have nothing to do with practitioner's services, as well as benefits that cover practitioner services and this section does not make the distinction; (3) there is no requirement that the services of the nurse midwife be within the scope of the person's certification; (4) the phrase which begins "in accordance with regulations" is not clearly tied to the practice of nurse midwives rather than to the provision of benefits.

Sections 3, 4, and 5 mandate benefits for maternity services furnished by nurse midwives in all policies which provide for hospital, nursing, medical, or surgical services. We object to the mandating of benefits. Also the sections are improperly drafted in tha hospital policies may provide no benefits for the services of any medical practitioner, and in that benefits for nursing services do not cover the services of physicians. The nurse midwife is supposed to be an alternative to the physician for some services in connection with pregnancy and childbirth.

There is no good reason that everyone who takes out an insurance policy which provides hospital, nursing, medical, or surgical benefits should also have to purchase maternity benefits, whether that person wants to pay for maternity benefits or not. Maternity coverage is now available from many insurers for those who wish to pay for the coverage.

Section 6 of the bill mandates maternity benefits for services or nurse midwives in subscribers' contracts. If the Blues want to accept this, that is alright with us. All we want to make sure of in connection with the Blues are not also required to do.

Attached is my redraft of Sections 2 through 8 of the bill. What my redraft says is that if a policy or a subscribers' contract or fraternal benefit society certificate provides benefits for a physician's services in connection with pregnancy or childbirth, benefits shall not be denied when the services are performed by a certified nurse midwife if the services are within the scope of the nurse midwife's certification.

Whenever I have mentioned "certificates" I have done so only in connection with a fraternity benefit society, because we must be careful not to use the word "certificate" in a way in which it can be interpreted to refer to an individual's certificate under a group disability insurance policy.

We need some lead time which I have provided for us. We also should avoid having the state interfere with previously issued policies, but (to be realistic) I have included a provision affecting previously issued group policies under certain circumstances.

The ACLI's position, I believe, is the same as ours on this bill.

Sincerely,

Charles D. Kuhnen
Counsel

CDK/erc

Fairbanks Memorial Hospital

1650 Cowles St.
FAIRBANKS, ALASKA 99701

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

April 18, 1980

State Medical Board
c/o Jeffrey A. Partnow, M.D.

SUBJECT: Lay Midwifery

Dear Jeff,

In recent months the members of the Department of OB/GYN and Pediatrics have become aware of at least one person, calling herself a lay midwife, soliciting deliveries to take place in the patient's home. We have checked into the legality of this situation, that is, lay midwifery, and find that the State Statutes are deficient in this regard, that is, it is currently illegal for a certified nurse midwife or even a physician to practice in any manner, including attendance at home deliveries unless they are appropriately licensed. Since the subject of lay midwifery is not covered at all, it is apparently the opinion of the Attorney General's office that it is not illegal for someone to label themselves a lay midwife and provide care for home deliveries. We feel that this situation is inappropriate and that someone, i.e., the State of Alaska, should spell out the necessary conditions under which a lay midwife may be defined and may practice. To ignore this problem is to condone its existence. We would, therefore, recommend that a bill be drawn up using the outline provided below to rectify the situation. Senator Don Bennett has stated that he would be willing to sponsor such a bill if it was recommended by the Medical Board.

AN ACT RELATING TO LAY MIDWIFERY

PROBLEM: The lack of a statute providing for licensure of lay midwives.

GOAL: The purpose of this bill is to prevent unqualified persons from misleading the public by providing for the licensure of lay midwives.

DEFINITION: In this bill the word "physician" shall mean a person with an M.D. or a D.O. degree.

DEFINITION: A lay midwife is a person who engages in planned attendance and/or assistance at delivery of a baby wherever the delivery may occur and whether for fee or other consideration. This definition applies only to those persons who are not otherwise licensed as a physician or as a nurse midwife under current statute.

PROVISION I: In order to be licensed in the State of Alaska a lay midwife must have a supervisory-consultative relationship with a licensed physician who must ascertain that the lay midwife has appropriate qualifications and training.

PROVISION II: The supervisory physician must have staff privileges in the OB/GYN Department of the hospital or other medical facility to which a patient with complications would be referred.

PROVISION III: The supervisory physician or another physician of his designation must be available for consultation at all times by the lay midwife.

PROVISION IV: The application for licensure must include the following:
1. The name and address of the supervisory physician.
2. The physician shall state that the applicant is qualified to practice lay midwifery.
3. The application shall include a brief description of the method of supervision and the mechanism for consultation.
4. The institution in which the physician has privileges must be listed.

PROVISION V: A fee should be established payable to the Department of Commerce, and the length of the licensure period and the date of its expiration should be spelled out.

PROVISION VI: Practice of lay midwifery as defined, without a current license, is an offense punishable by--(the same provision should be used here as would apply for a nurse practicing without a license.)

The undersigned staff members of Fairbanks Memorial Hospital concur in recommending that such a bill be drawn up as soon as possible.

David Cammack, M.D.

Clarice Dukeminier, M.D.

Lawrence Dunlap, M.D.

Richard Hess, M.D.

Robert Roth, M.D.

Ralph Wells, M.D.

Joseph Worrall, M.D.

Leanne Converse, M.D.

Alan MacFarlane, M.D.

Richard Reem, M.D.

Donald Thieman, M.D.

Nancy Schultz, M.D.

James Bertelson, M.D.

Midwives

[redacted] 802, by Reps. McKinnon, Rogers and Phillips. Amends AS 18.20 (Hospitals) by addition of new section which prohibits the issuance of a license to a hospital which doesn't per nurse practitioners, certified as nurse midwives in accordance with state regulations, to practice as nurse midwives in the hospital. Amends AS 21.42 (The Insurance Contract) by adding new section which requires all individual and group health insurance policies providing coverage on an expense-incurred basis, and al individual and group service or indemnity contracts issued by a nonprofit corporation, to provide that the health insurance benefits applicable to maternity shall be payable for maternity services furnished by certified nurse midwives. Amends AS 21.51 (Disability Insurance Policies) by adding new section which requires disability policies issued or delivered in state to provide indemnity in reasonable amount for cost of maternity service furnished by certified nurse midwives. Amends AS 21.54 (Group & Blanket Disability Insurance) by adding a new section with above effect. Amends AS 21.8- (Fraternal Benefit Societies) by adding

HB 802

new section which requires certificate or other evidence of a contract of health insurance issued or delivered by a society in state to provide indemnity for nurse midwife services. Amends AS 21 87 (Hospital & Medical Service Corporations) by adding new section outlining nurse midwife services that must be furnished by medical service corporations, hospital service corporations, or combined medical and hospital service corporations. Adds "nurse midwife" to definition of "participant physician" under AS 21.87.330(8) and adds definition of "nurse midwife" (registered professional nurse who is certified as an advanced nurse practitioner under AS 08.68410(9) and authorized to practice as a nurse midwife under regulations adopted in accordance with AS 08.68.410(5)). Does not provide for effective date.

Nurse Midwives (SUBSTITUTE offered)

HOUSE BILL NO. 802, [redacted]. Reported back to the House by HESS with a majority recommending replace with a SUBSTITUTE and that it do pass. Not concurring: Chatterton has no recommendation. The substitute deletes provisions added in the original bill relating to disability policies issued or delivered in the state to provide indemnity in reasonable amount for cost of maternity services furnished by certified nurse mudwives. Deletes proposed amendment to Group and Disability Insurance relating to the same. Deletes provisions which called for certificate or other evidence of a contract of health insurance issued or delivered by a society in state to provide indemnity for nurse midwive service. Deletes section which added provisions outlining nurse midwife services that must be furnished by medical service corporations, hospital service corporations, or combined medical and hospital service corporations. The substitute adds "nurse midwife" to the definition of "physician" under AS 21.87 (Insurance. Hospital and Medical Service Corporations.) Adds section 21.42.347 (Coverage for Cost of Services Provided by Nurse Midwives) to AS 21.87.340(15) (Hospital and Medical Service Corporations. Other provisions applicable). To Rules.

CS HB 802

rse Midwives

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 802 (Amended), (see pages 238,435, and bills passed in the House, this report). Received in the Senate on April 1 and referred to HESS, then to Judiciary.

(4) the society has a board of directors charged with the responsibility for managing its affairs in the interim between meetings of its supreme legislative or governing body, subject to control by the body and having powers and duties delegated to it in the constitution or laws of the society;

(5) the board of directors is elected by the supreme legislative or governing body, except in case of filling a vacancy in the interim between meetings of the body;

(6) the officers are elected either by the supreme legislative or governing body or by the board of directors; and

(7) the members, officers, representatives or delegates may not vote by proxy. (§ 1 ch 120 SLA 1966)

Sec. 21.84.596. Other provisions applicable. In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to fraternal benefit societies, to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications thereof, as follows:

(1) AS 21.03
(2) AS 21.06, with the exception of AS 21.06.250
(3) The following sections of AS 21.09:
  (A) AS 21.09.050
  (B) AS 21.09.100
(4) AS 21.33.010
(5) AS 21.36
(6) AS 21.42.290
(7) AS 21.69.370
(8) AS 21.69.640
(9) AS 21.78. (§ 1 ch 120 SLA 1966)

Chapter 87. Hospital and Medical Service Corporations.

Sec. 21.87.010. S
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Title 21
Insurance

health care services is to be rendered to or on behalf of the subscriber by a physician or hospital that has entered into a service agreement with the corporation covering the services;

(7) "participant hospital" is one which has entered into a service agreement with a service corporation;

(8) "participant physician" means a doctor, dentist, osteopath, optometrist, chiropractor or other licensed health care practitioner who has entered into a service agreement with a service corporation; and

(9) "physician" includes also "surgeon." (§ 1 ch 120 SLA 1966)

Sec. 21.87.340. **Other provisions applicable.** In addition to the provisions contained or referred to previously in this chapter, the following chapters and provisions of this title also apply with respect to service corporations to the extent applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of the express provisions, and for the purposes of the application the corporations shall be considered to be included "insurers":

1 AS 21.03
2 AS 21.06
3 AS 21.09
4 AS 21.18.010
5 AS 21.18.030
6 AS 21.18.040
7 AS 21.18.120
8 AS 21.21.321
9 AS 21.36
10 AS 21.69.400
11 AS 21.69.520
12 AS 21.69.600, AS 21.69.620, and AS 21.69.630
13 AS 21.78
14 AS 21.90 (§ 1 ch 120 SLA 1966)

Sec. 21.87.350. **Existing certificates of authority.** A health care corporation registered to do business in this state on July 1, 1966 is to be registered under this chapter, whether or not the requirements of this chapter. (§ 1 ch 120 SLA

Chapter 89. Miscellaneous Provisions.

Settlements. A settlement made under a motor vehicle liability policy of a claim against an insured arising from an accident or other event insured against or destruction of property owned by another is not to be construed as an admission of liability by the

assume all duties and ... incurred by the Health Care ... Joint Underwriting Association ... declaration of invalidity; and ... that if the requirement that health ... providers purchase medical ... insurance from the Medical ... Corporation of Alaska is found ... secs. 41, 42, 43, and 44 of this ... void; however, the Medical ... Corporation of Alaska and the ... Care Providers Joint Underwriting ... shall continue to discharge and ... to pay claims incurred before the ... of invalidity."

This chapter on its face limits "covered claims" to those asserted by claimants or insureds. White v. Alaska Ins. Guar. Ass'n, Sup. Ct. Op. No. 1813 (File No. 3796), 592 P.2d 367 (1979).

The word "claimant" refers to the insured or a third party victim who may be entitled to reimbursement for injury or damage which under the terms of the policy triggers the insurer's obligation to pay benefits. White v. Alaska Ins. Guar. Ass'n, Sup. Ct. Op. No. 1813 (File No. 3796), 592 P.2d 367 (1979).

The word "insured" classically refers to a person whose risk of economic loss of a designated type is part of the subject matter of the contract. White v. Alaska Ins. Guar. Ass'n, Sup. Ct. Op. No. 1813 (File No. 3796), 592 P.2d 367 (1979).

The insured is the person who places his name in a blank on the policy form following the words "does insure" or some phrase of similar import. White v. Alaska Ins. Guar. Ass'n, Sup. Ct. Op. No. 1813 (File No. 3796), 592 P.2d 367 (1979).

Noncompensable claims. — Claims by law firms, attorneys, and insurance adjusters for professional services rendered to insolvent insurance companies are not compensable from the coffers of the Alaska Insurance Guaranty Association. White v. Alaska Ins. Guar. Ass'n, Sup. Ct. Op. No. 1813 (File No. 3796), 592 P.2d 367 (1979).

Law firms, attorneys, and insurance claims adjusters who were retained by insolvent insurance companies to adjust, settle, and defend claims and lawsuits against policyholders of automobile liability insurance, did not fit into the category of "insured" or "claimant" and thus could not invoke the protection of the "covered claims" clause of this chapter. White v. Alaska Ins. Guar. Ass'n, Sup. Ct. Op. No. 1813 (File No. 3796), 592 P.2d 367 (1979).

Sec. 21.80.190. Title. This chapter may be known and cited as the Alaska Insurance Guaranty Association Act. (§ 1 ch 121 SLA 1979)

Chapter 87. Hospital and Medical Service Corporations.

Supplement

Section
340. Other provisions applicable

Sec. 21.87.340. Other provisions applicable. In addition to the provisions contained or referred to previously in this chapter, the following chapters and provisions of this title also apply with respect to service corporations to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications of the express provisions, and for the purposes of the application the corporations shall be considered to be mutual "insurers":

(3) AS 21.09, except AS 21.09.090

(15) AS 21.42.345

(16) AS 21.89.040.

(am § 1 ch 92 SLA 1974; am § 2 ch 95 SLA 1975; am § 2 ch 84 SLA 1976)

insurance.

(b) Repealed by § 25 ch 245 SLA 1970.

(c) Repealed by § 25 ch 245 SLA 1970.

(d) Repealed by § 25 ch 245 SLA 1970. (§ 1 ch 120 SLA 1966; am § 25 ch 245 SLA 1970)

Effect of amendment. — The 1970 amendment repealed subsections (b), (c) and (d).

Legislative committee report. — Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.). For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6.

Sec. 21.42.120. Filing, approval of forms.

Stated in Stordahl v. Government Employees Ins. Co., Sup. Ct. Op. No. 1422 (File Nos. 2988, 3130), 564 P.2d 63 (1977).

Sec. 21.42.130. Grounds for disapproval.

The supreme court has urged the director of insurance to encourage the use of clearer language in all policies, both to assist the insured in purchasing insurance and to avoid the necessity of litigation in our courts. Stordahl v. Government Employees Ins. Co., Sup. Ct. Op. No. 1422 (File Nos. 2988, 3130), 564 P.2d 63 (1977).

Sec. 21.42.230. Construction of policies.

Insurance policies are to be looked upon as contracts of adhesion for the purpose of determining the rights of the parties thereto. In so construing a policy the supreme court does not require as a condition precedent that ambiguities be found in the policy language. All that is required is that the parties be of such disproportionate bargaining power that the insured could not have negotiated for variations in the terms of the standard policy. Thus, the finding that a policy is a contract of adhesion depends not upon its language, but upon the relationship of the parties. The result of such a finding is that the policy is construed so as to provide that coverage which a layman would reasonably have expected given his lay interpretation of the policy's terms. Continental Ins. Co. v. Bussell, Sup. Ct. Op. No. 810 (File No. 1517), 498 P.2d 706 (1972).

Stated in Stordahl v. Government Employees Ins. Co., Sup. Ct. Op. No. 1422 (File Nos. 2988, 3130), 564 P.2d 63 (1977).

Sec. 21.42.345. Required provision for coverage for newly born children.

All individual and group health insurance policies providing coverage on an expense incurred basis and individual and group service or indemnity type contracts issued by a nonprofit corporation which provide coverage for a family member of the insured or subscriber shall, as to the family members' coverage, also provide that the health insurance benefits applicable for children shall be payable with respect to a newly born child of the insured or subscriber from the moment of birth. The coverage for newly born children shall consist of coverage of

payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage continue beyond the 31-day period. The requirements of this chapter shall apply to all insurance policies and subscriber contracts delivered or issued for delivery in this state more than 120 days after the effective date of this Act. (§ 1 ch 95 SLA 1975)

Sec. 21.42.360. Definitions.

Repealed by § 11 ch 165 SLA 1976.

Cross reference. — For present provision defining "policy" and "premium," see AS 21.90.110.

Editor's note. — The repealed section derived from § 1, ch. 120, SLA 1966; § 1, ch. 33, SLA 1970.

Sec. 21.42.370. Separate accounts. (a) A domestic life insurance company may, after adoption of a resolution by its board of directors, establish one or more separate accounts, and may allocate to them the amounts paid to the company which are to be applied under the terms of an individual or group contract to provide annuity benefits, which may also provide other incidental benefits payable in fixed or in variable dollar amounts or in both.

(b) Notwithstanding any other provision of law, a domestic life insurance company which establishes one or more separate accounts as provided in (a) of this section may provide to the holders of interests in a separate account voting rights with respect to the management of that separate account and the investment of its assets, may establish for the separate account a committee, board or other body, the members of which (1) may be elected solely by holders having voting rights, and (2) may or may not be otherwise affiliated with the life insurance company, and may provide for compliance with any applicable state and federal law in order that contracts assigned to separate accounts may be lawfully sold or offered for sale. If so provided in the applicable contract, the assets in a separate account may not be chargeable with liabilities arising out of any other business of the company.

(c) When the reserve liability of a life insurance company with regard to (1) benefits guaranteed as to amount and duration, and (2) funds guaranteed as to principal amount or stated rate of interest is maintained in a separate account, a portion of the assets of the separate account at least equal to the reserve liability shall be invested in accordance with the law governing the investments of life insurance companies. All other amounts allocated to and accumulations on each account may be invested and reinvested in any class of investment

of court. The injunction proceeding is in addition to other penalties and remedies provided in this chapter. (art VIII ch 90 SLA 1957)

Article 5. General Provisions.

Section
100 Exceptions to application of chapter
110 Definitions

Sec. 08.68.100. Exceptions to application of chapter. (a) This chapter does not apply to

(1) a qualified nurse licensed in another state employed by the United States Government or a bureau, or agency, or division of the United States Government while in the discharge of his official duties;

(2) nursing service given temporarily in the case of a public emergency or disaster;

(3) the practice of nursing by a student enrolled in a nursing education program accredited by the board when the practice is in connection with the student's course of study; or

(4) the practice of nursing by a nurse enrolled in an approved refresher course.

(b) For purposes of this section the word "nurses" includes professional and practical nurses, and "nursing" means professional and practical nursing. (art IX ch 90 SLA 1957; am § 10 ch 129 SLA 1974)

Effect of amendment. — The 1974 amendment added paragraph (4) to subsection (a).

Sec. 08.68.110. Definitions. As used in this chapter

(1) "board" means the Board of Nursing;

(2) "licensed professional nurse" is equivalent to the common term registered nurse;

(3) "licensed practical nurse" is equivalent to the title licensed vocational nurse;

(4) "practical nursing" also means vocational nursing;

(5) "practice of professional nursing" means the performance for compensation of observation, care and counsel of the ill, injured, or infirm, or the maintenance of health or prevention of illness of others, the supervision and teaching of personnel; or the administration of medications and treatments prescribed by a licensed physician or dentist which require substantial specialized judgment and skill based on knowledge and application of the principles of biological, physical, and social science, but the foregoing do not include acts of medical diagnosis or the prescription of medical therapeutic or corrective measures unless authorized by regulations promulgated jointly by the State Medical Board and the Board of Nursing and as implemented by the Board

(6) "practice of practical nursing" means the performance for compensation of selected acts in the care or prevention of illness, and in the care of the ill, injured, or infirm under the direction of a licensed professional nurse or a licensed physician or a licensed dentist not requiring the substantial specialized skill, judgment and knowledge required in professional nursing;

(7) an "accredited nursing education program" is a program having curricula and standards which meet the requirements established by the board;

(8) "endorsement" is the licensing or registering of an applicant without examination through the acceptance of a license or registration issued by any state or territory after a comprehensive examination which is equivalent to the examination offered in this state, and providing the applicant meets all other qualifications required by law;

(9) "advanced nurse practitioner" means a registered professional nurse who by virtue of specialized education and experience, has become certified to perform acts of medical diagnosis, and prescription of medical, therapeutic or corrective measures as authorized by regulations promulgated under (5) of this section. (§ 2 ch 90 SLA 1957; am § 5 ch 37 SLA 1970; am § 3 ch 67 SLA 1973; am §§ 11, 12 ch 129 SLA 1974)

Effect of amendments. — The 1973 amendment added the language beginning "when authorized" to the end of paragraph (5).

The 1974 amendment substituted "state or territory" for "state, territory, or foreign country" near the middle of paragraph (8) and added paragraph (9).

Chapter 70. Nursing Home Administrators.

Section
Creation of Board of Nursing Home Administrators
Membership board; source of appointments; term of office
Election of officers
Board meetings; Quorum
Duties and powers of the board
Expenses
Applicability of Administrative Procedure Act
License required
Application
Licensing
Examination
Provisional licenses
Expiration and renewal
Fees
Unlawful acts
Penalties
Definitions
Facilities operated by religious organizations

Sec. 08.70.010. Creation of Board of Nursing Home Administrators. There is established the Board of Nursing Home Administrators. (§ 1 ch 123 SLA 1975)

Legislative committee report. — For [Judiciary] am H), see 1975 House Journal, ch. 123, SLA 1975 (HCSSB 132 p. 1221.

Sec. 08.70.020. Membership board; source of appointments; term of office. (a) The board consists of five members: two nursing home

Monday, May 19th, 1980

To Senator Glenn Hackney and Committee Members

The Alaska Nurse's Association supports HB802am as it is.

Please do give it a "Do Pass"

Barbara Walker- Lobbyist - Phone 789--977
Alaska Nurse's Association

PROVIDENCE
HOSPITAL

3200 PROVIDENCE DRIVE - POUCH 6604
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SISTERS OF
PROVIDENCE

SERVING IN THE WEST SINCE 1856

April 7, 1980

The Honorable Glenn Hackney
Chairman, Senate HESS Committee
Pouch V
Juneau, Alaska 99811

Position Paper: CS H.B. 802 a.m. - "An Act relating to nurse midwives"

Dear Senator Hackney:

Recently, the House passed CS H.B. 802 a.m., "An Act relating to health care services and the coverage of the services of nurse midwives under the insurance laws of the state and clarifying the definition of physician under AS 21.87."

On March 5, 1980 we sent you a copy of our position on this bill. The original of the letter had been sent to Representative Buchholdt. Although the House did amend the original bill and delete some sections that we had objections to, we still have some concerns.

1. Section 4 - AS 21.87.330 (9), which defines "physician" also includes nurse midwives. Nurse midwives are not physicians. They do, in fact, have to work under the supervision of a physician, and then, only if the hospital by-laws permit it.

   Section 3 - AS 21.87.330 (8) also refers to nurse midwives as participant physicians. We feel that to include midwives, as well as chiropractors and optometrists, as physicians is very misleading and should be re-defined accordingly.

2. As nurse midwives are currently allowed to practice under the supervision of a physician in many health care service institutions, we don't see the necessity for passage of this bill. Being under the supervision of a physician, a midwive's services in a maternity case should be covered by existing health insurance plans.

We would appreciate your consideration of these comments. If you need further clarification, please feel free to contact us at any time.

Sincerely,

Al M. Camosso
Administrator

/MC/mm

cc: Max Kersbergen
William Dann
Charles Rigden
Ron Hammett
Donald DeMers
Jack Brown
Alaskan Hospital Administrators
Advisory Board

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO 802 am

"An Act relating to health care services and the coverage of the services of nurse midwives under the insurance laws of the state and clarifying the definition of physician under AS 21.87."

CSHB No. 802 am requires the coverage of nurse midwives' practice under those health and disability insurance policies that pay for maternity care, and adds nurse midwife services to the list of medical services provided to persons eligible for Medicaid. The Bill also amends the definition of "participant physician" to include the nurse midwife and adds a new paragraph defining "nurse midwife" to the Alaska Statutes.

The Department of Health and Social Services will limit its comments to the areas of the practice of the nurse midwife and coverage of these services under the State Medicaid Program. It is our understanding that the Department of Commerce and Economic Development, Division of Insurance, has commented separately on the section dealing with mandatory insurance coverage.

Practice of Nurse Midwives

Nurse midwives have been a part of the American health care system for over fifty years. The practice of nurse midwifery, including the management of labor and delivery, is recognized in the laws of all states except Kansas, Michigan, and Wisconsin. The typical recent graduate of a nurse midwifery educational program has six years of professional nursing experience and a bachelor's degree in addition to nine months to two years of midwifery training. Upon successful completion of the course and a national certification examination, the nurse midwife is prepared to care for women's health needs, including normal childbirth and uncomplicated gynecological and family planning services.

The nurse midwife according to Alaska law collaborates with a physician. Nationally, nurse midwives are employed by hospitals, public health agencies, private physicians, the military, prepaid health plans, and birthing centers. Their practice typically extends beyond pregnancy and birth to include the post-partum care of the well woman and neonatal care of the infant. Health education is a vital component of the nurse midwife's role.

The use of nurse midwives can offer greater availability of quality prenatal care, delivery, and post-natal care in medically underserved areas. As a member of the health care team, the nurse midwife can provide professional care to the normal obstetrical or postpartum patient, freeing her collaborating physician to concentrate on patients with problems requiring medical expertise. An expanded use of nurse midwives also can offer an alternative style of care to families at a special time in their lives. The desire of certain families for such an alternative may partially account for the apparent increase in home deliveries, a practice which involves increased risk to mother and baby.

POSITION PAPER/Department of Health & Social Services

Medicaid Coverage of Nurse Midwives

Federal regulations permit the expansion of covered services under Medicaid to include qualified nurse midwives as defined in the amended Committee Substitute for HB No. 802. The Department of Health and Social Services supports the inclusion of nurse midwives under the list of covered medical services, and expects no resulting additional cost to the State.

Department Position

The Department of Health and Social Services recognizes the valuable contribution that nurse midwives can make to the overall physical and emotional health of the family at time of pregnancy and delivery. We would encourage hospitals to provide staff privileges to well-qualified nurse midwives who meet the requirements of the Advanced Nurse Practitioner Guidelines issued by the Alaska Board of Nursing. We endorse coverage of nurse midwife services under Medicaid.

Recommended by: _____
Dean F. Tirador, M.D.
Director, Division
of Public Health

Date: 4/29/80

_____
Rod Betit, Director
Division of
Public Assistance

Date: _____

Approved by: _____
Helen D. Beirne
Commissioner

Date: 5/5/80

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSHB No. 802 am
Title "An Act relating to health care services and the coverage of .... nurse midwives.."
Requested by Commissioner's Office Date 4/29/80

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected Health/Division of Public Health
BRU, Program, or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Prepared by: Mary Deaver Date: 4/29/80
Division/Office: P.H. Admin. PH: 3090
Department of Health & Social Services

Approval DHSS Mgt. & Bdgt: [signature] Date:

33-001 (Rev. 12/79)
Modify by DHSS (11-28-79)

ALASKA STATE MEDICAL ASSOCIATION
~~750 W. Eighth Avenue, Suite 6-C, Anchorage, Alaska 99501~~ (907) 277-0891
4107 Laurel St., #1, Anchorage, AK 99504

April 3, 1980

Senator Glenn Hackney,
Chairman, Senate HSS Committee
Pouch V, M/S 3100
Juneau, AK 99811

Dear Senator Hackney:

You will be addressing HB 802, relating to nurse-midwives. The bill poses a problem for us.

It appears that many women desire delivery by nurse-midwives, and it is highly probable that well-trained midwives are perfectly capable of performing uncomplicated deliveries.

You will be receiving a longer letter from us dealing with the social problems we expect to result from the admission into the practice of medicine of a seemingly limitless supply of non-physicians, specifically dealing with how many medical practioners society can be expected to support.

The nurse-midwife is the leading edge. Such individuals are governed by the Advanced Nurse Practioner regulations which are in many regards nearly identical to the PA regulations. We have no serious doubt that HB 802 will provide a precedent for nurse practioners in general and PA's to demand essentially independent practice, fee for service, access to third party payers, including government sources, and equal access to hospital facilities.

Our perception is that the general public does not know this, would not desire it, cannot afford it and would be ill-served by it. This is a position our detractors will call self-serving. We can therefore only hope that those in the Legislature with vision and concern for the future quality of their own medical care will give careful consideration to the potential problems we can expect with passage of HB 802.

Sincerely,

[illegible]
[illegible], Tim, M.D.
Chairman, Legislative Committee

[illegible]

TANANA VALLEY MEDICAL-SURGICAL GROUP, INC.

(A PROFESSIONAL CORPORATION)
1001 NOBLE STREET • FAIRBANKS, ALASKA 99701 • PHONE 452-1611

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RICHARD C. HESS, M.D.
RALPH A. WELLS, M.D.
CLARICE DUKEMINIER, M.D.

SURGERY
ANCEL EARP, M.D.

ORTHOPEDIC SURGERY
WALDO H. HANNS, M.D.
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INTERNAL MEDICINE
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ADMINISTRATION
G. A. SEELIGER, MGR.
JAN WIESE, OFFICE MGR.

March 17, 1980

Honorable Glenn Hackney
Pouch V
Juneau, Alaska 99811

Dear Senator Hackney:

This letter is in reference to House Bill #802. I am writing to you because I would be directly affected by this bill as I am a practicing obstetrician-gynecologist with staff privileges at the Fairbanks Memorial Hospital and in active private practice at the Tanana Valley Medical-Surgical Clinic. I am urging you to defeat this bill because -

1) it would permit the independent practice in the hospital of a nurse without requiring supervision by an appropriate qualified physician. This would be unwise and would also be contrary to current regulations, as applied to supervision of physician extenders.

2) as worded, the bill would unnecessarily require the presence of a nurse mid-wife where there may be no need; for instance, in hospitals which do not have an obstetrical service and perhaps in Outpatient clinics, depending on how one interprets the bill.

3) if strictly interpreted, the bill would place sanctions against those institutions which do not have a nurse mid-wife even if a nurse mid-wife was not needed and if one was not available. This is clearly unwise.

4) this bill is unnecessary because nurse mid-wives are currently permitted to practice in Alaska's hospitals and the regulations governing the setting for their practice, with appropriate physician supervision, is already covered by statute.

An additional subject, which I would like to bring to your attention along these lines, is that the state law is deficient in the areas of non-medically qualified practitioners of health care. I am specifically referring to the independent practice of "lay mid-wives" in Anchorage and Fairbanks and perhaps in other areas of the state as well. The term "lay mid-wife" refers to a person who is not a physician and not a trained nurse and these persons may, in fact, have no training at all. At the present time there is no regulation prohibiting them from practicing medicine and this is an extremely dangerous condition. At the present time in Fairbanks, there is at least one "lay mid-wife" who is soliciting mothers for home deliveries. It is my strong opinion that home deliveries are unwise and can unnecessarily jeopardize the health of the mothers and babies, especially so when the attendant is not trained to handle emergencies which frequently arise. The health of the public is especially jeopardized by the fact that under current statute the State of Alaska has no control over these persons' qualifications or lack of qualifications, whereas a physician or registered nurse or even a completely trained mid-wife is prohibited from this same activity if they are not appropriately licensed in the state. I am sure you will agree that this is an absurdity and an oversight which should be corrected as soon as possible. I urge you to help correct this situation and offer my services, as well as those of the Department of Obstetrics and Gynecology at Fairbanks Memorial Hospital towards the end of drafting appropriate legislation.

Thank you very much for your time and consideration.

Sincerely,

Ralph A. Wells, M.D.
Obstetrics & Gynecology

RAW:mb

Suggested Revisions to Alaska HB 802

Strike everything after Section 1 and substitute the following:

Sec. 2. AS 21.42 is amended by adding a new section to read:

Sec. 21.42.347. SERVICES OF NURSE MIDWIVES. Notwithstanding the provisions of an individual or group disability insurance policy, subscriber's contract, or fraternal benefit society certificate, which policy or subscriber's contract or fraternity benefit society certificate provides benefits for physicians' services in connection with pregnancy or childbirth, benefits shall not be denied because any such service is performed instead by an advanced nurse practitioner, certified to practice as a nurse midwife in accordance with regulations adopted under AS 08.68.410(5), provided the service performed is within the lawful scope of practice of the nurse midwife under such certification.

Sec. 3. AS 21.84.590 is amended by adding a new item to read:

(10) AS 21.42.347

Sec. 4. AS 21.87.340 is amended by adding a new item to read:

(17) AS 21.42.347

Sec. 5. Sections 2 through 4 of this act apply to any such individual or group policy, subscriber's contract, or fraternity benefit society certificate which is delivered in this state on or after January 1, 1981; and to any such group policy, subscriber's contract, or fraternity benefit society certificate delivered in this state before that date when, on or after that date, either the benefits are amended or the applicable collective bargaining agreement, if any, expires, whichever occurs later.

HB
880

COMMITTEE REPORT

SENATE

FURTHER: Finance

5/5/80

Date: 5-7-80

Mr. President:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had CSHB 880(Finance) am post-retirement pension adjustments in the teachers' and public employees' retirement systems

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[✓] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Colletta

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Steve Sachs
CHAIRMAN

DEPTS

S 60 (Rev. 12/78)

CSHB 880 (Finance) AM — An Act relating to the Public Employees Retirement System, the Teachers Retirement System, the Judicial Retirement System, and the Alaska National Guard and Alaska Naval Militia Retirement System; and providing for an effective date.

By Finance Comm.

SHES 79 80

Introduced 4-29-80
Logged 5-5-80
Referred - Finance
Comm Meeting 5-7-80
" action Passed out do pass (Fisher Senate Secy 5-8-80 @ 8:30 Am 5-8-80)

PAUL ARNOLDT - NOTIFIED
Rep. Miller "
APEA "
NEA "

Passed House as listed
32 YEAS - NAY 0
8 not voting

Effect of amendment.

The 1979 amendment, effective May 19, 1979, in the first sentence, substituted "is reported from the committee of first referral" for "which would require increased appropriations by the state is reported to the rules committee" and "a fiscal note containing an estimate of the amount" for "an estimate of the probable amount," inserted "or decrease which would result from enactment of the bill" and added "or, if the bill has no fiscal impact, a statement to that effect shall be attached" to the end. The amendment also substituted "fiscal note" for "estimate" in the second sentence, inserted "or statement" in the third sentence, and added the fourth sentence.

Sec. 24.30.036. Fiscal notes on bills affecting state retirement systems. Before a bill which would have an effect on the retirement systems of the state is reported to the rules committee, there shall be attached to the bill an analysis of the long-term and short-term costs to the state if the bill is adopted, as well as the impact of the bill on the actuarial soundness of the fund. The analysis shall be prepared by the Legislative Board of Retirement Benefits and is in addition to the fiscal note requirements of AS 24.30.035. (§ 2 ch 130 SLA 1977; am § 3 ch 60 SLA 1979)

Effect of amendment. — The 1979 amendment, effective May 19, 1979, added "and is in addition to the fiscal note requirements of AS 24.30.035" to the end of the section

HCR

43

COMMITTEE REPORT

SENATE

FURTHER: Judiciary

2/14/80

Date: 4-1-80

Mr. President:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had CSHCR 43

endorsing concept and requesting implementation of the Indian Child Welfare Act of 1978

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78,

Introduced 2-14-82
Logged 2-14-80
Referred Judiciary
Comm. Meeting 4-21-80
" Acting Passed individual pc.

CSHCR 43 "A ~~Resolution~~ ~~SENATE~~ ~~JOINT~~ ~~RESOLUTION~~ ~~No.~~ ~~19~~ ~~DE~~
By: HESS Comm. Concept and request to im-
~~plement~~ ~~into~~ ~~the~~ ~~Alaskan~~ ~~p~~

Ron Whitcraft (3818) notified
Rep Duncan
Brenda Knapp 586-1432
Rick Robertson 3055 (Assist. AG) notified

James D. DeWitt Put letter and memo in file.
Call, Hayoraft & Fenton 452-2211
1919 Lathrop, Suite 206
Box 99701

Copy of regs from Dept of HSS

no federal money

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

POUCH V
JUNEAU, ALASKA 99811

Senate

CHAIRMAN
SENATE JUDICIARY COMMITTEE
IMMEDIATE PAST CHAIRMAN
WESTERN CONFERENCE - COUNCIL OF STATE GOVERNMENTS

VICE CHAIRMAN
SENATE RULES COMMITTEE

MEMBER
SENATE STATE AFFAIRS COMMITTEE
SENATE COMMITTEE ON COMMITTEES
LEGISLATIVE COUNCIL
WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE

February 26, 1980

The Honorable Frank Ferguson,
Alaska State Senator
Room 123 Capitol Building
Juneau, Alaska

and

The Honorable Patrick Rodey,
Alaska State Senator
Room 427 Capitol Building
Juneau, Alaska

Dear Senators Ferguson and Rodey:

I spoke to you the other day about the Indian Child Welfare Act (P.L. 95-608, 92 Stat. 3069) which became effective May 7 last year. No doubt the intent was great, but the difficulty the bill addresses is a non-problem in this day and age. The Act also has the following citation: 25 U.S.C.A. 1901 et seq.

Ordinarily, in adoption proceedings, the adoptive parents are well motivated and are not dealing in a "hot baby" market. The complications and barricades that the federal Act places in the way tend to discourage, not promote, adoption of Native children.

You can read, if you're so inclined, the names, dates, places etc. on the legal documents; please don't; they have no relevance.

Regards,

Robert H. Ziegler, Sr.

RHZ:lk

Enclosures

bcc: Senator Glenn Hackney
with cc of enclosures

RH2

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER / *POUCH H 01 – JUNEAU 99811*

APR 2 7 1979

The Honorable Robert Ziegler
Alaska State Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

The Indian Child Welfare Act was signed into law in November, 1978. The regulations implementing this law are scheduled for completion sometime in June. Due to the significant impact this law will have on the Department's operations, I wanted to take this opportunity to give each of you a brief summary of the Department's activities regarding its implementation and a review of some of the most significant changes which will result from its passage.

The Department has been quite involved in the developments concerning the implementation of this Act in Alaska. As recently as March 7th, one of my staff and a member of the Attorney General's Office testified at a hearing concerning the proposed federal regulations. In addition, Department representatives have met with the Bureau of Indian Affairs and with various native non-profit organizations to discuss and plan the process of implementation. Further meetings with these organizations are planned and the Department is in the process of developing agreements with some of the organizations.

In relation to specific change, the Indian Child Welfare Act does alter existing procedures for both adoptions and foster child placements of native children. The area of adoptions is addressed in Sec. 103 of the Indian Child Welfare Act. This section requires voluntary relinquishments of the parental rights of parents of native children to be "executed in writing and recorded before a judge's certificate that the terms and

consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian." Presently, the Division of Social Services' procedures is that "if there is no active child in need of aid case before the court, the relinquishment may be taken before a social service worker of the Department." In addition, Sec. 103 mandates that "any consent given prior to, or within ten days after birth of the Indian child shall not be valid." Once again this will result in significant change for the Division of Social Services. The Division's policy, as stated in the manual, is that "a relinquishment may not be taken prior to 48 hours following the birth of a child." Finally, Sec. 103 states that "the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination of adoption, as the case may be, and the child shall be returned to the parent." Under present Alaskan statutes, the parents have 10 days to withdraw the relinquishment. After the 10 day period, the parents must show good cause for withdrawing consent.

In regard to foster placement, the Indian Child Welfare Act addresses both custody proceedings (Sec. 102) and placement (Sec. 105). In Sec. 102(d) the Act states that "any party seeking to effect a foster care placement, or termination of parental rights to an Indian child under state law, shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the break-up of the Indian family and that these efforts have proved successful." The Act goes on to state in Sec. 102(e) that "no foster care placement may be ordered in such proceedings in the absence of a determination supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." The standard of proof that the Indian Child Welfare Act establishes for foster placements is higher than present state law. Under present law a preponderance of the evidence is required and there is no requirement for testimony from expert witnesses.

Sec. 105(b) of the Act establishes an order of preference for placement of native children: (1) a member of the child's extended family; (2) a foster home licensed or approved by the Indian child's tribe; (3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (4) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs. The Division's policy now in effect requires workers to give consideration to placement with relatives before exploring other alternatives. This Act, however, states that "a preference shall be given in the absence of good cause to the contrary" to the order of placement delineated above. To accomplish this the Department and the native organizations in the state must develop ongoing cooperative efforts, particularly in the area of the finding and licensing of foster homes.

These are just a few of the changes which will result from the Indian Child Welfare Act. There are many other anticipated changes in the area of court proceedings. Due to the fact that the federal regulations have not been published, the Department cannot determine the total impact of this Act. The Department is working with the Attorney General's Office to develop an implementation plan. - JOHN

If you have further questions, please feel free to contact my office.

Sincerely,

Helen D Beirne

Helen D. Beirne
Commissioner

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Juneau Area Office
P. O. Box 3-8000
Juneau, Alaska 99802

June 12, 1979

Dear Alaska Bar Member:

RE: Indian Child Welfare Act (25 U.S.C.A. 1901 et seq.)

The Alaska Supreme Court has permitted the United States Bureau of Indian Affairs (BIA) to include this informational letter in this mailing.

We wish to advise you that the Indian Child Welfare Act (P.L. 95-608, 92 Stat. 3069) became effective on May 7, 1979. All child custody proceedings initiated in State courts after that date must be conducted under the procedures set out in the Act. These include specific consent requirements for voluntary foster care, termination of parental rights, preadoptive placement and adoptive placement as well as certain notice requirements and preferences for placement of Indian children in involuntary "child custody proceedings" as defined in the Act. The Act pertains to all State courts proceedings involving Indian children, except custody disputes between biological parents and juvenile delinquency proceedings.

Bureau of Indian Affairs offices throughout the country are beginning to receive inquiries concerning the meaning of the Act, frequently in regard to a specific proceeding or situation. The Act covers any child who is a member of a tribe or who is the son or daughter of a tribal member and who is eligible to be a member. Many inquiries involve efforts to determine whether a particular child meets these requirements. In Alaska, such questions should be referred to the Alaska Area Director for the Bureau of Indian Affairs at the above address.

Other inquiries pertain to the criteria and requirements which the Act imposes on State court proceedings. With the exception of enrollment matters, these questions usually involve legal determinations that are best made by attorneys. Questions of this nature, if addressed

to the BIA Area Office, will generally be referred to our solicitors for a legal opinion and, of course, are always subject to clarification by the courts.

Finally, you should be aware that the Department has published proposed rules for the implementation of the Indian Child Welfare Act and recommended guidelines for State courts in the handling the Indian child custody proceedings. These proposed regulations may be found at 44 Fed. Reg. 23992 (April 23, 1979). Final regulations are expected to be published in the near future in the Federal Register. Because this legislation and these regulations will have a significant impact on Indian child custody proceedings in Alaska, we are sure that those of you representing clients in such proceedings will want to fully acquaint yourselves with the Act and its impact.

Once again, I wish to express my appreciation to the Supreme Court for permitting the Bureau of Indian Affairs to include this letter in the Court's regular mailings.

Sincerely yours,

Clarence Antioquia
Area Director

Filed in Trial Courts
State of Alaska, First District
at Ketchikan
[redacted]
KRISTEN O'DOWD, Clerk
by _____, Deputy

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN

IN THE MATTER OF THE ADOPTION)
)
of)
)
[redacted])
a minor child.)
)

No. 1KE [redacted]

PETITION FOR LEAVE TO ADOPT

Comes now [redacted] and respectfully represents to the Court:

I

Your petitioner and [redacted] formerly [redacted] were married in Reno, Nevada, on August 18, 1978. Both are over the age of twenty-one (21) years, and both are bona fide residents of [redacted] Alaska.

II

Your petitioner desires to adopt [redacted] who was born in [redacted] California, on November 10, 1969, unto [redacted] and [redacted], his then wife.

III

The said minor child is now in the custody of petitioner herein in [redacted] Alaska, and within the jurisdiction of this Court, and has been in his custody and has resided at the home of petitioner and his wife, the mother of said child, since the marriage of the parties. The father of said child is [redacted]

ZIEGLER, CLOUDY, SMITH, KING & BROWN
Phone (907) 225-4145
307 Bawden Street
Ketchikan, Alaska 99901

[redacted] from whom petitioner's wife was divorced in Ketchikan, Alaska, on September 2, 1976.

IV

Your petitioner's name is [redacted]; his age is thirty (30) years. He has lived in [redacted] Alaska, all of his life.

V

The said [redacted] the mother of the said minor child, consents to her adoption by petitioner above named and has executed her written consent to such adoption, which has already been filed with the Court.

VI

Petitioner alleges that [redacted] the mother of said minor child, joins in this petition only for the purpose of giving her consent to this adoption and, by executing a consent herein, does recommend the granting of said adoption, retaining, however, all of her maternal rights as the mother of said minor child.

VII

The minor child to be adopted herein has no assets or any other thing of value in her own name other than a savings account in the [redacted] California; the amount on deposit is approximately Two Thousand One Hundred Fifty ($2,150.00) Dollars; the birth certificate of said minor child has already been filed with this Court.

VIII

[redacted] the biological father of said minor child, has indicated that he will consent to this adoption. It is anticipated that said parental consent will be filed herein by the time this matter comes on for hearing.

IX

The said [redacted] is in all respects a fit and

ZIEGLER, CLOUDY, SMITH, KING & BROWN
Phone (907) 225-4145
307 Bawden Street
Ketchikan, Alaska 99901

proper person to adopt said minor child, financially and otherwise, and is able to care for, maintain and support the said minor child, and it will be for the best interests of the said minor child that she be adopted by said petitioner and that her name be changed to [redacted]

WHEREFORE, petitioner prays that an order be made and entered by this Court fixing the time and place of hearing upon this petition; that upon such hearing, the Court make and enter the decree granting this petition and authorizing the adoption of the said minor child by petitioner above named and further authorizing that the name of the minor child be changed as follows: from [redacted] to [redacted]

Dated at [redacted] Alaska, this 1st day of ~~August~~ September, 1979.

[redacted]

STATE OF ALASKA)
) ss:
First District)

[redacted], being first duly sworn, on oath, deposes and says:

I am the petitioner above named; I have read the within and foregoing Petition for Leave to Adopt, know the contents thereof, and the same are true, as I verily believe.

[redacted]

Subscribed and sworn to before me this 1st day of ~~August~~ September, 1979.

[STAMP]

S/Portia A. Bensley, Postmaster
United States Postmaster

RHZ:cg
12.125.01

ZIEGLER, CLOUDY, SMITH, KING & BROWN
Phone (907) 225-4145
307 Bawden Street
Ketchikan, Alaska 99901

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN

IN THE MATTER OF THE ADOPTION of [redacted] a minor child.	No. 1KE - 79 - 50 P/A DECREE OF ADOPTION

This matter having come regularly on for hearing before the Superior Court, at Ketchikan, Alaska, on the 22nd day of October, 1979, upon the petition of [redacted], praying for leave to adopt [redacted] as his own child and to change the name of the child to [redacted] and,

The Court having heard the testimony of the petitioner and his wife; and the Court having examined the records and files herein, and now being fully advised in the premises, finds as follows, to-wit:

I

That your petitioner and [redacted] formerly [redacted] were married in Reno, Nevada, on August 18, 1978. That both are over the age of twenty-one (21) years, and both are bona fide residents of [redacted] Alaska.

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Phone (907) 225-4145
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Ketchikan, Alaska 99901

II

That your petitioner desires to adopt [redacted], who was born in [redacted] California, on November 10, 1969, unto [redacted] and [redacted] his then wife.

III

That the said minor child is now in the custody of petitioner herein in [redacted] Alaska, and within the jurisdiction of this Court, and has been in his custody and has resided at the home of petitioner and his wife, the mother of said child, since the marriage of the parties. That the father of said child is [redacted] from whom petitioner's wife was divorced in [redacted] Alaska, on September 2, 1976.

IV

That your petitioner's full name is [redacted]; his age is thirty (30) years. He has lived in [redacted] Alaska, all of his life.

V

That the said [redacted] the mother of the said minor child, consents to her adoption by petitioner above-named and has executed her written consent to such adoption which has already been filed with this Court.

VI

That the petitioner alleges that [redacted] the mother of said child, joins in this petition only for the purpose of giving her consent to this adoption, and by executing a consent herein, does recommend the granting of said adoption, retaining, however, all of her maternal rights as the mother of said child.

VII

That the said minor child to be adopted herein has no assets or any other thing of value in her own name other than a savings account in the [redacted] California; the amount on deposit is approximately Two Thousand One

ZIEGLER, CLOUDY SMITH, KING & BROWN
Phone (907) 225-4145
307 Bawden Street
Ketchikan, Alaska 99901

Hundred Fifty ($2,150.00) Dollars; the birth certificate of said minor child has already been filed with this Court.

VIII

That [redacted] the biological father of said minor child, has consented to her adoption by petitioner above-named and has executed his written consent to such adoption, which is on file with this Court.

IX

That petitioner's wife, [redacted] and said [redacted] have been fully advised as to the provisions of the Indian Child Welfare Act (P.L. 95-603, 29 Stat. 3069); the parental consents on file herein acknowledge that their rights have been fully explained to them, that any and all such rights have been waived and that the right of tribal intervention was likewise waived.

X

That the said [redacted] is in all respects a fit and proper person to adopt said minor child, financially and otherwise, and is able to care for, maintain, and support the said minor child, and that it will be for the best interests of the said minor child that she be adopted by said petitioner, and that her name be changed to [redacted]

And the Court being satisfied with the identities and relations mentioned herein, and that said petitioner is of sufficient ability in all respects, and is a fit, proper and suitable person to bring up said minor child, and to furnish her with suitable nurture and education; that it is fit and proper for said adoption to take place; that all the requirements of law applicable to adoptions having been met and fully complied with, and no objections having been filed or made by anyone to said adoption; and the Court being fully advised in the premises.

ZIEGLER, CLOUDY, SMITH, KING & BROWN
Phone (907) 225-4145
307 Bawden Street
Ketchikan, Alaska 99901

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That the petition of [redacted] for leave to adopt [redacted] as his child be granted, and that he is authorized to take said minor child as his own child, and to give her such nurture, care and education as is meet and proper.

2. That from this date henceforth the said minor child shall, to all legal intents and purposes, be the child of the above-named petitioner, and shall be treated by him in all respects as his own lawful child should be treated, including the right of his inheritance, and that said petitioner and said minor child shall bear toward each other the relationship of parent and child.

3. That from this date henceforth, the name of [redacted] shall be, and the same hereby is declared to be, [redacted]

Dated at Ketchikan, Alaska, this 29th day of October, 1979.

/s/ Thomas E. Scholz
Superior Court Judge

ZIEGLER, CLOUDY, SMITH, KING & BROWN
Phone (907) 225-4145
307 Bawden Street
Ketchikan, Alaska 99901

RHZ:st
12.125.01

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

CS FOR HOUSE CONCURRENT RESOLUTION NO. 43

"A resolution endorsing the concept and requesting implementation of the Indian Child Welfare Act of 1978."

Committee Substitute for House Concurrent Resolution No. 43 resolves that: 1) the legislature endorse and support the concept and policy of the Indian Child Welfare Act of 1978 (P.L. 95-608); 2) urgently requests the Governor to direct the Department of Health and Social Services to promptly take the steps necessary for implementation of the Act in Alaska and provide the financing necessary for this implementation; and 3) requests the Chief Justice of the Alaska Supreme Court to direct the court system to promptly take steps necessary to cooperate in the implementation of the Act.

The Department strongly supports the concepts and policies embodied in the Indian Child Welfare Act of 1978 and, therefore, supports the legislature's endorsement and support of the Act. The Department has been actively involved in implementing the Act since its passage in November, 1978. During calendar year 1979, the Department has taken numerous steps towards full implementation of the Act (report attached). The Department plans to increase its efforts during 1980 through close coordination with the various Indian Child Welfare programs established under Title II of P.L. 95-608 and recently funded by the Bureau of Indian Affairs, and through close monitoring and evaluation of its own programs to ensure compliance with the Act.

Attachment

RECOMMENDED BY: _____ DATE: 3/20/80
Art Holmberg, Director
Division of Social Services

APPROVED BY: Helen D. Beirne DATE: 3-3-80
Helen D. Beirne, Commissioner
Department of Health and Social Services

REPORT ON IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

The Department of Health and Social Services has been quite active since the passage of the Indian Child Welfare Act in working towards full implementation. As early as February 13, 1979 Department representatives met with the Area Director of BIA and representatives from various native non-profit corporations to begin mapping out strategies and procedures necessary for implementation. In early March Department Representatives met with the BIA contractors to further discuss implementation. On March 7, 1979 the Department testified at hearings held in Juneau regarding the first draft of federal regulations (testimony attached). These regulations were finally published as proposed regulations on April 23, 1979 and were not finalized until July of 1979.

During this interim period before finalization of the implementing regulations the Department's Regional Social Services Managers met with representatives of the native non-profit organizations as well as various village and IRA council leaders to discuss the Act and to begin informal working procedures. The Managers also met with court personnel and the attorney general's offices to establish appropriate court procedures. The Social Service's Field Director met with Art Snowden, the Court Administrator, his staff, the BIA Social Services Director, and the BIA Counsel to further work toward state-wide development of court procedures. As a result of this meeting the Court Administrator agreed to include a letter summarizing the Act in the next mailing to the Alaska Bar members.

Since the finalization of regulations the Department has not only attempted to comply with the formal procedures established by the regulations but has developed many cooperative projects for furthering the implementation of the Act. For example, the Division of Social Services has been working with Tanana Chiefs and United Crow Band on locating, studying, and licensing native foster homes. Similar projects have also been operating in Fairbanks (Fairbanks Native Association) and in Southeast Alaska (Tlingit-Ha'da). The Division also held a two day training session in Anchorage on Oct 8 & 9, 1979 on the Indian Child Welfare Act. The trainer was Bert Hirsh, one of the original drafters of the law. All the native non-profit organizations as well as state and private agencies were invited to attend. Finally, the Division's training director by request of the native non-profit in the Bethel area provided a training session in Bethel.

These are just some of the examples of the cooperative efforts that have been initiated state-wide. It should be noted however that the Department has supported the concepts embodied in the Indian Child Welfare Act before its passage in 1978. In fact the Department supported a change in 47.10.230 (Powers and duties of Department over care of child) which made placement with blood relatives mandatory if they requested custody.

The intent of this statute was to provide for placement of children in surroundings which meet their social and cultural needs.

The Department has attempted to implement this statute to the fullest extent possible. It has been very successful in areas such as Nome and Bethel but less successful in larger cities such as Anchorage, Fairbanks, and Juneau. For example, 10 years ago 92% of all native children placed for adoption were placed in non-native homes. This has been completely reversed. Presently 75% of the native children placed for adoption are placed in native homes. The only exceptions being some severely handicapped children who have special medical needs and some native children who have been in long term foster care with a non-native family. In addition, in the Nome Region in 1969 all but two Eskimo children were in non-native foster homes. Today in Nome the figures are: 32 native children in native homes and 7 in non-native homes. In the Bethel Region there are 42 native children placed in foster homes. All are placed in native foster homes. However, the placements of native children in native foster homes are significantly lower in the larger cities with Anchorage having the lowest percentage (20 out of 127 native children are in native foster homes). The Department has been working diligently to improve the situation. As noted earlier Tlingit-Haida and Fairbanks Native Association have had foster home finding projects in Juneau and Fairbanks respectively. The Department has supported and worked closely with the staff of these projects. However, the success has been limited.

In summary the Department has been supporting the concepts of the Indian Child Welfare Act for a number of years. It had implemented certain policies consistent with the Act prior to its passage. In addition the Department, has worked diligently to develop formal procedures to implement the Act as well as numerous cooperative projects. The Department realizes there is stil much to be accomplished and certainly agrees to continue its present efforts of implementation and to increase its efforts wherever necessary.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS FOR HOUSE CONCURRENT RESOLUTION NO. 43
Title endorsing concept/requesting implementation of the Indian Child Welfare Act of 1978
Requested by _____ Date February 26, 1980

II. FISCAL DETAIL
Agency Affected Department of Health and Social Sevices
Program Category Affected All Program Categories
BRU, Program, or Subprogram(s) Affected All BRU's
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS		-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)		-0-	-0-	-0-	-0-	-0-	-0-
		-0-	-0-	-0-	-0-	-0-	-0-
		-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This Resolution has no fiscal impact on the Department of Health and Social Services.

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Prepared by: [illegible] Date: 2/27/80
Division/XXXXX: Social Services PH: 465-3170
Department of Health & Social Services

Approval DHSS Mgt. & Bdgt: [illegible] Date: 2/27/80

33-001 (Rev. 12/79)
Modify by DHSS (11-28-79)

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JAMES D. DEWITT
PAUL A. BARRETT

TELEPHONE
907 - 452-2211
452-2296

March 13, 1980

NOTE
This letter sent to most legislators from Fairbanks & Allen Chance of H. Hess

Representative Sarah J. Smith
Pouch V
Juneau, AK 99811

Re: House Concurrent Resolution No. 43
Indian Child Welfare Act of 1978

Dear Sally:

I am writing to state my opposition to House Concurrent Resolution No. 43, "a resolution endorsing the concept and requesting implementation of the Indian Child Welfare Act of 1978."

As background, I have never represented any parent whose parental rights were being terminated or involuntarily relinquished or otherwise being surrendered by force. I have never represented the State of Alaska in an action to take away parental rights. I have, however, on numerous occasions, represented the children in these proceedings for termination. My official title has always been "guardian ad litem" but my duties have frequently involved reconciliation, peacemaking and negotiation.

Under Alaska law, a guardian ad litem represents the "best interests of the child" in the proceeding; not necessarily what the child wants and not necessarily what the parents or the State of Alaska want. It is a difficult assignment and I confess I am uncomfortable with it in many situations. However, I accept appointments as guardian ad litem because all too frequently the children themselves are not otherwise a concern in a parental rights termination proceeding. It is very easy for the other parties involved to lose sight of the fact that while their lives may be impacted by whatever decision a court may reach, the children will live with the results and be affected by the results for the rest of their lives. The Alaska Supreme Court has begun to recognize that the children are a party in interest, that they have constitutional rights in custody and termination proceedings and that those rights deserve to be represented. The Indian Child Welfare Act, as to the class of children who happen to be of fractional Native blood, removes those rights and removes the right of the children to be represented in a meaningful sense in those kinds of proceedings.

My first dispute is with the underlying premise for the Act, that "a highly disproportionate number of Native American children in Alaska are from families broken up by the removal of children. . .", with the inference that that statistical fact is somehow evidence of wrongdoing by the State of Alaska. The hard truth, however politically unpopular it may be, is that Native American families have the highest rate of alcoholism, the highest rate of broken, unstable homes, and the highest rate of child abuse in Alaska and that that, not any wrongdoing or excess of zeal by the Department of Health and Social Services or the State of Alaska, is the reason why Native American homes are broken up most frequently. I will leave it to sociologists, psychologists and anthropologists to describe why these statistical facts exist, but they do. Those problems may or may not be susceptible of solution, but you are treating a symptom when you remove the right of the children to be removed from abusive homes. If the Alaska Legislature wants to solve the problem of abused Native children and their statistically anomalous frequency, it should create programs to treat the underlying problems, not endorse a statute which forces the children to continue to live in those homes, regardless of consequences.

And it is effectively impossible to terminate the parental rights of a parent whose child is an Alaska Native. To terminate those parental rights, someone must prove beyond a reasonable doubt (1) that there is a clear and present physical danger to the children; (2) that the danger has caused harm or imminently will cause harm to the children; and (3) that that conduct constituting a clear and present danger is likely to continue. Check with your legislative counsel, but in my view it is effectively impossible to prove beyond a reasonable doubt that a pattern of conduct is likely to continue. It is hard enough to establish beyond a reasonable doubt that something has happened; ask any district attorney.

So the parental rights cannot be terminated, the parents will continue to have contact with their children, no matter how abusive they have been in the past and no matter how harmful that conduct may be to the children themselves.

In my view, the Indian Child Welfare Act of 1978 is unconstitutional since it unfairly imbalances the constitutional rights of the children as against the constitutional rights of their parents. I emphasize that is my opinion alone, and has not been endorsed by any court of which I am aware.

Another serious problem with the Act is its application in Alaska. Assuming the Act exists to preserve a Native culture, its avowed purpose, then it operates without regard to that avowed purpose. An Alaska Native family, regardless of its ties to its culture, is entitled to the protections of the Indian Child Welfare Act. If I may, I would like to analyze a specific hypothetical.

Let us assume that two fathers in Barrow, Alaska have sexually abused their five year old daughters. One family is caucasian, the other is one-quarter Eskimo. To terminate the parental rights of the caucasian father, the State of Alaska must establish by clear and convincing evidence that the child has suffered emotional harm and that it is likely that the conduct leading to the emotional harm will continue. That is not an easy matter, and is not likely to be proven by one specific bad act, in the absence of other conduct. Obviously, it is not going to be possible to terminate the parental rights of the Native father for a single act.

Now let us assume that each father again sexually abuses the five year old daughter. Probably, it will now be possible to terminate the parental rights of the caucasian father. In the view of most of the courts of Alaska, two specific, identical instances give rise to an inference that conduct is likely to continue and reach the burden of proof: clear and convincing evidence. While the matter has not been ruled upon, it is reasonably certain that it is not going to be possible to terminate the Native father's rights, even though the conduct takes place in the same community, even though the children are harmed in precisely the same way and to precisely the same degree. In fact, as long as there is even a slight doubt that the Native father will continue to sexually abuse his daughter, his parental rights may not be terminated.

Obviously, I oppose House Concurrent Resolution No. 43. While I cannot pretend to make up your minds for you, I urge you to give the Act, its implications and the points I have raised in this letter serious consideration before proceeding further with this Resolution. The State of Alaska and the Department of Health and Social Services have not attempted to force all of the diverse cultures of Alaska into one white, suburban, middle class mold. Whatever the rationale for the Indian Child Welfare Act in other jurisdictions, Alaska has acted in every way to protect the cultural identities of its peoples. The Act is unnecessary, harmful to the children it is intended to protect and possibly unconstitutional. I urge you to resist adoption and passage of the Resolution.

Thank you for your time and patience in reviewing the points that I have set out. Please feel free to contact me if you have questions regarding my position.

Sincerely yours,

CALL, HAYCRAFT & FENTON

James D. DeWitt

JDD:so

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PAUL A. BARRETT

TELEPHONE
907 - 452-2211
452-2296

March 13, 1980

Representative Thelma Buchholdt
Pouch V
Juneau, AK 99811

Re: House Concurrent Resolution No. 43
Indian Child Welfare Act of 1978

Dear Representative Buchholdt:

I am writing to state my opposition to House Concurrent Resolution No. 43, "a resolution endorsing the concept and requesting implementation of the Indian Child Welfare Act of 1978."

As background, I have never represented any parent whose parental rights were being terminated or involuntarily relinquished or otherwise being surrendered by force. I have never represented the State of Alaska in an action to take away parental rights. I have, however, on numerous occasions, represented the children in these proceedings for termination. My official title has always been "guardian ad litem" but my duties have frequently involved reconciliation, peacemaking and negotiation.

Under Alaska law, a guardian ad litem represents the "best interests of the child" in the proceeding; not necessarily what the child wants and not necessarily what the parents or the State of Alaska want. It is a difficult assignment and I confess I am uncomfortable with it in many situations. However, I accept appointments as guardian ad litem because all too frequently the children themselves are not otherwise a concern in a parental rights termination proceeding. It is very easy for the other parties involved to lose sight of the fact that while their lives may be impacted by whatever decision a court may reach, the children will live with the results and be affected by the results for the rest of their lives. The Alaska Supreme Court has begun to recognize that the children are a party in interest, that they have constitutional rights in custody and termination proceedings and that those rights deserve to be represented. The Indian Child Welfare Act, as to the class of children who happen to be of fractional Native blood, removes those rights and removes the right of the children to be represented in a meaningful sense in those kinds of proceedings.

My first dispute is with the underlying premise for the Act, that "a highly disproportionate number of Native American children in Alaska are from families broken up by the removal of children. . .", with the inference that that statistical fact is somehow evidence of wrongdoing by the State of Alaska. The hard truth, however politically unpopular it may be, is that Native American families have the highest rate of alcoholism, the highest rate of broken, unstable homes, and the highest rate of child abuse in Alaska and that that, not any wrongdoing or excess of zeal by the Department of Health and Social Services or the State of Alaska, is the reason why Native American homes are broken up most frequently. I will leave it to sociologists, psychologists and anthropologists to describe why these statistical facts exist, but they do. Those problems may or may not be susceptible of solution, but you are treating a symptom when you remove the right of the children to be removed from abusive homes. If the Alaska Legislature wants to solve the problem of abused Native children and their statistically anomalous frequency, it should create programs to treat the underlying problems, not endorse a statute which forces the children to continue to live in those homes, regardless of consequences.

And it is effectively impossible to terminate the parental rights of a parent whose child is an Alaska Native. To terminate those parental rights, someone must prove beyond a reasonable doubt (1) that there is a clear and present physical danger to the children; (2) that the danger has caused harm or imminently will cause harm to the children; and (3) that that conduct constituting a clear and present danger is likely to continue. Check with your legislative counsel, but in my view it is effectively impossible to prove beyond a reasonable doubt that a pattern of conduct is likely to continue. It is hard enough to establish beyond a reasonable doubt that something has happened; ask any district attorney.

So the parental rights cannot be terminated, the parents will continue to have contact with their children, no matter how abusive they have been in the past and no matter how harmful that conduct may be to the children themselves.

In my view, the Indian Child Welfare Act of 1978 is unconstitutional since it unfairly imbalances the constitutional rights of the children as against the constitutional rights of their parents. I emphasize that is my opinion alone, and has not been endorsed by any court of which I am aware.

Another serious problem with the Act is its application in Alaska. Assuming the Act exists to preserve a Native culture, its avowed purpose, then it operates without regard to that avowed purpose. An Alaska Native family, regardless of its ties to its culture, is entitled to the protections of the Indian Child Welfare Act. If I may, I would like to analyze a specific hypothetical.

Let us assume that two fathers in Barrow, Alaska have sexually abused their five year old daughters. One family is caucasian, the other is one-quarter Eskimo. To terminate the parental rights of the caucasian father, the State of Alaska must establish by clear and convincing evidence that the child has suffered emotional harm and that it is likely that the conduct leading to the emotional harm will continue. That is not an easy matter, and is not likely to be proven by one specific bad act, in the absence of other conduct. Obviously, it is not going to be possible to terminate the parental rights of the Native father for a single act.

Now let us assume that each father again sexually abuses the five year old daughter. Probably, it will now be possible to terminate the parental rights of the caucasian father. In the view of most of the courts of Alaska, two specific, identical instances give rise to an inference that conduct is likely to continue and reach the burden of proof: clear and convincing evidence. While the matter has not been ruled upon, it is reasonably certain that it is not going to be possible to terminate the Native father's rights, even though the conduct takes place in the same community, even though the children are harmed in precisely the same way and to precisely the same degree. In fact, as long as there is even a slight doubt that the Native father will continue to sexually abuse his daughter, his parental rights may not be terminated.

Obviously, I oppose House Concurrent Resolution No. 43. While I cannot pretend to make up your minds for you, I urge you to give the Act, its implications and the points I have raised in this letter serious consideration before proceeding further with this Resolution. The State of Alaska and the Department of Health and Social Services have not attempted to force all of the diverse cultures of Alaska into one white, suburban, middle class mold. Whatever the rationale for the Indian Child Welfare Act in other jurisdictions, Alaska has acted in every way to protect the cultural identities of its peoples. The Act is unnecessary, harmful to the children it is intended to protect and possibly unconstitutional. I urge you to resist adoption and passage of the Resolution.

Thank you for your time and patience in reviewing the points that I have set out. Please feel free to contact me if you have questions regarding my position.

Sincerely yours,

CALL, HAYCRAFT & FENTON

James D. DeWitt

JDD:so

CHARLIE PARR

ALASKA LEGISLATURE

S. R. Box 50599
Fairbanks, Alaska 99701
456-5029

Pouch V
Juneau, Alaska 99811
465-3797

March 19, 1980

M E M O R A N D U M

TO: Senator Glenn Hackney, Chairman
Health, Education and Social Services Committee

Senator Robert Ziegler, Chairman
Judiciary Committee

FROM: Representative Charles H. Parr

SUBJECT: House Concurrent Resolution No. 43

Enclosed is a letter from Mr. James DeWitt expressing what appear to be some valid concerns about HCR 43. I believe Mr. DeWitt's comments will be of interest to you as you consider the resolution.

CHP:vc
Encl.

CALL, HAYCRAFT & FENTON
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March 13, 1980

Representative Charles H. Parr
Pouch V
Juneau, AK 99811

Re: House Concurrent Resolution No. 43
Indian Child Welfare Act of 1978

Dear Charlie:

I am writing to state my opposition to House Concurrent Resolution No. 43, "a resolution endorsing the concept and requesting implementation of the Indian Child Welfare Act of 1978."

As background, I have never represented any parent whose parental rights were being terminated or involuntarily relinquished or otherwise being surrendered by force. I have never represented the State of Alaska in an action to take away parental rights. I have, however, on numerous occasions, represented the children in these proceedings for termination. My official title has always been "guardian ad litem" but my duties have frequently involved reconciliation, peacemaking and negotiation.

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In my view, the Indian Child Welfare Act of 1978 is unconstitutional since it unfairly imbalances the constitutional rights of the children as against the constitutional rights of their parents. I emphasize that is my opinion alone, and has not been endorsed by any court of which I am aware.

Another serious problem with the Act is its application in Alaska. Assuming the Act exists to preserve a Native culture, its avowed purpose, then it operates without regard to that avowed purpose. An Alaska Native family, regardless of its ties to its culture, is entitled to the protections of the Indian Child Welfare Act. If I may, I would like to analyze a specific hypothetical.

Let us assume that two fathers in Barrow, Alaska have sexually abused their five year old daughters. One family is caucasian, the other is one-quarter Eskimo. To terminate the parental rights of the caucasian father, the State of Alaska must establish by clear and convincing evidence that the child has suffered emotional harm and that it is likely that the conduct leading to the emotional harm will continue. That is not an easy matter, and is not likely to be proven by one specific bad act, in the absence of other conduct. Obviously, it is not going to be possible to terminate the parental rights of the Native father for a single act.

Now let us assume that each father again sexually abuses the five year old daughter. Probably, it will now be possible to terminate the parental rights of the caucasian father. In the view of most of the courts of Alaska, two specific, identical instances give rise to an inference that conduct is likely to continue and reach the burden of proof: clear and convincing evidence. While the matter has not been ruled upon, it is reasonably certain that it is not going to be possible to terminate the Native father's rights, even though the conduct takes place in the same community, even though the children are harmed in precisely the same way and to precisely the same degree. In fact, as long as there is even a slight doubt that the Native father will continue to sexually abuse his daughter, his parental rights may not be terminated.

Obviously, I oppose House Concurrent Resolution No. 43. While I cannot pretend to make up your minds for you, I urge you to give the Act, its implications and the points I have raised in this letter serious consideration before proceeding further with this Resolution. The State of Alaska and the Department of Health and Social Services have not attempted to force all of the diverse cultures of Alaska into one white, suburban, middle class mold. Whatever the rationale for the Indian Child Welfare Act in other jurisdictions, Alaska has acted in every way to protect the cultural identities of its peoples. The Act is unnecessary, harmful to the children it is intended to protect and possibly unconstitutional. I urge you to resist adoption and passage of the Resolution.

Thank you for your time and patience in reviewing the points that I have set out. Please feel free to contact me if you have questions regarding my position.

Sincerely yours,

CALL, HAYCRAFT & FENTON

James D. DeWitt

JDD:so

HCR 43

Indian Child Welfare - Sd HCR that was tried by Duncan's office also - SCR. Brenda Knapp. 586-1432

CENTRAL COUNCIL
tlingit and haida indians of alaska
One Sealaska Plaza - Suite 200
Juneau, Alaska 99801
(907) 586-1432 or 586-3613

April 11, 1980

Mr. Glenn Hackney, Chairperson
Health, Education & Social
Services Committee
State Senate
Pouch V
Juneau, AK 99811

Dear Senator Hackney:

The Central Council of Tlingit and Haida Indian Tribes of Alaska supports the Committee Substitute for House Concurrent Resolution Number 43, "A resolution endorsing the concept and requesting implementation of the Indian Child Welfare Act of 1978." We believe that legislative recognition and support of this act is essential to full implementation. We also believe that a directive to the Department of Health and Social Services and the Alaska Supreme Court regarding prompt implementation will facilitate the establishment of appropriate priorities concerning the act

As a follow up to the resolution, a review of the existing Children's Code is necessary to identify areas of non-compliance with the Indian Child Welfare Act. Then any statutes found to be in non-compliance should be corrected with appropriate legislation.

Thank you for giving your support and attention to this issue of great concern to Alaska Native families.

Sincerely,

CENTRAL COUNCIL OF TLINGIT AND
HAIDA INDIAN TRIBES OF ALASKA

Raymond E. Paddock, Jr.
President

HJR

83

COMMITTEE REPORT

SENATE

FURTHER: None

4/7/80

Date: 4-7-80

Mr. President:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HJR 83

compensation to Alaska physicians who participate in the Medicaid program

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Sen. Hackney
CHAIRMAN

DO PASS

S 60 (Rev. 12/78)

1

Introduced 3-17-80
Logged 4-7-80
Referrals Finance
Comm. meeting 4-9-80 Passed
" action

HJR 83
By Finance Comm.
by Request

"Relating to compliance with DOD
Ck. physicians who participate
in Medicaid programs"

Position Paper herein
HSS: Mitchell

POSITION PAPER

ON

HOUSE JOINT RESOLUTION 83

This resolution seeks to eliminate the federal barrier which presently prevents fair compensation of Alaska's physicians participating in the Medicaid Program.

The problem stems from a federal law which sets physician reimbursement at the lowest of three factors;

1. The actual amount charged on the bill,

2. The physician's actual average charge for the preceeding year; and

3. The "adjusted 75th percentile" for all Alaska physicians' charges for the preceeding year.

A true 75th percentile would represent a figure which 75% of Alaska physicians did not exceed. However, under federal law the Alaska 75th percentile is not allowed to increase at the actual Alaska economic growth rate, but rather is limited to the economic growth rate for the United States as a whole. The potential effect of this growth limitation is displayed on the attached graph. This graph shows what would happen to a $15 office charge over the last 10 years assuming, for illustration only, that costs in Alaska have grown an annual percentage of 2% higher than the rest of the nation.

The Department supports HJR 83 for the following reasons:

1. Physician participation in Medicaid is optional and an increasing number of physicians will either drop out of the program or refuse to see new patients if they feel they are unfairly compensated. This is already severely effecting the specialty service of OB-GYN.

2. Although physicians' as a group represent no more than 10% of total costs under our medical programs, they are the hub of our entire medical delivery system. They see patients in their offices at the early stages of disease or injury, they admit people to hospitals and long term care facilities, they perform surgery and provide follow-up care, and they refer patients to other providers of health care services. We need their participation to make our program work.

3. Hospitals and long term care facilities receive full reimbursement for all reasonable costs they incur. Clearly, under the present system, physicians do not. Even if an Alaska cost index is substituted for the national index, physicians will still receive only partial reimbursement for the costs they incur.

4. Unless the growing disparity between costs and reimbursement is lessened, physician losses will have to be made up by increasing costs of private pay patients.

5. Although Medicare is also a federal program, it does not force physicians into this box. If a physician elects not to accept Medicare payment as full settlement of his bill, he can bill the patient for the remainder under Medicare rules. In Medicaid it is partial payment or nothing. If the State attempts to make up the portion lost by the physician under Medicaid, the State then becomes responsible for the entire payment.

Approved by: Rod Betit — March 25, 1980

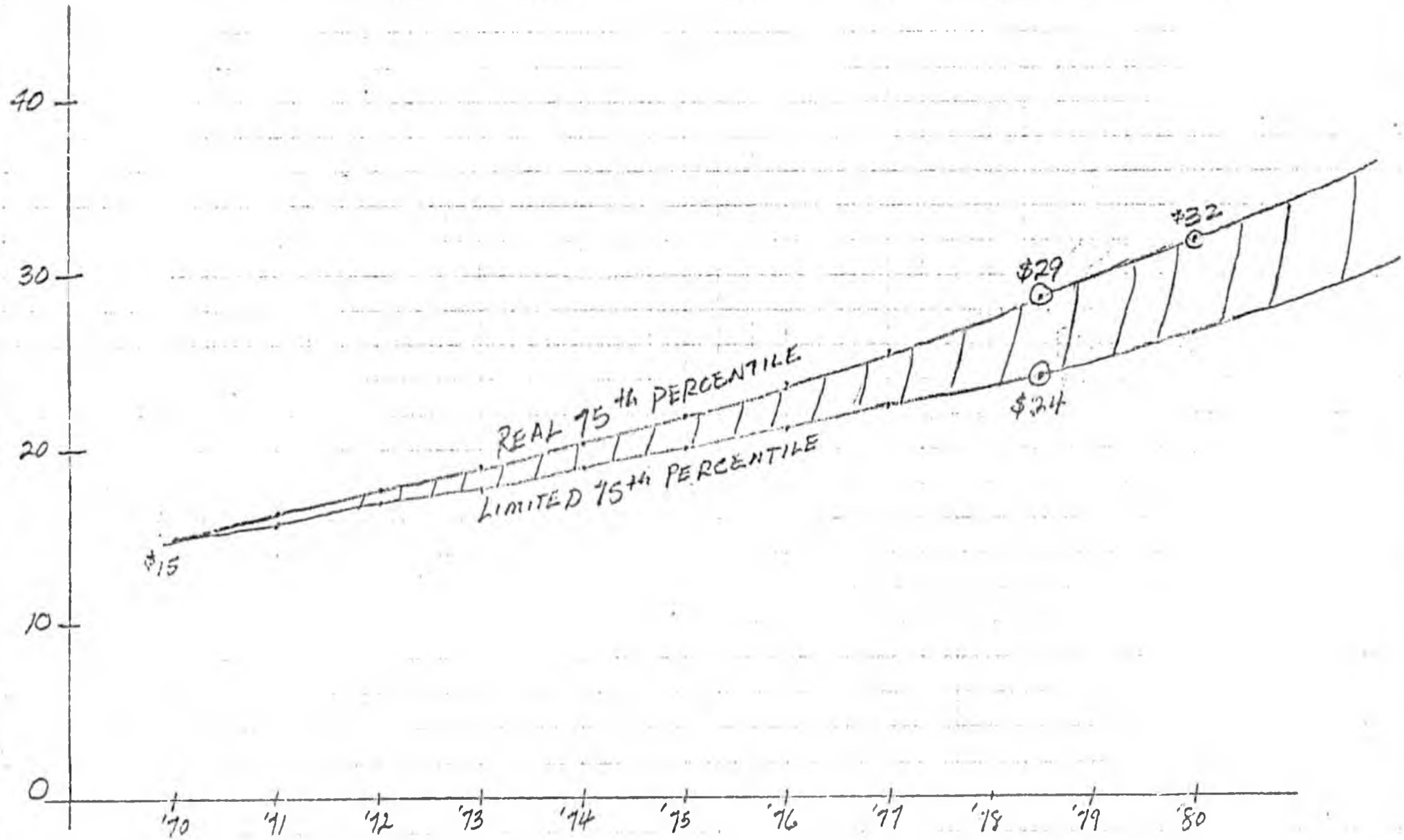
Rod Betit, Director
Division of Public Assistance — Date

3/28/80

Helen D. Beirne, Commissioner
Department of Health & Social Services — Date

MARCH 28, 1980

COMPARISON OF REAL 75th PERCENTILE TO LIMITED 75th PERCENTILE



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