

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4109 SJUD SB 364 - SB 371

989



RECORDS CERTIFICATION



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

James O. Smith
Signature of Camera Operator

11/7/89
Date

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MEMORANDUM

State of Alaska

TO Rod Betit, Director
 Division of Public Assistance
 Dept. of Health & Social Svcs

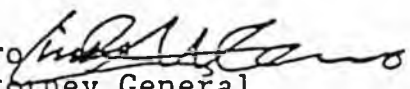
DATE June 21, 1984

FILE NO 366-516-84

TELEPHONE NO 465-3603

FROM Norman C. Gorsuch
 Attorney General

SUBJECT Retroactive Benefits
 under AS 44.77.010-
 MEDICAID SIX MONTH LAW.

By: Linda M. Cerro 
 Assistant Attorney General
 Human Services-Juneau

You have inquired whether AS 44.77.010 prohibits payment of medical claims filed greater than six months after medical service was provided or third party payment was received, in light of fair hearing or judicial decisions granting retroactive medicaid eligibility to recipients for whom claimants have submitted untimely claims.

AS 44.77.010 creates an absolute bar to payment of claims submitted after six months of the date medical service was provided or third party payment was received.

AS 44.77.010 provides in pertinent part:

Presentation of Claims. (a) Every claim for reimbursement for money expended...shall be promptly presented to the appropriate administrative or executive officer for approval and payment.

(b) For the purposes of filing claims for medical services provided under AS 47.07 or 47.25.120 - 47.25.300, "promptly", in (a) of this section, means within six months after the date the service was provided or third-party payment was received. No such claim may be paid which is not filed within that period; no inference to the contrary may be drawn from AS 09.10.050, 09.50.250 - 09.50.300, or AS 37.25.010. (Emphasis added).

The attached April 10, 1978 informal attorney general's opinion generally discusses the intent of the statute and the prohibition created. A fair hearing or judicial decision that a claimant be retroactively medicaid eligible does not cure a claimant's prior failure to have timely filed a claim for reimbursement. In light of AS 44.77.010, an adjudication of

retroactive medicaid eligibility requires retroactive payment only of those claims filed within six months of service or third-party payment. 1/

While the division must follow the mandate of the statute, that is not to suggest the statute cannot be challenged. Both the provider and recipient, however, received actual notice of the prohibition on payment of stale claims at the outset: the provider through both the provider manual and provider reimbursement agreement, and the recipient through the information booklet available to assist applicants in completing assistance applications. This fact and the division's liberal policy of accepting as timely claims filed within six months of service by providers on behalf of as yet ineligible applicants, and by applicants in conjunction with their applications for eligibility or fair hearing, weigh in the division's favor in a balancing of equities. 2/

1/ It is not intended by this opinion to suggest that the provider, whose claim has been denied by the State for untimeliness under AS 44.77.010(b), may thereafter pursue payment from the beneficiary of services.

7 AAC 43.050 prohibits providers from charging beneficiaries the difference between the amount billed and the amount received in payment from the division. It provides that beneficiaries are only responsible for payment for services not coverable under medicaid. A judicial or fair hearing decision that the services are coverable under medicaid even though not payable under the state plan due to untimely filing, arguably forbids the provider from billing the beneficiary as well. Where one of two or more parties must bear the ill consequences of a particular turn of events, in this case the denial of reimbursement for medical services rendered due to an untimely claim, it is not unreasonable to saddle the provider, the party responsible for the untimely filing, to bear the consequences of its failure to act.

2/ But see the suggestion in the April 10, 1978 opinion that a curative amendment to AS 44.77.010, allowing the department to accept stale claims when it determines that the untimely filing was not the fault of the claimant or that it resulted from excusable neglect, would narrow the affected class sufficiently to better satisfy a court's notions of equity.

Rod Betit, Director
Division of Public Assistance
366-516-84

June 21, 1984
Page 3

Should the division deny the pending claims pursuant to the prohibition at AS 44.77.010(b), a claimant may obtain review of the division's action by applying within 60 days to the Department of Administration, at Juneau. If the Department of Administration rules adversely to the claimant, the claimant must bring an action in the Superior Court within 30 days of his receipt of the notice of decision by the Department of Administration. AS 44.77.040(c).

LMC:gmw

cc: Jeff Hubbard
Kim Busch



Official Business

Alaska State Legislature
Senate

Committee on
Community and Regional Affairs

Senator Edna DeVries, Chairman
Members:
Senator Ferguson, Vice Chairman
Senator Coghill
Senator Sturgulewski
Senator V. Fischer

Pouch V
Juneau, Alaska 99511

December 19, 1985

Dr. Robert W. Robinson, II, DMD
Valley Dental Clinic, Inc.
Suite 212, Land Company
P. O. Box 871687
Wasilla, AK 99687

Dear Dr. Robinson:

Senator DeVries wanted me to send along to you the attached letter she received from Commissioner John Pugh. As of this date, Senator DeVries intends to introduce her bill (the work draft mailed to you earlier). She will be in Juneau after January 13 and will welcome any comments you may have.

Sincerely,

Yvonne M. Alford
Professional Assistant to
SENATOR EDNA DEVRIES

atch

cc: Martha Dearborn, Alaska Dental Society
Sam Kito



Alaska Dental Society
3400 Spenard Road, Suite 10
Anchorage, Alaska 99503
(907) 277-4675

CB 364
Rec'd 12/19/85

Dental payment bill
+ 47:335

December 11, 1985

Senator Edna DeVries
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator DeVries:

The draft legislation, enclosed, which was given to Sam Kito in November, was discussed and unanimously approved/endorsed by the Alaska Dental Society at their executive council meeting on December 6, 1985.

Yvonne Alford communicated to Sam that you would like an opinion (or comments) by December 13. I hope we make it....

Sincerely,

Martha A. Dearborn

Martha A. Dearborn
Executive Director/Secretary
Alaska Dental Society

cc: Sam Kito
Dr. Robert Robinson

This will sent to
Redey - 2/18/86
- 2/-
CJ

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

December 4, 1985

POUCH H 01
JUNEAU, ALASKA 99811

PHONE: (907)
465-3030

DOCUMENT #85-200

The Honorable Edna DeVries
Alaska State Senate
P.O. Box 321
Palmer, Alaska 99645

Dear Senator DeVries:

Yvonne Alford asked me to review your proposed changes to AS 44.77.010(b).

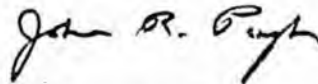
The Division of Medical Assistance has also recommended revision to this statute next session. The Division has drafted extensive changes to AS 44.77.010(b) with the assistance of the Department of Law. The Division of Medical Assistance's proposal contains a provision similar to that offered by Senator DeVries.

Please note that in the Division's proposal, a bill that is not submitted timely would only be eligible for partial payment unless it meets one of the special conditions. We feel that allowing payment up to 50% will provide some financial relief in the event of a billing error, but will also reinforce the importance of complying with the 6 month billing limitation.

Mr. Rod Betit, Director DMA, is the Department contact person on this issue. Please feel free to discuss this matter directly with him at your convenience. I hope this provides the information you need to understand our intentions relative to revision of AS 44.77.010(b).

Thank you for the opportunity to comment.

Sincerely,



John R. Pugh
Commissioner

cc: Mr. Rod Betit
Ms. Norma Lang
Ms. Iris Barnett, Assistant Attorney General



Alaska State Legislature
Senate
Committee on
Community and Regional Affairs

Senator Edna DeVries, Chairman
Members:
Senator Paul W. Anderson, Chairman
Senator Eugene
Senator Stephen
Senator G. Fisher
Phone
1111

November 20, 1985

To: Sam Kito
From: Yvonne *Yvonne*
for Senator Edna DeVries

Senator DeVries requests that you review the attached draft bill that deals with the payment of medical services as provided for in AS 44.77.010(b).

If you have any comments, I would appreciate receiving them no later than December 13.

Our office phone number is 745-3281.



Alaska State Legislature
Senate

Committee on
Community and Regional Affairs

Senator Edna DeVries, Chairman
Senator Ferguson, Vice Chairman
Senator Gupitt
Senator Stubbins
Senator V. Finner
Juneau, Alaska 99801

November 20, 1985

To: Dr. Robinson

From: Yvonne [Signature] for: Senator Edna DeVries

Senator DeVries requests that you review the attached draft bill that deals with the payment of medical services as provided for in AS 44.77.010(b).

If you have any comments, I would appreciate receiving them no later than December 13. Our office phone number is 745-3281.

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811

PHONE:

(907)

465-3030

DOCUMENT #85-189

October 28, 1985

The Honorable Edna DeVries
Alaska State Legislature
137 E. Arctic, Suite 102
P.O. Box 321
Palmer, Alaska 99645

Dear Senator DeVries:

This is in reply to your correspondence on behalf of Robert W. Robinson, II, D.M.D., concerning non-payment of a Medicaid billing for Kirsten Ekren.

The reason for initial denial of this billing was a determination that the bill had not been submitted timely as required by Alaska law, AS 44.77.010.

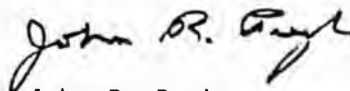
An Attorney General's opinion dated June 21, 1984 confirmed that the Department has no discretion in granting exceptions to this law. However, based on written statements secured from the involved parties, my staff have concluded that sufficient evidence exists to assume the original billing was submitted timely even though it was never received by the Department. Accordingly, we have processed the re-submitted billings for payment.

The Department is confronted with a number of late billing submissions each year that must await special legislative approval because of the rigid requirements of AS 44.77.010. We are pleased that Kirsten Ekren's bills could be spared this delay and appreciate your assistance in clearing up this problem.

For your information, the Administration intends to introduce legislation during the 1986 session that would authorize the Department of Health & Social Services greater discretion in situations like this.

Again, thank you for your help.

Sincerely,



John R. Pugh
Commissioner

cc: Bill Parker
Robert W. Robinson, II, D.M.D.

Valley Dental Clinic, Inc.

Robert Wade Robinson II, D.M.D.

SUITE 212 LAND COMPANY
P.O. BOX 871687
WASILLA, ALASKA 99687
(907) 376-3884

SEP 3 1985

call Pugh + Robinson

September 1, 1985

Mr. Rod Betit
DIVISION OF MEDICAL ASSISTANCE
4040 "B" Street, Suite 101
Anchorage, Alaska 99503

Re: Kirsten Ekren
ID# 191062902

Dear Rod:

I just called Kent Autor with your office regarding the status of my second level of appeal concerning Kirsten Ekren. Kent informed me there was not record of my submitting any information and none was on file. Kent also stated that Bob Ogden had left and was possibly handling my case at the time of his departure. Kent also informed me that August 28, 1985, was his last day!

I asked him to give you a note that I did in fact call. I do hope this was done. As you can see, this appeal was submitted May 10, 1985, and was received by your Office May 21, 1985, and again I was informed that I would hear from someone. It is now September and if I had not initiated contact I would still be in limbo.

Rod, this is what started my whole dilemma; i.e., CSC telling me I did not submit a claim. Now I am caught in the Catch 22 again!

Where does this all end???

Sincerely,

Robert W. Robinson, II, DMD

cc: Governor Sheffield
Alaska Dental Society
Senator Jay Kertula
Senator Edna DeVries
Representative Katey Hurley
Representative Ron Larsen

RWR:kh

Valley Dental Clinic, Inc.

Robert Wade Robinson II, D.M.D.

SUITE 212 LAND COMPANY
P.O. BOX 871687
WASILLA, ALASKA 99687
(907) 376-3884

September 1, 1985

State Ombudsman
STATE OF ALASKA
Pouch W0
Juneau, Alaska 99811

Re: *Kirsten Ekren*
ID# 191062902

Dear Sir:

I would like to request your assistance, if at all possible, regarding typical problems facing many health professionals in this State. Maybe you will see why some do not want to treat those who are on medical assistant programs.

Please review the one case in point, *Kirstin Ekren*, and related documents which are enclosed.

I believe you can follow the sequence of events as outlined in my letter dated May 2, 1985; Enclosure #1.

Since sending this letter, I have received responses from various representatives and senators. I appreciate their concern and time, but, as you can see, they all were told that they would hear from the Division of Medical Assistance.

Now almost another four months plus have elapsed and I have not heard from anyone. Today I called Bob Ogden only to find him not employed by the State any longer. I then talked with Kent Autor. Kent informed me there was no record for a second appeal. Here again as you can see, I'm told we did not submit but I do have a copy of a receipt of my letter, and, in addition, a hand written memo from their office.

I am enclosing a letter also written today to Rod Betit, who I am now told will handle my case.

September 1, 1985
Page Two
State Ombudsman

Please note the letter dated July 11, 1985, from Commissioner John R. Pugh stating that he would try to have an answer to me within two weeks.

I would like the public to be aware of what actually happens to health professionals. I am also curious how much time, money, and energy all of us including myself, Senators, Representatives, and yourself will spend just to obtain payment for a May 5, 1983 service!

This is not an isolated case. The same is true with Lauri Hale for \$265.00.

Thank you for your time and attention regarding this matter.

Sincerely,

Robert W. Robinson, II, DMD

RWR:kh

cc: Governor Sheffield
Alaska Dental Society
Senator Jay Kertula
Senator Edna DeVries
Representative Katie Hurley
Representative Ron Larsen

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811

PHONE: (907)
465-3030

Document No. 85-167

July 11, 1985

The Honorable Edna DeVrie
137 E Arctic, Suite 102
P.O. Box 321
Palmer, Alaska 99645

Dear Senator DeVries:

Thank you for the documents from Dr. Robinson concerning his Medicaid billing problems.

As this matter will require some time to research, I hope to have a reply to you within two weeks covering the specifics of Dr. Robinson's complaints.

Sincerely,



John R. Pugh
Commissioner

cc: Mr. Rod Betit
Robert W. Robinson II, D.M.D.



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

FEBRUARY 17, 1986

TO: SENATOR PAT RODEY
FROM: SENATOR EDNA DEVRIES *Edna*
SUBJECT: SB 364

I DON'T HAVE ANY PROBLEM WITH ADDING THE DEPARTMENT OF SOCIAL SERVICES' RECOMMENDATION EXCEPT THAT I WOULD WANT ITEM #3 TO READ "50% AFTER 12 MONTHS" INSTEAD OF "50% AFTER 6 MONTHS".

THEY INDICATED TO ME THAT THEY DID NOT SEE A PROBLEM WITH THAT AMENDMENT,

PLEASE LET ME KNOW IF I CAN BE OF FURTHER ASSISTANCE.

EDNA

ED:MAL

FEB 13 1982

POSITION PAPER

Senate Bill 364

I. Purpose of SB364

SB364 seeks to clarify the Legislature's intent regarding the six-month limitation placed on medical providers for filing medical claims.

II. Sectional Analysis

SECTION 1

This section waives the six-month filing deadline through an exclusion defined in Section 2.

SECTION 2

This section gives the state discretion to pay a claim that was not filed promptly if good cause existed for the late filing. If the filing deadline were waived, the claim would be paid in full.

III. Discussion

The Department endorses the sponsor's efforts to correct inequities in the present six-month law. The Department would recommend the following additional changes to SB364:

- (1) Language correcting those situations where the third-party payor was so late in responding to the claim that more than six months elapsed before the medical provider received the negative response. The medical provider cannot then "promptly" file the claim, and is left with no recourse.
- (2) Language correcting those situations that arise when a person has been found ineligible for Medicaid or General Relief Medical, and then successfully appeals that finding through a judicial or administrative proceeding only to discover that more than six months have elapsed since the medical services were provided. This could be corrected by permitting a medical provider to file claims within six months after the date upon which a court or administrative hearing officer finds that a person was improperly found to be ineligible for Medicaid or General Relief Medical.
- (3) Finally, while SB364 recognizes that some claims are filed late for good reasons, the Commissioner of Health & Social Services should approve payment, at no more than 50 percent of the allowed charges, of a claim not "promptly" filed, if the medical provider shows "good cause" for the failure to meet the filing deadline. This will permit partial payment of the claim, but continue to stress the importance of the filing a claim timely.

POSITION PAPER/Department of Health & Social Services

The estimated state fund impact of SB364 is \$14.6 in additional expenditures annually.

IV. Position

The Department supports SB364 as a needed clarification of the Medicaid six-month law, however, the Department recommends the changes noted in Part III of this position paper. Language for these recommended charges can be found in SECTION 1 of CS for CSHB98(HESS)

Recommended By: Rod Betit
Rod Betit, Director
Division of Medical Assistance

Date: 2/6/86

Approved By: John R. Pugh
John R. Pugh, Commissioner
Department of Health and
Social Services

Date: 2/13/86

Original sponsor: DeVries

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 364 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the criteria for payment by the
7 state of claims for certain medical services."

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

9 * Section 1. AS 44.77 is amended by adding a new section to read:

10 Sec. 44.77.015. CLAIMS FOR MEDICAL SERVICES. (a) For the
11 purposes of filing claims for medical services provided under AS 47.07
12 or 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1)
13 within six months after the date of service, or as provided in (b) or
14 (c) of this section, if there is no third-party claim, or (2) within
15 12 months after the date of service if there is a third-party claim.
16 Except as provided in (d) of this section, a claim may not be paid if
17 it is not filed promptly; an inference to the contrary may not be
18 drawn from AS 09.10.050, AS 09.50.250 - 09.50.300, or AS 37.25.010.

19 (b) In accordance with (a) of this section, a claim may be
20 considered to be filed promptly if (1) the claim was filed more than
21 six months after the date of service because the medical provider had
22 reason to believe that the beneficiary was ineligible for service
23 under AS 47.07 or AS 47.25.120 - 47.25.300; (2) a court of competent
24 jurisdiction or an administrative hearing officer finds that the
25 beneficiary was eligible for service under AS 47.07 or AS 47.25.120 -
26 47.25.300 on the date of service; and (3) the claim is filed within
27 six months after the date that the court or administrative hearing
28 officer's final decision is rendered. The beneficiary is responsible
29 for notifying the medical provider of the judicial or administrative

1 finding. If the Department of Health and Social Services has reason
2 to believe that the medical provider is unaware of the judicial or
3 administrative finding, the department shall make a good-faith effort
4 to notify the medical provider of the finding.

5 (c) In accordance with (a) of this section and for good cause
6 shown, the commissioner of health and social services may authorize
7 payment to a medical provider of a claim filed within 12 months after
8 the date of service.

9 (d) The commissioner of health and social services may authorize
10 payment to a medical provider of a claim not promptly filed, upon good
11 cause shown. Payments under this subsection may not exceed 50 percent
12 of the allowable charges presented in the claim.

13 (e) In this section,

14 (1) "beneficiary" means a person who is found to be eligi-
15 ble to receive medical services under AS 47.07 or AS 47.25.120 -
16 47.25.300;

17 (2) "medical provider" means a person, firm, corporation,
18 association, or institution that, on the date of service, was approved
19 to provide medical assistance, in accordance with regulations adopted
20 by the Department of Health and Social Services.

21 * Sec. 2. AS 44.77.010(b) is repealed.
22
23
24
25



Alaska Dental Society
3400 Spenard Road, Suite 10
Anchorage, Alaska 99503
(907) 277-4675

December 11, 1985

Senator Edna DeVries
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator DeVries:

The draft legislation, enclosed, which was given to Sam Kito in November, was discussed and unanimously approved/endorsed by the Alaska Dental Society at their executive council meeting on December 6, 1985.

Yvonne Alford communicated to Sam that you would like an opinion (or comments) by December 13. I hope we make it....

Sincerely,

Martha A. Dearborn

Martha A. Dearborn
Executive Director/Secretary
Alaska Dental Society

cc: Sam Kito
Dr. Robert Robinson

SB 364

Rec'd 12/19/85
Dental payment bill
+ 47: 335

14-1408
Bannister
11/7/85

1 IN THE SENATE

BY DEVRIES

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act permitting the state to pay certain untimely
7 claims."

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

9 * Section 1. AS 44.77.010(b) is amended to read:

10 (b) For the purposes of filing claims for medical services
11 provided under AS 47.07 or AS 47.25.120 - 47.25.300, "promptly", in
12 (a) of this section, means within six months after the date the ser-
13 vice was provided or third-party payment was received. Except as
14 provided in (d) of this section, a [A] claim may not be paid if it is
15 not filed within that period; an inference to the contrary may not be
16 drawn from AS 09.10.050, AS 09.50.250 - 09.50.300, or AS 37.25.010.

17 * Sec. 2. AS 44.77.010 is amended by adding a new subsection to read:

18 (d) The state may pay a claim that is not presented promptly if
19 the state determines that the untimely filing either was not the fault
20 of the claimant or resulted from excusable neglect.
21

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

December 4, 1985

BILL SHEFFIELD, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811

PHONE: (907)
465-3030

DOCUMENT #85-200

DEC 13 RECD

The Honorable Edna DeVries
Alaska State Senate
P.O. Box 321
Palmer, Alaska 99645

Dear Senator DeVries:

Yvonne Alford asked me to review your proposed changes to AS 44.77.010(b).


The Division of Medical Assistance has also recommended revision to this statute next session. The Division has drafted extensive changes to AS 44.77.010(b) with the assistance of the Department of Law. The Division of Medical Assistance's proposal contains a provision similar to that offered by Senator DeVries.

Please note that in the Division's proposal, a bill that is not submitted timely would only be eligible for partial payment unless it meets one of the special conditions. We feel that allowing payment up to 50% will provide some financial relief in the event of a billing error, but will also reinforce the importance of complying with the 6 month billing limitation.

Mr. Rod Betit, Director DMA, is the Department contact person on this issue. Please feel free to discuss this matter directly with him at your convenience. I hope this provides the information you need to understand our intentions relative to revision of AS 44.77.010(b).

Thank you for the opportunity to comment.

Sincerely,



John R. Pugh
Commissioner

cc: Mr. Rod Betit
Ms. Norma Lang
Ms. Iris Barnett, Assistant Attorney General

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

October 28, 1985

BILL SHEFFIELD, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811

PHONE:

(907)

465-3030

DOCUMENT #85-189

The Honorable Edna DeVries
Alaska State Legislature
137 E. Arctic, Suite 102
P.O. Box 321
Palmer, Alaska 99645

Dear Senator DeVries:

This is in reply to your correspondence on behalf of Robert W. Robinson, II, D.M.D., concerning non-payment of a Medicaid billing for Kirsten Ekren.

The reason for initial denial of this billing was a determination that the bill had not been submitted timely as required by Alaska law, AS 44.77.010.

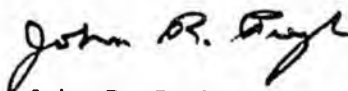
An Attorney General's opinion dated June 21, 1984 confirmed that the Department has no discretion in granting exceptions to this law. However, based on written statements secured from the involved parties, my staff have concluded that sufficient evidence exists to assume the original billing was submitted timely even though it was never received by the Department. Accordingly, we have processed the re-submitted billings for payment.

The Department is confronted with a number of late billing submissions each year that must await special legislative approval because of the rigid requirements of AS 44.77.010. We are pleased that Kirsten Ekren's bills could be spared this delay and appreciate your assistance in clearing up this problem.

For your information, the Administration intends to introduce legislation during the 1986 session that would authorize the Department of Health & Social Services greater discretion in situations like this.

Again, thank you for your help.

Sincerely,



John R. Pugh
Commissioner

cc: Bill Parker
Robert W. Robinson, II, D.M.D.

Secs. 44.74.200 — 44.74.260. Department of Fish and Game Working Capital Fund. [Repealed, § 1 ch 77 SLA 1971.]

Legislative history reports. — For report on ch. 77, SLA 1971 (SB 157), see 1971 House Journal, p. 1228.

Part 7. Claims and Liability.

Chapter

77. Claims Against the State (§§ 44.77.010 — 44.77.070)

80. Liability of the State (§§ 44.80.010 — 44.80.070)

Chapter 77. Claims Against the State.

Section

10. Presentation of claims

20. Disallowance by officer

30. Disallowance by Department of Administration

40. Hearing and judgment on appeal to department

Section

50. Authority of department

60. Request for attorney general's opinion

70. Application of procedure

NOTES TO DECISIONS

Stated in State v. Lundgren Pac. Constr. Co., Sup. Ct. Op. No. 1980 (File No. 3286), 603 P.2d 889 (1979).

Sec. 44.77.010. Presentation of claims. (a) Every claim for reimbursement for money expended, or for compensation for labor, materials, or supplies furnished, or services given to or for the state, whether based on a contract or on a ratification, shall be promptly presented to the appropriate administrative or executive officer for approval and payment.

(b) For the purposes of filing claims for medical services provided under AS 47.07 or 47.25.120 — 47.25.300, "promptly", in (a) of this section, means within six months after the date the service was provided or third-party payment was received. A claim may not be paid if it is not filed within that period; an inference to the contrary may not be drawn from AS 09.10.050, AS 09.50.250 — 09.50.300, or AS 37.25.010.

(c) For purposes of this chapter, "claim" includes a claim for a wrongful rejection of a bid proposal or for an arbitrary and unreasonable cancellation of a bid solicitation. (§ 15-1-1 ACLA 1949; am § 43 ch 133 SLA 1951; am §§ 1, 2 ch 24 SLA 1953; am § 1 ch 96 SLA 1974; am § 10 ch 144 SLA 1982)

Cross against th 09.50.300 see AS 44 Effect

This sec the claim: istrative r Ct. Op. No. 1257 (1976 The wo modify th ZIA, Inc., S 2518), 556 I It is app "money," "supplies," e modifier anc to construct legislature. s No. 1337 (F. (1976).

For the contract cl defined in c Inc., Sup. Ct. 556 P.2d 125 If the legis "promptly" f contract claim in mind, it ca

Collateral : 2d, States, Te §§ 76, 99 to 1: 81A C.J.S., s 307, 309.

Sec. 44.7 or executive obtain a rev Department

(b) When claim shall t to the claim

(c) When i ment shall re

(d) The de; shall make it the officer. Tl

Valley Dental Clinic, Inc.

Robert Wade Robinson II, D.M.D.

SUITE 212 LAND COMPANY
P.O. BOX 871687
WASILLA, ALASKA 99687
(907) 376-3884

SEP 5 - RECD

call Pugh + Robinson

September 1, 1985

Mr. Rod Betit
DIVISION OF MEDICAL ASSISTANCE
4040 "B" Street, Suite 101
Anchorage, Alaska 99503

Re: Kirsten Ekren
ID# 191062902

Dear Rod:

I just called Kent Autor with your office regarding the status of my second level of appeal concerning Kirsten Ekren. Kent informed me there was not record of my submitting any information and none was on file. Kent also stated that Bob Ogden had left and was possibly handling my case at the time of his departure. Kent also informed me that August 28, 1985, was his last day!

I asked him to give you a note that I did in fact call. I do hope this was done. As you can see, this appeal was submitted May 10, 1985, and was received by your Office May 21, 1985, and again I was informed that I would hear from someone. It is now September and if I had not initiated contact I would still be in limbo.

Rod, this is what started my whole dilemma; i.e., CSC telling me I did not submit a claim. Now I am caught in the Catch 22 again!

Where does this all end???

Sincerely,

Robert W. Robinson, II, DMD

cc: Governor Sheffield
Alaska Dental Society
Senator Jay Kertula
Senator Edna DeVries
Representative Katey Hurley
Representative Ron Larsen

RWR:kh

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

*POUCH H 01
JUNEAU, ALASKA 99811*

*PHONE: (907)
465-3030*

Document No. 85-167

July 11, 1985

The Honorable Edna DeVries
137 E Arctic, Suite 102
P.O. Box 321
Palmer, Alaska 99645

Dear Senator DeVries:

Thank you for the documents from Dr. Robinson concerning his Medicaid billing problems.

As this matter will require some time to research, I hope to have a reply to you within two weeks covering the specifics of Dr. Robinson's complaints.

Sincerely,



John R. Pugh
Commissioner

cc: Mr. Rod Betit
Robert W. Robinson II, D.M.D.

Valley Dental Clinic, Inc.

Robert Wade Robinson II, D.M.D.

SUITE 212 LAND COMPANY

P.O. BOX 871687

WASILLA, ALASKA 99687

(907) 376-3884

SEP 5 - RECD

September 1, 1985

State Ombudsman
STATE OF ALASKA
Pouch WO
Juneau, Alaska 99811

Re: Kirsten Ekren
ID# 191062902

Dear Sir:

I would like to request your assistance, if at all possible, regarding typical problems facing many health professionals in this State. Maybe you will see why some do not want to treat those who are on medical assistant programs.

Please review the one case in point, Kirstin Ekren, and related documents which are enclosed.

I believe you can follow the sequence of events as outlined in my letter dated May 10, 1985; Enclosure #1.

Since sending this letter, I have received responses from various representatives and senators. I appreciate their concern and time, but, as you can see, they all were told that they would hear from the Division of Medical Assistance.

Now almost another four months plus have elapsed and I have not heard from anyone. Today I called Bob Ogden only to find him not employed by the State any longer. I then talked with Kent Autor. Kent informed me there was no record for a second appeal. Here again as you can see, I'm told we did not submit but I do have a copy of a receipt of my letter, and, in addition, a hand written memo from their office.

I am enclosing a letter also written today to Rod Betit, who I am now told will handle my case.

SEP 5 - RECO

September 1, 1985
Page Two
State Ombudsman

Please note the letter dated July 11, 1985, from Commissioner John R. Pugh stating that he would try to have an answer to me within two weeks.

I would like the public to be aware of what actually happens to health professionals. I am also curious how much time, money, and energy all of us including myself, Senators, Representatives, and yourself will spend just to obtain payment for a May 5, 1983 service!

This is not an isolated case. The same is true with Lauri Hale for \$265.00.

Thank you for your time and attention regarding this matter.

Sincerely,

Robert W. Robinson, II, DMD

RWR:kh

cc: Governor Sheffield
Alaska Dental Society
Senator Jay Kertula
Senator Edna DeVries ✓
Representative Katie Hurley
Representative Ron Larsen

Valley Dental Clinic, Inc.

Robert Wade Robinson II, D.M.D.

SUITE 212 LAND COMPANY

P.O. BOX 871687

WASILLA, ALASKA 99687

(907) 376-3884

May 10, 1985

State of Alaska
Division of Medical Assistance
4040 "B" Street, Suite 101
Anchorage, Alaska 99503

RE; Second level of appeal - Kirsten Ekren ID# 191062102

To whom it may concern;

I am beginning to understand why our bureaucracy breeds contempt and kills honest people. There is no way I can express the frustration and anger I feel over this case. I have always been an honest law abiding citizen who put faith in our "system".

On May 5, 1983, I rendered service to Kirsten Ekren in the amount of \$220.00. Then on June 22, 1983, I again rendered service in the amount of \$110.00. Nobody, including the patient or CSC denies that the services were performed and done well! A claim was submitted for these services June 22, 1983, when the case was completed. On February 2, 1984, the claim was resubmitted after we were told there was no record of this claim.

What followed has been a time consuming, costly process which I am not at all pleased with. After much correspondence, telephone calls and many hours I find a denial of "First level of appeal" dated April 26, 1985. Also in the denial letter is a paragraph stating the eligible recipient cannot be held responsible for the bill.

Now I am told the patient was eligible, the service was performed but I cannot be paid by anyone including the patient or CSC. Where is the justice in this?

The question seems to be on the billing. Our office states the claim was sent June 22, 1983, and CSC states they did not receive the claim. Why call either a liar or try to guess what happened with the Postal Service? This is not going to resolve anything.

I am enclosing a copy of a CSC print out to answer a question and to prove a point. I have been asked why we did not resubmit before February 24, 1984. Since it seems it takes 6 months to a year before alot of cases are paid, we do not pull a record or initiate an inquiry before 7-8 months. Cases in point are, Jason Welton, billed March 1, 1983,

denied March of '84

Valley Dental Clinic, Inc.

Robert Wade Robinson II, D.M.D.

SUITE 212 LAND COMPANY
P.O. BOX 871687
WASILLA, ALASKA 99687
(907) 376-3884


paid January 9, 1984. Also Kevin Johnson billed February 4, 1983, paid February 6, 1984, over a year! (I wish I did not have to pay my bills for a year, but this is not the case!) Please notice both of these cases were during the same time frame as Kirsten Ekren!

A copy of Kirsten Ekren's chart is enclosed showing our record of services rendered and our billing to CSC. This is our relevant supporting documentation. Our record keeping is done on the patients chart and is done the same way for everyone's records. I have since contacted my former receptionist who handled the claim and who documented it on the record. She stated she was in contact with CSC by telephone regarding this case even before we resubmitted on February 24, 1984.

I gave my time, knowledge, paid for supplies and lab bill. I paid my assistants a salary to work on Kirsten. I have paid a receptionist and a bookkeeper for their time to work on this case. It has been 2 years, I have out of the pocket expenses for salaries, supplies and a lab bill, and have received no compensation for my time and services. In other words I paid to treat this patient!

The services were provided in good faith to a patient who was eligible and billed in good faith. I feel two years, many hours, and especially my out of pocket expenses are more than enough to deserve payment.

RWR/lsm



Robert W. Robinson II, DMD

CC

Bob Ogden
Alaska Dental Society
Senator Jay Kertula
Senator Edna DeVries
Representative Katey Hurley
Representative Ron Larsen

AFFIX LABEL HERE

AFFIX LABEL HERE

CONTROL NUMBER FOR CSC USE ONLY

CSC
COMPUTER
SCIENCES
CORPORATION

ADJUSTMENT REQUEST/CLAIM INQUIRY

CONTROL NO.
00036857

ADJUSTMENT REQUEST INQUIRY ONLY

| | | | |
|---|--|---|--|
| HEALTH CARE PROFESSIONAL (HCP) NAME AND ADDRESS | | CLAIM TYPE INDICATOR CHECK ONE BOX ONLY | |
| Valley Dental Clinic PC. Box 271687 Wasilla AK 99687 Robert R. 11/12/83, 12/25 | | <input type="checkbox"/> PHARMACY | <input type="checkbox"/> HOSPITAL OUTPATIENT/CLINIC |
| HCP I.D. NUMBER: DDO 450 | | <input type="checkbox"/> LTC | <input type="checkbox"/> PHYSICIAN/ALLIED MEDICAL/HEALTH CLINIC VISION |
| PAYEE NUMBER | | <input type="checkbox"/> HOSPITAL INPATIENT | <input checked="" type="checkbox"/> DENTAL |
| <input checked="" type="checkbox"/> UNDER PAYMENT | | <input type="checkbox"/> TRANSPORTATION | |
| <input type="checkbox"/> OVERPAYMENT - PLEASE DEDUCT FROM FUTURE CLAIMS PAYMENTS | | | |

PLEASE ENTER THE FOLLOWING DATA FROM YOUR REMITTANCE ADVICE (when applicable):

| | | |
|--|---|--|
| A. CLAIM NUMBER 406051040316 | B. PATIENT NAME LAST: EKREN FIRST: KINDEN MIDDLE: L | C. RECIPIENT I.D. NUMBER 191062502 |
| D. REMITTANCE ADVICE DATE 031284 | E. DATE OF SERVICE 5-24-83 to 6-22-83 | F. BILLING AMOUNT 330.00 |
| G. MONTHLY PATIENT LIABILITY AMOUNT | | H. OTHER COVERAGE/DEDUCTIONS |
| K. AMOUNT OWED TO HCP (94.69) | L. AMOUNT OWED TO STATE | |

GIVE REASON FOR ADJUSTMENT REQUEST

This claim was sent at the time of service, then resubmitted 2-24-79 at which time it was denied as Exceeds Goro limit. His dr. grandmother has been trying to pay this bill is financially unable to do this without it being a genuine hardship. / we have copies of the original claim form.

I REQUEST THAT REPROCESSING OF THE CLAIM BE MADE WITH THE INFORMATION GIVEN ABOVE. THIS IS TO CERTIFY THAT THE FOREGOING IS TRUE, ACCURATE, AND COMPLETE AND IS IN COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 WHICH PRECLUDES EXCLUSION OR DISCRIMINATION ON THE GROUNDS OF RACE, COLOR OR NATIONAL ORIGIN. I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL AND STATE FUNDS, AND THAT ANY FALSE CLAIMS, STATEMENTS OR DOCUMENTS OR CONCEALMENT OF A MATERIAL FACT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS. TO THE BEST OF MY KNOWLEDGE NO OTHER RESOURCE EXISTS

SIGNATURE *Buckley R. Newlon* DATE **4-11-85**

YOUR CLAIM HAS NOT BEEN PROCESSED FOR ONE OR MORE OF THE FOLLOWING REASONS:

- MEDICAL REVIEW
- RECIPIENT ELIGIBILITY DETERMINATION
- OTHER Please see attached letter of explanation

FISCAL AGENT REPRESENTATIVE *W. H. S. D. A.* DATE **042685**

SEND PARTS ONE AND TWO WITH CARBON INTACT TO:

COMPUTER SCIENCES CORPORATION

GOVERNMENT HEALTH SERVICES DIVISION (907) 465-3355
4041 "B" STREET ANCHORAGE, ALASKA 99507

April 26, 1985

Robert Robinson, DDS
Valley Dental Clinic
Box 871687
Wasilla, AK 99687

Subject: First Level of Appeal - Kirsten Ekren, ID# 191062902

Dear Dr. Robinson:

This letter is in response to the first level appeal submitted to CSC following denial of a claim. On March 12, 1984, claim no. 40605104036 reflecting services rendered to recipient Kirsten Ekren, ID# 191062902, from May 24, 1983, to June 22, 1983, total charges \$330.00, was denied because the six months billing limitation was exceeded.

On April 22, 1985, your appeal was forwarded to the State of Alaska Division of Medical Assistance, Medical Review Section, and today, April 26, we were notified that it has been denied. The six months billing limitation cannot be overridden without proof of original billing, i.e., billing submitted within six months from the dates of service.

Should you wish to pursue the second level of the appeals process, a written appeal, along with a copy of the first level appeal denial and any relevant supporting documentation, must be submitted within 30 days of receipt of the first level denial. Please direct second level appeals to the State of Alaska, Division of Medical Assistance, 4040 "B" Street, Suite 101, Anchorage, AK 99503.

In addition, please be advised when proof of eligibility is presented prior to rendering services and if the services are within the scope of the program, a recipient and/or family cannot be held responsible for the bill. Alaska Administrative Code 7, AAC 43.025(d) states, ". . . when a provider furnishes a covered service to a beneficiary who, before receiving the service, has furnished the provider with a medical assistance coupon or displayed an identification card, the beneficiary is under no obligation to pay the provider for the service. However, a beneficiary is liable for the cost of a service rendered if he or she fails to furnish evidence of eligibility before receiving the service."

Robert Robinson, DDS

-2-

April 26, 1985

Thank you for your participation in our program. If we can be of further assistance, please do not hesitate to contact our office in-state toll free at Zenith 8900.

Sincerely,

Inge Lysdal

Inge Lysdal
Health Care Liaison

IL:jp

cc: Medical Review

| RECIPIENT NAME SERVICE DATES | PATIENT RECORD NO SERVICE CODE | PATIENT ID NUMBER SERVICE DESCRIPTION | CLAIM CONTROL | UNITS | BILLED AMOUNT | NON-COVERED AMOUNT | ALLOWED AMOUNT | NON- REIMBURSED |
|-----------------------------------|-----------------------------------|--|---------------|-------|------------------|-----------------------|-------------------|--------------------|
| *** PAID AND DENIED CLAIMS *** | | | | | | | | |
| LTIN JASON W 03/01/83 | 00110 | 193509702 | 3069510403800 | | 2000 | | 2000 | |
| ** TOTAL PAID AND DENIED CLAIMS : | | | | 1 | 2000 | 00 | 2000 | |
| *** SUSPENDED CLAIMS *** | | | | | | | | |
| HNSON KEVIN S 02/04/83 | 09940 | 194026101 | 3069510403700 | | 2500 | | | |
| HNSEND DIAN J | 03310 10 | 159672801 | 3301510403000 | | 20000 | | | |
| ** TOTAL SUSPENDED CLAIMS : | | | | 2 | 22500 | | | |
| *** SUMMARY TOTALS *** | | | | | | | | |
| NO. OF CLAIMS ADJUDICATED | | THIS WEEK | YEAR TO DATE | | | | | |
| | | - 1 | 1 | | | | | |
| AMOUNT OF CLAIMS PAID | \$ | 20.00 | \$ | 20.00 | | | | |
| AMOUNT PAID ON XOVER | +\$ | .00 | \$ | .00 | | | | |
| ADMINISTRATIVE PAYMENTS | +\$ | .00 | \$ | .00 | | | | |
| POSITIVE ADJUSTMENTS | +\$ | .00 | \$ | .00 | | | | |
| NEGATIVE ADJUSTMENTS | -\$ | .00 | \$ | .00 | | | | |
| OTHER COVERAGE | -\$ | .00 | \$ | .00 | | | | |
| RETURNED CHECK/REFUND | -\$ | N/A | \$ | .00 | | | | |
| NET AMOUNT PAID | \$ | 20.00 | \$ | 20.00 | | | | |
| | | | | | 1099 ADJUSTMENT | | | |

OBINSON, ROBERT W. DDS
ALLEY DENTAL CLINIC
.O. BOX 1460
ASILLA AK 996870000

HCP
NAME AND
ADDRESS

HCP NUMBER DD0490
R/A NUMBER ****26231
R/A DATE 01/09/84
R/A SEQUENCE 02
R/A PAGE 1

ALASKA MEDICAID PAYMENT SYSTEM
REMITTANCE ADVICE
PLEASE CONSULT YOUR HEALTH CARE PROFESSIONAL
(HCP) MANUAL FOR A DETAILED EXPLANATION OF
THE ABOVE ITEMS.

PRIOR
CURRE

| RECIPIENT NAME SERVICE DATES | PATIENT RECORD NO. SERVICE CODE | PATIENT ID NUMBER SERVICE DESCRIPTION | CLAIM CONTROL | UNITS | BILLED AMOUNT | NON-COVERED AMOUNT | ALLOWED AMOUNT | NON- REIMBURSED | PAID AMOUNT |
|--|------------------------------------|--|---------------|-------|-------------------------|-----------------------|-------------------------|--------------------|-------------------------|
| *** PAID AND DENIED CLAIMS *** | | | | | | | | | |
| BOYLE RAYMOND J 05/10/83 - 05/16/83 | 03310 9 | 202110301 4027510401500 | | | 20000 | | 20000 | | 20000 |
| JOHNSON KEITH S 02/04/83 | 04330 | 194026101 3069510403700 | | | 2500 | | 2500 | | 2500 |
| PALEN JAELENE 83/02/16 83/02/16 02/16/83 - 02/22/83 | 07230 07240 32 | 174833401 4027510402100 | | | 15000 15000 30000 | | 15000 15000 30000 | | 15000 15000 30000 |
| T O T A L | | | | | | | | | |
| TOWNSEND DINA J 10/13/83 - 10/18/83 | 03310 10 | 159072801 3301510403000 | | | 20000 | | 20000 | | 20000 |
| *** TOTAL PAID AND DENIED CLAIMS : | | | | | 4 | 72500 | 00 | 72500 | 72500 |
| *** SUMMARY TOTALS *** | | | | | | | | | |
| | | THIS WEEK | YEAR TO DATE | | | | | | |
| NO. OF CLAIMS ADJUDICATED | | 4 | 5 | | | | | | |
| AMOUNT OF CLAIMS PAID | | \$ 725.00 | \$ 745.00 | | | | | | |
| AMOUNT PAID ON XOVER | | +\$.00 | .00 | | | | | | |
| ADMINISTRATIVE PAYMENTS | | +\$.00 | .00 | | | | | | |
| POSITIVE ADJUSTMENTS | | +\$.00 | .00 | | | | | | |
| NEGATIVE ADJUSTMENTS | | -\$.00 | .00 | | | | | | |
| OTHER COVERAGE | | -\$.00 | .00 | | | | | | |
| RETURNED CHECK/REFUND | | -\$ N/A | .00 | | 1099 ADJUSTMENT | | | | |
| NET AMOUNT PAID | | \$ 725.00 | \$ 745.00 | | | | | | |

RUBINSON, ROBERT W. DDS
VALLEY DENTAL CLINIC
P.O. BOX 1460
NASILLA

AK 996070000

HCP
NAME AND
ADDRESS

HCP NUMBER
H.A. NUMBER
H.A. DATE
H.A. SEQUENCE
H.A. PAGE

000490
***28160
02/06/84
06
1

ALASKA MEDICAID PAYMENT SYSTEM
REMITTANCE ADVICE
PLEASE CONSULT YOUR HEALTH CARE PROFESSIONAL
(HCP) MANUAL FOR A DETAILED EXPLANATION OF
THE ABOVE ITEMS

PHON
CURRENT

*REIMBURSEMENT
RATE

0.0
0.0

| NAME | | | | |
|--------------------|--|--------------|-----------------------|-----------|
| 1 | 2 | 3 | 4 | 5 |
| DATE | SERVICES RENDERED | Fees Charged | Credits and Discounts | BALANCE |
| 19__ | | | | |
| | BALANCE BROUGHT FORWARD | | | |
| 5-24-33 | Ph Xy / 1.50 1.8cc H 4d most LAV # 28.1 ext # 29.1 B AV | | 50 - 25 - 20 - | |
| | Impression and final study/loop | | 125 | |
| 5-25-33 | model sent. Temp wall w/ plaster | | 220 | |
| 6-22-33 | Ph Pt. Cup. act. 2h time Had to keep quiet 15 min all around in chair. | | | |
| | Xy / 1.50 2cc Neo H 20 LAV # 13 SS CR Seat Band & loop | | 30 - 80 - NC - | |
| 6-22-33 | Should not get a PA of # 13 | | | |
| 6-23-33 | Ph PA showed internal description Grandmother told to follow J will try & key in until all except | | 110 - | |
| | | | | PA 1 NC - |
| 9-22-33 | Ph Band & loop house. Appt reched 9-23-33 | | | |
| 2-24-34 | Ph back sent ins. to CSC. & | | | |
| 8-3-34 | US Spk. to Siriving (grandmother) she said they will make payment on this account I said we could try to appeal the dis. money denied and if they pay we will be reimb. her. | | | |
| | BALANCE CARRIED FORWARD | | | |

Valley Dental Clinic, Inc.

Robert Wade Robinson II, D.M.D.

SUITE 212 LAND COMPANY
P.O. BOX 871687
WASILLA, ALASKA 99687
(907) 376-3884

file

July 17, 1985

Senator Edna DeVries
Pouch V
State Capitol
Juneau, Alaska 99811

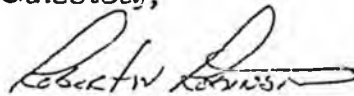
Dear Senator DeVries,

Thank you for your letter requesting my opinion on proposed regulatory changes for the Board of Dental Examiners.

I feel this is an excellent admendment which will benefit all those concerned.

Thank you for your representation.

Sincerely,



Robert W. Robinson, II, DMD

He is already on voters update code only

P.S. Thank you for your follow up on my claim from the state,

1. This goes in pending file - Robinson -
2. Code this Robert W. Robinson, II as
T-15:040 - ~~XXXXXXXXXXXXXXXXXXXX~~
3. ~~Check Edna work distribution for~~

MEMORANDUM

State of Alaska

TO Rod Betit, Director
 Division of Public Assistance
 Dept. of Health & Social Svcs

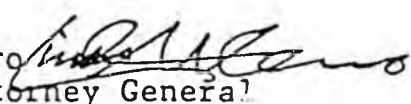
DATE June 21, 1984

FILE NO 366-516-84

TELEPHONE NO 465-3603

FROM Norman C. Gorsuch
 Attorney General

SUBJECT Retroactive Benefits
 under AS 44.77.010-
 MEDICAID SIX MONTH LAW.

By: Linda M. Cerro 
 Assistant Attorney General
 Human Services-Juneau

You have inquired whether AS 44.77.010 prohibits payment of medical claims filed greater than six months after medical service was provided or third party payment was received, in light of fair hearing or judicial decisions granting retroactive medicaid eligibility to recipients for whom claimants have submitted untimely claims.

AS 44.77.010 creates an absolute bar to payment of claims submitted after six months of the date medical service was provided or third party payment was received.

AS 44.77.010 provides in pertinent part:

Presentation of Claims. (a) Every claim for reimbursement for money expended...shall be promptly presented to the appropriate administrative or executive officer for approval and payment.

(b) For the purposes of filing claims for medical services provided under AS 47.07 or 47.25.120 - 47.25.300, "promptly", in (a) of this section, means within six months after the date the service was provided or third-party payment was received. No such claim may be paid which is not filed within that period; no inference to the contrary may be drawn from AS 09.10.050, 09.50.250 - 09.50.300, or AS 37.25.010. (Emphasis added).

The attached April 10, 1978 informal attorney general's opinion generally discusses the intent of the statute and the prohibition created. A fair hearing or judicial decision that a claimant be retroactively medicaid eligible does not cure a claimant's prior failure to have timely filed a claim for reimbursement. In light of AS 44.77.010, an adjudication of

Rod Betit, Director
Division of Public Assistance
366-516-84

June 21, 1984
Page 2

retroactive medicaid eligibility requires retroactive payment only of those claims filed within six months of service or third-party payment. 1/

While the division must follow the mandate of the statute, that is not to suggest the statute cannot be challenged. Both the provider and recipient, however, received actual notice of the prohibition on payment of stale claims at the outset: the provider through both the provider manual and provider reimbursement agreement, and the recipient through the information booklet available to assist applicants in completing assistance applications. This fact and the division's liberal policy of accepting as timely claims filed within six months of service by providers on behalf of as yet ineligible applicants, and by applicants in conjunction with their applications for eligibility or fair hearing, weigh in the division's favor in a balancing of equities. 2/

1/ It is not intended by this opinion to suggest that the provider, whose claim has been denied by the State for untimeliness under AS 44.77.010(b), may thereafter pursue payment from the beneficiary of services.

7 AAC 43.050 prohibits providers from charging beneficiaries the difference between the amount billed and the amount received in payment from the division. It provides that beneficiaries are only responsible for payment for services not coverable under medicaid. A judicial or fair hearing decision that the services are coverable under medicaid even though not payable under the state plan due to untimely filing, arguably forbids the provider from billing the beneficiary as well. Where one of two or more parties must bear the ill consequences of a particular turn of events, in this case the denial of reimbursement for medical services rendered due to an untimely claim, it is not unreasonable to saddle the provider, the party responsible for the untimely filing, to bear the consequences of its failure to act.

2/ But see the suggestion in the April 10, 1978 opinion that a curative amendment to AS 44.77.010, allowing the department to accept stale claims when it determines that the untimely filing was not the fault of the claimant or that it resulted from excusable neglect, would narrow the affected class sufficiently to better satisfy a court's notions of equity.

Rod Betit, Director
Division of Public Assistance
366-516-84

June 21, 1984
Page 3

Should the division deny the pending claims pursuant to the prohibition at AS 44.77.010(b), a claimant may obtain review of the division's action by applying within 60 days to the Department of Administration, at Juneau. If the Department of Administration rules adversely to the claimant, the claimant must bring an action in the Superior Court within 30 days of his receipt of the notice of decision by the Department of Administration. AS 44.77.040(c).

LMC:gmw
cc: Jeff Hubbard
Kim Busch



Ombudsman

John B. Chenoweth

September 10, 1985

Dr. Robert W. Robinson, II
Valley Medical Clinic, Inc.
Post Office Box 871687
Wasilla, Alaska 99687

RE: Ombudsman Complaint J85-0631 (closed)

Dear Dr. Robinson:

Enclosed are the two legal opinions prepared by staff at the Department of Law regarding reimbursement of medical claims.

As I understand the status of your claim with the Division of Medical Assistance, you have yet to receive a response to your level two appeal letter of May 10, 1985. Further, you believe that your former receptionist will provide a written statement confirming your assertion that the receptionist submitted the claim timely, and reviewed the claim with staff of the Computer Sciences Corporation within the filing period.

Since your appeal is in process, the Office of the Ombudsman may not investigate your complaint (see 21 AAC 20.010 (2)), and the case file is closed.

If you have any questions regarding this letter, please contact me.

Sincerely,

Bruce Aronson
Ombudsman Assistant

BCA:11e

Enclosures: - April 10, 1978 legal opinion
by Rodger W. Pegues, Assistant
Attorney General (file number J-66-608-78)
- June 21, 1984 legal opinion
by Linda M. Cerro, Assistant
Attorney General (file number 366-516-84)

cc: John R. Pugh, Commissioner
Department of Health and Social Services
Rod Betit, Director
Division of Medical Assistance
Department of Health and Social Services

State of Alaska
of prof. person
at least
word

State of Alaska

Reply to:

- 3201 C Street, Suite 606
Anchorage, Alaska 99503
(907) 563-3673
- F... ..
Juneau, Alaska 99811
(907) 465-4970
- P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

STATE
of ALASKA

MEMORANDUM



o [Hon. Helen D. Beirne
Commissioner
Department of Health &
Social Services

DATE April 10, 1978

FILE NO J-65-608-78

TELEPHONE NO

FROM AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT Untimely claims
filed under AS
44.77.010(b)

By: *[Signature]*
Rodger W. Pegues
Assistant Attorney General

[Signature]

You have asked whether the claim filed by the Anchorage Neighborhood Health Center for charges incurred between October 1976 and April 1977 may be paid by you.

The short answer is no.

AS 44.77.010 provides for the presentation of certain categories of claims against the state and requires that they "be promptly presented to the appropriate administrative or executive officer for approval and payment."

In 1974, the section was amended to make it subsection (a) and to add a new subsection (b) which provides (emphasis added) as follows:

For the purposes of filing claims for medical services provided under AS 47.07 or 47.-25.120--47.25.300, 'promptly', in (a) of this section, means within six months after the date the service was provided or third-party payment was received. No such claim may be paid which is not filed within that period; no inference to the contrary may be drawn from AS 09.10.050, 09.50.250-09.50.300, or AS 37.-25.010. */

The provision is an all-inclusive restriction against paying stale claims based on the state's programs for supporting medical care for those in need. It singles out those claims as a class and imposes a particularized statute of limitations against them.

*/ AS 09.10.050 is the six-year statute of limitations. AS 09.50.250-300 provides for claims against the state. AS 37.-25.010 provides for appropriations of money to pay old debts.

cc: Deputy Comm Jued
Deputy Comm Lloyd
F. Maxwell Thorne

Commissioner Beirne
April 10, 1978
Page #2

The basis for the statutory classification is that, prior to its enactment, a large number of health providers had developed the practice of accumulating their billings until the end of the calendar year. They would then, depending on the income tax consequences, file all their claims at the end of the year, or file them all at the beginning of the next year, or split them between the two years. This created an almost impossible situation for managing the program's budget, there being no reliable trend during the year to project fiscal-year costs. It also created an almost unmanageable administrative situation, with an enormous, unnecessary bulge of claims to handle at one point on the calendar year. The classification caused the health providers to bill the state promptly and both the budgeting and administrative problems were immediately eliminated.

The department has never waived the statutory requirement, nor could it properly do so; the bar is absolute. The department does pay claims for medical services which are over six months old but for which third-party partial payments were claimed and received by the health provider, e.g., from insurers, and the remainder then claimed against the state. This is expressly permitted by AS 44.77.010(b). It also pays stale claims where the claimant proves to the department's satisfaction that the claim was timely filed originally with the department and that the stale claim is in fact a second (or third) filing. This too is allowed by the statute because it is the original filing which is required. But nothing permits an untimely original filing. */

It may be suggested that because the statute employs the word "may" rather than the word "shall" in imposing the bar against payment (and the bar against contrary inferences) that the bar is discretionary rather than absolute. Aside from its being patently contrary to the statute's obvious purpose, the argument rests on a lack of understanding of the English language and of the drafting style used by the Alaska Legislature and its draftsmen.

The MANUAL OF LEGISLATIVE DRAFTING (hereafter,

*/ The effects of, and the law on, filing requirements are set forth in *Silides v. Thomas*, 559 P.2d 80 (Alaska 1977).

Commissioner Beirne
April 10, 1978
Page 3

MANUAL) */ says, with respect to using words of prohibition, the following:

Use the words "may not" or "no person may" to impose a prohibition on someone. For a further discussion see Dickerson, The Fundamentals of Legal Drafting (1965), pp. 130 and 131. For example:

- (a) The commissioner shall issue a license ..., i.e., it is his duty to do so.
- (b) The commissioner may inspect records..., i.e., he may if the circumstances are proper, but he is not obligated to do so.
- (c) The commissioner may not issue a license ..., i.e., under the defined circumstances, it is beyond his power to issue the license.
- (d) No person may operate a ... without a license..., i.e., under the circumstances, no person is permitted to do the specified act without a license.

Thus, the use of the phrase "no such claim may be paid" means that under the defined circumstances, it is beyond the department's power to pay the claim. The phrase "no inference to the contrary may be drawn" means that drawing the stated inference is prohibited. Professor Dickerson, in the work (and place) cited by the MANUAL, puts it this way:

Don't say

No person shall

Say

No person may

He then explains, id., as follows:

*/ Alaska Legislative Affairs Agency (1977). The law provides that "[b]ills and resolutions shall be prepared and introduced in the manner and form prescribed in the uniform rules and the legislative style manual." AS 24.30.060(a). Hence, the MANUAL controls the style of legislative drafting in Alaska.

Commissioner Beirne
April 10, 1978
Page #4

Literally, 'No person shall' means that no one is required to act. So read, it negates the obligation, but not the permission to act. On the other hand, "No person may" negates also the permission and is, therefore, the stronger prohibition.

The picture becomes crystal clear by harkening back to the key words of an old childhood game. "Mother, may I?" goes the question. If the answer comes back, "No, you may not," you have no discretion at all.

Accordingly, it is our view that you have no discretion to waive the statutory bar against paying this claim.

We must advise you that in a recent order, the Alaska Supreme Court has held invalid an Anchorage charter provision which requires notice of a tort claim to be made within four months after the tort occurred. De Husson v. City of Anchorage, ___ P.2d ___ (Alaska Sup. Ct., Case No. 2996, Jan. 11, 1978). The court's opinion has yet to be entered, and therefore, we are unable to say with particularity what its reasons were. A perusal of the briefs indicates, however, that its principal reason will be that the requirement denies municipal tort claimants equal protection under the law. The basis for the classification in De Husson, while by no means identical to the basis for the classification here, is not substantively dissimilar to any great extent. The effect on the persons in the class, while not (supposedly) constitutionally relevant, is quite similar, i.e., their claims are utterly barred. In the instant case, there is a distinction. Anchorage Neighborhood Health Center will, apparently, be able to, on the basis of our rejecting its claim, get reimbursed by the federal government. Hopefully, rather than challenge the statute, it will pursue that alternative.

If you are concerned that a health provider will successfully challenge the statute, you might want to suggest a curative amendment. A new subsection (c) could be added which would allow the department to accept stale claims when it determines that the untimely filing was, as here, not the fault of the claimant or that it resulted from excusable neglect. That would, in all likelihood, narrow the class sufficiently to satisfy the court's notions of equity.

RWP/pjg

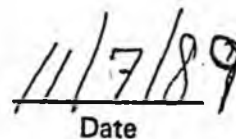


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Date

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Alaska State Legislature

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ANCHORAGE, ALASKA 99511
(907) 349-2192



CHAIRMAN
Special Committee on
Telecommunications

MEMBER
Labor and Commerce
State Affairs
Finance—Subcommittee Administration

Representative H. A. "Red" Boucher

To: Pat Rodey, Chairman
Senate Judiciary

From: Representative H. A. "Red" Boucher
Senator Jan Faiks *Jan Faiks* *Red*

Date: February 26, 1986

Subject: Hearings on HB 466 and SB 367

You have no doubt heard about the recent Alaskan Supreme Court decision which struck down the Alaska resident hire law in the Francis case. HB 466 and SB 367, in the opinion of the Attorney General's Office, respond directly to the major objections the Court raised in regards to the current law.

We have been further advised that in order for a new Alaska resident preferential hire law to be put in place and be constitutionally defensible, it is not enough that we show there is high unemployment in Alaska. We have to obtain findings that show unemployment can lead to a host of social problems, such as alcoholism, suicide, poverty, violent crimes, broken homes and families, even insolvency and bankruptcy. Even more importantly, we need to obtain testimony that focuses on outsiders as being a "significant contributing cause" of unemployment in Alaska, and on some other constitutional aspects as well.

We are further caught in a bind of trying to balance the problem of getting a new piece of legislation in place by the end of this session (which has to go through 4 to 6 Committees), against the problem of trying to obtain as much public testimony as possible for the record (so that we can demonstrate to any future court that we did indeed consider the constitutional problems raised).

We thus need to obtain both written (statements, publications, statistics) and spoken input on this issue of resident hire, and attempt in teleconferenced hearings to balance input from expert witnesses with input from private citizens chronicling their individual problems. We would appreciate it very much if you could attempt to strike this balance if your Committee is one of those holding hearings on these two bills.

A lot of the written and published material that is referred to by expert witnesses will not be obtainable until weeks later. We would like to therefore also request your indulgence in entering these various documents into the Committee hearing record as they come in and catch up to the Committee they are in, as they will be extremely critical in providing the basis for any future court cases on resident hire. This may even entail additional public teleconference hearings.

We respectfully request that we be allowed to work with your Committee towards meeting the above goals as the hearings on these bills progress.

Cramer
4/1/86

Original sponsors: Faiks, Josephson,
Sturgulewski and V.Fischer

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 367 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to Alaskan resident employment
7 preference; and providing for an effective date."

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

9 * Section 1. PURPOSE. The legislature recognizes that the state has a
10 significant unemployment problem. This Act is intended to better fulfill
11 the state's duty of loyalty to its citizens, reduce unemployment among
12 residents of the state, remedy social harms resulting from chronic unem-
13 ployment, and assist economically and socially disadvantaged residents. If
14 the courts find that a portion of AS 36.10 is unconstitutional, the public
15 interest requires that the remaining portions be implemented as fully as
16 possible.

17 * Sec. 2. AS 36.10.005 is amended by adding new subsections to read:

18 (c) The legislature further finds that the ratio of employees on
19 a certified payroll who did not apply for or were refused a permanent
20 fund dividend under AS 43.23 to employees who were found eligible to
21 receive a dividend is a reasonable but not exclusive indicator of the
22 ratio of nonresident to resident employees on a public works project.

23 (d) When determining the ratio of nonresident to resident em-
24 ployees working on a public works project, the commissioner may con-
25 sider information gathered from on-site surveys of public works proj-
26 ects including individual interviews, questionnaires, examination of
27 the state of registration of vehicles owned or operated by employees,
28 and other information acquired from inspection of certified payrolls.

29 (e) The legislature finds that the following factors are

1 reasonable but not exclusive indicators of the ratio of nonresident to
2 resident employees in the state:

3 (1) the ratio of applicants for unemployment insurance who
4 list out-of-state residences to applicants who list residences in the
5 state;

6 (2) the ratio of employees who are subject to unemployment
7 insurance coverage and who did not apply for or were denied a perma-
8 nent fund dividend to employees who were found eligible for a divi-
9 dend.

10 (f) The legislature finds that

11 (1) the number of state residents who are unable to find
12 work is considerably higher than is reflected by unemployment rates
13 based on nationally accepted measures;

14 (2) many rural state residents who wish to work do not seek
15 employment as frequently as necessary to meet federal definitions of
16 unemployment because of continuing lack of employment opportunities in
17 rural areas of the state.

18 * Sec. 3. AS 36.10.070 is repealed and reenacted to read:

19 Sec. 36.10.070. UNAVAILABILITY OF PREFERRED WORKERS. (a) An
20 employer subject to hiring requirements under this chapter may request
21 the Department of Labor to assist in locating qualified, eligible
22 employees. After receiving a request for assistance, the department
23 shall refer qualified, eligible, available residents to the employer
24 to fill the employer's hiring needs. The employer shall cooperate
25 with the department.

26 (b) If the department is unable to refer a sufficient number of
27 qualified, eligible, available residents able to perform the work, the
28 commissioner of labor may approve the hiring of residents who are not
29 eligible for preference and nonresidents for the balance of the

request.

* Sec. 4. AS 36.10.075 is amended by adding a new subsection to read:

(b) The commissioner of labor shall adopt regulations to encourage and require the hiring of residents to the maximum extent permitted by law.

* Sec. 5. AS 36.10 is amended by adding new sections to read:

Sec. 36.10.130. RESIDENT HIRE REPORT. The attorney general and the commissioner of labor shall report annually to the legislature and the governor on the status of employment in the state, the effect of nonresident employment on the employment of residents in the state, and methods to increase resident hire. The report shall be submitted by January 31 of each year.

Sec. 36.10.140. ELIGIBILITY FOR PREFERENCE. (a) A person is eligible for an employment preference under this chapter if the person certifies eligibility as required by the Department of Labor, is a resident, and

(1) is receiving unemployment benefits under AS 23.20 or would be eligible to receive benefits but has exhausted them;

(2) is not working and has registered to find work with a public or private employment agency or a local hiring hall;

(3) is underemployed or marginally employed as defined by the department; or

(4) has completed a job-training program approved by the department and is either not employed or is engaged in employment that does not use the skills acquired in the job-training program.

(b) An employer subject to a resident hiring requirement under this chapter shall certify that persons employed as residents under the preference are eligible for the preference.

Sec. 36.10.150. DETERMINATION OF UNDEREMPLOYED AREA. (a)

1 Immediately following a determination by the commissioner of labor
2 that an economic region of the state is an underemployed area or that
3 the state as a whole is an underemployed area, and for the next two
4 fiscal years after the determination, qualified residents of the area
5 who are eligible under AS 36.10.140 shall be given preference for work
6 on each project under AS 36.10.180 that is wholly or partially sited
7 within the area.

8 (b) The commissioner of labor shall determine the amount of work
9 that must be performed under this section by eligible qualified resi-
10 dents. In making this determination, the commissioner shall consider
11 the nature of the work, the classification of workers, availability of
12 eligible residents, and the willingness of eligible residents to
13 perform the work.

14 (c) The commissioner shall determine that an economic region of
15 the state or the state as a whole is an underemployed area if the
16 commissioner finds that

17 (1) the rate of unemployment within the area is substan-
18 tially higher than the national rate of unemployment;

19 (2) a substantial number of residents in the area desire
20 work in occupations that would be employed on a public works project;

21 (3) the lack of employment opportunities in the area has
22 substantially contributed to serious social or economic problems in
23 the area; and

24 (4) employment of workers who are not residents is a pecu-
25 liar source of the unemployment of residents of the area.

26 Sec. 36.10.160. PREFERENCE FOR RESIDENTS OF ECONOMICALLY DIS-
27 TRESSED AREAS. (a) Immediately following a determination by the
28 commissioner that an economic region of the state is an economically
29 distressed area, and for the next two fiscal years after the

1 determination, qualified residents of the area who are eligible under
2 AS 36.10.140 shall be given preference for at least 50 percent of
3 employment on each project under AS 36.10.180 that is wholly or par-
4 tially sited within the economically distressed area.

5 (b) The commissioner shall determine that an area is an econom-
6 ically distressed area if the commissioner finds that

7 (1) the per capita income of residents is less than 90
8 percent of the per capita income of the United States as a whole, or
9 the unemployment rate in the area exceeds the national rate of unem-
10 ployment by at least five percentage points;

11 (2) the lack of employment opportunities in the area has
12 substantially contributed to serious social or economic problems in
13 the area; and

14 (3) employment of workers who are not residents is a pecu-
15 liar source of unemployment of residents of the area.

16 Sec. 36.10.170. PREFERENCE FOR ECONOMICALLY DISADVANTAGED MINOR-
17 ITY RESIDENTS. (a) Immediately following a determination by the
18 commissioner that the female or minority residents of an economic
19 region are economically disadvantaged, and for the next two fiscal
20 years after the determination, qualified female or minority residents
21 of the area who are eligible under AS 36.10.140 shall be given prefer-
22 ence for at least 25 percent of employment on each project under
23 AS 36.10.180 that is wholly or partially sited within the area.

24 (b) The commissioner shall determine that the female or minority
25 residents of an area are economically disadvantaged if the commission-
26 er finds that

27 (1) the female or civilian minority population of the area
28 exceeds the average female or civilian minority population for the
29 state;

1 (2) either the percent of unemployment of female or civil-
2 ian minority residents of the area is at least two times the percent
3 of unemployment of male or nonminority residents of the area or the
4 female or civilian minority population of the area has suffered past
5 economic discrimination;

6 (3) the economic disadvantage of female or civilian minor-
7 ity residents of the area has substantially contributed to serious
8 social or economic problems in the area; and

9 (4) employment of workers who are not residents is a pecu-
10 liar source of unemployment of female or civilian minority residents
11 of the area.

12 (c) In this section, a person is considered to be a member of a
13 minority if the person is black but not of Hispanic origin, Hispanic,
14 Asian or Pacific Islander, American Indian or Alaskan Native, as those
15 terms are defined by the Equal Employment Opportunity Commission.

16 Sec. 36.10.180. PROJECTS SUBJECT TO PREFERENCE. (a) The pref-
17 erences established in AS 36.10.150 - 36.10.170 apply to

18 (1) the performance of contracts let by a municipality for
19 construction, repair, preliminary surveys, engineering studies, con-
20 sulting, maintenance work, or any other retention of services neces-
21 sary to complete a given project;

22 (2) a construction project that is partly or wholly funded
23 by state money if the state or an agency of the state, a department,
24 office, agency, state board, commission, regional school board with
25 respect to an educational facility under AS 14.11.020, public corpo-
26 ration, or other organizational unit of or created under the execu-
27 tive, legislative or judicial branch of state government, including
28 the University of Alaska and the Alaska Railroad Corporation, is a
29 signatory to the construction contract;

1 person is convicted of a crime in connection with a false statement
2 made in a certification required under AS 36.10.140, and the convic-
3 tion is not reversed, that person shall forfeit all future rights to
4 eligibility for an employment preference under this chapter.

5 Sec. 36.10.210. CIVIL PENALTIES. (a) In addition to any crimi-
6 nal penalties imposed, after a hearing the department may impose a
7 civil penalty on a person who, in connection with certification of
8 eligibility for an employment preference under this chapter,

9 (1) made a false sworn statement; or

10 (2) made an unsworn falsification with intent to mislead a
11 public servant in the performance of a duty.

12 (b) The amount of the civil penalty under (a) of this section
13 for a person who falsely certifies that the person is eligible for an
14 employment preference under this chapter is not more than \$400 for
15 each false certification. The person also forfeits all future rights
16 to eligibility for an employment preference under this chapter.

17 (c) The amount of the civil penalty under (a) of this section
18 for an employer who falsely certifies that employees are residents
19 eligible for a preference under this chapter is not more than \$2,000
20 for each of the first five false certifications. The penalty for the
21 sixth false certification made by an employer and for each false
22 certification thereafter is at least \$2,000 and not more than \$4,000.

23 Sec. 36.10.900. EFFECT OF JUDICIAL DECISIONS. If a provision of
24 this chapter, or the application of a provision to a person or circum-
25 stance, is held invalid, the remainder of this chapter and the appli-
26 cation to other persons or circumstances shall not be affected by the
27 holding. The remainder shall be enforced to the greatest extent
28 constitutionally permissible under the constitutions of the United
29 States and the State of Alaska.

1 (3) work performed on a public works project under a grant
2 to a municipality under AS 37.05.315;

3 (4) work performed on a public works project under a grant
4 to a named recipient under AS 37.05.316; and

5 (5) work performed on a public works project under a grant
6 to an unincorporated community under AS 37.05.317.

7 (b) If the governor has declared an area to be an area impacted
8 by an economic disaster under AS 44.33.285, then the preference for
9 residents of the area established under AS 44.33.285 - 44.33.310
10 supercedes the preference under AS 36.10.150 and 36.10.160 for con-
11 tracts awarded by the state.

12 (c) The commissioner shall define the boundaries of an economic
13 region or an area within which a preference applies.

14 Sec. 36.10.190. REPORTING PROVISIONS. An employer obligated to
15 meet resident hire requirements under this chapter shall comply with
16 the reporting provisions that the commissioner of labor determines are
17 reasonably necessary to carry out this chapter. Except for statis-
18 tical data, all information regarding specific employees is confiden-
19 tial and may not be released by the Department of Labor.

20 Sec. 36.10.200. CRIMINAL PENALTIES. (a) A person who makes a
21 false sworn statement in connection with a certification of eligibil-
22 ity for an employment preference under this chapter is subject to
23 criminal prosecution for perjury as provided in AS 11.56.200.

24 (b) A person who makes an unsworn falsification, with the intent
25 to mislead a public servant in the performance of a duty, in connec-
26 tion with a certification of eligibility for an employment preference
27 under this chapter, is subject to criminal prosecution as provided in
28 AS 11.56.210.

29 (c) In addition to criminal penalties imposed by state law, if a

1 Sec. 36.10.990. DEFINITIONS. In this chapter

2 (1) "available" means physically present at the place of
3 hire at the time requested by the employer;

4 (2) "qualified" means possesses the requisite education,
5 training, skills, or experience to perform the work.

6 * Sec. 6. AS 36.95.010 is amended by adding a new paragraph to read:

7 (9) "resident" means a person who establishes residency
8 under AS 01.10.055.

9 * Sec. 7. AS 37.05.315 is amended by adding a new subsection to read:

10 (e) The Department of Labor shall require a municipality awarded
11 a grant for a public works project under (a) of this section to comply
12 with the hiring preferences under AS 36.10.150 - 36.10.170 for employ-
13 ment generated by the grant.

14 * Sec. 8. AS 37.05.316 is amended by adding a new subsection to read:

15 (b) The Department of Labor shall require a recipient awarded a
16 grant for a public works project under (a) of this section to comply
17 with the hiring preferences under AS 36.10.150 - 36.10.170 for employ-
18 ment generated by the grant.

19 * Sec. 9. AS 37.05.317 is amended by adding a new subsection to read:

20 (b) The Department of Labor shall require the qualified incor-
21 porated entity awarded a grant or agents or contractors with whom the
22 Department of Community and Regional Affairs contracts under (a) of
23 this section to comply with the requirements of AS 36.10.150 - 36.10.-
24 170 for employment generated by the grant or contract if the grant or
25 contract is for a public works project.

26 * Sec. 10. The provisions of this Act do not apply to a contract en-
27 tered into before the effective date of this Act unless the contract in-
28 cludes a provision requiring compliance with laws regarding the hiring of
29 Alaska residents that take effect during the term of the contract.

1 * Sec. 11. AS 36.95.010(4) and (5) are repealed.

2 * Sec. 12. AS 36.10.010 is repealed.

3 * Sec. 13. Section 12 of this Act takes effect April 17, 1986, or
4 immediately, in accordance with AS 01.10.070(c), whichever is later, if the
5 final decision of the Alaska Supreme Court in Robison v. Francis, File No.
6 S-493, Opinion No. 3011, January 17, 1986, is not submitted for review to
7 the United States Supreme Court. If the decision is submitted for review
8 but the United States Supreme Court declines to accept review, then sec. 12
9 of this Act takes effect on the date of the order of the United States
10 Supreme Court declining to accept review. If the United States Supreme
11 Court accepts review, then sec. 12 of this Act takes effect on the date of
12 a final decision of the United States Supreme Court affirming the decision
13 of the Alaska Supreme Court.

14 * Sec. 14. Sections 1 - 11 of this Act take effect immediately in
15 accordance with AS 01.10.070(c).

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FILE SB 367 bills
MOVED AT

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE
907-465-3740

JAN FAIKS
FOLCH V
CAPITOL BUILDING
JUNEAU ALASKA 99811

Senate

April 1, 1986

MEMORANDUM

TO: Senator Pat Rodey, Chairman
Senate Judiciary Committee

FROM: Senator Jan Faiks *JF*

SUBJECT: Background on Senate Bill 367, an Act relating to
Alaskan resident employment preference

Senate Bill 367 requires local hire on public construction projects. It was introduced to replace our current local hire law, AS 36.10.010. This law was declared unconstitutional by the Alaska Supreme Court in January.

SB 367 has been tailored to satisfy the constitutional questions raised by the Francis decision. Also, it has been amended to conform with the latest version of its companion, House Bill 466. CSSH B 466(Jud) passed from the House Judiciary Committee on April 1.

After reciting the purpose of the bill in Section 1, Section 2 adds more findings to those added by the legislature during last session. These findings support the need for local hire legislation and identify methods for determining if nonresidents are a contributing cause of high local unemployment.

If employers request assistance in locating eligible residents, Section 3 requires the Department of Labor to help them. If no eligible residents are available, this section allows employers to hire ineligible residents and nonresidents.

Section 4 authorizes the Commissioner to adopt local hire regulations.

OUT OF SESSION

1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611



Section 5 contains the substantive requirements for local hire on public construction projects. It requires the Department of Labor to prepare an annual report on nonresident hire in the State. It also requires the Department to identify among the six economic regions of the state three types of areas. These are underemployment areas, economically distressed areas, and areas where female and minority residents are economically disadvantaged.

Once these areas have been identified, for the following two years eligible residents must be given preference for hire. This preference applies to any construction projects which are contracted by a municipality or which are funded by state funds or grants.

For projects located in underemployment and economically distressed areas, residents will be eligible for the hiring preference if they are unemployed, underemployed, or marginally employed. For projects in underemployment areas, the Commissioner will determine the amount of work that must be performed by these residents. For projects in economically distressed areas, these residents must be given preference for at least one-half of the jobs.

For projects located in areas where female or minority residents are economically disadvantaged, these residents must be given preference for at least one-fourth of the jobs.

Eligibility for the hiring preference will be established by a self-certification process. Section 5 establishes criminal and civil penalties for making false certifications.

Section 6 defines residency according to one's physical presence in the state for at least thirty days and by other indications of intent to remain here.

Sections 7 through 9 require the Department of Labor to enforce the resident hiring preference against municipalities and grantees of state funds. According to Section 10, the Act does not apply to construction contracts issued before the effective date of this act unless these contracts adopt the effect of local hire laws passed during their lifetime. Section 11 repeals conflicting statutory definitions of the terms "qualified" and "resident".

Section 12 repeals AS 36.10.010, the current local hire law which was declared unconstitutional. Section 13 says that

if the state does not appeal the Alaska Supreme Court's decision, the repeal of AS 36.10.010 takes effect on the effective date of this bill or at the state's deadline for appealing this decision, whichever is later. If the state does appeal the Francis decision, the repeal will take effect on the date the U.S. Supreme Court declines to review the appeal or the date the U.S. Court upholds our Court's decision. If the Supreme Court overturns the state court and upholds our current local hire law, then AS 36.10.010 will not be repealed and will remain on the books.

Section 14 gives the other sections of the bill an immediate effective date



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James O. Smith

Signature of Camera Operator

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Date

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BILL CONTACT/ACTION

| DATE | CONTACT/ACTION |
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| 4/27 | JIM AUPERS |
| | (3428) CRIMINAL DIV. - Sunny |
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STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No.: 50371
 Title: "An Act amending the controlled substance schedules."

Sponsor: By Request of the Governor
 Requestor: Governor's Office/OMB
 Date of Request: 12-16-85

FISCAL DETAIL

Agency Affected: Department of Law
 BRU: Prosecutions

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS :

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| PAR-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

This bill amends the state's existing controlled substance schedules to conform to the federal schedules, insuring that state law enforcement authorities will have the legal tools necessary to combat illicit trafficking in dangerous drugs. The amended schedule includes several of the so-called designer drugs that have recently emerged outside Alaska in order that we can be prepared should their use spread to the state. The number of new prosecutions that will occur as a result of these schedule changes is expected to be negligible, and any additional cases can be handled with existing prosecution resources, without causing a fiscal impact.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division

Approved by Commissioner: Harold M. Brown, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 12-20-85
 Date: 12-20-85

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 29, 1986

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, and in accordance with AS 11.71.120(b), I am transmitting a bill that amends Alaska's controlled substance schedules to add substances that are controlled under federal law but not under Alaska's law.

This bill would add 26 substances to the Alaska schedules: 16 to schedule IA, three to schedule IIA, one to schedule IIIA, and six to schedule IVA. The bill would also reschedule two substances that have been rescheduled under the federal law, and remove from control two substances that have been removed from the federal schedules. The drug scheduling criteria set out in AS 11.71.120(c) were used to determine the appropriate level of scheduling for each substance.

A section-by-section analysis of the bill, explaining in detail what drugs will be added to the schedules and why, follows:

SECTION-BY-SECTION ANALYSIS OF DRUG BILL

Note: Unless otherwise indicated, the descriptions of the drugs listed below are based upon materials supplied by the federal Drug Enforcement Administration (DEA).

Section 1 removes the substance "nalmefene" from Alaska's Controlled Substances Act by adding it to the list of exclusions in AS 11.71.140(b)(1). Currently, nalmefene is included in schedule IA (AS 11.71.140) because it is a

ek 371

derivative of the listed opiod "thebaine". Nalmefene is also a derivative of the narcotic antagonist naltrexone, currently excepted from the state Controlled Substances Act. The DEA and the Secretary of the U.S. Department of Health and Human Services have concluded there is insufficient scientific evidence to demonstrate that nalmefene possesses sufficient potential for abuse to justify its continued control in any schedule of the federal Controlled Substances Act.

Section 4 adds five narcotic substances to schedule IA: alfentanil; alpha-methylfentanyl; bulk dextropropoxyphene; sufentanil; and tilidine.

Alfentanil was placed in federal schedule I in accordance with U.S. treaty obligations under the Single Convention on Narcotic Drugs. At the request of the World Health Organization, alfentanil was examined by various groups from the Committee of Problems of Drug Dependence. The results of the study showed that alfentanil is a potent morphine-like compound with two to four times the potency of morphine when used as an analgesic.

Alpha-methylfentanyl, also known as "China White" or "synthetic heroin", is a close structural analog of the Alaska schedule IA substance "fentanyl". It is an analgesic approximately 80 times more potent than morphine. The substance has been placed in federal schedule I because it has a high potential for abuse and currently has no accepted use in medical treatment in the United States.

Bulk dextropropoxyphene (nondosage form) is a federal schedule II opiate. The scheduling criteria used in Alaska require that all federal schedule I and II narcotics be placed in Alaska's schedule IA. This substance, therefore, is placed in schedule IA. It should be noted that dextropropoxyphene in dosage form is placed in Alaska's schedule IVA and federal schedule IV. Dextropropoxyphene in dosage form is better known as the drug "Darvon". Nondosage form was placed in federal schedule II in accordance with U.S. treaty obligations under the Single Convention on Narcotic Drugs.

Sufentanil is contained in the federal schedule II; it is a congener of the federal schedule II narcotic substance fentanyl. Sufentanil is indistinguishable in terms of abuse potential from fentanyl, a drug used mainly in operating rooms and abused primarily by operating room personnel.

Tilidine, also known as "tilidate hydrochloride," is a

narcotic analgesic used in the control of moderate to severe pain. Tilidine was placed in federal schedule I in accordance with U.S. treaty obligations under the Single Convention on Narcotic Drugs.

Section 3 adds a new subsection to AS 11.71.140 to list the new "designer drugs" included in the federal schedules by the DEA over the past year. A designer drug is defined as:

New chemical analogs or variations of existing controlled substances, or other new substances, which have a psychedelic, stimulant, depressant, or narcotic effect and have a high potential for abuse.

The federal 1984 Crime Control Act provided the DEA with emergency scheduling authority, to avoid an imminent hazard to the public safety. Scheduling under this authority is effective for one year and is not applicable to substances for which there is an exemption under the Federal Food, Drug, and Cosmetic Act (e.g., investigational new drugs and new drug applications). To classify a substance under its emergency powers, the DEA must publish a notice of the classification in the Federal Register; the classification becomes effective after 30 days. To date, the DEA has scheduled a total of 12 new substances under its emergency scheduling authority. Eleven of these substances are added, in sec. 3 of this bill, to the state's schedule IA; the 12th is a non-narcotic and is therefore placed in the state's schedule IIA (see sec. 4).

Section 4 would add three new substances to schedule IIA (AS 11.71.150): fenethylamine, N-ethylamphetamine, and 3,4-methylenedioxymethamphetamine (MDMA).

Fenethylamine is a conjugate of amphetamine and theophylline (a methylxanthine). The drug produces a delayed, but prolonged, central nervous system stimulatory effect. Fenethylamine has a high potential for abuse, has no recognized medical use in the United States, and has not been tested to determine its safety for use under medical supervision. It is a federal schedule I drug, but it has been placed in Alaska's schedule IIA because the drug is non-narcotic.

N-ethylamphetamine's pharmacological and behavioral effects are similar to those of amphetamine and methamphetamine. It is a federal schedule I substance with a high potential for abuse, and no known medical use in the United States.

MDMA, the designer drug known as Ecstasy, is an analog of the substance "methamphetamine." It has a high potential for abuse and no currently accepted medical use in the United States.

Section 5 removes the substance "mazindol" from Alaska's schedule IIIA (AS 11.71.160), and transfers it to schedule IVA (AS 11.71.170) (see sec. 8). This change has been made because mazindol is an anorectic substance which has a lower potential for abuse than other schedule III anorectics; it also presents less danger of psychological dependence relative to other anorectics in schedule III.

Section 6 places the substance "parahexyl" into Alaska's schedule IIIA. Parahexyl is a synthetic analog of delta-9-tetra-hydrocannabinol (THC), and has been placed in federal schedule I. Because Alaska law classifies THC as a schedule IIIA substance, however, it is appropriate to place parahexyl in Alaska's schedule IIIA.

Section 7 adds four benzodiazepines to schedule IVA: alprazolam, halazepam, temazepam, and triazolam. Each substance is an anti-anxiety agent substantially similar to other benzodiazepines currently listed in Alaska's schedule IVA. All four substances have been classified into the federal schedule IV.

Section 8 places the substance "mazindol" in schedule IVA (see sec. 5 description, above). Section 8 also adds two additional substances to schedule IVA: "pipradol" and "SPA". Each of these substances has been classified into the federal schedule IV.

Pipradol is a mild central nervous system stimulant. Its effects resemble those of the amphetamines, but the usual therapeutic dose of pipradol results in less euphoria, anorexia, and insomnia. It is an effective anti-depressant without the extreme central nervous system stimulation found in the amphetamines.

SPA is a substance marketed in Japan, but not in the U.S. It exhibits the same properties as morphine and methamphetamine, but with analgesic effects. Results of a study conducted by the University of Michigan showed that SPA has no physical dependence capacity.

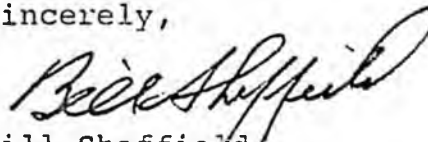
Section 9 classifies the substance "buprenorphine" as a schedule VA (AS 11.71.180) drug. The DEA has placed buprenorphine into federal schedule V. It had previously been

considered a federal schedule II drug because it is a derivative of the substance "thebaine" (a schedule IA narcotic in Alaska). The DEA has found that buprenorphine has a low potential for abuse, has a currently accepted medical use, and has limited potential for physical or psychological dependence.

Section 9 also removes the substance "loperamide" from Alaska's schedule VA. Loperamide, an antidiarrheal, was removed from control by the DEA in 1982. The DEA concluded that loperamide has a currently accepted use in medical treatment in the United States and does not have sufficient potential for abuse to justify its continued control in any schedule of the federal Controlled Substances Act.

To ensure that all dangerous drugs that have a potential for abuse are appropriately covered by Alaska's law, I urge your prompt passage of this bill.

Sincerely,



Bill Sheffield
Governor