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STATE OF ALASKA
 MENTAL HEALTH LANDS TRUST REVIEW
 SUMMARY SCHEDULE AND ANALYSIS OF
 POTENTIAL STATE MENTAL HEALTH EXPENDITURES
 July 1, 1978 - September 30, 1985

Department Division Program Sub-Program	Program Receipts	Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation Pro- and Other Comments
Department of Health and Social Services Division of Family and Youth Services (DFYS) Family/Social Services Residential Care (cont.)						
patients, return to the community must be passed through transitional facilities such as halfway houses, and for other patients, residential facilities may be required for more than mental health treatment. It is expected that community mental health centers will coordinate activities and collaborate with other community agents in the identification and development of such resources." (VOL I, P 73)			4,375,040		<p>Category IV - Intensive Care (Staff Secure) Residential and Treatment Homes: A setting that provides 24-hour treatment in interdisciplinary psychotherapeutic treatment for children with conduct, anxiety, affect, or adjustment disorders or who pose a danger to themselves or others.</p> <p><u>Mental Health Analysis:</u> Since there is little or no formal psychological evaluative criteria used by DFYS to place youth in these various residential facilities, mental health professionals are reluctant to accept the DFYS categorization of services. Essentially, only a portion of the Category III treatment beds could qualify as being mental health related. Category IV residential programs are more likely to be therapeutically structured, provide more intensive therapy, and better address the mental illness problems of residents.</p> <p>Since Category II, Emergency Shelter, provides custodial care without therapeutically structured treatment, these expenditures are not mental health related.</p> <p>In addition, DFYS program management estimated that approximately 10% of their caseloads were also a result of alcohol and substance problems. These DFYS expenditures for Residential Care services may be determined to be mental health related based on DSM-III's classification of alcohol and substance abuse problems as mental disorders.</p>	<p>Although the four categories of residential care have only recently been established, they were used to separate historical costs for Residential Care. Program management assisted us in retrospectively classifying these historical expenditures based on the current category of care definitions.</p> <p>Allocation of expenditures identified as Category IV and Category Residential Care costs were based on program management's estimate of the percentage of clients with a diagnosis in their current original caseload. The final weighted average of the percentage of DF cases was 8.3%.</p> <p>The second allocated cost figure presented in the mental health column represents an estimate for services provided to individuals having alcohol and substance abuse problems. These individuals may have received a formal DSM-III diagnosis but represent a significant DFYS caseload. Costs associated with individuals who have received a diagnosis and have alcohol/substance abuse problems may be included in allocation figures.</p> <p>This allocation also contains administrative and general capital project costs. These non-direct service expenditures allocated to the Residential Care category based on its percentage of total Social Services expenditures for the FY 79 - 9/30/85 period.</p>
			290,254			

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<u>Department of Health and Social Services</u>						
<u>Division of Family and Youth Services (DFYS)</u>						
<u>Family/Social Services</u>						
<u>Residential Care (cont.)</u>				52,902,545	<p><u>Program Management Analysis:</u> Although conceding that little or no therapy or treatment goes on in Category II - Emergency Shelter programs, DFYS workers feel that the other residential care categories do provide useful treatment services that meet the needs of their clients. DSM-III diagnosed individuals in DFYS' caseload receive treatment, to some extent, from providers of the other three categories of care.</p>	<p>Although the four categories of residential care have only recently been established, they were used separate historical costs for Residential Care. Program Management assisted us in retrospectively classifying these historical expenditures based on the current category of care definitions.</p> <p>This allocation also contains a % of administrative and general capital project costs. These non-direct service expenditures are allocated to the Residential Care category based on its percentage total Social Services expenditure the FY 79 - 9/30/85 period.</p>
<u>Contract/Purchased Services</u>					<p><u>Program Description:</u> Contractual Services are those expenditures made under contract with other providers needed to meet the casework and program activities of DFYS. Mental health related expenditures in this area include expenditures made under contracts with appropriate mental health professionals such as: psychologists, psychiatrists, counselors, mental health centers, etc.</p> <p><u>Mental Health Analysis:</u> To the degree that DFYS contracts for and uses the professional services of mental health professionals in meeting the needs of its DSM-III caseload for both children and adults, the agency is providing a valid mental health function.</p> <p>In addition, DFYS program management estimated that approximately 10% of their caseloads were also a result of alcohol and substance problems. These DFYS expenditures for Contract/Purchased Services may be determined to be mental health related based on DSM-III's classification of alcohol and substance abuse problems as mental disorders.</p>	<p>Expenditures were allocated based on a review of contracts for the period. The scope of services in contracts in the FY 81 - FY 85 period were reviewed with program management to determine if the contract met definition of mental health services.</p> <p>The amount of mental health related contracts, as identified above, was compared to total contractual Social Services expenditures for the FY 81 - FY 85 period to develop a ratio. This ratio was then applied to Contractual Social Services expenditures for the entire period under review.</p>
			980,193			
			1,185,240			
<p>The FY77 PLAN lists the following as one of the characteristics of the State's mental health system:</p> <p>"There will be a network of mental health units throughout the State that can provide comprehensive mental health services to all consumers. This will include mental health services for promotive and preventive mental health care to acute care transition and rehabilitation. These mental health service units may be solo practitioners, health maintenance organizations, public or private agencies or other types of units." (VOL I, PP 68-69)</p> <p>The FY77 PLAN goes on to state that another characteristic of the State's mental health system is "maximum use . . . of allied health personnel in the delivery of mental health services." (VOL I, P 70)</p>						

STATE OF ALASKA
 MENTAL HEALTH LABORATORY REVIEW
 BUDGETARY SCHEDULE AND ANALYSIS OF
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Department Division Program Sub-Program 1977 Mental Health Plan Aspects	Program Receipts	Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation Pro- and Other Comments
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Department of Health and Social Services

Division of Family and
Youth Services (DFYS)

Family/Social Services

Contract/Purchased Services (cont.)

	11,852,395	<p>Program Management Analysis: Program managers agree that direct service contracts for mental health services are clearly mental health related.</p>
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Using these adjusted contractual service costs, the mental health allocation was made based on program management's estimates of the percentage of clients with DSM-III diagnosis in current DFYS caseloads. Estimates were developed from a survey of selected caseloads in Fairbanks Anchorage office management's estimates of DSM-III individual their current caseload. The first weighted average estimate of the percentage of DSM-III cases was

The second allocated cost figure presented in the mental health column represents an estimate of for services provided to individuals having alcohol and substance abuse problems. These individuals may have received a formal DSM-III diagnosis but represent a significant DFYS' caseload. Costs associated with individuals who have received a diagnosis and have alcohol/substance abuse problems may be included in allocation figures.

This allocation also contains a of administrative and general capital project costs. These non-direct service expenditures allocated to the Contract/Purchased Services category based on the percentage of Social Services expenditures the FY 79 - 9/30/85 period.

Expenditures were allocated based on a review of contracts for the period. The scope of services on contracts in the FY 83 - FY 85 period were reviewed with program managers to determine if the contract met the definition of mental health services.

It appears that program managers has a broader definition of mental health related contractual services than that of mental health professionals.

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Department Division Program Sub-Program 1977 Mental Health Plan Aspects	Program Receipts	Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation Pro- and Other Comments
<u>Department of Health and Social Services</u>						
<u>Division of Family and Youth Services (DFYS)</u>						
<u>Family/Social Services</u>						
<u>Contract/Purchased Services (cont.)</u>						
<u>Out-of-State Residential Care</u>		967,825			<p><u>Program Description:</u> The Out-of-State category reflects the use by both Youth Services and Family Services of out-of-state programs. DFYS has and continues to try to develop in-state services so that individuals can receive treatment closer to home. Historically, out-of-state treatment has been used primarily for the most severely disturbed children who require very specialized and intensive treatment.</p>	<p>The amount of mental health related contracts, as identified above, compared to total contractual expenditures for the FY 81 - FY period to develop a ratio. This was then applied to contractual expenditures for the entire period under review.</p> <p>This allocation also contains a portion of administrative and general capital project costs. These non-direct service expenditures allocated to the Contract/Purchased Services category based on its percentage of total Social Services expenditures for the FY 79 - 9/30/85 period.</p>
<p>The FY77 PLAN identified inpatient services that provided short-term, intensive treatment, and/or evaluation as an element of mental health services. (VOL 1, PP 70-72)</p> <p>The FY77 PLAN also seems to consider that facilities with differing programs could be part of the mental health system. The FY77 PLAN states "it is to be recognized that for certain patients, return to the community must be phased through transitional facilities such as halfway houses, and for other patients, residential facilities may be required for more than mental health treatment. It is expected that community mental health centers will coordinate activities and collaborate with other community agents in the identification and development of such resources." (VOL 1, P 73)</p>			967,825	967,825	<p><u>Mental Health and Program Management Analysis:</u> Program management believes that virtually all youth who have been treated in out-of-state programs since FY 79 fall in the category of having serious mental disorder/illness problems. Mental health professionals generally agree with that assessment and recognize that most, if not all, of out-of-state treatment costs could be classified as mental health related expenditures.</p>	<p>All expenditures identified as related to Out-of-State Care for the FY 9/30/85 period are presented.</p> <p>These costs do not contain an allocation of administrative and general capital project costs.</p>

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<u>Department of Health and Social Services</u>						
<u>Division of Family and Youth Services (DFYS)</u>						
<u>Youth Services</u>		84,255,374				
<u>Intake Probation Services</u>			-0-	4,054,463	<p><u>Program Description:</u> Intake within the Youth Services section of DFYS involves an assessment of juveniles arrested by law enforcement officers for further action and possible adjudication. Probation officers review the circumstances surrounding the arrests of various juveniles in accordance with a standard set of criteria in order to make a determination on how to proceed with the arrested juvenile.</p> <p><u>Mental Health Analysis:</u> Intake Probation Services are not mental health related expenditures. Intake involves preliminary assessment and screening of arrested juveniles and has little relationship to identifying and treating any mental disorder.</p> <p><u>Program Management Analysis:</u> Intake Probation Services are directly related to mental health. Intake probation officers are mental health professionals as defined by statute and are responsible for preventing or relieving disabling emotional conditions of adolescents. Disabling is defined in AS 12.47.090 as "any mental condition that increases likelihood of the individual to be dangerous to him/herself, to the public, or to personal property."</p>	<p>None.</p> <p>Intake youth service expenditures were separated from total probation officer expenditures based on a weighted average of management estimate of how each current probation officer allocated their time between intake and formal supervision duties. Since DFYS not always been responsible for intake function for the entire period of our review, some historical adjustments of the ratios were made to reflect the changing duties of probation officers.</p> <p>This allocation also contains a portion of administrative and general capital project costs. These non-direct service expenditures are allocated to the Intake Probation category based on its percentage of total Youth Services expenditures for the FY 79 - 9/30/85 period.</p>
<p>The FY77 PLAN considered the presence of juvenile intake officers in communities when it conducted an inventory of resources available in various regions in the State.</p> <p>The FY77 PLAN noted, at the time it was prepared that "... In the 4th Judicial District there are two juvenile intake officers who do some counseling and social work. They are based in Fairbanks. In the 3rd Judicial District there are three juvenile intake officers. . ." (VOL V, P 98)</p> <p>Juvenile intake officers were identified as part of the "few auxiliary services" provided by the Alaska Court System.</p>						

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Department Division Program Sub-Program 1977 Mental Health Plan Aspects	Program Receipts	Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation Pro- and Other Comments
<u>Department of Health and Social Services</u>						
<u>Division of Family and Youth Services (DFYS)</u>						
<u>Youth Services</u>						
<u>Formal Probation Services</u>						
At the time the FY77 PLAN was prepared, formal probation services were part of the Division of Corrections. The FY77 PLAN addresses mental health services for individuals involved with correction agencies as follows:			3,781,928		<u>Program Description:</u> Ongoing probation is the formal supervision of adjudicated juveniles by staff probation officers. Probation officers, like ongoing social workers, often "broker" available local community treatment resources for juveniles being supervised. Ongoing probation officers frequently provide direct counseling services.	
"The Division of Corrections has, by the very nature of those persons in their custody, historically required the availability of mental health services. Those services have traditionally been provided by the State operated mental health clinics and API [Alaska Psychiatric Institute]. These services have included inpatient treatment, consultation and education, evaluations, individual and group therapy, and services to children and adolescents." (VOL 1, P 29)			3,328,831		<u>Mental Health Analysis:</u> To the extent that individuals under formal supervised probation have been identified by psychological evaluations as having a DSM-III diagnosed mental disorder, ongoing probation services may qualify as mental health related expenditures. In addition, Youth Services management estimates another 29% of their caseload is a result of alcohol and/or substance abuse problems.	Formal probation supervision services expenditures were separated from total probation officer expenditures based on a weighted average of management's estimate of how current probation officer allocate their time between intake and supervision duties.
When inventorying mental health manpower resources in various areas of the State, the FY77 PLAN included a count of probation/parole officers in each region of the State. (VOL V, P 109)						These separated probation supervision costs were further allocated based on management's estimate of the incidence of formally DSM-III diagnosed individuals it had among current caseloads. Estimates were developed by reviewing a sample caseload files in Fairbanks, Anchorage and Juneau. The weighted average DSM-III cases was determined to approximately 33%. The allocation presented is based on this percentage.
						The second allocated cost figure presented in the mental health column represents an estimate of for services provided to individuals having alcohol and substance abuse problems. These individuals may have received a formal DSM-III diagnosis but represent a significant DFYS' caseload. Costs associated with individuals who have received a diagnosis and have alcohol/substance abuse problems may be included in allocation figures.
						This allocation also contains a portion of administrative and general capital project costs. These non-direct service expenditures are allocated to the Formal Probation category based on its percentage of total Youth Services expenditures for the FY 79 - 9/30/85 period.

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Department Division Program Sub-Program 1977 Mental Health Plan Aspects	Program Receipts	Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation Per and Other Comments
<u>Department of Health and Social Services</u>						
<u>Division of Family and Youth Services (DFYS)</u>						
<u>Youth Services</u>						
<u>Formal Probation Services (cont.)</u>				11,470,815	<p><u>Program Management Analysis:</u> Ongoing probation officers are mental health professionals, who are critical in the prevention or relief of a disabling mental or emotional condition. As such, costs of providing supervising probation officers would qualify in total as mental health related expenditures.</p>	<p>Formal probation supervision expenditures were separated to total probation officer expense based on a weighted average of management's estimate of how current probation officer allocate their time between intake and supervision duties.</p> <p>This allocation also contains administrative and general capital project costs. These non-direct service expenditures allocated to the Formal Probation category based on its percentage total Youth Services expenditures the FY 79 - 9/30/85 period.</p>
<u>Detention Program</u>			-0-		<p><u>Program Description:</u> Detention is the short-term aspect of juvenile custody. Generally, juveniles are placed in detention if the intake probation officer determines that they present a danger to themselves or others or to assure their appearance in court. Virtually no formal structured rehabilitative treatment takes place in detention, although there is strict disciplined supervision of the youth.</p> <p><u>Mental Health Analysis:</u> Little treatment goes on in detention. Detention in many ways is a holding area for juveniles awaiting formal evaluation and adjudication. Usually no determination is made whether or not an individual even has a diagnosable mental disorder until he/she has been put into detention.</p> <p><u>Program Management Analysis:</u> Detention serves youth with either a mental or emotional condition that causes the youth to present a danger to themselves or others. As such, it serves as prevention against a disabling mental/emotional condition and thus is mental health related.</p>	<p>None.</p> <p>Detention costs were determined by adding expenditures for detention facilities and allocated detention expenditures from facilities at McLaughlin Youth Center, Fairbanks Youth Facility, and Kona Youth Detention. Detention costs were separated treatment costs for these facilities based on a ratio of the average census for detention and treatment each year covered in the period review.</p>
				21,519,371		

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 SUPPLEMENTARY SCHEDULE AND ANALYSIS OF
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Department Division Program Sub-Program 1977 Mental Health Plan Aspects	Program Receipts	Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation In- and Other Comments
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Department of Health and Social Services

Division of Early and
Youth Services (DEYS)

Youth Services

Detention Program (cont.)

Long-Term Treatment Program

As in the case with Formal Probation Services, the FY77 PLAN discusses the mental health aspects of treatment facilities, as follows:

"The Division of Corrections has, by the very nature of those persons in their custody, historically required the availability of mental health services. Those services have traditionally been provided by the State operated mental health clinics and API. These services have included inpatient treatment, consultation and education, evaluations, individual and group therapy, and services to children and adolescents." (VOL 1, P 29)

When inventorying mental health manpower resources in various areas of the State, the FY77 PLAN included a count of youth counselors, the primary service provider in juvenile confinement facilities, for each region of the State. (VOL V, P 108)

23,681,96.

Program Description:

The term "facilities" refers to the long-term custody of juveniles who have been appropriately adjudicated. The three DEYS facilities that provide secured long term, structured, rehabilitation treatment programs are: McLaughlin Youth Center, Fairbanks Youth Facility (FYF), and Home Youth Facility. Juveniles in these facilities receive rehabilitative treatment and counseling from staff youth counselors. McLaughlin Youth Center has differing levels of secured treatment based on the level of danger that a youth presents.

Mental Health Analysis:

To the extent that individuals in juvenile confinement facilities suffer from DSM-III diagnosed mental disorders, treatment and housing costs in the facilities may qualify as mental health related expenditures. This also presumes that the youth facility is, in fact, designed to treat diagnosed mental disorders rather than designed to primarily incarcerate youth for punishment and protect society at large.

This allocation also contains a of administrative and general capital project costs. These non-direct service expenditures allocated to the Detention category based on its percentage of total Youth Services expenditures for the FY 79 - 9/30/85 period.

Juvenile facility costs were allocated between treatment and detention based on a ratio of 11 average daily census for each of those respective sections. Our ratio analysis was for each facility, for each year opened during the period of our review.

Mental health related expenditures were estimated from identified costs based on the percentage of residents with DSM-III diagnosed mental disorders currently at FYF.

This allocation also contains a of administrative and general capital project costs. These non-direct service expenditures allocated to the Long-Term Treatment Program category based on its percentage of total Youth Services expenditures for the FY 79 - 9/30/85

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Department Division Program Sub-Program	Program Receipts	Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation Per- centage and Other Comments
<u>Department of Health and Social Services</u>						
<u>Division of Family and Youth Services (DFYS)</u>						
<u>Youth Services</u>						
<u>Long-Term Treatment Program (cont.)</u>			32,598,720		<p>Program Management Analysis: Juvenile facilities offer secure therapeutic settings. As such, their costs are mental health related, even though all individuals in confinement have not been formally diagnosed as having mental disorders. The youth is under confinement because it has been judicially determined that he/she presents a danger to themselves, others, or personal property. As such, they are exhibiting a disabling emotional/mental condition which the facility's treatment program is addressing.</p>	<p>Juvenile facility costs were allocated between treatment and detention based on a ratio of (1) average daily census for each of those respective sections. Our ratio analysis was for each facility, for each year opened during the period of our review.</p> <p>This allocation also contains a portion of administrative and general capital project costs. These non-direct service expenditures allocated to the Long-Term Treatment category based on its percentage of total Youth Services expenditures for the FY 79 - 9/30/85 period.</p>
<u>Residential Care</u>			3,687,243		<p>Program Description: In FY 86, DFYS developed a Request for Proposals that categorized and described the types of residential care that DFYS needed for their clients. These categories of care were defined as follows:</p> <p>Category I - Day Treatment: An intensive daytime program of structured, supervised, rehabilitative activities for adolescents with behavioral and emotional problems.</p> <p>Category II - Emergency Shelter: A temporary residential care shelter for children who are in immediate danger in their present environment. There is little or no emphasis on treatment due to the short-term stays of children placed.</p> <p>Category III - Specialized Group Homes: Residential programs with more highly structured programs providing 24-hour care, supervision and treatment services for children with moderate to severe emotional and behavioral problems.</p> <p>Category IV - Intensive Care (Staff Secure) Residential and Treatment Homes: A setting that provides 24-hour treatment in interdisciplinary psychotherapeutic treatment for children with conduct, anxiety, affect, or adjustment disorders or who pose a danger to themselves or others.</p>	
					<p>Mental Health Analysis: Since there is little or no formal psychological evaluative criteria used by DFYS to place youth in these various residential facilities, mental health professionals are reluctant to accept the DFYS categorization of services. Essentially, only a portion of the Category IV treatment beds could qualify as being mental health related. Category IV residential programs are more likely to be therapeutically structured, provide more intensive therapy, and better address the mental illness problems of residents.</p>	<p>Mental health related residential costs were estimated by allocating identified in-state residential expenditures based on the percentage of DSH-III diagnosed individuals carried in the current formal caseload. This percentage, based on estimates made by regional Youth Services supervisors in Alaska,</p>

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<u>Department of Health and Social Services</u>						
<u>Division of Family and Youth Services (DFYS)</u>						
<u>Youth Services</u>						
<u>Residential Care (cont.)</u>			1,245,490		In addition, Youth Services management estimates another 29% of their caseload is a result of alcohol and/or substance abuse problems.	and Juneau. The weighted average DSM-III cases was determined to approximately 33%. The allocation presented is based on this percentage. The second allocated cost figure presented in the mental health column represents an estimate of for services provided to individuals having alcohol and substance abuse problems. These individuals may have received a formal DSM-III diagnosis but represent a significant DFYS' caseload. Costs associated with individuals who have received a diagnosis and have alcohol/substance abuse problems may be included in allocation figures. This allocation contains a portion of administrative and general capital project costs. These non-direct service expenditures were allocated to the Residential Care category based on its percentage of total Youth Services expenditures for the FY 9/30/85 period. Costs presented are the total allocated Residential Care costs identified in our review of juvenile custody expenditures for the period under review. This allocation contains a portion of administrative and general capital project costs. These non-direct service expenditures were allocated to the Residential Care category based on its percentage of total Youth Services expenditures for the FY 79 - 9/30/85 period.
				11,842,321	<u>Program Management Analysis:</u> All categories of residential services are utilized by Youth Services in various sections of the State. As part of the continuum of services provided by the agency, all expenditures are mental health related. Youth Services uses these residential facilities in carrying out its goal of supervising adolescents arrested for crimes that pose a danger to themselves, others, or personal property. As such, these youth are exhibiting a disabling emotional/mental condition which the agency, as a whole, is addressing.	

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<u>Department of Health and Social Services</u>											
<u>Division of Family and Youth Services (DFYS)</u>											
<u>Youth Services</u>											
<u>Foster Care</u>											
We could not identify any aspects of foster care that were identified by the FY77 PLAN.				-0-	<p><u>Program Description:</u> DFYS Youth Services has developed and supervises a Foster Care program for juveniles needing formal probation supervision but who can function in a less restrictive environment. DFYS Youth Services has recruited adults who are willing to provide a home environment setting for youth who cannot or will not be able to appropriately function living at home.</p> <p><u>Mental Health Analysis:</u> Foster parents are not trained to deliver appropriate treatment or counseling services to adolescents who have DSM-III diagnosed disorders. Although food and shelter are being provided, these costs are more for the sake of public protection rather than establishing a therapeutic setting.</p> <p style="text-align: right;">Recognizing that foster parents necessarily trained to deliver health services, an argument could be made that associated costs, prior room and board, could be identified as mental health related based on estimates of the Youth Services caseload. Such an approach would result in the following costs:</p> <table style="margin-left: auto; margin-right: 0;"> <tr> <td>DSM-III Diagnoses (33%)</td> <td style="text-align: right;">\$ 5</td> </tr> <tr> <td>Alcohol/Substance Abuse (29%)</td> <td style="text-align: right;">79</td> </tr> <tr> <td>Total DSM-III/Abuse Costs</td> <td style="text-align: right;">\$176</td> </tr> </table>	DSM-III Diagnoses (33%)	\$ 5	Alcohol/Substance Abuse (29%)	79	Total DSM-III/Abuse Costs	\$176
DSM-III Diagnoses (33%)	\$ 5										
Alcohol/Substance Abuse (29%)	79										
Total DSM-III/Abuse Costs	\$176										
				2,769,683	<p><u>Program Management Analysis:</u> Foster parent services are utilized by Youth Services in carrying out its statutory responsibilities. As part of the continuum of services provided by the agency, all expenditures are mental health related. Youth Services uses foster parents in carrying out its goal of supervising adolescents arrested for crimes that pose a danger to themselves, others, or personal property. As such, they are exhibiting a disabling emotional/mental condition which the agency, as a whole, is addressing.</p> <p>Costs presented are the total unallocated Foster Care costs identified in our review of juvenile custody expenditures for the period under review.</p> <p>This allocation contains a portion of administrative and general capital project costs. These non-direct expenditures were allocated to the Foster Care category based on its percentage of total Youth Services expenditures for the FY 79 - 80 period.</p>						
<u>Total Division of Family and Youth Services</u>	<u>\$1,150,987</u>	<u>\$262,097,495</u>	<u>\$74,419,880</u>	<u>\$199,769,885</u>							

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Department of Health and Social Services (DHSS)						
<u>Division of Medical Assistance</u>	64,398,000	133,359,000				
<u>Medicaid-nursing homes</u>					<u>Program Description:</u> Medicaid is a joint Federal/State program which pays providers of medical care for medical services delivered to eligible low-income Alaskans. Reimbursement for nursing home services are among the services provided to eligible persons. Nursing home services include skilled intermediate care and intermediate care for mentally retarded (ICF/MR). (See program description for Hope Cottage below.) General Relief - Medical (GRM) also provides nursing home services to eligible persons and is funded entirely by the State. GRM nursing home services are included in this allocation.	
			36,520,000		<u>Mental Health Analysis:</u> The Medicaid and GRM programs serve persons in nursing homes, some of which have been diagnosed with mental disorders as classified under the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III). Residents are diagnosed with a primary diagnosis and a secondary diagnosis. Nursing home residents with a primary diagnosis of a mental disorder as defined by DSM-III should be included in the computation for allocating mental health programs. Those diagnosed with a secondary diagnosis of a mental disorder should be excluded if the primary diagnosis for admitting the person to a nursing home is a non-mental illness disorder.	Statistical information on the incidence of mental disorders in nursing homes receiving Medicaid GRM payments was readily available for calendar years 1986, 1985 and 1984. Statistical information provided to us by the Division of Medical Assistance. Expenditure allocations for all fiscal periods presented are based on the overall incidence of various mental disorders from 1984 - 1986. There are no material variances between 3 years' statistics.
The FY77 Plan anticipated that Medicaid would play a large part in the funding of mental health services. The FY77 PLAN cited passage of 1976 legislation that would expand the State Medicaid law to allow mental health clinics to receive Medicaid reimbursement for nearly all services rendered to eligible clients. (VOL I, P 223)						
The FY77 PLAN also notes that one of the characteristics of the State's mental health system is a "network of mental health units" providing comprehensive mental health services to all consumers. The FY77 PLAN identifies "public or private agencies" among these mental health units. (VOL I, P 69)						
The FY77 PLAN states that mental health services should be organized and arranged in a "logical, continuous sequence of service, follow-up, and surveillance." Along this continuum the FY77 PLAN contemplates a "spectrum of institutional services" ranging from intensive treatment and psychiatric services to less elaborate services such as "partial hospitalization, skilled nursing care, home care and care in facilities providing general custodial care." (VOL I, P 153)						The following percentages of nursing home residents were diagnosed with primary diagnosis of a psychiatric disorder according to DSM-III. Although primary diagnosis of traumatic brain syndrome, traumatic cerebral degeneration and toxic encephalopathy if being treated. Thorazine are not categorized as mental disorder in DSM-III, they are included as a psychiatric disorder for statistical purposes. Due to time constraints, we were unable to segregate these diagnoses. We estimate no material impact on the percentage of residents with a primary psychiatric disorder diagnosis presented even though the non-mental diagnoses are included.
In the inventory of mental health resources by community, the FY77 PLAN identified private nursing homes, where they existed, as either health facilities or residential transitional facilities. For example, in Anchorage, the listed inventory identified Glenacre, Careage House, and Ridgeview as health facilities; and two other nursing homes as being transitional facilities. (VOL III, PP 52-53)						Also included in these percentages are diagnoses of mental retardation and psychiatric disorders related to alcoholism. Mental retardation and alcoholism are specifically identified in DSM-III as a mental disorder but are excluded by statute. If percentage of nursing home residents with a primary diagnosis meeting DSM-III was 31%. However, individuals with mental deterioration caused by the aging process are not included.

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<u>Department of Health and Social Services (DHSS)</u>												
<u>Division of Medical Assistance</u>												
<u>Medicaid-nursing Homes (cont.)</u>				73,040,000	<u>Program Management Analysis:</u> Program management agrees with using DSM-III to classify residents of nursing homes. However, the program management allocation of expenditures includes both primary and secondary diagnoses of mental disorders as categorized in DSM-III and also includes dementias related to the aging process.	Expenditures for nursing homes allocated in the program management analysis column based on the percentage of residents in nursing homes with a primary and secondary diagnosis of a mental disorder as defined by DSM-III. Also included are persons diagnosed with dementias related to aging (both primary and secondary). Statistical data of nursing home residents with diagnoses of mental disorders as gathered for us by the Division of Medical Assistance. The following percentages of nursing home residents were diagnosed with mental disorders. These percentages were used to allocate expenditures: <table style="margin-left: auto; margin-right: auto;"> <tr> <td>Primary Diagnosis</td> <td>52%</td> </tr> <tr> <td>Secondary Diagnosis</td> <td>16%</td> </tr> <tr> <td>Total</td> <td>68%</td> </tr> </table>	Primary Diagnosis	52%	Secondary Diagnosis	16%	Total	68%
Primary Diagnosis	52%											
Secondary Diagnosis	16%											
Total	68%											
<u>Hope Cottage</u>				11,348,000	<u>Program Description:</u> Hope Cottage is an intermediate care facility for the mentally retarded (ICF/MR). Medicaid payments are made on behalf of residents who are eligible for the Medicaid program. <u>Mental Health Analysis:</u> DSM-III classifies mental retardation as a mental disorder, however, it is excluded from the Alaska Statutes. Accordingly, all associated expenditures are included in the mental health analysis.	Expenditures recorded for Hope Cottage are allocated as mental health related at 100%. Mental retardation is included as a diagnosis in DSM-III but it is excluded as a mental disorder from the Alaska Statutes.						
The FY77 PLAN anticipated that Medicaid would play a large part in the funding of mental health services. (VOL I, P 223)				11,348,000	<u>Program Management Analysis:</u> Program management also agrees with using DSM-III in classifying residents in Hope Cottage. Accordingly, Hope Cottage would be classified as part of the State's Mental Health Program.	Expenditures for Hope Cottage are allocated consistent with the mental health analysis.						
Hope Cottage residential units for the mentally retarded were identified as among institutions for children in the FY77 PLAN's inventory of Anchorage mental health resources. (VOL III, P 54)				11,348,000								
To the extent that Hope Cottage serves children it would come under the purview of FY77 PLAN's discussion of targeted services to children and the elderly. The FY77 PLAN states that the Federal Community Mental Health Center Act requires "special attention be paid to the mental health needs of children and the elderly." The FY77 PLAN also states that "services for children can include the full range of services made available through the center, appropriately geared to the needs of children at different stages of development." (VOL I, PP 77-78) (VOL I, P 223)												

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Department Division Program Sub-Program 1977 Mental Health Plan Aspects	Program Receipts	Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation Pr. and Other Comments
<u>Department of Health and Social Services (DHSS)</u>						
<u>Division of Medical Assistance</u>						
<u>Medicaid-Mental Health Clinics</u>						
The FY77 PLAN anticipated that Medicaid would play a large part in the funding of mental health services.					<u>Program Description:</u> Medicaid-Mental Health Clinics reimburse mental health clinics for services rendered to eligible recipients in the Medicaid program.	
The FY77 PLAN noted that the State Medicaid law was expanded to include payment for clinic services in addition to physician services by Chapter 221, SLA 1976 (cited in the FY77 PLAN as Senate Bill 542).			4,204,000		<u>Mental Health Analysis:</u> Treatment for mental disorders provided by a mental health clinic would be considered part of the State's Mental Health Program.	Medicaid-Mental Health Clinics' expenditures are allocated as mental health related at 100%.
This legislation, the FY77 PLAN noted "... allows [Community Mental Health Centers] to opt to receive Medicaid reimbursement for nearly all services rendered to eligible clients." (VOL 1, P 223)				4,204,000	<u>Program Management Analysis:</u> Program management concurs with the mental health analysis.	Expenditures for Medicaid-Mental Health Clinics are allocated consistent with the mental health analysis.
Total Division of Medical Assistance	<u>\$64,398,000</u>	<u>\$133,359,000</u>	<u>\$52,072,000</u>	<u>\$88,592,000</u>		

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Department Division Program Sub-Program	Program Receipts	Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation Error and Other Comments
Department of Education (DOE)						
<u>Special Education - State Program</u>	374,090,189	1,707,204,789			<p>Program Description: In providing a Free Appropriate Public Education (FAPE) to all children, school districts are required to offer special education and related services to handicapped children, ages 3 - 21, who reside within their district. "Special education" means specifically designed instruction to meet the unique needs of handicapped children including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.</p> <p>Special education serves children who are mentally retarded, seriously emotionally disturbed, and multihandicapped with either of these conditions. Mentally handicapped children are diagnosed by a psychiatrist or by a psychologist who is licensed by the State or certified under DOE requirements.</p> <p>School districts also provide support services and incur indirect costs for educating all children including mentally handicapped. Support services include psychological evaluation and counseling, administration and overhead costs for special and regular education, pupil transportation, and school operating and maintenance costs.</p> <p>Mental Health Analysis: Mental retardation is classified as a mental disorder under the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III) but is specifically excluded in the definition of mental illness under Alaska Statutes.</p> <p>DOE's classification of seriously emotionally disturbed children is broader than the mental disorder definitions of both DSM-III and the Alaska Statutes.</p> <p>DOE's classification of multihandicapped may include children with mental disorders classified under DSM-III and/or Alaska Statutes as well as children with multiple physical handicaps.</p> <p>Expenditures for children diagnosed with a mental disorder classified under DSM-III or Alaska Statutes may be considered mental health-related expenditures. Only an analysis of the diagnosis in a child's case file would provide an accurate count of the children with mental disorders diagnosed under DSM-III or the statutes.</p>	<p>Total expenditures presented an audited direct and indirect special education expenditures from all districts' annual audit report: FY 79 - FY 85. Data for the 4th quarter of FY 86 was not yet available.</p> <p>Direct expenditures include salaries, teachers, equipment, and supplies for special education instructional handicapped children alone. Indirect expenditures include school district support services, general support services, pupil transportation, operation and maintenance.</p> <p>Direct expenditures were allocated each fiscal year using the ratio of the number of children in the mentally retarded category to the total handicapped children in the State. Child counts were taken from annual reports to the Federal Office of Special Education. For FY 82 to FY 86, an average ratio for all years was used as the Federal ratio was not available. The ratios used to allocate expenditures for each year averaged 6.4%.</p> <p>Indirect expenditures were allocated for each fiscal year using the ratio of the number of mentally retarded children to the average daily membership of all children in all school districts in the State. Ratios used to allocate expenditures for each year averaged 0.6%.</p> <p>Although some children in other categories may have disorders classified under DSM-III or Alaska Statutes, as discussed in the mental health analysis, these children could not be identified without review of the diagnosis in each child's case file maintained at school districts.</p>
			25,246,531			

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<u>Department of Education (DOE)</u>						
<u>Special Education - State Program (cont.)</u>						
				42,465,134	<p><u>Program Management Analysis:</u> Special education expenditures for mentally retarded, seriously emotionally disturbed, autistic, and multihandicapped children with these conditions are mental health-related expenditures.</p>	<p>The allocation also contains a portion of DOE's administration. These costs were allocated to State and Federal special education programs based upon the percentage of the program expenditures to total State and Federal expenditures.</p> <p>Direct expenditures were allocated each fiscal year using the ratio of the number of children in the seriously emotionally disturbed, and multihandicapped categories to the total of all handicapped children in the State. The child counts were taken from annual reports to the Federal Office of Special Education. For FY 82 and FY 80, average ratio of all other years used as the Federal reports were available. The ratios used to allocate expenditures for each year averaged 10.5%.</p> <p>Indirect expenditures were allocated for each fiscal year using the ratio of the number of mentally retarded, seriously emotionally disturbed, multihandicapped children to the average daily membership of all children in all school districts in the State. The ratios used to allocate expenditures for each year averaged 1.4%.</p> <p>The allocation also contains a portion of DOE's administration. These costs were allocated to State and Federal special education programs based upon the percentage of the program expenditures to total State and Federal expenditures.</p> <p><u>National Statistics:</u> A contractor report entitled, "Statistical Profile of Special Education in Elementary and Secondary Schools in the United States" prepared for the National Center for Education Statistics in January 1985, indicated the following statistics. For the 1982-1983 school year, 17.8% of the children served by special education programs were mentally retarded and 8.1% seriously emotionally disturbed. In terms of all children in public school systems in the United States, this becomes 1.91% mentally retarded and 0.89% seriously emotionally disturbed.</p>

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Department of Education (DLE)						
<u>Special Education - State Program (cont.)</u>						
<u>Special Education - Federal Program</u>	23,007,245	24,845,606			<u>Program Description:</u> Federal funds are granted annually to school districts through DOE to supplement the districts' State and locally funded expenditures for special education. The same children diagnosed with mental disorders under the State-funded special education program are served with Federal grant funds.	This report was provided by the Division of Mental Health and Developmental Disabilities (DMHD).
The FY77 PLAN does not specifically address the mental health aspects of special education services. The FY77 PLAN states that the Federal Community Mental Health Centers Act of 1975 (PL 95-63) requires that special attention be paid to the mental health needs of children.					The mentally handicapped children served are mentally retarded, seriously emotionally disturbed, and multihandicapped children with these conditions.	Expenditures presented are a combination of audited expenditures and amounts of Federal grants. FY 85 expenditures are from Division of Legislative Audit's annual financial reports. Due to structure of DOE's accounting for FY 79 - FY 81 Federal handicapped program expenditures were not identifiable, so Federal grants were used.
∞ The FY77 PLAN also states that "services for children can include the full range of services, made available through the center, appropriately geared to the needs of children at different stages of development." (VOL I, PP 77-78)			1,548,868		<u>Mental Health Analysis:</u> See mental health analysis for Special Education - State Program.	Expenditures were allocated for fiscal year using the ratio of number of children in the mental retarded category to the total handicapped children in the State. The child counts were taken from annual reports to the Federal Office of Special Education. For FY 82 - FY 86, an average ratio for all years was used as the Federal reports were not available. The ratios used to allocate expenditures for each year averaged 6.4%.
When identifying and inventorying mental health resources in various regions of the State, the FY77 PLAN includes special education teachers for the emotionally disturbed among its manpower inventory category (for example, see VOL III, P 51, for Anchorage's inventory.)						Although some children in other categories may have disorders classified under DSM-III or ALA Statutes, as discussed in the mental health analysis, these children could not be identified without review of the diagnosis in each child's case file maintained at school districts.
				2,584,801	<u>Program Management Analysis:</u> See program management analysis for Special Education - State Program.	The allocation also contains a portion of DOE's administration. These costs were allocated to State and Federal special education programs based upon the percentage of the program expenditures to total State and Federal expenditures.
						Expenditures were allocated for fiscal year using the ratio of number of children in the mental retarded, seriously emotionally disturbed, and multihandicapped categories to the total handicapped children in the State.

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Department Division Program Sub-Program	Program Receipts	Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation Errors and Other Comments
<u>Department of Education (DOE)</u>						
<u>Special Education - Federal Program (cont.)</u>						
08 - Severe Multi-Handicapped School	-0-	4,627,677			<p><u>Program Description:</u> DOE contracts with the Anchorage School District to administer the Severe Multi-Handicapped School. Most of the students are from outside Anchorage and are placed in Anchorage facilities by the Department of Health and Social Services, Division of Mental Health and Developmental Disabilities (MHDD). These children require an intensive special education program which is not available in most districts.</p> <p><u>Mental Health Analysis:</u> Some of these expenditures will be for children diagnosed with a mental disorder classified under DSM-III or Alaska Statutes. However the percentage of these children cannot be determined without review of the diagnosis of each child in case files maintained at the school districts.</p> <p><u>Program Management Analysis:</u> The children in the Severe Multi-Handicapped School are almost all mentally retarded, and almost 100% of the expenditures would be mental health-related expenditures. Only an analysis of the diagnosis in the child's case file would give a more accurate count of the children with diagnosed mental disorders.</p>	<p>The child counts in these categories were taken from annual reports to the Federal Office of Special Education. For FY 83 and FY 84, average ratios for all other years was used as the Federal reports not available. The ratios use allocate expenditures for each averaged 10.5%.</p> <p>The allocation also contains a portion of DOE's administration. These costs were allocated to State and Federal special education based upon the percentage of the program expenditures to total State and Federal expenditures.</p> <p>Expenditures presented are FY 77-85 audited expenditures from the Anchorage School District audit reports for these years. For the first quarter of FY 86 available.</p> <p>The allocation per the mental health analysis is not presented because the actual number of children diagnosed with mental disorders classified under DSM-III or Alaska Statutes cannot be determined without review of case files maintained at school districts.</p> <p>Expenditures were allocated 100% mental health-related expenditures based upon DOE's program manager estimate that almost all of the children served are mentally retarded.</p>
			Indeterminate			
				4,627,677		

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Department of Education (DOE)						
Providence Heights School	-0-	853,735			<p>Program Description: DOE contracts with the Anchorage School District to administer the Providence Heights School which serves patients of the Alaska Psychiatric Institute (API), ages 3 - 22. These students require a very structured educational program closely related to their treatment.</p> <p>Mental Health Analysis: Some of these expenditures will be for children diagnosed with a mental disorder classified under DSM-III or Alaska Statutes. However the percentage of these children cannot be determined without review of the diagnosis of each child in case files maintained at the school districts.</p> <p>Program Management Analysis: At any given time, potentially all of these children attending Providence Heights School are seriously emotionally disturbed and all of the expenditures would be mental health-related expenditures. Only an analysis of the diagnosis in the child's case file would give us a more accurate count of the children with diagnosed mental disorders.</p>	<p>Expenditures presented are FY FY 85 audited expenditures from the Anchorage School District audit reports for these years, for the first quarter of FY 86 available.</p> <p>The allocation per the mental health analysis is not presented because the actual number of children diagnosed with mental disorder classified under DSM-III or Alaska Statutes cannot be determined without review of case files maintained at school districts.</p> <p>Expenditures were allocated to mental health-related expenditures based upon DOE's program management estimate that almost all of the children served are seriously emotionally disturbed.</p>
<p>The FY77 PLAN does not specifically address the mental health aspects of special education services. The FY77 PLAN states that the Federal Community Mental Health Centers Act of 1975 (PL 95-63) requires that special attention be paid to the mental health needs of children.</p> <p>The FY77 PLAN also states that "services for children can include the full range of services, made available through the center, appropriately geared to the needs of children at different stages of development." (VOL 1, PP 77-78)</p> <p>When identifying and inventorying mental health resources in various regions of the State, the FY77 PLAN includes special education teachers for the emotionally disturbed among its manpower inventory category (for example, see VOL III, P 51, for Anchorage's inventory.)</p>		Indeterminate		853,735		
Alaska Resources for the Moderately Severely Impaired (ARMSI)	-0-	3,457,778			<p>Program Description: The Alaska Resources for the Moderately Severely Impaired program (ARMSI) provides services statewide to low incidence, severely handicapped students, ages 3 - 22, when the specialized educational services required by the student are not available locally.</p> <p>Mental Health Analysis: Some of these expenditures will be for children diagnosed with a mental disorder classified under DSM-III or Alaska Statutes. However the percentage of these children cannot be determined without review of the diagnosis of each child in case files maintained at the school districts.</p> <p>Program Management Analysis: Expenditures under this contract for mentally retarded, seriously emotionally disturbed, and multihandicapped children with these conditions would be mental health-related expenditures.</p>	<p>Expenditures presented are cost provided by DOE for this contract from 1983, the first year of the contract, through FY 85. Data for the first quarter of FY 86 not available.</p> <p>The allocation per the mental health analysis is not presented because the actual number of children diagnosed with mental disorder classified under DSM-III or Alaska Statutes cannot be determined without review of case files maintained at school districts.</p> <p>Expenditures were allocated to upon the ratio of mentally retarded, seriously emotionally disturbed, multihandicapped children to the total number of children served each year of the contract. Data of children were provided by the program managers.</p>
<p>The FY77 PLAN does not specifically address the mental health aspects of special education services. The FY77 PLAN states that the Federal Community Mental Health Centers Act of 1975 (PL 95-63) requires that special attention be paid to the mental health needs of children.</p> <p>The FY77 PLAN also states that "services for children can include the full range of services, made available through the center, appropriately geared to the needs of children at different stages of development." (VOL 1, PP 77-78)</p> <p>When identifying and inventorying mental health resources in various regions of the State, the FY77 PLAN includes special education teachers for the emotionally disturbed among its manpower inventory category (for example, see VOL III, P 51, for Anchorage's inventory.)</p>		Indeterminate		1,331,374		

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Department of Education (DOE)						
McLaughlin Youth Center (MYC)	-0-	5,173,387			<p>Program Description: DOE contracts with the Anchorage School District to provide education to young adults at McLaughlin Youth Center. The program provides basic skills, remedial services, and special education instruction.</p> <p>Mental Health Analysis: Expenditures for young adults diagnosed with a mental disorder classified under DSM-III or Alaska Statutes would be considered mental health-related expenditures.</p> <p>Program Management Analysis: Expenditures for young adults diagnosed with a mental disorder would be considered mental health-related expenditures. Only an analysis of the diagnosis in the young adult's case file would give us an accurate count of those with diagnosed mental disorders.</p>	<p>Expenditures presented are FY 77, FY 85 audited expenditures from the Anchorage School District audit reports for these years. For the first quarter of FY 86, available.</p> <p>Expenditures were allocated based upon the Division of Family and Youth Services' estimate that 10 young adults in the Center had 10 classified mental disorders.</p> <p>Expenditures were allocated based upon the Division of Family and Youth Services' estimate that 10 young adults in the Center had 10 classified mental disorders.</p>
<p>The FY77 PLAN does not specifically address the mental health aspects of special education services. The FY77 PLAN states that the Federal Community Mental Health Centers Act of 1975 (PL 95-63) requires that special attention be paid to the mental health needs of children.</p> <p>The FY77 PLAN also states that "services for children can include the full range of services, made available through the center, appropriately geared to the needs of children at different stages of development." (VOL 1, PP 77-78)</p> <p>When identifying and inventorying mental health resources in various regions of the State, the FY77 PLAN includes special education teachers for the emotionally disturbed among its manpower inventory category (For example, see VOL III, P 51, for Anchorage's inventory.)</p>			3,594,987	3,594,987		
Fairbanks Youth Facility (FYF)	-0-	951,207			<p>Program Description: DOE contracts with the Fairbanks School District to provide education to young adults at the Fairbanks Youth Facility. The program provides basic skills, remedial services, and special education instruction.</p> <p>Mental Health Analysis: Expenditures for young adults diagnosed with a mental disorder classified under DSM-III or Alaska Statutes would be considered mental health-related expenditures, and then only if the facility is designed to treat such disorders rather than incarcerating young adults to protect society.</p> <p>Program Management Analysis: Expenditures for young adults diagnosed with a mental disorder would be considered mental health-related expenditures. Only an analysis of the diagnosis in the young adult's case file would give us a more accurate count of those with diagnosed mental disorders.</p>	<p>Expenditures presented are FY 77, FY 85 audited expenditures from the Fairbanks School District audit reports for these years. For the first quarter of FY 86, available.</p> <p>Expenditures were allocated based upon the Division of Family and Youth Services' estimate that 10 young adults in the Center had 10 classified mental disorders.</p> <p>Expenditures were allocated based upon the Division of Family and Youth Services' estimate that 10 young adults in the Center had 10 classified mental disorders.</p>
<p>The FY77 PLAN does not specifically address the mental health aspects of special education services. The FY77 PLAN states that the Federal Community Mental Health Centers Act of 1975 (PL 95-63) requires that special attention be paid to the mental health needs of children.</p> <p>The FY77 PLAN does state that "services for children can include the full range of services, made available through the center, appropriately geared to the needs of children at different stages of development." (VOL 1, PP 77-78)</p> <p>When identifying and inventorying mental health resources in various regions of the State, the FY77 PLAN includes special education teachers for the emotionally disturbed among its manpower inventory category (For example, see VOL III, P 51, for Anchorage's inventory.)</p>			951,207	951,207		

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Department Division Program Sub-Program 1977 Mental Health Plan Aspects	Program Receipts	Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation Errors and Other Comments
Department of Education (DOE)						
<u>Out-of-District Transfers</u>	-0-	1,565,234			<p><u>Program Description:</u> Special education students are transferred out-of-district by DOE when a district cannot serve the student locally. These students are Alaska's most severely impaired children who are usually seriously emotionally disturbed and exhibit severe behavior problems. These students are generally placed out-of-state into highly specialized, residential institutions. DOE pays all expenses associated with the transfer student including residential and treatment costs.</p> <p><u>Mental Health Analysis:</u> Some of these expenditures will be for children diagnosed with a mental disorder classified under DSM-III or Alaska Statutes. However the percentage of these children cannot be determined without review of the diagnosis of each child in case files maintained at the school districts.</p> <p><u>Program Management Analysis:</u> These special education students transferred out-of-district almost always have a serious emotional disturbance and are often multihandicapped. Almost all of the expenditures under this program would be considered mental health-related expenditures.</p>	<p>Expenditures presented are DOE contract costs for FY 82 - FY 83. Data for FY 79 - FY 81 and the first quarter of FY 86 was not available. Costs were obtained from DOE's program managers' records.</p> <p>The allocation per the mental health analysis is not presented because the actual number of children diagnosed with mental disorder classified under DSM-III or Alaska Statutes cannot be determined without review of case files maintained at school districts.</p> <p>Expenditures were allocated for mental health-related expenditures based upon DOE's program manager estimate that almost all of the children are seriously emotionally disturbed.</p>
<p>The FY77 PLAN does not specifically address the mental health aspects of special education services. The FY77 PLAN states that the Federal Community Mental Health Centers Act of 1975 (PL 95-61) requires that special attention be paid to the mental health needs of children.</p> <p>The FY77 PLAN also states that "services for children can include the full range of services, made available through the center, appropriately tailored to the needs of children at different stages of development." (VOL I, PP 77-78)</p> <p>When identifying and inventorying mental health resources in various regions of the State, the FY77 PLAN includes special education teachers for the emotionally disturbed among its manpower inventory category (for example, see VOL III, P.51, for Anchorage's inventory.)</p>			Indeterminate	1,565,234		
<u>Total Special Education Programs</u>	<u>\$397,097,434</u>	<u>\$1,748,679,413</u>	<u>\$31,341,573</u>	<u>\$57,974,149</u>		

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Department Division Program Sub-Program 1977 Mental Health Plan Aspects	Program Receipts	Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation Process and Other Comments
<u>Department of Education (DVE)</u>						
<u>Division of Vocational Rehabilitation (DVR)</u>						
General Program	72,969,329					
DVE - Services to Clients		18,626,448				
<p>Men analyzing the needs and services in various regions of the State, MDD's 1977 PLAN examined each region's incidence of vocational rehabilitation clients in comparison with the State average. This ratio was identified as one of the indices of a region's need for mental health services.</p> <p>The FY77 PLAN cited estimates from DVR's FY 76 plan that stated that the agency served individuals who were mentally ill, had personality disorders, alcoholics, addicted to drugs, or were mentally retarded. (VOL V, PP 87-90)</p> <p>In the FY77 PLAN, vocational rehabilitative services were categorized as direct mental health services in each region's inventory of resources. (See VOL III, P 49, for an example of direct services identified in the Anchorage area.)</p>				<p>Program Description: The Division of Vocational Rehabilitation (DVR) provides the following services to rehabilitate both mentally and physically handicapped clients:</p> <ol style="list-style-type: none"> 1. Diagnostic and evaluation services - Includes medical, psychological, and vocational diagnostic and evaluation services to determine the nature of the handicap and the scope of services required. This includes transportation and hospitalization of clients for diagnostic and evaluation purposes. 2. Mental or physical restoration - Includes medical and related services necessary to correct the disabling condition. This can include surgery, therapy, treatment, and hospitalization. 3. Training - Includes all training and materials provided to the client. 4. Maintenance - Includes basic living expenses so that the client can derive the full benefit of other vocational rehabilitative services provided. 5. Services to other family members - Includes services provided to family members of a handicapped client for the purpose of contributing substantially to the rehabilitation of the client. 6. Other services - Includes services such as reader and interpreter services, occupational tools and equipment, initial stocks, licenses, and transportation. <p>Confirmation of a mental disability is provided to DVR by a physician skilled in the diagnosis and treatment of such disorders or by a psychologist licensed or certified in accordance with State laws and regulations. The nature of the client disability is categorized by DVR into Psychotic Disorders; Psychoneurotic Disorders; Alcoholism; Drug Addiction; Mental Retardation; and Other Character, Personality, or Behavior Disorders.</p>		
			7,186,826			<p>Mental Health Analysis: Costs of services to clients would be considered mental health-related expenditures if the client was diagnosed with a mental disorder classified in DSM-III and/or Alaska Statutes.</p> <p>The mental disorders in the Psychotic Disorders category are all classified as DSM-III disorders except senility. Korsakov's Syndrome (Alcoholic) is excluded as a mental disorder in the Alaska Statutes but is included in DSM-III.</p> <p>Expenditures were allocated as ratios developed by the Division of Vocational Rehabilitation (DVR) through their statistical reporting system which records client information on the nature of services provided, and total expenditures for each client.</p>

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<u>Department of Education (DOE)</u>						
<u>Division of Vocational Rehabilitation (DVR)</u>						
<u>General Program</u>						
<u>DVR - Services to Clients (cont.)</u>						
				3162	<p>The mental disorders in the Psychoneurotic Disorders category are all classified in DSM-III.</p> <p>The Alcoholism and Drug Addiction categories are excluded in the Alaska Statutes as a mental disorder but are classified in DSM-III.</p> <p>Mental Retardation is classified as a mental disorder in DSM-III but excluded as a mental disorder under Alaska Statutes.</p> <p>The disorders of clients in the Other Character, Personality, or Behavior Disorders category may be classified in DSM-III or statutes. The classification of the disorder can only be determined by a review of the diagnosis in the client's case file maintained at DVR field offices.</p>	<p>For cases closed during each fiscal year from FY 79 through the first quarter of FY 86, DVR compiled the expenditures for clients in each of the following categories of mentally disabling conditions: Psychotic Disorders; Psychoneurotic Disorders; Alcoholism; Drug Addiction; Mental Retardation; and Other Character, Personality, and Behavior Disorders. Expenditures were compiled for clients with either a confirmed primary or secondary mentally disabling condition in the above categories.</p> <p>The allocation was based on the ratio of total expenditures for all categories except Other Character, Personality, and Behavior Disorders to the total expenditures for all handicapped clients served during this same time period. This ratio was applied to each State fiscal year's expenditures for this program. The ratios used to allocate expenditures for each year averaged 39.1%.</p> <p>An allocation for the Other Character, Personality, and Behavior Disorders category is not presented because the actual number of clients in this category with mental disorders classified under DSM-III or Alaska Statutes cannot be determined without review of client case files maintained at DVR field offices.</p>
				8,223,377	<p><u>Program Management Analysis:</u> All of the clients classified by a psychiatrist or psychologist into the categories addressed above would be considered as having a mentally disabling condition. All costs of services for these clients would be considered mental health-related expenditures.</p>	<p style="text-align: center;">3,64</p> <p>The allocation was based on the ratio of expenditures for clients in the Psychotic Disorders; Psychoneurotic Disorders; Alcoholism; Drug Addiction; Mental Retardation; and Other Character, Personality, and Behavior Disorders categories to the total expenditures for all handicapped clients served. This ratio was applied to each State fiscal year's expenditures for this program. The ratios used to allocate expenditures for each year averaged 44.7%.</p>

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Department of Education (DOE)						
Division of Vocational Rehabilitation (DVR)						
General Program						
DVR - Counseling & Placement (cont.)			3.62 6,500,976		<p>Program Management Analysis: All of the clients classified by a psychiatrist or psychologist into the categories addressed above would be considered as having a mentally disabling condition. All costs of services including indirect costs for these clients would be considered mental health-related expenditures.</p>	3.64 The allocation was based on the ratio of total closed cases in all categories of mentally disabling conditions to the total closed cases for all handicapped clients served during each year from FY 79 - FY 86. This ratio was applied to each State fiscal year's expenditures for this program. The ratios used to allocate expenditures for each year averaged 34.8%.
DVR Administration		4.6 4,887,124	3.62 1,480,536		<p>Program Description: Included in this program are all the costs for the administration of the vocational rehabilitation division statewide.</p> <p>Mental Health Analysis: 3.64.1 Indirect costs to provide client services would be considered mental health-related expenditures if the client was diagnosed with a mental disorder classified in DSM-III and/or Alaska Statutes.</p> <p>The mental disorders in the Psychotic Disorders category are all classified as DSM-III disorders except senility. Korsakov's Syndrome (Alcoholic) is included as a mental disorder in the Alaska Statutes but is included in DSM-III.</p> <p>The mental disorders in the Psychoneurotic Disorders category are all classified in DSM-III.</p> <p>The Alcoholism and Drug Addiction categories are excluded in the Alaska Statutes as a mental disorder but are classified in DSM-III.</p> <p>Mental Retardation is classified as a mental disorder in DSM-III but excluded as a mental disorder under Alaska Statutes.</p> <p>The disorders of clients in the Other Character, Personality, or Behavior Disorders category may be classified in DSM-III or statutes. The classification of the disorder can only be determined by a review of the diagnosis in the client's case file maintained at DVR field offices.</p>	3.64.1 The allocation was based on the ratio of total closed cases in all categories except Other Character, Personality, and Behavior Disorders to the total closed cases for all handicapped clients served during each year from FY 79 - FY 86. This ratio was applied to each State fiscal year's expenditures for this program. The ratios used to allocate expenditures for each year averaged 30.1%.
			3.62 1,712,270		<p>Program Management Analysis: 3.64 All of the clients classified by a psychiatrist or psychologist into the categories discussed in the mental health analysis section would be considered as having a mentally disabling condition. All costs of services including indirect costs for these clients would be considered mental health-related expenditures.</p>	3.64 The allocation was based on the ratio of total closed cases in all categories of mentally disabling conditions to the total closed cases for all handicapped clients served during each year from FY 79 - FY 86. This ratio was applied to each State fiscal year's expenditures for this program. The ratios used to allocate expenditures for each year averaged 34.8%.

4.6
6.7

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Department Division Program Sub-Program	Program Receipts	Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation Proc. and Other Comments
Department of Education (DE)						
Division of Vocational Rehabilitation (DVR)						
General Program						
<u>Specialized Facilities Grants</u>	370,376	1,217,286			<p>Program Description: Included in this program are grants to nonprofit organizations that provide services to mentally and physically handicapped individuals. Some of these organizations primarily provide services to mentally retarded individuals and individuals with other mental disorders. Some of the major grantees and types of services offered are:</p> <ol style="list-style-type: none"> 1. Homer Mental Health Center - This program provides services to rural mentally ill individuals. The major services provided are individual counseling, interest and aptitude testing, and community job development. 2. Anchorage Community College Food Service Program - This program provides initial evaluation of mentally retarded individuals' ability to function in the food industry and also provides skill training of entry-level dishwashers, cooks, food processors, and food servers. 3. Gateway Opportunity Center - This program provided a sheltered workshop in Ketchikan for developmentally disabled individuals. This program closed in July 1985. 4. Alpine Alternatives - This is a children's recreation program serving the mentally retarded. <p>A variety of other organizations received grants from DVR to provide work adjustment, occupational skill training, and other rehabilitative services to mentally retarded and mentally ill clients.</p> <p>Mental Health Analysis: Some of these expenditures will be for individuals diagnosed with a mental disorder classified under DSM-III or Alaska Statutes. However the percentage of these clients cannot be determined without review of the diagnosis in each case file maintained by the grantee.</p> <p>Program Management Analysis: Since almost all of the individuals being served have mentally disabling conditions, all of these expenditures would be considered mental health-related expenditures. Only an analysis of the diagnosis in the individual's case file would give us an accurate count of clients served who have diagnosed mental disorders. The client case files are maintained by grantees.</p>	<p>An allocation for grants to organizations who provide services to mentally handicapped individuals not presented because the actual number of individuals with mental disorders classified under DSM-III or Alaska Statutes cannot be determined without review of client files. These are maintained by DVR grantees.</p> <p>Allocated expenditures represent total of DVR grants to organizations serving mentally retarded and mentally ill clients from FY 81 FY 85. Grant amounts were provided by DVR. The grant costs for FY 80, and the first quarter of FY 86 were not readily available.</p>
			Indeterminate	1,385,777		
Total Division of Vocational Rehabilitation	\$21,289,705	\$45,118,494	\$14,295,530	\$17,822,400		

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Department of Corrections (DOC) 1977 Mental Health Plan Aspects	1,900,000					
Adult Confinement - Operating Programs		283,112,000				
The FY77 PLAN recognizes mental health treatment as an integral need of the corrections program:						
"It is recognized that the Alaska Court System, the Alaska Division of Corrections, plus State and local law enforcement agencies all require the availability of mental health resources. . . . The Division of Corrections has, by the very nature of those persons in their custody, historically required the availability of mental health services. Those services have traditionally been provided by the State operated mental health clinics and the Alaska Psychiatric Institute. These services have included inpatient treatment, consultation and education, evaluations, individual and group therapy, and services to children and adolescents." (VOL I, P 29)			23,215,000			
"Virtually all components of the criminal justice system are intrinsically related to and sometimes dependent upon mental health services. It is anticipated that this relationship will tend to become more crystallized in the future, not necessarily by virtue of a philosophical compatibility but rather as a result of an increased awareness of the capabilities of each agency involved." (VOL I, P 31)				23,215,000		
					<p>Program Description: The Department of Corrections, formerly the Department of Health and Social Services, Division of Corrections - Adult Confinement (FY 79 - FY 83), has two major areas of responsibility: (1) protection of the public and (2) reformation of the offender. In that pursuit, facilities are located around the State to house offenders, in addition to sending offenders to out-of-state facilities. The operating budget provides for facility operations, parole functions, and general administrative duties. The capital budget mainly provides for the construction of facilities to house inmates.</p> <p>Mental Health Analysis: Treatment for mental health disorders is available to correction facility residents. It is difficult to say whether persons receiving mental health treatment in correctional facilities meet the diagnoses for disorders identified in DSM-III unless a review is done of each inmate's psychological evaluation. A person in jail could be diagnosed in a DSM-III "V" code category which would preclude a person from being categorized as having a mental disorder. (A person is diagnosed under a "V" code when a focus of attention or treatment is adult antisocial behavior that is apparently not due to a mental disorder.)</p> <p>Program Management Analysis: A needs assessment was conducted on April 30, 1986 in an attempt to more accurately quantify the incidence or prevalence of mental illness in State correctional centers. The review found that an average of 8.2% of the inmates were diagnosed as suffering from a major mental disorder. Major mental disorders include: (1) organic mental disorders, (2) schizophrenic disorders, (3) paranoid disorders, (4) other psychotic disorders, and (5) major affective disorders; i.e., major depression and bipolar disorders. (According to the Division of Mental Health and Developmental Disabilities professionals, the aforementioned disorders are all within mental disorders as defined under DSM-III.)</p>	See allocation method in program management analysis for DOC operating programs.
						Expenditures presented for adult corrections were allocated based on the finding that 8.2% of the inmate population is suffering from one of the major mental disorder categories mentioned in the needs assessment (discussed at left) conducted by the Department of Corrections.
						Due to time constraints, specific expenditures were not identified that were associated with contract services for mental health treatment and with departmental employees providing mental health-related services. Rather, total operating and capital expenditures were allocated as mental health related based on the 8.2% incidence of disorders found in prison population. This percentage was considered consistent for the period of our review.

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Department Division Program Sub-Program	Program Receipts	Program Expenditures Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation Pro- and other Comments
Department of Corrections (DOC) (cont.)						
Adult Confinement - Capital Programs		69,153,000			<p><u>Program Descriptions:</u> For description see discussion under DOC, Adult Confinement - Operating Programs.</p>	
For 1977 PIAH Aspects, see discussion under DOC, Adult Confinement - Operating Programs.			5,671,000		<p><u>Mental Health Analysis:</u> For analysis see discussion under DOC, Adult Confinement - Operating Programs.</p>	See allocation method in program management analysis for DOC capital programs.
				5,671,000	<p><u>Program Management Analysis:</u> For analysis see discussion under DOC, Adult Confinement - Operating Programs.</p>	Expenditures presented for adult corrections were allocated based on the finding that 8.2% of the inmate population is suffering from one of the major mental disorder categories mentioned in the needs assessment (discussed at left) conducted by the Department of Corrections. Due to time constraints specific expenditures were not identified that were associated with contractual services for mental health treatment and with departmental employees providing mental health related services. Rather, total operating and capital expenditures were allocated as mental health related based on the 8.2% incidence of mental disorders found in prison populations. This percentage was considered to be consistent for the period of our review.
<u>Total Department of Corrections</u>	<u>\$1,900,000</u>	<u>\$352,265,000</u>	<u>\$28,886,000</u>	<u>\$28,886,000</u>		

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Department Division Program Sub-Program 1977 Mental Health Plan Aspects	Program Receipts	Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation Pro- and Other Comments
Department of Administration (DOA)						
Division of Pioneers' Benefits						
Pioneers' Homes	7,721,000	137,215,000			<p>Program Description: The Pioneers' Homes program provides elderly Alaskans who qualify under the Statute with a residential program which allows them to live their lives with dignity and contentment. Homes are located in Sitka, Fairbanks, Palmer, Anchorage, and Ketchikan. Both residential care and nursing care services are provided to residents of the homes.</p> <p>Mental Health and Program Management Analysis: The purpose of the Pioneers' Homes is to provide a home for pioneer Alaskans. Although an application for admission to a home includes a description of any physical or medical disability of the applicant, the reason for admission is not because of the disability. If a resident requires specialized treatment such as mental health treatment, that person would be sent to an appropriate facility for treatment. Residents diagnosed as having Alzheimer's disease are admitted to the homes. Persons suffering from a personality defect that would threaten the health or safety of other residents will not be admitted to a home. Except for residents with Alzheimer's disease, it is believed that the homes do not meet the definition of a mental health program.</p>	<p>Expenditures and revenues were from the State accounting records for the period presented. Cost associated with the care of patients with Alzheimer's disease were identified in the accounting records. DSH-III classifies Alzheimer's disease as a mental disorder. In reading the FY77 PLAN, it appears that services provided to the elderly are to be considered a part of the Mental Health Program. There is expenditures are presented in it but they are not allocated. The Division of Medical Assistance that 31% of the residents in homes have a mental disorder. section on Division of Medical Assistance programs in this Schedule.</p>
<p>The FY77 PLAN notes that the "Federal Community Mental Health Centers Act of 1975 (PL 95-63) requires that special attention be paid to the mental health needs of children and the elderly. . . . The specialized nature of their needs and the limited availability of appropriate services requires that community mental health centers devote greater attention to these opposite ends of the age spectrum."</p> <p>The FY77 PLAN states that "Programs for the elderly must similarly address the full range of services made available through the center geared to the physical and emotional needs of the elderly." (VOL I, PP 77-76)</p> <p>The FY77 PLAN also notes that one of the characteristics of the State's mental health system is a "network of mental health units" providing comprehensive mental health services to all consumers. The FY77 PLAN identifies "public or private agencies" among these mental health units. (VOL I, P 69)</p> <p>The FY77 PLAN states that mental health services should be organized and arranged in a "logical, continuous sequence of service, follow-up, and surveillance." Along this continuum the FY77 PLAN contemplates a "spectrum of institutional services" ranging from intensive treatment and psychiatric services to less elaborate services such as "partial hospitalization, skilled nursing care, home care and care in facilities providing general custodial care." (VOL I, P 153)</p> <p>The FY77 PLAN includes Pioneers' Homes beds in the inventory of various regions' health facility resources. (For an example, see VOL IV, P 35 for the Sitka region's inventory of facilities.)</p>			Indeterminate	Indeterminate		
Total Division of Pioneers' Benefits	7,721,000	137,215,000	Indeterminate	Indeterminate		

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<u>Department of Administration</u>						
Older Alaskans Commission (OAC)	18,018,000	54,640,000			<p><u>Program Description:</u> The Older Alaskans Commission was created in July 1981. OAC is authorized to administer and coordinate State programs for the elderly and to administer Federal programs provided under the Older Americans Act of 1965. The goal of the Commission is to ensure honor, dignity, security, and independence for Alaskans and to assist in maintaining meaningful, quality life. Services provided include nutrition services, support services, information and referral, home care, home maintenance, adult day care for victims of Alzheimers disease, and various other services to maintain senior citizens' independent living at home. (Certain programs previously offered through the Division of Adult and Aging Services, Department of Health and Social Services (DISS), were transferred to OAC when it was established.)</p>	
<p>The FY77 Plan notes that the "Federal Community Mental Health Centers Act of 1975 (PL 95-63) requires that special attention be paid to the mental health needs of children and the elderly. . . . The specialized nature of their needs and the limited availability of appropriate services requires that community mental health centers devote greater attention to these opposite ends of the age spectrum."</p>						
<p>The FY77 PLAN states that "Programs for the elderly must similarly address the full range of services made available through the center geared to the physical and emotional needs of the elderly." (VOL I, PP 77-78)</p>			Indeterminate	Indeterminate	<p><u>Mental Health and Program Management Analysis:</u> Program management indicates mental health services are provided that meet the definition as provided by the Department of Health and Social Services. Mental health concurs with program management that some mental health services are provided; however, it might be difficult to determine the amount spent on clients diagnosed with a mental disorder according to DSM-III because client profiles are not maintained by OAC.</p>	<p>Expenditures and revenues were from the State accounting records for the period presented. Prior to the establishment of OAC, the Division of Adult and Aging Services, DISS recorded expenditures in their account codes for programs transferred to OAC. These are presented under the OAC program.</p>
<p>The FY77 PLAN also notes that one of the characteristics of the State's mental health system is a "network of mental health units" providing comprehensive mental health services to all consumers. The FY77 PLAN identifies "public or private agencies" among these mental health units. (VOL I, P 69)</p>						
<p>The FY77 PLAN states that mental health services should be organized and arranged in a "logical, continuous sequence of service, follow-up, and surveillance." Along this continuum the FY77 PLAN contemplates a "spectrum of institutional services" ranging from intensive treatment and psychiatric services to less elaborate services such as "partial hospitalization, skilled nursing care, home care and care in facilities providing general custodial care." (VOL I, P 153)</p>						<p>Due to time constraints, we were unable to identify specific payments made to specific mental health service providers that meet the definition of mental health as provided by DISS. In reading the FY77 PLAN, it appears as though services provided to the elderly are to be considered a mental health program. DSM-III is specific as to those diagnoses considered mental disorder.</p>
<u>Total Older Alaskans Commission</u>	<u>\$18,018,000</u>	<u>\$54,640,000</u>	<u>Indeterminate</u>	<u>Indeterminate</u>		

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<u>Department of Administration</u>							
<u>Division of Administrative Services</u>							
<u>Municipal Grants</u>							
<u>Anchorage:</u>							
Anchorage Child Abuse Board/ Crisis Nursery Program		462,000			<p><u>Program Description:</u> The Department of Administration administers grants awarded by legis- lative appropriation to municipal governments. Some of these grant awards are for the purposes of mental health or related facilities or services.</p> <p><u>Mental Health Analysis:</u> None made.</p> <p><u>Program Management Analysis:</u> None made.</p> <p><u>For All Municipal Grants:</u> Most municipal grants administered by Department of Administration (FY FY 86) and selected those awards appeared to relate to mental he- alcohol and/or drug abuse treat- child abuse, and women's shelter programs. Actual expenditures allocated 100%.</p> <p>Prior to FY 81, any municipal go- appropriations were administered Department of Community and Regi- Affairs (DCRA). DCRA was contin- appropriation legislation was so No mental health related grants noted for FY 79 - FY 81. Commu- health facilities which may or serve mental health or related have been funded by legislative appropriation; however, no means allocating those expenditures re- to mental health has been deter- and thus excluded.</p>		
Family Institute of Alaska/ Family Therapy		65,000					
Alaska Semi-Supportive Homes		33,200					
Women's Shelter Facility		3,500,000					
Mental Health Facility		300,000					
Mental Health Facility		1,700,000					
Alcohol Treatment Facility		88,000					
Community Mental Health Center		100,000					
Community Mental Health Center		750,000					
Transition House - Transition Care Facility		50,000					
<u>Bethel:</u>							
Women's Shelter Construction, Phase II		900,000					
Phillips Alcohol Treatment Center/Expansion		769,800	Indeterminate				
<u>Fairbanks:</u>							
Women in Crisis - Building Funds		47,000		Indeterminate			
Alcohol Treatment Facility		1,200,000					
Native Association - Alcohol Treatment Facility Construction		200,000					
Alcohol Treatment Facility		191,200					
<u>Fairbanks North Star Borough:</u>							
Women in Crisis - Equipment		11,400					
Fairbanks Rehabilitation Association - Building Repairs/Master Plan		55,000					
Fairbanks Rehabilitation Associ- ation Group Home		72,000					
Group Home Purchase		211,000					
<u>Bobert:</u>							
Community Mental Health Building		245,200					
<u>Juneau:</u>							
Developmentally Disabled Adult Facility		200,000					
Detoxification Facility Improvements		116,853					
Reach, Inc. - Sheltered Workshop Construction		64,000					
Women's Shelter Facility Completion		140,000					
Reach, Inc. - Group Home		-0-					

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Department of Administration						
Division of Administrative Services						
Municipal Grants (cont.)						
Kenai:						
Women's Resource/Crisis Facility		50,000				
Ketchikan:						
Alcohol Treatment Center		80,000				
Mental Health Water & Sewer		35,000				
Kodiak:						
Battered Women & Rape Shelter		275,000				
97 Sitka-Susitna Borough:						
Valley Women's Shelter		199,067				
North Slope Borough:						
Barrow Group Home		-0-				
Sitka:						
Women's Shelter Renovation		50,000				
Shelter Repairs		10,000				
Wasilla:						
Crisis Center Equipment		25,000				
Crisis Line & Information Center		33,000				
Total Division of Administrative Services	\$ -0-	\$11,728,720	Indeterminate	Indeterminate		

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Department Division Program Sub-Program	Program Receipts	Program Expenditures	Allocation Per Mental Health Analysis	Allocation Per Program Management Analysis	Program Descriptions and Analyses of Mental Health Professionals and Program Managers	Nature and Extent of Audit Review, Allocation Pro- and Other Comments
<u>Department of Public Safety (DPS)</u>						
<u>Commissioner's Office</u>						
<u>Council on Domestic Violence and Sexual Assault (CDVSA)</u>	2,179,790	26,467,668			<p><u>Program Description:</u> CDVSA has the following service categories:</p> <p><u>Adult Victims:</u> Shelter, crisis intervention, counseling (group and individual), referral services, consultation, advocacy assistance pertaining to legal, employment, housing, day care, social service, medical, financial and educational needs; child care, safety checks and follow-up, and transportation.</p> <p><u>Child Victims:</u> Advocacy, support, counseling and shelter.</p> <p><u>Batterer:</u> Counseling, consultation and referral services.</p> <p><u>Public:</u> Prevention and education programs to change attitudes and behavior surrounding domestic violence and sexual assault.</p>	
<p>The FY77 PLAN does not directly address or identify any program aspects of CDVSA. In general, it seems that CDVSA activities would fall under the category of "comprehensive services." The FY77 PLAN states that "the concept of comprehensiveness embraces the notion that the full range of mental health services is available, including those services directed to primary prevention, mental health promotion and maintenance, prediction of mental health states, diagnosis, treatment, and rehabilitation. Within each category or type of service, specific services would be determined to match the specific needs of specific populations." (VOL I, PP 149-150)</p>			-0-		<p><u>Mental Health Analysis:</u> To the extent that individuals receiving counseling from CDVSA programs have been identified by psychological evaluations as having a DSM-III diagnosed mental disorder, the programs may qualify as mental health related expenditures. Antisocial behavior, such as domestic violence and sexual assault, while being perhaps a symptom of a mental disorder is not considered a diagnosable DSM-III mental illness. Additionally, domestic violence and sexual assault are not included in the statutory definition of mental illness.</p>	Expenditures recorded in the accounting records for CDVSA as codes are not mental health related.
<p>The FY77 PLAN develops a table of "indicators of need" for mental health services for various regions in the State. Included in this table is a comparison of the region's rate of "selected criminal offenses" to the State average. Among these "selected criminal offenses" considered indicators of mental health services needs are forcible rape and aggravated assault. CDVSA, in part, deals with some of the victims of these crimes. (VOL V, PP 18-21)</p>				26,467,668	<p><u>Program Management Analysis:</u> Because CDVSA provides services to recipients whose circumstances impact their mental health status, management recommends 100% allocation of CDVSA expenditures to the Mental Health Program. This recommendation is based on the program's nature of raising its clients' mental health through its services.</p>	Expenditures recorded in the accounting records for CDVSA as codes are allocated to the Mental Health Program 100%.
<u>Total Council on Domestic Violence and Sexual Assault (CDVSA)</u>	<u>\$2,179,790</u>	<u>\$26,467,668</u>	<u>\$ -0-</u>	<u>\$26,467,668</u>		

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SB65

Federal Act Creating Trust

70 STAT.]

PUBLIC LAW 830—JULY 28, 1956

709

Public Law 830

CHAPTER 772

AN ACT

To confer upon Alaska autonomy in the field of mental health, transfer from the Federal Government to the Territory the fiscal and functional responsibility for the hospitalization of committed mental patients, and for other purposes.

July 28, 1956
[H. R. 6376]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Alaska Mental Health Enabling Act".

Alaska Mental Health Enabling Act.

TITLE I—AUTHORITY OF THE TERRITORY OF ALASKA
IN THE FIELD OF MENTAL HEALTH

POWERS OF THE TERRITORIAL GOVERNMENT

SEC. 101. For the purpose of vesting in the Territory of Alaska authority comparable in scope to that of the States and other Territories of the United States in the field of mental health, the Territorial legislature is hereby authorized to enact such laws on the subject of mental health as it may deem appropriate, and such legislation may supersede any of the Acts cited in section 301.

FUNCTIONS OF COURTS

SEC. 102. In carrying out section 101, the Territorial legislature is authorized to confer upon United States commissioners, as ex officio probate judges, and upon the United States District Court for the Territory of Alaska, such jurisdiction, functions, and duties as it may deem appropriate for such purpose.

EFFECTIVE DATE

SEC. 103. This title shall become effective on the date of enactment of this Act.

TITLE II—GRANTS

SPECIAL GRANTS TO ALASKA FOR MENTAL HEALTH

SEC. 201. Title III of the Public Health Service Act, as amended, is hereby amended by adding thereto a new part as follows:

58 Stat. 691.
42 USC 201 note.

"PART H—GRANTS TO ALASKA FOR MENTAL HEALTH

"GRANTS FOR ALASKA MENTAL HEALTH PROGRAM

"SEC. 371. (a) There are hereby authorized to be appropriated the following sums to be available to the Surgeon General of the Public Health Service for the purpose of making grants to the Territory of Alaska to assist it to carry out plans, submitted by the Governor of the Territory or his designee and approved by the Surgeon General, for an integrated mental health program for the Territory, including outpatient and inpatient care and treatment: For each of the fiscal years ending June 30, 1958, and June 30, 1959, the sum of \$1,000,000; for each of the fiscal years ending June 30, 1960, and June 30, 1961, the sum of \$800,000; for each of the fiscal years ending June 30, 1962, and June 30, 1963, the sum of \$600,000; for each of the fiscal years ending June 30, 1964, and June 30, 1965, the sum of \$400,000; and for each of the years ending June 30, 1966, and June 30, 1967, the sum of \$200,000.

Appropriations.

Estimated pay-
ments.

"(b) The Surgeon General shall, prior to the beginning of each calendar quarter or such shorter period as the Surgeon General may find necessary, estimate the cost of carrying out the approved plan, on the basis of estimates furnished by the Territory, including estimates of the amount of contractual obligations for hospitalization, and on the basis of such further investigations as he may find necessary. From the amounts appropriated for any fiscal year, the Surgeon General shall pay to the Territory the amount requested by it but not to exceed the amount so estimated by the Surgeon General for each such period, reduced or increased, as the case may be, by any sum (not previously adjusted under this section) by which he finds that the amount paid for any prior period was greater or less than the amount which should have been paid. The amount of any balance of payments made to the Territory under this section and remaining unobligated on July 1, 1967, shall be repaid to the Treasury of the United States.

"(c) Whenever the Surgeon General finds, after affording opportunity for hearing, that the Territory has failed to comply substantially with any provisions of the approved plan, he shall notify the Governor that no further payments will be made under this section (or that further payments will not be made for parts of the plan affected by such failure) until he is satisfied that there will no longer be any such failure.

"(d) For the purpose of facilitating the administration of the Territory's mental health program, the Surgeon General is authorized to enter into arrangements with the Territorial government to provide for the care and treatment, in hospitals operated by the Service, of patients requiring hospitalization. Such arrangements shall be subject to the availability of suitable facilities therefor and shall provide for charges to the Territorial government in amounts determined by the Surgeon General which shall be sufficient to cover the full cost of such care and treatment. Upon payment by the Territory the amount of such charges shall be credited to the appropriation from which such costs were incurred: *Provided*, That, during the period of grants under this section, payment may be effected by deductions from the amount of such grants otherwise payable to the Territory, with such deductions to be credited to the appropriation from which such costs were incurred.

"PAYMENTS FOR CONSTRUCTION OF HOSPITAL FACILITIES

"SEC. 372. (a) There is hereby authorized to be appropriated an amount not exceeding the total sum of \$6,500,000, to remain available until expended, to enable the Surgeon General to make payments to the Territory of Alaska as the total contribution of the Federal Government to be used in defraying the cost of construction of hospital and other facilities in Alaska needed for the carrying out of a comprehensive mental health program.

"(b) Such facilities shall be scheduled for construction in accordance with a comprehensive construction program, developed by the Territory in consultation with the Public Health Service and approved by the Surgeon General. Projects shall be constructed in accordance with such approved program and in accordance with plans and specifications for the project approved by the Surgeon General.

"(c) Upon certification by the Territory, based upon inspection by it, that work has been performed upon a project, or purchases have been made in accordance with approved plans and specifications, and that payment of an installment is due, the Surgeon General shall certify such installment for payment: *Provided, however*,

That the Surgeon General may cause the project to be inspected at any time, and if such inspection indicates that the project is not being constructed in accordance with approved plans and specifications, he may, after notice and affording opportunity for hearing, withhold further payment until he finds that adequate corrective measures have been taken.

“(d) The term ‘cost of construction’ means the amount found necessary by the Surgeon General for the construction of a project and includes the construction and initial equipment of buildings (including medical transportation facilities), architects’ and engineering fees, the cost of land acquired specifically for the purpose of the project, and on-site improvements.

“(e) If, within twenty years from the date of completion of construction, any hospital or other medical facility constructed with the aid of grants under this section shall cease to be a publicly owned facility operated for the care or treatment of patients under the Territory’s mental health program, the United States shall be entitled to recover from the Territory the then value of the hospital or other medical facility, reduced, however, proportionately to the extent to which the Territory may have contributed to the cost of construction thereof.”

Recovery of value of facility.

LAND GRANT

SEC. 202. (a) The Territory of Alaska is hereby granted and shall be entitled to select, within ten years from the effective date of this Act, not to exceed one million acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: *Provided*, That nothing herein contained shall affect any valid existing rights. All lands duly selected by the Territory of Alaska pursuant to this section shall be patented to the Territory by the Secretary of the Interior.

(b) The lands authorized to be selected by the Territory of Alaska by subsection (a) of this section shall be selected in such manner as the laws of the Territory may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. The authority to make selections shall never be alienated or bargained away, in whole or in part, by the Territory. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved. Upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than ninety days before the date on which it otherwise becomes effective during which period the Territory of Alaska shall have a preferred right of selection, subject to the requirements of this Act, except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right of selection shall have precedence over the preferred right of application created by section 4 of the Act of September 27, 1944 (58 Stat. 748; 43 U. S. C., sec. 282), as now or hereafter amended, but not over other preference rights now conferred by law. As used in this subsection, the words “equitable claims subject to allowance and confirmation” include, without limitation, claims of holders of permits issued by the Department of Agriculture on lands eliminated from national forests, whose permits have been terminated only because of such elimination and who own valuable improvements on such lands.

Trustee

get

(c) All grants made or confirmed under this section shall include mineral deposits: *Provided, however*, That mineral deposits in lands which on January 1, 1956, were subject to public land order numbered 82 of January 22, 1943, shall not be included in said grants, but shall continue to be reserved to the United States.

Mineral deposits.

Leases; sales.

(d) Following the selection of lands by the Territory pursuant to subsection (b), but prior to the issuance of final patent, the Territory shall be authorized to lease and to make conditional sales of such selected lands.

(e) All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide, in order to obtain funds or other property to be invested, expended, or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this Act.

EFFECTIVE DATE

SEC. 203. This title shall become effective on the date of enactment of this Act.

TITLE III—TRANSITIONAL AND GENERAL PROVISIONS

AMENDMENTS AND REPEALS

SEC. 301. (a) Such of the following Acts or parts thereof as the Governor by proclamation shall declare to be superseded by a law or laws hereafter enacted by the Territorial legislature are repealed as of the effective date (specified in such proclamation) of such superseding law or laws, or as of the two hundred and tenth day after the date of enactment of this Act, whichever is later:

(1) Section 8 of the Act of January 27, 1905 (33 Stat. 616, 619; 48 U. S. C. 47);

(2) The first sentence of section 7 of the Act of February 6, 1909 (35 Stat. 600, 601), as amended by section 2 of the Act of October 14, 1942 (56 Stat. 782; 48 U. S. C. 46);

(3) The Act of June 25, 1910 (36 Stat. 852; see 48 U. S. C. 46b);

(4) The Act of April 24, 1926 (44 Stat. 322), as amended by sections 4 and 5 of the Act of October 14, 1942 (56 Stat. 782, 783; 48 U. S. C. 50, 50a); and

(5) Sections 1, 3, 6, 7, 8, and 9 of the Act of October 14, 1942 (56 Stat. 782, 783-785; 48 U. S. C. 46c, 47a, 47b, 47c, 48, 48a).

(b) (1) The Acts and parts of Acts listed in subsection (a), except the Act of June 25, 1910, are, pending their repeal as provided in subsection (a), amended (A) by striking out the words "Secretary", "United States", "Congress", and "Department of the Interior" wherever these words appear, and inserting in lieu thereof the words "Governor of Alaska or his designee", "Territory of Alaska", "the Legislature of Alaska", and "Territory of Alaska", respectively; (B) by inserting immediately before the word "Treasury", wherever it appears, the word "Territorial"; (C) by striking out the word "Federal"; and (D) by amending section 1 (a) of the Act of October 14, 1942, to read as follows: "'Governor' means the Governor of Alaska or his designee;": *Provided*, That the words "United States" where

48 USC 46c, 47a, 47b, 47c, 48, 48a.

they appear as a part of the term "United States Veterans' Bureau facility" in section 6 of the Act of October 14, 1942, shall not be struck.

(2) The amendment, by this subsection, of any Act or part of Act specified in subsection (a) shall take effect on the two hundred and tenth day after the date of enactment of this Act and shall cease to be effective upon the repeal of the Act or part of Act which it amends, as provided in subsection (a).

(c) Effective upon the date of enactment of this Act, section 3 of the Act approved August 24, 1912 (37 Stat. 512; see 48 U. S. C. 24), entitled "An Act to create a legislative assembly in the Territory of Alaska, to confer legislative power thereon, and for other purposes", is amended by inserting the following at the end of the first sentence of such section, immediately before the period: "or to prevent the legislature from altering, amending, modifying, or repealing section 8 (relating to commitment of insane persons) of the aforesaid Act approved January twenty-seventh, nineteen hundred and five".

(d) (1) Any vested rights or liabilities existing, and any commitment proceeding commenced, under any Act or part thereof prior to the effective date of the amendment or repeal of such Act or part thereof by this section shall not be affected by such amendment or repeal.

(2) With respect to the money or property of any patient who has died or eloped prior to the enactment of this Act, or who will have died or eloped prior to the two hundred and tenth day following such enactment, the functions of the Secretary of the Interior under the Act of April 24, 1926, as amended (48 U. S. C. 50, 50a), and the requirement of certification of the claim to Congress if established more than five years after such death or elopement, shall remain in effect notwithstanding the amendment or repeal of such Act by this section.

EXISTING CONTRACT AND APPROPRIATIONS

SEC. 302. (a) Within two hundred and ten days after the date of enactment of this Act, the Secretary of the Interior, with the concurrence of the Governor of Alaska, may either (i) assign all of his rights and duties under contract numbered 14-04-001-31, entered into on June 18, 1953, between the Secretary of the Interior on behalf of the United States, and the Sanitarium Company of Portland, Oregon, to the Territory of Alaska, such assignment to become effective on the two hundred and tenth day after the date of enactment of this Act, or (ii) terminate the said contract in accordance with the terms thereof. Upon the effective date of any such assignment, such contract shall have the same binding effect upon the Territory as it had upon the United States prior to such assignment.

(b) On the two hundred and tenth day after the date of enactment of this Act, so much of all unexpended balances of appropriations as are available to the Department of the Interior for the care of the Alaska insane shall be transferred to the Governor of Alaska to be available for expenditure by him for the administration of the Acts specified in, and in part amended by, section 301 and for the administration of the laws of the Territory of Alaska enacted pursuant to section 101 of this Act, and the Secretary of the Interior shall, upon such transfer or as soon as practicable thereafter, transfer to the Governor of Alaska all papers and documents used primarily in the administration of all laws pertaining to the Alaska insane. For the remainder of the fiscal year ending June 30, 1957, there are hereby authorized to be appropriated to the Secretary of the Interior for transfer to the Governor of Alaska such additional sums as may be necessary for the care of the Alaska insane during that fiscal year.

Effective date.

Prior rights, etc.

Appropriation.

(c) Until July 1, 1957, expenses for the transportation to a mental institution outside of Alaska of all patients to be hospitalized pursuant to a commitment under section 8 of the Act of January 27, 1905 (33 Stat. 616, 619, 48 U. S. C. 47), or to be hospitalized in such a mental institution pursuant to a commitment under a law of the Territorial legislature superseding such Act of January 27, 1905, shall be paid by the Department of Justice.

Approved July 28, 1956.

STATE of Alaska,
Appellant/Cross-Appellee,

v.

Vern T. WEISS, et al.,
Appellee/Cross-Appellant.

Nos. S-653, S-678.

Supreme Court of Alaska.

Oct. 4, 1985.

Class action was brought against State for breach of public trust in enacting legislation redesignating federal mental health grant lands as general grant lands. The Superior Court, Fourth Judicial District, Fairbanks, Warren W. Taylor, J., ruled the legislation could not be invalidated, but that the State breached its duties as trustee by removing federal grant lands from the trust. The state appealed, and plaintiffs cross-appealed. The Supreme Court, Compton, J., held that: (1) the State breached its duties as trustee in redesignating the land, and (2) the redesignation legislation was invalid.

Affirmed in part, reversed in part and remanded.

1. Public Lands ⇄62

In passing the Alaska Mental Health Enabling Act, the United States Congress intended to create a trust, to be based on a corpus of one million acres of federal land, to help effectuate the creation and operation of mental health care facilities in the state, and the state, as trustee, had no power to alter the status of the property grant, thereby effectively terminating the trust. Alaska Mental Health Enabling Act, § 101 et seq., 70 Stat. 709; Laws 1978, c. 181, § 3(a).

2. Public Lands ⇄62

In passing act [Laws 1978, c. 181, § 3(a)] redesignating trust lands given state by United States Congress under Alaska Mental Health Enabling Act as general grant land, the State went beyond the power which had been granted it with re-

spect to the land by Congress and the redesignation act was therefore invalid. Alaska Mental Health Enabling Act, § 101 et seq., 70 Stat. 709.

G. Thomas Koester, Asst. Atty. Gen.,
Norman C. Gorsuch, Atty. Gen., Juneau,
for appellant/cross-appellee.

Stephen C. Cowper, Fairbanks, for appel-
lee/cross-appellant.

Russ Winner, McGrath & Associates, An-
chorage, for amicus curiae Cook Inlet Re-
gion, Inc.

Before RABINOWITZ, C.J., and
BURKE, MATTHEWS and COMPTON, JJ.

OPINION

COMPTON, Justice.

The State of Alaska ("state") appeals from a judgment of the superior court holding that the state breached its duty as trustee of federal mental health grant lands when the legislature redesignated the property as "general grant land." For the reasons set forth below, we affirm the holding to this extent, but reverse the superior court's conclusion that the redesignation legislation was valid.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1956 the United States Congress passed the Alaska Mental Health Enabling Act (AMHEA) which, insofar as it concerns this case, granted the Territory of Alaska one million acres of federal land to be held in public trust to help effectuate the creation and operation of mental health care facilities in Alaska. Pub.L. No. 84-830, 70 Stat. 709 (1956). Section 202(e) of the Act specifically provides:

All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds

and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide in order to obtain funds or other property to be invested, expended or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this Act. (emphasis added)

The state managed these lands without maintaining a separate account until 1978. The Alaska State Legislature made its practice law in 1978 when it passed the following statutory provision:

REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND

(a) Land granted to the state under the Mental Health Enabling Act of 1956, 70 Stat. 709, and patented to or approved for patent to the state on July 1, 1978 and land designated as mental health land which was received by the state in exchange for land granted under that federal land grant is redesignated as general grant land and shall be managed and disposed of by the Department of Natural Resources under applicable provisions of law.

Ch. 181, § 3(a), SLA (1978).

Alaska has provided continuous mental health care since statehood. The record indicates that between 1959 and 1982 the state spent over \$222,000,000 on mental health care. Generally speaking, there has been a constant increase from 1959 to the present in mental health expenditures: slightly less than \$1,200,000 was expended in 1959, and slightly more than \$29,000,000 was expended in 1982. The record does not

indicate how much of the trust land at issue has been disposed of, nor the total value of such disposed land. In the state's answer to the complaint, it alleges that "state expenditures for mental health purposes exceeded revenues from mental health grant lands in all years for which revenues from those lands were tabulated separately." The record does indicate that as of 1973, total revenues from these mental health trust lands amounted to \$19,555,582. The state's total expenditures to that point amounted to \$66,726,176.

Weiss *et al.* filed a class action in 1982 alleging that the state breached the public trust by 1) failing to account for revenues realized, 2) using revenues for purposes other than mental health care and 3) passing legislation redesignating the property "general grant land." Plaintiffs sought declaratory relief invalidating the redesignation legislation; injunctive relief compelling the state to administer the trust according to the law; general relief establishing a trust account "for the receipt of funds generated from all lands selected by the State of Alaska under the aforesaid mental health land grant...."

The superior court ruled that invalidation of the redesignation legislation was not an available remedy, based on *State v. University of Alaska*, 624 P.2d 807, 815 (Alaska 1981). However, the court did hold that the state breached its duties as trustee by removing the federal grant lands from the trust. As a remedy, the court ordered that [t]he public trust established by P.L. 84-830, 70 Stat. 709, shall recover from the defendant State of Alaska an amount equal to the fair market value of all lands conveyed from the trust as of the date of conveyance, plus prejudgment interest from the date of each conveyance. For the purposes of this judgment, all lands remaining in the trust as of July 19, 1978, shall be considered as having been removed from trust status by the State of Alaska on that date....

The court also ordered a set-off for all monies spent by the state on mental health care.

The state except the h legislation w: pealed the tr legislation in

II. DID THE PUBLIC GROSS PROCEED "GENERAL"

A. Nature

The state redesignation because the s lic mental he: implicitly, wi. The state m programs ful to AMHEA, other public p this position Section 202(e and income s the necessar health progra ed that this tended that th nue base gu placed on th HEA which e

1. The debates lengthy to req certain remar sions. Senate income from support the r The income v pose. Any m need for the used for oth noted that th fundamental purpose of gr as in all other school land: 9761 (June 7.

We note tha was changed the land gran Alaska's men the proceeds necessary exp gram" only b of Congress t

The state appeals from the judgment, except the holding that the redesignation legislation was valid. Weiss *et al.* cross-appealed the trial court's failure to rule the legislation invalid.

II. DID THE STATE BREACH THE PUBLIC TRUST CREATED BY CONGRESS WHEN IT REDESIGNATED PROPERTY IN THE TRUST AS "GENERAL GRANT LAND?"

A. Nature of the Trust.

The state argues, essentially, that the redesignation is of no legal consequence because the state has always provided public mental health programs in the past and, implicitly, will provide them in the future. The state maintains that providing such programs fulfills its obligations according to AMHEA, freeing the grant lands for other public purposes. Textual support for this position comes from the portion of Section 202(e) which states that "proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska." It is suggested that this language means Congress intended that the land grant serve as a revenue base guarantee. Great emphasis is placed on the legislative history of AMHEA which establishes that Congress did

1. The debates in the House and Senate are too lengthy to reproduce in their entirety here, but certain remarks are representative of the discussions. Senator Jackson commented that "[t]he income from sales or leases will be used to support the mental health program in Alaska. The income will be held in trust for that purpose. Any money received over and above the need for the mental health program may be used for other public purposes." He further noted that the language change was not of a fundamental nature, and thus said that, "[t]he purpose of granting 1 million acres is the same as in all other similar grants, such as the public school land-grant program." 102 Cong.Rec. 9761 (June 7, 1956).

We note that the language in the federal grant was changed from designating the proceeds of the land grant to be used as a public trust for Alaska's mental health program, to saying that the proceeds "shall first be applied to meet the necessary expenses of the mental health program" only because of worry among members of Congress that the land may actually have a

not wish to limit the use of grant lands *exclusively* to mental health programs.¹

[1] Despite these observations, we think it irrefutable that Congress intended to create a trust, to be based on a corpus of one million acres of federal land. It is a commonplace of the law that without trust property there can be no trust. Restatement (Second) of Trusts § 74 (1959).² When the state, through the legislature, altered the status of the property grant the trust was thereby effectively terminated. The state, as trustee, had no power to do this and consequently breached its duty to preserve the corpus.³ The fact that the state has provided mental health care in the past and will most likely do so in the future is no justification for termination of the trust. Whether a beneficiary can rely on the *bona fides* of a trustee to continue voluntarily to uphold the terms of a defunct trust is quite beside the point. We decline the opportunity to encourage the state, or any trustee for that matter, to determine unilaterally when to terminate a trust without specific authority to do so.

B. Remedy.

[2] Having concluded that the state breached the trust, we find it necessary on the facts of this case to invalidate the redesignation statute, Ch. 181, § 3(a), SLA (1978). *State v. University of Alaska*, 624

value far in excess of the necessary health care expenses. The record in this case shows that income from the land grant was actually less than state expenditures for mental health programs.

2. Section 74 provides: "A trust cannot be created unless there is trust property."
3. Our reliance upon basic trust law principles finds ample support in the precedents of this court and the United States Supreme Court. See *Lassen v. Arizona*, 385 U.S. 458, 87 S.Ct. 584, 17 L.Ed.2d 515 (1967); *State v. University of Alaska*, 624 P.2d 807 (Alaska 1981). Both *Lassen* and *University of Alaska* involved federal grants to be used by states for school purposes. Those cases stand for the proposition "that the same private trust law principles are to apply to federal land granted to the states for school purposes." *University of Alaska*, 624 P.2d at 813. There is no reason to treat federal lands granted for mental health purposes differently.

P.2d 807, 815 (Alaska 1981) does not compel a different result. In that case, the federal government had granted 100,000 acres to the state "for the exclusive use and benefit" of the University. *Id.* at 811. Years after the grant, the state included 5,040 acres of the trust land in a state park. This action was not in itself a breach of the trust so long as the University was paid fair market value for the land. We inferred that the legislature intended to pay the University for this disposition, stating:

It is also logical to assume that the legislature intended to compensate the University for the loss of its land. This view gives the statute creating [the park] a reading that is in accord with the well recognized canon of statutory construction that, when possible, legislation should be construed in a way that upholds its validity.

524 P.2d at 816.

Unlike the situation in *University of Alaska*, the present case does not involve a disposition of a portion of trust lands for a specific use. Instead, the entire corpus of the trust is intermingled with the general grant lands of the state. No particular use of the trust lands is specified and it may be years before much of the land is used. While it was reasonable to infer a legislative intent to pay for 5,040 acres for which there was a present park land use in *University of Alaska*, it is not reasonable to infer that the legislature meant to pay for a quantity of trust land approaching one million acres for which in large part there is no present use. Thus, the payment remedy imposed in *University of Alaska* is not appropriate here. Because the state in passing the redesignation act went beyond the power which had been granted it with respect to the trust lands by Congress, the redesignation act must be declared invalid.

It follows from our conclusion that the redesignation legislation is invalid that the trust must be reconstituted to match as nearly as possible the holdings which com-

4. Amicus raises questions regarding the title held by conveyances and bona fide purchasers of mental health lands. In view of our disposi-

tioned the trust when the 1978 law became effective. The case is remanded so that requisite findings can be made. We take this opportunity to provide some guidance to the trial court to simplify its task.

Those general grant lands which were once mental health lands will return to their former trust status. In the event exchanges have been made, those properties which can be traced to an exchange involving mental health lands will also be included in the trust. To the extent that former mental health lands have been sold since the date of the conveyance the trust must be reimbursed for the fair market value at the time of sale. In calculating the total amount owed, the trial court should grant a set-off for mental health expenditures made by the state during the same period. In the event that expenditures exceeded the value of lands sold, the state need not furnish cash as part of the reconstitution. The goal is to restore the trust to its position just prior to the conveyance effected by the redesignation legislation.⁴

AFFIRMED in part, REVERSED in part and REMANDED for further proceedings consistent with this opinion.

MOORE, J., not participating.



In the Matter of the Application of: John L. McKAY, Jr., An Applicant for admission to the Practice of Law in Alaska and Membership in the Alaska Bar Association.

No. S-667.

Supreme Court of Alaska

Sept. 27, 1985.

Applicant for Bar filed an appeal with Board of Governors of the Alaska Bar As-

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Remand Opinion, drawn.

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John L. McF R. Eldridge & Hicks, Anch Alaska Rep. 705-707

tion of this case, we deem it unnecessary to address those issues at the present time.

In Brief:

MENTAL HEALTH LAND



Alaska Department of
**NATURAL
RESOURCES**

Division of Land and Water • January, 1991

The Mental Health Enabling Act

In 1956, the U.S. Congress granted the Territory of Alaska one million acres of land to be used first to fund mental health programs. Any funds left over could be used for other public purposes at the discretion of the legislature.

Land was selected under the Mental Health Enabling Act between 1956 and 1966¹, and included areas along transportation routes and near the state's population centers. Mental health lands were managed by the state as trust land, and, in 1976, the Mental Health Trust Board was established to provide oversight.

Under the enabling act, mental health land could be sold. By 1978, 19,800 acres had been sold to individuals. Income received from mental health land and resources was placed in a separate account within the general fund. As the state's population grew, so did pressure to use these lands for purposes that might produce little or no revenue. Among those uses were municipal expansion, public facilities, utilities, recreation and charitable activities.

Redesignation and Litigation

In 1978, the legislature redesignated the mental health land as general statehood grant land to be managed similar to other state land. In return, the legislature was to annually appropriate 1.5 percent of the state's annual income from land and resources to the mental health trust. However, the legislature did not appropriate the money,² and on November 26, 1982, a class action law suit was filed in Superior Court on behalf of several mental health beneficiaries (Weiss v. State of Alaska).

In 1984, the Superior Court directed the state to pay the trust for the mental health land redesignated as general statehood grant land in 1978. In order to value that land, the state produced an accounting of mental health land and assembled a panel of three appraisers to assign a 1978 value to the redesignated lands.³

The Superior Court decision was appealed to the Alaska Supreme Court and, on October 4, 1985 that court invalidated the 1978 redesignation.

The court required the state to restore the mental health land holdings as much as possible to their pre-1978 status and to compensate the trust for the value of the land already conveyed, minus prior state expenditures made for mental health programs⁴. The Supreme Court decision also returned the case to the Superior Court so that the remaining issues could be decided. As a result, income from mental health land transactions again began to flow into a specially designated mental health trust account within the state's general fund. In addition, the Department of Natural Resources adopted safeguards to prevent further diminution of the trust (Department Order 121); appointed an Interim Mental Health Trust Officer; and audited mental health land status as of the 1985 court decision.⁵

Legislative Action

In 1986, the legislature passed two bills affecting mental health land. The bills established two bodies: a five-member Interim Mental Health Trust Commission to oversee management of mental health trust land and to develop recommendations for legislation relating to those lands and mental health programs of the state; and a Joint Special Committee on Mental Health Trust Land to hold public hearings and develop a proposal to resolve the mental health trust litigation, particularly from the aspect of annual funding levels for mental health programs.

Based upon the recommendations of the Commission and the Committee, the 1987 legislature passed a bill initiating a mechanism for settlement. A three-member Interim Mental Health Trust Commission was established and charged with approving procedures for the Department of Natural Resources' commissioner to use to determine the fair-market-value of mental health land as of September 7, 1987 (the effective date of the bill); selecting land within legislative designations to equal the value of the original mental health land granted to the state; and continuing oversight of mental health land management. The framers of the bill envisioned a designation "switch," that would release existing mental land from trust status, and replace it with land within legislative designations, such as parks and refuges. The designated land would then be

leased from the trust at eight percent of its value. The proposal would secure the trust with land already removed from the Public Domain, and provide income to the trust through rental of the land. The 1987 bill also established a separate board to consider state mental health needs and funding levels.

Valuation

In 1988, the commission contracted with nine independent fee appraisers to determine the fair-market-value of the surface estate of mental health land. The appraisers set that value at \$511.9 million. However, attorneys for the plaintiffs and intervenors disagreed and hired their own review appraisers. These review appraisers, operating under the direction to determine "the highest value supported by market data" concluded that the surface estate was worth \$833.3 million.

The commission initially decided that there were insufficient data to establish a sub-surface value. Instead, lands with mineral potential were to be replaced with land of similar potential. However, the attorneys for the plaintiffs and intervenors hired a consultant who established a sub-surface value of \$1.5 billion. This value was challenged by several independent experts who concluded that it was not fair-market-value and could not be supported.

In December, 1989, the commission adopted a value of \$2.23 billion for all mental health land. A minority report was prepared by the department establishing the fair-market-value of mental health land at \$564 million. The Commissioner of Natural Resources disagreed with both values, stating that they did not reflect the fair-market-value required by the legislation, and declared an impasse.

1990 Actions

In the 1990 legislative session, several alternatives were proposed to resolve this issue. A bill was introduced removing the fair-market-value requirement from the 1987 legislation, adopting the commission's \$2.23 billion figure and providing for a periodic land revaluation index

based on municipal land assessments. This value would then be the basis for future mental health program expenditures. However, many legislators opposed this approach because it would cause the mental health revenue account to exceed the entire state general fund within a relatively short time-frame.

The 1990 legislature eventually passed SB 498 allocating up to six percent of the state's annual unrestricted general fund revenue to the mental health income account, and redesignating over nine million acres of legislatively designated land as mental health land to secure the trust. In return, the original mental health trust land was redesignated to general state land status. The legislature remains responsible for determining mental health program expenditure levels. However, mental health advocates did not support the bill.

On July 9, 1990, the Superior Court granted a temporary injunction preventing the state from taking any further action on mental health land. On September 7, 10, and 11, attorneys for the mental health litigants filed a Notice of Lis Pendens on the million acres of mental health land. The notice warns people that the title to the property is in litigation, and that they are in danger of being affected by an adverse judgement. This notice is affecting many private transactions as Alaskans attempt to sell their properties, or use them as collateral.

The state petitioned the court to mitigate the effects on third party owners of mental health land and allow the state to issue patent for land that has been paid for. The court refused, however, stating that the plaintiffs "would be within their rights to litigate the issue of third-party rights." Still pending is a motion by the state for declaratory judgement to determine whether the plaintiffs are entitled only to monetary compensation for the prior transfer of mental health land to third parties.

Another outstanding issue yet to be addressed by the court is whether the 1990 legislation complies with the 1985 Supreme Court Weiss decision.

Endnotes

1. State records show that 1,006,843.88 acres of mental health land have been received by the state under the mental health grant. The state is involved in a survey recalculation project to rectify this apparent over-conveyance.
2. The 1.5% appropriation would have amounted to approximately \$71 million by the end of FY 82; it would have grown to \$147 million by the 1985 Supreme Court decision.
3. The 1978 value of mental health land in state ownership as of the redesignation in 1978 was established under this process as \$281,997,805. Brought forward to July, 1985 at 10.5% settlement interest, the total was estimated at \$567,259,354.
4. Total income for mental health land from 1959-1977 was \$25,110,480. State mental health expenditures during this same period were \$115,364,054 with an additional \$16,430,771 being spent on alcohol and drug abuse programs.
5. 1985 mental health land status:

Mental Health Land no longer in state ownership

The following conveyances were not disputed by mental health plaintiffs in 1985:

- 46,000 acres were sold to individuals
- 5,000 acres were condemned for the Chena River Lakes flood control project.
- (Total remaining mental health land: 949,000 acres)

The following conveyances were disputed by the mental health plaintiffs:

- 43,000 acres conveyed to municipalities
- *36,000 acres were conveyed to Native corporations
- *3,000 acres were conveyed to the University of Alaska
- (Total remaining mental health land: 867,000 acres)
- *These conveyances were made under litigation settlement agreements and land exchanges.

Encumbrances

- 368,000 acres were legislatively designated for parks, etc.
- 6,685 acres were under land lease
- 54,600 acres were under coal lease
- 131,900 were under oil & gas lease
- 4,500 acres were covered by inter-agency land management assignments or transfers (e.g. for state facilities)
- 1,900 acres were covered by material sales
- 28,000 acres supported timber sales
- 62,000 acres were covered by state mining claims

MEMORANDUM

Department of Natural Resources

State of Alaska

Division of Land & Water Management

TO: Harold C. Heinze
Commissioner

DATE: January 28, 1991

FILE NO: 9346.2A

TELEPHONE NO: 762-2692

FROM: Gary Gustafson
Director

SUBJECT: Information to Respond to
Senator Duncan's Proposal to
Resolve Mental Health Trust
Litigation

Pursuant to your request for information to respond to Senator Duncan's proposal to resolve mental health trust litigation the following information has been jointly developed with the Division of Management.

As requested, we used the Interim Mental Health Commission's valuation of the original mental health lands of \$2.243 billion*. The following valuations have been calculated for each category of land status:

** 1. Unencumbered mental health land.

- a. Commission value of parcels — \$107,474,538.29 (209,415 Acres)
- b. Mineral Estate value of parcels only — value included in overall commission value above \$73,264,200.33

2. Original mental health trust land located within Legislative Designated Areas (LDA).

- a. Commission value of parcels in state ownership — \$762,113,782.30
- b. Commission value of parcels within LDA boundary but conveyed from state ownership — \$3,048,455.13

3. Encumbered mental health land.

This value is determined by subtracting the commission value of the unencumbered mental health level plus the commission value of the mental health trust land located within LDA from the total value of \$2.243 billion.

- ADD
- a. Commission value — \$1,370,363,224.28 (422,585 A)

GG:CS:eg

* The commission value consists of (1) the commission value of the land, (2) timber FMV, (3) coal FMV, (4) oil and gas FMV, (5) sand and gravel FMV and (6) high value for the minerals.

** The unencumbered parcels are determined by a computer run to the nearest section of mental health land by excluding specific LAS case types that could constitute an encumbrance. The case types include all rights-of-way and easements. Closed case files including closed patented files prior to 1993 were not entered in LAS.

MENTAL HEALTH TRUST LANDS INVENTORY

<u>KEY</u>	<u>CATEGORY</u>	<u>ACRES</u>
	1. TRUST LAND BASE	1,000,000
[]	2. LAND SALES	51,286
	*Land Sales to Individuals *Chena River Water Project Condemnation	
[]	3. LAND EXCHANGES	39,269
	*CIRI/USA (1979) *Seldovia (1979) *U of A Settlement (1982)	
[]	4. MUNICIPAL DISPOSAL	43,088
[]	5. PARKS, FORESTS, REFUGES, etc.	372,268
	*State Refuge and Habitat Areas *State Forests *State Parks *Interagency Transfers	
[]	6. ENCUMBERED WITH LEASE, CONTRACT, etc.	281,791
	*Land Leases *Mining Claims *Coal Leases *Oil and Gas Leases *Material and Timber Sale Contracts *Permits	
[]	7. UNENCUMBERED	212,300

SOURCE: Alaska Department of Natural Resources (all figures \pm 5%)

THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

VERN T. WEISS, father and next)
 friend of CARL WEISS, a minor)
 child, and EARL HILLIKER, on)
 behalf of themselves and all)
 others similarly situated; the)
 ALASKA MENTAL HEALTH ASSOCIATION,)
 MARY C. NANUWAK and JOHN MARTIN,)
 on behalf of themselves and all)
 others similarly situated,)
 ANITA BOSEL, FRANCES DOULIN,)
 SHARON GOODWIN, and GABRIEL)
 MAYOC and H.L., M.F. and ALASKA)
 ADDITION REHABILITATION SERVICES,)
)
 Plaintiffs,)
)
 vs.)
)
 STATE OF ALASKA,)
)
 Defendant.)

Case No. 4FA-82-2208 Civil

MEMORANDUM DECISION AND ORDER

This case comes before the court on two motions for preliminary injunction. On March 5, 1990, the State of Alaska, defendant, requested a preliminary injunction restraining the plaintiffs, intervenors, and all members of the classes they represent ("plaintiffs") from (1) challenging the current record title to any lands selected by and patented to the state under the Alaska Mental Health Enabling Act, P.L. 84-830; (2) filing lis pendens with the state recorder with respect to any such lands; and (3) taking any other action which would cast a legal cloud on the current record title to any such lands, whether that

legal title in the state, political subdivisions of the state, or third parties. On June 25, 1990, plaintiffs moved for a preliminary injunction and temporary restraining order prohibiting the State of Alaska from issuing any patents or any other documents or taking any further steps which convey or transfer mental health trust lands or any interest or interests therein, including without limitation, any permits to use or occupy mental health trust lands, or extract resources from any mental health trust lands, pending final resolution of this litigation. On June 29, 1990, the court granted the temporary restraining order associated with the second motion which is valid until July 9, 1990. The court indicated that this decision would issue on July 9, 1990.

To understand the current conflict, it is necessary to understand the history behind this litigation and the activities which have brought us to this point.

In 1956, the Congress of the United States enacted the Alaska Mental Health Enabling Act (AMHEA) in which Congress granted the Territory of Alaska one million acres of federal land to be held as a public trust whose proceeds and income were to be first applied to meet the necessary expenses of the comprehensive mental health program of Alaska. The state managed the lands without maintaining separate accounting until 1978. See State v. Weiss, 706 P.2d 681, 682 (Alaska 1985). In 1978, the Alaska State Legislature in Chapter 181, redesignated the mental health

lands which had been patented or approved for patent to the state as general grant land to be managed as all other state lands.

In 1982, the original Weiss plaintiffs filed this class action asserting that the state breached this public trust by failing to account for revenues realized, using revenues for purposes other than mental health care, and redesignating the mental health lands as general grant land. When first before it, the superior court ruled that the state breached its duties as trustee by removing the federal grant lands from the trust. As a remedy, the court ordered that the trust was to recover from the state an amount equal to the fair market value of lands conveyed from the trust as of the date of conveyance plus prejudgment interest from the date of each conveyance. Additionally, the court ordered a set-off for all monies spent by the state on mental health care. Both sides appealed from that decision. In State v. Weiss, 706 P.2d 681 (Alaska 1985), the Alaska Supreme Court held that the state breached the public trust created by Congress when it redesignated property in the trust as general grant land. The court thus invalidated the redesignation statute, Chapter 181, Section 3(a) SLA 1978. The Alaska Supreme Court, however, disagreed with the remedy proposed by the superior court. Instead, the court held "that the trust must be reconstituted to match as nearly as possible the holdings which compromised the trust when the 1978 law became effective." 706

P.2d at 684. The Alaska Supreme Court provided the following guidance to the trial court:

Those general grant lands which were once mental health lands will return to their former trust status. In the event exchanges have been made, those properties which can be traced to an exchange involving mental health lands will also be included in the trust. To the extent former mental health lands have been sold since the date of the conveyance the trust must be reimbursed for the fair market value at the time of the sale. In calculating the total amount owed, the trial court should grant a set-off for mental health expenditures made by the state during the same period. In the event that expenditures exceeded the value of lands sold, the state need not furnish cash as part of the reconstitution. The goal is to restore the trust to its position just prior to the conveyance effected by the redesignation legislation.

706 P.2d at 684. The court specifically declined to rule on questions raised by the amicus regarding the title held by conveyancees and bona fide purchasers of mental health lands. See Weiss, 706 P.2d at 684 n.4.

Following the Alaska Supreme Court's remand to this court, the parties engaged in complex negotiations in an attempt to settle the lawsuit. These negotiations led to the enactment of Chapter 48, SLA 1987. Chapter 48 provided a mechanism for reconstituting the trust and settling this litigation. In essence, four elements were involved. The first element involved the determination of fair market value of the original one million acre mental health land grant as of September 7, 1987, the effective date of Chapter 48. The second element involved an

exchange of those original mental health lands not in legislatively designated areas such as parks and wildlife refuge areas for lands of equal value within such areas so that the reconstituted mental health trust corpus would consist entirely of lands within areas such as parks and refuges. The original mental health lands not in such areas were to be released from trust status. The third element involved the state's rental of the reconstituted mental health trust corpus for eight percent of its fair market value to compensate the trust for administering the lands for legislative purposes. The fourth part was a transitional provision effective until the corpus of the trust was reconstituted. During this transitional period, the state is to compensate the trust by annually paying an amount equal to five percent of the state's unrestricted resources. Section 9 of Chapter 48 provided for the Interim Mental Health Trust Commission to assist in the valuation process.

The valuation process designed in Chapter 48 has broken down. Each side blames the other for problems. Whatever the source of the problems, the parties are at impasse. On November 7, 1989, the Interim Mental Health Trust Commission approved its final procedures for valuing mental health trust lands and on December 20, 1989 it issued its final report. On April 17, 1990, the Commissioner of the Department of Natural Resources wrote to the Chair of the Alaska Mental Health Board

announcing that the Department would not follow the procedures adopted by the Commission. The Commissioner declared an impasse.

During the final days of the legislative session in 1990, a bill was passed which modifies the procedures of Chapter 48. That bill, House Committee substitute for Committee substitute for Senate Bill 493(Fin) [SB 493], deletes the valuation step and ties rents not to the land value but to the state's gross revenues.

In January 1990, plaintiffs sent letters to various interested parties urging these parties to support plaintiffs' position in the political process. The letters indicate a possible intent to challenge title to about 750,000 acres of land.

On March 27, 1990, the Department of Natural Resources advised counsel for plaintiffs that it intended to issue 23 patents to various parcels of mental health trust lands. After that date, the Department announced its intent to issue patents and take other actions such as mineral sales, mining permits, and lease assignments, with respect to various other parcels of mental health trust lands. The Department intended to take these actions on June 30, 1990. On June 29, 1990, the court issued a temporary restraining order forbidding the Department from doing so.

Preliminary injunctions are designed to maintain the status quo pending the final resolution of a case where the

equities of the situations balance in favor of maintaining that position. Preliminary injunctions are not designed to be a final resolution of the legal issues involved in a case nor are they a final resolution of factual matters. As the parties have noted, it is not for the court at this time to determine the final law which will be applied to this case nor to determine which side should ultimately prevail.

While decisions involving preliminary injunctions are frequently difficult ones, the law regarding preliminary injunctions is fairly straight forward. In deciding whether to issue a preliminary injunction, the court must consider three factors: (1) the irreparable harm faced by the party requesting the preliminary injunction; (2) adequate protection for the party opposing the preliminary injunction; and (3) whether serious and substantial questions going to the merits of the case have been raised by the proponent of the preliminary injunction.¹ See, e.g., Betz v. Chena Hot Springs Group, 657 P.2d 831, 837 (Alaska 1982); Alaska Public Utilities Commission v. Greater Anchorage Borough, 534 P.2d 549, 554 (Alaska 1975). The court must balance the hardships by weighing the harm that will be suffered by the

¹It is arguable that a fourth element must be considered: the public interest. See Betz v. Chena Hot Springs Group, 657 P.2d 831, 837 (Alaska 1982); Powell v. Anchorage, 536 P.2d 1228, 1229 n.2 (Alaska 1973). The court concludes that this factor has not been adopted by the Alaska Supreme Court in light of its failure to mention it in recent cases. See, e.g., Messerli v. Department of Natural Resources, 768 P.2d 1112, 1122 (Alaska 1989).

proponent if an injunction is not granted against the harm that will be imposed upon the party opposing the injunction by the granting of the injunction. See A.J. Industries, Inc. v. Alaska Public Service Commission, 470 P.2d 537, 540 (Alaska 1970).

The two motions for preliminary injunction pending before the court are related in that each involves the creation of third-party rights in lands which were originally mental health trust lands prior to the 1978 redesignation. The state's principal arguments in each are that (1) the subsequent acts of the legislature in the enactment of Chapter 48 and the 1990 amendments in Senate Bill 493 have changed the situation so that the state is no longer in breach of its fiduciary duty to the trust, and (2) that the plaintiffs' sole remedy for breach of the trust is the payment of compensation given the subsequent actions of the legislature. The fallacy of these arguments is that they ignore the fact that the state may not unilaterally settle this lawsuit. The parties in this action and this court are under the mandatory remand of the Alaska Supreme Court in State v. Weiss, 706 P.2d at 684, to "reconstitut[e] to match as nearly as possible the holdings which compromise the trust when the 1978 law became effective." Moreover, the law of this case is that for the original breach a compensation remedy is not adequate. Id. This lawsuit will not come to its conclusion until a final adjudication on the merits reconstituting the trust is reached or a bilateral settlement is reached which is approved

by the court under the provisions of Alaska R. Civ. P. 23(e). The court is not yet persuaded by the State's arguments that all its actions must be judged under the new legislative standards. While it is true that Chapter 40 as amended is the law, it is equally true that where an appellate court issues a specific mandate, a trial court has no authority to deviate from it. See, e.g., Gaudiane v. Lundgren, 754 P.2d 742, 744 (Alaska 1988). With these principles in mind, the court turns to the specific issues raised by each motion for preliminary injunction.

In its March 5, 1990 motion for preliminary injunction, the state asked this court to issue an anti-lawsuit injunction barring the plaintiffs from challenging title to any mental health lands, filing lis pendens as to such lands, or taking any other action which would cast a legal cloud on the current record title to such lands. The state argues that the irreparable harm which it faces is the potential for political pressure brought by such litigation. The state argues that the use of litigation actions to influence the political process would be an abuse of process. The court concludes that this is not irreparable harm. In essence, the state is arguing that it might take precipitous actions favorable to plaintiffs without regard to the substantive merit of those actions because of the political pressure which may result from the multitudinous lawsuits which could be filed by plaintiffs. However, given the supreme court's decision in Weiss and the court's specific reservation as to the title held

by conveyances and bona fide purchasers of mental health lands in footnote 4 of that opinion, the court concludes that plaintiffs would be within their rights to litigate the issue of third-party rights.² Moreover, the state may protect itself from precipitous action through the sound exercise of discretion in its decision-making processes.

The court further concludes that plaintiffs cannot be adequately protected. The state argues that the plaintiffs are adequately protected because their remedy is limited to monetary compensation. The court disagrees. It is not at all clear at this point in the litigation that plaintiffs are limited to monetary compensation. That is an issue which is a complex and troubling one. Additionally, the protection to plaintiffs' rights from the January 25, 1990, decision of the Interim Mental Health Trust Commission disapproving any further transactions involving mental health lands will seemingly disappear given the legislature's 1990 amendments of Chapter 48. Under Senate Bill 493, the legislature has repealed the provisions which created and empowered the Interim Mental Health Trust Commission. Presumably, the orders of the Commission will no longer be valid.

²The state also argues that multiple suits could reek havoc with the courts and divest this court of jurisdiction. The court relies on plaintiffs' counsel's assurances of an orderly development of litigation under this court's supervision.

The state has presented a serious and substantial claim regarding third-party rights and whether any such rights may be "undone."

Taking all these factors into consideration and balancing the hardships as required by the law, the court must conclude that the State's motion for preliminary injunction is denied.³

In their June 25, 1990, motion for preliminary injunction, plaintiffs sought injunctive relief precluding the state from issuing patents or other title documents or taking any further steps which convey or transfer mental health trust lands or any interests therein including permits to use and occupy mental health trust lands or extract resources from mental health trust lands pending final resolution of the litigation. The state argues that such injunctive relief is not called for under the facts of this case given that the proposed transfers are of "vested rights," that is rights which attached prior to the Alaska Supreme Court's decision on October 4, 1985. The state

³The court is not unmindful of nor unsympathetic to the problems which may be created for third-party holders of lands originally designated as mental health trust lands. It is very possible that innocent third-parties will have their rights to those lands tied up in court for a period of time. There is no question that such actions may be harmful to individuals. However, it must be stressed that the problem arises not because of actions of plaintiffs or this court but because of the actions of the State in violating its trust responsibilities when it redesignated mental health trust lands as general grant lands in 1978. Had the legislature taken its trust obligation seriously, these innocent third-parties would not have been adversely affected.

argues that the plaintiffs are adequately protected without such injunctive relief given its rental payments to the trust under the provisions of Chapter 48 and SB 493. Further, the state argues that actions are clearly allowable under Section 202(e) of the Alaska Mental Health Enabling Act. Again, the problem with the state's reasoning is that it ignores the mandate of the Alaska Supreme Court in Weiss. If this court must reconstitute the trust as of the date of the redesignation, July 19, 1978, it necessarily follows that the court should take requested action to preserve the status quo. It is true that Section 202(e) of the Alaska Mental Health Enabling Act gave the Alaska Legislature the power to sell, lease, mortgage, exchange, or otherwise dispose of the mental health lands. However, as the Supreme Court has clearly held in this case, it must do so in light of its fiduciary responsibilities to the trust. One of those responsibilities is to preserve the corpus of the trust. Weiss, 706 P.2d at 683. It is similarly clear that it is the duty of the state in administering this trust to administer solely in the interest of the beneficiaries. See State v. University of Alaska, 624 P.2d 807, 813 (Alaska 1981). Given that these third-party interests were created prior to the Supreme Court's decision in Weiss in 1985, it is clear that they were created at a time when the state was not fulfilling its trust responsibilities. Thus, there is a serious and substantial question regarding the validity of these third-party rights.

The court further concludes that the plaintiffs are subject to irreparable harm if the preliminary injunction is not granted. The actions of the state have the potential of creating bona fide purchaser rights where it is possible that they would not otherwise be. In such an instance, there is no question that such lands could not be taken from third-party hands and placed into the reconstituted trust. These lands are clearly income-producing properties which could be managed to produce long term income for the trust itself. If the lands are lost they may be lost forever. Additionally, since the legislature's repeal of the statute creating the Interim Mental Health Trust Commission, there is no other way to protect the lands other than through court action.

The state can be adequately protected. The preliminary injunction would not undo any of the state's commitments; rather, it would delay execution. The effect of the preliminary injunction would be to temporarily prevent the state from transferring title to the mental health trust lands to third-parties pending resolution of the claims in this lawsuit. For these reasons and those set forth in the findings of fact issued by the court, the court concludes that the preliminary injunction should issue.

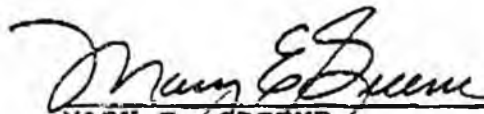
Plaintiffs have argued, and the state does not oppose, that the court should issue the preliminary injunction without bond. It is clear here that the plaintiffs themselves are financially unable to post a bond. It is also true that this is

public interest litigation. In light of these facts, the court concludes that the injunction will issue without bond.

Because of the impact on third-parties of this preliminary injunction, it is the court's desire to speedily resolve the issue of challenges to third-party holdings. The court urges the parties to move expeditiously to file whatever motions must be filed so that after complete and thorough briefing, the court may resolve the legal issue regarding potential challenges to title held in third-party hands. The court is concerned about the effect of this injunction on third-party rights and, thus, if the parties do unreasonably delay in moving this issue along, the court will schedule a status conference and set a briefing schedule.

IT IS SO ORDERED.

DATED this 9th day of July, 1990, at Fairbanks,
Alaska.



MARY E. GREENE
Superior Court Judge

DAVID T. WALKER
ATTORNEY AT LAW
MENDENHALL BUILDING
326 FOURTH STREET, SUITE B
JUNEAU, ALASKA 99801
(907) 586-3537

February 15, 1991

HAND DELIVERED

Senator Arliss Sturgulewski
Senate
Capitol Building, Room 427
Juneau, Alaska 99811

Re: Settlement of Mental Health
Trust Lands Litigation

Dear Senator Sturgulewski:

I am lead counsel¹ for the plaintiff class in the mental health trust lands litigation, Weiss v. State, 4FA-82-2208 Civ., and in connection with that action I am enclosing copies of:

1. Alaska Mental Health Trust Lands Atlas; and
2. Briefing Paper by the Alaska Mental Health Trust Coalition²;

The legislature is involved through the expressed desire of some legislators to "settle" or "resolve" the issue. I am sending this letter to each legislator as a means of communicating the Plaintiffs' position regarding settlement. To "settle" the litigation, the litigants (ie., the state and the

1/ James B. Gottstein, Jeffrey L. Jessee and Philip R. Volland are co-counsel.

2/ The Alaska Mental Health Trust Coalition is made up of persons concerned with a just resolution of the litigation and includes, among others, persons associated with all of the beneficiary groups specifically identified by Judge Greene in her April, 1988, Memorandum Decision and Order. While the Coalition is not a party in the litigation, the plaintiffs in the litigation and their attorneys work closely together and with the Coalition to arrive at consensus. The position presented in the Coalition Briefing paper is also the position of the plaintiffs in the litigation. In terms of negotiations, of course, it is the attorneys for the plaintiffs, and particularly, myself, as lead counsel, who have authority to negotiate.

plaintiffs), must agree on a settlement. That means negotiating a mutually acceptable resolution. The legislature does not have the power or ability to unilaterally resolve the litigation or to lift the land freeze through legislation. The Court spoke clearly on this in its Memorandum Decision and Order of July 9, 1991, "freezing" all mental health trust lands.³

In January of last year we widely distributed a legal analysis informing interested parties that the state's indicated course of action in failing to follow the Chapter 48 settlement scenario would result in the beneficiaries challenging title to protect their interest in approximately 750,000 acres of mental health trust land.⁴ The legislature's and administration's response was Chapter 210 SLA 1990, and the predicted land freeze followed naturally.

This problem exists because the State accepted the one million acres of mental health trust land as a trust to be administered "first for the necessary expenses of the mental health program of Alaska", but instead of using the trust land for the required purposes it attempted to abolish the trust and use the land for its own purposes. It is essentially the same as if you set up a trust to meet your children's needs, and the trustee used trust assets for his own purposes without providing for your children's education. Transfers of trust property to third parties are not valid unless strict conditions are met, and we believe few if any transactions concerning mental health trust lands meet these conditions.

3/ Page 8: "The fallacy of [the State's] arguments is that they ignore the fact that the state may not unilaterally settle this lawsuit. * * * This lawsuit will not come to its conclusion until a final adjudication on the merits reconstituting the trust is reached or a bilateral settlement is reached which is approved by the court under the provisions of Alaska R. Civ. P. 23(e)." This decision was issued two days before Chapter 210 SLA 1991 was signed by Governor Cowper purporting to do exactly what the court made clear was beyond legislative power. The State petitioned the Alaska Supreme Court to review and reverse this (and other) decisions by the court and the Supreme Court refused to consider the State's arguments. There are two aspects of the land freeze. The first is an injunction against any transfers or permits to use mental health trust lands unless and until the court allows it. The second is the placement in the land records of a public notice informing the public that title to mental health trust lands is clouded.

4/ Memorandum from James B. Gottstein, to Interested Parties, dated January 19, 1990, Re: Legal Analysis of Status of Mental Health Trust Lands and Related Issues.

In 1987, the plaintiffs and the state agreed on a proposed settlement mechanism, including a compensation approach, that was enacted as Chapter 48 SLA 1987 (Chapter 48)⁵. Chapter 48 provided for (1) an equal value exchange of lands so that the trust would be reconstituted with lands located within legislatively designated areas (ie., parks, refuges, forests, etc.), (2) payment by the State to the trust of "rent" at 8% per year on the value of the trust lands, to be determined under procedures approved by the Interim Mental Health Trust Commission, such value to be redetermined at least every five years, and (3) the creation of the Alaska Mental Health Board to determine the needs, including those unmet, of the mental health program, and the appropriation from the trust income account necessary to meet those needs. As an interim measure, until the land value had been determined, the State was to pay 5% of the unrestricted revenue of the State into the trust.

Unfortunately, the State did not honor its commitment to pay rent on the value arrived at under the procedures approved by the Interim Mental Health Trust Commission (8% of \$2,243 million annually), and by the enactment of Chapter 210 SLA 1990 attempted to unilaterally impose an unfair resolution of the litigation with predictable (and predicted) results, ie., the land freeze.

The foregoing is by way of background to set the stage for what will be required in any settlement. The first is that any compensation package that allows previous dispositions of mental health trust lands to remain undisturbed, must result in fair compensation to the trust. This is referred to as the "asset side" of the case. The second requirement is that procedures be established to insure that the trustee fulfills the trust obligation to first utilize the trust income to meet the necessary expenses of the mental health program of Alaska. This is the "program side" of the case.

SB 65 has recently been introduced with a different approach to trust reconstitution and compensation. It may be that the bill's reconstitution and compensation proposal is fair but we must know these elements before we can fully understand and respond to the proposal. We have indicated we could support such an approach if the compensation is fair to the Trust. The independent trust authority concept (with perfecting amendments) proposed in SB 65 satisfies our requirement for enforceability and assures that the trust will be managed for the benefit of the beneficiaries. Clearly, Sen. Duncan's SB 65 (which has been

5/ Part of that agreement on the Plaintiffs side has always been that any proposed settlement would have to be enforceable by the beneficiaries.

Trust Lands Settlement

February 15, 1991

Page 4

introduced by Representative Boyer in the House as HB 79) is a major step toward reaching settlement.⁶ To reiterate, with respect to the "asset side" of the case, the plaintiffs' only bottom line is that the approach must fairly compensate the trust.⁷

There is a similar simple bottom line with respect to utilization of trust funds (the "program side"). Since the enactment of Chapter 48, the expectation that the State, as Trustee, would utilize trust funds to "first meet the necessary expenses of the mental health program" as required by law, has remained unfulfilled. The Alaska Mental Health Board has diligently, competently, and in accordance with State⁸ and Federal⁹ law reported to the State the level of mental health program funding necessary to fulfill the State's legal obligation as trustee. Instead, the State has flouted its responsibilities and spent over a hundred million dollars of trust funds on non-trust purposes while we continue to have a grossly inadequate mental health program. The Mental Health Trust Income Account is trust money, it can not be viewed as general fund revenue. There is every indication that the State intends to perpetuate this intolerable and illegal situation. Under the law the Alaska Mental Health Board determines the mental health program of the State and the necessary expenses of that program. The Administration's budget provides for a cut in mental health program expenditures rather than proposing the \$29,666,800 operating budget increase and \$14,514,100 in capital improvements determined under law by the Alaska Mental Health Board as the amount required to "meet the necessary expenses of the mental health program" for FY 92. A settlement requires the Alaska Mental Health Board's funding determinations to be fully implemented, and the establishment of an enforceable system for insuring proper application of trust funds in the future. I have previously indicated in this letter that with perfecting amendments the trust authority provisions contained in SB 65 meet the enforceability requirement.

6/ The Plaintiffs are still willing to follow the Chapter 48 approach to reconstitution and compensation, with compensation based on the value determined under the procedures approved by the Interim Mental Health Trust Commission in its November 7, 1989 resolution.

7/ Part of this requirement is that the corpus of the trust (principle) must be preserved in perpetuity and protected from inflation. See briefing paper.

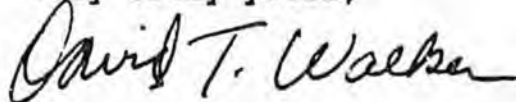
8/ AS 47.30.666.

9/ Section 202(e), Alaska Mental Health Enabling Act, Pub. L. 84-830.

Trust Lands Settlement
February 15, 1991
Page 5

During the campaign, there were numerous pronouncements that the mental health trust lands litigation would be resolved promptly and title to the desired trust lands released by the Trust this session. We share the belief that the litigation can be settled promptly and we are prepared to discuss a fair settlement. The failure to negotiate a settlement with the Plaintiffs will necessarily and predictably result in a continued freeze on mental health land, and many years of continuing and divisive litigation.

Very truly yours,

A handwritten signature in cursive script that reads "David T. Walker". The signature is written in dark ink and is positioned above the typed name.

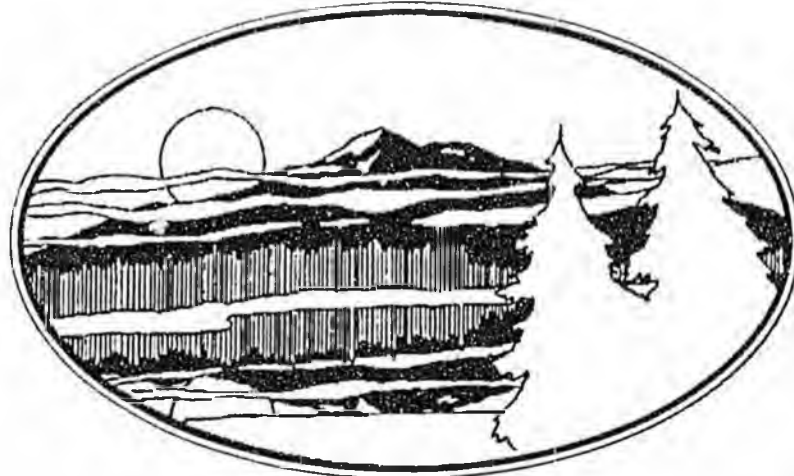
David T. Walker

DTW

Enclosures

Mental Health Trust Lands Litigation and Settlement Prospects

Briefing Paper



Prepared By:

The Mental Health Trust Coalition

October 2, 1990

The Federal Grant

During Territorial days, the Territory of Alaska was prohibited from enacting any laws with respect to mental health. At that time the federal government had complete control and only addressed the mentally ill by trying them under the crime of being "an insane person at large," and if convicted of that crime, transporting these "criminals" to Morningside Hospital in Portland, Oregon. In 1956, in response to public outrage in Alaska over this system, the U.S. Congress passed the Alaska Mental Health Enabling Act, granting authority to the Territory of Alaska to administer its own mental health program, and in order to provide funds to run the program, granting Alaska the right to select one million acres of land to be administered as a public trust, with the funds derived therefrom to "first be applied to the necessary expenses of the mental health program of Alaska." The mental health program was to be a comprehensive mental health program, with the trust serving those individuals suffering from a psychiatric illness who may require hospitalization, the mentally retarded and defective, chronic alcoholics with psychosis and senile people suffering major mental illness.

Recognizing that the purpose of the Trust was to earn income, the Territory, and then the State of Alaska¹ selected what was known to be the most valuable property in the State available at the time of selection. These included urban and suburban lands in Anchorage, Fairbanks, Juneau, Sitka, Ketchikan, Petersburg, Wrangell, Haines, Homer, Kodiak and Skagway, lands on the Kenai peninsula, in the Matanuska and Susitna Valleys and on Kachemak Bay. In addition high value resource lands were selected, such as 60

percent of what is now known as the Haines State Forest, forest lands at Cape Yakataga, a significant percentage of the known coal resources of Alaska, oil and gas prospects, and in the prime mineral districts of Alaska. As a result, this land is probably the most valuable million acres of land in the State, with the possible exception of Prudhoe Bay, and is better suited to the production of income in perpetuity than Prudhoe Bay.

Although the land was selected for the Trust, and was supposed to earn money in support of the mental health program, no trust administration was established, no trust fund was created, and the State Division of Lands received no direction on managing the trust lands as a trustee. In this vacuum some of the land was improperly disposed of and no proper accounting was made. In addition, due to the valuable nature of the land, there was tremendous pressure by municipalities and individuals to make Mental Health Trust Lands available.

The Legislative Redesignation

In response to this pressure, in 1978 the Alaska Legislature purported to abolish the Trust by "redesignating" Mental Health Trust Lands as general grant lands. This 1978 legislation also purported to compensate the Trust with 1.5 percent of revenues from all State lands. This was to be "subject to appropriation" which was never made.

1. Section 6(k) of the Alaska Statehood Act confirms the Mental Health Lands Trust Grant, and the State accepted the grant on its original terms.

The Weiss Litigation

After failing to achieve legislative redress of this blatant violation of federal law and the State's fiduciary obligation to the Mental Health Lands Trust, and after being told "we don't care if it is illegal - sue us," in 1982 the Alaska Mental Health Association sponsored commencement of the litigation. Vern Weiss, on behalf of his son Carl, and Earl Hilliker, on behalf of themselves and the class of people entitled to benefits under the trust (beneficiaries of the trust) were named as plaintiffs in the lawsuit. Since that time, the Alaska Mental Health Association, representatives of the mentally retarded and mentally defective (developmentally disabled) and chronic alcoholics with psychosis have formally intervened to participate together with the original plaintiffs in the lawsuit.

The 1985 Alaska Supreme Court Decision

In 1985, in what is known as the Weiss Decision, the Alaska Supreme Court rejected the State's arguments that there really was no trust, and even if there was a trust, that by having any mental health program it didn't really matter. The Alaska Supreme Court then ordered that the "trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective."

At the time of the Weiss Decision, the following legally questionable actions had been taken by the State with respect to Mental Health Trust Lands:

370,000	acres designated as state parks, refuges, etc.;
40,000	acres to Municipalities;
40,000	acres to Native corporations ² ;
45,000	acres to individuals;
3,000	acres to the University of Alaska; and
280,000	acres in less than total conveyances.
778,000	total

The 1987 Settlement Proposal

Not surprisingly, the State (and other third parties) didn't want to give the land back and reverse illegal dispositions of Mental Health Trust Lands. So in 1986, the legislature appointed a special committee to develop a means of settling the lawsuit without disturbing previous dispositions of Trust Lands. The Interim Mental Health Trust Commission was also created to oversee management of Trust Lands and make recommendations for settling the litigation. In addition to the problem of the status of the Trust Land and its administration, the Beneficiaries were concerned about the Legislature's conflict of interest in being legally obligated in administering the Trust to do so solely in the Trust's benefit, but also being able to use any funds not "necessary for the mental health program" for other public purposes. All parties

worked together and agreed on a proposed settlement mechanism, which was enacted as Chapter 48 Session Laws of Alaska 1987 (Chapter 48).

Chapter 48 had four elements. The first element involved the determination of fair market value of the original one million acre mental health land grant under procedures approved by the Interim Mental Health Trust Commission. The second element involved an equal value exchange of those original Mental Health Trust Lands not in legislatively designated areas such as parks and wildlife refuge areas for land of equal value within such areas so that the reconstituted Mental Health Lands Trust corpus would consist entirely of lands within such legislatively designated areas approved by the Interim Mental Health Trust Commission. The original Mental Health Trust Lands not in such areas were to be released from trust status and dispositions with respect to those lands would be ratified. The third element was for the State to "rent" the reconstituted trust for eight percent of its fair market per year, with the value to be redetermined at least every five years. Until the value was established, 5 percent of the State's unrestricted general fund revenues was to be the compensation to the Trust. The fourth element was the creation of the Alaska Mental Health Board to study and determine the needs of the mental health program, including those unmet and transmit to the Governor and Legislature its recommendations of the funding required to meet the necessary expenses of the mental health program, including capital needs.

The Plaintiffs, the State, and third parties saw numerous advantages in the Chapter 48 approach.

1. Assuming sufficient guaranties of enforceability, it satisfied the State's legal obligation under federal law to administer a permanent land trust for the benefit of people in need of mental health program services.
2. It allowed the original one million acres of Mental Health Trust Land to be used for general public purposes, removing the "cloud" on title and/or use of some 6,000+ dispositions of Mental Health Trust Lands.
3. It provided for immediate financial support for the mental health program, but doesn't require a major "up front" payment.
4. It provided a legitimate method for determining the necessary expenses of the mental health program.
5. It was designed to avoid costly and time consuming litigation.
6. It is relatively easy to administer.

The Obstruction to Implementation of Chapter 48

The Interim Mental Health Trust Commission worked from the passage of Chapter 48 until January of 1990, to determine and approve the appropriate valuation procedures to implement Chap-

2. It does not appear this would include a large portion of the Beluga Coal Field conveyed to Cook Inlet Region Inc., as a result of its exchange under the Alaska Native Claims Settlement Act.

ter 48. On November 7, 1989, the Commission adopted by a two to one vote (the State's representative dissenting) its final approved procedures for determining the value of the original Mental Health Trust Lands. Utilizing these approved procedures the value of Mental Health Trust Lands, as of September 7, 1987, is \$2.243 Billion. However, on January 23, 1990, the State Department of Natural Resources announced a creative interpretation of Chapter 48 that the Commission could not approve any valuation procedures that the Commissioner of Natural Resources did not accept. On February 1, 1990, the Department of Natural Resources issued its Minority Recommendations, indicating it believed the value of the Trust Lands were only \$565 Million. The Commissioner of Natural Resources then declared an "impasse".

The Proposed Legislative Solution

(and its derailing by the Administration)

In order to overcome this obstruction to the implementation of Chapter 48, SB 493 was introduced. As originally formulated, SB 493 would have (1) established the value of the original one million acres at the \$2.243 Billion figure arrived at under the procedures approved by the Interim Mental Health Trust Commission, (2) reconstituted the Trust with all legislatively designated areas that existed as of September 7, 1987, and (3) provided for a formula to revalue the lands based upon the changes in assessed values. The attorneys for the Beneficiaries advised the Legislature all session that unless the problem was solved this session that third party title to Mental Health Trust Land would be brought into question and there would be widespread economic disruption with respect to third party plans for Mental Health Trust Lands. Representatives of the Administration, on the other hand, were telling the Legislature that the plaintiffs in the lawsuit would not be able to prevent actions on Mental Health Trust Lands.

The Legislature apparently relied upon the Administration's interpretation. Instead of enacting SB 493 as originally contemplated to implement Chapter 48, just before the end of the session, the Administration sponsored a Finance Committee substitute that ultimately passed, which changed compensation to the Trust from the value of the Trust Lands to 6 percent of the unrestricted general revenues of the State.

The Beneficiaries commissioned an economic analysis of this change, and not surprisingly, the result was that changing the form of compensation from the value of the land to a percentage of declining state revenues seriously undercompensates the Trust.³

3. See "Analysis of State General Forecasts and the Future Value of the Mental Health Trust Lands," by The McDowell Group, July 12, 1990.

4. These are the Alaska Mental Health Board recommended increases to move toward meeting the necessary expenses of the Mental Health Program.

5. Estimated.

6. On the other hand, the Beneficiaries have tried to eliminate unnecessary hardship, and when no harm to the trust is apparent, the Beneficiaries have uniformly agreed to modify the injunction to allow things to proceed.

Expenditure of Trust Funds

For every year since the enactment of Chapter 48, the Legislature has substantially underfunded the needs of the mental health program in order to raid the Trust fund for other state programs. A summary is as follows:

Fiscal Year	AMHB Rec. ⁴ Increments	Legislative Appropriation	Trust Funds Used on Non-Trust Purposes
1989	\$15,322,400	\$8,868,900	
1990	15,791,800	5,026,000	\$47,072,734
1991	19,179,050	10,249,200	81,500,000 ⁵

Current Status

Faced with yet another example of the State's breaking its commitments and breach of its fiduciary responsibilities to the Trust the Beneficiaries went back to court and obtained an injunction prohibiting the State from transferring any more Mental Health Trust Lands or issuing any permits or leases, and confirmation that the Beneficiaries were entitled to challenge the status of previous dispositions of Mental Health Trust Lands. As mentioned there are over 6,000 questionable actions that have occurred on Mental Health Trust Lands that are open for reversal. Prospective activities on Mental Health Trust Lands have been suspended, or are in limbo. For example, the Wishbone Hill Coal Mining Project has been put on hold pending determination of certain legal questions. Usibelli Coal Mine operates substantially on Mental Health Trust Lands and its future operations are planned to be substantially on Mental Health Trust Lands. The Diamond Shamrock Coal Project in the Beluga Coal Field is also impacted. People who have received patents to Mental Health Trust Lands may be divested of title. Lessees of Mental Health Trust Lands may have their leases declared invalid.⁶

In terms of the legalities, a third party does not receive good title to Mental Health Trust Lands unless that party paid value for the land and had no reason to know of the breach of trust. Beneficiaries believe that all persons will be found to have "constructive knowledge" of the breach of trust because it was a matter of public record. The difficulties that third parties are now experiencing are the difficulties the State, the Beneficiaries and others tried to avoid in agreeing to Chapter 48 as a proposed settlement mechanism.

The Beneficiaries are still interested in a settlement of the litigation and have formulated the following settlement principles. The basic bottom line is, as it always has been, that the settlement must be fair to and in the best interests of the beneficiaries of the Trust. In this context fair includes that the settlement must be enforceable and not subject to dismantling by the State. There are a number of ways this could be accomplished and fairness is the only precondition.

The Mental Health Trust Coalition hopes to be able to garner widespread, bipartisan support for the principles set forth below, in trying to fashion a permanent solution next session.

Lands Litigation Settlement Statement of Principles

The Alaska Mental Health Enabling Act is a Federal law, enacted before statehood, confirmed by the Statehood Act, which granted Alaska One Million acres of land as a public trust to be administered first for the necessary expenses of the mental health program of Alaska. The mental health program may involve numerous agencies and entities. At a minimum the Mental Health Lands Trust must serve through a comprehensive and integrated program those individuals suffering from a psychiatric illness who may require hospitalization, the mentally retarded and defective, chronic alcoholics with psychosis and senile people suffering major mental illness.

A trustee is legally obligated to manage a trust for the sole benefit of the beneficiaries of the Trust, insulated from political interference,

Chapter 48 SLA 1987 (un-amended) or any other settlement proposal can only be acceptable as a resolution of the mental health trust lands litigation if (a) compensation is fair to the Trust and (b) there are adequate guarantees that the Trust is enforceable and will be administered properly, including determining and meeting the necessary expenses of the mental health program.

There are a number of ways that such a settlement may be fashioned, both with respect to (a) compensation to the Trust and management of Trust assets and (b) appropriate expenditures from the Trust.

Fair compensation to the Trust can include: (i) fair rental payments for the use of Mental Health Trust Lands and the ratification of previous questionable dispositions of Trust Lands, such as provided in Chapter 48 (un-amended); (ii) transfer of Trust Assets at an agreed upon price with preservation of the cor-

pus in perpetuity; (iii) proper trust management of Trust Lands, with preservation of the corpus in perpetuity, or (iv) any combination of these elements.

The State of Alaska, as trustee of the Mental Health Trust, has a built in conflict of interest. This conflict of interest arises because it is generally obligated to meet all the governmental needs of the citizens of Alaska, may spend Trust Funds on non-mental health program needs only after it has first met the necessary expenses of the mental health program, and must determine and meet the necessary expenses of the mental health program without consideration of the other needs of the state.

The conflict of interest can be eliminated by the creation of an independent Trust Authority, whose sole interest is proper management of the Trust, with appropriate powers and duties to administer and enforce the Trust, under specific guidelines agreed to in advance and so ordered by the Court.





Mental Health Trust Issue

Briefing Paper for SB 65 Duncan / HB 79 Boyer

February 18, 1991

Prepared by Sharron Lobaugh

There are four major aspects of the proposed legislation

- Reconstitution of the Mental Health Trust (the Trust) with land, cash, and State rental payments.
- A provision that earnings of the Trust shall be used to fund a comprehensive mental health program to serve, as a minimum, those determined by Superior Court to be eligible for services — without regard for the other needs of the State.
- Establishment of a Mental Health Trust Authority (the Authority) as an independent non-profit corporation and trustee for the Trust, responsible for managing investment of the Trust assets as well as income derived from those investments.
- Amendment of related statutes and agencies to accommodate the creation of the Authority and its duties and responsibilities.

Reconstitution of the Mental Health Trust

The legislation sets the value for the body of the Trust (the Corpus) at \$2,243,000,000. This is the amount determined by procedures established by the Interim Mental Health Trust Commission, which is dissolved. The Trust Corpus is to be preserved in perpetuity and produce income for necessary mental health services.

The Trust Corpus will be comprised of:

Approximately 209,000 acres of the original trust lands which are unencumbered.

Approximately 368,000 acres of original trust lands which have been designated as parks, forests, etc., by the legislature for specific purposes.

Money due to the Trust for approximately 422,585 acres of land which the State has conveyed or committed to other purposes and cannot be returned to the Trust. This debt is to be paid to the Corpus on a negotiated payment schedule.

Trust Earnings

The 209,000 acres of land returned unencumbered to the Trust is to be managed by the newly established Trust Authority according to private Trust principles in order to produce income.

The reconstituted Trust Corpus is income producing.

Trust land in legislatively designed areas will earn annual rent, paid by the State to the Trust, equal to 8% of the value of that land. Having paid rent, the State obtains the right for the Department of National Resources (DNR) to continue to manage this category of asset for the legislatively designated purpose. This land will be revalued every five years and the rent earnings will be adjusted.

The money paid by the State to the Trust for encumbered land is to be invested by the Authority to produce income. A payment schedule shall be negotiated with the State which will require an annual payment plus interest at the statutorily established rate for State debts.

The allowable expenditures and beneficiaries are defined.

The legislation sets forth the allowable uses of this account for meeting the necessary expenses of the mental health program, and allowable services are described.

The beneficiaries are defined and a procedure set forth for determining the eligibility and priority of persons to receive benefits. Those persons most seriously disabled, as determined by the court, are eligible for first priority, specialized, and community support services. In addition, other more general mental health services are provided for in the mental health program.

Establishes an Alaska Mental Health Trust Authority with legal existence distinct from the State.

The Authority may sue and be sued, obtain counsel, contract for services, purchase and dispose of property, and is exempt from the state procurement code.

The responsibility for management of Trust assets and income is assigned to a nine member Board of Trustees. The Governor shall appoint the trustees with confirmation by the legislature. The legislation invests the Board of Trustees (the Authority) as a public corporation with powers and duties separate from the State.

Qualifications of Trustees Defined

People eligible to serve as trustees may not have direct conflicts of interest (e.g. state employee or contractor); they must have expertise in trust management and mental health. Their terms are to be set at five years with a two-term limit and compensation of \$400 per day.

A process is established to enable beneficiaries to provide input into the selection of trustees through the Governor's Council on Handicapped and Gifted and the Mental Health Planning Council.

The Governor is required to appoint a majority of trustees from lists provided by these councils. (To ensure representation of beneficiaries not previously included, the Mental Health Planning Council is required to be composed of at least one person each with the following: senior citizens with dementia, alcoholics with psychosis, and other mental illnesses.)

Regulatory/Duties of the Trustees

The Board of Trustees, under the Administrative Procedure Act, shall establish: criteria for determining eligibility for benefits from the Trust, the delivery of services and systems of care, administration and management of the Trust, equitable distribution of the assets of the Trust, and appeal procedures for those who have not received services under the Trust.

The Board of Trustees shall manage the Trust: to preserve the Corpus, to protect it from inflation, to defray the operating and capital expenditures of the State's mental health program, and to pay the operating expenses of the Authority. The Authority's operating budget is subject to the Executive Budget Act.

The Board is responsible for determining the needs of those persons eligible for services under the State mental health program and to provide services to address those needs.

The Authority shall review the mental health programs of the State and develop a long term plan, an implementation plan, and an annual budget. They will transmit money to appropriate agencies to provide authorized services, as well as create a state-wide client database.

In performing its duties, the Board shall consider the recommendations of the State Mental Health Planning Council, the Governor's Council on the Handicapped and Gifted and other boards, commissions, agencies and individuals concerned with services for the mentally ill or handicapped.

The Authority must use Trust income to defray necessary operating and capital expenditures of the State's mental health program — independent of other needs of the State. The Authority must preserve and protect the Corpus and make an inflation-proofing payment to the Trust annually. They must establish the amount of surplus funds which are generated each year by the Trust in excess of the annual need. These excess funds shall be returned to the general fund annually. The Authority must use "the prudent-person rule" as a general guide in making investments and the legislation gives explicit directions for exceptions.

The Authority will prepare an annual report of services and financial activity for the legislature and administration.

Temporary Duties of the Trustees

The Authority must make a determination of which programs and services are to be funded with Trust resources by January 1993. They must establish the "base" of eligible programs to be funded, identify the persons to be served in each category, and develop a formula to ensure equitable allocation of resources.

Amendment of Related Statutes and Agencies to Accommodate The Authority.

The legislation revises some of the duties of the **Department of Health and Social Services** by assigning the Division of Mental Health and Developmental Disabilities responsibility for managing the State institutions and administering grants to local providers. The Division's role is specified as technical and support: i.e. regulating program reviews, setting standards, licensing, audit review, and quality assurance.

The **Community Mental Health Services Act** is revised to be aligned with the Authority changes. The bill clarifies responsibilities and sets standards for community mental health services. It requires data gathering and local planning to be accomplished. The service emphasis is shifted from institutionalization toward programs in the community.

The **Mental Health Board** is reconstituted as the **Alaska Mental Health Planning Council**. The Council is given the principal role as a planning and coordination agency for the mental health program. Council membership is broadened in order to facilitate inter-departmental coordination by providing a balance of professionals, agency representation, public, consumer, and family members. This assures representation of the beneficiaries and involves agencies such as the State Office of Alcoholism and Drug Abuse and the Older Alaskans Commission. The Council is allowed to hire its own executive director.

Governor's Council for Handicapped and Gifted is given a revised statement of principles to parallel those of the Mental Health Planning Council. Its duties are amended to include responsibilities to the Mental Health Trust Authority.

Other Miscellaneous Effects of the bill

Sections of law which would conflict with this legislation are repealed.

Enforcement provisions include, among other things, adoption by the court as a settlement of the Suit of Weiss vs. the State of Alaska.

The bill provides for an "effective date," i.e. the date the requirements of the bill become State law and are binding.

**Alaska Mental Health Board
Annual Report
for
Calendar Year 1990**

January 1991

**Michael Graf, Ph.D.
Chairperson**

**Deborah K. Smith
Executive Director**

ALASKA MENTAL HEALTH BOARD

WALTER J. HICKEL, GOVERNOR
STATE OF ALASKA

ST. ANN'S CENTER
419 6th STREET RM. 124
JUNEAU, ALASKA 99801

January 14, 1991

Concerned Citizens

Members, Alaska State Legislature
P.O. Box "V"
Juneau, Alaska 99811

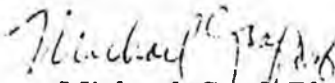
Concerned Citizens and Legislators:

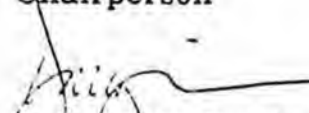
The Alaska Mental Health Board (AMHB) hopes you find the enclosed Alaska Mental Health Annual Report for Calendar Year 1990 informative and relevant to your deliberations regarding the Alaska Mental Health Program. Created in 1987 by the State Legislature, the AMHB is mandated to ensure an integrated and comprehensive mental health program.

The Alaska Mental Health Board is the planning, coordination, evaluation, and advocacy agency for the State Comprehensive Mental Health Program including all programs and services funded with proceeds from the Alaska Mental Health Lands Trust. Board duties include program planning, evaluation and funding recommendations. The Board reviews and recommends changes to state mental health policy, statutes and regulations. In addition, the Board provides a public forum for discussion of matters pertinent to the mental health services and reports to the Legislature and the Governor.

The Alaska Mental Health Lands Trust and the Alaska Mental Health Program face significant challenges during 1991. Thank you for this opportunity to provide you with the AMHB Annual Report. If you would like any additional information regarding the Board's activities, please contact our office.

Sincerely,


Michael Graf, Ph.D.
Chairperson


Deborah K. Smith
Executive Director

**Alaska Mental Health Board
Annual Report
for
Calendar Year 1990**

Alaska Mental Health Board Members

Michael Graf, Ph.D. (Provider)
Alicia Iden (Public)
Thelma Langdon (Public)
John F. Malone (Provider)
Sally Mead (State)
Isaac Ozenna (Consumer)
Nelson Page (Public)
George Rogers, Ph.D. (Consumer)
Irvin Rothrock, M.D. (Provider)
Patricia Ryan-Clasby (Provider)
Evelyn Tucker (Public)
Marcia Watson (Consumer)
Dick Wilson (Consumer)

Executive Committee

Michael Graf, Ph.D., Chair
Alicia Iden, Vice Chair
Thelma Langdon, Secretary/Treasurer

Produced by the
Alaska Mental Health Board
419 6th Street
Juneau, Alaska 99801

January 1991

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INTRODUCTION

Alaska Mental Health Board: 1988-1990

The Alaska Mental Health Board (AMHB) held its first meeting in January, 1988. The AMHB was created by the 15th Alaska State Legislature as a critical element of a legislatively proposed settlement of a lawsuit involving the State's breach of Trust. The AMHB mandate is much broader than that of the Governor's Mental Health Advisory Council which the Board replaced. The Board consists of twelve persons appointed by the Governor and a representative of the Commissioner of Health and Social Services. Of the appointed members, one third are consumers of mental health services, one third are providers of mental health services and the remainder are representatives of the public at large. The Alaska Mental Health Board constituency embraces all people served by the State's mental health program. The beneficiaries of the mental health program are, at a minimum, the mentally ill, the mentally defective and retarded, chronic alcoholics who suffer from psychosis and senile persons who as a result of their senility suffer major mental illness.¹

The beneficiary groups encompassed by the Mental Health Trust were identified by a Memorandum Decision and Order issued by Fairbanks Superior Court Judge Greene in April 1988 (Greene Decision). This decision generated considerable debate within the mental health community. In response to the Greene Decision, the AMHB formed the Greene Decision Ad Hoc Committee known as the "Greene Group". The Greene Group included the AMHB Executive Committee, staff from the Department of Health and Social Services, and representatives of boards or organizations interested in services to the beneficiary groups identified in the Greene Decision.² In addition, a new organization was formed by representatives of the beneficiary groups known as the Mental Health Trust Coalition (MHTC). The MHTC prepared a policy paper entitled the "White Paper: Statement Regarding Beneficiaries of Alaska's Mental Health Trust" which was presented to the AMHB. The AMHB adopted the "White Paper" as a statement of the Board's position regarding Trust beneficiaries during their July 1990 meeting³ (see Appendix).

¹ These are the terms used by Judge Greene, Fairbanks Superior Court, in an April 1988 Decision and Order in the Weiss case known as the "Greene Decision".

² Two reports were produced: "Executive Committee Report Pertinent to the Greene Decision", July 1989; and Policy Report Pertinent to the Greene Decision, AMHB Report number 5, July 1989.

³ Motion 90-28 passed during the July 15, 16, 1990 meeting in Anchorage.