

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9811 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

HB

168

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

April 12, 1999

Representative Joe Green
Room 214
State Capitol
Juneau, AK 99801

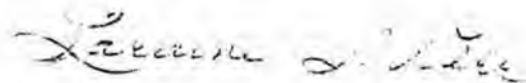
Dear Representative Green:

I am writing in support of HB 168. An Act relating to decisions regarding certain health facility payments. As you know, several of the hospitals in the State have had administrative appeals before the Hearing Officer of the Department of Health and Social Services (DHSS), had the hearing officer decisions sent to the Commissioner of DHSS, and had them remanded or sent back for more information.

The Alaska State Hospital and Nursing Home Association (ASHNHA) wants to see the situation rectified. Not only is it costly to have staff continuously working on appeals, it comes with a significant legal cost. In addition, there is an estimated \$10 million amount of money claimed by the hospitals as rightfully theirs. We believe that setting a tighter final decision date will alleviate the situation. HB 168 asks that the Commissioner of DHSS render a final decision within 30 days after the hearing officer has offered an opinion. If the Commissioner does not, then the hearing officer's decision becomes final. If either side is unsatisfied with that decision, they may proceed directly to court. Right now the process can drag on for many years - this bill should alleviate that.

Please do not hesitate to contact me if you have questions or if we can be of benefit to you.

Sincerely yours,



Laraine L. Derr
President/CEO

426 Main

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Alaska State Legislature

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DEPT. OF ENVIRONMENTAL CONSERVATION
DEPT. OF REVENUE

Representative Joe Green

District 10

House Majority Leader

Sponsor Statement

HB 168 – Appeals of Medicaid Reimbursement Rates

HB 168 amends the Medicaid reimbursement rate appeals process to ensure a more timely final decision, which, I believe, will result in lower costs for both health care providers and the Department of Health and Social Services.

Problem: The Medicaid reimbursement rate appeals process currently traps health care providers in a state of administrative indecision when they appeal rates. The payment rates for health care services covered by Medicaid are set annually by the Medicaid Rate Advisory Commission, a five-member board appointed by the Governor. If a health care provider wishes to challenge a reimbursement rate they must file an appeal within 30 days after the rate is set. Once an appeal is filed a briefing and hearing schedule is agreed upon and an evidentiary hearing is held (usually) within 120 days. These hearings often take several days, after which the hearing officer submits a recommendation to the Commissioner of Health and Social Services. The commissioner has three options: accept, deny, or remand the hearing officer's recommendation. In some cases the commissioner has remanded the recommendation, whereupon the hearing officer made additional findings and resubmitted the recommendation to the commissioner, only to have the commissioner remand the decision again. There are cases still in the appeals process that were filed in 1991, nearly a decade ago.

Solution: HB 168 establishes a more responsive timeline for the disposition of rate appeals. Current law (AS 47.07.075) allows the commissioner 30 days to render a decision, with the option of remanding the case back to the hearing officer for additional findings. HB 168 allows the commissioner 30 days to render a final administrative decision. If the commissioner fails to make a final decision, the hearing officer's recommendation becomes the final decision. A final administrative decision may be appealed to the state superior court.

There are currently more than 40 appeals outstanding, with a cost to the state of at least \$10 million and as much as \$30 million. Health care providers need to be able to more efficiently define their cost and reimbursement structure, and the department needs to be able to finalize these costly administrative appeals in a more timely manner. Please support HB 168, which addresses the needs of both the health care providers and the department.

(b) The department may establish the scope and timing of audits under this chapter. The department may provide that audits will be conducted less frequently than annually. (§ 4 ch 95 SLA 1983; am §§ 3, 4 ch 95 SLA 1997)

Effect of amendments. — The 1997 amendment, effective June 21, 1997, rewrote paragraph (a)(2) and added subsection (b).

NOTES TO DECISIONS

Recoupment. — This section does not provide authority for recoupment from a health care facility based on audit results. The text of the statute does not state or imply that the amount of the payment will be affected by any audit. *City of Cordova v. Medicaid Rate Comm'n*, 789 P.2d 346 (Alaska 1990).

Sec. 47.07.075. Administrative procedure. (a) Actions of the department regarding health facility payment rates under this chapter and AS 47.25.120 — 47.25.300 are subject to provisions of AS 44.62 (Administrative Procedure Act) except as provided in (b) of this section.

(b) The commissioner shall, by regulation, establish time limits applicable to the various phases of an administrative appeal process involving an appeal of the amount of a payment rate set by the department for a facility. The time limits set under the regulations supersede conflicting time limits in AS 44.62.330 — 44.62.630. The regulations must provide that

(1) a hearing for an appeal described in this subsection must be scheduled under AS 44.62.410 to occur no more than 120 days after written notice of rate appeal has been received by the department from a facility unless the facility requests a delay or good cause for the delay is demonstrated to the satisfaction of the hearing officer;

(2) the commissioner must, within 30 days after receiving the recommendation of the hearing officer, either render a decision in the case or refer the case back to a hearing officer for additional findings;

(3) if either time limit set under (1) or (2) of this subsection is not met, the department shall report the noncompliance to the legislature and the governor by the following January 20 with an explanation of the length of delay, reasons for the delay, and proposed corrective action by the department to ameliorate the causes of delay. (§ 4 ch 95 SLA 1983; am E.O. No. 72 § 8 (1989); am §§ 3, 4 ch 153 SLA 1990)

Sec. 47.07.080. [Renumbered as AS 47.07.900.]

Sec. 47.07.110. Medicaid Rate Advisory Commission established. The Medicaid Rate Advisory Commission is established in the department. (§ 6 ch 95 SLA 1983; am E.O. No. 72 § 9 (1989))

NOTES TO DECISIONS

Quoted in *City of Cordova v. Medicaid Rate Comm'n*, 789 P.2d 346 (Alaska 1990).

Sec. 47.07.120. Composition of commission. The commission consists of five members as follows:

(1) the chief executive officer of a health facility that is licensed by the state but not owned or operated by the state or federal government and that is subject to the budget review process under this chapter;

(2) the commissioner of administration, the commissioner of health and social services, or the appointed designee of either commissioner;

(3) a physician licensed to practice medicine in the state who is actively engaged in the practice of medicine and who is not employed by the state;

MEDICAID RATE APPEALS

What are Medicaid Rate Appeals

The Commissioner of the Department of Health and Social Services sets Medicaid reimbursement rates for hospitals and nursing homes. A complex methodology that is described in statute and regulation is used to set the rates. These rates can be appealed to an administrative hearing officer, who is an employee of the Department.

Appeal Process

Within 30 days after a Medicaid rate is set, the facility may appeal its rate to the Commissioner. The appeal is assigned to the Office of Hearings and Appeals. A briefing and hearing schedule is established among the parties. State law requires that an evidentiary hearing be held within 120 days of the filing of the appeal unless good cause can be shown for delaying the hearing. After the hearing, the hearing officer sends a proposed decision to the Commissioner. The Commissioner is to either accept or remand the decision within 30 days. If remanded with instructions, the Commissioner sends the decision back to the hearing officer for further clarification. The hearing officer then issues a final decision based on those instructions.

Current Appeals

There are currently 42 open appeals filed by 12 of Alaska's 26 facilities. Facilities with current appeals are:

- Alaska Regional Hospital – 10 appeals
- Wesley Rehabilitation and Care Center – 8 appeals
- North Star Hospital – 6 appeals
- St. Ann's Nursing Home – 4 appeals
- Charter North Hospital – 3 appeals
- Bartlett Memorial Hospital – 3 appeals
- Valley Hospital – 2 appeals
- Ketchikan General Hospital – 2 appeals
- South Peninsula, Heritage Place, Sitka Community Center, Norton Sound – 1 appeal each

Fourteen other facilities have no appeals pending. Twelve of the 42 appeals are stayed pending the outcome of court decision involving a common issue; the legality of the Department to use audited information in rate setting. The other appeals are in some stage of the hearing process.

What Kind of Issues are Appealed

Alaska's Medicaid reimbursement system sets specific reimbursement rates for each facility in Alaska. The reimbursement rate to each facility is based upon that facility's actual cost of serving Medicaid patients. The Department audits facility costs to assure that only expenditures directly related to Medicaid patients are reimbursed through the established rate. Consequently, facility appeals are generally disputes regarding the audit results and how those audit results are applied in the rate setting system. Alaska's system of setting specific rates for each facility encourages facilities to appeal because each appeal can directly affect the facility's revenue.

Potential Liability of Outstanding Appeals

The potential cost to the state of the outstanding appeals is approximately \$10 million. Beyond the immediate cost, many of the appeals will set precedents for the rate system and will also increase state costs on into the future.

Valley Hospital Appeals

Valley Hospital currently has two appeals; neither one has resulted in a proposed decision for the Commissioner's office to consider. The hearing officer has granted a partial summary judgement in one of the appeals (1997 rate) and stayed other issues pending a court decision on the question of the Department's use of audits in rate setting. This particular appeal has proceeded through the process as far as possible until the issue before the courts is settled. The other valley appeal is waiting to be scheduled for a hearing.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

RD. BOX 110001
JUNEAU, ALASKA 99811-0601
PHONE: (907) 485-3030
FAX: (907) 465-3088

January 20, 1999

The Honorable Tony Knowles
Governor
State of Alaska
PO Box 110001
Juneau, AK 99811-0001

RE: Compliance Report (AS 47.07.075)

Dear Governor Knowles:

AS 47.07.075 requires that the Department report to the legislature regarding its compliance with timeliness of hearing and deciding facility appeals of Department set Medicaid reimbursement rates. The report covers calendar year 1998.

During 1998, seven appeals were filed. Three of these appeals were stayed by stipulation of counsel as they addressed issues that are currently before the superior court. Four other appeals did not have hearings within the 120 day period due to scheduling conflicts and availability of either counsel or the hearing examiner. These were all delayed for good cause and are not required to be reported under 7AAC 43.708 (c) and (j).

With regard to Commissioner compliance regarding action on proposed decisions, the Commissioners office was not in compliance with one decision (North Star 94-MRC-04). The hearing examiner's decision was received in the Commissioner's Office on March 31 but was not remanded until May 12. However, during the time that the Commissioner was considering her reply to the decision, the hearing examiner reconsidered her decision. The reconsidered decision, which was issued on July 28, was received by the Commissioner's Office on July 31, and a remand was signed by the Commissioner on August 31, within the required time period.

The Department proposes two administrative actions to avoid these issues in the future. The first is to establish a process for the hearing examiner to notify the Commissioner's office if a decision is under reconsideration. The second is to assure that the hearing examiner provides a complete set of briefs to the Commissioner's Office with the proposed decision to facilitate review.

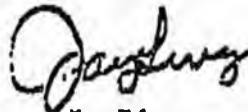
Governor Knowles

-2-

January 20, 1999

The Department would also like to correct an oversight regarding the 1997 compliance report. The Department inadvertently failed to report its lack of compliance regarding Bartlett's appeal (95 -AU -05). In that particular case, the Department mistakenly failed to send a notice of remand to the hearing examiner regarding her decision. This mistake was not realized until the instructions for the remand were prepared, at which time the remand was issued. However, the Commissioner's Office was out of compliance as a result of this oversight and this should have been reported last year.

Sincerely,



Jay Livey
Deputy Commissioner

FACILITY ID #	MRAC CASE #	HEALTH FACILITY	STATUS CODE	APPEALED TO COM	ASSIGNED BY COM
02	90-mrc-01A	Central Peninsula Hosp.	10A	1/11/90	1/24/90
15	90-mrc-02A	Our Lady of Compassion CC	10A	1/22/90	2/5/90
09	90-mrc-03A	Humana Hospital	10A	2/7/90	2/23/90
09	90-mrc-04A	Humana Hospital	10A	2/7/90	2/23/90
09	90-mrc-05A	Humana Hospital	10A	2/7/90	2/13/90
09	90-mrc-06	Humana Hospital	10A	5/11/90	5/23/90
06	90-mrc-07	Fairbanks Memorial Hosp.	10A	6/28/90	7/9/90
10	91-au-01	Ketchikan General Hosp.	10A	9/4/91	9/16/91
10	91-au-02	Ketchikan General Hosp.	10A	9/4/91	9/16/91
10	91-au-03	Ketchikan General Hosp.	10A	9/4/91	9/16/91
10	91-au-04	Ketchikan General Hosp.	10A	9/4/91	9/16/91
10	91-au-05	Ketchikan General Hosp.	10A	9/4/91	9/16/91
16	91-mrc-01	Petersburg General Hosp.	10A	1/7/91	4/2/91
21	91-mrc-02	South Peninsula Hospital	10A	1/14/91	4/2/91
14	91-mrc-03	Norton Sound Regional Hosp.	10A	2/20/91	4/2/91
02	91-mrc-04	Central Peninsula Hosp.	10A	5/23/91	6/5/91
20	91-mrc-05	Sitka Community Hospital	10A	7/2/91	7/3/91
04	91-mrc-06	Cordova Hospital	10A	7/9/91	7/12/91
24	91-mrc-07	Wrangell General Hospital	10A	7/24/91	7/25/91
10	91-mrc-08	Ketchikan General Hosp.	10A	10/2/91	10/8/91
10	91-mrc-09	Ketchikan General Hosp.	10A	10/21/91	11/7/91
10	91-mrc-10	Ketchikan General Hosp.	10A	10/21/91	10/28/91
26	92-mrc-01	Fifteen Facilities	10A	1/16/92	1/24/92
02	92-mrc-02	Central Peninsula Hosp.	10A	4/3/92	4/14/92
27	92-mrc-03	North Star Hospital	10A	5/8/92	5/19/92
04	92-mrc-04	Cordova Hospital	10A	7/7/92	7/9/92
16	92-mrc-05	Petersburg General Hosp.	10A	7/7/92	7/9/92
20	92-mrc-06	Sitka Community Hospital	10A	7/7/92	7/9/92
24	92-mrc-07	Wrangell General Hospital	10A	7/7/92	7/9/92
13	92-mrc-08	Mary Conrad Center	10A	7/16/92	8/3/92
12	92-mrc-09	Kotzebue Sr. Citizens Ctr.	10A	7/22/92	8/13/92
16	93-au-01	St. Ann's Nursing Home	10A	4/8/93	4/20/93
28	93-au-02	Valley Hospital	10A	5/4/93	5/11/93
26	93-au-03	Fifteen Facilities	10A	7/28/93	7/28/93
21	93-au-04	South Peninsula Hospital	10A	10/8/93	10/14/93
15	93-mrc-01	Our Lady of Compassion CC	10A	1/6/93	1/21/93
22	93-mrc-02	Valdez Community Hospital	10A	1/6/93	1/21/93
01	93-mrc-03	Bartlett Memorial Hosp.	10A	4/16/93	4/20/93
26	93-mrc-04	Fifteen Facilities	10A	7/28/93	7/28/93
28	93-mrc-05	Valley Hospital	10A	7/29/93	7/30/93
29	93-mrc-06	Alaska Regional Hospital	10A	9/15/93	9/27/93
14	93-mrc-07	Norton Sound Regional Hosp.	10A	10/8/93	10/14/93
29	94-au-01	Alaska Regional Hospital	01A	7/8/94	7/18/94
23	94-au-02	Wesley Rehab. & Care Ctr	01A	7/14/94	7/18/94
23	94-au-03	Wesley Rehab. & Care Ctr	01A	7/14/94	7/18/94
24	94-au-04	Wrangell General Hospital	10A	12/9/94	12/12/94
24	94-au-05	Wrangell General Hospital	10A	12/9/94	12/12/94
24	94-au-06	Wrangell General Hospital	10A	12/9/94	12/12/94
24	94-au-07	Wrangell General Hospital	10A	12/9/94	12/12/94
24	94-au-08	Wrangell General Hospital	10A	12/9/94	12/12/94
29	94-mrc-01	Alaska Regional Hospital	01A	1/10/94	1/19/94
02	94-mrc-02	Central Peninsula Hosp.	10A	2/22/94	3/8/94
24	94-mrc-03	Wrangell General Hospital	10A	4/28/94	5/4/94
27	94-mrc-04	North Star Hospital	01A	9/29/94	10/4/94
39	94-mrc-05	Alaska Regional Hospital	01A	9/30/94	10/4/94
23	95-au-01	Wesley Rehab. & Care Ctr	01A	2/6/95	2/10/95
40	95-au-02	St. Ann's Care Center	01A	2/17/95	2/28/95
27	95-au-03	North Star Hospital	01A	2/28/95	3/1/95
29	95-au-04	Alaska Regional Hospital	01A	6/23/95	6/27/95
01	95-au-05	Bartlett Memorial Hosp.	01A	7/21/95	7/24/95
28	95-au-06	Valley Hospital	10A	8/19/95	8/25/95
14	95-au-07	Norton Sound Regional Hosp.	10A	9/12/95	9/18/95
18	95-au-08	St. Ann's Nursing Home	01A	12/26/95	12/28/95
11	95-mrc-01	Kodiak Island Hospital	10A	1/6/95	1/6/95

FACILITY ID #	MRAC CASE #	HEALTH FACILITY	STATUS CODE	APPEALED TO COM	ASSIGNED BY COM
27	95-mrc-02	North Star Hospital	01A	2/21/95	2/28/95
23	95-mrc-03	Wesley Rehab. & Care Ctr	01A	5/25/95	6/2/95
23	95-mrc-04	Wesley Rehab. & Care Ctr	01A	6/25/95	6/2/95
27	95-mrc-05	North Star Hospital	01A	5/25/95	6/2/95
21	95-mrc-06	South Peninsula Hospital	10A	5/25/95	6/2/95
04	95-mrc-07	Cardova Hospital	10A	7/20/95	7/24/95
23	95-mrc-08	Wesley Rehab. & Care Ctr	01A	7/20/95	7/24/95
21	95-mrc-09	South Peninsula Hospital	10A	10/20/95	11/3/95
29	95-mrc-10	Alaska Regional Hospital	01A	12/4/95	12/6/95
03	95-mrc-11	Charter North Hospital	01A	12/4/95	12/5/95
27	96-mrc-01	North Star Hospital	01A	1/12/96	1/23/96
34	96-mrc-02	Providence AK Med Center	10A	1/18/96	1/23/96
14	96-mrc-03	Norton Sound Regional Hosp.	10A	1/22/96	1/23/96
18	96-mrc-04	St. Ann's Nursing Home	01A	1/26/96	1/29/96
01	96-mrc-05	Bartlett Memorial Hosp.	01A	3/14/96	3/14/96
10	96-mrc-06	Ketchikan General Hosp.	10A	5/2/96	6/5/96
23	96-mrc-07	Wesley Rehab. & Care Ctr	01A	8/2/96	8/16/96
04	96-mrc-08	Cardova Hospital	10A	8/2/96	8/16/96
21	96-mrc-09	South Peninsula Hospital	10A	8/22/96	10/7/96
01	96-mrc-10	Bartlett Memorial Hosp.	01A	8/29/96	10/11/96
20	96-mrc-11	Sitka Community Hospital	10A	9/4/96	10/7/96
03	96-mrc-12	Charter North Hospital	01A	12/18/96	1/7/97
40	97-mrc-01	St. Ann's Care Center	01A	2/10/97	3/5/97
28	97-mrc-02	Valley Hospital	01A	2/11/97	3/5/97
29	97-mrc-03	Alaska Regional Hospital	01A	5/23/97	7/12/97
29	97-mrc-04	Alaska Regional Hospital	01A	5/23/97	7/12/97
29	97-mrc-05	Alaska Regional Hospital	01A	7/7/97	7/11/97
29	97-mrc-06	Alaska Regional Hospital	01A	7/7/97	7/11/97
41	97-mrc-07	Bartlett Memorial Hospital	01A	8/6/97	8/11/97
14	97-mrc-08	Norton Sound Regional Hosp.	01A	10/16/97	10/29/97
10	97-mrc-09	Ketchikan General Hosp.	01A	10/21/97	10/21/97
03	97-mrc-10	Charter North Hospital	01A	10/24/97	11/17/97
27	98-mrc-01	North Star Hospital	01A	1/20/98	1/20/98
28	98-mrc-02	Valley Hospital	01A	1/30/98	2/2/98
07	98-mrc-03	Heritage Place	01A	3/2/98	4/17/98
10	98-mrc-04	Ketchikan General Hosp.	01A	7/23/98	7/29/98
23	98-mrc-05	Wesley Rehab. & Care Ctr	01A	7/23/98	7/29/98
20	98-mrc-06	Sitka Community Hospital	01A	9/4/98	9/10/98
21	98-mrc-07	South Peninsula Hospital	01A	11/2/98	11/5/98

STATE OF ALASKA

DEPT. OF HEALTH & SOCIAL SERVICES

OFFICE OF HEARINGS AND APPEALS

TONY KNOWLES, GOVERNOR

4730 BUSINESS PARK BLVD., SUITE 34
ANCHORAGE, ALASKA 99503-7137
PHONE: (907) 562-0631
FAX: (907) 561-0614

MEMORANDUM

DATE: October 19, 1998

TO: Jay Livey
Deputy Commissioner

FROM: Martha Beckwith
Hearing Examiner
Office of Hearings and Appeals

SUBJECT: Status of Cases (See Attached Open Case List -9/15/98)

I am sending a list of my open cases as of this date, and will explain the status of certain appeals. Of the ten Alaska Regional Hospital (ARH) cases listed, four cases were consolidated for hearing at the request of the parties, a hearing was held, and the parties are completing the post-hearing briefing in November. The four cases were consolidated because they involved related audit and rate appeal issues, and because the cases had been pending for quite awhile when I took this position. The parties felt that it would expedite the cases and save expense to have one hearing on the cases with similar issues and rate periods. The parties have requested that the remaining six ARH cases not be scheduled for hearing until a final decision in the consolidated cases is issued, in order to save the expense of preparing for a hearing which might be unnecessary, depending on the final decision.

The two Bartlett cases (FY 94, 96) were remanded from the Commissioner's office in order to determine whether a certificate of need was necessary for the MRI project. The parties briefed the issue, and a decision was issued (8/98) that a CON was not necessary. The remaining issues are scheduled to be heard at an evidentiary hearing starting this week, on October 22, 1998. The cases were consolidated at the request of the parties to avoid having two hearings on related audit and rate issues. The two other Bartlett cases (FY 97, 98), have not been set for hearing at the request of the parties, as they wish to wait for a final decision in the cases presented this week.

Charter North has a case (FY 95) which is currently under advisement. The other two Charter North cases involve FY 97 rates, and the parties have requested that the evidentiary hearing be held after a final decision is issued in that case.

The Ketchikan General Hospital (FY 98) appeal was scheduled for evidentiary hearing in January 1999. The facility asked that the matter be stayed until a decision is issued by the Supreme Court in the Wesley matter. The FY 99 appeal was just filed, and a conference will be scheduled with the attorneys soon.

I issued a proposed decision in the North Star Hospital consolidated cases (FY 93, 94, 95, and 94 audit) in March 1998, and a reconsidered proposed decision in July 1998. The Commissioner remanded the proposed decision (9/98) with instructions to proceed to address the audit issues. The cases are scheduled for a status hearing November 12, 1998, to determine whether a further evidentiary hearing is required. Another North Star case (FY 96), is scheduled for evidentiary hearing February 1999. The remaining North Star appeal will be scheduled for hearing after a final decision in the consolidated cases is made by the Commissioner.

Norton Sound is currently set for an evidentiary hearing in November 1998. However, I was recently notified that the evidentiary hearing may be vacated, based upon the summary judgment decision I issued 9/98. With regard to the St. Ann's cases, I issued a proposed decision in the FY 93 case, which was remanded by the Commissioner in 9/97. The case was then set for further briefing by the parties; the facility changed attorneys, and the new attorney requested that the case be stayed until a final decision was issued in the Wesley matter. The other two St. Ann's appeals (FY 94, FY 96), have been stayed at the request of the parties, until the FY 93 appeal is decided.

Valley Hospital (FY 97) currently has a motion for summary judgment under advisement. The other issues in that appeal have been stayed at the request of the parties pending the outcome of the Wesley matter.

With regard to the Wesley appeals, 6 of the cases have been consolidated at the request of the parties to avoid the unnecessary expense of having 6 separate evidentiary hearings when the issues are related. These appeals were all pending when I began in this position, and involve appeals for audits for FY 91, 92, 93, and rate appeals for FY 94, 95, 96. An evidentiary hearing was held in June 1998, where the parties presented evidence on their version of the proper application of Judge Link's decision in the Wesley superior court matter. The parties requested that the pending administrative appeals in this office be stayed pending a final court decision in Wesley. Two additional appeals have been filed in Wesley (FY 97 and FY 99), which will probably be stayed pending a decision in the other cases.

In summary, all of the appeals which were pending when I began this position have had summary judgment decisions issued, evidentiary hearings held, or have been stayed at the request of the parties pending decisions in other earlier cases. Almost all of the current appeals awaiting hearings, which are not stayed for other companion cases, involve FY 97 (or later) rates. As I indicated earlier, the Alaska Regional appeals are stacked up behind the earlier ARH consolidated cases, which the parties are still briefing. I issued a proposed decision in the four consolidated North Star appeals, which was remanded by the Commissioner. The other North Star appeals will await scheduling until a final decision is issued in the consolidated cases. The St. Ann's and Wesley appeals are stayed pending a decision in Wesley.

In order to expedite the appeal process, when new appeals are filed by a facility which does not have any pending appeals, I often have scheduled evidentiary hearings in those cases as soon as my calendar permits, ahead of other older appeals, because the facilities that have a number of appeals pending are all awaiting decisions in their earlier cases. At this time, almost

Status of Cases Memo to Jay Avey
October 19, 1998

all of the facilities have cases which are stayed pending the outcome in the Wesley superior court matter.

I hope that this memo and attached case list assist in explaining the status of my cases. If you have any questions, please contact me.

rec. 11/2/98

42 OPEN CASES
As of 9/15/98

# CASES	CASE #	HEALTH FACILITY	FY	COUNSEL	STATUS
1	95-au-04	Alaska Regional Hospital	FY 93	Stephen Rose	Post-Hearing Briefing Reply brief due 11/23/98 Status Conference 12/8/98 @ 9 a.m.
2	93-mrc-06 cons.	Alaska Regional Hospital	FY 91-93	Stephen Rose	Post-Hearing Briefing Reply brief due 11/23/98 Status Conference 12/8/98 @ 9 a.m.
3	94-mrc-05	Alaska Regional Hospital	FY 93	Stephen Rose	Post-Hearing Briefing Reply brief due 11/23/98 Status Conference 12/8/98 @ 9 a.m.
4	94-mrc-01	Alaska Regional Hospital	FY 92	Stephen Rose	Post-Hearing Briefing Reply brief due 11/23/98 Status Conference 12/8/98 @ 9 a.m.
5	94-au-01 cons.	Alaska Regional Hospital	FY 92	Stephen Rose	Status Conf. 12/8/98 @ 9 a.m.
6	95-mrc-10	Alaska Regional Hospital	FY 92 & 94	Stephen Rose	Status Conf. 12/8/98 @ 9 a.m.
7	97-mrc-03	Alaska Regional Hospital	FY 95	Stephen Rose	Status Conf. 12/8/98 @ 9 a.m.
8	97-mrc-04	Alaska Regional Hospital	FY 95	Stephen Rose	Status Conf. 12/8/98 @ 9 a.m.
9	97-mrc-05	Alaska Regional Hospital	FY 96	Stephen Rose	Status Conf. 12/8/98 @ 9 a.m.
10	97-mrc-06	Alaska Regional Hospital	FY 97	Stephen Rose	Status Conf. 12/8/98 @ 9 a.m.
11	95-au-05 cons.	Bartlett Memorial Hosp.	FY 94	Stephen Rose	S/J Granted 8/20/98 & Evidentiary Hearing 10/22-29/98
12	96-mrc-05	Bartlett Memorial Hosp.	FY 96	Stephen Rose	S/J Granted 8/98 Evidentiary Hearing 10/22-29/98

42 OPEN CASES

As of 9/15/98

# CASES	CASE #	HEALTH FACILITY	FY	COUNSEL	STATUS
13	96-mrc-10	Bartlett Memorial Hosp.	FY 97	Stephen Rose	Evid. Hearing 10/19-28/98--vacated To be set
14	97-mrc-07	Bartlett Regional Hospital	FY 98	Stephen Rose	To be set
15	96-mrc-12	Charter North Hospital	FY 97	Stephen Rose	To be set
16	95-mrc-11	Charter North Hospital	FY 95	Stephen Rose	Under Advisement
17	97-mrc-10	Charter North Hospital	FY 97	John Sullivan	To be set
18	98-mrc-03	Heritage Place	FY 98/95	Susan Mason	Stayed pending <u>Wesley</u> ; Cont.. status hearing on 9/15/99 @ 9:00am
19	97-mrc-09	Ketchikan General Hospital	FY 98/95	Teresa Bigelow	Evid. Hearing Stayed Pending decision in <u>Wesley</u> ; Status hearing 1/11/99 @ 9:30 a.m.
20	98-mrc-04	Ketchikan General Hospital	FY 99/96	Administrator	To be set
21	94-mrc-04 cons.	North Star Hospital	FY 93	John Sullivan	Remanded 9/98; Status hearing 11/12/98 @ 9:00 a.m.
22	95-mrc-05	North Star Hospital	FY 95	John Sullivan	Remanded 9/98; Status hearing 11/12/98 @ 9:00 a.m.
23	95-mrc-02	North Star Hospital	FY 94	John Sullivan	Remanded 9/98; Status hearing 11/12/98 @ 9:00 a.m.
24	95-au-03	North Star Hospital	FY 93	John Sullivan	Remanded 9/98; Status hearing 11/12/98 @ 9:00 a.m.

42 OPEN CASES
As of 9/15/98

# CASES	CASE #	HEALTH FACILITY	FY	COUNSEL	STATUS
25	96-mrc-01	North Star Hospital	FY 96	John Sullivan	Evid. Hearing 2/8-2/12/99.
26	98-mrc-01	North Star Hospital	FY 97	John Sullivan	To be set
27	97-mrc-08	Norton Sound Hospital	FY 97	Stephen Rose	Evid. Hearing 11/9-13/98; Order Denying Partial S/J issued 9/11/98; hearing may be vacated;
28	95-au-02	St. Ann's Care Center	FY 93	Susan Mason	Remanded by CO 9/97; Stayed 7/98 pending <u>Wesley</u> decision; Con't Status Hearing 12/15/98 @ 9 a.m.
29	95-au-08 cons.	St. Ann's Nursing Home	Year '94	Susan Mason	Stayed Pending Decision in 95-AU-02; Con't Status Hearing 12/15/98 @ 9 a.m.
30	96-mrc-04	St. Ann's Nursing Home	FY 96	Susan Mason	Stayed Pending Decision in 95-AU-02; Con't Status Hearing 12/15/98 @ 9 a.m.
31	97-mrc-01	St. Ann's Care Center	FY 97	Susan Mason	Stayed Pending Decision in 95-AU-02; Status Hearing 12/15/98 @ 9 a.m.
32	97-mrc-02	Valley Hospital	FY 97	Susan Mason	Facility's motion for S/J pending 6/98;
33	98-mrc-02	Valley Hospital	FY 98/95	Susan Mason	To be set
34	94-au-02 cons.	Wesley Rehab. & Care Ctr	FY 91	John Sullivan	Evidentiary Hearing 6/19/98 @ 9:30 a.m.; Stayed as of 6/19/98 per agreement of the parties pending Supreme Court <u>Wesley</u> decision; Con't Status Hearing 12/16/98 @ 9 a.m.
35	94-au-03	Wesley Rehab. & Care Ctr	FY 92	Stephen Rose	Evidentiary Hearing 6/19/98 @ 9:30 a.m.; Stayed as of 6/19/98; Con't Status Hearing 12/16/98 @ 9 a.m. E.H. 6/19 @ 9 a.m.

42 OPEN CASES

As of 9/15/98

# CASES	CASE #	HEALTH FACILITY	FY	COUNSEL	STATUS
36	95-au-01	Wesley Rehab. & Care Ctr	FY 93	Stephen Rose	Evidentiary Hearing 6/19/98 @ 9:30 a.m.; Stayed as of 6/19/98; Con't Status Hearing 12/16/98 @ 9 a.m. E.H. 6/19 @ 9 a.m.
37	95-mrc-03	Wesley Rehab. & Care Ctr	FY 95	Stephen Rose	Evidentiary Hearing 6/19/98 @ 9:30 a.m.; Stayed as of 6/19/98; Con't Status Hearing 12/16/98 @ 9 a.m.
38	95-mrc-04	Wesley Rehab. & Care Ctr	FY 94	Stephen Rose	Evidentiary Hearing 6/19/98 @ 9:30 a.m.; Stayed as of 6/19/98; Con't Status Hearing 12/16/98 @ 9 a.m.
39	95-mrc-08	Wesley Rehab. & Care Ctr	FY 96	Stephen Rose	Evidentiary Hearing 6/19/98 @ 9:30 a.m.; Stayed as of 6/19/98; Con't Status Hearing 12/16/98 @ 9 a.m.
40	96-mrc-07	Wesley Rehab. & Care Ctr	FY 97	Stephen Rose	Status Conf. 12/8/98 @ 9 a.m.
41	98-mrc-05	Wesley Rehab. & Care	FY 99/96	Administrator	To be set
42	98-mrc-06	Sitka Community Hosp.	FY 2000	Administrator	To be set

Office of Hearings and Appeals
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BEFORE THE COMMISSIONER

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

STATE OF ALASKA

In the Matter of)
)
 VALLEY HOSPITAL)
 7 Palmer, Alaska)
)
 8 Appeal of 1997 Medicaid Rate)
 and 1995 Medicaid Audit)

Case No. 97-MRC-02

ORDER GRANTING VALLEY HOSPITAL'S MOTION FOR PARTIAL SUMMARY
JUDGMENT AND ORDER DENYING THE STATE'S CROSS-MOTION FOR PARTIAL
SUMMARY JUDGMENT

Valley Hospital has appealed the decision of the executive
director of the Medicaid Rate Advisory Commission setting its FY
97 medicaid reimbursement rate.¹ The facility has moved for
partial summary judgment on the grounds that the staff of the
commission incorrectly calculated the disproportionate share (DSH)
threshold percentage because the staff incorrectly excluded
nursery days (all facilities), exempt-unit days (Bartlett and
Alaska Regional), and inpatient "medicaid-eligible" days from the
threshold DSH calculation.

¹ Decision and Order letter, dated December 27, 1996.

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1 In its opposition/cross-motion for summary judgment, the
2 staff conceded that exempt-unit days should have been included in
3 the calculation, but argued that even if exempt-unit and nursery
4 days were included in the calculation, Valley still would not
5 qualify for the 1997 DSH adjustment.

6 **I. Valley's Motion for Partial Summary Judgment**

7 Valley has raised the following issues:

8 1) Should the DSH calculation's "medicaid inpatient
9 utilization rate" include "nursery days"?

10 2) Should the DSH calculation's medicaid inpatient
11 utilization rate include "exempt-unit" days for Alaska Regional
12 Hospital and Bartlett Memorial Hospital?

13 3) Should the medicaid inpatient utilization rate include
14 inpatient "medicaid eligible" days?

15 **DSH Adjustment**

16 According to 7 AAC 43.687(a), "an acute care hospital
17 providing services to a disproportionate share of Medicaid
18 patients is eligible for additional payments for Medicaid
19 services..." In order to qualify to receive a an "additional
20 payment," a hospital must have either
21
22

23 (A) an Alaska Medicaid inpatient utilization rate
24 at least one standard deviation above the mean of
25 Alaska Medicaid inpatient utilization rates for all
hospitals in this state;or

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(B) a low-income inpatient utilization rate exceeding 25 percent; . . .²

Valley contends that it qualifies for a disproportionate share (DSH) payment under the method requiring a Medicaid inpatient utilization rate at least one standard deviation above the mean for all hospitals. In order to determine whether a particular hospital qualifies for a disproportionate share payment, the staff of the commission performs a calculation to determine which hospitals have a Medicaid inpatient utilization rate at least one standard deviation above the mean. If this threshold calculation establishes that a hospital qualifies to receive the DSH adjustment, then a separate calculation is performed to determine the amount of the DSH payment.

In order to determine a hospital's Medicaid inpatient utilization rate, a calculation must be performed according to the regulation methodology. The regulations define the term "Medicaid inpatient utilization rate" as follows:

(A)...the Alaska Medicaid inpatient utilization rate is a fraction, expressed as a percentage, of which the numerator is the hospital's number of inpatient days for Medicaid-eligible patients in this state for its qualifying year and the

² 7 AAC 43.687(b)(2)(A) and (B), (am 6/29/95, Reg. 124, the language in this section has stayed the same through the 5/31/98 amendments).

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1 denominator is the total number of the hospital's
2 inpatient days for its qualifying year;³

3 Valley contends that the staff performed this threshold
4 calculation incorrectly, as it failed to include newborn nursery
5 days as "inpatient days"; it submits that the Medicaid nursery
6 days should have been included in the numerator and the total
7 nursery days should have been included in the denominator. The
8 staff disputes this assertion, contending that nursery days were
9 properly excluded because healthy newborn babies do not constitute
10 "inpatients" as the term is used in 7 AAC 43.687, the DSH
11 regulation.

12 **A. Nursery days should be included in the DSH calculation**

13 In addition to the state regulation which provides for DSH
14 payments to qualifying hospitals, the federal medicaid and
15 medicare statutes also provide for DSH payments to hospitals. The
16 federal medicaid DSH statute is almost identical to Alaska's DSH
17 regulation, as it also provides that a hospital can qualify by
18 either a medicaid inpatient utilization rate, or by a low-income
19 utilization rate; it also uses the same methodology to determine
20 the
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25 ³ 7 AAC 43.687(b)(2)(A).

Order Granting Valley Hospital's Motion for Partial Summary Judgment/Order Denying the State's Cross-Motion for Summary Judgment
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1 medicaid inpatient utilization rate.⁴ The federal medicaid DSH
2 statute expressly includes newborns as inpatients in the DSH
3 calculation:

4 (b) (2) . . . In this paragraph, the term "inpatient
5 day" includes each day in which an individual
6 (including a newborn) is an inpatient in the hospital,
7 whether or not the individual is in a specialized ward
8 and whether or not the individual remains in the
9 hospital for lack of suitable placement elsewhere.
10 (emphasis added).⁵

11 The Medicaid Rate Advisory Commission's Accounting and
12 Reporting Manual also considers newborn infants as inpatients. In
13 its instructions on how to report expense account data, the MRAC
14 manual directs that newborn patient days are to be the standard
15 unit of measurement used in reporting nursery data:

16 STANDARD UNIT OF MEASURE: NUMBER OF NEWBORN PATIENT DAYS
17 Report patient days of care for all infant patients
18 (including "boarder babies") admitted to this unit.
19 Include the day of admission but not the day of
20 discharge or death. If both admission and discharge
21 or death occur on the same day, the day is considered
22 a day of admission and counts as one newborn patient day.⁶

23 ⁴ (2) For purposes of paragraph (1)(A), the term "medicaid inpatient
24 utilization rate" means, for a hospital, a fraction (expressed as a
25 percentage), the numerator of which is the hospital's number of inpatient days
attributable to patients who (for such days) were eligible for medical
assistance under a State plan approved under this title in a period, and the
denominator of which is the total number of the hospital's inpatient days in
that period. . . 42 U.S.C.A. § 1396r-4(b) (2).

⁵ Id.

⁶ Medicaid Rate Advisory Commission Accounting and Reporting Manual
Promulgations, "Expense Account Descriptions," § 6170, (March 1994).

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1 In addition, the Provider Reimbursement Manual, interpreting
2 federal medicare law, also indicates that newborn infants are
3 considered as inpatients:

4 Newborn Inpatient Day - Newborn inpatient days
5 are the days that an infant occupies a newborn bed
6 in the nursery. Include an infant remaining in the
7 hospital after the mother is discharged who does not
8 occupy a newborn bed in the nursery, an infant
9 delivered outside the hospital and later admitted to
10 the hospital but not occupying a newborn bed in the
11 nursery, or an infant admitted or transferred out of
the nursery for an illness in inpatient days. Also,
include an infant born in and remaining in the hospital
and occupying a newborn bed in the nursery after the
mother is discharged in newborn inpatient days.
(emphasis added).⁷

12 ...
13 Line 4--Total newborn inpatient days to be reported
on line 4 are the total days that infants occupy newborn beds
in the nursery. (emphasis added).⁸

14 In summary, the state's argument that newborn infants are not
15 inpatients because they are not "admitted" was not supported by
16 any legal authority. Newborn infants are specifically considered
17 inpatients according to the MRAC's own manual, the federal
18 medicaid DSH statute, and the provider reimbursement manual.
19 Because the federal medicaid DSH law has the same purpose as the
20 Alaska DSH regulation, (reimbursing hospitals which qualify due to
21 high medicaid inpatient utilization rate or low-income utilization
22

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24 ⁷ FRM (HCFA Pub. 15-2) §1924; HCFA Form 2552-96, § 3622. "Worksheet D-1
Computation of Inpatient Operating Cost," p. 36-107.

25 ⁸ FRM §1208.1. See also ex. 13, 14.

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1 rate), and uses the same methodology for calculating the medicaid
2 inpatient utilization rate, the similarity of purposes and
3 methodology also support the conclusion that the same categories
4 of patients are included in the identical calculations.

5 I find that Valley's DSH calculation should be recomputed to
6 include nursery days in both the medicaid days (numerator) and
7 total facility days (denominator) components of the medicaid
8 inpatient utilization rate calculation.

9
10 **B. Exempt-Unit Days should be included in the denominator of the
DSH calculation**

11 In its motion, Valley requested that certain "exempt-unit"
12 days (1266 psychiatric days for Bartlett, and 2,572 rehabilitation
13 days for Alaska Regional) be included in the total patient days
14 portion (denominator) of the DSH calculation, as the staff
15 included these days in the denominator for all of the other
16 facilities. As the state conceded that these days were omitted
17 and should have been included in the original calculation, I find
18 that the DSH calculation should also be re-computed to include
19 1,266 psychiatric days for Bartlett, and 2,572 rehabilitation days
20 for Alaska Regional, in the total patient days portion of the
21 calculation (denominator).⁹

22
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24 ⁹ The state indicated in its brief: "Staff agrees that Alaska Regional's
25 and Bartlett's exempt-unit days originally should have been included in the DSH
calculation."

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1 **C. Inpatient "Medicaid-eligible" days**

2 Valley has also raised the issue that the DSH calculation was
3 improperly performed because it excluded inpatient "medicaid-
4 eligible" days. Valley indicated in its motion that a decision on
5 this issue is unnecessary if it prevailed on the nursery and
6 exempt-unit days issues. Because those issues have been decided
7 in the facility's favor, I will not reach the issue of whether
8 inpatient medicaid-eligible days were improperly excluded. If the
9 parties request a decision on this issue, I will be requesting
10 supplemental briefing on the matter.
11

12 **II. The State's Cross-Motion for Summary Judgment**

13 The state filed a cross-motion for summary judgment on the
14 grounds that even if the adjustments requested by Valley were made
15 to the DSH calculation, the facility still would not qualify for a
16 DSH adjustment, so that Valley's request was moot. In support of
17 its argument, the state filed exhibit A, which it represented as
18 containing data to support this position. Valley then filed a
19 reply, which indicated that the data in exhibit A was not the
20 original data used by the state in performing the 1997 DSH
21 calculation. Valley identified eighteen changes from the original
22 source data the staff had made in exhibit A, which the state had
23 not identified or discussed in its opposition to Valley's motion.
24

25

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1 Despite the issues raised by Valley, the state did not file a
2 reply, or respond to the allegations raised about the altered data
3 in exhibit A.

4 A month later, at the oral argument on the parties'
5 respective motions for summary judgment, the state filed several
6 new exhibits, containing new data (ex. B, C, and D), and attempted
7 to raise new arguments not previously made in its motion for
8 summary judgment. Over the objections of Valley, although the
9 state had not filed a timely response to its own motion, the state
10 was allowed an opportunity to file a late reply (after oral
11 argument) solely to address these issues: 1) to explain the
12 reasons why it had made numerous changes to the original DSH data
13 in its exhibit A, without identifying the changes or source of the
14 data, and 2) to explain any legal or factual basis for the changes
15 it presented in exhibit A.

17 In its two-page reply, the state did not address the required
18 issues as directed. It did not provide any explanation as to why
19 it filed an exhibit which misrepresented its source data. The
20 state also did not identify any legal support for the changes it
21 had made in exhibit A. In fact, in its reply, the state
22 specifically disavowed any reliance on exhibit A, and presented a
23 new exhibit F. The only explanation provided by the state for
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25

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1 filing an exhibit with altered source data, was set out in the
2 affidavit of Susan Christy, the state's auditor. The affidavit
3 stated that she had been inexperienced and unfamiliar with how to
4 perform DSH calculations as she had only performed the calculation
5 once before, in 1996; the MRAC does not have any written policy or
6 description of which days to include in the DSH calculation, and
7 because of this, she was unaware of which days to include in the
8 1997 DSH calculation. Ms. Christy conceded that when she prepared
9 exhibit A (filed 4/20/98), she made approximately 18 changes to
10 the original source data, to attempt to correct for the 18
11 categories of errors that she alleges she made in the original
12 1997 DSH calculation. She indicated that although a supervisor
13 reviewed the revised DSH calculation, the unnamed supervisor
14 apparently did not discover any of the numerous alleged errors.
15

16 She also stated that after preparing exhibit A in April 1998,
17 she subsequently decided that it also contained numerous errors.
18 At the oral argument on June 2, 1998, even staff's counsel agreed
19 that exhibit A contained inaccurate data, and again incorrectly
20 calculated the DSH adjustment. Counsel identified approximately
21 four new categories of errors in the denominator of DSH
22 calculation, and indicated that these four categories should
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1 (apparently) be changed back to the original data used in the
2 calculation. Counsel stated:

3 There were a number of errors and those were
4 the categories and they said if we're going to redo
5 the DSH calculation, it should be done correctly and
6 this [exhibit C (sic)] is what the correct calculation is
and subsequent to exhibit A, four of those 18 adjustments
actually were in error. They should not have been made.¹⁰

7 ...I will now pass out exhibit C which I
8 will also discuss in the brief that I will submit
9 or the affidavit that I will submit and that has
those errors backed out and that is the latest staff
DSH calculation for 1997. (emphasis added).¹¹

10 Thus, as of June 2, the state had discarded exhibit A, and
11 was now relying on exhibit C as the "latest" correct DSH
12 calculation, which was intended to replace exhibit A (prepared
13 three months earlier, on 4/98), and the original DSH calculation
14 (prepared 8/97). Ms. Christy also conceded that exhibit A should
15 be disregarded because of the errors she made, stating:
16

17 It should be noted that exhibit A also contains
18 errors, as explained below, and is not the staff's final
DSH calculation with respect to Valley's claims.¹²

19 Ms. Christy went on to state that she also prepared exhibits
20 B and C (filed at oral argument 6/2/98), which were presented by
21 the state's attorney on that date, as being the "latest" correct
22

23 " Tr. at 32.

24 " Tr. at 34.

25 " Christy affidavit, p. 6.

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1 version of the DSH calculation. However, on June 9, only a week
2 later, she stated in her affidavit that because she again made
3 errors in those exhibits (B and C), that these exhibits should
4 also be disregarded:

5 Staff has previously submitted its exhibits A
6 and C relating to the revised DSH calculation . . .
7 However, those exhibits should be disregarded because
8 they contain the errors noted above in paragraph 10.¹³

9 The errors referred to in paragraph 10, include 22 separate
10 categories of errors (10 in the numerator, 12 in the denominator)
11 which Christy says she made in exhibits A, B, and C, filed only a
12 week earlier. After stating that all of the alleged errors and
13 data source changes made in exhibit A were now fully explained in
14 the new exhibit E, (filed 6/9/98 with her affidavit), Ms. Christy
15 then indicates that exhibit E should be disregarded, (apparently
16 because it was merely a restatement of the inaccurate exhibit A)
17 because she has prepared other, more accurate exhibits, F and G.¹⁴

18 Christy then states that exhibits F and G (filed June 9,
19 1998), now contained the actual, correct 1997 DSH calculation:

20 I prepared Exhibit F, attached hereto,
21 as staff's final, corrected DSH calculation.¹⁵

22
23 ¹³ Id. at 13.

24 ¹⁴ Id.

25 ¹⁵ Id.

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2 However, although Ms. Christy details at length all of the
3 numerous mistakes she made in exhibits A, B, C, and E, the
4 affidavit is silent as to what changes she made in exhibits F and
5 G, how these exhibits differ from the state's original 1997 DSH
6 calculation, and does not provide any justification for the
7 changes, other than her opinion. The affidavit also does not
8 identify how exhibits F and G differ from the previously filed
9 inaccurate exhibits, or provide any justification for the sudden
10 change in treatment of swing bed days, observation bed days, and
11 medicaid psych/substance abuse/rehabilitation days, from the
12 original or revised DSH calculation and previous exhibits.

13 Discussion

14
15 1. The affidavit lacks credibility

16 To the extent the state has submitted Ms. Christy's affidavit
17 as support to "re-do" the 1997 DSH calculation because of alleged
18 errors made by her in the original calculation, that request is
19 denied because it is not supported by any legal authority,
20 argument or competent evidence. The information presented at the
21 oral argument and in Christy's affidavit established a pattern by
22 the agency of preparation and filing of inaccurate and incorrect
23 exhibits. I find that the affidavit of Susan Christy and the
24 exhibits she has prepared in this matter, illustrate a lack of
25

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1 candor and apparent inability to competently perform the DSH
2 calculation. As an initial matter, she stated that she made
3 numerous errors in the revised 1997 DSH calculation because she
4 was inexperienced and had only worked on one other DSH
5 calculation, the 1996 DSH calculation. This sworn statement
6 directly conflicts with the sworn interrogatory answer given
7 previously by her supervisor, the executive director, in the
8 Charter North appeal. Contrary to Christy's statement that she
9 had only worked on one 1996 DSH calculation, her supervisor stated
10 under oath that she had also worked on the FY 1995 DSH
11 calculation. Thus, she was not as inexperienced as she
12 represented.¹⁶

14 Christy attributes her alleged 18 errors in the revised 1997
15 DSH calculation (illustrated in exhibit A), to inexperience, lack
16 of written guidelines, and lack of adequate supervision. However,
17 she never explained why she has continued to make similar,
18 repeated errors in each of the exhibits submitted in this matter,
19 in April and June 1998, when she presumably had more experience.
20 In addition, no explanation has been provided by the state as to
21 why the MRAC supervisors did not adequately or competently review
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¹⁶ Ex. 15, p. 2.

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1 her work in 1997 or 1998, on a calculation which has a substantial
2 effect on several facilities.

3 **2. Inaccurate exhibits**

4 I find that each of the exhibits submitted by the state has
5 been shown to be inaccurate, unreliable, and to contain
6 unsupported changes in the treatment of source data. Except for
7 the new exhibits F and G, each exhibit Ms. Christy has prepared
8 has been repudiated either by her or state's counsel, because they
9 both agree the exhibits contain inaccuracies and errors.¹⁷

10
11 In addition to filing inaccurate exhibits, I find that the
12 state made misrepresentations about exhibit A in its opposition to
13 Valley's motion. In its opposition, the state claimed that if the
14 two types of changes requested by Valley were allowed, then Valley
15 still would not qualify for a DSH adjustment. Exhibit A was
16 offered to support this argument, and was represented by the state
17 as being the original 1997 DSH calculation, with Valley's two
18 submitted proposed changes. This representation was untrue. The
19 state, through Ms. Christy, had made 18 changes to the underlying
20 source data without identifying those changes, and also had
21 misrepresented the data changes sought by Valley. Instead of
22 including the exempt-unit days in the denominator as requested by
23
24

25 ¹⁷ Affidavit p. 4, 5, 6, 11, 13; tr. at 32, 34.

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1 Valley, the auditor put these days in the numerator in exhibit A,
2 representing that this was the result sought by Valley, which was
3 not a true statement.¹⁸

4 **3. No legal authority supports the state's treatment of swing bed**
5 **days, observation bed days, and psych/substance abuse days**

6 The state requested an opportunity to file a late reply to
7 try to explain the reasons for filing the inaccurate exhibit A,
8 and to justify any changes it felt were necessary to the 1997 DSH
9 calculation. In its reply, the state indicated that a number of
10 errors had been made by the staff, but did not identify any
11 alleged errors in the revised DSH calculation, or provide any
12 legal support for any changes sought, despite being requested to
13 do so.

14 Even though the state did not identify or provide legal
15 authority to support any changes to the 1997 DSH calculation, I
16 will briefly address the conclusionary statements made in
17 Christy's affidavit concerning swing bed days, observation days,
18 and psych/substance abuse days.

20 **Psych/substance Abuse Days**

21 The Christy affidavit states that although she did not
22 originally include rehabilitation days in the numerator of the DSH
23

24 ¹⁸ State's brief, p. 1, 2.

25

Order Granting Valley Hospital's Motion for Partial Summary Judgment/Order
Denying the State's Cross-Motion for Summary Judgment
Valley Hospital
97-MRC-02

1 calculation, she now (in 1998) believed that these days should be
2 included in the numerator. Ms. Christy's opinion was not
3 supported by any legal authority or even discussed by her counsel.
4 Her position also directly contradicted the way the agency has
5 treated these days in past calculations, as well as how the agency
6 treated these days in the subsequent 1998 DSH calculation.¹⁹ No
7 explanation was provided to justify the agency's change in the
8 treatment of these days.

9
10 In addition, Christy's statements that substance abuse days
11 should be in the numerator of the calculation, directly conflict
12 with the previous sworn statements given by Jack Nielson, the
13 executive director of the commission, in his testimony in the
14 Charter North formal hearing. During his testimony, Nielson
15 testified that rehabilitation/chemical dependency days should not
16 be included in the numerator.²⁰

17 I find that because Christy's unsupported statements conflict
18 with the agency's past and present treatment of these types of
19 days, and the agency supervisor's previous testimony, that her
20 position that rehabilitation days should be included in the
21 numerator of the calculation, is neither credible nor reliable.
22

23
24 ¹⁹ Ex. 16.

25 ²⁰ Ex. 17, p. 4.

Order Granting Valley Hospital's Motion for Partial Summary Judgment/Order
Denying the State's Cross-Motion for Summary Judgment
Valley Hospital
97-MRC-02

1 **Swing Bed/Observation Bed Days**

2 Christy also indicates in her affidavit that although she did
3 not include swing bed or observation bed days in the 1997 DSH
4 calculation, she now "believes" that these days should be
5 included. No other information was presented to support this
6 conclusion. Christy's statements concerning swing bed days again
7 conflict with the agency's past treatment of swing bed days in the
8 original and revised 1997 DSH calculation, as well as the agency
9 statements presented on the front of the revised 1997 DSH
10 calculation:
11

12 Total facility days taken from T-2, include
13 acute care, ICU, NICU, Psych & Sub. abuse, observation
14 beds, but not nursery.²¹

15 The agency clearly indicated that swing bed days were not
16 included in the total facility days. Christy's statements also
17 conflict with the agency's treatment of swing bed days in the 1998
18 DSH calculation: the agency did not include swing bed days.²²

19 With regard to observation bed days, it was the agency's
20 previous position (in the original and revised 1997 DSH
21 calculations) that observation bed days were to be included in the

22
23
24 ²¹ Ex. 3.

25 ²² Ex. 16, p. 3.

Order Granting Valley Hospital's Motion for Partial Summary Judgment/Order
Denying the State's Cross-Motion for Summary Judgment
Valley Hospital
97-MRC-02

1 "total facility days" portion of the calculation, and no authority
2 has been provided to support a different treatment.²³

3 In summary, I do not find any support for the agency's sudden
4 change in the treatment of swing bed or observation bed days.

5 **4. Agency's Arbitrary and Capricious Conduct**
6

7 The only argument presented by the state in its motion for
8 partial summary judgment, was that the facility would not qualify
9 for a DSH adjustment even if the nursery days and exempt-unit days
10 were included in the calculation. Prior to Valley's raising its
11 concerns about the DSH calculation in its motion for summary
12 judgment, the state never requested to re-do the already revised
13 1997 DSH calculation because of any alleged errors it had made.
14 Even after Valley filed its motion for summary judgment and raised
15 issues about the accuracy of the calculation, the state never
16 identified any type of errors that it made, or requested to change
17 the 1997 DSH calculation due to errors it had made.²⁴ After
18 Valley pointed out that even with the changes the state made in
19 altering the data in exhibit A, it still would qualify for a DSH
20

21 ²³ Ex. 3, p. 1.

22 ²⁴ In its opposition, the state did concede that the exempt-unit days
23 (rehabilitation days for Alaska Regional and the psych days for Bartlett),
24 should have been included in the calculation. However, the state then
25 proceeded to include these days in the numerator, representing this change as
requested by Valley, which was not correct. Valley's request was to treat
these days the same way the staff treated all the other facilities
rehabilitation days, which was to include them in the denominator.

Order Granting Valley Hospital's Motion for Partial Summary Judgment/Order
Denying the State's Cross-Motion for Summary Judgment
Valley Hospital
97-MRC-02

1 DSH payment if nursery and exempt-unit days were included as
2 requested, the state began to file exhibits, each of which
3 presented a different position on which categories of days should
4 be included in the DSH calculation.

5 I find that the staff's presentation of successive inaccurate
6 exhibits, each with new allegations of its own "recently
7 discovered" numerous mistakes, and the staff's continuously
8 changing positions of which patient data to include, illustrated a
9 pattern of arbitrary and capricious conduct, with its sole purpose
10 to attempt to defeat Valley's motion, by changing the data to be
11 included in the calculation. Each time that Valley indicated that
12 it would still qualify for the DSH payment, even with the staff's
13 changes, the staff then changed its position to exclude or include
14 a different category of patients from the calculation, which if
15 accepted, would disqualify Valley from receiving a DSH payment.

16 I find that the staff's 1998 changes to the original 1997 DSH
17 calculation, were not made because of any real "errors", but
18 rather were arbitrary and capricious efforts by the agency to
19 manipulate the data and calculation to exclude Valley from
20 qualifying for the DSH payment.²⁵ An agency is required to follow
21

22
23 _____
24 " The exhibits also showed that the auditor made repeated clerical
25 errors, (even in exhibit F). No authority was provided to justify changing
these numbers. Hopefully, adequate training, supervision, and competent review
of the calculation prior to its dissemination to the public, should correct
this problem in the future.

Order Granting Valley Hospital's Motion for Partial Summary Judgment/Order
Denying the State's Cross-Motion for Summary Judgment
Valley Hospital
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1 its regulations, and is not entitled to act in an arbitrary and
2 capricious manner, without any authority for its conduct.²⁶

3 Conclusion

4 Based upon the foregoing discussion, the 1997 DSH calculation
5 must be re-calculated to include nursery days in both the
6 numerator and denominator of the DSH calculation. I also find
7 that the rehabilitation days for Alaska Regional (2,572) and the
8 psychiatric days for Bartlett (1,266), should be included in the
9 denominator (total facility days) of the calculation.

10 The staff's request to consider its most recent exhibits F
11 and G as the "final, corrected 1997 DSH calculation" is denied.
12 The DSH regulation requires that staff produce the DSH calculation
13 by June 1 of the qualifying year.²⁷ The staff prepared the
14 original DSH calculation 6/1/96, and then issued the revised 1997
15 DSH calculation 8/11/97, as the final DSH calculation.²⁸ In
16 preparing the calculation, the staff is required to follow the
17 regulation criteria. According to the affidavit of the staff's
18 auditor, because the agency lacks any written protocol to follow,
19 and the existing regulations are so vague, that she is still
20 uncertain which days to include or exclude. Despite the auditor's
21

22
23 ²⁶ Noey v. Department of Environmental Conservation, 737 P. 2d 796
(Alaska 1987).

24 ²⁷ 7 AAC 43.687.

25 ²⁸ Ex. 2, p. 5; ex. 3.

Order Granting Valley Hospital's Motion for Partial Summary Judgment/Order Denying the State's Cross-Motion for Summary Judgment
 Valley Hospital
 97-MRC-02

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lack of knowledge, the staff is not permitted to change the DSH criteria on an ad hoc basis, or by whim or conjecture. Absent any other authority, I find that the patient bed categories staff used in preparing the "final" revised 1997 DSH calculation (dated 8/11/97), indicated the staff's view of the correct categories of days to include in the calculation. These categories and numbers used shall remain the same in the re-computed DSH calculation, with the exception of the inclusion of nursery days and rehabilitation days as indicated above.

If a decision on the issue of "medicaid-eligible" patients is still sought by the facility, Valley can present the issue again with additional briefing.

Dated at Anchorage, Alaska, this 23rd day of November, 1998.

Martha Beckwith
 Martha Beckwith
 Hearing Examiner

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Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

Senate Finance Committee, April 6, 1999, 6:04 p.m.

Alaska State Legislature

ALASKA STATE LEGISLATURE
OFFICE OF THE CLERK
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ANCHORAGE, ALASKA 99501
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FACSIMILE: 457-3001
WWW.AKLEGISLATURE.GOV



GOVERNOR'S JUDICIARY COMMITTEE
INDEPENDENT LEGISLATION &
SOCIAL SERVICES COMMITTEE
BUDGET SUBCOMMITTEES
ALASKA COURT SYSTEM
DEPT. OF ENVIRONMENTAL CONSERVATION
DEPT. OF REVENUE

Representative Joe Green
District 10
House Majority Leader

Sponsor Statement

HB 168 – Appeals of Medicaid Reimbursement Rates

HB 16 amends the Medicaid reimbursement rate appeals process to ensure a more timely final decision, which, I believe, will result in lower costs for both the health care providers and the Department of Health and Social Services.

Problem: The Medicaid reimbursement rate appeals process currently traps health care providers in a state of administrative indecision when they appeal rates. The payment rates for health care services covered by Medicaid are set annually by the Medicaid Rate Advisory Commission, a five-member board appointed by the Governor. If a health care provider wishes to challenge a reimbursement rate they must file an appeal within 30 days after the rate is set. Once an appeal is filed a briefing and hearing schedule is agreed upon and an evidentiary hearing is held (usually) within 120 days. These hearings often take several days, after which the hearing officer submits a recommendation to the Commissioner of Health and Social Services. The commissioner has three options: accept, deny, or remand the hearing officer's recommendation. In some cases the commissioner has remanded the recommendation, whereupon the hearing officer made additional findings and resubmitted the recommendation to the commissioner, only to have the commissioner remand the decision again. There are cases still in the appeals process that were filed in 1991, nearly a decade ago.

Solution: HB 168 establishes a more responsive timeline for the disposition of rate appeals. Current law (AS 47.07.075) allows the commissioner 30 days to render a decision, with the option of remanding the case back to the hearing officer for additional findings. HB 168 allows the commissioner 30 days to render a final administrative decision. If the commissioner fails to make a final decision, the hearing officer's recommendation becomes the final decision.

There are currently more than 40 appeals outstanding, with a cost to the state of at least \$10 million and as much as \$30 million. Health care providers need to be able to more efficiently define their cost and reimbursement structure, and the department needs to be able to finalize these costly administrative appeals in a more timely manner. Please support HB 168, which addresses the needs of both the health care providers and the department.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 168

Revision Date/Time (Note if correction): _____ Dept. Affected: Health and Social Services
 Title: Actions of the Department of Health and Social BRU: Medical Assistance Admin
 Services regarding certain facility payments Component: Hearings and Appeals
 Sponsor: Green COMPONENT SERIAL NO. 143-J
 Requestor: House HESS See also (SN#): _____

Expenditures/Revenues: (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES	226.4	226.4	226.4	226.4	226.4	226.4
TRAVEL						
CONTRACTUAL	140.4	140.4	140.4	140.4	140.4	140.4
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	366.8	366.8	366.8	366.8	366.8	366.8

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	183.4	183.4	183.4	183.4	183.4	183.4
1003 GF Match	183.4	183.4	183.4	183.4	183.4	183.4
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	366.8	366.8	366.8	366.8	366.8	366.8

Estimate of any current year (FY1999) cost: \$0.0

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The department assumes that the "recommendation" on page 2, line 16 of Section 2. for which the commissioner must render a final decision within 30 days, is a proposed decision under AS 44.62.500. In order to accelerate the hearing process, meet the 30 day review requirements for a final administrative decision, and make any necessary changes for the final administrative decision, the department requests three new positions. The positions consist of two new hearing officers in the Office of Hearings and Appeals and one new position in the Commissioner Office to review the proposed appeals. Facility rate appeals are extremely specialized and complex, and cannot be successfully reviewed within the 30 day window without additional staff resources.

Contractual funding is requested to support a new attorney position in the Department of Law to handle the increased activity related to rate appeals by the new hearing officer positions. The department will RSA funding to the Department of Law who will establish this position in Anchorage.

4/7/99
 Prepared by: Bob Labbe Phone: 465-3355
 Division: Medical Assistance Date/Time: 4/6/99 8:15 AM
 Approved by Commissioner: Karen Perdue, Commissioner Date: 4/12/99
 Agency: Department of Health & Social Services

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DRAFT

October 3, 1994

Mr. Jack Nielson, Executive Director
Medicaid Rate Advisory Commission
4710 Business Park Blvd, Ste 44
Anchorage, Alaska 99503-7100

Dear Mr. Nielson:

I am writing to you regarding the proposed amendments to 7 AAC 43 Medicaid Appeal Regulations. I share ASHNHA's concern that a deadline for appeal decisions is not included in the regulations.

It is my understanding that imposing a deadline on the hearing officer's proposed decision was the legislature's intent when it passed Senate Bill 431 in 1990. It seems that one of the concerns addressed by SB 431 was the backlog of medicaid appeals. In several cases, health facilities have waited, or are waiting, for more than two years for a decision to be proposed. Again, this does not seem to be fulfilling the legislation's intent.

I hope the department will consider the inclusion of a deadline for a proposed decision within these proposed regulations. Otherwise, it seems that these regulations will not solve the perceived problem of an open-ended appeal process. This situation may require the regulations to be reviewed by the Administrative Regulation Review Committee or addressed through more precise legislation.

Any effort by the department to ensure these regulations solve the problem would be appreciated.

Regards,

Gary L. Davis, Representative
GD:dm

HB

177

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 177

Revision Date/Time (Note if correction): _____
 Title: Relating to foster parents rights at delinquency
proceedings.
 Sponsor: Rep. Dyson
 Requestor: House (HES)

Dept. Affected: Health and Social Services
 BRU: Youth Corrections
 Component: Probation Services
 COMPONENT SERIAL NO. 2134
 See also (SN#): _____

Expenditures/Revenues: (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY1999) cost: \$0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the Department if enacted.

5/13/99

Prepared by: George Buhite *Robert Buttcane*
 Division: Family & Youth Services

Phone: 465-2212
 Date/Time: 4/13/99 1:14 PM

Approved by Commissioner: Karen Perdue, Commissioner
 Agency: Department of Health & Social Services

Date: 4/14/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 177

Revision Date: _____
Title: "An Act relating to foster parents..."

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

Sponsor: Representative Dyson
Requestor: (H)HES

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill has no fiscal impact on the Public Defender Agency.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Robert Poe Jr.
Agency: Department of Administration

Date: 4/12/99

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HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 7, 1999

FURTHER REFERRALS:

Judiciary

Date of Committee Action: _____

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 177

HOUSE BILL NO. 177

FOSTER CARE & DELINQUENT MINORS

"An Act relating to foster parents; relating to the right of foster parents to have notice of, and testify at, delinquency hearings and to the disclosure of minors' records to foster parents; and amending Rules 3, 7, 10, 12, 21, 23, and 25, Alaska Delinquency Rules."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Paul Ryan</i>	✓			
<i>John...</i>	✓			
<i>...</i>			✓	
<i>...</i>	✓			

CHAIR'S SIGNATURE *Paul Ryan*

John...



Alaska State Legislature

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REPRESENTATIVE FRED DYSON

HB 177 Sponsor Statement

"An Act relating to foster parents; relating to the right of foster parents to have notice of, and testify at, delinquency hearings and to the disclosure of minors' records to foster parents; and amending Rules 3, 7, 10, 12, 15, 21, 23, and 25, Alaska Delinquency Rules."

Foster parents often are an inordinately valuable resource to the State of Alaska case workers and judges in respect to the condition and best interests of a foster child in state custody. This bill requires that foster parents be allowed to be present and have a voice at all proceedings dealing with the disposition and treatment of the child.

Because these foster parents live with the child continually, and are often very experienced at dealing with troubled children, most foster parents are an excellent resource for the overworked case workers and the busy judges who must make important decisions concerning children with very little information.

Last year, we introduced HB 456 which gave the right of foster parents to have notice of, and testify at, **child-in-need-of-aid (CINA)** and **delinquency** hearings and to the disclosure of minors' records to foster parents. In addition, HB 375, the Child Protection Bill which predominately focused on CINA proceedings, was introduced. Due to its subject, we were able to incorporate half of HB 456 into HB375.

Now law, HB 375 gives foster parents a right to be heard in CINA court proceedings, but not in delinquency hearings. HB 177 will essentially achieve my original intent and will allow foster parents a voice in court and information without regard to the process in which their foster children are involved.

- E-mail -
Representative_Fred_Dyson
@Legis.state.ak.us

- Internet -
<http://www.akrepublicans.org>

1-LS0760D
Luckhaupt/
4/13/99

CS FOR HOUSE BILL NO. 177()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE DYSON

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to foster parents; relating to the right of foster parents to have
2 notice of, and testify at, delinquency hearings and to the disclosure of minors'
3 records to foster parents; and amending Rules 3, 7, 10, 12, 21, 23, and 25,
4 Alaska Delinquency Rules."

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

6 * **Section 1.** AS 47.12.010(b) is amended to read:

7 (b) The purposes of this chapter are to

8 (1) respond to a juvenile offender's needs in a manner that is consistent

9 with

10 (A) prevention of repeated criminal behavior;

11 (B) restoration of the community and victim;

12 (C) protection of the public; and

13 (D) development of the juvenile into a productive citizen;

14 (2) protect citizens from juvenile crime;

- 1 (3) hold each juvenile offender directly accountable for the offender's
2 conduct;
- 3 (4) provide swift and consistent consequences for crimes committed by
4 juveniles;
- 5 (5) make the juvenile justice system more open, accessible, and
6 accountable to the public;
- 7 (6) require parental or guardian participation in the juvenile justice
8 process;
- 9 (7) create an expectation that parents will be held responsible for the
10 conduct and needs of their children;
- 11 (8) ensure that victims, witnesses, parents, foster parents, guardians,
12 juvenile offenders, and all other interested parties are treated with dignity, respect,
13 courtesy, and sensitivity throughout all legal proceedings;
- 14 (9) provide due process through which juvenile offenders, victims,
15 parents, and guardians are assured fair legal proceedings during which constitutional
16 and other legal rights are recognized and enforced;
- 17 (10) divert juveniles from the formal juvenile justice process through
18 early intervention as warranted when consistent with the protection of the public;
- 19 (11) provide an early, individualized assessment and action plan for
20 each juvenile offender in order to prevent further criminal behavior through the
21 development of appropriate skills in the juvenile offender so that the juvenile is more
22 capable of living productively and responsibly in the community;
- 23 (12) ensure that victims and witnesses of crimes committed by juveniles
24 are afforded the same rights as victims and witnesses of crimes committed by adults;
- 25 (13) encourage and provide opportunities for local communities and
26 groups to play an active role in the juvenile justice process in ways that are culturally
27 relevant; and
- 28 (14) review and evaluate regularly and independently the effectiveness
29 of programs and services under this chapter.
- 30 * Sec. 2. AS 47.12.050(a) is amended to read:
- 31 (a) Except as may be otherwise specifically provided, in all cases under this

1 chapter, the minor, each parent of the minor, the foster parent of the minor, and the
2 guardian of the minor are entitled to notice adequate to give actual notice of the
3 proceedings, taking into account education and language differences that are known
4 or reasonably ascertainable by the party giving the notice. The notice must contain all
5 names by which the minor has been identified.

6 * Sec. 3. AS 47.12.060(b) is amended to read:

7 (b) When the department or the entity selected by it decides to make an
8 informal adjustment of a matter under (a)(2) of this section, that informal adjustment
9 may not be made without the agreement or consent of the minor and the minor's
10 parents or guardian to the terms and conditions of the adjustment. In addition, the
11 department or entity shall give the minor's foster parent an opportunity to be
12 heard before the informal adjustment is made. An informal action to adjust a
13 matter is not successfully completed unless, among other factors that the department
14 or the entity selected by it considers, as to the victim of the act of the minor that is the
15 basis of the delinquency allegation, the minor pays restitution in the amount set by the
16 department or the entity selected by it or agrees as a term or condition set by the
17 department or the entity selected by it to pay the restitution.

18 * Sec. 4. AS 47.12.110(a) is amended to read:

19 (a) The court shall conduct a hearing on the petition. The court shall give
20 notice of the hearing to the department, and the department shall send a representative
21 to the hearing. The representative of the department may also be heard at the hearing.
22 The department shall give notice of the hearing and a copy of the petition to the
23 minor's foster parent, and the court shall give the foster parent an opportunity
24 to be heard at the hearing. The public shall be excluded from the hearing, but the
25 court, in its discretion, may permit individuals to attend a hearing if their attendance
26 is compatible with the best interests of the minor. Nothing in this section may be
27 applied in such a way as to deny a minor's rights to confront adverse witnesses, to a
28 public trial, and to a trial by jury.

29 * Sec. 5. AS 47.12.120(b) is amended to read:

30 (b) If the minor is not subject to (j) of this section and the court finds that the
31 minor is delinquent, it shall

1 (1) order the minor committed to the department for a period of time
2 not to exceed two years or in any event extend past the day the minor becomes 19
3 years of age, except that the department may petition for and the court may grant in
4 a hearing (A) two-year extensions of commitment that do not extend beyond the
5 minor's 19th birthday if the extension is in the best interests of the minor and the
6 public; and (B) an additional one-year period of supervision past age 19 if continued
7 supervision is in the best interests of the person and the person consents to it; the
8 department shall place the minor in the juvenile facility that the department considers
9 appropriate and that may include a juvenile correctional school, juvenile work camp,
10 treatment facility, detention home, or detention facility; the minor may be released
11 from placement or detention and placed on probation on order of the court and may
12 also be released by the department, in its discretion, under AS 47.12.260;

13 (2) order the minor placed on probation, to be supervised by the
14 department, and released to the minor's parents, guardian, or a suitable person; if the
15 court orders the minor placed on probation, it may specify the terms and conditions
16 of probation; the probation may be for a period of time not to exceed two years and
17 in no event to extend past the day the minor becomes 19 years of age, except that the
18 department may petition for and the court may grant in a hearing

19 (A) two-year extensions of supervision that do not extend
20 beyond the minor's 19th birthday if the extension is in the best interests of the
21 minor and the public; and

22 (B) an additional one-year period of supervision past age 19 if
23 the continued supervision is in the best interests of the person and the person
24 consents to it;

25 (3) order the minor committed to the custody of the department and
26 placed on probation, to be supervised by the department and released to the minor's
27 parents, guardian, other suitable person, or suitable nondetention setting such as with
28 a relative or in a foster home or residential child care facility, whichever the
29 department considers appropriate to implement the treatment plan of the predisposition
30 report; if the court orders the minor placed on probation, it may specify the terms and
31 conditions of probation; the department may transfer the minor, in the minor's best

1 interests, from one of the probationary placement settings listed in this paragraph to
2 another, and the minor, the minor's parents or guardian, the minor's foster parent,
3 and the minor's attorney are entitled to reasonable notice of the transfer; the probation
4 may be for a period of time not to exceed two years and in no event to extend past the
5 day the minor becomes 19 years of age, except that the department may petition for
6 and the court may grant in a hearing

7 (A) two-year extensions of commitment that do not extend
8 beyond the minor's 19th birthday if the extension is in the best interests of the
9 minor and the public; and

10 (B) an additional one-year period of supervision past age 19 if
11 the continued supervision is in the best interests of the person and the person
12 consents to it;

13 (4) order the minor and the minor's parent to make suitable restitution
14 in lieu of or in addition to the court's order under (1), (2), or (3) of this subsection;
15 under this paragraph,

16 (A) except as provided in (B) of this paragraph, the court may
17 not refuse to make an order of restitution to benefit the victim of the act of the
18 minor that is the basis of the delinquency adjudication; under this
19 subparagraph, the court may require the minor to use the services of a
20 community dispute resolution center that has been recognized by the
21 commissioner under AS 47.12.450(b) to resolve any dispute between the minor
22 and the victim of the minor's offense as to the amount of or manner of payment
23 of the restitution; and

24 (B) the court may not order payment of restitution by the parent
25 of a minor who is a runaway or missing minor for an act of the minor that was
26 committed by the minor after the parent has made a report to a law
27 enforcement agency, as authorized by AS 47.10.141(a), that the minor has run
28 away or is missing; for purposes of this subparagraph, "runaway or missing
29 minor" means a minor who a parent reasonably believes is absent from the
30 minor's residence for the purpose of evading the parent or who is otherwise
31 missing from the minor's usual place of abode without the consent of the

1 parent;

2 (5) order the minor committed to the department for placement in an
3 adventure-based [ADVENTURE BASED] education program established under
4 AS 47.21.020 with conditions the court considers appropriate concerning release upon
5 satisfactory completion of the program or commitment under (1) of this subsection if
6 the program is not satisfactorily completed;

7 (6) in addition to an order under (1) - (5) of this subsection, order the
8 minor to perform community service; for purposes of this paragraph, "community
9 service" includes work

10 (A) on a project identified in AS 33.30.901; or

11 (B) that, on the recommendation of the city council or
12 traditional village council, would benefit persons within the city or village who
13 are elderly or disabled; or

14 (7) in addition to an order under (1) - (6) of this subsection, order the
15 minor's parent or guardian to comply with orders made under AS 47.12.155, including
16 participation in treatment under AS 47.12.155(b)(1).

17 * Sec. 6. AS 47.12.120(d) is amended to read:

18 (d) A minor found to be delinquent is a ward of the state while committed to
19 the department or while the department has the power to supervise the minor's actions.
20 The court shall review an order made under (b) of this section annually [,] and may
21 review the order more frequently to determine if continued placement, probation, or
22 supervision, as it is being provided, is in the best interest of the minor and the public.
23 The department, the minor, and the minor's parents, guardian, or custodian are entitled,
24 when good cause is shown, to a review on application. If the application is granted,
25 the court shall afford these parties and their counsel and the minor's foster parent
26 reasonable notice in advance of the review and hold a hearing where these parties and
27 their counsel and the minor's foster parent shall be afforded an opportunity to be
28 heard. The minor shall be afforded the opportunity to be present at the review.

29 * Sec. 7. AS 47.12.250(b) is amended to read:

30 (b) A peace officer who has a minor detained under (a) of this section shall
31 immediately, and in no event more than 12 hours later, notify the court and make

1 reasonable efforts to notify the minor's parents or guardian, the minor's foster parent,
2 and the department of the officer's action. The department may file with the court a
3 petition alleging delinquency before the detention hearing.

4 * Sec. 8. AS 47.12.250(c) is amended to read:

5 (c) The court shall immediately, and in no event more than 48 hours later, hold
6 a hearing at which the minor and the minor's parents or guardian if they can be found
7 shall be present. The court shall determine whether probable cause exists for believing
8 the minor to be delinquent. The court shall inform the minor of the reasons alleged
9 to constitute probable cause and the reasons alleged to authorize the minor's detention.
10 The minor is entitled to counsel. The court shall give the minor's foster parent the
11 opportunity to be heard at the hearing.

12 * Sec. 9. AS 47.12.300(e) is amended to read:

13 (e) The court's official records prepared under this chapter and not made public
14 under this section are confidential and may be inspected only with the court's
15 permission and only by persons having a legitimate interest in them. A foster parent
16 is considered to have a legitimate interest in those portions of the court's official
17 records relating to a child who is already placed with the foster parent or who is
18 recommended for placement with the foster parent. A person with a legitimate
19 interest in the inspection of a confidential record maintained by the court also includes
20 a victim who suffered physical injury or whose real or personal property was damaged
21 as a result of an offense that was the basis of an adjudication or modification of
22 disposition. If the victim knows the identity of the minor, identifies the minor or the
23 offense to the court, and certifies that the information is being sought to consider or
24 support a civil action against the minor or against the minor's parents or guardian
25 under AS 34.50.020, the court shall, subject to AS 12.61.110 and 12.61.140, allow the
26 victim to inspect and use the following records and information in connection with the
27 civil action:

28 (1) a petition filed under AS 47.12.040(a) seeking to have the court
29 declare the minor a delinquent;

30 (2) a petition filed under AS 47.12.120 seeking to have the court
31 modify or revoke the minor's probation;

1 (3) a petition filed under AS 47.12.100 requesting the court to find that
2 a minor is not amenable to treatment under this chapter and that results in closure of
3 a case under AS 47.12.100(a); and

4 (4) a court judgment or order entered under this chapter that disposes
5 of a petition identified in (1) - (3) of this subsection.

6 * **Sec. 10. COURT RULE CHANGE.** (a) AS 47.12.050, 47.12.060, 47.12.110, 47.12.120,
7 and 47.12.250, amended by secs. 2 - 8 of this Act, have the effect of amending Rules 3, 7,
8 10, 12, 21, 23, and 25, Alaska Delinquency Rules, by requiring certain information about
9 delinquency hearings to be sent to foster parents and by providing that foster parents are
10 entitled to testify at the hearings.

11 (b) Sections 2 - 8 of this Act take effect only if this section receives the two-thirds
12 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

13 * **Sec. 11. APPLICABILITY.** The changes made by secs. 2 - 8 of this Act apply to
14 hearings described in this Act for which notice has not been sent by the court or the
15 Department of Health and Social Services before the effective date of this Act.

HB

184

CS FOR HOUSE BILL NO. 184()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES KERTTULA, Brice

A BILL

FOR AN ACT ENTITLED

1 "An Act permitting certain juvenile detention or juvenile correctional institution
2 employees to convert their credited service under the public employees' retirement
3 system to credited service as peace officers; and providing for an effective date."

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

5 * **Section 1.** AS 39.35.370 is amended by adding a new subsection to read:

6 (g) When an employee who was employed as a youth counselor, unit leader,
7 or superintendent in a juvenile detention or juvenile correctional institution in the
8 public employees' retirement system applies for appointment to retirement, the
9 employee may convert the credited service for that position to credited service as a
10 peace officer by claiming the service as peace officer service. An employee who has
11 converted credited service to peace officer service under this subsection shall be treated
12 as a peace officer for purposes of this chapter. When the member claims this credited
13 service as peace officer service, an indebtedness of the member to the system shall be
14 established. The indebtedness is equal to the full actuarial cost of the conversion of

1 the credited service to treatment as peace officer service. Any outstanding
2 indebtedness that exists at the time the member is appointed to retirement will require
3 an actuarial adjustment to the benefits payable based upon the conversion of the
4 credited service.

5 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).



Representative Beth Kerttula

Alaska State Legislature, District 3
State Capitol • Juneau, Alaska 99801-1182 • (907) 465-4766 • Fax (907) 465-4748
E-mail: Representative_Beth_Kerttula@legis.state.ak.us • <http://www.kerttula.net>

Sponsor Statement

House Bill 184 Benefits for Juvenile Corrections Employees

House Bill 184 will allow juvenile detention or juvenile correctional institution employees to have the option of converting their credited service under PERS to credited service as a peace officer. To qualify for the peace officer retirement, the juvenile corrections employee must have at least 20 years of credited service.

Under the proposed Committee Substitute for HB 184, if a juvenile corrections employee elects to be treated under the peace officer service, he or she would pay the full actuarial cost of conversion. An indebtedness would be incurred to make up for the lower contribution rate paid by employees and employers under PERS, in comparison with the higher contribution rate paid by employees and their employers under the peace officer retirement system. There will be no additional cost to government for this benefit for juvenile detention and corrections employees.

As a part of their job, employees in the state youth detention and correctional institutions face dangerous situations working with the juvenile residents. Major incident reports document physical assaults on staff in addition to the need to physically restrain youth from doing harm to themselves and other residents. The stressful nature of the work leads to employee burnout.

HB 184 would provide youth facility employees with the option to access the 20-year retirement system provided to other public employees in high risk, potentially life-threatening jobs (i.e., peace officers, adult probation officers, and adult correctional facility employees). Employee retention and recruitment would likely improve with passage of HB 184.

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF JUVENILE JUSTICE

Tony Knowles, GOVERNOR

P.O. BOX 110635
JUNEAU, ALASKA 99811-0635
PHONE: (907) 465-2212
FAX (907) 465-2333

February 2, 2000

The Honorable Beth Kerttula
Alaska State Capitol
Juneau, Alaska 99801

Dear Representative Kerttula,

In response to a request by your staff for information related to HB 184, I am enclosing a chart showing the number of physical assaults against our youth facility staff between FY 1997 and the first six months of FY 2000. I am also enclosing a summary chart of worker compensation claims related to youth counselor staff at McLaughlin Youth Center for FY 1998,

Please contact my office if you have questions or if we can be of further assistance.

Sincerely,


George Buhite
Director

Enclosure.

Additional Information

**Number of Physical Assaults By Residents
against Youth Facility Staff FY97- FY00***

	FY97	FY98	FY99	FY00*	Total
Bethel Youth Facility	0**	3	9	2	14
McLaughlin Youth Center	38	9	9	5	61
Fairbanks Youth Facility	5	7	5	3	20
Nome Youth Facility	1**	1	0	0	1
Johnson Youth Center	0	0	1	0	1
Total	43	20	24	10	97

*Through December 1999

** Data 7/96 - 12/96 unavailable

**Youth Counselor Injury Costs by Age
at MYC, FY 98***

FY 98 Composition of Youth Counselor Workforce at MYC by Age (effective 1/99)	
Age	% of total
20-30 17 employees	16%
30-40 27 employees	26%
40-50 34 employees	32%
50-60 28 employees	26%
Total All Ages—106 employees	100%

Injuries to MYC Youth Counselor Staff Who Responded to Out of Control Residents FY98	
AGE	COST
20 - 40	
none	\$0.00
40 - 50	
43 (date of injury 07/03/97)	\$0.00
41 (date of injury 08/11/97)	\$355.00
42 (date of injury 09/02/97)	\$2,147.00
43 (date of injury 09/23/97)	\$170.00
42 (date of injury 09/23/97)	\$45,103.00
46 (date of injury 12/14/97)	\$24,637.00
40 (date of injury 12/18/97)	\$2,821.00
Sub Total	\$75,233.00
50 - 60	
50 (date of injury 07/03/97)	\$5,000.00
50 (date of injury 07/03/97)	\$74,451.00
50 (date of injury 09/08/97)	\$301.00
52 (date of injury 10/09/97)	\$258.00
52 (date of injury 10/24/97)	\$180.00
54 (date of injury 10/25/97)	\$898.00
50 (date of injury 11/13/97)	\$248.00
51 (date of injury 11/13/97)	\$15,000.00
52 (date of injury 10/24/97)	\$648.00
Sub Total	\$96,984.00
Total costs All Ages	\$172, 217.00

*Source: DISS Risk Management 01/99

MIR

MAJOR INCIDENT REPORT

DH&SS / DFYS / Fairbanks Youth Facility

Name: [REDACTED] Others Involved: Messrs Marsh, Onev, Shevlin and Yee

Date: 1/2/99 Time: 1420 Location: Detention

TYPE OF INCIDENT:

- Escape from facility
- Resident substance abuse
- Unlawful evasion from pass
- Physical assault on staff
- Physical assault on resident
- Contraband
- Staff injury
- Escape from escort
- Resident injury- other
- Physical restraint
- Suicide attempt
- Other: Use of Observation Cell
- Destruction of property
- Resident injury- self harm
- Pass violation
- Disciplinary transfer to detention
- Fire

INCIDENT CHECKLIST:

ACTION	DATE	TIME	INITIALS
Initial CDO Notificauon	1/2/99	1421	[Signature]
Initial SDO Notification	1/2/99	1423	
Initial Nursing Notification			
Mental Health Referral Submitted	1/4/99		
Arm Restraints Applied	1/2/99	1430	[Signature]
Arm Restraints Removed	1/2/99	1523	
Leg Restraints Applied	1/2/99	1430	
Leg Restraints Removed	1/2/99	1523	
Resident IN Observation Room	1/2/99	1431	
Resident OUT Observation Room	1/2/99	1757	
Resident FROM FYF TO Hospital			
Resident FROM Hospital TO FYF			
Detention Disciplinary Transfer Review			
Parent Notificauon			
Resident Return To Treatment Unit			
Resident Disciplinary Notice Served			

DESCRIPTION OF INCIDENT:

[REDACTED] started acting out, pounding, yelling, self-injury to himself by placing a staple in his arm, He removed the staple after staff prompting. He continued pounding and yelling from his room, was placed in cuffs and moved to the Observation cell B. Once he was there cuffs were removed, minutes later he started to pound around again. He was pounding the wall, so soft restraints were applied. He continued to spit and pound his head on floor. Messrs Shevlin and Onev held him until he settled down. He calmed down after several minutes, but refused to commit to appropriate behavior, so the restraints were left on through the end of the shift..

Fb 99

2 Resident assault
1 Female Mast

MAJOR INCIDENT REPORT

DH&SS / DFYS / Fairbanks Youth Facility

Name: [redacted] Others Involved: [redacted]

Date: 2/25/99 Time: 1910 Location: Detention/Dayroom

TYPE OF INCIDENT:

- Escape from facility
- Escape from escort
- Unlawful evasion from pass
- Physical assault on staff
- Physical assault on resident
- Contraband
- Staff injury
- Resident injury- self harm
- Resident injury- other
- Physical restraint
- Suicide attempt
- Other: _____
- Destruction of property
- Resident substance abuse
- Pass violation
- Disciplinary transfer to detention
- Fire

INCIDENT CHECKLIST:

ACTION	DATE	TIME	INITIALS
Initial CDO Notification			
Initial SDO Notification			
Initial Nursing Notification			
Mental Health Referral Submitted			
Arm Restraints Applied			
Arm Restraints Removed			
Leg Restraints Applied			
Leg Restraints Removed			
Resident IN Observation Room			
Resident OUT Observation Room			
Resident FROM FYF TO Hospital			
Resident FROM Hospital TO FYF			
Detention Disciplinary Transfer Review			
Parent Notification			
Resident Return To Treatment Unit			
Resident Disciplinary Notice Served	2/26/99		

DESCRIPTION OF INCIDENT:

While the presentation on Aids was going on [redacted] was sitting in back of [redacted]. [redacted] kept putting his feet on [redacted] chair. [redacted] turned around and slapped [redacted] in the face. [redacted] then punched [redacted] on the side of his face. This writer and Mr. Yee separated the boys. Both boys were responsible for the incident.

S. Green JR, YC II
Submitted by:

MAJOR INCIDENT REPORT

DH&SS / DFYS / Fairbanks Youth Facility

Name: [REDACTED] Others Involved: None

Date: 3/9/99 Time: 0940 Hours Location: MPR *Detention*

TYPE OF INCIDENT:

- | | | |
|---|--|--|
| <input type="checkbox"/> Escape from facility
<input type="checkbox"/> Escape from escort
<input type="checkbox"/> Unlawful evasion from pass
<input type="checkbox"/> Physical assault on staff
<input type="checkbox"/> Physical assault on resident
<input type="checkbox"/> Contraband | <input type="checkbox"/> Staff injury
<input type="checkbox"/> Resident injury- self harm
<input type="checkbox"/> Resident injury- other
<input checked="" type="checkbox"/> Physical restraint
<input type="checkbox"/> Suicide attempt
<input checked="" type="checkbox"/> Other: <u>Use of Observation Cell</u> | <input type="checkbox"/> Destruction of property
<input type="checkbox"/> Resident substance abuse
<input type="checkbox"/> Pass violation
<input type="checkbox"/> Disciplinary transfer to detention
<input type="checkbox"/> Fire |
|---|--|--|

INCIDENT CHECKLIST:

ACTION	DATE	TIME	INITIALS
Initial CDO Notification			
Initial SDO Notification			
Initial Nursing Notification			
Mental Health Referral Submitted			
Arm Restraints Applied	3/9/99	0940	NC
Arm Restraints Removed	3/9/99	1015	NC
Leg Restraints Applied			
Leg Restraints Removed			
Resident IN Observation Room	3/9/99	0945	NC
Resident OUT Observation Room	3/9/99	0952	NC
Resident FROM FYF TO Hospital			
Resident FROM Hospital TO FYF			
Detention Disciplinary Transfer Review			
Parent Notification			
Resident Return To Treatment Unit			
Resident Disciplinary Notice Served			

DESCRIPTION OF INCIDENT:

At 0940 Hrs Mr. Oney and Mr. Smith's assistance was requested by detention staff in the MPR. They were asked to escort [REDACTED] back to detention for refusing to follow teaching staff instructions. After exiting the MPR door, [REDACTED] became agitated when Mr. Oney placed one hand on his shoulder, After walking only ten feet down the hall, Steve stopped and placed his back against the wall. He stared into Mr. Oney's eyes and said "Don't touch me like that." Mr. Oney said "Come on lets go." [REDACTED] said "Don't be touching me like that." At that time Mr. Oney asked [REDACTED] not to resist, but [REDACTED] continued to sand firm with his back to the wall. Saying

DESCRIPTION OF INCIDENT (continued):

"Don't touch me like that." Mr. Oney and Mr. Smith asked ██████ to turn around and place his hands behind his back, ██████ refused. Oney and Smith turned ██████ around, placing his chest against the wall while moving his hand behind his back. ██████ began to struggle. At that time Mr. Cooper moved in to assist by placing handcuffs on ██████'s wrist.

Nello Cooper Jr. YC II
Submitted by:

RECOMMENDATION:

██████ should receive a 250 point fine from the review board suspended pending any other staff resistance.

Nello Cooper Jr. YC II
Shift Supervisor

MEDICAL DEPARTMENT REVIEW and RECOMMENDATIONS:

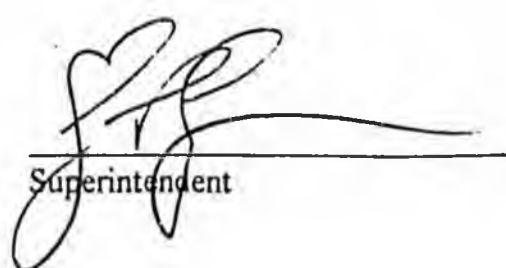
Nursing (for medical incidents)

DISPOSITION:

██████ was placed in the Observation cell for a short while and had no further incident. As ██████ is already serving a lengthy point fine an additional fine would have little impact. Since ██████ did not escalate further he will receive a consequence of a zero for the shift.

Jeff Rigo
Unit Leader or Designee

REVIEWED BY:



Superintendent

MAJOR INCIDENT REPORT

DH&SS / DFYS / Fairbanks Youth Facility

Name: ██████████ Others Involved: Mr. Adams and Mr. Oney

Date: 3/28/99 Time: 0945 Location: TX Unit/N. Wing Rm #5

TYPE OF INCIDENT:

- | | | |
|---|--|---|
| <input type="checkbox"/> Escape from facility | <input type="checkbox"/> Staff injury | <input checked="" type="checkbox"/> Destruction of property |
| <input type="checkbox"/> Escape from escort | <input type="checkbox"/> Resident injury- self harm | <input type="checkbox"/> Resident substance abuse |
| <input type="checkbox"/> Unlawful evasion from pass | <input type="checkbox"/> Resident injury- other | <input type="checkbox"/> Pass violation |
| <input checked="" type="checkbox"/> Physical assault on staff | <input checked="" type="checkbox"/> Physical restraint | <input type="checkbox"/> Disciplinary transfer to detention |
| <input type="checkbox"/> Physical assault on resident | <input type="checkbox"/> Suicide attempt | <input type="checkbox"/> Fire |
| <input type="checkbox"/> Contraband | <input type="checkbox"/> Other: _____ | |

INCIDENT CHECKLIST:

ACTION	DATE	TIME	INITIALS
Initial CDO Notification	3/28/99	0951	TCO
Initial SDO Notification	3/28/99	0954	TCO
Initial Nursing Notification			
Mental Health Referral Submitted			
Arm Restraints Applied	3/28/99	0956	TCO
Arm Restraints Removed	3/28/99	1014	TCO
Leg Restraints Applied			
Leg Restraints Removed			
Resident IN Observation Room			
Resident OUT Observation Room			
Resident FROM FYF TO Hospital			
Resident FROM Hospital TO FYF			
Detention Disciplinary Transfer Review			
Parent Notification			
Resident Return To Treatment Unit			
Resident Disciplinary Notice Served			

DESCRIPTION OF INCIDENT:

██████ became upset about feedback he was receiving about his behavior during points meeting and was sent to his room. On the way to his room, ██████ reached across the staff desk and threw the metal file box damaging the lid. ██████ continued walking to his room and closed the door. While in his room ██████ began banging around, disrupting the unit and not following staff directives to quit acting out. Mr. Oney decided to strip ██████'s room to prevent further destruction of property. While Mr. Adams and Mr. Oney were stripping the room, ██████ became uncooperative by laying down on his bed to prevent himself from being searched for items that he may

DESCRIPTION OF INCIDENT (continued):

use to harm himself with as documented in the past. [REDACTED] was assisted off his bed by Mr. Oney and Mr. Adams and searched. During the search, [REDACTED] pushed Mr. Oney's arm away in an attempt to not be searched. After the room was stripped, [REDACTED] was left in his room with only a roll of toilet paper in order to take some time to calm down. [REDACTED] being the resourceful young lad that he is decided to plug the toilet with his tissue in an attempt to flood his room. At this point [REDACTED] was placed in handcuffs as he was escalating his negative behavior, insisting that he be transferred to the detention unit. After a short intervention with Mr. Oney, [REDACTED] was able to de-escalate himself and control his behavior. [REDACTED] was given his bed back and his other personal items will be returned if he demonstrates that he can control his behavior. Mr. Oney was able to repair the metal file box.

T. Oney
Submitted by:

RECOMMENDATION:

[REDACTED] should be given his personal items by the end of the dayshift if he controls his behavior.


Tim Oney
Shift Supervisor

MEDICAL DEPARTMENT REVIEW and RECOMMENDATIONS:

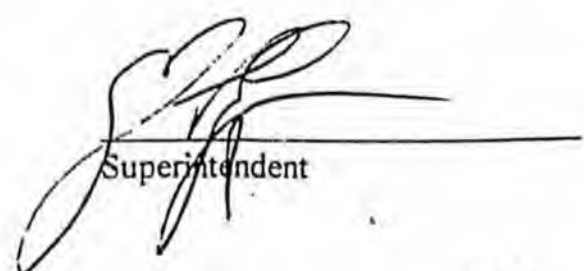
Nursing (for medical incidents)

DISPOSITION:

[REDACTED] will continue to create management difficulties until (if) he buys into the program. It is important that staff maintain an acute awareness of his potential for lashing out/destroying property/striking others. Making significant attempts to help [REDACTED] remain on the Treatment Unit (as opposed to transferring to detention) is important at this time.

M. Short 
Unit Leader or Designee

REVIEWED BY:



Superintendent

DESCRIPTION OF INCIDENT (continued):

decided to destroy things in his room, breaking a Rubbermaid trash can. Staff stripped [REDACTED]'s cell of all his personals and bed. During the room strip [REDACTED] began posturing at staff not following numerous warnings to back down. [REDACTED] escalated the situation by stepping up to Mr. Oney and put his hand aggressively on Mr. Oney's chest. [REDACTED] was quickly restrained and handcuffs put on. [REDACTED] remained in cuffs until he was able to regain control of himself, 43 minutes later.

Tim Oney
Submitted by:

RECOMMENDATION:

[REDACTED] will not be given his personals until his treatment team decides it will be appropriate. The treatment team should again discuss the seriousness of these threatening and assaultive behaviors with [REDACTED].


Tim Oney
Shift Supervisor

MEDICAL DEPARTMENT REVIEW and RECOMMENDATIONS:

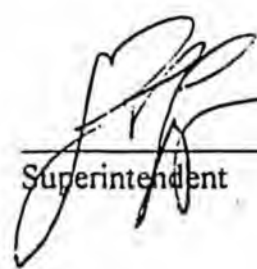
Nursing (for medical incidents)

DISPOSITION:

[REDACTED] threats are serious as is his aggressive acting out. All staff are commended for their handling of [REDACTED]'s many acting out incidents on 3/27, 3/28, and 3/29. It may not be possible to prevent [REDACTED]'s transfer to Detention in the future but efforts will continue to be made with a non-Detention goal in mind.

Mike Short 
Unit Leader or Designee

REVIEWED BY:



Superintendent

MAJOR INCIDENT REPORT

DH&SS / DFYS / Fairbanks Youth Facility

Name: _____ Others Involved: _____

Date: 4/3/99 Time: 0835 Location: MPR Tombot

TYPE OF INCIDENT:

- | | | |
|--|--|--|
| <input type="checkbox"/> Escape from facility | <input type="checkbox"/> Staff injury | <input type="checkbox"/> Destruction of property |
| <input type="checkbox"/> Escape from escort | <input type="checkbox"/> Resident injury- self harm | <input type="checkbox"/> Resident substance abuse |
| <input type="checkbox"/> Unlawful evasion from pass | <input type="checkbox"/> Resident injury- other | <input type="checkbox"/> Pass violation |
| <input checked="" type="checkbox"/> Physical assault on staff | <input checked="" type="checkbox"/> Physical restraint | <input checked="" type="checkbox"/> Disciplinary transfer to detention |
| <input checked="" type="checkbox"/> Physical assault on resident | <input type="checkbox"/> Suicide attempt | <input type="checkbox"/> Fire |
| <input type="checkbox"/> Contraband | <input type="checkbox"/> Other: _____ | |

INCIDENT CHECKLIST:

ACTION	DATE	TIME	INITIALS
Initial CDO Notification	4/3/99	0838	SM
Initial SDO Notification	N/A per JR		
Initial Nursing Notification	N/A		
Mental Health Referral Submitted	N/A		
Arm Restraints Applied	4/3/99 (soft)	0835	SM
Arm Restraints Removed	4/3/99	0905	SM for AK
Leg Restraints Applied	N/A		
Leg Restraints Removed	N/A		
Resident IN Observation Room	4/3/99	0838	SM
Resident OUT Observation Room	4/3/99	1330	SM for AK
Resident FROM FYF TO Hospital	N/A		
Resident FROM Hospital TO FYF	N/A		
Detention Disciplinary Transfer Review	4/4/99	0830	SM for TCO
Parent Notification	4/3/99	0920 (No contact/phone disconnected)	SM
Resident Return To Treatment Unit	N/A		
Resident Disciplinary Notice Served	4/3/99	0940	SM

DESCRIPTION OF INCIDENT:

While in line at Breakfast in the MPR _____ and _____ began bickering at each other and swearing. _____ poked _____ with an elbow (lightly). _____ pushed _____ forcefully and squared off with him. I stepped in between them both, facing _____. I placed my hand on _____'s chest to prevent him from striking out at _____. _____ pushed me. I attempted a control tactic on _____'s arm and he continued to push me. _____ was pushed to the wall. Mr. Klaich then assisted me in taking _____ to the ground. Mr. Marsh arrived with restraints, _____ was restrained, and taken to Detention.

MAJOR INCIDENT REPORT

DH&SS / DFYS / Fairbanks Youth Facility

Name: [REDACTED] Others Involved: n/a

Date: 04/23/99 Time: 1850 Location: TX Unit FA and TX Unit

TYPE OF INCIDENT:

- | | | |
|---|---|---|
| <input type="checkbox"/> Escape from facility | <input type="checkbox"/> Staff injury | <input type="checkbox"/> Destruction of property |
| <input type="checkbox"/> Escape from escort | <input type="checkbox"/> Resident injury- self harm | <input type="checkbox"/> Resident substance abuse |
| <input type="checkbox"/> Unlawful evasion from pass | <input type="checkbox"/> Resident injury- other | <input type="checkbox"/> Pass violation |
| <input checked="" type="checkbox"/> Physical assault on staff | <input checked="" type="checkbox"/> Physical restraint | <input type="checkbox"/> Disciplinary transfer to detention |
| <input type="checkbox"/> Physical assault on resident | <input type="checkbox"/> Suicide attempt | <input type="checkbox"/> Fire |
| <input type="checkbox"/> Contraband | <input checked="" type="checkbox"/> Other: <u>Attempted destruction of property</u> | |

INCIDENT CHECKLIST:

ACTION	DATE	TIME	INITIALS
Initial CDO Notification	04/23/99	1905	KM
Initial SDO Notification	04/23/99	1906	KM
Initial Nursing Notification			
Mental Health Referral Submitted			
Arm Restraints Applied	04/23/99	1907	KM
Arm Restraints Removed	04/23/99	1929	KM
Leg Restraints Applied			
Leg Restraints Removed			
Resident IN Observation Room			
Resident OUT Observation Room			
Resident FROM FYF TO Hospital			
Resident FROM Hospital TO FYF			
Detention Disciplinary Transfer Review			
Parent Notification			
Resident Return To Treatment Unit			
Resident Disciplinary Notice Served			

DESCRIPTION OF INCIDENT:

During P.E. in the Fenced Area, [REDACTED] began having difficulty with several of his teammates and escalated to swearing at them. He then quit the game opting to go to his room. On the way in, [REDACTED] intentionally stepped on the Unit's hand-held radio trying to damage it. This writer restrained his arms to remove him from the radio/keeping him from damaging it, and to help assist him take control of his escalating behaviors. With the assistance of Mr. Kuntz, [REDACTED] was escorted to his room and the Unit was closed. [REDACTED] was again given the opportunity to control himself, but choose to throw his hygiene items into his toilet. [REDACTED]'s arms were again

Major Incident Report

[REDACTED]
[REDACTED]
restrained and he was again given directives to behave himself in his room. At this point, [REDACTED] made a commitment to this writer to behave and was left in his room for a cooling-off period. The unit was re-opened, but within 5 minutes [REDACTED] was hitting his window with his chair, head, and hands. The Unit was again closed and [REDACTED] was restrained by this writer and Mr. Adams applied handcuffs. [REDACTED] attempted to kick staff while they attempted to help him regain control. With staff present, [REDACTED] calmed down and the handcuffs were removed at 1929.

K.J. Milles

Submitted by:

RECOMMENDATION:

Although [REDACTED]'s recovery time is quicker and he was able to resume regular unit activities by 2000, his acting out behaviors continue to regularly disrupt Unit routines. [REDACTED] acting out episodes appear to be not only manipulation attempts for attention, but also to ruin fun activities for others. It is hoped that [REDACTED] will soon require less hands-on intervention, respond better to staff directives, and learn more productive ways to gain attention and release his built up energy.

K.J. Milles

Shift Supervisor

MEDICAL DEPARTMENT REVIEW and RECOMMENDATIONS:

Nursing (for medical incidents)

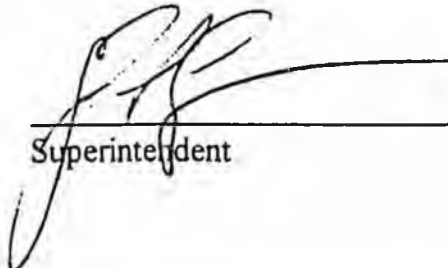
DISPOSITION:

Incident handled appropriately. Staff are again commended for their efforts and patience in working with this difficult young man. It is likely [REDACTED] will require a disciplinary transfer to detention in the near future.

Shawn Marsh for M.S.

Unit Leader or Designee

REVIEWED BY:



Superintendent

MAJOR INCIDENT REPORT

DH&SS / DFYS / Fairbanks Youth Facility

Name: [REDACTED] Others Involved: Ms. Drew, YC II

Date: 5-13-99 Time: 0940 Location: FYF TX UNIT

TYPE OF INCIDENT:

- | | | |
|---|--|--|
| <input type="checkbox"/> Escape from facility | <input type="checkbox"/> Staff injury | <input type="checkbox"/> Destruction of property |
| <input type="checkbox"/> Escape from escort | <input type="checkbox"/> Resident injury- self harm | <input type="checkbox"/> Resident substance abuse |
| <input type="checkbox"/> Unlawful evasion from pass | <input type="checkbox"/> Resident injury- other | <input type="checkbox"/> Pass violation |
| <input checked="" type="checkbox"/> Physical assault on staff | <input type="checkbox"/> Physical restraint | <input checked="" type="checkbox"/> Disciplinary transfer to detention |
| <input type="checkbox"/> Physical assault on resident | <input type="checkbox"/> Suicide attempt | <input type="checkbox"/> Fire |
| <input type="checkbox"/> Contraband | <input checked="" type="checkbox"/> Other: <u>Refusal to meet minimum treatment expectations</u> | |

INCIDENT CHECKLIST:

ACTION	DATE	TIME	INITIALS
Initial CDO Notification			
Initial SDO Notification			
Initial Nursing Notification			
Mental Health Referral Submitted			
Arm Restraints Applied	5-13-99	0939	SCM
Arm Restraints Removed	5-13-99	1030	SCM for RS
Leg Restraints Applied			
Leg Restraints Removed			
Resident IN Observation Room	5-13-99	0940	SCM
Resident OUT Observation Room	5-13-99	1115	SCM for RS
Resident FROM FYF TO Hospital			
Resident FROM Hospital TO FYF			
Detention Disciplinary Transfer Review	5-14-99	0845	MS
Parent Notification	5-13-99		
Resident Return To Treatment Unit			
Resident Disciplinary Notice Served	5-13-99	1625	TCO

DESCRIPTION OF INCIDENT:

On the evening of 05-12-99, Ms. Drew informed all KP workers that there would be no talking unless work related. It became necessary to repeatedly confront [REDACTED] and several other workers, as they were consistently off task, singing, taunting others, and engaging in general horseplay. [REDACTED] was resistant to correction when instructed to redo certain tasks. As Ms. Drew stooped down with her knees bent to stack and put away detention trays on a lower shelf by the steam table, Ray came up behind her and brushed her back with his upper thigh / groin area. Ray continued to remain staunchly in that position as Ms. Drew attempted to stand up, making it difficult to do so. When Ms. Drew did get to her feet, Ray still hovered within inches of her. At that point, Ms. Drew pushed him in the chest to move him away, and he finally took a step back. Ray then complied with her instruction to return to the unit immediately. As Ray is involved in sexual offender treatment at FYF, he was approached this morning by members of the SOTC TX Team (this writer, Mr. Beall, and MHC Levit) to discuss this incident. During the meeting, Ray steadfastly refused to accept any level of

MAJOR INCIDENT REPORT

DH&SS / DFYS / Fairbanks Youth Facility

Name: [REDACTED] Others Involved: [REDACTED]

Date: 06/23/99 Time: 1853 Location: TX Tink

TYPE OF INCIDENT:

- | | | |
|--|---|--|
| <input type="checkbox"/> Escape from facility | <input type="checkbox"/> Staff injury | <input type="checkbox"/> Destruction of property |
| <input type="checkbox"/> Escape from escort | <input type="checkbox"/> Resident injury- self harm | <input type="checkbox"/> Resident substance abuse |
| <input type="checkbox"/> Unlawful evasion from pass | <input type="checkbox"/> Resident injury- other | <input type="checkbox"/> Pass violation |
| <input type="checkbox"/> Physical assault on staff | <input type="checkbox"/> Physical restraint | <input checked="" type="checkbox"/> Disciplinary transfer to detention |
| <input checked="" type="checkbox"/> Physical assault on resident | <input type="checkbox"/> Suicide attempt | <input type="checkbox"/> Fire |
| <input type="checkbox"/> Contraband | <input type="checkbox"/> Other: _____ | |

INCIDENT CHECKLIST:

ACTION	DATE	TIME	INITIALS
Initial CDO Notification	6/23/99	1845	JK
Initial SDO Notification	06/23/99	1850	JK
Initial Nursing Notification			
Mental Health Referral Submitted			
Arm Restraints Applied	6/23/99	1853	JA
Arm Restraints Removed	06/23/99	1900	JS
Leg Restraints Applied			
Leg Restraints Removed			
Resident IN Observation Room	6/23/99	1900	JS
Resident OUT Observation Room	06/23/99	2020	JA
Resident FROM FYF TO Hospital			
Resident FROM Hospital TO FYF			
Detention Disciplinary Transfer Review			
Parent Notification			
Resident Return To Treatment Unit	06/23/99	2025	JA
Resident Disciplinary Notice Served			

DESCRIPTION OF INCIDENT:

During open unit time, [REDACTED] walked up and shoved [REDACTED] M. from behind for no apparent reason. [REDACTED] was confronted by this writer and told to go to his room. [REDACTED] slowly complied, mumbling obscenities and threats. Mr. Adams counseled [REDACTED] about his behaviors, informed him to pack up his personal belongings as he was being placed on automatic TRS, and was told not to act further. Upon closing his door, [REDACTED] proceeded to bang on his door several times. SDO Short was notified of the situation and authorized a transfer to Detention if [REDACTED]

DESCRIPTION OF INCIDENT (continued):

was unwilling to comply with the unit expectations. When approached, [REDACTED] was unwilling to make a commitment, he was cuffed and escorted to Detention without incident.

J. Klaich
Submitted by:

RECOMMENDATION:

With prior approval SDO Short, Mr. Klaich (CDO) and Mr. Adams (primary counselor for [REDACTED]) met with [REDACTED] to see if he was willing to commit to following the rules. [REDACTED] stated he acted out because he was upset and wanted to take out his frustrations on someone. He committed to following the rules and not to act out his frustrations on others. [REDACTED] was informed that he was still on TRS and that a 100 point fine for Anti-social Physical Behavior would assessed. [REDACTED] returned to the TX Unit at 2025.

K.J. Milles
Shift Supervisor

MEDICAL DEPARTMENT REVIEW and RECOMMENDATIONS:

Nursing (for medical incidents)

DISPOSITION:

Staff did a good job dealing with [REDACTED] during his "crisis" situation. The adjustment period in the observation room appears to have worked effectively. [REDACTED] is an emotionally disturbed, explosive fellow who requires much staff intervention/monitoring.

Mike Short
Unit Leader or Designee

REVIEWED BY:



Superintendent

MIR Book

MAJOR INCIDENT REPORT

DH&SS / DJJ / Fairbanks Youth Facility

Name: [redacted] Others Involved: Mr. Kline, Ms. Forgue and AST Officer Eldridge

Date: 12/14/99 Time: 0245 Location: FYF Detention Intake

TYPE OF INCIDENT:

- Escape from facility, Staff injury, Destruction of property, etc. with checkboxes. Physical assault on staff and Physical restraint are checked.

INCIDENT CHECKLIST:

Table with 4 columns: ACTION, DATE, TIME, INITIALS. Rows include: Initial CDO Notification, Arm Restraints Applied, Staff Debriefing Conducted, etc.

DESCRIPTION OF INCIDENT:

[redacted] was brought into detention on a no bail warrant for absconding placement. On call Social Worker Randy Hagen had contacted this writer within minutes of her arrival at 0325. AST Officer Eldridge had escorted her without handcuffs stating that she had been cooperative until arriving at the intake sally port. [redacted] was uncooperative and verbally abusive. Ms. Forgue (CDO) arrived on the unit within minutes of her arrival. [redacted] was placed in cuffs for a pat search due to her refusal to remove coat, shoes and pocket contents. While Mrs. Forgue was pat searching her, attempting to remove her shoe, [redacted] kicked at Ms. Forgue. Officer Eldridge and

DESCRIPTION OF INCIDENT (continued):

Mr Kline lowered her to the floor with Office Eldridge securing her feet/legs and Mr. Kline securing her head. [redacted] began to cry and discontinued struggling within three minutes. A commitment to cooperate was obtained and cuffs were removed at 0255. During the pat search two small bags were found and retained by Officer Eldridge. One bag contained a stem, possibly marijuana. Officer Eldridge was released and [redacted] cooperated during the rest of the admit. CDO Forgue was present. [redacted] also threatened suicide to myself and Officer Eldridge. A 15 minute log was started.

R. Kline

Submitted by

RECOMMENDATION:

Concur with action taken. Also this information should be passed on to [redacted]'s Social Worker. The Social Worker should be aware of [redacted]'s uncooperativeness, contraband and suicidal [redacted] intentions

Tyler Yee YC II

Shift Supervisor

MEDICAL DEPARTMENT REVIEW and RECOMMENDATIONS:

Nursing (for medical incidents)

DISPOSITION:

Concur with action taken. If [redacted] is not released a mental health referral will be made. Cara will be placed on a 15 minute watch while she's here.

Jeff Rigo

Unit Leader or Designee

REVIEWED BY:

See Response to debriefing memo

Superintendent

Kerttula

MAR 08 2000

Patricia Leeman
PO Box 1644
Bethel, AK 99559

February 28, 2000

Representative Carl Morgan
State Capitol, Rm. 409
Juneau, AK 99801

Dear Representative Morgan;

I am writing to ask your assistance in getting a hearing scheduled for HB 184, a bill pertaining to peace officer retirement for employees of our State's juvenile correctional facilities. This bill was introduced during the last legislative session, and it is my understanding that it was assigned to the House Health Education and Social Services Committee.

You may not be aware of the inequity that currently exists within the Public Employees Retirement System as pertains to employees of juvenile correctional facilities. Currently, adult correctional officers and adult and juvenile probation officers are members of the peace officer retirement system. Juvenile correctional employees are excluded from this benefit.

I am currently employed at the Bethel Youth Facility. Given the fact that juvenile correctional facilities are located in Fairbanks, Anchorage, Nome, Juneau, and Bethel, this matter clearly has statewide implications.

In past years I have also been employed as an adult correctional officer, an adult probation officer, and a juvenile probation officer. Having experience in these areas of corrections, and now in juvenile facilities, I am well aware of the many similar aspects of these positions. I believe that the inequity of the current system was recognized by the legislature some years ago when this legislation was passed by the Senate and the House, only to be vetoed by then-Governor Hickel.

In recent years, Alaska and the nation have focused increasingly on juvenile crime. Few would argue, I believe, that the stresses and risks associated with working on a daily basis with juvenile offenders are any less than those associated with adult offenders. Much is asked of those responsible for the safety, security, and rehabilitative opportunities provided in our correctional facilities. And those employees in our juvenile facilities must provide these services for a population distinguished by its impulsiveness. Staff are assaulted, and they must intervene in physical altercations between residents. They must physically control residents who are attempting to harm themselves or others. They must protect the public by ensuring that facilities are secure, and they must prevent escapes. They must remain calm and professional in the most trying of circumstances and in the face of aggression and violence directed toward them.


HB 184

Page 2

Perhaps the title of Youth Counselor is misleading. Youth Counselors are expected to counsel and provide rehabilitative services to offenders in addition to, not instead of, these security and control functions. The Alaska Statutes address the status of Youth Counselors as peace officers in AS 47.12.270 which reads, in part, "Youth Counselors have the powers of a peace officer with respect to the service of process, the making of arrests of minors who violate state or municipal law, and the execution of orders of the court relating to juveniles, and shall assist and advise the courts in the furtherance of the welfare and control of minors under the court's jurisdiction." Granting peace officer retirement to Youth Counselors, Unit Leaders, and Superintendents would be consistent with probation officers and adult corrections, and would correct the current inequity in the system.

Thank you very much for taking the time to review this matter, and I would very much appreciate your assistance in getting this bill on the agenda for a hearing. If I can provide additional information that may be helpful, I would be happy to do so.

Sincerely,



Patricia Leeman

Sec. 39.35.370. Retirement benefits.

(a) Subject to AS 39.35.450 , a terminated employee is eligible for a normal retirement benefit

(1) at age 60 with at least five years credited service;

(2) with at least 20 years of credited service as a peace officer or fire fighter; or

(3) with at least 30 years of credited service for all other employees.

(b) Subject to AS 39.35.450 , a terminated employee is eligible for an early retirement benefit at age 55 with at least five years credited service. An actuarial adjustment shall be made to retirement benefits paid under this section for an early retirement benefit. The monthly amount of a retirement benefit that would be due under (c) of this section shall be reduced by multiplying one-half of one percent times the number of months, to the nearest month, by which the retirement date of the employee falls short of the date that the employee reaches age 60.

(c) The monthly amount of a retirement benefit for a peace officer or fire fighter is two percent of the average monthly compensation times the years of credited service through 10 years, plus two and one-half percent of the average monthly compensation times the years of service over 10 years. For all other employees it is

(1) two percent of the average monthly compensation times all years of service before July 1, 1986, and for years of service through a total of 10 years; plus

(2) two and one-quarter percent of the average monthly compensation times all years of service after June 30, 1986, over 10 years of total service through 20 years; plus

(3) two and one-half percent of the average monthly compensation times all years of service after June 30, 1986, over 20 years of total service.

(d) The monthly amount of a retirement benefit for a deferred vested member shall be determined in accordance with (c) of this section as it was in effect on the date of the employee's termination of employment.

(e) Benefits payable under this section accrue from the first day of the month after which all of the following requirements are met: (1) the member meets the eligibility requirements of this section; (2) the member terminates employment; and (3) the member applies for retirement. The benefits are payable the last day of the month. If payment is delayed, a retroactive payment shall be made to cover the period of deferment. The last payment shall be made for the month in which a benefit is payable under this section.

(f) A member who is vested in the system as a peace officer or fire fighter at the time the member incurs a permanent disability of at least 33 1/3 per cent under workers' compensation and who (1) undergoes retraining because of the disability; and (2) is subsequently employed with the state or other employer in a position other than peace officer or fire fighter, is eligible for a normal retirement benefit as a peace officer or fire fighter under (a) and (c) of this section upon completing 20 years of credited service.