

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9830 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of Federally-supported education programs; recordkeeping. (1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, or (iii) State educational authorities, under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted—

GENERAL PROVISIONS

20 USCS § 1232g

- (i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or
- (ii) after November 19, 1974, if—

- (I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

- (II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parent of the student.[:]

- (F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

- (G) accrediting organizations in order to carry out their accrediting functions;

- (H) parents of a dependent student of such parents, as defined in section 152 of the Internal Revenue Code of 1986 [26 USCS § 152];

- (I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons; and

- (J)(i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

- (ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

- (2) No funds shall be made available under any applicable program to any

educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, or (C) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.

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(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(6) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in section 16 of title 18, United States Code), the results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime with respect to such crime.

(c) **Surveys or data-gathering activities; regulations.** Not later than 240 days after the date of enactment of the Improving America's Schools Act of 1994 [enacted Oct. 20, 1994], the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) **Students' rather than parents' permission or consent.** For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) **Informing parents or students of rights under this section.** No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution effectively informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) **Enforcement; termination of assistance.** The Secretary shall take appropriate actions to enforce this section and to deal with violations of this section, in accordance with this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with this section, and he has determined that compliance cannot be secured by voluntary means.

(g) **Office and review board; creation; functions.** The Secretary shall establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating violations

of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(h) Certain disciplinary action information allowable. Nothing in this section shall prohibit an educational agency or institution from—

- (1) including appropriate information in the education record of any student concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community; or
- (2) disclosing such information to teachers and school officials, including teachers and school officials in other schools, who have legitimate educational interests in the behavior of the student.

(Jan. 2, 1968, P. L. 90-247, Title IV, Part C, Subpart 4, § 444 [438], as added Aug. 21, 1974, P. L. 93-380, Title V, § 513(a), 88 Stat. 571; Dec. 31, 1974, P. L. 93-568, § 2(a), 88 Stat. 1858; Aug. 6, 1979, P. L. 96-46, § 4(c), 93 Stat. 342; Nov. 8, 1990, P. L. 101-542, Title II, § 203, 104 Stat. 2335; July 23, 1992, P. L. 102-325, Title XV, Part H, § 1555(a), 106 Stat. 840; Oct. 20, 1994, P. L. 103-382, Title II, Part A, § 212(b)(1), Part D, § 249, Part E, § 261(h), 108 Stat. 3913, 3924, 3928.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The "Improving America's Schools Act of 1994", referred to subsec. (c), is Act Oct. 20, 1994, P. L. 103-382, 108 Stat. 3518. For full classification of this Act, consult USCS Tables volumes.

"This Act", referred to in this section, is Act Jan. 2, 1968, P. L. 90-247, 81 Stat. 783, popularly known as the Elementary and Secondary Education Amendments of 1967, Title IV of which is popularly known as the General Education Provisions Act and appears generally as 20 USCS §§ 1221 et seq. For full classification of such Act, consult USCS Tables volumes.

Explanatory notes:

The bracketed semicolon was inserted in subsec. (b)(1)(E)(ii)(II) to indicate the probable intent of Congress to retain that punctuation in the 1994 amendment. See 1994 Amendment note.

Effective date of section:

This section took effect ninety days after enactment, pursuant to Act Aug. 21, 1974, P. L. 93-380, Title V, § 513(b)(1)(i), 88 Stat. 574.

Amendments:

1974. Act Dec. 31, 1974, in subsec. (a), para. (1), designated existing provisions as subpara. (A), in subpara. (A) as so designated, substituted "educational agency or institution" for "State and local educational agency, any institution of higher education, any community college, any school agency offering a preschool program, or any other educational institution", substituted "who are or have been in attendance at a school of such agency or at such institution, as the case may be" for "attending

any school of such agency, or attending such institution of higher education, community college, school, preschool, or other educational institution", substituted "the education records of their children" for "any and all official records, files, and data directly related to their children, including all material that is incorporated into each student's cumulative record folder, and intended for school use or to be available to parties outside the school or school system, and specifically including, but not necessarily limited to, identifying data, academic work completed, level of achievement (grades, standardized achievement test scores), attendance data, scores on standardized intelligence, aptitude, and psychological tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns.", substituted "If any material or document in the education record of a student includes" for "Where such records or data include", substituted "one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material" for "any student shall be entitled to receive, or be informed of, that part of such record or data as pertains to their child"; substituted "educational agency or institution" for "recipient", substituted "the education records of their children" for "their child's school records", and added subparas. (B) and (C), in para. (2), substituted "No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order" for "Parents shall have an opportunity for a hearing to challenge the content of their child's school records," and inserted "and to insert into such records a written explanation of the parents respecting the content of such records", and added paras. (3)-(6); in subsec. (b), para. (1), introductory matter, substituted "educational agency or institution" for "State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution", inserted "or practice", and substituted "education records (or personally identifiable information contained 'herein other than directory information, as defined in paragraph (5) of subsection (a))" for "personally identifiable records of files (or personal information contained therein)", in subpara. (A), substituted " , who have been determined by such agency or institution to" for "who", in subpara. (B), inserted "seeks or", in subpara. (C), substituted "section 408(c)" for "section 409 of this Act", and deleted "and" after "subsection;", in subpara. (D), substituted a semicolon for the final period, added subparas. (E)-(I) and the concluding matter, in para. (2), substituted "educational agency or institution" for "State and local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution", and substituted "releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection." for "furnishing, in any form,

any personally identifiable information contained in personal school records, to any persons other than those listed in subsection (b)(1)", in para. (3) substituted "Provided, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements" for "Provided, That, except when collection of personally identifiable data is specifically authorized by Federal law, any data collected by such officials with respect to individual students shall not include information (including social security numbers) which would permit the personal identification of such students or their parents after the data so obtained has been collected.", in para. (4), substituted subpara. (A) for one which read: "With respect to subsections (c)(1) and (c)(2) and (c)(3), all persons, agencies, or organizations desiring access to the records of a student shall be required to sign a written form which shall be kept permanently with the file of the student, but only for inspection by the parents or student, indicating specifically the legitimate educational or other interest that each person, agency, or organization has in seeking this information. Such form shall be available to parents and to the school official responsible for record maintenance as a means of auditing the operation of the system."; in subsec. (e), substituted "to any educational agency or institution unless such agency or institution" for "unless the recipient of such funds"; and in subsec. (g), deleted ", according to the procedures contained in sections 434 and 437 of this Act" after "violations of this section", and inserted the sentence beginning "Except for the conduct . . .".

1979. Act Aug. 6, 1979 (effective 10/1/78, as provided by § 8 of such Act, which appears as 20 USCS § 2701 note), added subsec. (b)(5).

1990. Act Nov. 8, 1990 added subsec. (b)(6).

1992. Act July 23, 1992 (effective on enactment as provided by § 1555(b) of such Act) substituted subsec. (a)(4)(B)(ii) for one which read: "if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1), the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;"

1994. Act Oct. 20, 1994 (effective on enactment, as provided by § 3(a)(2) of such Act, which appears as 20 USCS § 1221 note), in subsec. (a), in para. (1), redesignated subparas. (B) and (C) as subparas. (C) and (D), respectively, and added a new subpara. (B), in subpara. (C) as redesignated, in cl. (iii), substituted "subparagraph (D)" for "subparagraph (C)" and, in subpara. (D) as redesignated, substituted "subparagraph (C)" for "subparagraph (B)", in para. (2), substituted "rights" for "or other rights" and, in para. (4)(B)(ii), substituted the semicolon for a period; in subsec. (b), in para. (1), in subpara. (A), inserted ", including the educational interests of the child for whom consent would otherwise be required", in subpara. (C), substituted "or (iii)" for "(iii) an administrative head of an education agency (as defined in section 408(c)), or (iv)",

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substituted subpara. (E) for one which read: "State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;"; in subpara. (H), substituted "1986" for "1954" and deleted "and" following the semicolon, in subpara. (I), substituted "; and" for a period, and added subpara. (J), in para. (2)(B), inserted "except as provided in paragraph (1)(J);", in para. (3), substituted "or (C)" for "(C) an administrative head of an education agency or (D)" and substituted "education programs" for "education program" and, in para. (4)(B), inserted the sentence beginning "If a third party outside . . ."; in subsec. (c), substituted "Not later than 240 days after the date of enactment of the Improving America's Schools Act of 1994, the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which" for "The Secretary shall adopt appropriate regulations to"; in subsec. (d), inserted a comma after "education"; in subsec. (e), inserted "effectively"; in subsec. (f), deleted ", or an administrative head of an education agency," following "The Secretary", substituted "enforce this section" for "enforce provisions of this section", substituted "in accordance with" for "according to the provisions of", and substituted "comply with this section" for "comply with the provisions of this section"; in subsec. (g), deleted "of Health, Education, and Welfare" following "Department" and deleted "the provisions of" following "adjudicating violations of"; and added subsec. (h). Such Act further (effective as above) purported to amend the introductory matter of subsec. (b)(2), by substituting ", unless—" for a period; however, the amendment could not be executed because the introductory matter included no period.

Redesignation:

This section, enacted as § 438 of Act Jan. 2, 1968, P. L. 90-247, Title IV, Part C, Subpart 4, was redesignated § 444 of such Act by Act Oct. 20, 1994, P. L. 103-382, Title II, Part A, § 212(b)(1), 108 Stat. 3913 (effective on enactment as provided by § 3(a)(2) of such Act, which appears as 20 USCS § 1221 note).

Short title:

Act Aug. 21, 1974, P. L. 93-380, Title V, § 513(b)(2)(i), 88 Stat. 574 provided: "This section [this section and note thereto] may be cited as the 'Family Educational Rights and Privacy Act of 1974'."

Transfer of functions:

Act Oct. 17, 1979, P. L. 96-88, Title III, § 301, 93 Stat. 677, which appears as 20 USCS § 3441, transferred functions and offices (relating to education) of the Department of Health, Education, and Welfare to the Department of Education.

Other provisions:

Effective date and application of 1974 amendments. Act Dec. 31, 1974, P. L. 93-568, § 2(b), 88 Stat. 1858, provided: "The amendments made by subsection (a) [amending this section] shall be effective, and retroactive to, November 19, 1974."

CODE OF FEDERAL REGULATIONS

Office of the Secretary, Department of Education—Family education rights and privacy, 34 CFR Part 99.

CROSS REFERENCES

This section is referred to in 20 USCS §§ 1232i, 1417, 5917; 25 USCS § 3205; and 42 USCS § 11432.

RESEARCH GUIDE

Federal Procedure L Ed:

15 Fed Proc L Ed, Freedom of Information § 38:12, 17.

17 Fed Proc, L Ed, Health, Education, and Welfare §§ 42:1853, 1908, 1910.

Am Jur:

37A Am Jur 2d, Freedom of Information Act (1994) § 31.

Annotations:

What is "interest" relating to property or transaction which is subject of action sufficient to satisfy that requirement for intervention as matter of right under Rule 24(a)(2) of Federal Rules of Civil Procedure. 73 ALR Fed 448.

Validity, construction, and application of Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USCS § 1232g). 112 ALR Fed 1.

Validity, construction, and effect of provision releasing school from liability for injuries to students caused by interscholastic and other extracurricular activities. 85 ALR4th 344.

Auto-Cite[®]: Cases and annotations referred to herein can be further researched through the Auto-Cite[®] computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Applicability
3. —"Student"
4. Relation to other laws
5. Availability of private right of action
6. Application to particular records and information
7. —Expenditures
8. —Law enforcement records
9. —Names and addresses of students
10. Subpoenas
11. Immunity

1. Generally

In view of the significant role of private law suits in ending various forms of discrimination in school systems, 20 USCS § 1232g should not serve as a cloak for alleged discriminatory practices simply because litigation to end such practices is initiated by private plaintiffs rather than the government. *Rios v Read* (1977, ED NY) 73 FRD 589.

In action against school officials for censorship of student newspaper, allegation in answer, that information contained within articles was subject to proscriptions of 20 USCS § 1232g, will not be stricken, since it cannot be said at early stage of litigation that 20 USCS § 1232g is legally insufficient defense. *Kuhlmeier v Hazelwood School Dist.* (1984, ED Mo) 578 F Supp 1286, 38 FR Serv 2d 1491.

Right of privacy in student records is recognized by 20 USCS § 1232g. *Porten v University of San Francisco* (1976, 1st Dist) 64 Cal App 3d 825, 134 Cal Rptr 839.

2. Applicability

20 USCS § 1232g of Family Educational Rights and Privacy Act only gives students and their parents access to their educational records and has no relationship to complaint for defamation brought by person arrested for driving while intoxicated, and sanction will be awarded against arrestee for bringing such suit. *Vukadinovich v McCarthy* (1990, CA7 Ind) 901 F2d 1439, 16 FR Serv

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3d 915, reh den, en banc (1990, CA7) 1990 US App LEXIS 9683 and cert den (1991) 498 US 1050, 112 L Ed 2d 780, 111 S Ct 761.

Cause of action against university and professor based on disappointing grade received in physics class is dismissed, even though 20 USCS § 1232q(a)(2) provides that no federal funds shall be made available to educational agency unless parents have opportunity for hearing to insure accuracy of student's education records, because neither statute nor school policy provides means by which student may obtain information on how particular grade was assigned. *Tarka v Cunningham* (1990, WD Tex) 741 F Supp 1281, affd (1990, CA5 Tex) 917 F2d 890.

Employee's action for invasion of privacy cannot be supported by 20 USCS § 1232g, where employee attended technical college classes as part of employee training program but refused to sign consent to release records showing attendance and grades to employer, because § 1232g does not prohibit request for or release of student records nor create private right of action. *Tombrello v USX Corp.* (1991, ND Ala) 763 F Supp 541, 30 BNA WH Cas 650, 119 CCH LC ¶ 35502.

Former medical student seeking to challenge his failure of exam administered to allow student to waive pharmacology course did not have cause of action under 20 USCS § 1232g(a)(2), where complaint fundamentally was challenge to substance of professor's evaluation, which was beyond reach of statute, exam test score did not even appear in student's permanent school record, and score of "high pass" that student ultimately received after taking class was accurately reflected in his permanent record. *Lewin v Medical College* (1996, ED Va) 931 F Supp 443, affd without op (1997, CA4 Va) 120 F3d 261, reported in full (1997, CA4 Va) 1997 US App LEXIS 20851.

3. —"Student"

Teacher was employee and not "student" of institution requested to disclose her college transcript, and thus did not fall within class of people for whose benefit act was created. *Klein Independent School Dist. v Mattox* (1987, CA5 Tex) 830 F2d 576, 2 BNA IER Cas 1391, cert den (1988) 485 US 1008, 99 L Ed 2d 702, 108 S Ct 1473.

Person is not "student" for purpose of gaining access to admission files pursuant to FERPA where his application was rejected and he only audited some classes. *Tarka v Franklin* (1989, CA5 Tex) 891 F2d 102, cert den (1990) 494 US 1080, 108 L Ed 2d 940, 110 S Ct 1809, reh den (1990) 496 US 913, 110 L Ed 2d 285, 110 S Ct 2605.

4. Relation to other laws

Although no private right of action exists under 20 USCS § 1232g, action under 42 USCS § 1983

20 USCS § 1232g, n 5

may be premised on violation of § 1232g. *Tarka v Cunningham* (1990, CA5 Tex) 917 F2d 890.

Student's claim against school district seeking declaratory and injunctive relief under 20 USCS § 1232g may be brought under 42 USCS § 1983, because (1) language of § 1232g reveals congressional intent to impose obligations directly on educational agencies or institutions, (2) plain meaning of statute sets forth what educational agencies or institutions must do and not do in order to be eligible for federal funds, (3) plaintiff's claim can be readily enforced by judiciary, and results will not vary based on facts and law, and (4) enforcement regulations do not demonstrate congressional intent to preclude suits under § 1983 to remedy violations of § 1232g. *Belanger v Nashua Sch. Dist.* (1994, DC NH) 856 F Supp 40.

Section 1983 action on behalf of 13-year-old hermaphrodite may proceed, where Family Educational Rights and Privacy Act (20 USCS § 1232g) does not give rise to private cause of action but does create interest that may be vindicated in § 1983 action, because question of fact remains as to whether information disclosed in due process hearing and reported by newspaper in story about establishment of emotional behavior disorder unit was personally identifiable and in violation of statute. *Doë v Knox County Bd. of Educ.* (1996, ED Ky) 918 F Supp 181.

5. Availability of private right of action

Enforcement of 20 USCS § 1232g is solely in hands of Secretary of Health, Education and Welfare under § 1232g(f); no private remedy is granted under statute, and none arises by inference to aid student who received discharge on student loan in bankruptcy proceeding, and who sought to obtain college transcript from university to which loan was owed. *Girardier v Webster College* (1977, CA8 Mo) 563 F2d 1267.

20 USCS § 1232g creates interest that may be vindicated in action under 42 USCS § 1983, but does not give rise to private cause of action, and divorced father with joint legal custody is entitled to present evidence on his claim for compensatory damages for school's denial of access to his children's records, and District Court erred in awarding nominal damages on summary judgment. *Fay v South Colonie Cent. Sch.* (1986, CA2 NY) 802 F2d 21.

Buckley Amendment set forth at 20 USCS § 1232g did not provide private cause of action to compel college to issue certified copies of college transcripts to former students. *Girardier v Webster College* (1976, ED Mo) 421 F Supp 45, vacated on other grounds (1977, CA8 Mo) 563 F2d 1267.

20 USCS § 1232g does not give rise to private federal cause of action in favor of aggrieved person since it is simply directed to Secretary of Educa-

tion to prohibit distribution of public funds as sanction against schools which denied students right to inspect and review their educational records; underlying purpose is not to grant individual students right to privacy or access to educational records but to stem growing policy of institutions to carelessly release student records. *Smith v Duquesne University* (1985, WD Pa) 612 F Supp 72, *affd without op* (1986, CA3 Pa) 787 F2d 583.

Former student may not bring action under 20 USCS § 1232g against university, where student claimed university released transcript of his academic record to U.S. Attorneys' office without properly notifying him, resulting in his conviction for drug offence, because university's failure to comply with § 1232g does not give rise to private cause of action. *Francois v University of District of Columbia* (1992, DC Dist Col) 788 F Supp 31, *affd* (1993, App DC) 1993 US App LEXIS 5071.

Parents of handicapped student failed to allege justiciable case or controversy against state and federal defendants under 20 USCS § 1232g, despite requests for declaratory and injunctive relief, where parents alleged that 7-year-old son had been denied appropriate preschool education by failure to approve school parents chose for child, because relief sought would not have redressed student's loss of free appropriate preschool education or entitled his parents to reimbursement for his alternative placement. *M.M. v Board of Educ.* 1997, ND NY) 963 F Supp 185.

6. Application to particular records and information

Newspaper's interest in access to court records in proceeding by school seeking to enjoin handicapped students from attending, is outweighed by privacy interests of handicapped child and by state's interest in protecting minors from public dissemination of hurtful information. *Webster Groves School Dist. v Pulitzer Pub. Co.* (1990, CA8 Mo) 898 F2d 1371, 17 Media L R 1633, *reh den, en banc* (1990, CA8) 1990 US App LEXIS 7897.

Nothing in 20 USCS § 1232g requires prison officials to take plaintiff's word that envelope addressed to correspondence school contained transcripts, or to accept sealed mailing of envelopes. *Stow v Grimaldi* (1993, CA1 NH) 993 F2d 1002.

In course of suit challenging procedures used by state for placing children with handicapping conditions in specialized classes, in which plaintiffs alleged that these procedures did not satisfy federal statutory requirement, 20 USCS § 1232g did not bar disclosure of certain subpoenaed educational documents where conditions of subpoena permitted deletion of any information contained in documents which tended to identify student or students who were subject of or mentioned in documents; if

§ 1232g were in fact applicable in that subpoenaed documents were in "personally identifiable form," task of sending notification to student's parents prior to documents' production falls on educational agency or institution which has custody of documents and not on party who subpoenaed documents. *T. v Johnston* (1976, ND Miss) 74 FRD 498.

20 USCS § 1232g relates to "privacy" and apparently establishes procedures for advising or notifying person when educational records pertaining to that person are to be released pursuant to judicial order, so that, in medical malpractice action, records of defendant's participation in hospital residency program did not appear to be privileged. *Reeg v Feizer* (1976, WD Okla) 78 FRD 34.

In action against school officials seeking to prevent bar on distribution of certain issue of school newspaper which was caused by publication of allegedly confidential information regarding student, defendants' reliance on 20 USCS § 1232g was misplaced since school records were not source of information: prohibition contained in 20 USCS § 1232g against disclosure of information contained in school records does not extend to information which is derived from source independent of school records because Congress could not have constitutionally prohibited comment on, or discussion of, facts about student which were learned independently of his school records. *Frasca v Andrews* (1978, ED NY) 463 F Supp 1043, 4 Media L R 2173.

Prospective law student's action against university officials for failing to release information pursuant to 20 USCS § 1232g is dismissed, where prospective student seeks records relating to school disciplinary proceedings against several athletes for sexual incident in athletic dorm, because § 1232g creates no private right of action, term "student" under Act does not include person who has not been in attendance at educational institution, and violation of § 1232g consists of releasing information concerning that person's attendance, not refusal to release information concerning someone else. *Norwood v Slammmons* (1991, WD Ark) 788 F Supp 1020.

University is enjoined from allowing unprotected distribution of class rosters containing social security numbers and names of students, where students had filed action under 42 USCS § 1983 claiming that distribution violates 20 USCS § 1232g(b)(1), because claims made under § 1232g may be raised in § 1983 action and no explicit or implicit exhaustion requirement exists under § 1232g as shown by inadequacy of Secretary of Education's regulations coupled with § 1232g's failure to provide more complete relief for aggrieved individuals. *Krebs v Rutgers* (1992, DC NJ) 797 F Supp 1246.

In action against publicly funded law school and

officials, school's claim for injunctive relief to prohibit distribution of 20 USCS § 1232g records on fact that student's conduct interfered with student's educational records. *Smith v Duquesne University* (1985, WD Pa) 612 F Supp 72, *affd without op* (1986, CA3 Pa) 787 F2d 583.

20 USCS § 1232g does not create private cause of action for murder victim's family to recover damages for alleged negligence and statute prohibits disclosure of educational records. *Smith v Duquesne University* (1985, WD Pa) 612 F Supp 72, *affd without op* (1986, CA3 Pa) 787 F2d 583.

7. —Expenditures

Claim for reimbursement of educational expenses under 20 USCS § 1232g is not enforceable unless released by state. *Smith v Duquesne University* (1985, WD Pa) 612 F Supp 72, *affd without op* (1986, CA3 Pa) 787 F2d 583.

Information regarding student's educational records is required to be disclosed to parents and students. *Smith v Duquesne University* (1985, WD Pa) 612 F Supp 72, *affd without op* (1986, CA3 Pa) 787 F2d 583.

8. —Law enforcement

Public university is not entitled to receive information and records from security department. *Smith v Duquesne University* (1985, WD Pa) 612 F Supp 72, *affd without op* (1986, CA3 Pa) 787 F2d 583.

GENERAL PROVISIONS

20 USCS § 1232g

officials, school's graduate may not amend complaint to add claim under § 1983 for alleged violation of 20 USCS § 1232g, where claim was based on fact that defendants attached to their answer to student's complaint for breach of contract and interference with contractual relations 2 letters from student to defendants concerning matters relevant to lawsuit, because § 1232g(b) requires only that participating institution not have policy or practice that permits unauthorized release of educational records and defendant's discrete submission of 2 letters to court does not state claim for violation of this section. *Gundlach v Reinstein* (1996, ED Pa) 924 F Supp 684, aff'd without op (1997, CA3 Pa) 114 F3d 1172.

20 USCS § 1232g does not bar disclosure of murder victim's school records in criminal trial of alleged murderer where victim's reputation for belligerence and aggressiveness was at issue, since statute prohibits only practice or policy of disclosure of educational records and expressly recognizes that disclosure may be made in response to subpoena duces tecum or other judicial order. *State v Birdsall* (1977, App) 116 Ariz 196, 568 P2d 1094.

7. —Expenditures

Claim premised on violation of Family Educational Rights and Privacy Act of 1974 (FERPA) (20 USCS § 1232g) must fail, even though FERPA establishes federal statutory rights which are enforceable under § 1983, where: only information released by school board was reporting of authorized expenditures in board meeting minutes published according to requirements of state law, which led to public identification of autistic child requiring expenditures which led to property tax increase, because board cannot be liable for complying with state law which was not clearly preempted by federal law. *Maynard v Greater Hoyt Sch. Dist. No. 61-4* (1995, DC SD) 876 F Supp 1104, subsequent app sub nom *Greater Hoyt Sch. Dist. No. 61-4 v National Union Fire Ins. Co.* (1997, CA8 SD) 1997 US App LEXIS 19763.

Information concerning amount of money paid to student athletes are not educational records required to be closed under Family Education Rights and Privacy Act (20 USCS §§ 1230 et seq.). *Arkansas Gazette Co. v Southern State College* (1981) 273 Ark 248, 620 SW2d 258, 7 Media L R 1837, cert den and app dismd (1982) 455 US 931, 71 L Ed 2d 640, 102 S Ct 1416.

8. —Law enforcement records

Public university student newspaper editor is entitled to receive and publish criminal investigation and incident reports compiled by campus security department, where such reports do not contain type of information student is required to submit as precondition to enrollment or atten-

dance, nor academic data created in natural course of student's career, because reports are not exempt from disclosure under state sunshine law nor protected as "educational records" under 20 USCS § 1232g. *Bauer v Kincaid* (1991, WD Mo) 759 F Supp 575, 112 ALR Fed 671.

Department of Education is enjoined from preventing universities from releasing to public personally identifiable information in law enforcement records regarding students by withdrawing or threatening to withdraw federal funding, where public interest in greater access to information bearing on personal safety and crime prevention outweighs arrested students' privacy interests in protecting their reputations, because 20 USCS § 1232g prohibition of information disclosure was afoul of First Amendment. *Student Press Law Center v Alexander* (1991, DC Dist Col) 778 F Supp 1227, 19 Media L R 1620.

9. —Names and addresses of students

Names and addresses of students enrolled at community college which have not been designated as "directory information" by college need not be disclosed; necessity of court order for disclosure must take into account students' right to privacy against demonstrated need for disclosure; in absence of demonstrated need for disclosure of names and addresses of students enrolled at community college, requesting party is not entitled to court ordered access. *Krauss v Nassau Community College* (1983, Sup) 122 Misc 2d 218, 469 NYS2d 553.

Although names and addresses of students sought by plaintiff are protected by Educational Privacy Act, court would compel college to disclose information in statistical, summary form such as number of transferees, exams taken for transfer purpose, and schools sponsoring them. *Naglak v Pennsylvania State University* (1990, MD Pa) 133 FRD 18.

10. Subpoenas

In view of policies underlying Family Educational and Privacy Rights Act, court will impose limitations on subpoenas so as to restrict their scope to material that pertains to acts specified in complaint. *Chazin v Lieberman* (1990, SD NY) 129 FRD 97.

11. Immunity

In suit by black students against state college seeking damages against college employees who released list of names and addresses of black male students to law enforcement officers looking for armed, young black male suspected in violent crime, it was unclear whether "emergency exception" of 20 USCS § 1232g applied and therefore no clearly established right of plaintiffs was infringed, and defendants were thus entitled to qualified immunity. *Brown v City of Oneonta* (1997, CA2 NY) 106 F3d 1125.

S B

48

FISCAL NOT No. 1

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

Bill Version: SR 48
(S) Publish Date: 2-25-99

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Economic Development
 Title An Act relating to Health Insurance provided and BRU Insurance
provisions relating to the Comprehensive Health Insurance Association Component Insurance
 Sponsor Senator Mackle
 Requester _____ Component Serial No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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						
-----------------------------	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component.

Prepared by Marlann K. Burke, Director Phone 465-2215
 Division Insurance Date/Time 2/18/99 3:13 PM
 Approved by Commissioner Deborah B. Sedwick Date 2/19/99
 Agency Commerce & Economic Development

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SENATOR JERRY MACKIE

SENATE MAJORITY LEADER

Sponsor Statement

SB 48, State Health Insurance

The Alaska Legislature created the Comprehensive Health Insurance Association (CHIA) in 1992 to provide a health insurance pool for an individual Alaskan whose health condition was considered uninsurable or who could not otherwise find adequate health coverage. The legislation mandated that all providers of health insurance in the state must participate in the pool. The association then makes health insurance available to Alaska residents who are high risks or are federally defined eligible individuals. These people typically suffer the most severe health conditions and face insurmountable costs of medical treatment and care.

In addition to operating the insurance pool, the board of directors of CHIA (which include two consumer advocates) is directed to periodically report on the effectiveness of the association in promoting rate stability, product availability, and affordability of coverage and to make recommendations on further legislative or administrative improvements. Senate Bill 48 is the direct result of this effort by the association to make the program work better and more efficiently. The legislation has the support of the Division of Insurance.

Senate Bill 48 amends AS 21.55 to

1. Allow the board greater flexibility to design more cost effective health insurance plans for individuals eligible for coverage under the CHIA plan.
2. Increase the number of potential administrators of the CHIA by eliminating the requirement that the administrator be an insurer.
3. Allow greater flexibility in evaluating an administrator and in setting the terms of the administrative contract.
4. Simplify administration by decreasing the number of declinations required for eligibility.
5. Make technical corrections relating to the determination of premium rates, terminology, premium payment modes, board member terms and voting at board meetings.

SPONSOR STATEMENT

6. Give the director of insurance a more effective and appropriate mechanism to enforce the requirement that members pay their share of the CHIA assessments on a timely basis.

The legislation will allow the board to manage the CHIA in a more cost effective and efficient manner. Also, the legislation is particularly important in light of the new federal requirements and the use of CHIA as the mechanism to guarantee portability of health insurance coverage to federally eligible individuals.

CS SB 48 (NES)

Sectional Analysis

"An Act relating to the Comprehensive Health Insurance Association"

Section. 1. AS 21.55.020

Amendments to this section clarify the voting methodology to be used in board and association meetings and establish reasonable terms for members of the board.

Current law defines the voting methodology to be used at association meetings as premium weighted. However, this methodology is not appropriate for board meetings, since the public members would not have a vote and the small insurers would essentially have no vote due to the fact that, Alaska's health insurance market is overwhelmingly dominated by only a few carriers. Therefore, amendments to this section clarify that each member receives only one vote at board meetings giving proper representation of the members of the board.

Sec. 2. AS 21.55.100(a)

Sec. 4. AS 21.55.100(d)

Sec. 6. AS 21.55.120(a)

Sec. 7. AS 21.55.120(c)

Amendments to these sections allow the board greater flexibility in developing cost-saving health benefit plans for high risk individuals by expanding the deductible, coinsurance and out-of-pocket maximum options and providing for more appropriate out-of-pocket limits in relation to the deductible. These changes will also allow for the development of a structure that encourages more cost-effective use of services.

Sec. 3. AS 21.55.100(c)

Amendments to this section clarify that coverage under the CHIA plan is available to all persons eligible under the chapter which is consistent with AS 21.55.100(a) and (d).

Sec. 9. AS 21.55.150

Amendments to this section eliminate the conflict between the requirement that the premium rates not be excessive or inadequate and the requirement that premium rates not be greater than 200% of standard premium rates. CHIA is essentially a pool for uninsurable health insurance risks, which means in general that the premium rates will not be adequate to cover the costs.

Also, the current requirements regarding the calculation of the premium rates are amended to allow additional flexibility in determining the premium rates. Current statute requires that the premium rates be based on standard rates of the top 5 insurers in the state. Since there are fewer than 5 significant individual comprehensive health insurers in the state, this basis for calculating the premium rates results in the use of rates that are not necessarily appropriate for the Alaska market.

Sec. 10. AS 21.55.200

Sec. 23. AS 21.55.500

The amendments to these sections allow greater flexibility in selecting an administrator and strengthen the criteria under which a plan administrator will be evaluated.

Since the inception of CHIA, only one insurer has offered to administer the plan. Amendments to these sections will increase the number of potential administrators by eliminating the requirement that the administrator be an insurer. This should result in reduced administrative costs by opening the door to many other entities that have an expertise in administration of individual health insurance type contracts. The greater number of bidders should result in better bargaining power for CHIA in negotiating administrative fees and services. CHIA's administrative expenses are currently the highest in the nation.

Sec. 11. AS 21.55.210

Amendments to this section will allow greater flexibility in evaluating an administrator and in setting the terms of the administrative contract.

Sec. 14. AS 21.55.220(d)

The first amendment to this subsection will give the director a more effective and appropriate mechanism to enforce the requirement that members pay their share of the CHIA assessments on a timely basis. This amendment establishes a monetary penalty for failure to pay within the established timeframe.

The second amendment will allow the board to excuse members from assessment, if the assessment amount is minimal. This will give the board the flexibility to determine the level of assessment at which it becomes cost prohibitive to assess a member.

Sec. 17. AS 21.55.330

The amendment to this section clarifies that monthly premium modes would be acceptable. Allowing a monthly premium mode is particularly important for the individuals in the CHIA plans, since premiums are relatively high.

Sec. 20. AS 21.55.500(6)

The amendment to this section corrects a minor error in the definition of a "federally defined eligible individual". The current law does not conform with federal law.

Sec. 21. AS 21.55.500(18)

The amendment to this section modifies the definition of "residents who are high risks" in order to simplify the eligibility requirements to allow an individual with only one declination to be eligible for coverage. Under current law individuals must wait to receive two formal declinations in order to prove eligibility under the plan. This often results in a long waiting period for the individual before they can be covered under the CHIA plan.

Sec. 23. AS 21.55.500(22)

This amendment defines the term "plan administrator".

Sec. 24.

This section repeals unnecessary provisions. AS 21.55.120(d) is no longer needed since reference to the consumer price index has been removed in AS 21.55.120(a) and (c). AS 21.55.120(e) is no longer needed since the provisions in AS 21.55.100(a) and (d) allow this flexibility. AS 21.55.500(21) is no longer needed since it is replaced with the more appropriate term "plan administrator".

Sec 5.

Sec. 8.

Sec. 12.

Sec. 15.

Sec. 16.

Sec. 18.

Sec. 19.

Sec. 22.

Amendments to these sections simply change the term "writing carrier" to "plan administrator" which is defined in AS 21.55.500(22). The term "writing carrier" is a misnomer as it implies that the administrator of the CHIA is insuring the plan when in fact the CHIA is the "insurer".



Comprehensive
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Insurance
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Karl Ideman
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Robert Niebrugge
Katherine Campbell (Ex-Officio)

February 2, 1999

The Honorable Jerry Mackie
Alaska State Senate
State Capitol Room 427
Juneau, AK 99801-1182

Dear Senator Mackie:

I was very pleased to hear from your aide, Dave Gray, today regarding the legislation introduced in SB 48. In response to the discussion he and I had concerning this legislation, I would like to indicate in writing the reasons that the Board supports these changes to AS 21.55. In fact, this legislation was developed by the Comprehensive Health Insurance Association's Board of Directors. The Board is composed of five representatives from the top health insurers in Alaska and two consumer members. The Board has spent many hours of basically volunteer time managing this program. Several of us have been with the Board since it was formed in late 1992. We have a passion to make it work the best that it can for the citizens of Alaska.

It is for that reason that we have developed these proposed changes; to make the program work better and more efficiently. I can assure you that these changes will in no way reduce the options provided to the policyholders. In fact it should make it easier for citizens to prove that they qualify while giving the Board greater flexibility in managing the program and reducing the administrative costs.

Specifically, this legislation amends AS 21.55 to

1. Allow the Board greater flexibility to design more cost effective health insurance plans for individuals eligible for coverage under the CHIA plan.
2. Increase the number of potential administrators of the CHIA by eliminating the requirement that the administrator be an insurer.
3. Allow greater flexibility in evaluating an administrator and in setting the terms of the administrative contract.

4. Simplify administration by decreasing the number of declinations required for eligibility.
5. Make technical corrections relating to the determination of premium rates, terminology, premium payment modes, board member terms, definitions and voting at Board meetings.
6. Give the Director of Insurance a more effective and appropriate mechanism to enforce the requirement that members pay their share of the CHIA assessments on a timely basis.

I believe that Director Burke indicated that the Division of Insurance was also in support of this legislation. The Board is appreciative of the assistance that the Division gives it in administering the program.

Finally, it is necessary that I indicate that a few minor changes to the legislation as introduced last year and again this year, are desirable. These changes are described in an attachment. Also enclosed with this letter, please find a Sectional Analysis of the legislation.

The Board is enthused about the advancement of this legislation. We stand ready to aid in whatever way we can. If you would like to have one or more of us testify at any hearings, please let us know so that we can arrange schedules to comply. If you have need of any other information please let us know. My telephone number is (402) 351-2534. My fax is (402) 351-5944 and my e-mail is cecil.bykerk@mutualofomaha.com.

Sincerely,



Cecil D. Bykerk, FSA, MAAA
Chair, Comprehensive Health Insurance Association

cc: Director Marianne Burke

Attachments

REQUESTED CHANGES TO SB 48

Please note the items in blue on the attached marked copy of SB48.

In Sections 2, 3, 4 and 20, the indicated changes are of a technical nature so as to properly define or to make proper reference.

The change in the maximum out-of-pocket limit in Section 7 of the bill from \$2,500 to \$1,500 was originally requested by the consumer members of the Board. This change would ensure that at least one plan of insurance would be offered that had a maximum out-of-pocket limit of \$1,500.

The change in Section 14 would provide for more effective and appropriate enforcement of the requirement that members pay their share of the CHIA assessments on a timely basis.

These changes were unanimously endorsed by the Board and fully supported by the Division of Insurance.

We hope that these changes can be made with minimal disruption to the process. We apologize that the original legislation submitted in 1998 failed to incorporate these changes.

SLA 92

AN ACT

1 Relating to pooled health insurance for individuals who are uninsured or denied adequate coverage; and
2 providing for an effective date.

3
4 • Section 1. PURPOSE. It is the purpose of this Act to provide access to health insurance to all
5 residents of the state who are presently denied adequate health insurance or who are considered
6 uninsurable.

7 • Sec. 2. AS 21 is amended by adding a new chapter to read:

8 CHAPTER 55. STATE HEALTH INSURANCE.

9 ARTICLE 1. COMPREHENSIVE HEALTH INSURANCE ASSOCIATION.

10 Sec. 21.55.010. CREATION; MEMBERSHIP. There is established a nonprofit
11 incorporated legal entity to be known as the Comprehensive Health Insurance Association.
12 Membership consists of all licensed hospital or medical service corporations in the state that offer
13 subscriber contracts for major medical coverage and all insurers licensed to transact health
14 insurance in the state that offer policies for major medical coverage on an expense incurred basis.

Cross references. — For statement of legislative purpose in enacting this chapter, see § 1, ch. 126, SLA 1992 in the Temporary and Special Acts.

Article 1. Comprehensive Health Insurance Association.

Section

- 10. Creation; membership
- 20. Board of directors; organization
- 30. General powers

Section

- 40. Plan of operation
- 50. Administrative Procedure Act
- 60. Tax exemption

Sec. 21.55.010. Creation; membership. There is established a nonprofit incorporated legal entity to be known as the Comprehensive Health Insurance Association. Membership consists of all licensed hospital or medical service corporations in the state that offer subscriber contracts for major medical coverage, all health maintenance organizations or other managed care arrangements approved by the director, and all insurers licensed to transact health insurance in the state that offer policies for major medical coverage on an expense incurred basis. All members shall maintain membership in the association as a condition of doing health insurance business, or being able to offer subscriber contracts or enrollment in a health maintenance organization or managed care arrangement, in the state. (§ 2 ch 126 SLA 1992; am § 2 ch 125 SLA 1994)

Effect of amendments. — The 1994 amendment, effective July 1, 1994, inserted “, all health maintenance organizations or other managed care arrangements approved by the director,” in the second sen-

tence and inserted “or enrollment in a health maintenance organization or managed care arrangement” in the last sentence.

Sec. 21.55.020. Board of directors; organization. (a) The board of directors of the association shall be made up of seven individuals. Five board members shall be selected by participating members, subject to approval by the director of the division of insurance, and two board members shall be consumers selected by the director of the division of insurance. The director or the director’s designee shall serve as a nonvoting ex officio member of the board. In determining voting rights at members’ meetings, a member is entitled to vote in person or proxy. The vote shall be a weighted vote based upon the member’s premiums for health insurance for major medical coverage on an expense incurred basis, or the member’s subscriber fees, derived from or on behalf of state residents in the previous calendar year, as determined by the director. In approving members of the board, the director shall consider, among other things, whether all types of participating members are fairly represented. Members of the board may be reimbursed from the association for expenses incurred by them as members, but may not otherwise be compensated by the association for their services. The costs of conducting meetings of the association and its board of directors shall be borne by members of the association.

(b) The board shall study and prepare a report at least once every three years on the effectiveness of this chapter. The report must include an analysis of the effectiveness of this chapter in promoting rate stability, product availability, and affordability of coverage. The report may contain recommendations for legislative or other regulatory action. The board shall notify the legislature that the report is available. (§ 2 ch 126 SLA 1992; am § 42 ch 21 SLA 1995)

Effect of amendments. — The 1995 amendment, effective August 8, 1995, in subsection (b), substituted

“prepare a report” for “report to the legislature” in the first sentence and added the last sentence.

Sec. 21.55.030. General powers. The association may
(1) exercise the powers granted to insurers under the laws of the state;

- (2) sue or be sued;
- (3) enter into contracts with other persons for the purpose of providing health insurance;
- (4) establish, administer, and maintain an association; and
- (5) receive funds from the state plan of health insurance (1992)

Sec. 21.55.040. Plan of operation. The plan of operation and equitable administrative provisions shall become effective upon the date the plan is submitted. If the association fails to submit a suitable plan, after notice and hearing, adopt regulations, or provisions of this chapter, the director or superseded director.

- (b) All members of the association shall be subject to the plan of operation.
- (c) The plan of operation shall:
 - (1) establish procedures for the administration of this chapter will be performed;
 - (2) establish procedures for the administration of this chapter;
 - (3) establish the amount of contributions under AS 21.55.020;
 - (4) establish regular meetings;
 - (5) establish procedures for the administration of the association, its agents, and its members;
 - (6) provide that a member of the association may appeal to the director;
 - (7) establish procedures for the administration of the association;
 - (8) contain additional powers and duties of the association.

Sec. 21.55.050. Administrative Procedure Act. (Administrative Procedure Act)

Sec. 21.55.060. Tax and taxes levied by the state or personal property. (§ 2 ch 126 SLA 1992)

Article 2

Section

- 100. Types of insurance plans
- 110. Minimum benefits of state plan
- 120. Deductibles and copayments

Sec. 21.55.100. Type of health insurance plan for residents who are high risk. The state plan of health insurance shall include deductibles as described in this section.

- (2) sue or be sued;
- (3) enter into contracts with insurers, similar associations in other states, or with other persons for the performance of administrative functions;
- (4) establish administrative and accounting procedures for the operation of the association; and
- (5) receive funds from sources other than members of the association. (§ 2 ch 126 SLA 1992)

Sec. 21.55.040. Plan of operation. (a) The association shall submit to the director a plan of operation and amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and amendments become effective upon approval in writing by the director. If the association fails to submit a suitable plan of operation by December 22, 1992, or if at subsequent time the association fails to submit suitable amendments to the plan, the director may, after notice and hearing, adopt reasonable regulations necessary or advisable to effectuate the provisions of this chapter. These regulations shall continue in force until modified by the director or superseded by a plan submitted by the association and approved by the director.

- (b) All members of the association shall comply with the plan of operation.
- (c) The plan of operation shall
 - (1) establish procedures whereby all the powers and duties of the association under this chapter will be performed;
 - (2) establish procedures for handling assets of the association;
 - (3) establish the amount and method of reimbursing members of the board of directors under AS 21.55.020;
 - (4) establish regular places and times for meetings of the board of directors;
 - (5) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;
 - (6) provide that a member insurer aggrieved by a final action or decision of the association may appeal to the director within 30 days after the action or decision;
 - (7) establish procedures whereby selections for the board of directors will be submitted to the director;
 - (8) contain additional provisions necessary or proper for the execution of the powers and duties of the association. (§ 2 ch 126 SLA 1992)

Sec. 21.55.050. Administrative Procedure Act. The association is exempt from AS 4.62 (Administrative Procedure Act). (§ 2 ch 126 SLA 1992)

Sec. 21.55.060. Tax exemption. The association is exempt from the payment of fees and taxes levied by the state or any of its political subdivisions except taxes levied on real or personal property. (§ 2 ch 126 SLA 1992)

Article 2. State Health Insurance Plans.

Section

100. Types of insurance plans
110. Minimum benefits of state health insurance plan
120. Deductibles and copayments

Section

130. Preexisting conditions
140. Persons, care, and services not covered
150. State plan premiums

Sec. 21.55.100. Types of insurance plans. (a) The association shall make available to residents who are high risks or to federally defined eligible individuals an individual health insurance plan of health insurance. The association shall offer three alternatives related to deductibles as described in AS 21.55.120 and may offer additional deductible alternatives.

S B

5 6

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

No. 1
Bill Version: SB56
(S) Publish Date: 3/16/99

Revision Date/Time (Note if correction): _____

Dept. Affected: Health and Social Services

Title: Licensing Home Health Agencies and

BRU: Medical Assistance Admin

Disclosure of Licensing Report.

Component: Certification & Licensing

Sponsor: Senate (HES)

COMPONENT SERIAL NO. 245

Requestor: Senate (HES)

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	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGES IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
---------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (please specify)	0.0	0.0	0.0	0.0	0.0	0.0
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	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The Department supports this bill, both for the Disclosure of Licensing Reports and Licensing Home Health Agencies sections. **Section 1 - Disclosure of Licensing Reports (HOSPICE) - Analysis:** The disclosure of licensing reports would affect all hospice organizations licensed by the Department under AS18.18. It is in the interest of the public to have access to licensure reports to assist in making decisions about their health care needs. There is no FY2000 fiscal impact to this section of the bill. **Section 2 - Disclosure of Licensing Reports - Analysis:** The disclosure of licensing reports would affect all health facilities licensed by the Department under AS18.20. This would include hospitals, nursing homes, ambulatory surgical centers and free standing birth centers. It is in the interest of the public to have access to licensure reports to assist in making decisions about their health care needs. There is no FY2000 fiscal impact to this section of the bill. **Section 3 - Home Health**

Prepared by: Shelbert Larsen *BY*
Division: Medical Assistance
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: (907)561-8081
Date/Time: 2/11/99 1:47 PM
Date: 2/11/99

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ANALYSIS (cont.):

Agencies Analysis: The Department has, since the early 80s, licensed home health agencies. It was only recently that the Department of Law questioned the authority to do so. Currently the department has regulations (7 AAC 12.500-12.590) under the broad statutory authority of AS 18.05. for regulating home health agencies. This bill would provide unquestionable, clear and specific statutory authority to license and regulate the quality of care provided by these agencies. It is felt this bill is justified in order for the Department to have statutory authority for oversight of home health agencies to assure minimum standards in quality of care are being provided to clients. Because the Department is currently surveying home health agencies, there would be no increased funding necessary for this bill anticipated for FY2000.

Section 4 - Disclosure of Assisted Living Home Licensing Reports - Analysis: The disclosure of licensing reports would affect all assisted living homes licensed by the Department under AS 47.33. We believe it is in the interest of the public to have access to licensure reports to assist in making decisions about their health care needs. There is no FY2000 fiscal impact to this section of the bill.

Section 5 - TRANSITION - Analysis: This section establishes authority for each department affected by the bill to adopt regulations necessary to implement the act. Since regulations are currently used in licensure of home health agencies, revision would be minimal, requiring only to revise the regulations to include the authority. One or two sections will have to be added for the licensure of home health agencies. There is no FY2000 fiscal impact to this section of the bill.

Section 6 - REVISOR'S INSTRUCTION - Analysis: This section provides instruction to the revisor. There is no FY2000 fiscal impact to this section of the bill.

Section 7 - EFFECTIVE DATE - Analysis: This section establishes the effective date for the statute. There is no FY2000 fiscal impact to this section of the bill.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 18C

Revision Date/Time (Note if correction): _____
 Title: Licensing Home Health Agencies and
Disclosure of Licensing Reports
 Sponsor: House (HES)
 Requestor: House (HES)

Dept. Affected: Health and Social Services
 BRU: Medical Assistance Admin
 Component: Certification & Licensing
 COMPONENT SERIAL NO. 245
 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	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGES IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (please specify)	0.0	0.0	0.0	0.0	0.0	0.0
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	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The Department supports this bill, both for the Disclosure of Licensing Reports and Licensing Home Health Agencies sections.

Section 1 - Disclosure of Licensing Reports (HOSPICE) - Analysis: The disclosure of licensing reports would affect all hospice organizations licensed by the Department under AS18.13. It is in the interest of the public to have access to licensure reports to assist in making decisions about their health care needs. There is no FY2000 fiscal impact to this section of the bill.

Section 2 - Home Health Agencies - Analysis: The Department has, since the early 80s, licensed home health agencies. It was only recently that the Department of Law questioned the authority to do so. Currently the department has regulations (7 AAC 12.500-12.590) under the broad statutory authority of AS 18.05. for regulating home health agencies. This bill would provide unquestionable, clear and specific statutory authority to license and regulate the quality of care provided by these agencies. It is felt this bill is justified in order for the Department to have statutory authority for oversight of home health agencies to assure minimum standards in quality of care are being provided to clients. Because the Department is currently surveying home health agencies, there would be no increased funding necessary for this bill anticipated for FY2000.

Prepared by: Shelbert Larsen *SL*
 Division: Medical Assistance
 Approved by Commissioner: Karen Perdue, Commissioner
 Agency: Department of Health & Social Services

Phone: (907)561-8081
 Date/Time: 4/15/99 1:29 PM
 Date: 4/16/99

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ANALYSIS (cont.):

Section 3 - Disclosure of Licensing Reports - Analysis: The disclosure of licensing reports would affect all health facilities licensed by the Department under AS18.20. This would include hospitals, nursing homes, ambulatory surgical centers and free standing birth centers. It is in the interest of the public to have access to licensure reports to assist in making decisions about their health care needs. There is no FY2000 fiscal impact to this section of the bill.

Section 4 - Disclosure of Assisted Living Home Licensing Reports - Analysis: The disclosure of licensing reports would affect all assisted living homes licensed by the Department under AS47.33. We believe it is in the interest of the public to have access to licensure reports to assist in making decisions about their health care needs. There is no FY2000 fiscal impact to this section of the bill.

Section 5 - TRANSITION - Analysis: This section establishes authority for each department affected by the bill to adopt regulations necessary to implement the act. Since regulations are currently used in licensure of home health agencies, revision would be minimal, requiring only to revise the regulations to include the authority. One or two sections will have to be added for the licensure regulations of home health agencies. There is no FY2000 fiscal impact to this section of the bill.

Section 6 - REVISOR'S INSTRUCTION - Analysis: This section provides instruction to the revisor. There is no FY2000 fiscal impact to this section of the bill.

Section 7 - EFFECTIVE DATE - Analysis: This section establishes the effective date for the statute. There is no FY2000 fiscal impact to this section of the bill.

SB 56/HB 186

Section 1

Disclosure of Licensing Reports

- Full public disclosure of licensing reports would affect all health facilities licensed by the Department under AS18.20. This would include hospitals, nursing homes, ambulatory surgical centers, home health agencies, hospice organizations and free standing birth centers.
- It is in the interest of the public to have access to licensure reports to assist in making decisions about their health care needs.
- Public scrutiny would further encourage facilities to maintain a safe environment for recipients, clients and patients, and to provide a high level of quality of care and quality of life.

Section 2

Home Health Agencies

- The Department has, since the early 80s, licensed home health agencies.
- Recently, the Department of Law questioned the authority to license home health agencies. Currently the department has regulations (7 AAC 12.500-12.590) under the broad statutory authority of AS 18.05. for regulating home health agencies.
- This bill would provide unquestionable, clear and specific statutory authority to license and regulate the quality of care provided by home health agencies.
- The Bill is justified in order for the Department to have clear statutory authority for oversight of home health agencies to assure minimum standards in quality of care are being provided to clients.
- The bill would ensure that an entity that establishes, conducts, or represents itself to the public as a home health agency, or otherwise meets the definition must have a license from the department authorizing it to be a home health agency.
- Rationale for requiring licensing of entities that meet the home health agency definition is to ensure compliance with minimum standards for entities effectively operating as home health agencies, but which may not be calling themselves such.

Alaska State Legislature



Official Business

State Capitol
Juneau AK
99801-1182

Long-Term Care Task Force

Senate Bill No. 56

An Act allowing the disclosure of reports with regard to inspection and investigations of certain health care facilities, home health agencies, hospice programs and assisted living homes; authorizing the Department of Health and Social Services to license home health agencies; and providing for an effective date.

Under current law, the Departments of Health and Social Services and Administration cannot make available to the public the annual inspection and investigation reports of hospitals, nursing homes, or assisted living homes licensed by the departments. Full public disclosure of licensing reports would benefit the public and help individuals make appropriate decisions regarding their health care needs.

This legislation will make the departments' final licensing report available to the public within 14 calendar days after the information is made available to the health care facility being reviewed. Public scrutiny encourages facilities to maintain a safe environment and provide a high quality of care. Any information that identifies patients or clients remains confidential.

This legislation also addresses the actual licensing process for home health agencies. A home health agency, either public or private, is an entity that provides primarily skilled nursing care and therapeutic services to people in their own homes, an assisted living home, or another residential setting.

The Department of Health and Social Services has, since the early 1980s, licensed home health agencies. Regulations (7AAC 12.500-12.590) were adopted under the department's broad regulatory authority. Recently the Department of Law questioned that authority. This legislation provides the Department of Health and Social Services the necessary and specific statutory authority to license and regulate the quality of care provided by home health agencies. The continued oversight of home health agencies will assure the public that the quality of care being provided to clients meets minimum standards.

April 12, 1999

LTC **TASK FORCE**
Long-Term Care Task Force



FINAL REPORT
January 1999

Representative Con Bunde, Co-chairman
Senator Gary Wilken, Co-chairman

State Capitol Building
Juneau, Alaska 99801-1182

activity and the active engagement of all interested individuals, agencies, long-term care providers and other professional boards. The Task Force challenges everyone to participate in the decision-making process. ❖

HOME HEALTH AGENCIES/LICENSING REPORTS

RECOMMENDATION

3

The Task Force recommends that legislation be drafted and introduced relating to the disclosure of licensing reports and licensing of home health agencies.

The Task Force was presented draft legislation that covered two specific areas of concern. The first subject dealt with the disclosure of licensing reports. Under current law, AS 18.20.090, the Department of Health and Social Services cannot make available to the public the annual inspection and investigation reports of the hospitals or nursing homes licensed by the department. As noted in testimony before the Task Force, full public disclosure of licensing reports would benefit the public and help individuals make appropriate decisions regarding their health care needs.

“Full public disclosure of licensing reports would benefit the public.”

The proposed legislation under consideration will make the department's licensing reports available to the public within 14 calendar days after the information is made available to the health care facility being reviewed. Any information that identifies patients or clients remains confidential.

The second area of discussion centered on the actual licensing process for home health agencies. A home health agency, either public or private, is an entity that provides primarily skilled nursing care and therapeutic services to people in their own homes, an assisted living home, or another residential setting.

“A home health agency is an entity that provides primarily skilled nursing care.”

The Department of Health and Social Services has, since the early 1980s, licensed home health agencies. Regulations (7AAC 12.500-12.590) were adopted under the department's broad regulatory authority. Only recently did the Department of Law question that authority. The draft legislation presented to the Task Force provides the Department of Health and Social Services with the necessary and specific statutory authority to license and regulate the quality of care provided by

these agencies. The continued oversight of home health agencies will assure the public that the quality of care being provided to clients meets minimum standards.

The Task Force acknowledges the importance of the concepts included in the proposed legislation and recommends the legislation be introduced for further consideration. (Please see Appendix B, page 69, for further detail.)

SMALL BUSINESS TRAINING

RECOMMENDATION

4

The Task Force supports an increased effort to train Assisted Living Home administrators in proven small business practices and urges collaboration between the Department of Administration and the University of Alaska to provide this education.

On January 14, 1994 Governor Wally Hickel introduced legislation that developed a system of long-term care "by encouraging the establishment of assisted living homes that provide a homelike environment for elderly persons and persons with a mental or physical disability who need assistance with the activities of daily living." (Chapter 130, SLA 1994) Assisted living homes promote and sustain the independence of Alaskans through a social model of community-based long-term care.¹³

"Eighty-five assisted living homes have been licensed by the Department of Administration."

Assisted living homes provide a home-like setting as well as certain health-related services or assistance with certain personal activities. Such services allow the elderly to age in place, rather than having to be transferred to a more institutionalized nursing-home setting, and allow adults with a physical or mental disability to become integrated into their community.¹⁴ Eighty-five assisted living homes have been licensed by the Department of Administration to serve the elderly. In addition, the Department of Health and Social Services has licensed 134 assisted living homes to provide care primarily to individuals with a mental or developmental disability.

Assisted living homes have become a reality in many, but not all, areas of Alaska.¹⁵ In some instances, it is difficult to establish an assisted living home and provide the necessary care. Interested care providers must first have an adequate, safe facility and then must obtain the required licensure, insurance coverage, and per-

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P.O. BOX 110209
JUNEAU, AK 99811-0209
(907) 465-3250
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Alaska Commission on Aging

Resolution 99-2

In support of SB 56: Timely disclosure of inspection and investigation reports concerning health care facilities, home health agencies, hospice programs, and assisted living facilities; and licensing of home health agencies

Whereas SB 56 provides for the timely disclosure of inspection and investigation reports concerning facilities and home care services upon which frail and disabled Alaskans rely for their care; and

Whereas SB 56 also provides for the State of Alaska to license home health agencies, thus reinforcing the standards of care these agencies must meet; and

Whereas the Legislative Long Term Task Force Report of January, 1999, recommended the introduction of this legislation in its Recommendation #3;

Now therefore the Alaska Commission on Aging strongly encourages the Twenty-First Alaska Legislature to pass SB 56.

Adopted this 9th day of March, 1999.

A handwritten signature in cursive script that reads "Alaire E. Stanton".

Alaire Stanton
Chair

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 13, 1999

FURTHER REFERRALS:

Date of Committee Action: 7/22/99

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

CSSB 56(L&C)

CS FOR SENATE BILL NO. 56(L&C)

HOME HEALTH AGENCIES/HOSPITALS/HOSPICES

"An Act allowing the disclosure of reports with regard to inspection and investigations of certain health care facilities, home health agencies, hospice programs, and assisted living homes; authorizing the Department of Health and Social Services to license home health agencies; and providing for an effective date."

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) HSS

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			

CHAIR'S SIGNATURE *[Signature]* *[Signature]*

SB

71



FAX
MESSENGER

**Valley
Medical
Care, PC**

ATTENTION: Sharon Clarke

FROM: Sarah Ista

DATE: 5/13

PAGES: 3 **TO FAX #** 465-3803
(Including cover sheet)

Urgent For Your Review Reply ASAP Please Comment

REMARKS: _____

Here is a summary on SB 71

what the bill does

Section by Section list

I'm sorry I did not have time to do this sooner +

realize it may be arriving too late to be useful to you but

you are welcome to any part of it.

FAX RETURN: 1-907-586-2448

VOICE TELE. # 1-907-586-2434

See you at 8am. tomorrow

Sarah

3220 HOSPITAL DRIVE, SUITE 100, JUNEAU, AK 99801

FAXMASTR.WIL

CSSB 71 (RLS) am

Background: Housekeeping bill for the Medical Board. Changes requested discussed by the board in meetings over the past year. Board has been in contact with Alaska State Medical Association, Alaska Osteopathic Association and Alaska Family Practice Residency and rural hospital administrators. Board newsletter requested and received feedback from licensees on postgraduate training issues.

What the bill does:

Accelerates license renewals by designating staff actions which can be taken in the interim between board meetings.

Allows the board to consider applicant's and licensee's felony convictions and several disciplinary actions by other medical boards which are not included in present statute.

Requires new applicants (medical doctors or osteopathic doctors) who are recent graduates (after 1994) of US and Canadian medical schools to have two years of post graduate training, conforming to present standards of medical education and national recommendations. *(Applicants who graduated prior to 1995 would continue to be required to have one year of post-graduate training; their applications would also contain information from other boards who had licensed them and hospitals they had worked at since completing post-graduate training.)*

Allows the board to renew permits for resident doctors-in-training in programs such as the Alaska Family Practice residency. Residency programs are typically three years; current statute limits permits to one year. *(Residents in training who are US graduates need a permit for 2 years; foreign graduates would need a permit for 3 years before applying for an active license.)*

CS For SB No. 71(RLS) am

Section 1. Requires new applicants who are recent graduates (after 1994) of US and Canadian medical school to have two years of post graduate training. *(This is the current standard for completion of osteopathic and Canadian family practice post-graduate training. All other programs require 3 or more years, so this is a minimum current standard expectation of medical school graduates.)*

Section 2. Makes the same requirements for osteopaths as for medical graduates in Section 1.

Section 3. Allows the board to renew permits for resident doctors-in-training in programs such as the Alaska Family Practice residency. Residency programs are typically three years; current statute limits permits to one year. *(New residents in training who are US or Canadian graduates will need a permit for at least 2 years before applying for an active license.)*

Section 4. Accelerates license renewals by allowing the board to designate a staff member to renew "locums" (replacement) physician licenses in the interim between board meetings. *(Currently only a quorum of the board can issue the 60-day renewals allowed by statute.)*

Section 5 and 6. Accelerates license renewals by allowing the board to designate a staff member in the interim between board meetings to set up agreements with licensees who are late in completing continuing education requirements. *(Current statute requires full board action on each renewal in which the licensee is late in presenting continuing education credits.)*

Section 7. Allows the board to consider applicants' and licensees' felony convictions when granting licenses and disciplining physicians. It also allows the board to consider several disciplinary actions taken by other state medical boards which are not included in present statute. *(Currently no felony conviction may be considered in evaluating a licensee or an applicant unless the felony was substantially related to the qualifications, functions or duties of the licensee. This bill allows Class A and unclassified felonies to be considered even if they were committed while the physician was not practicing medicine.) (Current statute allows the board to act if a medical board in another state suspended or revoked a license, but is silent on other common board actions which are added in this bill.)*

Section 8. Applicability statements.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

No. 1
Bill Version: CSSB 71 (HES)
(S) Publish Date: 4-28-99

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ Dev.
Title An act relating to the licensure by the BRU Occupational Licensing
State Medical Board. Component Occupational Licensing
Sponsor Senate HESS
Requester Senate Labor and Commerce Component Serial No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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						
-----------------------------	--	--	--	--	--	--

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 (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSB 71 (HES) increases the requirements for medical licensure. New funds are not required to implement this bill.

Prepared by Jennifer Strickler, Administrative Manager Phone 465-2144
Division Occupational Licensing Date/Time 4/26/99 4:52 PM
Approved by Commissioner Deborah B. Sedwick Date 4/26/99
Agency Commerce & Economic Development

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(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: May 7, 1999

FURTHER REFERRALS: Labor and Commerce

Date of Committee Action: _____

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

CSSB 71(RLS) am

CS FOR SENATE BILL NO. 71(RLS) am

PHYSICIAN LICENSURE CHANGES

"An Act relating to licensure by the State Medical Board."

recommends it be replaced with the following committee substitute CS 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) CEID

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			

CHAIR'S SIGNATURE

[Signature] *[Signature]*



ALASKA STATE LEGISLATIVE COMMITTEE

LONG-TERM CARE
POSITION PAPER
1999

AARP POSITION:

Advocate for a state long-term care plan which provides quality home and community-based care that promotes independence in the least restrictive setting necessary.

DISCUSSION:

State statistics show that older Alaskans constitute the fastest growing segment of the Alaskan population. As a result of the passage of SCR 11 during the 1998 Legislative Session, the State Long-Term Care Task Force must plan for the extraordinary acceleration in the number of older Alaskans over the age of 65. The same planning efforts include disabled Alaskans of any age.

State Law should be established which addresses accessibility, quality, affordability and safety. The State long-term care system should:

- Respond quickly to Alaskans in need of home and community-based services;
- Maintain and expand affordable home and community-based services as needed;
- Preserve the integrity, independence and safety of individuals and their families;
- Explore public/private options for affordable long-term care insurance;
- Protect Alaskans from fraud and abuse in the long-term care delivery system;
- Promote a transportation system which supports independence and access to community-based services;
- Strengthen and expand the State Long-Term Care Ombudsman Program.

(Over, please)

For further information please contact:

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State Legislative Committee
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Robert Venhaus, Chair
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501 Jordt Circle
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Adopted: 9/23/98



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American Association of Retired Persons



**FAX
MESSENGER**

**Valley
Medical
Care, PC**

ATTENTION: Sharon Clarke
FROM: Sarah Iste
DATE: 5/13
PAGES: 3 **TO FAX #** 465-3883
(including cover sheet)

Urgent For Your Review Reply ASAP Please Comment

REMARKS:
Here is a summary on SB 71
what the bill does
Section by Section list
I'm sorry I did not have time to do this sooner +
realize it may be arriving too late to be useful to you but
you are welcome to drop part of it.

FAX RETURN: 1-907-586-2446
VOICE TELE. # 1-907-586-2434
See you at 8am tomorrow
Sarah

3220 HOSPITAL DRIVE, SUITE 100, JUNEAU, AK 99801

CSSB 71 (RLS) am

Background: Housekeeping bill for the Medical Board. Changes requested discussed by the board in meetings over the past year. Board has been in contact with Alaska State Medical Association, Alaska Osteopathic Association and Alaska Family Practice Residency and rural hospital administrators. Board newsletter requested and received feedback from licensees on postgraduate training issues.

What the bill does:

Accelerates license renewals by designating staff actions which can be taken in the interim between board meetings.

Allows the board to consider applicant's and licensee's felony convictions and several disciplinary actions by other medical boards which are not included in present statute.

Requires new applicants (medical doctors or osteopathic doctors) who are recent graduates (after 1994) of US and Canadian medical schools to have two years of post graduate training, conforming to present standards of medical education and national recommendations. *(Applicants who graduated prior to 1995 would continue to be required to have one year of post-graduate training; their applications would also contain information from other boards who had licensed them and hospitals they had worked at since completing post-graduate training.)*

Allows the board to renew permits for resident doctors-in-training in programs such as the Alaska Family Practice residency. Residency programs are typically three years; current statute limits permits to one year. *(Residents in training who are US graduates need a permit for 2 years; foreign graduates would need a permit for 3 years before applying for an active license.)*

CS For SB No. 71(RLS) am

Section 1. Requires new applicants who are recent graduates (after 1994) of US and Canadian medical school to have two years of post graduate training. *(This is the current standard for completion of osteopathic and Canadian family practice post-graduate training. All other programs require 3 or more years, so this is a minimum current standard expectation of medical school graduates.)*

Section 2. Makes the same requirements for osteopaths as for medical graduates in Section 1.

Section 3. Allows the board to renew permits for resident doctors-in-training in programs such as the Alaska Family Practice residency. Residency programs are typically three years; current statute limits permits to one year. *(New residents in training who are US or Canadian graduates will need a permit for at least 2 years before applying for an active license.)*

Section 4. Accelerates license renewals by allowing the board to designate a staff member to renew "locums" (replacement) physician licenses in the interim between board meetings. *(Currently only a quorum of the board can issue the 60-day renewals allowed by statute.)*

Section 5 and 6. Accelerates license renewals by allowing the board to designate a staff member in the interim between board meetings to set up agreements with licensees who are late in completing continuing education requirements. *(Current statute requires full board action on each renewal in which the licensee is late in presenting continuing education credits.)*

Section 7. Allows the board to consider applicants' and licensees' felony convictions when granting licenses and disciplining physicians. It also allows the board to consider several disciplinary actions taken by other state medical boards which are not included in present statute. *(Currently no felony conviction may be considered in evaluating a licensee or an applicant unless the felony was substantially related to the qualifications, functions or duties of the licensee. This bill allows Class A and unclassified felonies to be considered even if they were committed while the physician was not practicing medicine.) (Current statute allows the board to act if a medical board in another state suspended or revoked a license, but is silent on other common board actions which are added in this bill.)*

Section 8. Applicability statements.

Alaska State Legislature



Senator Mike Miller, Chairman
Senator Pete Kelly, Vice Chairman
Senator Drue Pearce
Senator Gary Wilken
Senator Kim Elton

State Capitol, Rm 119
Juneau, Alaska 99801-1182
(907) 465-3762

Senate Committee on Health, Education and Social Services

SB 71

An Act relating to licensure by State Medical Board

SPONSOR STATEMENT

SB 71 was requested for introduction by the Hess committee from the State Medical Board who fully support the bill. This bill resolves licensure problems for the board, updates Alaska statutes in relation to other states and corrects unintended problems within the current law.

The members of the Alaska State Medical Board conveyed their appreciation to the House Hess committee members for scheduling this bill.

We would ask your consideration and support of SB 71.

CSSB 29 (RLS): Licensure of Physicians

Section 1:

Deletes the requirement that an applicant be a citizen or permanent resident.

(The federal government has created categories of visa, which allow doctors to work, but are not permanent residence permits. No other state requires citizenship and the Alaska law prevents legal, qualified foreign citizens such as an Anchorage VA cardiologist from working)

CSSB 29 (L&C) amended the citizenship requirement instead of deleting it.

Section 2.

Makes a conforming amendment to the to qualifications for licensing osteopathic physicians, by eliminating reference to the citizenship requirement deleted in section 1.

Section 3

Increases from 1 to 3 years the length of the postgraduate residency program required of applicants who graduated from a foreign medical school (not US or Canadian)

(There is no way for the board to judge the quality of foreign medical schools. A three-year US residency allows the board to assess the competence of the applicant. 43 other states require foreign graduates to complete 3-year residencies)

CSSB 29 (L&C) also increased the residency for foreign graduates, but it mandated that all three years be completed at a single hospital and gave the option of completion of a program accredited by the American Board of Medical Specialists.

Section 4

Increases the length of a residency permit from 1 year to 18 months and allows renewal of the permit.

(This section will allow foreign graduates to complete the three-year residency required in section 3. Residency permits are the licenses doctors use while in residency.)

Section 5

Makes a conforming amendment to the qualifications for a temporary Alaska license, referencing the three-year residency requirement for foreign graduates.

Section 6

Makes the changes in SB 29 apply only to applications received after the effective date.

Section 7

Immediate effective date.

CSSB 71 (RLS): Licensure by the State Medical Board

Section 1:

Increases from 1 to 2 years the length of the postgraduate residency program required of applicants who graduated from an accredited US or Canadian medical school after January 1, 1995.

(2-year, or longer, residencies are now standard. Residents dismissed after one year do not have full post-graduate training. Individuals who graduated before 1995 have a work history the board can judge)

Section 2.

Makes the change in section 1 (2-year residency) apply to osteopathic physicians.

Section 3

Increases the length of a residency permit from 1 year to 18 months and allows renewal of the permit.

(Residency permits are the licenses doctors use while in training. The increase in the length of residencies necessitates this change.)

Section 4

Allows the board to delegate to staff the extension of a temporary medical license, for efficiency.

Section 5 and Section 6

Allow the board to delegate to staff the processing of continuing education documents and the grant of exemptions or extensions of time to complete continuing education.

Section 7

Allows the board to consider disciplining existing doctors or denying licenses to applicants who have committed any Class A or unclassified felony, as well as Class B and C felonies connected to the practice of medicine. The section also allows denial or discipline of Alaska doctors who have their licenses disciplined in any manner in other states.

(Examples of problems this section will solve are:

- 1) The board was not able to take into account an applicant's murder conviction because the murder occurred at home.

- 2) The board can not easily act against doctors whose licenses are on probation or conditioned in other states.)

Section 8

Makes the longer residency requirements apply only to applications received on or after the effective date of the act, and makes the criminal and disciplinary history requirements apply only to new applicants and new crimes/discipline of existing Alaska doctors.

S B

7 3

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: April 13, 2000

FURTHER REFERRALS:

Finance

Date of Committee Action: 04/13/00

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

CSSB 73(FIN)

CS FOR SENATE BILL NO. 73(FIN)

ASSISTED LIVING FACILITIES

"An Act relating to assisted living homes; and providing for an effective date."

recommends it be replaced with the following committee substitute House CS for CSSB 73(HES) [x] 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>[Signature]</i>				<input checked="" type="checkbox"/>
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE *[Signature]*

4/13/00

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HCS CS SB 73 (HES)

Revision Date/Time (Note if correction): April 13, 2000 4:30pm

Dept. Affected: Health and Social Services

Title: An Act Related to Assisted Living Homes

BRU: Community Mental Health Grants

Component: Gen Community Mental Hlth Grants

Sponsor: Senator Miller

COMPONENT SERIAL NO. 307

Requestor: House (HES)

See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

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

OPERATING	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	2,328.8	2,328.8	2,328.8	2,328.8	2,328.8	2,328.8
MISCELLANEOUS						
TOTAL OPERATING	2,328.8	2,328.8	2,328.8	2,328.8	2,328.8	2,328.8

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health	1,869.8	1,869.8	2,328.8	2,328.8	2,328.8	2,328.8
1092 MHTAAR	459.0	459.0				
TOTAL	2,328.8	2,328.8	2,328.8	2,328.8	2,328.8	2,328.8

Estimate of any current year (FY2000) cost: _____

\$0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS:

(Attach a separate page if necessary)

Assisted living Homes (formerly known as Adult Residential Care) are a cost-effective alternative to institutional care for individuals choosing to remain in their home communities. The FY2000 budget is \$622.2. 7AAC 47.450-470 governs the fee structure for Assisted Living Homes and has not been revised since 1982. The lack of cost of care adjustments to the ALH's fee structure jeopardizes the health and safety of residents and the future of ALH's options. This bill would require the Department of Health & Social Services, Division of Mental Health & Developmental Disabilities (DMHDD) to increase the rate paid to ALHs under the existing general relief assistance program for 131 consumers to a base rate of \$75/day in FY01. The number of individuals receiving support for ALH services varies each year. This fiscal note would include a geographic cost of living differential (an analysis without the geographic differential is also attached). An augmented rate of \$35/day would be paid for 26 (20%) of consumers from the total population of 131 consumers. The augmented rate covers care of consumers with increased service needs. A personal needs allowance would be paid at \$100/month for all consumers. Both DMHDD and the Division of Senior Services are requesting this increase from \$75/month.

Prepared by: Anne Henry

Division: Mental Health & Dev. Disabilities

Phone: 465-4852

Date/Time: 4/13/00 4:34 PM

Approved by Commissioner: Karen Perdue, Commissioner

Agency: Department of Health & Social Services

Date: 4/14/00

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CALCULATIONS, ALH Fiscal Notes (with geographic index applied)

location	% of service	geographic index	RATE \$75/day
Anchorage	77%	1.00	\$2,761,316
Palmer/Wasilla	5%	1.04	\$186,479
Southeast	5%	1.00	\$179,306
Northern	7%	1.15	\$288,683
Western	5%	1.33	\$238,477
N/Western	1%	1.38	\$49,489
Cost of Providers' Standard Service:			\$3,703,750
client contrib of \$862 std rate x 11 mo x 131 clients (11 mo adjusts for vacancies, hospitalizations, 1st time eligibility funding lag)			\$1,242,142
less: proposed pers needs allowance \$100/mo x 12 mo x 131 clients			\$157,200
Portion of Costs Paid by Clients			\$1,084,942
Proposed State's Portion of Costs			\$2,618,808
current state costs budgeted			\$622,200
Proposed Increase to Current State Costs			\$1,996,608
AUGMENTATION, \$35/day x 26 clients x 365 days			\$332,150
Proposed Increase Including Augmentation			\$2,328,758
			<i>In thousands</i> \$2,328.8

DAILY RATE, with geographic index applied

	TOTAL		daily
current rate			\$36.52
	client portion	$\{(\$862 \text{ std monthly allowance} \times 11 \text{ mo}) - (\$75 \text{ pers needs} \times 12 \text{ mo})\} / 365 \text{ days}$	\$23.51
	state portion	budgeted \$622,200 / 365 days / 131 clients	\$13.01
proposed \$75/day	TOTAL	total indexed cost of providers' std svc @ \$75 / 365 days / 131 clients	\$77.46
	client portion	$\{(\$862 \text{ std monthly allowance} \times 11 \text{ mo}) - (\$100 \text{ pers needs} \times 12 \text{ mo})\} / 365 \text{ days}$	\$22.69
	state portion	difference	\$54.77

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO HCS SB73 (HESS)

Revision Date: 4/13/00
 Title: An act related to assisted living homes

Department Affected: Administration
 BRU: Central Administrative Services
 Component: Protection, Community Services, Administration

Sponsor: Sen. Mike Miller
 Requestor: (H) HESS

COMPONENT SERIAL NO. 2083

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	2,409.5	2,409.5	2,409.5	2,409.5	2,409.5	2,409.5
MISCELLANEOUS						
TOTAL OPERATING	2,409.5	2,409.5	2,409.5	2,409.5	2,409.5	2,409.5

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

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,572.9	2,018.5	2,409.5	2,409.5	2,409.5	2,409.5
1005 GF/Program Receipts						
1037 GF/Mental Health	445.6	0	0	0	0	0
OTHER MHTAAR	391.0	391.0	0	0	0	0
TOTAL	2,409.5	2,409.5	2,409.5	2,409.5	2,409.5	2,409.5

Estimate of any current year (FY 2000) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill would require the Department of Administration to increase the rate paid to assisted living homes under the existing general relief assistance program for 120 clients to a base rate of \$75 a day beginning July 1, 2000. This fiscal note would include a geographical cost of living differential. An augmentation rate of \$22 a day would be paid for 40 (33%) clients out of the total client population of 120 clients. A personal needs allowance would be paid at \$100 a month per client. The requested increase in the monthly personal needs allowance from \$75 to \$100 is needed for clients because they have increasing copayments to make for medical coverage, and the costs of personal items clients normally purchase are no longer affordable at the \$75 rate. DSS and DMHDD are jointly asking that this \$75 rate be increased to \$100 at this time.

Recommendation: This bill is consistent with the existing general relief assistance program objective to provide financial assistance to eligible vulnerable adults who are in need of assisted living resources. The current base rate of \$30 a day is not adequate to meet rising costs of providing assisted living care. A rate increase is overdue. This bill would allow for improving the current system of general relief payment by increasing rates to an adequate amount based on the Alaska Rate Study Report completed December 1998. This analysis continues past practice of applying a regional geographic differential to rates paid across the state. An analysis without the geographical is also included on page 4.

Prepared by: Dwight Becker
 Division: Senior Services

Phone: 269-3674
 Date: 4/13/00

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

Date: 4/13/00

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FISCAL NOTE

STATE OF ALASKA

BILL NO.HCS SB73 (HESS)

2000 LEGISLATIVE SESSION

ANALYSIS: (continued)

Calculation of General Relief Payment by State
(including geo differential)

First Year FY 2001 and following years with geographical differential							
GR Rate	Anchorage	Mat-su	Southeast	Northern	Western	N Western	
with Geographical							
<input type="text" value="75"/>	2,135,250	170,820	164,250	566,662.50	218,452.50	226,665	3,482,100
Augmentation Rate	Augmentation Cost for 40 clients						
<input type="text" value="22"/>	321,200						321,200
Personal Needs Allowance							
<input type="text" value="100"/>							144,000
Client's Contributions							Less (1,137,840)
Current FY 2000 General Relief Budget Request					400,000		Less (400,000)
						Grand Total	\$2,409,460

The Mental Health Trust Authority has agreed to provide funding in the amount of 391.0 for each of two years, FY 2001 and FY 2002.

In addition the Mental Health Trust Authority has approved 445.6 in GF Mental Health funds.

The current FY 2001 Division of Senior Services GR budget is 400.0.

FISCAL NOTE

STATE OF ALASKA

BILL NO.HCS SB73 (HESS)

2000 LEGISLATIVE SESSION

The general relief payment made by the state is the amount needed to supplement the client's contribution to meet the base rate indicated in the specific geographic region. An estimated 33% of the clients have higher needs and require augmented rates. The augmented rate is calculated at \$22.00 over the base rate multiplied by the index. The average contribution of the clients is the adult public assistance payment standard of \$862.00 per month or \$28.34 per day. Emergency protective service placements make up about one month or 1/12th of the total of 32,850 days which are paid by the by the state at the full rate without any contribution by clients because of the time needed to investigate and resolve client financial issues. The current budget request for FY2000 is \$400.0. The MHTA has committed 391.0 of MHTAAR funds for FY2001 and FY2002.

Days of Service provided by General Relief Program

120 clients per month x 365 days =43,800 days of service per year

Days of Service by Region

Anchorage	65% of 43,800 days =	28,470 days
Palmer/Wasilla	5%	= 2,190
Southeast	5%	= 2,190
Northern	15%	= 6,570
Western	5%	= 2,190
N/Western	5%	= 2,190
		43,800 days

Client Contribution Towards Payment for Assisted Living

\$862 payment standard per mo. x 11 mo. x 120 clients = \$1,137,840

Cost Calculation for Geographical Differential

Region	Index
Anchorage	1.00
Palmer/Wasilla	1.04
Southeast	1.00
Northern	1.15
Western	1.33
N.Western	1.38

Personal Needs Allowance for all Clients

\$100 x 120 clients x 12 months = \$144,000

Augmentation Calculation

\$22 a day x 40 clients x 365 day = \$321,200

FISCAL NOTE

STATE OF ALASKA

BILL NO.HCS SB73 (HESS)

2000 LEGISLATIVE SESSION

Calculation of General Relief Payment by State
(including no geo differential)

First Year FY2001 and following years GR Rate with No Geographical	Place numerical entries in white boxes to the left.	Total
<input type="text" value="75"/>		3,285,000
Augmentation Rate	Augmentation Cost for 40 clients	
<input type="text" value="22"/>	321,200	321,200
Personal Needs Allowance		144,000
<input type="text" value="100"/>		
Client's Contributions	853,380	Less (1,137,840)
Current FY 2000 General Relief Budget Request	400,000	less (400,000)
		Grand Total 2,212,360

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

No. 2
Bill Version: SB 73
(S) Publish Date: 3-30-99

Revision Date: _____
Title: An act related to assisted living homes
Sponsor: Senator Mike Miller
Requestor: (S) HES

Department Affected: Administration
BRU: Senior Services
Component: Protection, Community Services, Administration
COMPONENT SERIAL NO. 2083

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	1,526.8	1,526.8	1,526.8	1,526.8	1,526.8	1,526.8
MISCELLANEOUS						
TOTAL OPERATING	1,526.8	1,526.8	1,526.8	1,526.8	1,526.8	1,526.8

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

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,526.8	1,526.8	1,526.8	1,526.8	1,526.8	1,526.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	1,526.8	1,526.8	1,526.8	1,526.8	1,526.8	1,526.8

Estimate of any current year (FY 97) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill would require the Department of Administration to increase the rate paid to assisted living homes under the existing general relief assistance program to a base rate of \$70 a day. An assisted living home rate schedule is attached which describes the rates which this bill would require the state to be paid in the six regions of the state with a base rate of \$70 a day in Anchorage. The six regions are paid according to geographical cost of living differentials. Taking into account geographical cost differentials and a system with augmented rates for higher needs clients a budget of \$1,926.8 is needed annually to fund this bill.

Recommendation: This bill is consistent with the existing general relief assistance program objective to provide financial assistance to eligible vulnerable adults who are in need of assisted living resources. The current base rate of \$30 a day is not adequate to meet rising costs of providing assisted living care. A rate increase is overdue. This bill would require substantial funding which has not been approved by OMB. This bill would allow for improving the current system of general relief payment by increasing rates to an adequate amount based on the Alaska Rate Study Report completed December 1998.

Prepared by: Dwight Becker
Division: Senior Services

Phone: 269-3674
Date: _____

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

Date: 3/4/99

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FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 73

99 LEGISLATIVE SESSION

#2

ANALYSIS: (continued)

Calculation of General Relief Payment by State

The general relief payment made by the state is the amount needed to supplement the client's contribution to meet the base rate indicated in the specific geographic region. An estimated 20% of the clients have higher needs and require augmented rates. The augmented rate is calculated at \$22 over the base rate multiplied by the index. The average contribution of the clients is the adult public assistance payment standard of \$862 per month or \$28.34 per day. Emergency protective service placements make up about 20% of the total of 32,850 days which are paid by the by the state at the full rate without any contribution by clients because of the time needed to investigate and resolve client financial issues. The current budget request for FY2000 is 400.0.

Days of Service provided by General Relief Program

90 clients per month x 365 days = 32,850 days of service per year

Days of Service by Region

Anchorage	65%	of 32,850 days =	21,354 days
Palmer/Wasilla	5%	=	1,642
Southeast	5%	=	1,642
Northern	15%	=	4,928
Western	5%	=	1,642
N/Western	5%	=	1,642
			<u>32,850 days</u>

Client Contribution Towards Payment for Assisted Living

\$2 payment standard per mo. x 12 mo. / 365 days = \$28.34 per day
 20% of the days are not contributed towards due to emergency adult protective placements)
 80% of 32,850 days x \$28.34 per day = \$744,755

Cost Calculation for Non-augmented Clients (80%)

Region	Index	Regular Rate	x 80% of days	Cost
Anchorage	1.00	70.00	17,083	\$1,195,810
Palmer/Wasilla	1.04	72.80	1,314	95,659
Southeast	1.00	70.00	1,314	91,980
Northern	1.15	80.50	3,942	317,331
Western	1.33	93.08	1,314	122,307
N.Western	1.38	96.58	1,314	126,906
			<u>26,281</u>	<u>1,949,993</u>

Cost Calculation for Augmented Clients (20%)

Region	Index	Augmented Rate	x 20% of days	Cost
Anchorage	1.00	92.00	4,270	392,840
Palmer/Wasilla	1.04	95.68	328	31,383
Southeast	1.00	92.00	328	30,176
Northern	1.15	105.80	987	104,424
Western	1.33	122.36	328	40,134
N.Western	1.38	126.96	328	41,642
			<u>6568</u>	<u>640,599</u>

Personal Needs Allowance for all Clients

\$75 x 90 clients x 12 months = \$81,000

The General Relief Assistance payment by the State as required by this bill

\$1,949,993	Non-augmented cost
640,599	Augmented Cost
81,000	Personal Needs Allowance
<u>2,671,592</u>	Sub-Total Cost
(744,755)	Clients Contributions
(400,000)	Current FY 2000 Budget Request
<u>,526,837</u>	Total Cost to State

STATE OF ALASKA
1999 LEGISLATIVE SESSION

No. _____
Bill Version: SB 73
(S) Publish Date: 3-30-99

Revision Date: _____
Title: An act relating to Assisted Living Homes
Sponsor: Miller
Requestor: Senate (HES)

Dept. Affected: Health and Social Services
BRU: Community Mental Health Grants
Component: Services for the Chronically Mentally Ill
COMPONENT SERIAL NO. 800
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY00	FY01	FY02	FY03	FY04	FY05
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	1,858.8	1,858.8	1,858.8	1,858.8	1,858.8	1,858.8
MISCELLANEOUS						
TOTAL OPERATING	1,858.8	1,858.8	1,858.8	1,858.8	1,858.8	1,858.8

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

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

FUND SOURCE

(Thousands of Dollars)

	FY00	FY01	FY02	FY03	FY04	FY05
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health	1,858.8	1,858.8	1,858.8	1,858.8	1,858.8	1,858.8
Other (please specify)						
TOTAL	1,858.8	1,858.8	1,858.8	1,858.8	1,858.8	1,858.8

POSITIONS:

	FY00	FY01	FY02	FY03	FY04	FY05
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY99) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

The Department of Health and Social Services, Division of Mental Health and Developmental Disabilities serves approximately 138 individuals in Assisted Living Home environments with a FY99 budget of \$622.2. The number of individuals receiving support for Assisted Living Home services authorized by the Adult Residential Care regulations varies each year. 7AAC 47.450-470 governs the fee structure for Adult Residential Care and has not been revised since 1982. Adult Residential Care is now referred to as Assisted Living Home services. The lack of cost of care adjustments to the Adult Residential Care fee structure jeopardizes the health and safety of residents and the future of Assisted Living Homes. Assisted Living options are a cost-effective alternative to institutional care for individuals choosing to remain in their home communities. Development of the Assisted Living Home industry is very important for our Long-Term Care Plan for the State of Alaska. Also, it is a residential care approach that all disability groups support. This fiscal note is based on a zero population growth. It will fix the system as it now exists. Growth in community based services for Mental Health consumers is addressed in the "API Community Implementation Plan" dated October 31, 1997, published by J.L. Mitson & Associates. This growth is not included in this fiscal note. Growth for the developmentally disabled consumer is provided in the Community Developmental

Prepared by: Leonard Abel, Ph.D.
Division: Mental Health and Developmental Disabilities
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-4827 or 465-3370
Date: 02/23/99
Date: 2/24/99

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ANALYSIS (cont.):

Disabilities Grants Component Budget.

The following rationale was used to develop the needed General Fund increase to implement SB 73 as written and remains the same for the amendment proposed by the Department noted on the bill analysis.

Current Practice:

DMHDD augments the cost of care by an avg. daily rate:		\$12.35/day*
Consumer contributes entitlements avg. monthly amount	\$ 850.00	
Less Personal Allowance	\$ (75.00)	
	<u>\$ 775.00</u>	<u>\$25.48/day**</u>
Average paid for total care in an Assisted Living Home currently		\$37.83/day

* FY98 Budget of \$622,200 divided by 138 served = \$4509 divided by 365 days = \$12.35/day

** Consumer Entitlements (SSI/SSA/AD) = \$850 per month average minus monthly personal allowance = \$775/month times 12 = \$9300/year divided by 365 = \$25.48/day

Proposed in SB73 with Recommendations

Currently DMH&DD augments the cost of care by an avg. daily rate:	\$	12.35 /day
Consumer contributes entitlements at an average monthly rate	\$ 850	
Less increased personal allowance	<u>\$ (100)</u>	
	\$ 750	\$ 24.66 /day
Average now available after the increased personal allowance	\$	37.01 /day
Needed increased augmentation by DMH&DD to equal \$70/day avg.	<u>\$</u>	<u>32.99 /day ***</u>
Total to be received by the Assisted Living Home	\$	70.00 /day

*** Additional daily rate funding with zero growth in the population to fix the Assisted Living Homes system as it pertains to the Department of Health and Social Services.

It is estimated that 20% or 27 individuals would require augmented rates averaging \$90.00 per day. The average augmentation adjustment is \$20.00/day times 365 days = \$7,300 per year. The overall augmentation cost at \$7,300 per individual per year times 27 individuals = \$197,100.

An additional \$197.1 is required to cover these augmented rates for individuals requiring a higher level of care.

The Department of Health and Social Services, Division of Mental Health and Developmental Disabilities will need an increase in general funds of \$1858.8 (\$32.99/day x 365 days = \$12,041.35 x 138 served = \$1,661.7 plus \$197.1 for augmented rates = \$1858.8) for FY2000. These funds will bring the existing Assisted Living Home placements to a level of care that will meet their health and safety needs. The average cost of care should remain around \$70/day. Due to individual acuity levels, some individuals will require supports costing less than \$70/day, while others may need additional supports exceeding \$70/day. The Department believes that the Assisted Living Home industry can become a viable option if the funds requested and the needed regulatory changes are approved. Additionally, and of equal importance, these changes will ensure the health and safety of all served. Subsequent fiscal year's calculations have been planned with zero population growth for this bill.

The Alaska Mental Health Trust Authority has shown interest in the idea of a multi-year system change approach to address the funding needed to fix the Assisted Living Home service system. The Trust have indicated interest in receiving a jointly backed proposal from the Departments and planning boards impacted by the need to maintain the existing Assisted Living Home service system.

CALCULATIONS, ALH Fiscal Notes (with geographic index applied)

location	% of service	geographic Index	RATE	
			\$42.25/day	\$51.00/day
Anchorage	77%	1.00	\$1,555,541	\$1,877,695
Palmer/Wasilla	5%	1.04	\$105,050	\$126,805
Southeast	5%	1.00	\$101,009	\$121,928
Northern	7%	1.15	\$162,625	\$196,304
Western	5%	1.33	\$134,342	\$162,165
N/Western	1%	1.38	\$27,879	\$33,652
Cost of Providers' Standard Service:			\$2,086,446	\$2,518,550
client contrib of \$862 std rate x 11 mo x 131 clients (11 mo adjusts for vacancies, hospitalizations, 1st time eligibility funding lag)			\$1,242,142	\$1,242,142
less: proposed pers needs allowance \$100/mo x 12 mo x 131 clients			\$157,200	\$157,200
Portion of Costs Paid by Clients			\$1,084,942	\$1,084,942
Proposed State's Portion of Costs			\$1,001,504	\$1,433,608
current state costs budgeted			\$622,200	\$622,200
Proposed Increase to Current State Costs			\$379,304	\$811,408
AUGMENTATION, \$35/day x 26 clients x 365 days			\$332,150	\$332,150
Proposed Increase Including Augmentation			\$711,454	\$1,143,558
in thousands			\$711.5	\$1,143.6

DAILY RATE, with geographic index applied

			daily
current rate	TOTAL		\$36.52
	client portion	$\{(\$862 \text{ std monthly allowance} \times 11 \text{ mo}) - (\$75 \text{ pers needs} \times 12 \text{ mo})\} / 365 \text{ days}$	\$23.51
	state portion	budgeted \$622,200 / 365 days / 131 clients	\$13.01
proposed \$42.25/day	TOTAL	total indexed cost of providers' std svc @ \$42.25 / 365 days / 131 clients	\$43.64
	client portion	$\{(\$862 \text{ std monthly allowance} \times 11 \text{ mo}) - (\$100 \text{ pers needs} \times 12 \text{ mo})\} / 365 \text{ days}$	\$22.69
	state portion	difference	\$20.95
proposed \$51.00/day	TOTAL	total indexed cost of providers' std svc @ \$51.00 / 365 days / 131 clients	\$52.67
	client portion	$\{(\$862 \text{ std monthly allowance} \times 11 \text{ mo}) - (\$100 \text{ pers needs} \times 12 \text{ mo})\} / 365 \text{ days}$	\$22.69
	state portion	difference	\$29.98

FISCAL NOTE

553 3/9/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CS SB 73 (FIN)

Revision Date/ <u>3/10/00</u>	Dept. Affected <u>Administration</u>
Title <u>An act relating to assisted living homes</u>	BRU <u>Central Administrative Services</u>
Sponsor <u>Senators Miller, Ellis, Wilken</u>	Component <u>Protection, Community Services,</u>
Requester <u>(S) FIN</u>	Administration
	Component No. <u>2083</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	888.9	1,295.2	1,295.2	1,295.2	1,295.2	1,295.2
Miscellaneous						
TOTAL OPERATING	888.9	1,295.2	1,295.2	1,295.2	1,295.2	1,295.2

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

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match						
1004 GF	52.3	458.6	849.6	849.6	849.6	849.6
1005 GF/Program Receipts						
1037 GF/Mental Health	445.6	445.6	445.6	445.6	445.6	445.6
Other (Specify Type)	391.0	391.0				
TOTAL	888.9	1,295.2	1,295.2	1,295.2	1,295.2	1,295.2

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would require the Department of Administration to increase the rate paid to assisted living homes under the existing general relief assistance program for 120 clients to a base rate of \$42.25 a day the first year, \$51 the second year, and following years. This fiscal note would include a geographical cost of living differential. An augmentation rate of \$22 a day would be paid for 40 (33%) clients out of the total client population of 120 clients. A personal needs allowance would be paid at \$100 a month per client. The requested increase in the monthly personal needs allowance from \$75 to \$100 is needed for clients because they have increasing copayments to make for medical coverage, and the costs of personal items clients normally purchase are no longer affordable at the \$75 rate. DSS and DMHDD are jointly asking that this \$75 rate be increased to \$100 at this time.

Recommendation: This bill is consistent with the existing general relief assistance program objective to provide financial assistance to eligible vulnerable adults who are in need of assisted living resources. The current base rate of \$30 a day is not adequate to meet rising costs of providing assisted living care. A rate increase is overdue. This bill would require substantial funding which has not been approved by OMB. This bill would allow for improving the current system of general relief payment by increasing rates to an adequate amount based on the Alaska Rate Study Report completed December 1998. This analysis continues past practice of applying a regional geographic differential to rates paid across the state.

Prepared by: <u>Dwight Becker</u>	Phone <u>269-3674</u>
Division <u>Senior Services</u>	Date/Time <u>3/13/00 11:26 AM</u>
Approved by <u>Commissioner -- Robert Poe, Jr. <i>Alison M. Elger</i></u>	Date <u>3/14/00</u>
Agency <u>Department of Administration</u>	

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FISCAL NOTE

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

BILL NO. CS SB 73(FIN)

ANALYSIS: (continued)

**Calculation of General Relief Payment by State
(including geo differential)**

First Year FY 2001 with geographical differential							
GR Rate	Anchorage	Matsu	Southeast	Northern	Western	N Western	
with Geographical							
42.25	1,202,858	96,228.6	92,527.5	319,219.9	123,061.6	127,688	1,961,583
Augmentation Rate	Augmentation Cost for 40 clients						
22		321200					321200
Personal Needs Allowance							144000
100							144000
Client's Contributions							minus 1137840
Current FY 2001 General Relief Budget Request				400,000			minus 400,000
							Grand Total 888.9
Second Year FY 2002 and following years with geographical differential							
GR Rate	Anchorage	Matsu	Southeast	Northern	Western	N Western	
with Geographical							
51	1,451,970	116,157.6	111,690	385,330.5	148,547.7	154,132.2	2,367,828
Augmentation Rate	Augmentation Cost for 40 clients						
22		321200					321,200
Personal Needs Allowance							144,000
100							144,000
Client's Contributions							minus 1,137,840
Current FY 2000 General Relief Budget Request				400,000			minus 400,000
							Grand Total 1,295,188

FISCAL NOTE

STATE OF ALASKA

BILL NO. CS SB 73(FIN)

2000 LEGISLATIVE SESSION

Calculation of General Relief Payment by State

The general relief payment made by the state is the amount needed to supplement the client's contribution to meet the base rate indicated in the specific geographic region. An estimated 33% of the clients have higher needs and require augmented rates. The augmented rate is calculated at \$22 over the base rate multiplied by the index. The average contribution of the clients is the adult public assistance payment standard of \$862 per month or \$28.34 per day. Emergency protective service placements make up about one month or 1/12th of the total of 32,850 days which are paid by the by the state at the full rate without any contribution by clients because of the time needed to investigate and resolve client financial issues. The current budget request for FY2000 is 400.0. MHTA has committed 391.0 for each year FY2001 and FY2002.

Days of Service provided by General Relief Program

120 clients per month x 365 days = 43,800 days of service per year

Days of Service by Region

Anchorage	65%	of 43,800 days =	28,470 days
Palmer/Wasilla	5%	=	2,190
Southeast	5%	=	2,190
Northern	15%	=	6,570
Western	5%	=	2,190
N/Western	5%	=	2,190
			<u>43,800 days</u>

Client Contribution Towards Payment for Assisted Living

\$862 payment standard per mo. x 11 mo. x 120 clients = \$1,137,840

Cost Calculation for Geographical Differential

Region	Index
Anchorage	1.00
Palmer/Wasilla	1.04
Southeast	1.00
Northern	1.15
Western	1.33
N. Western	1.38

Personal Needs Allowance for all Clients

\$100 x 120 clients x 12 months = \$144,000

Augmentation Calculation

\$22 a day x 40 clients x 365 day = \$321,200

The TRUST

The Alaska Mental Health Trust Authority

March 1, 2000

Senator Mike Miller
State Capital
Juneau, Alaska 99801

Dear Senator Miller,

This letter is to confirm the Trustees commitment to provide Mental Health Trust Authorized Receipts (MHTTAR) to help the state increase the assisted living rate.

The Trustees have authorized \$391.0 of MHTAAR in the Department of Administration and \$459.0 in the Department of Health and Social Service for a total of \$850.0 for both FY 01 and FY 02. This \$1.700.0 commitment should enable the state to transition to a more appropriate assisted living rate with a minimal impact on the state budget.

If we can be of any further assistance, please do not hesitate to call.

Sincerely,



Jeff Jessee
Executive Director

Cc: Board of Trustees
Commissioner Poe
Commissioner Perdue

**ANALYSIS OF DIFFERENCES BETWEEN FY 99 AND FY 00 FISCAL NOTES
CSSB 73 (FIN)**

The Fiscal Note for FY 99 is: \$1,024.4
The Fiscal Note for FY 00 is: 1,094.2

The change is the result of several factors, including refined methods of calculation, which more accurately reflect the real needs of the population, and other changes outlined below.

Last year, MHTAAR made a commitment of \$900.0 or \$300.0 annually for three years. This year, the trust has committed for a total of \$918.0 or \$459.0 for two years. Resulting in a \$159.0 decrease in FY 01 and FY 02 General Fund Mental Health monies required.

The next three factors are all interrelated, and decrease the bottom line on the Fiscal Note. 1) The consumer contribution has gone from \$850, to \$862 per month, per consumer. 2) The number of consumers currently receiving services is 131. The FY 99 Fiscal Note reflected 138 consumers. The number of consumers varies from year to year. 3) An adjustment in the geographic differential from 25% in FY 99 to 13% in FY 00 more accurately reflects the locations of consumers.

By history, the average consumer contributes to their Assisted Living Homes a total of 11 months per year. The state must absorb the extra month. There are many reasons that consumers lose funding. An example is a short hospitalization, which causes a consumer to be temporarily ineligible for Medicaid. Using historical numbers, this creates an increase of \$165.5.

In past years, the augmentation for the most exceptional of consumers, Level 2, was \$22.00 per day. In an effort to reduce this expense, and to improve the lives of consumers, DMHDD has initiated a training program which is expected to help move people to Level 1 services, which do not require such one on one services. This \$35 per day augmentation results in an increase of \$128.0.

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION DIVISION OF SENIOR SERVICES

Assisted Living Licensing
Alaska Commission on Aging
• Nutrition & Transportation
• Senior Residential Services
• Senior Employment Services
• Long Term Care Ombudsman
• Home & Community Grants

Personal Care Attendant Program
Care Plan Counseling
Older Alaskan's Waiver
Adults with Physical Disabilities Waiver
Adult Protective Services
Information & Referral
Citizen's Foster Care Review

TONY KNOWLES, GOVERNOR



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TTY: (907) 269-3891

March 1, 2000

MEMO

To: Sharon Clark
Senator Miller's Office Faxed to 465-3883

From: Dwight Becker, Program Coordinator

Re: ~~CE SR 73~~ (FIN) Fiscal Note



Hello Sharon,

I received your call about the fiscal note wanting to know why there was increase over last years fiscal note. There was an increase last year in the number of general relief assisted living clients. When I did the fiscal not last year, we were averaging more than 90 clients on GR each month. I used 90 at that time. Since that time we have been averaging 120 clients each month on GR. Therefore I revised the fiscal note to reflect this increase.

I used the exact same method for calculating the fiscal note this year as I did last year. I simply substituted 120 clients for 90 clients. The number of clients being augmented stayed at 33%, so that number also increased from 33% of 90 to 33% of 120.

The GR client caseload has been steadily increasing over the years. I expect that the need will continue to increase this year.

I hope this answers your questions.

Sincerely,

Dwight Becker

1-LS0468V
Lauterbach
4/13/00

HOUSE CS FOR CS FOR SENATE BILL NO. 73(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

Sponsor(s): **SENATORS MILLER, Ellis, Wilken, Taylor, Mackie, Pete Kelly, Elton**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to assisted living homes; and providing for an effective date."

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

3 * **Section 1.** AS 47.07.070 is amended by adding a new subsection to read:

4 (h) This section does not apply to the minimum daily reimbursement rate
5 specified by law under AS 47.24.017 or AS 47.25.195(f) for assisted living homes.

6 * **Sec. 2.** AS 47.24.017 is amended by adding a new subsection to read:

7 (d) If the protective services under this section include the placement of a
8 vulnerable adult in an assisted living home at the state's expense, the minimum daily
9 reimbursement rate to the assisted living home for the vulnerable adult is \$75. The
10 department may, under its regulations, provide for a daily rate higher than \$75 if the
11 additional care provided to the vulnerable adult in the assisted living home justifies the
12 additional reimbursement. In this subsection, "assisted living home" means an assisted
13 living home licensed under AS 47.33.

14 * **Sec. 3.** AS 47.25.195(b) is amended to read:

15 (b) Except as provided in (f) of this section, a [A] health facility receiving

1 a payment under this chapter is subject to the requirements of AS 47.07.070 -
2 47.07.075.

3 * Sec. 4. AS 47.25.195(c) is amended to read:

4 (c) Except as provided in (f) of this section, if [IF] insufficient money is
5 appropriated to fund medical assistance under AS 47.25.120 - 47.25.300 when taking
6 into consideration projected use and the health facility payment rates established in
7 accordance with (b) of this section, the department may, by regulation, establish at any
8 time in the fiscal year a prospective pro rata reduction of the facilities' established
9 payment rates that will be paid by the department for services provided by facilities
10 under AS 47.25.120 - 47.25.300.

11 * Sec. 5. AS 47.25.195(d) is amended to read:

12 (d) Notwithstanding (a) - (c) of this section, the department may enter into
13 agreements with a facility to provide services at a payment rate lower than the rate
14 established in accordance with (b) of this section, except that the department may
15 not enter into an agreement with an assisted living home to provide services at a
16 daily reimbursement rate lower than \$75.

17 * Sec. 6. AS 47.25.195(e) is amended to read:

18 (e) For purposes of this section,

19 (1) "assisted living home" means an assisted living home licensed
20 under AS 47.33:

21 (2) "health facility" includes a hospital, skilled nursing facility,
22 intermediate care facility, intermediate care facility for the mentally retarded,
23 rehabilitation facility, inpatient psychiatric facility, home health agency, rural health
24 clinic, and outpatient surgical clinic.

25 * Sec. 7. AS 47.25.195 is amended by adding a new subsection to read:

26 (f) Notwithstanding other provisions of this section and the provisions of
27 AS 47.07, if the assistance provided to a needy person under AS 47.25.120 - 47.25.300
28 includes the initiation or continuation of placement of the person in an assisted living
29 home at the state's expense, the department's minimum daily reimbursement rate to
30 the assisted living home for the person is \$75. This minimum rate is not subject to
31 reduction under (c) of this section. The department may, under its regulations and

1 under the procedures of AS 47.07.070 - 47.07.075, provide for a daily rate higher than
2 \$75 if the care provided to the needy person in the assisted living home justifies the
3 higher reimbursement. A daily rate higher than \$75 for assisted living homes may be
4 reduced under (c) of this section, but not below \$75.

5 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 APPLICABILITY. The minimum daily reimbursement rate set under AS 47.24.017(d),
8 enacted by sec. 2 of this Act, and AS 47.25.195(f), enacted by sec. 7 of this Act, applies to
9 services provided on or after July 1, 2000, and is not dependent on the adoption of regulations
10 by the Department of Health and Social Services.

11 * Sec. 9. This Act takes effect July 1, 2000.

Alaska State Legislature

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Senate District Q

MIKE MILLER

SB 73

Assisted Living Homes

Assisted living homes, formerly called adult foster care homes, are facilities that provide a home-like environment for seniors and people who have a disability and need assistance with everyday living activities. The program is under the Department of Administration and Division of Senior Services.

The program is regulated by the old general assistance regulations that need to be revisited and updated to be in line with the standard of care that is practiced by the other Assisted Living Programs. The cost of care is grossly outdated and has not had an increase since 1983.

The **purpose** of this legislation is to **increase the daily rate** paid to the (15 bed or less) "**Mom and Pop**" facilities by the state for vulnerable adults that are unable to provide safely for their own medical, emotional and personal care needs. A rate increase is long overdue! This bill would increase the current rate from the present **\$34.50** per day to a base rate of **\$70.00** per day based on individual care needs.

SB 73 would also establish an "equitable and reliable rate structure to ensure the success and growth of assisted living as a viable business" increasing rates to an adequate amount based on the **Alaska Rate Study Report** completed **December 1998**.

I respectfully request your consideration in passing SB 73