

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10302 HOUSE JUDICIARY

147

# ALASKA MANUFACTURED HOUSING ASSOCIATION

19 November 2001

To All Members  
Alaska House of Representatives

RE: CS for SB 6 (L&C)

Dear Representative:

Alaska Manufactured Housing Association (AMHA) is a statewide organization of owners and managers of manufactured housing communities and mobile home sales dealers. We are the only organized group representing the manufactured housing industry in Alaska.

At the 18 October 2001 meeting AMHA took the following action:

Motion: The AMHA will not support any Alaska legislation unless a relocation fund, as approved by the Association, is formatted and included as a part of the bill.

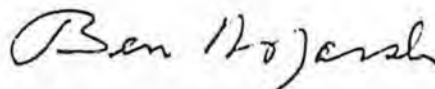
AMHA is adamantly opposed to SB 6 in its present form. The provision requiring the park owner to pay up to \$5,000 per unit for relocation if the use of the property is to be changed, is especially objectionable. Such a burden, not imposed on any other type of property ownership, would obviously seriously reduce the value of the owner's property in the marketplace.

SB 6 would confiscate private property by cutting its value. It would victimize one class of citizen to benefit another class. As such it would violate the principle of equal protection under the law. In our opinion it would not survive a legal challenge.

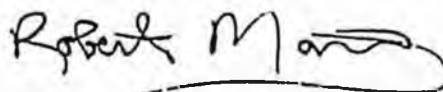
The notice period of 365 days is also objectionable, since that project delay would be a deal-killer in many instances, and it could be longer if the quit date doesn't fall in the May – October time period. The consensus at the meeting was that the notice period should remain at 180 days, with the quit date in the May – October period as written.

If, notwithstanding AMHA's opposition, SB 6 is enacted into law, we request that a publicly funded Relocation Fund be established. Support could be obtained from legislative appropriation, from a surcharge on mobile home sales, or by contribution from the local government that benefits from the tax valuation increase, or even from advance deposits from unit owners. Or a combination of these sources.

Sincerely,



Bernard L. Marsh, Executive Secretary  
Alaska Manufactured Housing Association



Robert Maier, President  
Alaska Manufactured Housing Association

# ALASKA MANUFACTURED HOUSING ASSOCIATION

22 January 2002

Senator Johnny Ellis  
State Capitol  
Juneau, AK 99801

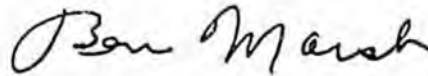
Dear Senator Ellis:

This is to advise you that Alaska Manufactured Housing Association (AMHA) has formally endorsed the draft proposal for Alaska Manufactured Home Relocation Fund (copy enclosed). This proposal was developed by the Manufactured Housing Task Force and circulated to all interested parties.

The three entities directly involved are the State, the local governing bodies affected, and AMHA. We are sending copies to Representative Norm Rokeberg to see if the House will consider an appropriation, you, to see if the Senate will do so, and Anchorage municipality to see if they will agree to their contribution.

We hope this proposal can be incorporated into SB6, or offered in place of it. Please let us know what we can do to help the process.

Sincerely,



Bernard L. Marsh, Executive Secretary  
Alaska Manufactured Housing Association

cc: Angela Liston, Archdiocese of Anchorage  
Jewel Jones, MOA Health & Human service Director  
Representative Rokeberg

## PROPOSAL FOR MANUFACTURED HOME RELOCATION FUND

1. The Manufactured Home Relocation Fund is established in the state treasury for the purpose of providing funds to facilitate the relocation of manufactured homes affected by voluntary closures or changes in use of all or part of a manufactured home community.
  
2. Monies from the following sources will be deposited into the Manufactured Home Relocation Fund (MHRF).
  - a. The buyer of a manufactured home shall pay \$25 to the MHRF when title to the manufactured home is transferred.
  - b. Manufactured home owners who do not own the land upon which the home is located shall pay annually to the MHRF an assessment equal to fifty cents per one hundred dollars of the taxable assessed valuation of the home, calculated and collected by the local governing body.
  - c. In the event of a voluntary closure or change in use of all or part of a manufactured home community, the developer/owner of the manufactured home community shall pay to the MHRF five hundred dollars per manufactured home section for each manufactured home relocated or abandoned due to the change of use or voluntary closure.
  - d. The local governing body in which the voluntary closure or change in use occurs shall pay to the MHRF, for each of three years after the change in use or voluntary closure, fifty percent of the tax collected on

/

the difference between the taxable assessed valuation of the land before the closure or change in use and the taxable assessed valuation after the change in use.

3. The State of Alaska shall appropriate \$500,000 during fiscal year 2002 to be deposited into the MHRF as created above.
4. The developer/owner of the manufactured home community shall:
  - a. Notify all tenants in writing of a the voluntary closure or change in use at least 180 day before the voluntary closure or change in use, with a quit date during the calendar year falling no earlier than May 1 and no later than October 15.
  - b. Notify the director of the MHRF of a voluntary closure or change in use at least 180 days before the voluntary closure or change in use.
  - c. Notify all tenants affected by the voluntary closure or change in use of the existence of the MHRF.
5. If a tenant is required to move due to a voluntary closure or change in use, the tenant is entitled to payment from the MHRF for the lesser of the actual disconnection, relocation, and reestablishment costs or an amount of \$8,000 for a single section manufactured home and \$10,000 for a multi-section manufactured home.

6. If a tenant chooses to abandon a manufactured home when a voluntary closure or change in use occurs, the tenant is entitled to collect one-fourth of the maximum allowable moving expenses for the manufactured home as stated in 5.
  
7. The State of Alaska will create the Alaska Mobile Home Relocation Corporation, which shall consist of six members. The Alaska Manufactured Home Resident Advisory Council shall nominate three members. The Alaska Manufactured Housing Owners Association shall nominate three members. The Corporation will be empowered to administer the MHRF.
  
8. When the monies in the MHRF reach six million dollars, the collections cited in 1, a, b and c will cease. Collections will resume when the fund drops below five million dollars.

Municipality  
of  
Anchorage



P.O. Box 196650  
Anchorage, Alaska 99519-6650  
Telephone: (907) 343-4431  
Fax: (907) 343-4499  
<http://www.ci.anchorage.ak.us>

*George P. Wuerch, Mayor*

OFFICE OF THE MAYOR

March 19, 2001

Senator Johnny Ellis  
Alaska State Legislature  
State Capital (MS 3100)  
Juneau, AK 99801-1182

Re: SB 6  
Mobile Home Park Eviction Notice

Dear Senator Ellis,

Thank you for sponsoring SB 6, regarding Mobile Home Park Eviction Notices.

Mobile homes have provided an important affordable housing alternative for Anchorage residents. However, as developable in the Anchorage area becomes more scarce, the land occupied by mobile home parks has become a target for other uses.

Senate Bill 6 extends the eviction notification period for tenants and mobile home owners and provides for reasonable relocation expense reimbursement in the event of a shorter notice period.

The Municipal Assembly, with the concurrence of Mayor Wuerch recently passed an assembly resolution (AR 2001-68) supporting such changes as proposed in SB6. We believe these changes are reasonable and prudent.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Rogers". The signature is fluid and cursive.

Tim Rogers  
Legislative Program Coordinator



PO Box 210908  
Anchorage, AK 99521-0908  
907.337.8887 Fax  
907.244.1948 Mbl  
[weedandseed@ak.org](mailto:weedandseed@ak.org)

---

EXECUTIVE COMMITTEE

---

Vicki Otte

Timothy M. Burgess

Mark Begich

Dennis McMillian

Phil Reid

Melinda Taylor

Carol Comeau

Walt Monegan

---

Timothy M. Sullivan  
Program Coordinator

March 23, 2001

Alaska State Legislature  
Juneau, Alaska

Currently there are two bills before you for consideration concerning Mobile Home Parks. SB 6 and HB 11. These two bills address the problems homeowners are facing regarding the recent wave of development of the large tracts of land that the parks occupy. These are the last vestiges of affordable housing in our community. Now these communities are being forced to find other locations for their mobile homes or the extreme, being forced to find other housing entirely. Normally, by definition, this would be considered a disaster. The current law offers no recourse to the homeowners by the developers. At least the provisions in the aforementioned pieces of legislation offer some time and monetary relief to these communities.

Weed and Seed East Anchorage is wholeheartedly in favor of legislation that will provide more opportunity for these people to restructure their lives.

Sincerely,

Timothy M. Sullivan, Coordinator  
Weed and Seed East Anchorage



# The Salvation Army

## Alaska Divisional Headquarters

Mailing Address: P.O. Box 101459  
143 E. Ninth Avenue • Anchorage, Alaska 99510-1459  
(907) 276-2515 • FAX (907) 276-1424

Founded in 1865  
By William Booth  
John Gowans  
General  
David Edwards  
Territorial Commander  
Terry W. Griffin  
Divisional Commander

February 15, 2001

ALASKA STATE LEGISLATURE  
Senator Johnny Ellis, Minority Leader  
FAX: #1-907-269-0172; Attention: Tyson Fick  
Anchorage, Alaska

**RE: Sectional Summary of Notice of Eviction to Mobile Home Park Dwellers  
Senate Bill 6**

Dear Senator Ellis;

On behalf of The Salvation Army Alaska Division and the Divisional Commander, Lt. Colonel Terry W. Griffin, I am writing this letter in support of Senate Bill 6 (which includes the amendments for tenants and landlords of mobile home parks).

This bill is important because it helps to develop strategy to alleviate the strain involved with the decrease of affordable housing caused by the displacement of residents of mobile home parks due to rezoning and commercial redevelopment in the Anchorage area.

Please add our names to the list of supporters for this Bill.

Thank you for your attention and assistance.

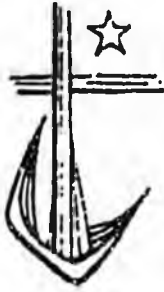
Sincerely,

C. Joe Murray, Major  
DIVISIONAL SECRETARY

C/c: Lt. Colonel Terry W. Griffin, Alaska Divisional Commander  
Dennis McMillian, Director, United Way of Anchorage



*Into a Second Century of Service*



## ARCHDIOCESE OF ANCHORAGE

225 CORDOVA STREET • ANCHORAGE, ALASKA 99501  
907/258-7898 • FAX: 907/279-3885

February 13, 2001

Senator Johnny Ellis  
State Capitol, Room 9  
Juneau, AK 99801-1182

Re: **SB 6 - An Act relating to required notice of eviction to mobile home park dwellers and tenants before redevelopment of the park.**

Dear Senator Ellis:

I am writing in support of SB6. As you know, the Anchorage community is faced with the possible rezone of two manufactured home communities – Alaska Village Mobile Home Park and Plaza 36 Mobile Home Community. Several hundred residents will be displaced if the Municipality of Anchorage approves these rezone petitions and the development goes forward.

During the past year, I had the privilege of serving on the Anchorage Manufactured Home Community (MHC) Task Force, formed specifically to address the potential suffering that might result from the displacement of hundreds of families. Those serving on the task force found that the issues were formidable:

- 1) there would result a loss of already scarce affordable housing due to the closure of manufactured home communities;
- 2) homes not code compliant, but having grandfather rights, would require costly code compliance when moved;
- 3) older manufactured homes are no longer movable or may not be acceptable in existing manufactured home communities;
- 4) the cost of disconnecting and relocating a home is prohibitive to many MHC residents;
- 5) self-sufficient individuals and families may be forced into poverty due to the cost of a move or the loss of their manufactured home due to its age and lack of mobility.

SB 36 mirrors legislation that was recommended in the Task Force Report. It provides some incentive for the owner/developer to consider the needs of the tenants when changing the use of the property. By expanding the notice requirement to 365 days, it was the hope that tenants would have adequate time to make relocation plans and,

if necessary, seek the assistance of social service agencies. However, not to unduly burden the owner/developer, the proposed legislation allows the owner/developer to essentially "buy down" the time to 180 days, by compensating the tenants for the costs of their move.

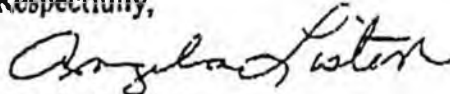
It should be noted that the \$5,000 maximum compensation in the proposed legislation also appeared in the Task Force Report. This amount was not the result of any specific study of relocation costs on the part of the Task Force. In fact, the cost of disconnecting, relocating, and reestablishing a manufactured home might well exceed \$5,000.

While serving on the Task Force and working with the tenants of manufactured home communities, it became apparent to me that mass displacement places an undue burden on the tenants and the social services of the community. If a change of use is, indeed, in the best interest of the community, then efforts to alleviate suffering of displaced persons must be shared by the owner/developer and the community.

SB6 is one step toward protecting the interests of manufactured home owners in Alaska. It does not address the needs of those whose homes will be lost in any change of use of a manufactured home community, but it is a first step. Further efforts will, undoubtedly, be required at the local level.

I urge you to support SB6.

Respectfully,



Angela A. Liston

Director

Department of Justice and Peace



ALASKA ASSOCIATION OF REALTORS, INC.  
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503  
Telephone 907-563-7133 • Fax 907-563-8476

April 24, 2001

Senator Johnny Ellis  
State Capitol  
Juneau, Alaska 99801-1182

RE: Senate Bill 6 – Relating to the mobile home eviction notice

Dear Senator Ellis,

The Alaska Association of REALTORS with over 1,100 members statewide supports Senate Bill 6 relating to mobile home eviction notices.

We agree that a mobile home park tenant being evicted due to a change in the use of land be given one year's notice, unless the park owner or operator pays the cost of relocating the mobile home. We are in favor of the Alaska Tenant Landlord Tenant Act being changed to accommodate the needs of the mobile home community.

The Alaska Association of REALTORS encourages the passage of Senate Bill 6.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bill Brady', written over a horizontal line.

Bill Brady  
President



Catholic Social Services  
Beyond Shelter Program  
276 3046

# Memorandum

**To:** Senator Betty Davis  
Senator Johnny Ellis  
**Cc:** Representative Eric Croft  
Representative Lisa Murkowski  
**From:** Stephanie Wheeler  
**Date:** 02/28/01  
**Re:** Senate Bill 6

---

I am the Program Director for the Beyond Shelter and St. Francis House programs – programs of Catholic Social Services.

Thank you for the opportunity to provide input for Senate Bill 6. Currently the Beyond Shelter Program is assisting with the relocation planning of forty-two (42) Plaza 36 residents needing to relocate the Plaza 36 Mobile Home Community by May and July. The concerns/issues of relocating a mobile home community are many and Senate Bill 6 addresses two of these major concerns for residents needing to relocate: adequate notice of closure and financial compensation for relocation costs.

Adequate planning for Mobile Home Residents is crucial for residents who are impacted by the redevelopment of their community. A 365-day notice will help residents explore options and finalize a plan for relocation. Additionally, Senate Bill 6 addresses the issue of relocating during appropriate seasons, so residents are not being forced to move during the winter months.

In conjunction with adequate planning time, financial compensation will assist residents with some of the relocation costs so that residents are not forced to abandon or sell their homes but can successfully relocate their homes to another area.

Mobile Homes/parks help meet the housing needs and provide a source of low cost housing to many families living in Alaska. We encourage the legislature to begin addressing other issues such as code compliance (or neglect issues) and help to establish acceptance for resident-owned mobile home communities in the private market. The cost for inspections and upgrades can be overwhelming for many residents who need to bring their homes up to code.

As two Anchorage area mobile home communities currently face the challenge of relocation, the total impact will not be fully understood until residents actually relocate. It is our hope that residents currently facing relocation and those who may be facing relocation in the future are not left homeless by this process. Thank you!

Alaska State Legislature

February 26, 2001

House Representative Eric Croft  
House Representative Lisa Murkowski  
House Representative Sharon Cissna  
House Representative Beth Kertulla  
State Senator Johnny Ellis

RE: HB 11 An Act relating to required notice of eviction to mobile home park dwellers and tenants before redevelopment of the park.

Dear Legislators:

We totally support House Bill 11, and its companion Senate Bill 6. We wish to thank you for your sponsorship. On our behalf you have acted on the Mobile Home Task Force Report recommendations to provide us statutory protection.

The increase in the notice period and the calendar restrictions for moving are sorely needed and are excellent as written. But regarding the money, we are very concerned that it's not enough to prevent the loss of homes.

When the task force made their recommendations, we didn't have any actual moves to learn from. Now we do. We've located people who have moved their mobile homes, and the costs far exceed \$5,000.

We urgently request that further research into these costs be made and the money figure changed if necessary to protect our homes.

For further research, we provide you a list of the following people who have already moved:

Dean & Maria Boyle, 907-332-1986  
Ron Okegawa, 907-333-6807  
Allen Hood, 907-333-4370

Linnie Pacillo, 907-338-0268  
Ken Kropidowski, 907-338-0533  
Kim Baughman, 907-338-8650

We will continue to work at the Anchorage Assembly level to urge passage of local ordinances we need for our protection. At the state level, we appreciate all your efforts on our behalf - your bills are a giant first step to eventually provide an umbrella of protection to all mobile home tenants.

Sincerely,

The Alaska Manufactured Home Resident Advisory Council  
Mobile Home Residents  
Concerned Citizens

REZONING HOME

2/17/01

# Lifestyle at risk

*What does future hold for city's trailer parks?*



MARC LESTER / Anchorage Daily News

By TIM PRYOR  
Anchorage Daily News

It's hard to see now, all covered with snow. But in the summer, back behind a white, 12-foot-wide mobile home in East Anchorage, broccoli, cauliflower and carrots grow. Ferns flourish among boulders in front. Tomatoes ripen in the greenhouse.

For Clark Richelderfer and Judy Billington, it's a little Garden of Eden. But for developer Jerry Neeser, it's just in the way.

Richelderfer and Billington live in Alaskan Village — a mobile home park on the verge of redevelopment by Neeser and on

**MARK CALENDAR:**  
On Feb. 27 the Assembly will start public hearings on mobile home park rezoning.

the front line as the city decides its trailer park policy for the next 20 years.

"The reality is, the entire park will be shut down because it's not a productive park," Neeser said. "It's fallen into disrepair. It's a dangerous park."

Long seen as a cheap way to own a home and live independently, trailer parks increasingly are targets for replacement by permanent housing, and to some degree, shopping or offices, as the city matures and vacant land becomes more valuable.

In the next week and a half, city officials will grapple with the competing demands of affordable housing, the rights of trailer park owners to profit from selling their land and future generations' need for space in a growing city.

The Anchorage Assembly will spell out these demands Tuesday when it votes on Anchorage 2020, the draft comprehensive plan that will help

city officials manage growth for the next two decades.

Then, on Feb. 27, the Assembly will start public hearings on proposals to rezone half of Alaskan Village and all of Plaza 36, a mobile home park in Midtown. Many mobile home dwellers will have to move — if only nearby — if the rezones succeed.

Until recently, the comprehensive plan described mobile home parks as areas for potential redevelopment.

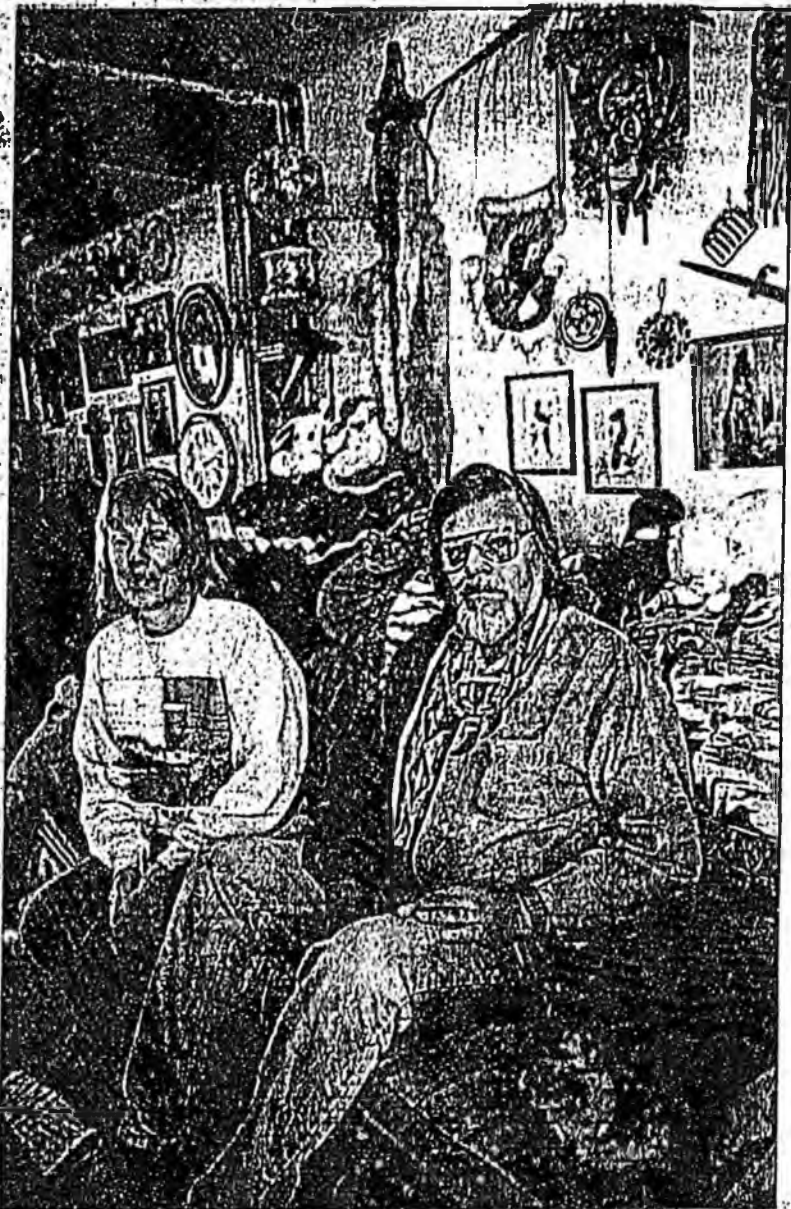
Then Cheryl Clementson and Melinda Taylor, two East Anchorage Assemblywomen with many of the city's big mobile home parks in their district, asked for

language in the plan recognizing the value of mobile homes.

City planners responded recently by proposing strategies to deal with mobile homes and by writing a sidebar that says, in part: "Mobile home parks offer an affordable housing choice and a desired neighborhood lifestyle" for some residents. The Assembly will consider those changes when it votes on the plan Tuesday.

Taylor says the old language wasn't sufficient because it assumed the parks would eventually just fade away. "Well, it's not going to go away," she said. "It's going to change."

In the future, residents could own mobile home parks themselves, rather than just owning a mobile home and renting the land beneath it as most do now, Taylor and tenant advocates say. That way, residents' money could improve infrastructure rather



JIM LAVRAKAS / Anchorage Daily News

Top, Plaza 36, a mobile home park in Midtown, is one of two parks slated for rezoning. Above, Judy Billington and Clark Richelderfer have lived at the Alaskan Village Mobile Home Park for 19 years. They are both retired and never planned to move.

See Back Page. MOBILE

# MOBILE: Trailer parks targets for replacement

Continued from A-1

than "landlords' pockets, proponents say.

Mobile home co-ops would also provide stability — something Billington and Richelderfer have come to rely on after spending 19 years at Alaskan Village.

Each spring, Richelderfer begins by starting about 1,000 vegetable plants inside the mobile home. He moves them into his greenhouse in the spring, then to raised beds in his garden in the summer.

This year, though, Alaskan Village management told Richelderfer there's no use planting a garden. He probably won't be able to use it.

Neeser bought the roughly 69-acre Alaskan Village from Pete Zamarello this week. He has applied to rezone 37 acres on the eastern half of the property from multifamily to general business district with special limitations.

Neeser hopes to attract a large, 130,000- to 150,000-square-foot retailer — about the size of a Wal-Mart or a Costco — to serve as a catalyst for the development, said Tim Potter, a planner for Dowl Engineers, which is working on the project.

Restaurants and banks or credit unions are also interested in the property and there's a strong interest in a medical clinic, Potter said.

If the rezoning is approved, Neeser would have to build at least 200 housing units or devote 10 acres to build homes — far fewer homes, potentially, than the 513 units Alaskan Village can hold at capacity, but more than the 154 units occupied right now.

Neeser says there's room on the park's west side for the 89 mobile homes affected by the rezone, but he's not encouraging people to move there. The city might build a school there. If it doesn't, he'll try to rezone it as commercial land. He said he will consider letting people move there on a case-by-case basis.

City planners like Neeser's idea because it would reuse deteriorated property rather than build on virgin land and because it would create a town center in the Muldoon area where people can live, shop and have access to public services.

Assemblywoman Clementson said she doesn't like to see

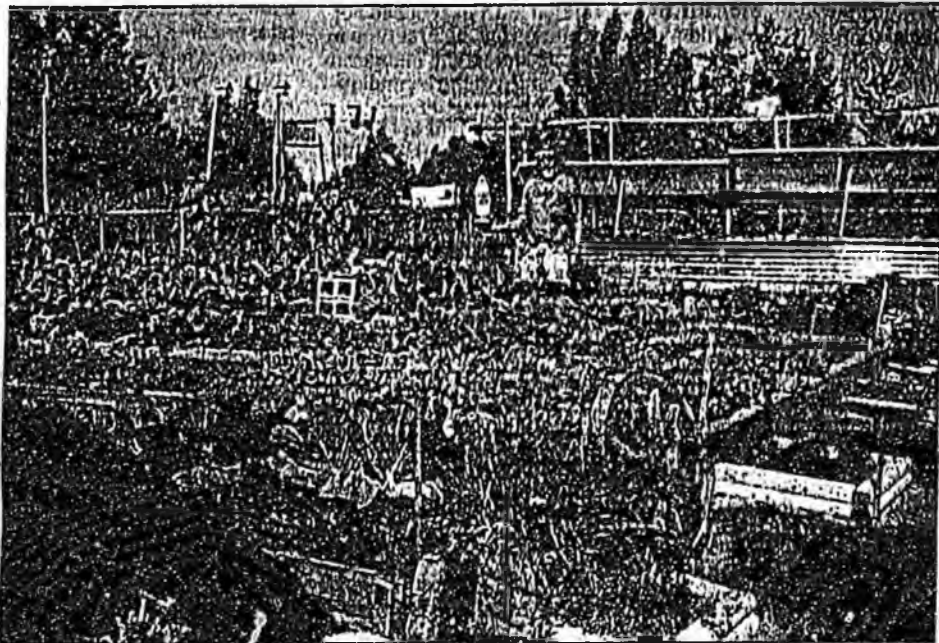


Photo courtesy of CLARK RICHELDERFER

Clark Richelderfer tends the garden behind his trailer at the Alaskan Village Mobile Home Park last summer.

## Alaskan Village rezone petition



residential land replaced with commercial development, especially when Boniface Mall lies partially vacant nearby. She also wants assurances that proposed housing will look attractive and have play areas for kids.

But she said she's inclined to support the rezone if Neeser and planners can assure her the project will really be a town center. The city's delay in making a decision about whether to build a school there may make that more difficult, she said.

Another mobile home park up for rezoning at the same time is Plaza 36, near C Street and 36th Avenue. Developer JL Properties Inc. wants to move about 40 of the park's roughly 200 mobile homes to build a 10-story office building on the eastern half of the property.

Developers of both parks

have said they'll provide money to help move displaced residents. At Plaza 36, JL Properties Inc. will help some residents find vacancies in remaining empty lots in the park, a spokesman said.

The two rezones wouldn't necessarily set a precedent for all other mobile home parks, said city planner Tom Nelson. Most mobile homes are located in areas that will probably stay residential, he said.

But residents who leave may not have many appealing alternatives.

Many don't like apartments — it's one of the reasons they moved to mobile homes in the first place. And a recent report by a mobile home task force said the city's remaining mobile home parks are about 80 percent full.

Richelderfer says he's lived in apartments before and doesn't want to go back. Neighbors make too much noise and it's just too confining.

"You can't sit out in the yard and barbecue or relax," he said. "You're stuck in the house all the time."

Besides, Billington's trailer is paid off, so she's only responsible for the \$290 a month space rent. Lots at the five or six trailer parks they've looked at are too small for her mobile home and garden. She and Richelderfer looked at a lot slightly under a quarter acre off DeArmoun

Road, but it cost \$53,000.

Buying a home isn't an option for many low- to moderate-income people.

There are some parts of Mountain View, Spenard, Muldoon and Russian Jack where homes are in reach of low- to moderate-income families, but increasingly there aren't many of them, said Lynn Taylor, who manages community development programs for the city planning department.

A better idea would be to create a mobile home park like ones in New Hampshire, says MacKenna Johns, an Alaskan Village resident and tenant organizer. There, residents buy memberships to a cooperative, elect a board of directors and then make monthly payments to the co-op to pay off the mortgage and run the park.

In New Hampshire, none of the 44 mobile home co-ops has failed since the first one started 17 years ago, said Paul Bradley, a vice president with the nonprofit New Hampshire Community Loan Fund, which helps tenants finance the parks. And rents are cheaper than the market rate, he said.

Co-ops might work here one day, but city planners weren't familiar enough with the idea to put it in the comprehensive plan, said the planning department's Nelson.

Reporter Tim Pryor can be reached at tpryor@adn.com or 257-4310.

**SB 19**

**/**

**HCR**

**10**





# STATE OF ALASKA

## DEPARTMENT OF REVENUE CHILD SUPPORT ENFORCEMENT DIVISION

TONY KNOWLES, GOVERNOR

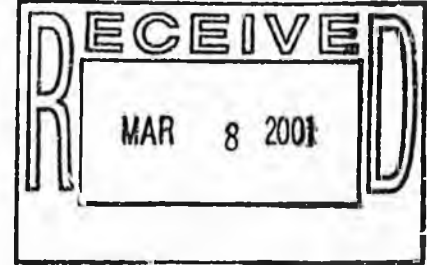
Please Reply To:

CSED, MS

550 W. 7<sup>th</sup> Ave., Suite 310  
Anchorage, AK 99501-6699  
907-269-6900  
800-478-3300 Toll Free In Alaska  
907-269-6650 CSC FAX  
TTY: (907) 259-6894  
Toll Free Alaska TTY: (800) 370-6894

February 28, 2001

The Honorable Norman Rokeberg  
Alaska State Legislature  
State Capitol  
Room 118  
Juneau, AK 99801-1182



Dear Representative Rokeberg:

*HCS CSSTB 19C HES)  
is the companion bill*

I am requesting that the Judiciary Committee hear CS for House Bill No. 41 (HES). This is an act relating to federal child support enforcement requirements regarding social security number information, employer reports about employees, and certain kinds of automated data matching with financial institutions; relating to child support payments; repealing the termination date of changes made by ch. 87, SLA 1997, and ch. 132, SLA 1998, regarding child support enforcement and related programs; repealing the nonseverability provision of ch. 132, SLA 1998; repealing uncodified laws relating to ch. 87, SLA 1997, and ch. 132, SLA 1998; and providing for an effective date.

This bill removes the existing sunset provisions which would repeal the 1997 and 1998 child support legislation as of July 1, 2001. The bill also repeals the nonseverability provision of the 1998 Act and several provisions from other legislation that refer to the sunset provisions of the 1997 and 1998 Acts. However, the bill imposes a new two year sunset on: (1) the requirements that applicants for various licenses provide their social security numbers to the licensing agency and that licensing agencies provide those social security numbers to the child support enforcement agency of this or another state; (2) requirements that certain court documents and documents of the Bureau of Vital Statistics include social security numbers and that those social security numbers be provided to the child support enforcement agency of this or another state; and (3) provisions allowing the child support enforcement agency to enter into agreements with financial institutions for financial data matching. The bill also includes two new provisions limiting civil liability of employers who fail to report newly hired or rehired employees and allowing support payments to be applied to a future month in certain limited circumstances.

The 1997 and 1998 child support legislation ensured Alaska's compliance with federal welfare reform requirements. The provisions of these Acts have been effective at increasing the amount of child support collected for Alaska's children. Moreover, federal funding for the state's child support enforcement program and the federal public assistance block grant depend on compliance with the federal requirements. The 1998 Act repealed these provisions as of July 1, 2001. It also included a nonseverability provision, which requires that if any part of the Act is found to be unconstitutional, the remaining provisions of the Act also will be considered invalid. CS for House Bill No. 41 (HES) ensures that these provisions are in effect, thus assuring that the law and court rule changes made by the 1997 and 1998 Acts will be retained.

**The Honorable Norman Rokeberg**  
**February 28, 2001**  
**Page 2 of 2**

This bill includes several provisions that have improved child support collections, including:

- Enhanced due process protections in paternity proceedings.
- Requirements that all employers' report newly hired employees to the child support agency.
- Authorization to use financial institution data matches to locate assets of delinquent parents.
- Immunity from civil liability for employers and financial institutions that comply with child support income-withholding orders.
- Prohibitions against disclosing identifying information of a parent or child where there is evidence of domestic violence.

CSED has implemented and tested the changes brought about by the 1997 and 1998 Acts. The agency has found these new programs and enforcement tools to be effective in ensuring that more children receive the support to which they are entitled. Due in great part to these changes, the agency's collections have increased. In fiscal year 2000, CSED collected over \$85 million, the largest annual collection in the agency's history.

We look forward to working with you on this legislation. Please let me know what information I can provide to assist the committee.

Sincerely,



Barbara Miklos  
Director

cc: Larry Persily, Deputy Commissioner, Department of Revenue  
Shari Kochman, Deputy Legislative Director, Office of the Governor

**CSED WELFARE REFORM LEGISLATION "SUNSET" SUMMARY**

**Repealer 2001**

NARRATIVE	STATE LAWS	FEDERAL LAWS	AMENDING SECTIONS
<p><b>Availability of Records/Access to Information</b>                      * must be able to obtain access, without order from another tribunal, to:                      - gov't records, including vital statistics, state tax, property, occ. licensing, business entity, employment security, public assistance, DMV, corrections                      - customer records of public utilities &amp; cable television per subpoena                      - financial institution information                      * to subpoena any financial information, and impose penalties for failure to respond                      * employer information upon request</p>	<p>AS 06.05.537                      AS 08.01.089                      AS 09.25.100                      AS 16.05.815                      AS 18.50.310                      AS 18.50.320                      AS 22.3.020                      AS 23.20.110                      AS 25.24.920                      AS 25.27.020(e)                      AS 25.27.085                      AS 25.27.086                      AS 25.27.250(e)                      AS 25.27.300                      AS 28.05.061                      AS 29.45.103                      AS 33.30.216                      AS 39.25.080                      AS 40.17.010                      AS 43.23.055                      AS 47.05.020                      AS 47.05.030</p>	<p>42 U.S.C. § 666(c)(1)                      PRWORA § 325</p>	<p><b>1997 Act:</b> Secs. 2, 7, 10, 11, 19, 26, 33, 34, 47, 77, 83-85, 140 – 146  <b>1998 Act:</b> Secs. 10, 11, 26, 48</p>
<p><b>Central Registry</b>                      * requires the state to have a central case registry and an automated system for extracting and exchanging information with federal case registry, federal parent locator service, ATAP programs, and agencies of other states</p>	<p>AS 25.24.920                      AS 25.27.020(a)(13)</p>	<p>42 U.S.C. § 654A(e) &amp; (f)                      PRWORA § 311</p>	<p><b>1997 Act:</b> Secs. 47, 76</p>
<p><b>Credit Bureau Reporting</b>                      * must have procedures requiring CSED to report periodically to credit bureaus the names of non-custodial parents who owe arrears</p>	<p>AS 25.27.273</p>	<p>42 U.S.C. § 666(a)(7)                      PRWORA § 367</p>	<p><b>1997 Act:</b> Sec. 133</p>

<p><b>Definitions</b>  * duty of support; earnings; support order; business day; employer; tribunal; arrearage</p>	<p>AS 25.27.900</p>	<p>42 U.S.C. § 653(p) and throughout  PRWORA § 366 and throughout</p>	<p><b>1997 Act:</b> Secs. 136 – 139  <b>1998 Act:</b> Secs. 49 – 50</p>
<p><b>Financial Institution Data Match</b>  * must be able to enter into agreements with financial institutions to do automated data exchanges and to attach assets located through that data match</p>	<p>AS 25.27.020(a)(2)(D)  AS 25.27.250  AS 09.65.250</p>	<p>42 U.S.C. § 666(a)(17)  PRWORA § 372</p>	<p><b>1997 Act:</b> Secs. 13, 74</p>
<p><b>Fraudulent Transfers</b>  * must have the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, or a law specifying indicia of fraud creating prima facie case re transfer of property to avoid payment of support AND procedures by which state can seek to avoid transfer or obtain settlement in best interests of the child support creditor</p>	<p>AS 25.27.279  AS 09.25.060  AS 34.40  15 AAC 125.415</p>	<p>42 U.S.C. § 666(g)  PRWORA § 364</p>	<p><b>1997 Act:</b> Sec. 135</p>
<p><b>High Volume Automated Enforcement</b>  * have automated procedures to take actions upon request from another state</p>	<p>AS 25.27.022  AS 25.27.900</p>	<p>42 U.S.C. § 666(a)(14)  PRWORA § 323 (with technical amendment)</p>	<p><b>1998 Act:</b> Sec. 21, 22, 50</p>
<p><b>Immunity from Liability</b>  * financial institutions are not liable for disclosure of info to agency  * employers are not liable for disclosure of info to agency or for good faith compliance with a withholding order</p>	<p>AS 09.65.250  AS 25.25.504  AS 25.25.250(h)</p>	<p>42 U.S.C. § 669A  42 U.S.C. § 666(b)(6)(A)  42 U.S.C. § 666(a)(17)  PRWORA §§ 314, 353, 372</p>	<p><b>1997 Act:</b> Secs. 13, 62</p>
<p><b>Income Withholding</b>  * revises existing withholding laws to incorporate various fed requirements, including 7 day employer deadline and no prior notice to obligor. Also, cleans up statutes relating to when and how CSED initiates income withholding when no immediate income withholding in order and when CSED may issue an order to withhold and deliver</p>	<p>AS 25.27.022(d)  AS 25.27.062  AS 25.27.150  AS 25.27.250</p>	<p>42 U.S.C. § 666(b)  42 U.S.C. § 666(c)(1)(F) &amp; (G)  PRWORA § 314, 325</p>	<p><b>1997 Act:</b> Secs. 80 – 82, 90 – 93, 128 – 130, 148(a)  <b>1998 Act:</b> Secs. 22, 23, 47</p>

<b>License Suspension</b> * "Best efforts" language added for occupational and drivers' licenses * recreational licenses	AS 25.27.244 AS 25.27.246 AS 09.50.020 AS 11.51.120 AS 12.55.139	42 U.S.C. 666(a)(16) PRWORA § 369	<b>1997 Act:</b> Secs. 106 – 127 <b>1998 Act:</b> Secs. 3 – 5 and 34 – 46
<b>Liens</b> * liens must arise by operation of law against non-custodial parent in arrears AND must give full faith & credit for liens arising in other states as long as other states meet Alaska's requirements	AS 25.27.230 AS 25.27.240	42 U.S.C. § 666(a)(4) PRWORA § 368	<b>1997 Act:</b> Secs. 104, 105 <b>1998 Act:</b> Sec. 31 – 33
<b>Medical Support Orders</b> * eliminates the requirement that the employer do business in Alaska before CSED sends a copy of medical support order to employer * requires the agency to send notice of medical support to new employer when obligor changes jobs	AS 25.27.063(b) AS 25.27.020(a)(9) AS 25.27.060 AS 21.36.095 Civil Rule 90.3(d)	42 U.S.C. § 666(a)(19) PRWORA § 382	<b>1998 Act:</b> Sec. 24
<b>Miscellaneous</b> * statute of limitations * interest rates * application for services * payments to the agency * audit of collections * certification of arrears * notice of public assistance * order establishment * service of papers	AS 09.10.040 AS 25.27.020(a)(6) AS 25.27.025 AS 25.27.100(a) AS 25.27.103 AS 25.27.105 AS 25.27.120(c) AS 25.27.160(b) AS 25.27.265	42 U.S.C. § 666(a)(2) 42 U.S.C. § 654A 42 U.S.C. § 654(4), (5) 42 U.S.C. § 666(c)(1) 42 U.S.C. § 654B(a)(1) PRWORA § 301 PRWORA § 311, 312 PRWORA § 325	<b>1997 Act:</b> Secs. 74 – 76, 78, 86 – 89, 94, 131 – 132 <b>1998 Act:</b> Secs. 2, 27
<b>Modification</b> * notice every 3 years of request for review; 3-year cycle for review upon request of parent or state agency, either per guidelines or based on COL or automated methods, without a material change in circumstances	AS 25.24.170(b) AS 25.27.190 AS 25.27.193	42 U.S.C. § 666(a)(10) PRWORA § 351	<b>1997 Act:</b> Secs. 44, 101 – 103
<b>New Hire Reporting</b> * must require employers to report hiring, rehiring, of each	AS 25.27.075	42 U.S.C. § 653A PRWORA § 313	<b>1998 Act:</b> Sec. 25

employee			
<b>Non-Cooperation</b> * good faith determinations when custodial parent fails to cooperate with CSED	AS 47.27.040(b)	42 U.S.C. § 654(29) PRWORA § 333	<b>1997 Act: Sec. 147</b>
<b>Nondisclosure of Information</b> * nondisclosure of information when there is a finding of domestic violence	AS 25.27.275	42 U.S.C. § 654(26) PRWORA § 303	<b>1997 Act: Sec. 134</b>
<b>Paternity</b> * state must have laws governing paternity establishment and voluntary acknowledgment of paternity which comply with detailed federal requirements. Please see summary for specifics.	AS 18.50.160 AS 18.50.165 AS 25.20.050 AS 25.20.055 AS 25.27.040(a) AS 25.27.165 AS 25.27.166 AS 25.27.167	42 U.S.C. § 666(a)(5) 42 U.S.C. § 666(c)(1) 42 U.S.C. § 652(a)(7) PRWORA § 325, 331	<b>1997 Act: Secs. 20 – 22, 36 – 42, 79, 95 – 100</b> <b>1998 Act: Secs. 12, 28 – 30</b>
<b>Seek Work Orders</b> * agency must be able to obtain order requiring obligor to seek work	AS 25.27.020(d)	42 U.S.C. § 666(a)(15) PRWORA § 365	<b>1997 Act: Sec. 77</b>
<b>Social Security Numbers</b> * must require SSN's on license applications (professional, driver's, occupational, recreational, marriage), case files re divorce, support or paternity, death certificates	AS 06.20.020 AS 06.40.050 AS 08.01.060 AS 08.01.100 AS 08.08.137 AS 09.55.050 AS 14.20.027 AS 16.05.330 AS 16.05.346 AS 16.06.360 AS 16.05.450 AS 16.05.480 AS 18.50.230 AS 18.60.395 AS 18.65.410 AS 18.72.030 AS 21.06.255 AS 25.05.091	42 U.S.C. § 666(a)(13) PRWORA § 317	<b>1997 Act: Secs. 3 – 6, 8, 9, 12, 14 – 18, 23 – 25, 27 – 32, 35, 41, 43, 45, 46</b> <b>1998 Act: Secs. 6 – 9, 12, 14 – 17, 51 – 52</b>

	AS 18.50.165 AS 18.50.280 AS 25.20.050(n) AS 25.24.160 AS 25.24.210 AS 25.24.230 AS 28.15.061		
<b>Subpoenas</b> * must be able to subpoena any financial or other information without approval of separate body, impose penalties for noncompliance, and enforce other states' subpoenas	AS 25.27.085 AS 25.27.086	42 U.S.C. § 666(a)(2) 42 U.S.C. § 666(c)(1) PRWORA § 325	<b>1997 Act: Secs. 83 – 85</b> <b>1998 Act: Sec. 26</b>
<b>Tax Dependents</b> * court may not unconditionally grant noncustodial parent right to claim child as tax dependent unless parent meets federal requirements and does not owe more than four times the monthly support obligation at end of tax year.	AS 25.24.152 AS 25.24.232	None	<b>1998 Act: Secs. 13, 18</b>
<b>UIFSA</b> * state must adopt verbatim the revised version of UIFSA	AS 25.25.101 – 25.25.903	42 U.S.C. § 666(f) PRWORA § 321	<b>1997 Act: Secs. 48 – 73</b> <b>1998 Act: Secs. 19 – 20</b>

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES



DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for  
Children and Families

2201 Sixth Avenue, Suite 600  
Seattle, WA 98121-1827

Barbara Miklos, Director  
Child Support Enforcement Division  
550 West 7th, 4th Floor  
Anchorage, AK 99501-3556

Dear Ms. Miklos:

This is in response to your request for clarification of:

- The consequences if a State fails to enact laws or otherwise conform to the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, and
  - Nationwide information on state compliance with PRWORA.
1. In order for a State to receive Federal funding for the operation of its child support enforcement program, it must have an approved State IV-D plan which meets the requirements of section 454 of the Social Security Act (the Act). One of those requirements, specified at section 454(20)(A), is that the State must have in effect all of the laws required by section 466.

PRWORA made numerous changes to sections 454 and 466 of the Act. When a State fails to comply with all statutory requisites, its plan is subject to disapproval by the Office of Child Support Enforcement (OCSE). In accordance with sections 452(a)(3) and 455(a)(1)(A) of the Act, there would then be no authority to expend Federal funds under Title IV-D of the Act for the operation of the State's child support enforcement program.

Therefore, a determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. Alaska received approximately \$12.4 million in Title IV-D funding for the administration of its child support program in FY 1997, and over \$3.2 million in Title IV-D performance related child support incentives.

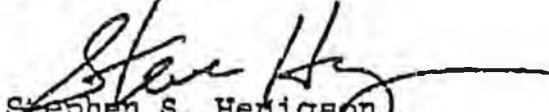
Page 2 - Barbara Miklos

In addition, in order to be eligible for a block grant for Temporary Assistance to Needy Families (TANF), section 402(a)(2) of the Act requires a State to certify that it will operate a child support enforcement program under the State plan approved under part D. Therefore, TANF funding would also be jeopardized if the State failed to enact the required child support legislation on a timely basis. Alaska's Federal funding for IV-A for FY 1997 was approximately \$63 million.

2. Data on state compliance with PRWORA changes frequently. We are therefore unable to provide you with an accurate and up to date listing of which states have fully complied with its provisions. Most states have either passed legislation that has been found complete, or is under review. Alaska is in the category of states which did not pass enabling legislation in 1997, but which have expressed an intent to do so and are working with its Regional Office to develop such legislation. Only one state, Idaho, has failed to enact enabling legislation and has stated it is unwilling to do so. Attached is a "notice of intent" to disapprove Idaho's state plan, with the resulting loss of Federal funding. If proposed legislation is not enacted in Alaska, our office would begin the process of issuing a similar notice of intent to disapprove.

Please contact Michael Furtado at (206) 615-2552, ext. 3045 if you have any further questions.

Sincerely,

  
Stephen S. Hennigson  
Regional Administrator

Attachment: Idaho Notice of Intent to Disapprove



DEPARTMENT OF HEALTH & HUMAN SERVICES

---

ADMINISTRATION FOR CHILDREN AND FAMILIES  
370 L'Enfant Promenade, S.W.  
Washington, D.C. 20447

Ms. Barbara J. Miklos  
Director  
State of Alaska, Department of Revenue  
Child Support Enforcement Division  
550 W. 7<sup>th</sup> Ave., Suite 310  
Anchorage, AK 99501-6699

Dear Ms. Miklos:

This is in response to your letter to Mr. Steve Henigson, Regional Administrator, regarding Alaska's request for an exemption from the provision regarding collection of Social Security Numbers on recreational license applications found in section 466 (a)(13) of the Social Security Act (Act), as amended by section 5536 of the Balanced Budget Act of 1997 (P.L. 105-33).

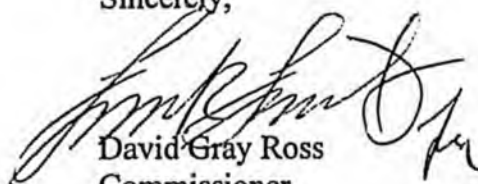
Alaska has demonstrated in accordance with section 466(d) of the Act, 45 CFR 302.70(d)(2) and OCSE-AT-97-02, that compliance with the requirement would not increase the efficiency and effectiveness of the State's Child Support Enforcement program. We are granting your request for exemption from the requirement of section 466(a)(13), which requires collection of social security numbers on recreational license applications, based on Alaska's operation of a similar existing procedure through the Permanent Fund Dividend program.

This exemption is granted for a three-year period effective October 1, 2000. The exemption may be terminated upon a change in circumstance in the State. If the State cannot demonstrate that the changed circumstances continue to warrant an exemption in accordance with this the aforementioned requirements, the exemption will be revoked. Alaska would then be required to implement the requirement in section 466(a)(13) of the Act.

Page 2 – Ms. Miklos

The State must apply for an extension of this exemption 90 days before the end of the exemption period. If an extension is not granted or the exemption is revoked, the State must enact the appropriate laws and procedures to implement the mandatory practice by the beginning of the fourth month after the end of the first regular, special, budget, or other session of the State legislature which ends after the date the exemption is revoked or an exemption is denied. If no legislation is necessary, Alaska must establish and be using the appropriate procedures by the beginning of the fourth month after the date the exemption is revoked.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Gray Ross".

David Gray Ross  
Commissioner,  
Office of Child Support Enforcement

CC: Mr. Steve Henigson  
Regional Administrator  
Region X

## **CHILD SUPPORT ENFORCEMENT "SUNSET" SUMMARY**

Legislation passed in 1997 and 1998 contained sunset provisions that will take effect in 2001. These laws support programs and activities at CSED that have resulted in a significant increase in child support payments, and improved services to families in Alaska. If the sunset is allowed to occur, these improvements will be diminished, and by being out of compliance with welfare reform laws Alaska will be in jeopardy of losing \$80,000,000 in federal public assistance and child support funding.

Below is an outline of key parts of the 1997 and 1998 legislation, as well as a description of how the sunset provisions would affect CSED's work. Each of these segments is a requirement of federal compliance.

### **Availability of Records/Access to Information**

The subject statutes allow CSED to obtain certain types of information electronically and through administrative action. If these provisions are repealed, CSED may be required to contact sources of information separately for each case, and take the difficult and time-consuming avenue of obtaining a court order to request basic information. The time lost would severely hamper our child support enforcement efforts.

### **'Best Efforts' Language**

Adopted in 1998, this language allows a non-custodial parent who is found by a court to be making the 'best efforts possible under the circumstances to have no child support arrearages' to avoid the loss or suspension of a driver's or other license. The act adds commercial crewmember fishing licenses to existing license statute, and removes subpoena noncompliance as a reason for general license suspension. Instead, the act allows license suspension for subpoena noncompliance only in the context of a civil contempt action.

### **Central Registry**

The law requires courts to automatically forward child support orders to CSED, and authorizes CSED to exchange this and other critical information within strict confidentiality guidelines. These procedures allow CSED to serve clients with improved timeliness and accuracy, efficiencies that will be diminished if the statutes are repealed.

### **Credit Bureau Reporting**

Current state law requires child support debt to be reflected on a delinquent parent's credit bureau report until it has been paid. The sunset would have the effect that unpaid child support arrears could not be reported after 10 years.

## **Definitions: Duty of support, earnings, tribunal, arrearages**

The 1997 and 1998 acts redefined a number of key terms used in child support enforcement, and this nationwide uniformity is essential to cooperative enforcement efforts between the states.

## **Due Process**

The 1997 and 1998 acts strengthened due process protections by requiring additional notices to parents of their rights and responsibilities in paternity and child support proceedings and by providing additional opportunities for parents and other persons to request and obtain administrative and judicial review of agency actions and decisions.

## **Financial Institution Data Match and Immunity from Liability**

Current statutes allow us to match the names of parents who owe arrears with the names on accounts at financial institutions. This makes it much more difficult for delinquent parents to hide their assets, simplifies the search for funds in multi-state institutions, and allows the institutions to cooperate without fear of retaliatory lawsuits. Few banks would participate in the FIDM if this protection were repealed. Searching for hidden assets would require sweeps of all banks for each and every case. For many children our ability to collect support would be seriously compromised.

## **Income Withholding**

In direct response to federal requirements from PRWORA, the 1997 and 1998 acts have simplified the way a non-custodial pays child support through withholding, and shortened to 7 days the time between the request for withholding and the commencement of withholding by the employer. Within 2 days of receipt of withheld funds, CSED forwards the payment to the family. In out-of-state cases, we can request income withholding directly (without going through the other state's child support agency), often saving several months' delay. If these laws are allowed to sunset, it will be harder for CSED to collect monthly payments and arrearages; these collections may take months to implement, rather than immediately; and it will be easier for delinquent parents to avoid payment of their child support obligations by moving to another job before income withholding can be established.

## **Liens**

The subject legislation simplified the statute so that CSED or a parent may assert a lien when the obligor owes an arrearage under a support order being enforced by the agency. Also, Alaska cooperates with other jurisdictions by giving full faith and credit to liens arising by operation of law in other states, *if the person seeking to enforce the lien complies with this state's procedural requirements for recording and serving liens*. The simplified statutes, and the reciprocity with regard to liens, allow us to collect lawfully established support payments and arrearages that might otherwise be unreachable.

## **Miscellaneous**

The subject statutes provide procedures and definitions relating to the following subjects, and bring Alaska into conformance with language in PRWORA.

- exchange information
- application for services
- payments to the agency
- audit of collections
- notice of public assistance
- order establishment
- service of papers
- regulations
- fees for services
- state registry information

## **Modification**

The subject statutes require that parties be given periodic notice of their right to seek review of child support orders. They allow review of orders every three years and clarify CSED's authority to modify administrative orders where out of state court orders also exist. If allowed to sunset, all parties' rights to due process will be weakened because state agencies will no longer be required to have written regulations setting out procedures and standards governing the modification process.

## **New Hire Reporting**

Under the current law, all employers in the state are required to report to CSED new hires and rehires. This information helps CSED locate parents, and establish and enforce child support orders. New Hire reporting is currently responsible for about 12% of total child support collections. If the acts sunset, we will revert to a previous statute that only required employers to report new hires if notified by CSED, and which created a number of classes of exempt employers. Reversion to the old statute will *increase* to \$1000 the civil penalties that can be levied against employers for not reporting

## **Non-Cooperation**

Current and previous laws require ATAP recipients to cooperate with child support proceedings. The 1997 act clarified who would make the determination of non-cooperation (CSED) and who would decide if the party had good cause for non-cooperation (DHHS). This clarification promotes cooperation in matters of paternity and child support, and protects parties who may have reasons for not cooperating, such as threats of domestic violence. These protections would be jeopardized by the sunset.

## **Nondisclosure of Information**

The 1997 statute allows CSED to refuse to disclose the address or other identifying information of a parent or child if the health, safety, or liberty of that person would be unreasonably put at risk by such disclosure. Under the sunset, Alaska law will revert to a requirement to make such information available regardless of the risk if the obligor is current on child support obligations and has a previous visitation or joint custody agreement.

## **Paternity**

The 1997 and 1998 acts include detailed requirements for the form, use, and legal effect of voluntary acknowledgments of paternity, and for proceedings to establish paternity. Acknowledgement forms must include a statement setting out the legal consequences, rights, responsibilities and alternatives to signing the form and listing the restrictions to rescinding the acknowledgment. The acts also addressed a variety of substantive and procedural requirements for the establishment of paternity, including genetic testing, consideration of the best interests of the child, recovery of costs of testing, and allowing a putative father to request genetic testing. Reversion to previous law will diminish due process provisions and safety considerations, and will complicate the paternity determination process.

## **Seek Work Orders**

In cases where support is owed a child who is receiving public assistance, the 1997 statute allows CSED to order an obligor to seek work, or to ask a court to order an obligor to seek work, unless the obligor enters into and complies with an approved payment plan. Without this statute, CSED would have to request a seek work order from the court in the context of a civil contempt proceeding.

## **Social Security Numbers**

The 1997 and 1998 acts required applicants for state licenses, including professional, business, occupational, driver's, recreational and marriage licenses, to include their social security numbers. These numbers help CSED locate parents and collect child support, and reduce the number of cases of mistaken identity. (Requirements for social security numbers on hunting and fishing licenses have been waived and will be allowed to sunset even if the sunset repealer is passed.)

## **Subpoenas**

The current statutes establish procedures that give CSED the authority to subpoena financial or other information needed to establish, modify, or enforce a child support order. They require that subpoenas be served in person, or by registered, certified or insured mail. They allow a claim of good cause excusing compliance, provide a direct avenue of appeal of penalty decisions to the Superior court, and specify that CSED will enforce a subpoena from another state in the same manner. Repeal will restrict CSED's ability to obtain critical information, limiting the establishment, modification and enforcement of child support orders; and will diminish parties' due process rights with regard to administrative subpoenas.

## **UIFSA**

The 1998 act revised the previous UIFSA statute to be clearer and more consistent. Without the changes, interstate cooperation in child support cases would be very difficult.

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
Bill Version: CS SB 19 (HES)  
(S) Publish Date: 02/15/01

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title: Child Support Enforcement / BRU: Child Support  
Social Security Numbers Component: Child Support  
Sponsor: Rules Committee  
Requester: Senate Finance Component Number: 111

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

There would be no fiscal impact from this legislation. However, failure to adopt this legislation would move the state out of compliance with federal law for child support enforcement programs and would expose the state to the penalty of losing about \$70 million a year in federal funding for Alaska's child support enforcement program and Alaska's Temporary Assistance Program (ATAP).

Prepared by: Barbara Miklos, Director Phone 269-6800  
Division: Child Support Enforcement Division Date/Time Feb. 13, 2001  
Approved by: Larry Persily, Deputy Commissioner Date Feb. 13, 2001  
Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

**SB**

**21**



Out of Session:  
PO Box 531  
Golovin, Alaska 99762  
(907) 443-5599

# Alaska State Legislature



In Session:  
State Capitol, Suite 510  
Juneau, Alaska 99801-1182  
(800) 597-3707  
(907) 465-3707  
(907) 465-4821 Fax

SENATOR  
DONALD C. OLSON

## DISTRICT S

Alakanuk  
Ambler  
Anaktuvuk Pass  
Atkasuk  
Barrow  
Brevig Mission  
Browerville  
Buckland  
Chevak  
Deering  
Diomede  
Elim  
Emmonak  
Gambell  
Golovin  
Hopper Bay  
Kaktovik  
Kiana  
Kivalina  
Kobuk  
Kotlik  
Kotzebue  
Koyuk  
Mekoryuk  
Mountain Village  
Newtok  
Nightmute  
Noatak  
Nome  
Noorvik  
Nuiqsut  
Nunam Iqua  
Pitka's Point  
Point Hope  
Point Lay  
Savoonga  
Scammon Bay  
Selawik  
Shaktolik  
Shishmaref  
Shungnak  
St. Mary's  
St. Michael  
Stebbins  
Teller  
Toksook Bay  
Tununak  
Unalakleet  
Wainwright  
Wales  
White Mountain

## SPONSOR STATEMENT

### SB 21, Fines by the State Medical Board.

I introduced SB 21 to increase the monetary sanction that the State Medical Board may impose on a licensee upon a finding of professional or ethical misconduct. The bill increases the maximum penalty from the \$10,000 limit that is currently in statute to \$25,000.

I feel the justification for SB 21 is twofold. First, I believe that the maximum sanction of \$10,000 does not provide a sufficient monetary deterrent, given the economic status of many licensees. Most often, the severity of the penalty is in no manner equivalent to the damage caused in extreme cases of misconduct. Furthermore, the \$10,000 limit has not been changed since it was first enacted 14 years ago.

A second reason for SB 21 is the increasing costs that the board is experiencing in its caseload management of misconduct allegations. It is not unusual for the costs of a misconduct determination to exceed the \$10,000 penalty limit. Since the activities of the board are wholly supported by licensure fees and fines, increased costs of operation usually translate into license fee increases. SB 21 offers a second way to meet increasing caseload costs. It expands the board's cost recovery ability through increased fines. In practice then, the financial burden for this regulatory activity may be shifted more from the general membership to the wrongdoers themselves.

Currently, the board has 188 cases that are open for potential investigation and adjudication by the Division of Occupational Licensing. During calendar year 2000, 130 new cases were opened and 133 closed. This effort resulted in 35 disciplinary actions against medical board licensees. In fiscal year 2000, the costs of pursuing misconduct charges exceeded \$160,000.

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB 21  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): 01/19/2001 1:25pm Dept. Affected: DCED  
Title: An Act increasing the maximum civil fine... BRU: Occupational Licensing  
by the State Medical Board..... Component: Occupational Licensing  
Sponsor: Senator Olson  
Requester: Senate Judiciary Component Number: 2360

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

SB 21 increases the amount of civil fine that may be imposed by the State Medical Board as a disciplinary sanction. New funds are not required to implement this change.

*Medical Investigations*

Prepared by: Jennifer Strickler, Administrative Manager  
Division: Occupational Licensing  
Approved by: Commissioner, Deborah B. Sedwick  
Agency: Dept. of Community and Economic Development

Phone (907) 465-2144  
Date/Time 01/19/2001 1:25pm  
Date 1/19/2001

For distribution information, call the Governor's Legislative Office

# Journal Text



02-13-2001

Senate Journal

0353

SB 21

The Finance Committee considered SENATE BILL NO. 21 "An Act increasing the maximum civil fine that may be imposed by the State Medical Board as a disciplinary sanction" and recommended the adoption of the following Finance Committee Letter of Intent:

### Letter of Intent for SB 21

It is the intent of the Legislature that the size of fines typically imposed for minor, noncompliance infractions remain unaffected by the enactment of SB 21.

It is the intent of the Legislature that the size of fines typically imposed for serious and consequential violations of ethical and professional misconduct be increased.

Signing do pass: Senators Donley, Kelly, Cochairs, Senators Green, Austerman, Hoffman, Olson, Wilken, Leman, Ward.

The following previously published fiscal information applies:  
Fiscal Note No. 1, zero, Department of Community and Economic Development

The bill was referred to the Rules Committee.

*Adopted by  
Senate on  
2/16/01*

Bill Root:

 Display Bill Root

**BASIS HAS BEEN RE-PROGRAMMED THIS YEAR  
TO REPORT PROBLEMS WITH BASIS INQUIRY**

[Return to Basis Main Menu \(22nd Legislature\)](#)

[Return to Legislature Home Page](#)

Tully Knowles, Governor

*Alaska* Department of Community  
and Economic Development

**Division of Occupational Licensing**

P.O. Box 110806, Juneau, AK 99811-0806

Telephone: (907) 465-2534 • Fax: (907) 465-2974 • Text Telephone: (907) 465-5437

Email: [license@dced.state.ak.us](mailto:license@dced.state.ak.us) • Website: [www.dced.state.ak.us/occ/](http://www.dced.state.ak.us/occ/)

*January 19, 2001*

*Alaska State Legislature  
State Capitol  
Juneau AK 99811*

*At its meeting of January 18, 2001, the Alaska State Medical Board reviewed Senate Bill 21 which would increase the maximum amount of civil fines that could be imposed by the board from \$10,000 to \$25,000. The board voted unanimously to support this bill.*

*The board appreciates the consideration of the members of legislature in this matter and hopes the bill will receive speedy and favorable action.*

*Sarah A. Isto, M.D.*

*Sarah A. Isto, MD*

*Chair*

*Alaska State Medical Board*

**S B**

**3 7**

*Amended  
Adopted  
4-24-02*

22-LS0323\U  
Bannister  
4/18/02

**HOUSE CS FOR CS FOR SENATE BILL NO. 37(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATOR KELLY**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to collective negotiation by competing physicians with health benefit**  
2 **plans, to health benefit plan contracts, to the application of antitrust laws to agreements**  
3 **involving providers and groups of providers affected by collective negotiations, and to**  
4 **the effect of the collective negotiation provisions on health care providers."**

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

6 **\* Section 1. AS 23 is amended by adding a new chapter to read:**

7 **Chapter 50. Collective Negotiation by Physicians.**

8 **Sec. 23.50.010. Legislative findings. (a) The legislature finds that permitting**  
9 **competing physicians to engage in collective negotiation of certain terms and**  
10 **conditions of contracts with a health benefit plan will benefit competition, so long as**  
11 **the physicians do not engage in an express or implied threat of retaliatory collective**  
12 **action, including boycotts or strikes.**

13 **(b) The legislature finds that permitting physicians to engage in collective**  
14 **negotiations over fee-related terms may, in some circumstances, yield anti-competitive**

1 effects. There are, however, instances in which a health benefit plan dominates the  
 2 market to the degree that fair negotiations between physicians and the health benefit  
 3 plan are not possible in the absence of joint action on behalf of the physicians. In  
 4 those circumstances, the health benefit plan can virtually dictate the terms of the  
 5 contracts that it offers to physicians.

6 (c) The legislature finds that it is appropriate and necessary to authorize  
 7 collective negotiations between competing physicians and health benefit plans on fee-  
 8 related and other issues when the imbalances in bargaining capacity described in this  
 9 section exist.

10 **Sec. 23.50.020. Collective action by competing physicians.** (a) Competing  
 11 physicians may meet and communicate in order to collectively negotiate with a health  
 12 benefit plan concerning any of the contract terms and conditions described in this  
 13 subsection, but may not negotiate the exclusion of providers who are <sup>non-</sup>not physicians  
 14 from direct reimbursement by a health benefit plan, and may <sup>non-</sup>not negotiate the setting  
 15 in which providers who are <sup>non-</sup>not physicians deliver services. Competing physicians  
 16 may not engage in a boycott related to these terms and conditions. Competing  
 17 physicians may meet and communicate concerning

- 18 (1) physician clinical practice guidelines and coverage criteria;
- 19 (2) the respective liability of physicians and the health benefit plan for  
 20 the treatment or lack of treatment of insured or enrolled persons;
- 21 (3) administrative procedures, including methods and timing of the  
 22 payment of services to physicians;
- 23 (4) procedures for the resolution of disputes between the health benefit  
 24 plan and physicians;
- 25 (5) patient referral procedures;
- 26 (6) the formulation and application of reimbursement methodology;
- 27 (7) quality assurance programs;
- 28 (8) health service utilization review procedures; and
- 29 (9) criteria to be used by health benefit plans for the selection and  
 30 termination of physicians, including whether to engage in selective contracting.

31 (b) An authorized third party that intends to negotiate with a health benefit

*Concept  
 Amendment  
 #1  
 Adopted*

1 plan the items identified under (a) of this section shall provide the attorney general  
2 with written notice of the intended negotiations before the negotiations begin.

3 (c) In exercising the collective rights granted by (a) of this section,

4 (1) physicians may communicate with each other with respect to the  
5 contractual terms and conditions to be negotiated with a health benefit plan;

6 (2) physicians may communicate with an authorized third party  
7 regarding the terms and conditions of contracts allowed under this section;

8 (3) the authorized third party is the sole party authorized to negotiate  
9 with a health benefit plan on behalf of a defined group of physicians;

10 (4) physicians can be bound by the terms and conditions negotiated by  
11 the authorized third party that represents their interests;

12 (5) a health benefit plan communicating or negotiating with the  
13 authorized third party may contract with, or offer different contract terms and  
14 conditions to, individual competing physicians;

15 (6) an authorized third party may not represent more than 30 percent of  
16 the market of practicing physicians for the provision of services in the geographic  
17 service area or proposed geographic service area, if the health benefit plan has less  
18 than a five percent market share as determined by the number of covered lives as  
19 reported by the director of insurance for the most recently completed calendar year or  
20 by the actual number of consumers of prepaid comprehensive health services; in this  
21 paragraph, "covered lives" means the total number of individuals who are entitled to  
22 benefits under the health benefit plan;

23 (7) the attorney general may limit the percentage of practicing  
24 physicians represented by an authorized third party; however, the limitation may not  
25 be less than 30 percent of the market of practicing physicians in the geographic service  
26 area or proposed geographic service area; when determining whether to impose a  
27 limitation described under this paragraph, the attorney general shall consider the  
28 provisions described under (f) - (h) of this section; this paragraph does not apply if the  
29 market of practicing physicians in the geographic service area or proposed geographic  
30 service area consists of 40 or fewer individuals; and

31 (8) the authorized third party shall comply with the provisions of (d) of

1 this section.

2 (d) A person acting or proposing to act as an authorized third party under this  
3 section shall,

4 (1) before engaging in collective negotiations with a health benefit  
5 plan,

6 (A) file with the attorney general the information that identifies  
7 the authorized third party, the physicians represented by the third party, the  
8 authorized third party's plan of operation, and the authorized third party's  
9 procedures to ensure compliance with this section;

10 (B) furnish to the attorney general, for the attorney general's  
11 approval, a brief report that identifies the proposed subject matter of the  
12 negotiations or discussions with a health benefit plan and that contains an  
13 explanation of the efficiencies or benefits that are expected to be achieved  
14 through the collective negotiations; the attorney general shall review whether  
15 the group of physicians represented by the authorized third party is appropriate  
16 to represent the interests involved in the negotiations; the attorney general may  
17 not approve the report if the group of physicians is not appropriate to represent  
18 the interests involved in the negotiations or if the proposed negotiations exceed  
19 the authority granted in this chapter and, if the group is not appropriate or the  
20 negotiations exceed the granted authority, shall enter an order prohibiting the  
21 collective negotiations from proceeding; the authorized third party shall  
22 provide supplemental information to the attorney general as new information  
23 becomes available that indicates that the subject matter of negotiations with the  
24 health benefit plan has changed or will change;

25 (2) within 14 days after receiving a health benefit plan's decision to  
26 decline to negotiate or to terminate negotiations, or within 14 days after requesting  
27 negotiations with a health benefit plan that fails to respond within that time, report to  
28 the attorney general that negotiations have ended or have been declined;

29 (3) during the negotiation process, provide the attorney general upon  
30 the attorney general's request with a copy of all written communications that are  
31 between physicians and the health benefit plan, that are relevant to the negotiations,

1 and that are in the possession of the authorized third party;

2 (4) before reporting the results of negotiations with a health benefit  
3 plan and before giving physicians an evaluation of any offer made by a health benefit  
4 plan, provide to the attorney general, for the attorney general's approval, a copy of all  
5 communications to be made to physicians related to the negotiations, discussions, and  
6 health benefit plan offers.

7 (e) The attorney general shall either approve or disapprove the contract that  
8 was the subject of the collective negotiation within 60 days after receiving the reports  
9 required under (d) of this section. If the contract is disapproved, the attorney general  
10 shall furnish a written explanation of any deficiencies along with a statement of  
11 specific remedial measures that would correct any identified deficiencies. An  
12 authorized third party who fails to obtain the attorney general's approval is considered  
13 to be acting outside the authority of this section.

14 (f) The attorney general shall approve a collective negotiation contract if

15 (1) the competitive and other benefits of the contract terms outweigh  
16 any anticompetitive effects; and

17 (2) the contract terms are consistent with other applicable laws and  
18 regulations.

19 (g) The competitive and other benefits of joint negotiations or negotiated  
20 provider contract terms must include

21 (1) restoration of the competitive balance in the market for health care  
22 services;

23 (2) protections for access to quality patient care;

24 (3) promotion of health care infrastructure and medical advancement;

25 or

26 (4) improved communications between health care providers and  
27 health care insurers.

28 (h) When weighing the anticompetitive effects of contract terms, the attorney  
29 general shall consider whether the terms

30 (1) provide for excessive payments; or

31 (2) contribute to the escalation of the cost of providing health care

1 services.

2 (i) This section does not authorize competing physicians to act in concert in  
3 response to a report issued by an authorized third party related to the authorized third  
4 party's discussion or negotiations with a health benefit plan. The authorized third  
5 party shall advise the physicians of the provisions of this subsection and shall warn  
6 them of the potential for legal action against those who violate state or federal anti-  
7 trust laws by exceeding the authority granted under this section.

8 (j) A contract allowed under this section may not exceed a term of five years.

9 (k) The documents relating to a collective negotiation described under this  
10 section that are in the possession of the Department of Law are confidential and not  
11 open to public inspection.

12 (l) Nothing in this section shall be construed as exempting from the  
13 application of the antitrust laws the conduct of providers or negotiations or agreements  
14 between providers and a health benefit plan if the purpose or effect of the conduct,  
15 negotiations, or agreements would be, directly or indirectly, to exclude, limit the  
16 participation or reimbursement of, or otherwise limit the scope of services to be  
17 provided by separate or competing classes of providers who practice or seek to  
18 practice within the scope of the occupational licenses held by the providers.

19 (m) A contract entered into under this section must be consistent with  
20 AS 21.36.090(d).

21 (n) Nothing in this section shall be construed to make any conduct by  
22 providers unlawful if the conduct was lawful before the effective date of this Act.

23 (o) In this section,

24 (1) "geographic service area" means the geographic area of the  
25 physicians seeking to jointly negotiate;

26 (2) "provider" has the meaning given in AS 21.36.090(d).

27 **Sec. 23.50.030. Fee for registration of authorized third parties.** (a) The  
28 attorney general shall adopt regulations that establish the amount and manner of  
29 payment of a registration fee for authorized third parties. The attorney general shall  
30 establish the fee level so that the total amount of fees collected from authorized third  
31 parties approximately equals the actual regulatory costs for the oversight of joint

1 negotiations between physicians and health benefit plans. The attorney general shall  
2 annually review the fee level to determine whether the regulatory costs are  
3 approximately equal to fee collections. If the review indicates that the fee collections  
4 and regulatory costs are not approximately equal, the attorney general shall calculate  
5 fee adjustments and adopt regulations under this subsection to implement the  
6 adjustments. In January of each year, the attorney general shall report on the fee level  
7 and revisions for the previous year under this subsection to the office of management  
8 and budget.

9 (b) In this section, "regulatory costs" means costs of the Department of Law  
10 that are attributable to oversight of joint negotiations between physicians and health  
11 benefit plans.

12 **Sec. 23.50.040. Regulations.** The attorney general may adopt regulations  
13 necessary to implement this chapter.

14 **Sec. 23.50.099. Definitions.** In this chapter,

15 (1) "authorized third party" means a person authorized by the  
16 physicians to negotiate on their behalf with a health benefit plan under this chapter;

17 (2) "health benefit plan" means a health care insurer as defined in  
18 AS 21.54.500, but does not include a self-insured health benefit plan.

19 \* **Sec. 2.** AS 45.50.572 is amended by adding a new subsection to read:

20 (k) AS 45.50.562 - 45.50.596 do not forbid the existence or operation of  
21 organizations of physicians acting in accordance with AS 23.50, or forbid or restrain  
22 members of those organizations from lawfully carrying out the legitimate objectives of  
23 them; nor are these organizations or members illegal combinations or conspiracies in  
24 restraint of trade under the provisions of AS 45.50.562 - 45.50.596.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 18, 2002

**SUBJECT:** HCS CSSB 37(JUD) relating to collective negotiation by competing physicians and health benefit plans (Work Order 22-LS0323\U)

**TO:** Representative Norman Rokeberg, Chair  
House Judiciary Committee  
Attn: Heather

**FROM:**  Theresa L. Bannister  
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Misleading definition. The term "health benefit plan" is misleading for the reader because the definition refers to an "insurer," not a "plan" (although the definition of "health care insurer" itself at AS 21.54.500 includes "plans"). A reader does not usually think of a "plan" when reading "insurer." This problem did not originate with this version.

2. ERISA preemption question. Because this bill relates to employee health care plans, there is a preemption issue since the Employee Retirement Income Security Act ("ERISA") addresses the entire field of employee welfare benefit plans. This issue does not originate with the changes made in this draft. I do not know whether preemption is a significant problem for the bill. Even with extensive research, this is a complicated area with few concrete answers.

If I may be of further assistance, please advise.

TLB:med  
02-387.med

Enclosure

# ~~1~~ 2

AMENDMENT TO HOUSE CS FOR CS FOR SENATE BILL NO. 37 (L&C)

ADD NEW SECTION TO READ:

"Sec.3. AS 23.50.010, 23.50.020, 23.50.030, 23.50.040, 23.50.099; and AS 45.50.572(k) are repealed July 1, 2006.

Offered by  
Barkowitz

B Y

K A

J N

O A

C N

M N

R N

FAILS

From: AK Nurses Assoc.

#3

AMENDMENT TO PROPOSED JUDICIARY DRAFT CS SB37 (L&C)

PAGE 5, LINE 9

“and completing the period for comment and review for interested parties required by this subsection. The review of the contract by the attorney general must allow adequate time for comment and review by interested parties and must include a review whether the contract would harm consumers or providers who are not physicians”

Moved by  
Perlovitz

B Y  
K A  
J N  
M N  
C N  
R Y  
O A

3-2 fails

From: AK Nurses Assoc.

#4

AMENDMENT TO HOUSE CS FOR CS FOR SENATE BILL NO. 37 (L&C)

Page 6, Line 20 add new subsection:

"individual physician members covered in the collective negotiations shall accept without qualification Medicare patients."

Re-letter subsections accordingly.

Moved by  
Berkowitz

B X  
J N  
O A  
K Y  
M N  
C N  
R N

4.2  
Fails

Rationale,

The first amendment is a technical amendment replacing not physician with non-physician. (They couldn't read Pat's doctor's handwriting).

The second and third amendments are both from the Senate Labor and Commerce version of the bill. The first amendment places a sunset clause in the bill of 2006.

The second amendment allows for a public comment to the AG's office within the 60 time frame outlined in the bill.

From: AK Nurses Assoc.

Adopted  
4.10.02

AMENDMENT #1

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG  
TO: HCS CSSB 37 (L & C)

Page 7, Line 15, after "include,"

Delete: "a multiple employer welfare arrangement or"



Tony Knowles, Governor

**Division of Insurance**

P.O. Box 110805, Juneau, AK 99811-0805  
Telephone: (907) 465-2515 • Fax: (907) 465-3422 • Text Telephone: (907) 465-5437  
Email: Insurance@dced.state.ak.us • Website: www.dced.state.ak.us/insurance/

April 2, 2002

The Honorable Norman Rokeberg  
Alaska House of Representatives  
Chairman of the House Judiciary Committee  
State Capitol, Room 118  
Juneau, AK 99801-1882

Re: Health Care Insurer Definition in HCS CSSB 37(L&C)

Dear Representative Rokeberg:

Thank you for your question regarding the HCS CSSB 37(L&C) definition of a "health benefit plan" and its exclusion of multiple employer welfare arrangements on page 7, lines 14-17 of HCS CSSB 37(L&C). You have asked the division to describe a multiple employer welfare arrangement and comment on why they should (or should not) be included in the definition of a health benefit plan.

A multiple employer welfare arrangement (MEWA) is defined under ERISA as an employee welfare benefit plan or arrangement established or maintained for the benefit of employees of two or more employers to provide health care or other welfare benefits. MEWAs are often formed by associations of employers in a common industry, but are also formed by associations of unrelated employers. If a plan is established or maintained pursuant to a bona fide collective bargaining agreement it is not a MEWA.

States have clear authority under ERISA to regulate MEWAs. The extent of state authority is limited in the case of a fully insured MEWA to regulation of minimum reserving and contribution standards. However, if a MEWA is not fully insured states have authority to regulate the MEWA as an insurance company. Many MEWAs are not fully insured.

Under current Alaska law, a MEWA is required to obtain a certificate of authority as an insurer in order to offer health benefit plans to its members. The MEWA is subject to all applicable insurance laws including solvency requirements. Many MEWAs have failed across the nation, leaving many employees with unpaid claims and without health insurance, because the MEWAs were not adequately funded. Regulation of MEWAs by the division provides important consumer protections that help ensure that MEWAs have and maintain adequate reserves and surplus to pay claims.

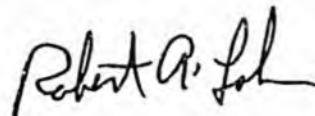
The Honorable Norman Rokeberg

-2-

April 2, 2002

A MEWA operates like any other insurer that provides health insurance coverage to Alaskans. Therefore, the Division can see no reason to subject MEWAs to a different standard than other insurers by excluding them from the definition of a health benefit plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Lohr". The signature is written in a cursive style with a large, prominent "R" and "L".

Robert A. Lohr  
Director

RAL/KC/go3108  
040202a

Adopted  
4.10.02

AMENDMENT #2

OFFERED IN THE HOUSE

TO: HCS CSSB 37(L&C)

- 1 Page 2, line 13, following "subsection":
- 2       Insert ", but may not negotiate the exclusion of providers who are not physicians from
- 3 direct reimbursement by a health benefit plan, and may not negotiate the setting in which
- 4 providers who are not physicians deliver services"

# Alaska State Legislature

*Session:*  
State Capitol  
Juneau, AK 99801  
Phone: (907) 465-2327  
Fax: (907) 465-5241



*Interim:*  
119 N. Cushman  
Fairbanks, AK 99701  
Phone: (907) 456-8161  
Fax: (907) 456-8163

Senator Pete Kelly  
District P

## SB 37 Sponsor Statement

**“An Act relating to collective negotiation by competing physicians with health benefit plans, to health benefit plan contracts, to the application of antitrust laws to agreements involving providers and groups of providers affected by collective negotiations, and to the effect of the collective negotiation provisions on health care providers.”**

Senate Bill 37 attempts to level the playing field for Alaska’s patients and the physicians who care for them.

Over the past eight years, the health insurance market has continued to consolidate at a rapid pace. There were once 18 national health insurance companies that physicians could choose to contract with. These companies have since merged into 6. It is even more severe for Alaskan physicians who have only 2 choices of insurers in this state. Physicians are given little if any opportunity to advocate for the best care of their patients.

Independent physicians are prevented from collective action by federal antitrust laws and are subject to aggressive antitrust enforcement actions. Large corporations, however, can adopt a “take it or leave it” position without any antitrust ramifications. This plus the market concentration of health insurers causes a damaging imbalance in bargaining power.

This inequity between health insurers and medical care providers dictates physician contracts. The resulting contracts favor the insurance companies over the health care patients receive and can result in such policies where physicians are required to use a low cost treatment when a higher cost treatment may be medically necessary.

Senate Bill 37 will enable independent, competing physicians to become effective advocates for their patients through collective negotiations with health insurers. These negotiations will fall into a narrow scope of topics with regard to the provisions of physician services contracts and will be under the scrutiny of the Attorney General’s office. SB 37 will still prohibit a group of independent competing physicians from striking or otherwise engaging in activities that would result in a boycott.

# Alaska State Legislature

*Session:*  
State Capitol  
Juneau, AK 99801  
Phone: (907) 465-2327  
Fax: (907) 465-5241



*Interim:*  
119 N. Cushman  
Fairbanks, AK 99701  
Phone: (907) 456-8161  
Fax: (907) 456-8163

Senator Pete Kelly

District P

## SB37 Talking Points

**“An Act relating to collective negotiation by competing physicians with health benefit plans, to health benefit plan contracts, to the application of anti-trust laws to agreements involving providers and groups of providers affected by collective negotiations, and to the effect of the collective negotiation provisions on health care providers.”**

- ◆ Levels the playing field between Alaska’s physicians and the outside insurance companies.
- ◆ Does **not** allow for boycotts or strikes.
- ◆ Does **not** impact nurses.
- ◆ Does **not** create doctor unions.
- ◆ Does **not** impact ERISA plans.
- ◆ It is **not** mandatory for either doctors or insurance companies to negotiate.
- ◆ Will **allow** the Attorney General to stop all negotiations and contracts at ANY time.
- ◆ Will **allow** for communication among doctors to improve the delivery of healthcare in Alaska.
- ◆ Will **allow** protected contract negotiations for non-cost provisions separate from cost provisions.

# Senate Bill 37

## How does it work?

Group of physicians wishing to jointly negotiate

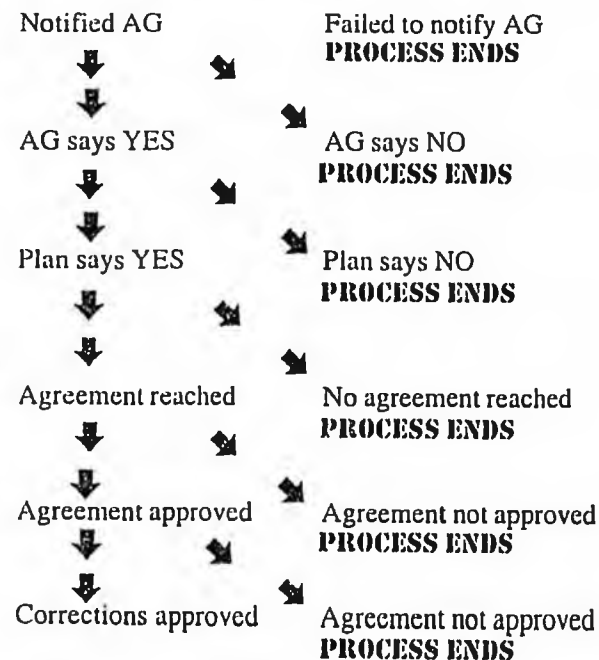
Appoint an exclusive representative

Authorized third party

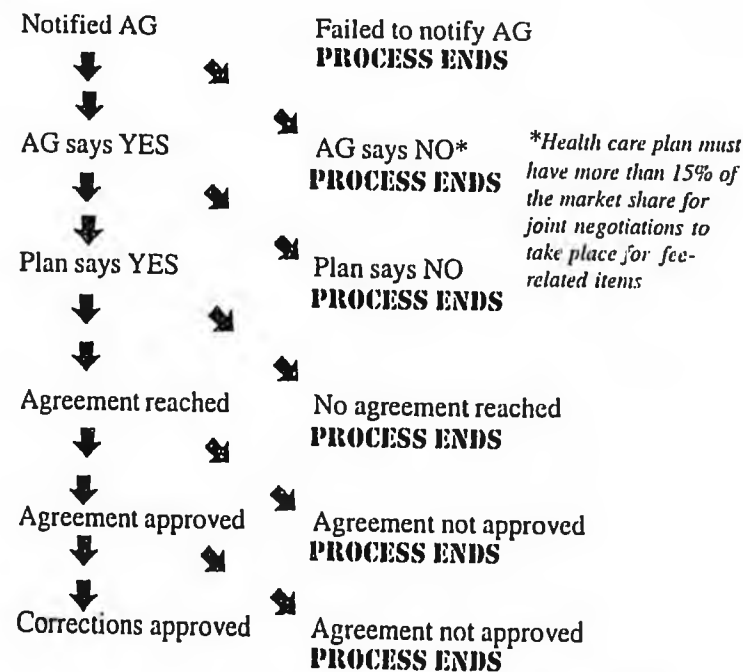
*(May not represent more than 30% of doctors in a geographic service area unless the health plan has a market share of more than 5% in that same geographic service area)*

Non-Fee Related Items

Fee Related Items



1. Notifies the Attorney General and health care plan of desire to negotiate
2. Attorney General decides if negotiations may take place
3. Health care plan decides whether to negotiate
4. Agreement between physicians and health plan reached
5. Submit to Attorney General for approval



*\*Health care plan must have more than 15% of the market share for joint negotiations to take place for fee-related items*

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: 6  
Bill Version: HCS CSSB 37(L&C)  
(H) Publish Date: 3/26/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title: "An Act relating to collective negotiation by BRU Centralized Admin Svcs.  
physicians with health benefits.... Component Retirement & Benefits  
Sponsor Senator Pete Kelly  
Requester House Labor & Commerce Component No. 64

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This version of the bill does not include self-insured plans; it will not apply to the State health plans.

Prepared by: Guy Bell, Director  
Division Retirement & Benefits  
Approved by: Jim Duncan, Commissioner  
Agency Department of Administration

Phone 465-4471  
Date/Time 3/21/02 4:34 PM  
Date 3/21/2002

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 7  
 Bill Version: HCS CSSB 37(L&C)  
 (H) Publish Date: 3/26/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title An Act relating to collective negotiation by BRU Insurance Operations (116)  
physicians with health benefits plans Component Insurance  
 Sponsor Senator Kelly  
 Requester House Labor & Commerce Component No. 354

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	23.7	24.3	25.0	25.7	26.4	27.2
Travel						
Contractual						
Supplies	1.5	1.5	1.5	1.5	1.5	1.5
Equipment	5.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>30.2</b>	<b>25.8</b>	<b>26.5</b>	<b>27.2</b>	<b>27.9</b>	<b>28.7</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	30.2					
1005 GF/Program Receipts		25.8	26.5	27.2	27.9	28.7
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>30.2</b>	<b>25.8</b>	<b>26.5</b>	<b>27.2</b>	<b>27.9</b>	<b>28.7</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time	1	1	1	1	1	1
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

A part-time administrative position is needed in order to gather and report the health benefit plan market share information required under Sec. 23.50.020(g)(6). This position would be responsible for developing and sending out surveys requesting data from over 18,000 employers in the state and for performing reasonableness checks on the data submitted, entering the data into a spreadsheet, and developing the required market share reports. Since the Division of Insurance does not have regulatory authority over health benefit plans (employers), it is anticipated that employers will be reluctant to respond to the survey (about 30% response rate). Therefore, a significant amount of this employee's time is anticipated to be spent following up with the employers who do not respond to the survey.

Prepared by: Robert A. Lohr, Director  
 Division: Insurance  
 Approved by: Deborah B. Sedwick, Commissioner  
 Agency: Department of Community & Economic Development

Phone \_\_\_\_\_  
 Date/Time 3/19/02 3:25 PM  
 Date 3/19/2002

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: 8  
Bill Version: HCS CSSB 37(L&C)  
(H) Publish Date: 3/26/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
Title "An Act relating to collective negotiation by BRU Civil Division  
competing physicians with health benefit plans, ..." Component Fair Business Practices  
Sponsor Senator Pete Kelly  
Requester House Labor and Commerce Committee Component No. 2206

## Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	134.5	134.5	134.5	134.5	134.5	134.5
Travel	5.3	5.3	5.3	5.3	5.3	5.3
Contractual	80.6	80.6	80.6	80.6	80.6	80.6
Supplies	2.3	2.3	2.3	2.3	2.3	2.3
Equipment	13.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>235.7</b>	<b>222.7</b>	<b>222.7</b>	<b>222.7</b>	<b>222.7</b>	<b>222.7</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>222.7</b>	<b>222.7</b>	<b>222.7</b>	<b>222.7</b>	<b>222.7</b>
-------------------------------	------------	--------------	--------------	--------------	--------------	--------------

## FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	235.7					
1005 GF/Program Receipts		222.7	222.7	222.7	222.7	222.7
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>235.7</b>	<b>222.7</b>	<b>222.7</b>	<b>222.7</b>	<b>222.7</b>	<b>222.7</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

## POSITIONS

Full-time	1	1	1	1	1	1
Part-time	1	1	1	1	1	1
Temporary						

## ANALYSIS: *(Attach a separate page if necessary)*

CSSB 37 (FIN) provides a method for physicians to collectively negotiate certain terms and conditions of contracts with a health benefit plan. If an authorized third party negotiates with the health benefit plan, the subject matter of the negotiations must be reviewed and approved by the attorney general, who then receives various reports on the progress of the negotiations. Once a negotiated contract proposal is reached, it is to be reviewed and approved by the attorney general, using specific criteria, within thirty days. The bill provides that registration fees for authorized third parties will be established to approximately equal the regulatory costs for the attorney general's oversight of joint negotiations between physicians and health benefit plans.

If enacted, this legislation places substantial responsibilities on the attorney general to approve proposed negotiations, monitor reports of on-going negotiations, and to make a determination whether to approve or not approve a proposed

Prepared by: Joan M. Kasson Phone (907) 465-5370  
Division: Attorney General's Office Date/Time 3/20/02 11:59 AM  
Approved by: Kathryn Daugherty for Bruce M. Botelho, Attorney General Date 3/20/2002  
Agency: Department of Law

## FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

BILL NO. HCS CSSB 37(L&C) - FN#8

### ANALYSIS CONTINUATION

negotiated contract within a very short time frame. The economic and patient care detriment or benefit criteria the attorney general is directed to base approval or disapproval on will require significant analysis by expert health care economic assistance, as well as additional legal resources.

Under this bill, competing physicians within the service area of a health benefit plan can collectively negotiate certain defined terms and conditions of contracts with the health benefit plan. Negotiations can include fee and price related terms and conditions.

CSSB 37 (FIN) excludes all self-insured plans. It is difficult to predict how many contracts and reports during a given year that the attorney general's office will have to review and approve. There are 2,050 licensed physicians currently in the State of Alaska, and we conservatively estimate more than 5,000 insured health benefit plans will be potentially subject to this bill. Given these numbers, we would anticipate the volume of collective negotiations under the bill to be significant enough that we will need additional resources to complete the required reviews and approvals.

The Department of Law anticipates a minimum of one-half of a full-time equivalent attorney position and one full-time equivalent paraprofessional position will be needed to handle this new workload. Extensive regulation development will be necessary to implement the legislation by defining terms and setting forth the reporting requirements that authorized third parties will be required to submit in order to reduce, or preferably eliminate, investigation time during the 30 day review period. Once regulations are complete, these positions will perform the necessary investigation, review, and antitrust analyses on the collective bargaining reports submitted by the authorized third party, and represent the state when decisions of the attorney general are challenged.

Requests for approval of proposed negotiations and review of negotiated contracts by the attorney general are unlikely to be spread evenly throughout the course of a year. Instead, they may come at any time, and in any volume. Thus, we assume it will be more efficient to hire expert health care economic assistance by contract on an as needed basis. \$50,000 is included for outside expert costs (250 hours at an estimated average cost of \$200/hour).

In-house estimates are based on the department's FY 2003 standard half-time equivalent attorney and full-time paraprofessional schedules, which include clerical support, communications, space, supplies, data processing, and other normal overhead expenses. (one-half FTE attorney: \$70,455, FTE paraprofessional: \$92,230). Each position estimate also includes an additional \$6,500 for one-time equipment purchases and \$5,000 for direct case costs, costs that cannot be included in the rate as overhead.

The bill assumes fees for the registration of authorized third parties will be established to cover the cost of the program upon implementation. It will take at least several months to establish the regulatory framework. During this time, no fees will be generated. General funds are necessary for the first year to implement the program, at which point, the bill envisions that fees will be set to cover all program costs.



# STATE HEALTH FACTS *Online*

<http://statehealthfa>

Your source for state he

## Rate of Nonfederal Physicians per 100,000 Civilian Population, 1999



- Less than 225
- 225 to 255
- 256 to 282
- More than 282
- No data available/NSD

## Rate of Nonfederal Physicians per 100,000 Civilian Population, 1999

Sort by: Rank

Rate of Nonfederal Physicians per 100,000 Civilian Population, 1999		
Rank	State	#
	United States	285
1	District of Columbia	811
2	Massachusetts	454
3	New York	423

4	Maryland	413
5	Connecticut	397
6	Rhode Island	372
7	Vermont	362
8	New Jersey	327
9	Pennsylvania	321
10	Hawaii	306
11	Florida	290
12	Illinois	287
13	Minnesota	282
14	California	280
15	Colorado	274
16	New Hampshire	273
17	Washington	272
18	Louisiana	270
19	Tennessee	269
19	Virginia	269
21	Maine	268
22	Oregon	266
23	Delaware	264
24	North Carolina	262
25	Ohio	261
26	Wisconsin	256
27	Missouri	250
28	Michigan	249
29	Nebraska	247
30	North Dakota	246
31	New Mexico	243
32	Arizona	240
33	West Virginia	239
34	South Carolina	234
35	Kansas	232
35	Kentucky	232
37	Georgia	230
38	Montana	228
39	Utah	225
40	Texas	222
41	Indiana	219
42	Alabama	217
43	Arkansas	214
44	South Dakota	211
45	Iowa	200
46	Nevada	199
47	Wyoming	198
48	Oklahoma	187
49	Alaska	186
50	Mississippi	180
51	Idaho	179
NR	Guam	NA
NR	Puerto Rico	NA
NR	Virgin Islands	NA
NR	Residence Unknown	NA

**Notes:** Nonfederal physicians are employed in the private sector of the US physician population. They represent 98% of total physicians.  
The US total excludes physicians and population in the possessions.

**Sources:** Physician Characteristics and Distribution in the US, 2001-2002 Edition, American Medical Association, copyright 2001, Table 5.20, p. 348.



---

**State Health Facts Online - <http://statehealthfacts.kff.org>**  
[Home](#) | [50 State Comparisons](#) | [Individual State Profiles](#) | [Mailing List](#)  
[Resources](#) | [Search](#) | [Feedback](#) | [Privacy Statement](#)

Site design and programming by [Velir Studios](#)



# amednews.com

THE NEWSPAPER FOR AMERICA'S PHYSICIANS

American  
Medical News  
[Home](#)

## SECTIONS

- [Government & Medicine](#)
- [Professional Issues](#)
- [Business](#)
- [Opinion](#)
- [Technology](#)
- [Health & Science](#)

## LISTINGS

- [By section](#)
- [By date](#)
- [By region](#)
- [By health plan](#)
- [News briefs](#)
- [Columns](#)
- [Letters](#)
- [Special coverage](#)
- [Reader opinion](#)
- [Past years](#)
- [Search](#)

## SERVICES

- [Mobile edition](#)
- [E-mail alert](#)
- [Print subscriptions](#)
- [Aff directory](#)
- [Author bios](#)
- [Advertising](#)
- [Permissions](#)
- [AMNews FAQ](#)
- [Contact us](#)

## GOVERNMENT & MEDICINE

### N.J. doctors get collective bargaining rights

**Physicians can join together, but insurers don't have to negotiate with them. Similar provisions have hurt physician bargaining efforts in other states.**

By [Amy Snow Landa](#), AMNews staff. Jan. 28, 2002.  
[Additional information](#)

Washington -- New Jersey has become the third state in the nation to allow independent physicians to bargain collectively with managed care plans over the terms of their contracts.

Legislation signed into law Jan. 8 exempts joint negotiating by physicians and dentists from antitrust laws as long as such activity takes place under close supervision by the state.

"We have been aching for some type of antitrust relief for years," said Angelo S. Agro, MD, president of the Medical Society of New Jersey. "Now it is up to physicians in our state to take advantage of the opportunities we have been fighting for and make them pay off."

Texas and Washington are the other states that give physicians the right to bargain collectively.

The New Jersey law allows doctors in that state to negotiate with health plans on such matters as the definition of medical necessity, utilization management procedures, quality assurance programs, clinical practice guidelines, dispute resolution and credentialing. Physicians also could negotiate payment issues as long as the attorney general found that the plan in question had substantial market power and that terms or conditions of the plan could pose a threat to quality and availability of care.

Doctors are not allowed to strike, nor can they negotiate to exclude nonphysicians from plans.

Write a  
[letter to the edit](#)  
about this stor



[Additional information](#)

Box: [Physicians gaining clout](#)

## **Plans unwilling to play**

Like the laws previously enacted in Texas and Washington, the New Jersey act does not require insurers to join doctors at the negotiating table, raising questions about whether self-employed physicians will be able to exert any more leverage in contract talks with health plans than they did before. The experiences of physicians in Texas and Washington seem to provide little basis for optimism.

In June 2000, a group of 11 physicians in Henderson, Texas, applied to the state attorney general's office for permission to band together for contract negotiations with Blue Cross and Blue Shield of Texas -- the area's dominant insurer.

The Henderson group was soon granted permission by Texas Attorney General John Cornyn to bargain collectively. He determined that physicians were locked into contracts with the Blues plan and that their practices couldn't absorb the loss of income they suffered as a result.

**The AMA is working on a physician collective bargaining bill it hopes to be introduced in Congress.**

Cornyn also stated in his decision that the plan's "dominant position and its terms and conditions for physician compensation threaten to adversely affect the quality and availability of patient care in the Henderson area." He gave the physicians and the insurer a 60-day period to meet to negotiate.

But the Blues plan simply refused to sit down with the physicians, and that was the end of it. Since then, no other group of physicians has decided to pursue an application, said Michael Cushman, director of the Texas Medical Assn.'s health care delivery department.

Like Texas, Washington also did not require insurer cooperation when it enacted its joint negotiation law in 1993.

Physicians' interest in pursuing negotiations with plans appears to have been dampened as a result.

"We can't even get to first base," said Len Edinger, director of public policy and planning for the Washington State Medical Assn.

The WSMA supports a measure that was expected to be introduced in the state Legislature in mid-January that would

amend the 1993 law to explicitly allow negotiations about reimbursement and require insurers to negotiate in good faith with physicians.

Although the New Jersey law does not require insurers to negotiate in good faith, Dr Agro said he hopes the state's doctors will be able to exert enough pressure to bring them to the table anyway.

If one or more groups of physicians apply for and receive permission to engage in joint negotiations with an insurer, and that insurer refuses, it could become a public relations problem for the HMO, he said.

"We think it would be an untenable [position] for the HMOs to stonewall if the state attorney general sees fit to allow negotiations with various groups around the state," he said. "I'm sure it won't help sell policies if it becomes known they're unwilling to negotiate on patient care issues even when the government and physicians say they should."

The New Jersey law also has an advantage over the Texas statute, according to MSNJ. It doesn't cap the percentage of physicians in a market who can negotiate, while the Texas law sets that limit at 10%, society officials said.

The AMA applauds the MSNJ for its success, said Donald J. Palmisano, MD, the Association's secretary-treasurer and a lawyer.

"Too long have insurers used their market concentration and market share to unfairly disadvantage patients and physicians," he said. "If insurers refuse to negotiate, then this will expose the insurers as entities that do not want to listen to reason, but instead want to exercise their monopsony power."

The AMA is working on a new collective bargaining bill that it hopes will be introduced in Congress. An earlier collective bargaining measure passed in the House but died in the Senate in 2000.

Joint negotiation bills have foundered in more than a dozen state legislatures due to concern that physicians would gain too much leverage and that such measures would lead to higher health insurance costs.

That was a complaint the insurance community used in its opposition to the New Jersey law.

"The virtually certain result would be higher costs for patients

and for the health plans that pay for the health care they receive," said the New Jersey Assn. of Health Plans.

[Back to top.](#)

---

#### ADDITIONAL INFORMATION:

### Physicians gaining clout

The New Jersey collective bargaining law:

- Gives physicians the right to bargain collectively, through a representative they select, with insurers on many nonpayment-related subjects, including patient referral standards, drug formularies and clinical practice guidelines.
- Allows doctors to bargain with plans on payment issues as long as the state attorney general has ruled that the carrier has substantial market power and its contract terms and conditions could hurt patient care.
- Requires that physicians submit a collective bargaining petition to the attorney general and pay a filing fee. The results of any collective bargaining agreements are also subject to the attorney general's approval.
- Bars physicians from striking.
- Does not require health plans to join physicians at the bargaining table.

[Back to top.](#)

---

Copyright 2002 American Medical Association. All rights reserved.

AMA • Journals • JAMA • AMNews • JAMA Condition-Specific Sites  
Archives of Internal Medicine • Dermatology • Family Medicine • Ophthalmology  
Neurology • General Psychiatry • Otolaryngology • Surgery • Pediatrics • Facial Plastic Surgery  
[Site Update](#) • [Search](#) • [Guestbook](#) • [Reader Services](#) • [Classified Ads](#)  
[Advertising Information](#) • [Contact Us](#)



Tuesday, March 26, 2002, 12:00 a.m. Pacific

Permission to reprint or copy this article/photo must be obtained from The Seattle Times. Call 206-464-3113 or e-mail [resale@seattletimes.com](mailto:resale@seattletimes.com) with your request.

## Doctors sue Blue Cross, BlueShield: Late, discounted payments alleged; class-action status sought

By Carol M. Ostrom  
*Seattle Times staff reporter*

Two groups of local doctors have filed twin lawsuits against two of the state's largest health-insurance companies, alleging they systematically deny and delay reimbursing doctors for the services they provide patients.

The civil lawsuits, against Premera Blue Cross and Regence BlueShield and their affiliated organizations, were filed Friday by Franciscan Medical Group and Tacoma Orthopaedic Surgeons Inc. in Pierce County Superior Court.

The lawsuits allege the insurers routinely engage in a process called "bundling," which lumps procedures that should be reimbursed separately into one lesser reimbursement. It also accuses the insurers of "downcoding," in which the insurer refuses to reimburse for the actual medical service billed and instead substitutes a lower reimbursement.

Neither company yesterday would respond directly to the suits, but Regence spokesman Chris Bruzzo said the company was disappointed because it had worked hard to address doctors' concerns about its reimbursement practices.

About 65 doctors and seven midlevel practitioners such as physician assistants joined in the lawsuits. They also are asking the court to certify the lawsuit as a class-action claim, which could involve more than 22,000 health-care providers in the state, said J. Richard Creatura, an attorney for the medical groups.

The suits say the insurers violated laws against criminal profiteering and requiring insurers to pay providers promptly.

Dr. Cliff Robertson, chief medical officer for the Franciscan Medical Group, said the lawsuit grew out of longstanding belief that the insurers were shortchanging doctors. "There's been a growing frustration that even when we do things correctly, we weren't getting paid based on our contractual relationships," he said.

For example, Robertson said, if a parent brought in a child for a routine exam and during that visit asked about removing a wart, the only way for doctors to assure payment for both would be for the doctor to schedule a second appointment for the wart removal.

"The rules don't make sense, and we believe they're not consistent," Cullison said. "We believe legally we should be paid for those services, and we're not."

Premera Blue Cross spokesman Scott Forslund declined to address the lawsuit, saying his company was reviewing it. Regence's spokesman, Bruzzo, also said his company is investigating the

claim.

Regence is disappointed that the physician concerns had been voiced through a lawsuit, Bruzzo said. "Physicians are incredibly important — integral — to Regence's job of providing health insurance." Regence has gone to some lengths to create processes by which doctors can address their concerns, including funding a physician ombudsman and a physician advisory board. "We have some good, strong systems in place for hearing physicians and working with them on their issues."

The system is complex, Bruzzo noted — based on more than 7,800 Current Procedural Terminology (CPT) codes and a system of assigning "relative values" of time and effort spent on each visit or procedure.

"There are going to be concerns with a system as complicated as this one," Bruzzo said. "We have certainly heard concerns like this. Our goal is to work outside lawsuits to resolve differences that exist."

But Bruzzo noted that similar lawsuits have been filed across the country.

Even within Washington, such complaints appear not to be limited to Regence and Premera. And the doctors who sued last week are also not the only ones complaining.

Stephanie Marquis, spokeswoman for the state Insurance Commissioner's Office, said her office receives many calls and letters from doctors who think insurers have violated the law. The office sends letters to the insurers, she said, but beyond that has little enforcement power.

Dr. Sam Cullison, president of the Washington State Medical Association, said the association has no way of measuring the extent of the problem. "What I have is hearsay evidence that is still quite powerful. As I go around the state, physicians are voicing concerns to me about problems such as this in practically every meeting I go to."

Many doctors think the appeals and arbitration processes set up by insurers are meant to throw expensive and time-consuming roadblocks at their efforts to get fair reimbursement, he said.

Both Cullison and Robertson noted the bankruptcy filings of several Western Washington clinics, evidence that doctors are taking early retirement and leaving the state. Because practices are becoming "so economically fragile," Robertson said, they no longer can afford to ignore such insurer practices.

*Carol M. Ostrom can be reached at 206-464-2249 or [costrom@seattletimes.com](mailto:costrom@seattletimes.com).*

Copyright © 2002 The Seattle Times Company



Bureau of Competition  
Office of Policy Planning

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

5837  
COMMISSION AUTHORIZED

*By Facsimile and First Class Mail*

January 18, 2002

The Honorable Lisa Murkowski  
Chair, House Labor and Commerce Committee  
Alaska House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182

Re: Alaska Senate Bill 37

Dear Representative Murkowski:

We write in response to your request for comment on Alaska Senate Bill 37, a bill that seeks to authorize competing physicians to engage in collective bargaining with health plans over fees and other terms.<sup>1</sup> As discussed below, the Commission has opposed legislation before the U.S. Congress that would create an antitrust exemption for physician collective bargaining, and the Commission staff has expressed similar concerns about bills before state legislatures. We continue to believe that the behavior authorized by the physician collective bargaining legislation would significantly increase health care costs and harm consumers.

You also specifically solicited our opinion on whether the bill meets the legal test of the state action doctrine. As you know, state economic regulation can immunize private parties from federal antitrust liability, but only where the displacement of competition furthers a clearly articulated policy of, and is actively supervised by, the state government. In the case of Senate Bill 37, the level of government involvement described falls far short of the level of "active supervision" required by the Supreme Court.

#### I. Physician Collective Bargaining

The Commission's opposition to legislation intended to create an antitrust exemption for physician collective bargaining has historically focused on two fundamental points, both of which are relevant to your consideration of Senate Bill 37:

---

<sup>1</sup> These comments are views of the staff of the Bureau of Competition and of the Office of Policy Planning of the Federal Trade Commission. They do not necessarily represent the views of the Commission or of any individual Commissioner. The Commission has, however, voted to authorize the Bureau of Competition and the Office of Policy Planning to submit these comments.

- (1) such legislation would likely harm consumers – an antitrust exemption would authorize price-fixing by physicians, which could be expected to result in increased consumer costs and decreased consumer access to care; and
- (2) such legislation would not likely improve the quality of care – an antitrust exemption would not likely improve patient care, and there are other, more effective means of addressing quality of care issues that do not sacrifice the benefits of a competitive marketplace.

#### A. Consumer Harm

In testimony before Congress regarding a proposed federal antitrust exemption for physician collective bargaining,<sup>2</sup> the Commission detailed the predictable impact on consumers that such legislation would have:

Without antitrust enforcement to block price fixing and boycotts designed to increase health plan payments to health care professionals, we can expect prices for health care services to rise substantially. Health plans would have few alternatives to accepting the collective demands of health care providers for higher fees. The effect of the bill . . . can be expected to extend to various parties, and in various ways, throughout the health care system:

- Consumers and employers would face higher prices for health insurance coverage.
- Consumers also would face higher out-of-pocket expenses as copayments and other unreimbursed expenses increased.
- Consumers might face a reduction in benefits as costs increased.
- Senior citizens participating in Medicare HMOs would face reduced benefits . . . .
- The federal government would pay more for health coverage for its employees through the Federal Employees Health Benefits Program and military health programs.
- State and local governments would incur higher costs to provide health

---

<sup>2</sup> Testimony of Federal Trade Commission before the House Judiciary Committee on H.R. 1304 (June 22, 1999) (“FTC Testimony on H.R. 1304”) at 5-6 *available at* <http://www.ftc.gov/os/1999/9906/healthcaretestimony.htm> (Attachment A) (footnotes 3-5 in original).

benefits to their employees.

- State Medicaid programs attempting to use managed care strategies to serve their beneficiaries could have to increase their budgets, cut optional benefits, or reduce the number of beneficiaries covered.
- State and local programs providing care for the uninsured would be further strained, because, by making health insurance coverage more costly, the bill threatens to increase the already sizable portion of the population that is uninsured.

These widespread effects are not simply theoretical possibilities. The record of antitrust law enforcement sets forth the impact of collective 'negotiations' on the public. For example, as described in the Commission's complaints, collective bargaining by anesthesiologists in Rochester, New York, and by obstetricians in Jacksonville, Florida, forced health plans to raise their reimbursement, and the result was increased premiums for the HMOs' subscribers.<sup>3</sup> Other cases have challenged actions by associations of pharmacists who succeeded in forcing state and local governments to raise reimbursement levels paid under their employee prescription drug plans.<sup>4</sup> In one such case, an administrative law judge found that the collective fee demands of pharmacists cost the State of New York an estimated \$7 million.<sup>5</sup>

Prior Commission cases illustrate the types of physician conduct that have raised problems. Price-fixing is one type of such conduct, and last year's *Alaska Health Network, Inc.*<sup>6</sup> case is a prime example. In that case, the Commission alleged that competing physicians organized and conspired to fix the prices and other competitively significant terms on which they would deal with health plans in Fairbanks, Alaska. Another type of conduct is price-related group boycotts, such as the one addressed in the *M.D. Physicians of Southwest Louisiana, Inc.*<sup>7</sup> case. There, the Commission charged a group of competing physicians with conspiring not to deal with certain third-party payers, as part of an unlawful enterprise designed to prevent managed care contracts

---

<sup>3</sup> Southbank IPA, Inc., 114 F.T.C. 783 (1991) (consent order); Rochester Anesthesiologists, 110 F.T.C. 175 (1988) (consent order).

<sup>4</sup> See, e.g., Baltimore Metropolitan Pharmaceutical Assoc., Inc. and Maryland Pharmacists Assoc., 117 F.T.C. 95 (1994) (consent order); Pharmaceutical Society of the State of New York, Inc., 113 F.T.C. 661 (1990) (consent order).

<sup>5</sup> See Peterson Drug Company, 115 F.T.C. 492, 540 (1992). See also Pharmaceutical Society of the State of New York, Inc., 113 F.T.C. 661 (1990) (consent order).

<sup>6</sup> Docket No. C-4007, 2001 WL 443471 (F.T.C. April 25, 2001) (consent order).

<sup>7</sup> Docket No. C-3824, 1998 WL 566834 (F.T.C. August 31, 1998) (consent order).

from taking hold in the Lake Charles, Louisiana region.

There is widespread agreement that horizontal agreements among competitors can raise the most significant competitive concerns. The facilitation of naked horizontal price-fixing is among the most serious of these concerns, as such conduct predictably and consistently results in substantial consumer harm. Departing from the general rules of antitrust in such a competitively sensitive area presents substantial risks that would not be offset by procompetitive gains from physician collective bargaining.

The two arguments that have typically been presented to justify a departure from the general rules of antitrust in this context are that, given health plan concentration, physician collective bargaining would (1) increase patients' quality of care, and (2) allow physicians to bargain on a more "level playing field." The former argument is based on a misunderstanding of both current law and the effects of collective bargaining, as will be discussed in the next section.

The latter argument is more straightforward, but equally problematic. As the Commission explained in its testimony before Congress:

Arguments that consumers would not be harmed by an antitrust exemption for collective bargaining by independent health care professionals appear to rest on assertions that the [federal] bill would balance the bargaining power between health care professionals and health plans. These assertions, however, are incorrect. The bill would permit doctors to create monopolies. On the health plan side of the ledger, the evidence does not support the suggestion that most (or even many) areas have only one or two health plans.<sup>8</sup>

Furthermore, even if the assumption that physicians confront monopoly health plans were correct, authorizing collusive conduct by physicians would not necessarily serve the interests of consumers. The argument that physician collusion would merely counterbalance hypothetical monopsony power by health plans implicitly assumes that collective bargaining would generate physician fees no larger than the fees that would exist in a competitive market. However, there is little reason to believe that a successful physician cartel would settle for fees at the competitive level. If a health plan possessed actual market power, health care consumers could be doubly harmed by physician collective bargaining, because they could be forced to pay the health care plan's monopoly mark-up on top of the elevated fees charged by the physicians.

## B. Quality of Care

Proponents of antitrust exemptions for physicians often suggest that greater physician bargaining power against health plans would result in increased quality of care for patients. This claim fails for two reasons: (1) physician collective bargaining has historically focused on

---

<sup>8</sup> FTC Testimony on H.R. 1304, *supra* note 2, at 6-7.

physician compensation, rather than patient care; and (2) current antitrust law already permits physicians to work collectively on legitimate quality of care issues.

Immunizing collective bargaining imposes costs while providing little assurance that consumers' interest in quality care will be served. As the Commission stated before Congress:

Collective bargaining rights are designed to raise the incomes and improve the working conditions of union members. The law protects the United Auto Workers' right to bargain for higher wages and better working conditions, but we do not rely on the UAW to bargain for safer cars. Congress addressed those concerns in other ways.<sup>9</sup>

Moreover, discussions between physician groups and health plans are not illegal. Current antitrust law permits doctors to collectively negotiate with health plans in various circumstances in which consumers are likely to benefit. The Health Care Guidelines – jointly issued by the Federal Trade Commission and the Antitrust Division of the Department of Justice – emphasize physicians' ability under the antitrust laws to organize networks, and other joint arrangements, to deal collectively with health plans and other purchasers.<sup>10</sup> In addition, through their professional societies and other groups, health care professionals can jointly provide information and express opinions to health plans.<sup>11</sup>

As the Commission explained in its congressional testimony:<sup>12</sup>

[T]he antitrust laws do not prohibit medical societies and other groups from engaging in collective discussions with health plans regarding issues of patient care. Among other things, physicians may collectively explain to a health plan why they think a particular policy or practice is medically unsound, and may present medical or scientific data to support their views . . . .<sup>13</sup>

---

<sup>9</sup> FTC Testimony on H.R. 1304, supra note 2, at 10.

<sup>10</sup> See Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CCH) ¶ 13,151 (Aug. 1996) ("Health Care Guidelines") *available at* <<http://www.ftc.gov/reports/hlth3s.htm>>. The Health Care Guidelines discuss "messenger model" arrangements designed to minimize the costs associated with the contracting process.

<sup>11</sup> See, e.g., Schachar v. American Academy of Ophthalmology, 870 F.2d 397 (7th Cir. 1989); Statements 4-5 of Health Care Guidelines, supra note 10.

<sup>12</sup> FTC Testimony on H.R. 1304, supra note 2, at 7-8 (footnotes 13-15 in original).

<sup>13</sup> [The Health Care Guidelines] create an antitrust safety zone for health care providers' collective provision of non-fee-related information to health plans. . . . [See Statement 4 of Health Care Guidelines, supra note 10.]

The Commission has never brought a case based on physicians' collective advocacy with a health plan on an issue involving patient care. Our cases have addressed instances in which physician groups (1) negotiated collectively on fee levels or other price-related issues, or (2) collectively refused to contract with plans, either to gain acceptance of their price-related demands or to prevent or delay market entry by managed care plans generally. In all such cases, the Commission has been very careful to make sure that its orders do not interfere with the legitimate exchange of information and views between health plans and health care practitioners. Indeed, in the Commission's first litigated case involving collective negotiations by physicians - *Michigan State Medical Society* - the opinion emphasized that the antitrust laws do not prohibit health care providers' collective provision of information and views to health plans.<sup>14</sup> Specific language was inserted in that order, and in subsequent orders, to make it clear that bans on anticompetitive agreements among competing providers do not prohibit the provision of information and views to health plans concerning any issue, including reimbursement.<sup>15</sup>

Accordingly, blanket antitrust immunity for physician price-fixing is not necessary to protect patient welfare.

## II. The Alaska Bill

Nonetheless, Senate Bill 37, like its federal and state counterparts, seeks to confer antitrust immunity with respect to collective physician conduct. To be sure, Senate Bill 37 also contains a number of provisions designed to protect consumers from the potential harms arising from a physician collective bargaining exemption. In some respects, these provisions resemble protections contained in physician collective bargaining bills introduced in Texas and the District of Columbia, on which the Commission staff also has commented.<sup>16</sup> As with the protections in the Texas and District of Columbia bills, these provisions - addressing a health plan's market power, the size of the physician bargaining group, and potential boycott conduct - do not alleviate the risk of substantial consumer harm resulting from a collective bargaining exemption.

---

<sup>14</sup> 101 F.T.C. [191,] at 302-09 [(1983)].

<sup>15</sup> *Id.* at 314; see also *Southbank IPA*, 114 F.T.C. 783 (1991) (consent order); *Rochester Anesthesiologists*, 110 F.T.C. 175 (1988) (consent order).

<sup>16</sup> Letter to the Texas Legislature on Senate Bill 1468 (May 13, 1999) available at <<http://www.ftc.gov/be/v990C09.htm>> (Attachment B); Letter to the District of Columbia Office of Corporation Counsel on Bill No. 13-333 (Oct. 29, 1999) ("District of Columbia Letter") available at <<http://www.ftc.gov/be/rigsbv.htm>> (Attachment C).