ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672
10753 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

Subject: Re: Early entry
Date: Tue, 17 Feb 2004 10:18:17 -0900
From: "Wiget_Larry" <Wiget_Larry@asdk12.org>
To: "Ryan Makinster" <Ryan_Makinster@Legis.state.ak.us>

Early Entry Students - ASD Legislative Priority 2003

The Anchorage School Board urges the Alaska Legislature to amend Alaska Statute 14.03.080 to afford the governing body of a school district the discretion to delegate to, the superintendent or his/her designee the authority to approve early entry of a student on an individual basis. Approval for early entry will be based on minimum standards prescribed by the board for identifying whether the child has the mental, physical, and emotional capacity to perform satisfactorily in the educational program being offered.

Rationale. Under AS 14.03.080(c), a child under school age may be admitted to the public school in the school district of which the child is a resident at the discretion of the governing body of the school district if the child meets minimum standards prescribed by the board evidencing that the child has the mental, physical, and emotional capacity to perform satisfactorily for the educational program being offered.

Regulations established by DEED and effective July 1, 2002, have interpreted this statute to mean, "the governing body of the school district must approve early entry of a student on an individual basis."

The Anchorage School Board believes that once it has adopted appropriate policy standards, it should have the discretion to delegate this responsibility for implementation to the district administration.

AASB approved a similiar resolution....

1.11 Discretion to Approve Early Entry - AASB 2004 Resolution

The AASB supports an amendment to state statutes or regulations to afford the governing body of a school district the discretion to delegate to, the superintendent or his/her designee the authority to approve early entry of a student on an individual basis. Approval for early entry will be based on minimum standards prescribed by the board for identifying whether the child has the mental, physical, and emotional capacity to perform satisfactorily in the educational program being offered.

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StateNotes

Kindergarten

700 Broadway, Suite 1200 Denver, CO 80203-3460 303.299.3600 Fax: 303.296.8332 www.ecs.org

Access to Kindergarten: Age Issues in State Statutes

May 2003

This *StateNote* documents how state lawmakers have addressed kindergarten-related age issues, including compulsory school age, kindergarten entrance age, early entrance to kindergarten, skipping kindergarten and kindergarten exemption.

Kindergarten Entrance Age

The entrance age cut-off dates for kindergarten are not uniform across states.

- Only six states have cut-off dates between December 1 and January 1. This practice leads to a robust mix of 4-year-olds and 5-year-olds enrolled in kindergarten.
- Thirty-five states have kindergarten entrance cut-off dates between August 31 and October 16. These policies lead to fewer 4-year-olds entering kindergarten, but classrooms consist of a combination of 4- and 5-year-olds entering each fall.
- Three states have cut-off dates on or before August 15. While legislative intent cannot be determined without additional research, it can be supposed that these states want to ensure all children are 5 years old before they enter kindergarten.
- Another six states leave the entrance-age question up to local district decision.

Early Entrance

No matter where the age of entry is set, most kindergarten classrooms have an age span of at least one year among students. Further contributing to this age span are allowances for early entrance to kindergarten. Statutes in 27 states allow children to enter kindergarten before they reach age eligibility; one state does not permit early entrance; and 22 state laws are silent on the issue.

Compulsory School Attendance

Only eight states have a compulsory school age of 5 that effectively, if not explicitly, mandates kindergarten attendance for all children. Compulsory attendance ages in the other states range from age 6-8. These laws allow parents and schools to delay a child's entrance into kindergarten for a year. The reasons for delaying entry into kindergarten include beliefs that some children are not yet developmentally ready to succeed and beliefs that older children are more able to adapt to the intellectual, social-emotional and academic demands of kindergarten.

Permissive Kindergarten Attendance, Skipping Kindergarten and Kindergarten Exemption

Thirteen states require students attend kindergarten. Of those states, only Tennessee does not allow exemptions from kindergarten attendance. Delaying entrance to kindergarten and skipping kindergarten altogether – whether because the state does not mandate kindergarten attendance, because a student enters early into 1st grade or because a student exempts out of school until compulsory school age – raise equity issues because both the causes and the effects of such practices vary. For instance, access to high-quality early childhood education programs and/or enriched educational environments at home are likely effective replacements for kindergarten at age 5. Children from better-educated and wealthier families, however, are more likely to have access to such experiences than poorer children from less-educated homes.

State	Compulsory School Age	Kindergarten Entrance Age (Child must be 5 on or before this date)	Early Entrance to Kindergarten Allowed?	Student Attendance in Kindergarten	Skipping Kindergarten Allowed (Enter 1st grade at age 5)?	Kindergarten Exemption Allowed?
Alabama	7	September 1	Transfer	Permissive	Transfer	NA
Alaska	7	August 15	Transfer	Permissive	Not specified	NA
Arizona	6	September 1	Decision – parent, child, teacher and principal	Permissive	Decision – parent, child, teacher and principal	NA
Arkansas	5	September 15	Transfer	Mandatory	Not specified	Readiness *and* Parent request
California	6	December 2	Decision – school district and parent	Permissive	Decision – school district and parent	NA
Colorado	7	LEA option	Not specified	Permissive	Not specified	NA

State	Compulsory School Age	Kindergarten Entrance Age (Child must be 5 on or before this date)	Early Entrance to Kindergarten Allowed?	Student Attendance in Kindergarten	Skipping Kindergarten Allowed (Enter 1st grade at age 5)?	Kindergarten Exemption Allowed?
Connecticut	5	January 1	Decision – local school board	Mandatory	Not specified	Parent request
Delaware	5	August 31	Decision – local school authorities	Mandatory	Not specified	Parent request
Florida	6	September 1	Not specified	Permissive	Not specified	NA
Georgia	7	September 1	Transfer	Permissive	Transfer	NA
Hawaii	6	December 31	Not specified	Permissive	Not specified	NA
Idaho	7	September 1	Not specified	Permissive	Transfer	NA
Illinois	7	September 1	Decision – school district	Permissive	Not specified	NA
Indiana	7	July 1	Decision – parent and superintendent	Permissive	Not specified	NA
Iowa	6	September 15	Not specified	Permissive	Readiness	NA
Kansas	7	August 31	Transfer	Permissive	Transfer	NA
Kentucky	6	October 1	Not specified	Permissive	Not specified	NA
Louisiana	7	September 30	Gifted	Mandatory	Readiness	Readiness
Maine	7	October 15	Transfer	Permissive	Not specified	NA
Maryland	5	September 1	Not specified	Mandatory	Not specified	Parent request *or* Readiness
Massachusetts	6	LEA option	Not specified	Permissive	Not specified	NA

State	Compulsory School Age	Kindergarten Entrance Age (Child must be 5 on or before this date)	Early Entrance to Kindergarten Allowed?	Student Attendance in Kindergarten	Skipping Kindergarten Allowed (Enter 1st grade at age 5)?	Kindergarten Exemption Allowed?
Michigan	6	December 1	Not specified	Permissive	If district does not offer kindergarten	NA
Minnesota	7	September 1	Not specified	Permissive	Policy – local school board	NA
Mississippi	6	September 1	Not specified	Permissive	Not specified	NA
Missouri	7	August 1	Not specified	Permissive	Not specified	NA
Montana	7	September 10	Decision – board of trustees	Permissive	Not specified	NA
Nebraska	7	October 15	Transfer *or* Readiness	Permissive	Not specified	NA
Nevada	7	September 30	Not permitted	Permissive	Not permitted	Parent request
New Hampshire	6	LEA option	Not specified	Permissive	Not specified	NA
New Jersey	6	LEA option	Decision – local school board	Permissive	Not specified	NA
New Mexico	5	September 1	Not specified	Mandatory	Not specified	Parent request
New York	6	LEA option	Not specified	Permissive	Not specified	NA
North Carolina	7	October 16	Transfer *or* Gifted	Permissive	Decision – principal	NA
North Dakota	7	September 1	Transfer *or* Readiness	Permissive	Transfer *or* Gifted	NA

State	Compulsory School Age	Kindergarten Entrance Age (Child must be 5 on or before this date)	Early Entrance to Kindergarten Allowed?	Student Attendance in Kindergarten	Skipping Kindergarten Allowed (Enter 1st grade at age 5)?	Kindergarten Exemption Allowed?
Ohio	6	September 1 *or* First day of school	Policy – school district	Mandatory	Not specified	Parent request *and* Readiness
Oklahoma	5	September 1	Not specified	Mandatory	Not specified	Parent request
Oregon	7	September 1	Policy – local school board	Permissive	Policy – local school board	NA
Pennsylvania	8	LEA option	Not specified	Permissive	Policy – state board of education	NA
Rhode Island	6	December 31 (until 1/1/04) September 1 (after 1/1/04)	Not specified	Mandatory	Not permitted	Not specified
South Carolina	5	September 1	Transfer *or* Decision – school district	Mandatory	Decision – school district	Parent request
South Dakota	6	September 1	Transfer	Permissive	Transfer	NA
Tennessee	6	September 30	Not specified	Mandatory	Not permitted	Not permitted
Texas	6	September 1	Readiness *and* Policy – school district	Permissive	Transfer	NA
Utah	6	September 2	Not specified	Permissive	Not specified	NA

State	Compulsory School Age	Kindergarten Entrance Age (Child must be 5 on or before this date)	Early Entrance to Kindergarten Allowed?	Student Attendance in Kindergarten	Skipping Kindergarten Allowed (Enter 1st grade at age 5)?	Kindergarten Exemption Allowed?
Vermont	6	January 1 *or* LEA option	Not specified	Permissive	Not specified	NA
Virginia	5	September 30	Readiness	Mandatory	Not specified	Parent request
Washington	8	August 31	Decision – LEA	Permissive	Decision – LEA	NA
West Virginia	6	September 1	Decision – county board	Mandatory	Decision – county board	Readiness
Wisconsin	6	September 1	Policy – school district	Permissive	[illegible]	NA
Wyoming	7	September 15	Not specified	Permissive	[illegible]	NA

Key:

Decision – (parties listed)
A decision to allow early admittance to individual children on a case-by-case basis may be made by the parties listed.

Policy – (authorities listed)
The authorities listed may adopt a policy to allow early admittance; this policy must be applied equally to every student seeking early admittance.

Gifted
A child may be allowed early admittance if he is determined to be gifted.

LEA
Local education agency

HB

353

Representative Mary Kapsner
State Capitol • Juneau, Alaska 99801-1182
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House District 38
Yukon Kuskokwim Delta

Akiachak
Akiak
Atmautluak
Bethel
Chefornak
Eek
Goodnews Bay
Kasigluk
Kipnuk
Kongiganak
Kwethluk
Kwigillingok
Lower Kalskag
Mekoryuk
Napakiak
Napaskiak
Newtok
Nightmute
Oscarville
Platinum
Quinhagak
Toksook Bay
Tuluksak
Tununak
Tuntutuliak
Upper Kalskag

SPONSOR STATEMENT

HB 353 provides an exemption from jury duty for teachers in schools that have failed to meet adequate yearly progress under state and federal law.

The role of the classroom teacher has taken on new importance in recent years with the passage of state and federal laws aimed at accountability in education. The ultimate winners or losers of these mandates will be our children. This year high school seniors will be required to pass the high school graduation qualifying exam to receive their diploma. We have added "No Child Left Behind" to our personal vocabulary when we talk about education. NCLB imposes requirements for highly qualified teachers and sanctions on districts that fail to meet "adequate yearly progress."

Jury duty can be lengthy, resulting in a significant impact on classroom learning. When a teacher is absent from the classroom the flow of learning is affected. In many small communities in Alaska, qualified substitute teachers are simply not available, and the person placed in charge of the classroom may be an aide pulled from other responsibilities or an individual who holds a high school diploma. Moreover, ratio of scale in small communities creates an additional burden on the school. For example, five of the eleven certified teachers in one of the schools in my district were called to Bethel for jury duty this year before this school year was half over.

Although jury duty is an important civic responsibility and part of the foundation of our legal system exemptions are appropriate under certain circumstances. HB 353 limits its impact by exempting only those teachers whose school has failed to meet AYP. In a time of so many educational mandates and with a lack of available educational resources in some areas of the state this is a reasonable solution to the problem.

Thank you for your consideration.

Lower Kuskokwim School District

Personnel and Student Services Department
P.O. Box 305 • Bethel, Alaska 99559
907 543-4885/4886/4887
FAX 907 543-4900

1/23/04

Representative Mary Kapsner
State Capitol
Juneau, Alaska 99801

Dear Representative Kapsner,

This letter is in support of HB 353 dealing with jury duty for teachers in schools that have not met the Adequate Yearly Progress requirements of the No Child Left Behind Act. In the Lower Kuskokwim School District we have several schools that are severely impacted by the amount of jury duty that our teachers are required to perform. From September 1 to December 15, 2003, for example, our payroll records show a total of 107.5 days that our teachers were out of the classroom performing jury duty. The negative impact on student learning is further compounded by the fact that certified substitutes are virtually non-existent in our district and in some cases it is not possible to find subs at all.

Quality instruction is the most important component in meeting the high academic standards brought about by legislation at the state and federal levels. The NCLB act recognizes this with its heavy emphasis on "highly qualified" teachers. HB 353 will help ensure that our highly qualified teachers remain in the classroom where they can help our students reach these standards.

Educating our children is the most important responsibility of the State of Alaska. Teachers have the greatest impact on the quality of education, but only when they are in the classroom. Legislators can help to ensure that teachers stay in the classroom by their support of HB 353.

Sincerely,

Gary Baldwin
Assistant Superintendent of Personnel and Student Services

HB 353 – Jury duty exemption for certain teachers
Email comment in support (emphasis added)

I believe all of our teachers need to be in the classroom to get ready for testing, as none of our substitutes are trained teachers. ***Out of 11 certified teachers, 5 have already been requested for jury duty****, which is close to half, and the year is not over.*

Marie Wierema
Lower Kuskokwim School District

Many of my school staff have been called for jury duty, and often, more than one each quarter. I, myself, have been called several times for service in Bethel, and more recently for federal service in Anchorage.

My experience with the Bethel jury service is that it is not possible for teachers to make "real" lesson plans for the duration of their service. The system is set so that one cannot know until 4:30 if jury members need to appear in Bethel the following morning. By the time you get notice that you have to go to Bethel in the evening to be present for an 8:30 jury call, there isn't time to alter one's lesson plans for a substitute. Therefore, teachers tend to write plans for easy to follow activities for a non-certified substitute.

Village teachers are faced with two problems. First, airplanes must fly in the daylight, and during much of the school year there isn't a great deal of that after school is dismissed. *By the time a teacher calls in to Bethel and discovers that s/he must fly to Bethel, there is barely time to grab a change of clothes and run to the airport to catch the mail plane.* ***The second issue is that we don't have any people with teaching certificates sitting around the village waiting to be called in as a substitute. When a teacher is out, the best we can manage is to bring in a recent high school graduate who isn't otherwise employed. The students are the ones who suffer from interruption of their learning.***

I've always felt that a well-educated population is less likely to commit crimes, and that effective teachers in the classroom contribute to a lower crime rate. Let the teachers teach, and the students learn, and we might not have need for so many trials and juries.

Felicia Griffith-Kleven
Lower Kuskokwim School District

I just finished the three month long stint of jury duty service last month. I can assure you that it did have a negative impact on my students and our school. *Partly because I missed many of my classes and partly because of the stress it caused. I never knew until the morning if I would have to fly into Bethel for jury duty or not. Several times the jury was cancelled at the last minute, sometimes before I left the village and sometimes after I arrived in Bethel. Sometimes ice or weather conditions made it impossible to go and all the time I worried that ice or weather conditions would prevent me from returning home if I did make it in. In the end I was never selected to be on a jury.*

Franklin A. Cook
Nunapitchuk

I would like to voice my support of the Jury Duty Bill. As the site administrator at Eek School I am very concerned about the impact of having teachers, administrators, and other staff members pulled away from their duties at the school for jury duty. This has a negative impact on our instructional program in terms of student academic growth and achievement.

It is almost impossible to find qualified substitute teachers to fill these vacancies. *If we are serious about improving student academic growth and achievement we need to seriously consider exempting school staff (teachers, administrators, aides) from jury duty. It is extremely difficult to run an effective educational program with the constant disruption of having our highly qualified staff members pulled away from their duties.*

Daniel Walker
Eek

I am the Director of Special Education for LKSD, which includes 21 village schools and four schools in Bethel and have been in this position for 6 years.

Jury duty has a tremendous impact when a special education teacher or district office special education specialist is called to serve. As you know, special education services are mandated by law. There are times when a student must, by law, be served by a certified special education teacher, not a sub or an aide. ***When a certified special education teacher is gone, we are out of compliance on some of our students' IEP's. This means that the parents can file a complaint against us with EED or file for due process.*** *Both of these options are extremely costly to the district and stressful to the people involved.*

We do the best we can to serve the student appropriately within the law and per their IEP's, but if the certified sp ed teacher or district office specialis is absent for any length of time, then it puts the district into situation of potential liability.

Linae Sanger
Special Education Director
Lower Kuskokwim School District

Serving for one month instead of three would be a great improvement for the teacher and his/her students, but would not eliminate the impact, and it would not in itself reduce the total burden of missing staff serving jury duty. The burden would just be spread around to more teachers and classrooms.

Larry Ctibor, Site Administrator
M.E. Primary School
Lower Kuskokwim School District

HB

374

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 2004

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 107
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of article III, section 18 of the Alaska Constitution, I am transmitting a bill establishing the "SeniorCare" program.

Prescription drug prices have spiraled upwards for years, placing a heavy financial burden on Alaska's seniors This past year my administration has initiated a number of reforms to our Medicaid program that will help assure that seniors receive the safest and most clinically appropriate prescription drugs they need at a reasonable cost. Among these reforms is the development of a preferred drug list, requiring prior authorization for certain drugs, and expanding case management of high-cost clients; often persons with chronic conditions that require a large number of medications.

This fall, Congress approved a comprehensive package of Medicare prescription drug subsidies. However, these subsidies are not fully effective until 2006. This creates a gap for seniors who need immediate assistance. SeniorCare is an innovative program, which bridges that gap for Alaska's seniors. The Senior Assistance Program, which I established this year to help Alaska's neediest seniors, has been brought under SeniorCare.

The SeniorCare program would provide two levels of subsidies, based on income. An individual who has an annual income of up to 135 percent of the federal poverty level for Alaska, and who is not already receiving a prescription drug benefit through Medicaid, may choose to receive up to $1,600 a year in prescription drug subsidies or to receive a monthly cash payment of $120. An individual who has an annual income of more than 135 percent but no more than 150 percent of the federal poverty level for Alaska may receive up to $1,000 a year in prescription drug subsidies, but

would not be eligible for the alternative cash payment. In addition, under federal law separate from this bill, the temporary Medicare prescription drug subsidy would add an extra $600 per year of prescription drug coverage to the first group.

Eligibility for the program would be limited to Alaska's most needy seniors. The program would not pay for prescription drug subsidies for seniors who already receive coverage under Medicaid or certain similar prescription drug subsidy programs. Eligibility for the program would be further defined by regulations developed by the Department of Health and Social Services under authority granted in this bill. Until those regulations are in effect, the eligibility requirements that govern the Alaska Senior Assistance Program (established by regulation in 2003) would govern the SeniorCare program. This would ensure that the SeniorCare program could go into operation without delay.

Prescription drug subsidies under the program would cover almost all prescription drugs, insulin and insulin syringes, and would require that, if available, cheaper and therapeutically equivalent generic drugs must be used unless a medical professional indicates that a brand name is medically necessary. This requirement would ensure that the subsidies would cover the maximum amount possible of each recipient's prescription drug costs.

The SeniorCare program is designed to help Alaska's seniors meet their financial and prescription drug needs. When the new Medicare prescription drug subsidy administered by the federal government begins, SeniorCare would be discontinued.

I urge your prompt and favorable action on this measure.

Sincerely yours,

Frank H. Murkowski
Governor

Enclosure

Senior CARE

Fact Sheet

SeniorCare is a proposed array of services for Alaska seniors. SeniorCare bridges a gap for low-income seniors until the full Medicare prescription drug coverage begins in January 2006, and provides a statewide senior information, resource and referral service for all Alaska seniors.

Seniors who qualify for this year's Senior Assistance Program (65 and older and 135 percent of the poverty level), and who are not receiving comprehensive Medicaid prescription drug coverage, will be provided a choice starting in April 2004 pending legislative approval. They will choose between receiving the new SeniorCare prescription drug subsidy of $1,600 a year or to continue to receive the Senior Assistance Program cash assistance of $120 a month, which totals $1,440 a year. Together with the $600 Medicare subsidy to begin this spring, these eligible seniors opting for the SeniorCare prescription drug benefit will have a combined benefit of $2,200 a year.

Additionally, seniors between 135 percent and 150 percent of poverty level will receive a prescription drug benefit of $1,000 a year.

Other services offered through SeniorCare include a new Senior Information Office through the Division of Senior and Disabilities Services. This office will be a one-stop resource for information seniors need. The Alaska Senior Information Office will provide a statewide toll-free telephone number and Web site for information on services available to seniors, including an up-to-date directory of local physicians who accept Medicaid and Medicare clients, available programs and services including SeniorCare, and prescription drug information and assistance.

The Medicaid Preferred Drug List, scheduled to be in place by early 2004, will contain costs for prescription drugs provided to those receiving Medicaid. The list will contain recommendations, selected by Alaska physicians and pharmacists, on drugs that are proven to be the most efficacious, cost-effective and safe. The Preferred Drug List will also provide a valuable resource for all seniors to compare prescription drug costs, and will enable seniors to work with their physicians to identify cost-effective drugs that are right for them. Once implemented next spring, seniors can get the list from the new Alaska Senior Information Office. The Senior Information Office and the Preferred Drug List will not need legislative approval to be implemented.

Current programs for seniors which will fall under SeniorCare include comprehensive Medicaid health insurance coverage and Medicare cost-sharing assistance for low-income seniors. About 7,000 eligible seniors receive prescription drugs, medical care, hospitalization and other services from the state at a cost of $119.6 million a year. In addition, DHSS will continue to work with the Denali Commission and others to ensure greater access to healthcare for Medicaid and Medicare patients.

To be eligible for the two levels of SeniorCare benefits, a senior age 65 or older must meet the following eligibility criteria:

First Level: Seniors eligible to receive the $1,600 Senior Care Prescription Drug Subsidy or $1,440 Senior Assistance Program cash assistance:

- Individuals may have an annual gross income of up to $15,134, couples a combined annual gross income of up to $20,439 (below 135 percent of the federal poverty level). Permanent Fund Dividend income is not counted.
- Participants receiving Medicaid prescription drug coverage are only eligible for cash assistance, and are not eligible for the SeniorCare prescription drug benefit.

Second Level: Seniors eligible to receive the $1,000 Senior Care Prescription Drug Subsidy only:

- Individuals may have an annual gross income of up to $16,815, couples a combined annual gross income of up to $22,710 (between 135 percent and 150 percent of the federal poverty level). Permanent Fund Dividend income is not counted.

Assets allowed:

- Individuals may have assets up to $4,000, couples combined assets up to $6000.
    - Assets not counted include a home, funds set aside for burial, automobiles, real estate and other real property.
    - Only liquid assets are counted such as cash and those assets easily converted to cash (e.g., stocks, bonds, IRAs, etc.).

For individuals, eligibility is based solely on their own income and assets. For married couples that are living together, eligibility is based on their combined income and assets regardless of whether one or both are 65 or older.

Other eligibility criteria:

- The senior must be a US citizen or legal alien, a resident of Alaska, and must intend to remain a resident of Alaska throughout the duration of the program.

- Only those seniors living independently (outside an institution such as a nursing home, Pioneer Home, API) are eligible.

Once they receive the benefit, recipients must report changes in residence, mailing address or the death of a spouse within 10 days.

The Benefit:
Seniors who qualify for this year's Senior Assistance Program, and who are not receiving Medicaid prescription drug coverage, will be provided a choice. They will choose between receiving the new SeniorCare prescription drug subsidy of $1,600 a year or to continue to receive the Senior Assistance Program cash assistance of $1,440 a year. Together with the $600 Medicare subsidy to begin this spring, these eligible seniors opting for the SeniorCare prescription drug benefit will have a combined benefit of $2,200 a year.

Additionally, seniors between 135 percent and 150 percent of poverty level will receive a prescription drug benefit of $1,000 a year.

How to Apply
Seniors who meet the eligibility criteria need apply only once by mail. The application asks for information about income and assets, and requires a signature to confirm the truthfulness of the statement given. No additional proof of income or assets is required.

If found eligible, the individual will receive written notice, and begin receiving the benefit following the month of application.

Applications for the current Senior Assistance Program are available at senior centers, libraries, offices of the Division of Public Assistance and at variety of other community agencies and at http://www.hss.state.ak.us/dpa/. Application forms for the new prescription drug benefit will be available spring 2004 at the same outlets.

The toll-free telephone number for the SeniorCare Senior Information Office is 1-800-478-6065 (Anchorage 907-269-3680) and the Web address is: http://www.seniorcare.alaska.gov

Alaska Department of Health & Social Services
Division of Senior and Disabilities Services
SeniorCare Senior Information Office
Statewide: 1-800-478-6065
Anchorage (907) 269-3680
www.seniorcare.alaska.gov

Senior CARE

Frequently Asked Questions

Q: What is SeniorCare?

SeniorCare is a proposed array of services for Alaska seniors. SeniorCare bridges a gap for low-income seniors until the full Medicare prescription drug coverage begins in January 2006, and provides a statewide senior information, resource and referral service available for all Alaska seniors.

In the current Senior Assistance Program, eligible seniors receive a cash benefit of $120 per month to help with basic needs such as food, housing and medication. Starting in April 2004, a prescription drug subsidy will be available to these same Alaska seniors, if approved by the Alaska Legislature. In the program, certain eligible seniors will have the option of selecting either the prescription drug subsidy or the cash benefit. A prescription drug benefit will also be offered to an additional group of eligible seniors needing assistance.

Seniors who qualify for this year's Senior Assistance Program (65 and older and 135 percent of the poverty level), and who are not receiving comprehensive Medicaid prescription drug coverage, will be provided a choice this spring. They will choose between receiving the new SeniorCare prescription drug subsidy of $1,600 a year or to continue to receive the Senior Assistance Program cash assistance of $1,440 a year. Together with the $600 Medicare subsidy to begin this spring, these eligible seniors opting for the SeniorCare prescription drug benefit will have a combined benefit of $2,200 a year.

Additionally, seniors between 135 percent and 150 percent of poverty level will receive a prescription drug benefit of $1,000 a year. The qualifying income level for these seniors would be those making below $16,815 for an individual or $22,710 for a couple.

Other services offered through SeniorCare include a new Senior Information Office through the Division of Senior and Disabilities Services. This office will be a one-stop resource for information seniors need. The Alaska Senior Information Office will provide a statewide toll-free telephone number and Web site for information on services available to seniors, including an up-to-date directory of local physicians who accept Medicaid and Medicare clients, available programs and services including SeniorCare, and prescription drug information and assistance for seniors.

The Medicaid Preferred Drug List, scheduled to be in place by early 2004, will contain costs for prescription drugs provided to those receiving Medicaid. The list will contain recommendations, selected by Alaska physicians and pharmacists, on drugs that are proven to be the most

efficacious, cost-effective and safe. The Preferred Drug List will also provide a valuable resource for all seniors to compare prescription drug costs, and will enable seniors to work with their physicians to identify cost-effective drugs that are right for them. Once implemented next spring, seniors can get the list from the new Alaska Senior Information Office.

The Senior Information Office and the Preferred Drug List will not need legislative approval to be implemented.

Current programs for seniors which will fall under SeniorCare includes comprehensive Medicaid health insurance coverage and Medicare cost-sharing assistance for low-income seniors. In addition, DHSS will continue to work with the Denali Commission and others to ensure greater access to healthcare for Medicaid and Medicare patients.

Q: When will the SeniorCare prescription drug benefit be made available?
It is anticipated that the prescription drug subsidy will begin April 1, pending legislative approval, and it will be available until the full Medicare prescription drug benefits begin in January 2006.

Q: Who is eligible for the SeniorCare prescription drug subsidy or cash benefit?
The individual must be age 65, a US citizen or legal alien, a resident of Alaska, and must plan to remain in Alaska for the duration of the program. Those seniors opting for the prescription drug subsidy must also have the Medicare Drug card, once it is available, about May 2004.

Seniors with income below 135 percent of the federal poverty level (annual income less than $15,134), and liquid assets of no more than $4,000 will qualify for the program. Couples living together who are married may have an annual income of no more than $20,439 and assets of no more than $6,000. Seniors who qualify for the SeniorCare program and who do not receive Medicaid prescription drug coverage, will be able to choose cash assistance or the new SeniorCare prescription drug subsidy of $1,600 a year (prorated).

Seniors with income between 135 percent and 150 percent of poverty level will also qualify for a prescription drug subsidy. The qualifying income level for these seniors would be those making below $16,815 for an individual or $22,710 for a couple. New federal poverty guidelines will be released early in 2004 and income level guidelines may change.

Q: Are all my income and assets counted for purposes of eligibility?
No. Permanent Fund Dividend income is not counted. Also, only liquid assets are counted. Liquid assets are cash or other resources that can easily be converted to cash. Liquid assets include cash, bank accounts, stocks, bonds, individual retirement accounts, money market certificates, cash value of life insurance, etc. A home, automobiles and other real property are not counted for purposes of eligibility.

Q: My spouse is over 65, but I'm not. Do we have to count my income and assets as well?
Yes. Eligibility is based on the combined income and assets of couples who are married and living together regardless of whether one or both is eligible to receive the benefit.

Q: I live in an assisted living home. Am I eligible for the Alaska SeniorCare Program?
Yes. Seniors living independently or in assisted living homes are eligible. You are not eligible if you are living in a nursing home or other institutional setting.

Q: Will SeniorCare prescription drug benefit cover all drugs?
No. The benefit will not cover over-the-counter drugs, vitamins, or any medical supplies currently not covered under Medicaid. This benefit will follow the current Medicaid formulary for seniors, so drugs normally not dispensed to seniors will not be covered under this program.

Q: How will SeniorCare prescription drug benefit work with Medicare and other insurance coverage?
SeniorCare will be the payer of last resort. Medicare and other insurance will be the first payer for prescription drugs, and the SeniorCare benefit will follow after the first benefits have been exhausted.

Q: Will I need to pay to sign up for the SeniorCare prescription drug benefit?
No. SeniorCare does not require an enrollment fee, co-payments for prescriptions or premium payments.

Q: Can I leave the state and still receive the benefit?
It depends. If you are only leaving temporarily and plan to remain an Alaska resident, you will remain eligible, though you may not be able to use your benefit while out of state.

However, if you intend to change your state of residence, the benefit will end. Other states are not offering the SeniorCare program.

Q: I receive Adult Public Assistance. Will I be eligible for the Alaska SeniorCare Program?
You are eligible for the cash assistance benefit, but if you are receiving Medicaid prescription drug coverage, you will not be eligible for the SeniorCare prescription drug subsidy.

Q: How can I apply for SeniorCare prescription drug or cash assistance?
Applications for the cash assistance Senior Assistance Program are currently available at Division of Public Assistance offices, at senior centers around the state, and at a variety of other community service agencies. Seniors who meet the eligibility criteria need apply only once by mail or online. The application asks for information about income and assets, and requires a signature to confirm the truthfulness of the statement given. No additional proof of income or assets will be required.

Application forms for the new prescription drug benefit will be available spring 2004 at the same outlets mentioned above and available on-line through the DHSS Web site.

Q: I am currently receiving the Senior Assistance Program cash benefit. How can I choose to receive the Alaska SeniorCare prescription drug benefit?
You will receive information on the new prescription drug option before the benefit is set to begin in April 2004. You will receive a form asking your preference. You will simply need to indicate your choice to switch to the new option and send it in.

Q: I have not yet applied for the Senior Assistance cash benefit. When I apply, how will I know if I've been found eligible for the program?
You will receive a written "notice of award" informing you that you are eligible, and when your benefit will begin.

Q: Once I begin receiving the Alaska SeniorCare prescription drug or cash benefit, is there anything I must do to maintain my eligibility for the benefit period?
You are required to report changes in mailing or residence address, the death of an individual receiving assistance, or admission or discharge from a nursing home or other institutional setting. We may periodically review eligibility.

Q: How long will SeniorCare benefits be offered?
Anticipated to being in April 2004 pending approval by the Alaska Legislature, SeniorCare will bridge a gap for low-income seniors until the full Medicare prescription drug coverage begins in January 2006. The SeniorCare prescription drug and cash benefit will end when the full Medicare prescription drug begins in January 2006.

Q: How many seniors does the state anticipate to participate in the SeniorCare prescription drug benefits?
Of the more than 47,000 seniors in Alaska, about 7,200 seniors are now receiving cash assistance under the Senior Assistance Program. A number of these seniors now receive prescription drugs, medical care, hospitalization and other services from the state. Seniors receiving Medicaid prescription drug coverage would not be able to receive SeniorCare prescription drug coverage, but would continue to qualify for the SeniorCare Senior Assistance Program cash assistance.

About 2,000 seniors who are enrolled in the Senior Assistance Program do not currently qualify for Medicaid services and would be able to choose to switch to the prescription drug benefit from the cash assistance. It is estimated that about 630 eligible seniors will choose to receive the SeniorCare prescription drug benefit.

Additionally, it is estimated that about 2200 seniors would fall within the 135 percent to 150 percent of the federal poverty level to qualify for the SeniorCare $1,000 prescription drug benefit. It is estimated that all if not most of these eligible seniors will choose to receive the SeniorCare prescription drug benefit.

Q: How do I contact the SeniorCare Senior Information Office?
The toll-free telephone number for the SeniorCare Senior Information Office is 1-800-478-6065 (Anchorage 907-269-3680) and the Web address is: http://www.seniorcare.alaska.gov

Alaska Department of Health & Social Services
Division of Senior and Disabilities Services
SeniorCare Senior Information Office
Statewide: 1-800-478-6065
Anchorage (907) 269-3680
www.seniorcare.alaska.gov

Providing a safety net

Basic human needs should be met through a safety net of services in a safe and healthy community environment

Financial Assistance

Adult Public Assistance: This program can provide Alaskans age 65 and older with Medicaid coverage, and, for those meeting income eligibility guidelines, with monthly cash assistance to supplement SSI. The state pays about $18.6 million annually for this program.

Food Stamps: This program helps ensure that those Alaskans meeting certain eligibility guidelines receive adequate nutrition. Almost 1,100 Alaska seniors receive $2.4 million in food stamps each year.

Photo by Hall Anderson/Ketchikan Daily News

DHSS Commissioner Joel Gilbertson with seniors

Other financial assistance

Housing Assistance: The Alaska Housing Finance Corporation offers senior housing with rent limits for qualifying seniors.

Heating Assistance Program: This federally funded program helps low-income families, whether home owners or renters, meet the high costs of keeping their homes warm.

Assurance of Safety

IMPROVED! **Adult Protective Services**: This program provides vulnerable adults with assistance and targets seniors in need. The demand for this service continues to grow, and the department is reviewing ways to have other departments, such as Public Safety, work collaboratively in this effort. Alaska provides this service for about $2 million a year.

Guardianships and Conservatorships: More than 850 adults take part in this program offered by the Office of Public Advocacy at a cost of $1.6 million per year to the state.

Long Term Care Ombudsman: This office investigates reports concerning the well being and rights of seniors who live in long-term care facilities. The office also works to resolve concerns that those over age 60 may have with other services. The state spent $208,000 on this service in the last fiscal year.

Services through Senior Centers

Senior Centers: State and federal grants help support 31 senior centers in Alaska.

Meal Transportation and Support: More than 100 Alaska communities receive help in providing nutritional services to those over age 60 at senior centers or similar centers, and through programs delivering meals to seniors' homes. Nutrition and health education is also provided. Alaska spends about $5.8 million a year on these programs through the Alaska Commission on Aging.

FOR INFORMATION CALL: ALASKA SENIOR INFORMATION OFFICE
Statewide: 1-800-478-6065
Anchorage: 907-269-3680
Alaska Department of Health & Social Services Division of Senior and Disabilities Services

A SPECIAL REPORT

A New Direction

Alaska's Benefits to Seniors Rank Among the Nation's Best

"We know Alaska's richest resource is our people."
- Governor Frank H. Murkowski

Governor Murkowski has charged Alaska's Department of Health and Social Services with setting new and higher standards for meeting the health care and social services needs of Alaskans. In the past year the department has made some of the most sweeping and innovative changes in Alaska's state government. DHSS Commissioner Joel Gilbertson undertook a major reorganization to better serve all Alaskans in need.

The Governor met with seniors at the State Fair

Self-Sufficiency, Safety Net and Access to Care

The work of the Department of Health and Social Services is guided by three core values: protecting each individual's right to live as self-sufficiently as possible; providing a safety net of services to those in the greatest need; and providing the broadest possible access to care. It is those core values that guide the department's work in serving seniors and in serving all Alaskans.

Division of Senior and Disabilities Services

One of the department's major initiatives in 2003 was to establish a new Division of Senior and Disabilities Services to care for seniors and the disabled in one agency. This division helps provide better access to a wide range of the services that seniors and people with disabilities need and deserve.

Making Hard Choices: Taking Care Of Those In Need

Governor Murkowski has said that one of the hardest decisions he had to make in 2003 was ending the Longevity Bonus program in order to redirect available financial resources to those seniors with the most serious needs. The Governor's commitment was to make sure seniors with the greatest need receive services. More than 1,100 elderly Alaskans who had been excluded from the Longevity Bonus program are among the 7,200 seniors now receiving needed assistance under the new Alaska Senior Assistance Program. The old program provided 18,000 of Alaska's 44,000 citizens over the age of 65 with monthly bonus checks, but deprived the other 26,000 of any such payment at all. And with eligibility for the old program based solely on date of birth – not on actual need – some of Alaska's most wealthy seniors got monthly checks, while others with significant needs got nothing. The new program provides funding for Alaskans in need who were not receiving any bonus payments. Of the 7,211 applicants qualifying for the new program, 6,072 had received the Longevity Bonus and 1,139 had not.

How We Compare To Other States

Alaska ranks near the top of the list of states in terms of services we provide to older residents. Alaska not only offers an array of services through the Department of Health and Social Services, but many other senior benefit programs as well. Property tax exemptions, sales tax exemptions, community service training and employment programs, hunting and fishing license exemptions, discounted ferry and Alaska Railroad

fares and driver's license discounts are all among the many ways the state shows respect and gratitude to older Alaskans who have helped make Alaska what it is today.

Introducing "SeniorCare" – A New Program For Alaska Seniors

Governor Murkowski believes that Alaskans should be provided the opportunity to direct and have access to necessary medical care as close to home and community as possible. The governor is committed to protecting access to prescription drugs for seniors, as well as providing better access to senior services. This commitment brought about some new services to help Alaska seniors in a program called "SeniorCare," which will provide help with prescription drugs, access to healthcare, and information about senior benefits, senior resources and referrals.

***NEW!* "SeniorCare"**
The Senior Assistance Program has been brought under a new program called "SeniorCare." Eligible seniors will soon be provided an option to receive a prescription drug benefit in lieu of cash assistance as provided under the Senior Assistance Program. A prescription drug benefit will be offered to an additional group of eligible seniors needing assistance. The "SeniorCare" prescription drug benefit is anticipated to be offered April 2004, pending legislative approval.

***NEW!* "SeniorCare" Prescription Drug Benefit:** Anticipated to start in April, this program will provide a bridge for seniors needing assistance until the new federal Medicare prescription drug program goes into effect in 2006. Seniors who qualify for the Senior Assistance Program (135 percent of the poverty level), and who do not receive Medicaid prescription drug coverage, will be provided a choice between the new "SeniorCare" prescription drug subsidy of $1,600 a year (prorated) or to continue with cash assistance. Together with the $600 Medicare subsidy to begin this spring, these eligible seniors opting for the "SeniorCare" prescription drug benefit will have a combined benefit of $2200 a year. Additionally, seniors between 135 percent and 150 percent of poverty level will receive a prescription drug benefit of $1000 a year.

"SeniorCare" Senior Assistance Program: Currently, Alaskans 65 and older at 135 percent of poverty level can receive cash assistance of $120 per month. By April, the seniors who qualify for this program will be offered a new option of receiving the "SeniorCare" prescription drug benefit in lieu of the cash benefit, for a total drug subsidy of $2,200. With a higher income eligibility level than Adult Public Assistance, the Senior Assistance Program now helps over 7,600 seniors – about 15 percent of whom had never received the Longevity Bonus. Alaska will spend more than $9 million on this program in the current fiscal year.

Total Medicaid Program Assistance: Prescriptions, medical care, hospitalization and other services are provided to more than 7,000 elderly eligible Alaskans at a cost of $119.6 million a year. Alaska spends almost $100 million on prescription drugs annually through Medicaid, with 25 percent annual cost increases expected in the future.

***NEW!* Medicaid Preferred Drug List:** The Preferred Drug List, scheduled to be in place by early 2004, will contain costs for prescription drugs provided to those receiving Medicaid. The Preferred Drug List will protect Alaska low-income seniors' access to prescription drugs, and will provide a valuable resource for all seniors to compare prescription drug costs. Once approved, the list will be made available through the Alaska Senior Information Office, allowing seniors to work with their physicians to identify cost effective drugs that are right for them.

***NEW!* Senior Information Office:** Find a one-stop resource and referral for benefits and services for seniors in the State of Alaska. Scheduled to be in place by mid-January, the Alaska Senior Information Office will provide a statewide toll-free telephone number for information on services available to seniors,

including: an up-to-date directory of local physicians who accept Medicaid and Medicare clients, available programs and services including "SeniorCare," prescription drug information and assistance for seniors.

Assistance with Medicare Costs for Low-Income Seniors: Premium, co-pay and deductible coverage is provided to those who qualify.

330 Clinics/Denali Commission: Federally funded clinics are being constructed in rural communities with assistance from the Denali Commission, to provide greater access for Medicaid and Medicare patients.

Other Programs for Alaska's Seniors

Please take a moment to learn about some of the other current programs that support Alaska's seniors.

Promoting self sufficiency and healthy behaviors
People should be provided the opportunity to be as independent and healthy as possible.

Long-Term Care Financial Assistance and Services

Home and Community-Based Programs: Seniors with dementia, those in rural areas, and other seniors in need are eligible for home- and community-based assistance programs. This program totals about $4.6 million annually in state funding.

***IMPROVED!* Assisted Living Development Investment:** We are working with the Denali Commission to develop community-based assisted living services in rural communities.

Older Alaskans Waiver Services: More than 1,350 seniors who are eligible for nursing home care chose to receive care at home instead. This program provides assistance to seniors who meet income criteria at a cost of about $25.5 million each year.

Personal Care Attendant Program: People with functional impairments and who meet income eligibility requirements are served by this program, at a cost of $21.8 million for seniors.

***IMPROVED!* Alaska Pioneers Homes**: Alaska's licensed assisted living facilities in Fairbanks, Palmer, Anchorage, Juneau, Sitka and Ketchikan provide more than 600 beds for Alaska's seniors. A person age 65 with one year Alaska residency can qualify for the Pioneers Homes. Rates are subsidized for low-income seniors. Alaska provides these services at a cost of about $35.7 million a year. Additionally, the state is proposing to invest more than $3 million to upgrade the Alaska Pioneers Homes in the next fiscal year.

Assisted Living Licensing: More than 1,700 assisted living beds are available in approximately 150 homes. There is no income criterion for this program.

Nursing Homes: The state of Alaska provides assistance to almost 950 people, largely seniors, in need of nursing home or home- and community-based waiver services. The state spent about $61.3 million in fiscal year ending June 30, 2003, on Medicaid nursing home services.

Transportation

Transportation services: Seniors and disabled residents get help in getting around town through local transportation services in communities statewide, such as AnchorRide in Anchorage, and Care-A-Van in Juneau. Alaska provides about $1.3 million annually for this program.

Employment Services

Senior Community Service Training and Employment: This program offers vocational training and job placement services to low-income Alaskans age 55. The state provides $1.6 million a year to support this effort.

Senior CARE

Comparison of Qualifications and Benefits

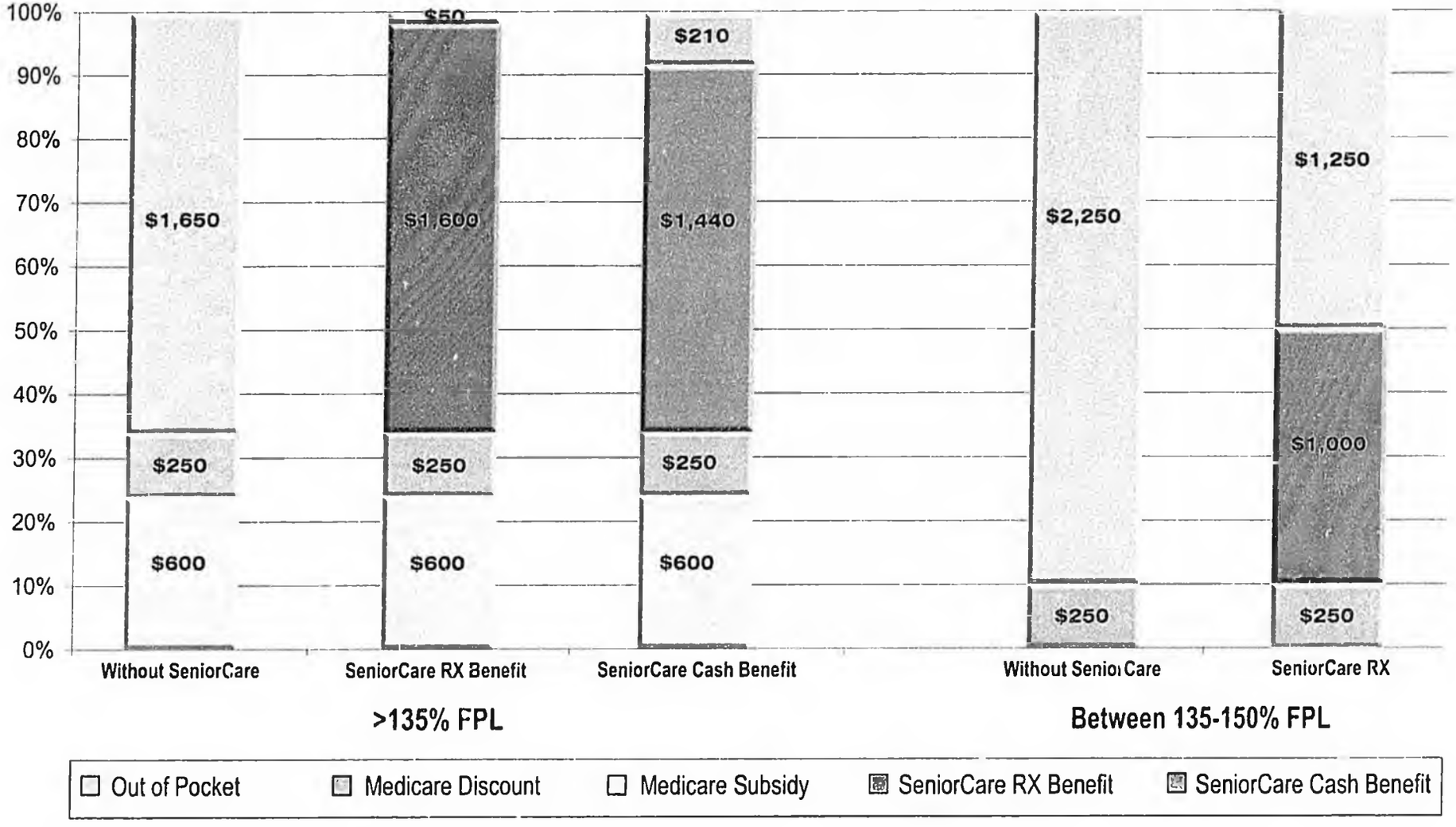
	SeniorCare Prescription Drug Subsidy	SeniorCare Cash Assistance Subsidy	SeniorCare Prescription Drug Subsidy
Qualifications	135% of Poverty Level Annual Income below $15,135 Single $20,439 Couple Liquid Assets below $4,000 Single $6,000 Couple	135% of Poverty Level Annual Income below $15,135 Single $20,439 Couple Liquid Assets below $4,000 Single $6,000 Couple	135% to 150% of Poverty Level Annual Income below $16,815 Single $22,710 Couple Liquid Assets below $4,000 Single $6,000 Couple
SeniorCare Benefit April 2004 - December 2005	$1,600 Annual Prescription Drug Subsidy (prorated)	$120 a month cash assistance (up to $1,440 annual)	$1,000 Annual Prescription Drug Subsidy (prorated)
Medicare Benefit May 2004 - December 2005	Annual Medicare Subsidy $600 Medicare drug discount	Annual Medicare Subsidy $600 Medicare drug discount	Medicare drug discount

Senior CARE

Bridging the Gap

Comparison of Benefits

$2,500 Annual Rx Cost



State of Alaska

Department of Health & Social Services

Frank H. Murkowski
Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

NEWS RELEASE

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FOR IMMEDIATE RELEASE: Dec. 17, 2003

Governor announces Senic Care, a new array of services for Alaska seniors

Prescription drug benefit, new services, better access to health care, information & resources to be offered

Juneau, Alaska – Governor Frank H. Murkowski today announced SeniorCare, a new proposed program to make prescription drugs more affordable for Alaska seniors. "SeniorCare will provide qualified seniors with a prescription drug benefit to assist in the purchase of needed medications," Governor Murkowski said. SeniorCare will also include a new Senior Information Office and a Preferred Drug List to make prescription drugs more affordable. Seniors receiving the Alaska Senior Assistance Program can choose to continue receiving the cash assistance of $120 a month instead of the drug coverage.

"SeniorCare will provide a bridge for those seniors most in need of assistance until the full Medicare prescription drug benefit begins in January 2006," Governor Murkowski noted. "I will ask legislators to pass this legislation in January so that this benefit can begin in April 2004." The Senior Assistance Program cash benefit was only budgeted in the current fiscal year and would end June 30 if the legislature takes no action, but will continue as an option until January 2006 if passed.

"SeniorCare will help low income seniors who do not otherwise qualify for public assistance – the people with greatest needs," said Department of Health and Social Services Commissioner Joel Gilbertson. "However, we will provide a broader program that will help all seniors," Gilbertson said. The new SeniorCare program will provide a one-stop senior resource and referral service, help with prescription drugs and access to healthcare, and work to lower the cost of prescription drugs.

Seniors who qualify for the Senior Assistance Program (65 and older and 135 percent of the poverty level), and who are not receiving comprehensive Medicaid prescription drug coverage will be provided a choice – between the new SeniorCare prescription drug subsidy of $1,600 a year or to continue to receive the Senior Assistance Program cash assistance of $1,440 a year. Together with the $600 Medicare subsidy to begin this spring, these eligible seniors opting for the SeniorCare prescription drug benefit will have a combined drug subsidy of $2,200 a year.

-more-

Currently those seniors who qualify for the Senior Assistance Program earn less than $15,134 annually, or if living with a spouse, earn less than $20,439. To qualify, some assets are considered in the overall needs test.

Additionally, seniors between 135 percent and 150 percent of poverty level will receive a prescription drug benefit of $1,000 a year. The qualifying income level for these seniors would be those making below $16,815 for an individual or $22,710 for a couple. New federal poverty guidelines will be released early in 2004 and income level guidelines may change.

Other new offerings under the SeniorCare program include completion of a Preferred Drug List and opening a Senior Information Office.

"My commitment to Alaska seniors is to protect their access to prescription drugs, and to provide them better access to senior services," Governor Murkowski said. "Alaska seniors want to get necessary medical care as close to home and community as possible, and they want the opportunity to direct that care to the maximum extent. These are important because they promote independent living at the highest level possible, and that's what SeniorCare is all about."

The Medicaid Preferred Drug List, scheduled to be in place by early 2004, will contain costs for prescription drugs provided to those receiving Medicaid. The list will contain recommendations, selected by Alaska physicians and pharmacists, on drugs that are proven to be the most efficacious, cost-effective and safe. "The Preferred Drug List will also provide a valuable resource for all seniors to compare prescription drug costs, and will enable seniors to work with their physicians to identify cost-effective drugs that are right for them," Gilbertson said. Once implemented next spring, seniors can get the list from the new Alaska Senior Information Office.

"By mid January, our new Senior Information Office is going to be the single stop Alaska seniors will have to make for all resources and referrals they need," Governor Murkowski said. "This is an essential thing we can do to give Alaska seniors better customer service." The Alaska Senior Information Office will provide a statewide toll-free telephone number and Web site for information on services available to seniors, including an up-to-date directory of local physicians who accept Medicaid and Medicare clients, available programs and services including SeniorCare, and prescription drug information and assistance for seniors. The Senior Information Office and the Preferred Drug List will not need legislative approval to be implemented.

The toll-free telephone number for the SeniorCare Senior Information Office is 1-800-478-6065 (Anchorage 907-269-3680) and the Web address is: http://www.seniorcare.alaska.gov

Current programs for seniors which will fall under SeniorCare include comprehensive Medicaid health insurance coverage and Medicare cost-sharing assistance for low-income seniors. About 7,000 eligible seniors receive prescription drugs, medical care, hospitalization and other services from the state at a cost of $119.6 million a year. In addition, DHSS will continue to work with the Denali Commission and others to ensure greater access to healthcare for Medicaid and Medicare patients.

-30-

For more information, please contact

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Public Information Officer III
Department of Health and Social Services
(907) 465-1611

AARP Alaska

JAN 12 2004

January 12, 2004

The Honorable Peggy Wilson, Chair
House Committee on Health, Education and Social Services
Alaska State Capitol, Room 104
Juneau, Alaska 99801-1182

Dear Chair Wilson: RE: SeniorCare (Governor Murkowski) - Support

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Committee on Health, Education and Social Services to support Governor Murkowski's SeniorCare proposal.

As you know, many older Alaskans faced very difficult financial situations with the loss of the Longevity Bonus. I am sure you heard from your constituents, as we did from our members, that their retirement budgets were significantly impacted by this loss after they had already been retired.

The Senior Assistance Program does not replace the Longevity Bonus, but helps over 7,000 older Alaskans cope financially in their later years. This program was projected to end June 30, 2004.

The SeniorCare program will extend the Senior Assistance Program, for those who qualify and choose to participate, until January 1, 2006. On that date the new federal Medicare prescription drug benefits will begin. During the debate about the Governor's proposal to eliminate the Longevity Bonus, we indicated in our testimony that many older Alaskans told us that they used the Bonus to purchase prescription drugs that, as you know, have had disproportionately high increases every year. The Senior Assistance Program checks have helped to cover at least some of those same costs.

3601 C Street, Suite 1420 | Anchorage, AK 99503 | 907-341-2277 | 907-341-2270 fax | 1-877-434-7598 TTY
James G. Parkel, President | William D. Novelli, Executive Director and CEO | www.aarp.org

The SeniorCare program offers older Alaskans a choice: to continue to receive the monthly Senior Assistance checks or to receive assistance with their out-of-pocket prescription drug costs until January 1, 2006, when the Medicare prescription drug benefit begins. Any assistance that will help eligible older Alaskans cope with the increasing costs of prescription medications will be welcome. As a nurse, you know better than most how important it is to be able to afford prescription drugs. It's just smart medicine and certainly older Alaskans will appreciate the financial support.

In addition, the SeniorCare program will have a new class of an estimated 2,200 older Alaskan beneficiaries who will be eligible for state prescription drug assistance of $1,000 annually. These citizens have incomes between 135% and 150% of the federal poverty level. They do not qualify for the Senior Assistance program and this is a group that also faced difficulties when the Longevity Bonus was eliminated. The SeniorCare program will help them with prescription drug costs until the Medicare program begins in two years.

The SeniorCare proposal also provides two additional staff for a Senior Information Office. In all our AARP surveys, access to helpful information is always cited as a critical need by older persons as well as younger family members who may be caring for older relatives. We anticipate that these new staff positions will help answer those questions for an ever-growing senior population and provide local contacts and guidance.

AARP particularly applauds the last part of the SeniorCare program: the Medicaid preferred drug list (PDL).

All of us, legislators and citizens alike, are frustrated by the rising costs of prescription drugs in the Medicaid program. "Whatever the market will bear" increases in prescription drug costs cannot continue without devastating our state budget.. Many states have already established preferred drug lists as a tactic to rein in prescription spending while still providing the most effective therapy available. States that have implemented Medicaid PDL's have generally saved at least 10% on prescription costs. It is just good common sense. Why should Alaska pay for a more expensive medication when a less expensive one is available, especially when it has been found scientifically to be equivalent or even more effective? AARP supports PDL's – with appropriate consumer protections – to avoid cuts in Medicaid eligibility or benefits and to expand access to affordable drugs. The Alaska preferred drug list that is currently being developed provides those consumer protections that AARP considers important.

PDL's also take advantage of pharmaceutical manufacturers' desires for market share. Anyone who watches 30 minutes of television understands how serious pharmacy companies are about direct-to-consumer marketing. With the companies spending more money on marketing than research, PDL's offer them an opportunity to expand the market share they obviously desire.

The Alaska program is being developed at a fortunate time. Federal funding for state efforts has resulted in unbiased information for therapeutic effectiveness comparisons

between drugs in the same class and making prudent purchasing decisions based on scientific evidence, not marketing claims.

In the past, we have not had a "Consumer Reports" for prescription drugs. All we had were the claims of the manufacturer or the television image of how much better life would be if we only took that particular brand name medicine. Now, however, PDL's are being developed using scientific evidence on effectiveness as well as cost.

Think about this. When a drug company seeks approval for a new drug from the FDA, they are only required to prove that their medication is more effective than a sugar pill. They are not required to prove that their product is more effective than drugs that are already on the market to treat a particular condition.

The Alaska Preferred Drug List will be our "Consumer Reports" for prescription drugs. It will be based on clinical evidence and standards of practice. Costs will be considered but only after safety and therapeutic efficacy.

When a physician determines it is medically necessary, he/she can prescribe a drug that is not on the PDL.

The comparative information on the PDL will be good consumer information for all of us, whether we are Medicaid beneficiaries or not. AARP believes the Alaska PDL will help us to be more prudent prescription drug consumers with information on costs as well as effectiveness. We applaud the steps already taken by Commissioner Gilbertson and the Alaska health professionals who are developing the PDL.

Although we have not seen any necessary or specific legislative language, "we like what we hear." We will be glad to comment further when the legislation and regulations are available.

When we survey our members about their prescription problems, their concerns generally come down to access and affordability. AARP anticipates the proposed SeniorCare program will help older Alaskans and all Medicaid beneficiaries with both these issues.

We encourage you and your Committee colleagues to support the SeniorCare program.

Should you have any questions about our position, please feel free to contact Marie Darlin, Coordinator of the AARP Capital City Task Force (907-586-3637); Patrick Luby, AARP Legislative Representative (907-762-3314); or me (907-245-5259).

Thank you for your consideration.

Sincerely,

Marguerite Stetson

Marguerite Stetson
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Representative John Coghill
Representative Paul Seaton
Representative Kelly Wolf
Representative Sharon Cissna
Representative Mary Kapsner
Governor Frank Murkowski
Commissioner Joel Gilbertson
Marie Darlin
Patrick Luby

HB

378

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Alaska State Legislature
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HB 378

Sponsor Statement

HB 378 amends provisions in Title 17 relating to the powers of the Commissioner of the Department of Environmental Conservation (DEC) relating to food offered or sold to the public. The bill makes it possible for DEC to require food-handling operators to become trained and certified and assess fines. Both of these capacities are needed as part of the new food safety paradigm - Active Managerial Control. In addition, the bill defines a violation of labeling or advertising as a violation of the unfair trade and consumer protection provisions.

Currently, AS 17.20.005 allows the Commissioner of DEC to issue orders, regulations, permits, embargoes, and quarantines. This includes inspection, sanitation standards, food handling methods, and labeling. Under this bill, the Commissioner of DEC will have additional authority to ensure knowledge of food safety and sanitation by individuals who handle or prepare food for the public, and persons who supervise or employ those individuals. This bill also authorizes DEC to impose a civil fine for a violation of the Alaska Food, Drug, and Cosmetic Act.

HB 378 also clarifies that a violation of the label or advertisement provisions in AS 17.20, or a violation of the representation requirement in AS 17.06 is an unfair or deceptive trade practice under Alaska's Statutes. This will allow the Attorney General's office to investigate labeling violations that are not food safety or sanitation concerns.

Knowledgeable Workforce

Trained Workers

Certified Managers

Managing Risks

Quarterly Self Assessments

Standard Operating Procedures:

Cleaning & Sanitizing
Receiving & Storage
Handwashing
Employee Health
Risk Factor related SOPs

Enforcement

Record Audits

Risk Based Inspections

Enforcement Actions

Testimony HB 378
Kristin Ryan - Director, Division of Environmental Health

- Restaurant industry sales account for 4 percent of the U.S. gross national product. According to the National Restaurant Association, Alaska saw sales of $878 million in 2003, and is projected to see sales of $922 million in 2004 (a 5% increase).
- Nationwide, the industry employs 12 million people, the nation's largest private-sector employer. In Alaska the numbers vary by season but averages to about 20,000 or 3% of the population (total pop 626,932).
- In 2000, an E. Coli outbreak at a Kenai restaurant resulted in 31 known sick Alaskans and an estimated 300 more unknown. The cause was infected workers, poor hand washing, food temperature control and cross contamination - All things easily avoided by a knowledgeable workforce. The operation permanently closed as a result.

Alaska needs a more effective food safety system - a system that ensures operators and staff are knowledgeable about food safety and accountable for controlling practices and procedures that contribute to foodborne illness. A system that sets reasonable standards, can be equitably implemented in both urban and rural settings, and does not rely on an infrequent government inspection to determine if standards are being met on a day-to-day basis.

- **Certification is a necessary part of an effective food safety system.**
- **Enforcement tools are necessary to promote compliance.**
- **Certification and enforcement are key components of Alaska's new Food Safety protection system called Active Managerial Control.**

1. Certification is a necessary part of an effective food safety system.

a. Government food protection programs across the country are grappling with diminishing resources and ineffective delivery systems. Relying on government inspections as the primary tool to ensure high sanitary standards is no longer considered an effective method to ensure food offered or sold to the public is safe. The premise that inspections can improve sanitation of restaurants is flawed. Alaska has never been able to inspect frequently enough to truly protect public health. A national trend toward a more effective food safety program makes it a food worker's responsibility to practice established safe food handling skills 365 days a year, and prove it through certification and testing.

b. A national study found restaurants for which managers were required to attend a training and certification program demonstrated significantly improved sanitation practices that were sustained over a two-year follow-up period.

c. Alaska's food permit holders were asked what they needed for a safe food handling system. Out of 321 respondents 89% stated mandatory food manager certification was necessary and 82% believed mandatory food handler training was also necessary.

d. Forty-one States or local governments have mandated certification requirements. Most remaining jurisdictions have voluntary programs like Alaska's current program.

e. It is a mark of professionalism to meet criteria determined by one's peers. Lawyers take the bar examination, doctors pass boards, and public accountants become CPAs. The process of certification and demonstrated knowledge raises professional esteem and expectations.

2. Enforcement tools are necessary to promote compliance.

a. Issuing a notice of violation, closing a facility, or pursuing criminal prosecution are currently the only enforcement tools DEC can use to promote compliance. Closing a facility is only appropriate when a serious health threat exists, and there are practical, procedural, and economic constraints to pursuing criminal prosecution for regulatory violations. Having the capacity to issue appropriate fines for violations that are significant or repeat violations provides a more reasonable, efficient, and effective mechanism to ensure food offered or sold to the public is safe and deter subsequent violations.

b. Some say that the threat of consumer lawsuits is adequate motivation for operators to serve safe food. However, many foodborne illnesses go unreported and cannot be attributed to a specific eating establishment. The median reported cases were 25:1.

3. Certification and enforcement are key components of Alaska's new Food Safety protection system called Active Managerial Control.

Each individual in the food chain from farmer to processor to retailer to consumer has some responsibility for food safety. The ultimate responsibility at the retail level lies not with the regulator but with the food service operators.

What makes an effective food safety system or regulatory program?

a. Unambiguous statutory authority. Alaska has a solid statutory foundation to ensure sanitary practices are used in the operation of a food handling establishment.

b. Documented basis for concern.
   1. Centers for Disease Control estimates 76 million illnesses, 325,000 hospitalizations and 5,000 deaths a year caused by foodborne illness
   2. Foodborne illness can be traced to several sources--61% is traced to the foodservice industry, 32% to homes and 7% to food processing plants.

c. Protective standards - With nearly 100 years of food safety regulation experience in the U.S. we know that the 5 risk factors that must be controlled are: food from unsafe sources, inadequate cooking, inadequate holding, contaminated equipment and poor personal hygiene.

d. Rational regulatory scheme. 32 Alaska food safety experts (Food Safety and Sanitation staff) have reviewed how jurisdictions and industry ensure food safety in other states and developed Alaska's new regulatory scheme called Active Managerial Control. As the name implies, responsibility for food safety has been clearly placed on operators. It consists of food service workers that are knowledgeable about the causes of foodborne illness and practices to control them, written standard operating procedures and self-audits, and DEC enforcement implemented through on-sight inspections and record audits. HB 378 is needed to make the proposed rational regulatory scheme of AMC possible.

e. Documented compliance. AMC incorporates various ways for operators to document and DEC health officers to verify compliance.

f. Enforcement. Flexible mechanisms are needed to promote compliance through appropriate actions that prevent and deter rather than ineffective mechanisms that only react and punish.

- **Certification is a necessary part of an effective food safety system.**
- **Enforcement tools are necessary to promote compliance.**
- **Certification and enforcement are key components of Alaska's new Food Safety protection system called Active Managerial Control.**

Memorandum

DATE: November 7, 2000

TO: FOR THE RECORD

FROM: Michael Beller, M.D., M.P.H.
Medical Epidemiologist

THRU: Sue Anne Jenkerson, R.N.C., M.S.N., F.N.P.
Nurse Epidemiologist

FROM: Kim Mynes-Spink, R.N., B.S.N.
Nurse Epidemiologist

SUBJECT: Final Report - Escherichia coli O157:H7 outbreak-Kenai Peninsula

Introduction

On July 18, 2000, the microbiologist at Central Peninsula General Hospital in Soldotna reported four laboratory-diagnosed cases of Escherichia coli O157 infection and said other patients with diarrhea had been seen in the emergency department. An outbreak investigation was immediately begun. This report summarizes Interim Reports of July 20, 21, and 28 and presents additional information collected since the last Interim Report.

Methods

We interviewed persons living on or visiting the Kenai Peninsula in July who developed an acute gastrointestinal illness (diarrhea, abdominal cramping, or bloody diarrhea) or had a positive stool specimen for E. coli O157. Initially, subjects were interviewed because they presented to Central Peninsula Hospital with gastrointestinal symptoms. After notification of Kenai Peninsula physicians of the outbreak and news media coverage beginning on July 20, other ill persons contacted the Section of Epidemiology. A questionnaire was used for the interviews (Attachment 1).

Because the interviews suggested that the source of the outbreak was the Mad Moose restaurant in Sterling (see Results), we interviewed all workers there. We obtained

worker schedules and compared shifts with times and dates that ill patrons had eaten at the restaurant.

Stool specimens were collected from all restaurant workers (irrespective of illness status) and requested from ill persons identified during the interviews. Some ill persons did not submit specimens. Positive specimens from hospital laboratories were sent to the State Public Health Laboratory and the U.S. Centers for Disease Control and Prevention (CDC) for confirmation, complete identification, and pulsed field gel electrophoresis (PFGE), a type of "genetic fingerprinting." The enzymes used for the PFGE were XbaI and BlnI. PFGE also was performed on an Anchorage E. coli O157:H7 isolate from July 2000 and a Sterling isolate from September 2000. In order to examine isolates unrelated to the outbreak, PFGE was done on three E. coli O157:H7 isolates from sporadic Alaska cases during 1998.

On July 19, the Department of Environmental Conservation (DEC) inspected the implicated restaurant. Food samples, including ground beef and hamburger patties, were obtained and sent to the State Public Health Laboratory and cultured for E. coli O157. The next day, the DEC inspector used culturette swabs to collect samples from a cutting board, a meat slicer, and kitchen surfaces. The swabs were sent to the DEC laboratory in Palmer and used as cleanliness indicators and for quality control at the laboratory.

On July 18, the U.S. Department of Agriculture issued a recall for ground beef contaminated with E. coli O157 that had been sold by an Anchorage meat supplier. We obtained information on the ground beef sold by the supplier and the sources of meat used by the restaurant. CDC compared the PFGE pattern of the E. coli O157 isolate from the recalled ground beef to the isolates from ill restaurant patrons and workers.

We obtained from the restaurant owner a list of 28 patrons that had eaten at the restaurant during July 6 to 9, 2000 and paid by check. They were interviewed about illness in their households.

On August 23, Dr. Michael Beller and Kim Mynes-Spink met with the restaurant owner to review our findings and answer questions. The owner was given information about E. coli O157:H7, graphs used in the investigation, and the PFGE results.

Results

In all, 58 persons were investigated who either had gastrointestinal illness or worked at the restaurant. Stools were collected from 39 of them, including all 12 restaurant workers. Since all persons with a positive stool culture had eaten at the Mad Moose 2 to 7 days before becoming ill and no other common exposures - restaurants, grocery stores, or social gatherings - were identified, we defined cases as follows:

1. A **confirmed case** was a person who within 8 days eating or working at the Mad Moose on or after July 1, 2000 either
   - had a stool culture positive for E. coli O157:H7, or

- met the clinical case definition (see below) **and** had eaten one or more meals at the restaurant with a person with a positive stool culture.

2. A **clinical case** was a person who ate or worked at the Mad Moose on or after July 1 and within 8 days had diarrhea, abdominal cramping or bloody diarrhea but did not have a positive stool culture.
3. A **secondary case** was a person with a stool culture positive for E. coli O157:H7 who developed acute gastrointestinal symptoms within 3 weeks of having contact with a household member who had eaten or worked at the Mad Moose.

There were 19 confirmed cases (16 patrons and three workers; all but two of which were laboratory confirmed), 10 clinical cases (nine patrons and one worker), and two secondary cases (both were siblings of a worker). This left 18 persons who reported being ill but had not eaten at the Mad Moose (five submitted stool for culture; all were negative) and nine employees who did not report having gastrointestinal symptoms and had negative stool cultures. All persons with E. coli O157:H7 infection in Alaska during April to August 2000 (except for an Anchorage resident with E. coli O157:H7 infection during June, see below) had either eaten or worked at the Mad Moose or lived with someone who had.

The most common symptoms experienced by cases were bloody diarrhea and abdominal cramping (Table 1). Cases ranged from 10 months to 73 years of age. Nearly 75% of the cases (23/31 or 74%) resided on the Kenai Peninsula; 12 in Kenai or Soldotna and 11 in Sterling. The remaining cases resided in Anchorage (n = 3), the State of Arizona (n = 3), and Wasilla (n = 2). For confirmed cases, 11 were male and eight were female; clinical cases included five males and four females; both secondary cases were male. Eleven cases were hospitalized; there were no deaths or serious sequelae, such as hemolytic uremic syndrome.

Among Mad Moose patrons, illness onset dates ranged from July 10 to July 24 (Figure 1). Patrons ate at the restaurant from July 7 to July 19 (Figure 2). The restaurant was closed on July 10, July 17, and July 20 to August 4. The mean interval between eating at the Mad Moose and onset of symptoms was 2.8 days (range: 2 – 7 days).

Among the 25 patron cases, none reported eating breakfast at the restaurant, 11 had lunch, 11 had dinner, and three had more than one lunch or dinner. Two were unsure of meal dates. No common food items were identified: nine had hamburgers, five had prime rib, three had club sandwiches, and one each had cashew salad, chef's salad, turkey sandwich, bacon-lettuce-tomato sandwich, and chicken fried steak (Table 2). Because patrons had difficulty recalling food items other than the main course, we did not ask them about salads, side dishes, or beverages.

Four restaurant workers reported having gastrointestinal symptoms during July, onsets were from July 11 to July 16 (Figure 2). Three of the four had positive stool cultures. The ill worker with a negative culture had illness onset on July 11 but did not submit a stool specimen until July 31. Employees had meal privileges at the restaurant and ill workers had eaten multiple meals.

Nine of the E. coli O157:H7 isolates were submitted to CDC; all were confirmed. The State Public Health Laboratory conducted PFGE on isolates from 17 confirmed cases, an isolate from an Anchorage infection in July 2000, an isolate from a Sterling infection in September 2000, and three unrelated isolates from 1998. Twelve patron isolates and three employee isolates had an indistinguishable PFGE pattern, which was termed the "outbreak pattern." Two of the outbreak pattern isolates were submitted to the State Public Health Laboratory by an Arizona laboratory since the patients, both patrons of the Mad Moose, had returned home to Arizona by the time of illness onset. Two patron isolates were indistinguishable from the outbreak pattern with the B1nI enzyme but had a one band difference with XbaI enzyme. The three isolates from previous infections and the July Anchorage isolate had PFGE patterns markedly different from the outbreak pattern (the ill Anchorage resident had not eaten at the restaurant). The September Sterling isolate was similar to the outbreak pattern though the patient had not eaten at the restaurant (see attachment).

Findings from the DEC inspection conducted on July 19 were: inadequate separation of cooked meat, uncooked meat and other foods; use of a cutting board that could not be cleaned thoroughly; inappropriate cooling process for prime rib; and inadequate hand washing between handling uncooked meat and other foods.

All 13 food samples taken on July 19 tested negative for E. coli O157:H7. Results from the culturette swabs varied from common organisms such as Streptococcus to Enterobacter cloacae; no E. coli O157:H7 was identified.

A small amount of ground beef used by the restaurant was purchased from a major retail store in Soldotna. Most of the ground beef served during the outbreak was purchased from a supplier on the Kenai Peninsula. From July 6 to July 18 the restaurant received three 80-pound shipments. The supplier had purchased meat from an Anchorage distributor. This distributor had sold ground beef to multiple suppliers including the Kenai Peninsula supplier and an Anchorage supplier that had been the subject of the USDA recall.

The PFGE pattern of the E. coli O157:H7 isolate obtained by USDA from the recalled ground beef was different than the outbreak pattern. The restaurant owner denied purchasing any meat from the Anchorage supplier. The sausage and bacon served during breakfast were purchased f om a different supplier on the Kenai Peninsula. The restaurant also obtained steak, prime rib, seafood, produce and miscellaneous items from this supplier.

We completed telephone interviews with 29 residents from 14 households on the list of restaurant patrons that had paid by check during July 6 to July 9. Five patrons had breakfast, five had lunch, and 21 had dinner; two of the lunch patrons also had breakfast during July 6 to July 9 (Table 3). Four reported having diarrhea 2 to 7 days after eating at the restaurant, all four reported having lunch or dinner at the restaurant on July 7 or July 9. The restaurant owner said 150 to 200 patrons ate lunch or dinner each day during July.

By applying the attack rate for lunch and dinner patrons in the survey (4/26 or 15%) to the estimated 1,500 to 2,000 lunch or dinner patrons served during July 7 to 19, we estimated at 225 to 300 persons may have been ill after eating at the restaurant.

All three workers with laboratory confirmed infection worked during the outbreak period. The other ill worker (with a negative stool culture) last worked on July 8 and became ill on July 11. All employees were involved in some food handling, preparation, or serving. There was no individual work schedule that matched the dates that ill patrons ate at the restaurant.

After the restaurant re-opened on August 4, one case of E. coli O157:H7 was reported from Sterling through the end of September. This case was not linked to the implicated restaurant (see attachment). There were seven other E. coli O157:H7 infections reported in Alaska between August 4 and September 30: five in Anchorage and one each in Seward and Fairbanks. None of these were linked to the restaurant

Discussion

Alaska has had very few E. coli O157:H7 infections reported (an average of 6.3 per year during 1997-1999), so the occurrence of almost 20 cases in less than a month is very unusual. The facts that all 19 laboratory confirmed cases either ate or worked at the Mad Moose and that 15 had an identical PFGE pattern were overwhelming evidence of a link between illness and the restaurant. The conclusion is further supported by the:

- absence of any other common exposure despite careful and extensive questioning,
- presence of serious sanitation deficiencies at the restaurant,
- mean interval between eating at the restaurant and illness onset was the same as the established incubation period (3 to 4 days, range 2 to 8 days) for E. coli O157:H7 infection, and
- observation that the outbreak stopped when the restaurant closed.

Although the epidemiologic and laboratory evidence demonstrated that the restaurant was the source of the outbreak, the investigation did not implicate any particular food item, food handler, or practice. This does not alter the conclusion that the outbreak came from the restaurant. Nearly all the patrons who became ill after eating on July 7, 9, and 11 had eaten hamburgers or prime rib. Given the well-established link between beef and E. coli O157:H7 and DEC's observation of food handling deficiencies, it is possible that the initial patrons and employees became ill after eating undercooked meat. Subsequently, infected restaurant workers could have been the source of illness among patrons who ate during July 13 to 19. A ground beef recall which occurred at the same time as the outbreak had no connection to the outbreak.

Food and kitchen surface samples taken on July 19 and 20 tested negative for E. coli O157:H7. These samples were collected 10 to 12 days after the outbreak started and were not from the same food shipments the ill patrons ate. Environmental swabs were collected after the restaurant closed and cleaning had occurred. Clearly, the culture results do not mean that meat served earlier did not contain E. coli O157:H7, that kitchen

surfaces were not contaminated, or that foods were not cross-contaminated with E. coli O157:H7 from meat.

Humans generally excrete E. coli O157:H7 for 1 or 2 weeks after being infected. Therefore, some of the nine workers who had negative stool cultures in mid- to late-July could have been culture positive earlier in the month. In particular, the worker with illness onset on July 11 could have had E. coli O157:H7 infection despite a negative culture of a stool collected on July 31.

Because the infectious dose is low, E. coli O157:H7 is readily transmitted from one person to another. Since the three workers with positive stool cultures worked while ill, a worker could have passed infection to patrons. We did not find a link between employee schedules and when patrons dined. However, the restaurant owner said the work schedule we were given was not the actual schedule (employees were allowed to trade days off or shifts). We requested a copy of the actual work schedule, but the owner did not provide one.

This outbreak was probably larger than the 31 cases identified. Investigation suggested that 15% of lunch and dinner patrons during the outbreak, or 225 to 300 persons, might have been sickened. Since some persons with E. coli O157:H7 infection have relatively mild symptoms, and many persons with diarrhea do not obtain medical care, we suspect that the true number of cases was substantially larger than the number of confirmed and clinical cases. The restaurant was in a community with a large influx of out-of-state tourists and additional cases may have returned home before becoming ill.

In conclusion, our investigation traced an E. coli O157:H7 outbreak to a restaurant. The restaurant was closed and the outbreak stopped. DEC worked with the owner and employees to correct all deficiencies before the restaurant re-opened. Because the source of the outbreak was quickly identified, disease transmission was stopped even though the precise mechanism of spread was not determined.

Acknowledgments: Janet Gleason and Lenore Wynkopp at Central Peninsula Hospital were extremely helpful in providing up-to-date information as the outbreak progressed. Patty Little, PHN at the Kenai Health Center quickly and efficiently completed interviews and collected stool specimens.

Attachments: Interim Reports
Memo to the Record, Escherichia coli O157 – Sterling

CC: Brad Tufto, DEC
Jerry Ferrington, DEC
Cory Willis, DEC
Janet Gleason, Central Peninsula Hospital
Patty Little, Kenai Health Center

The Eating and Drinking Industry

by Neal Fried
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Labor Economists

Many Alaskans find work at eating and drinking places

"A man hath no better thing under the sun, than to eat, and to drink and to be merry."
Ecclesiastes 8:15

"The finest landscape in the world is improved by a good inn in the foreground."
Samuel Johnson

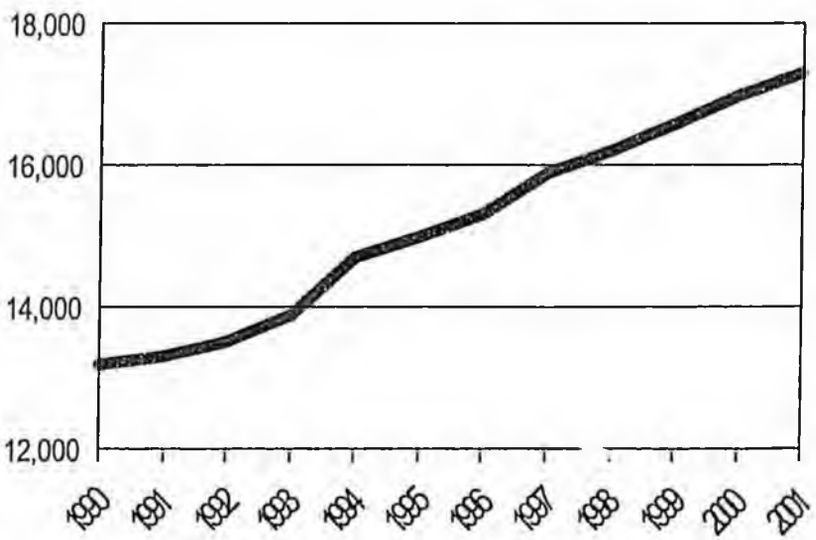
It is not just your imagination that eating places appear to be popping up literally everywhere these days—in gas stations, schools, airports, hotels, stores, along with those ubiquitous coffee shacks, and your actual stand-alone fast food eateries, bars, and sit-down restaurants. The eating and drinking industry is mushrooming across the nation. A third of all adults in the nation have worked in it some time in their lives. According to the National Restaurant Association, the average person eats 4.2 meals away from home every week, a frequency that has some home economists worried that cooking at home is becoming just a hobby, rather than a basic skill.

Alaska had 1,811 eating and drinking places in 2000, with sales projected to reach $982 million in 2001, according to the National Restaurant Association. These numbers grow every year, and competition intensifies. Eating and drinking is one of Alaska's more dynamic and competitive sectors, growing faster than most other industries. The industry's shape and look is constantly in flux, driven by changes in demographics, the economy, technology, fashions, tastes, and the state's visitor industry.

Recognizing eating and drinking places

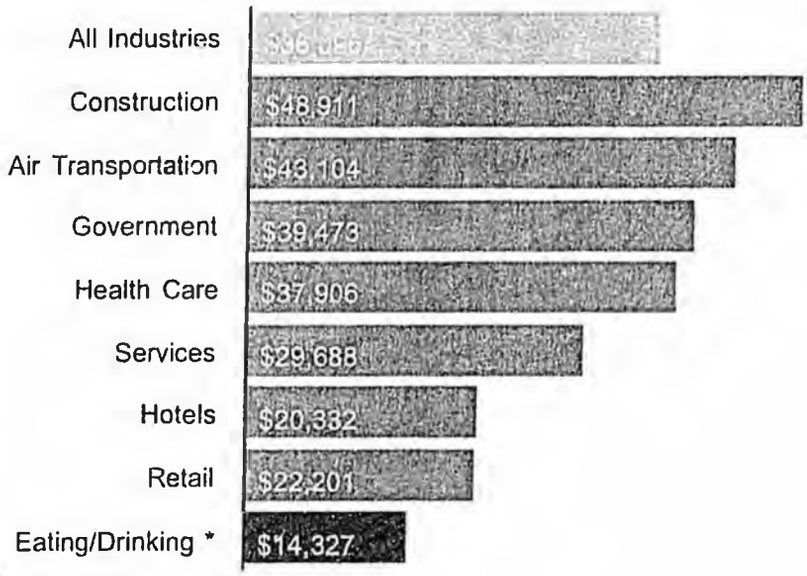
An eating and drinking place is defined as any business that prepares food and drink away from home, that is consumed either at a restaurant, bar, cafeteria, at home, at a grocery store, in sports facilities, in jail, on the go, at work, or in a car. In fact, it is estimated that one-fifth of all meals are eaten in a car. Employment data for eating and drinking places include nearly all of the above-mentioned kinds of places. However, this employment count does miss some players. Many hotels have restaurants and bars incorporated in their business and this employment is most likely captured in the hotel industry, not eating and

Restaurants Show Strong Growth In employment



Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

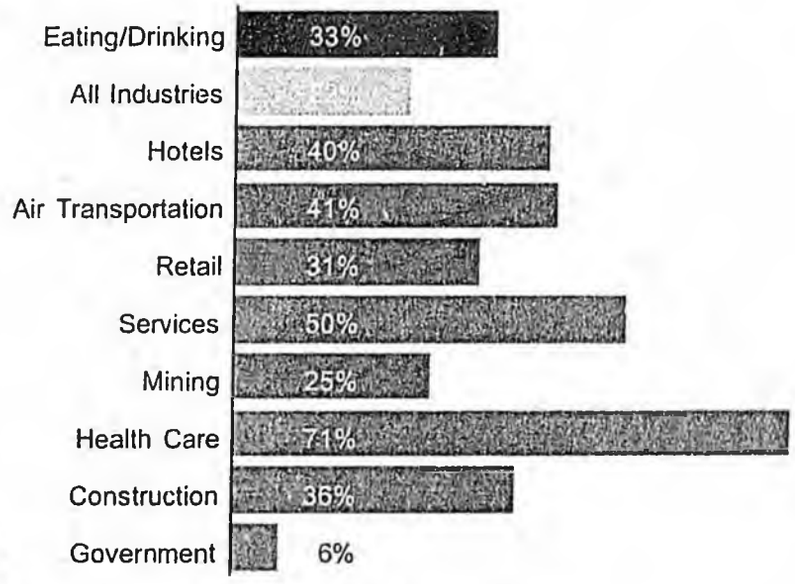
2 Wages in Eating and Drinking
Compared to other industries
2001 average annual wage



* Not including tips

Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

3 Employment Growth
Eating and Drinking vs. other industries
Percent employment growth 1990-2001



Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

drinking. Nationally, estimates project that about 4.4% of all food consumed away from home is eaten in hotel restaurants. That figure may be higher in Alaska because of the size of the visitor industry. Another example of missed eating and drinking places employment is today's supermarket, which often devotes a large slice of the business to ready-to-eat or ready-to-heat meals. Employment numbers are counted in the grocery store category. So, impressive as these eating and drinking employment numbers are, they tend to underestimate employment in the food-away-from-home businesses.

The industry employs more than 17,300

During the past decade, employment in Alaska's eating and drinking establishments has grown 2.8% per year versus 1.8% for total employment. This industry has grown steadily and without interruption for over a decade. (See Exhibit 1.) It supports 4,200 more jobs today than a decade ago. In 2001, 17,300 jobs in Alaska were directly tied to the eating and drinking industry—more jobs than oil, or construction, the federal government, or a number of other industries. Measured by payroll, the figures tell a different story. Total payroll for eating and drinking places was $248 million compared to $736 million for construction in 2001. Lower wages and the pervasiveness of part-time or seasonal employment put the average eating and drinking wage at the bottom of all industries. (See Exhibit 2.)

Employment for eating and drinking establishments grew quickly, faster than overall employment in Alaska, (see Exhibit 3) and in the nation as a whole over the past decade. The industry's share of the Alaska employment pie has expanded over the past two decades. In 1980, eating and drinking establishments generated four percent of all wage and salary employment in Alaska. By 2001, that share had more than doubled to 8.5 percent of all employment, compared to 6 percent nationwide. Nevertheless, the average Alaska consumer spends a smaller portion on food away from home than other Americans.

Eating and drinking employment is concentrated on the road system

More than 82 percent of all eating and drinking employment occurs in Anchorage, Fairbanks, the Kenai Peninsula, and the Mat-Su Borough. More than half of all workers are in Anchorage alone. Most of Alaska's population lives in these four urban areas, which are road accessible and on the most traveled visitor routes. Among the rural areas, the heaviest concentration of eating and drinking workforce is at the entrance to Denali National Park. There, the population to industry worker ratio is extreme, with only four residents per eating and drinking employee. (See Exhibit 4.) This underscores the tremendous impact the summer workforce, catering to visitors, has on the Denali Borough. Tourist areas in Southeast employ over nine percent of the state's eating and drinking workforce, but their ratio of population to industry worker is much larger. Most tourists in Southeast are cruise ship passengers, who typically take their meals on board. It is interesting to note that in the two places that can be reached by road, Skagway and Haines, the concentration of eating and drinking worker to population intensifies. Rural areas off the beaten path typically have much smaller eating and drinking industries. The exception is the North Slope Borough, where a relatively large food service workforce supports the oil industry.

More than a third of food dollars spent away from home

The average Anchorage consumer spent $2,498 per year on food away from home—which was 17 percent more than the average U.S. consumer, who spent $2,126. Some of this higher expense for Anchorage can be explained by higher costs, higher income and other factors. Expenditures in eating and drinking establishments generate business activity in other industries. According to the National Restaurant Association, each dollar spent in Alaska's eating and drinking industry generates another $.62 in sales are elsewhere. But

Restaurant Employment 4
And population by area–2001

	Restaurant Employment 2001	Population	Ratio of Population to Restaurant Employment
Statewide	17,301	626,932	36
Aleutians East Borough	2	2,697	1,349
Aleutians West Census Area	51	5,465	107
Anchorage, Municipality	9,820	260,283	27
Bethel Census Area	26	16,006	616
Bristol Bay Borough	15	1,258	84
Denali Borough	479	1,893	4
Dillingham Census Area	26	4,922	189
Fairbanks North Star Borough	2,212	82,840	37
Haines Borough	62	2,392	39
Juneau Borough	708	30,711	43
Kenai Peninsula Borough	1,216	49,691	41
Ketchikan-Gateway Borough	337	14,070	42
Lake and Peninsula Borough	n/a	1,823	n/a
Northwest Arctic Borough	36	7,208	200
Kodiak Island Borough	322	13,913	43
Matanuska-Susitna Borough	1,009	59,322	59
Nome Census Borough	110	9,196	84
North Slope Borough	271	7,385	27
Prince of Wales Census Area	91	6,146	68
Sitka Borough	192	8,835	46
Skagway-Hoonah-Angoon	92	3,436	37
Southeast Fairbanks Area	90	6,174	69
Valdez-Cordova Area	175	10,195	58
Wade Hampton Census Area	n/a	7,208	n/a
Wrangell-Petersburg CA	95	6,684	70
Yakutat Borough	19	808	43
Yukon Koyukuk Census Area	14	6,551	468

Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

.5 Restaurant Sales by State
Projected 2001

	Sales	Per Capita Sales
Alabama	$3,785,512,000	$848
Alaska	**981,836,000**	**1,546**
Arizona	5,803,522,000	1,093
Arkansas	2,108,463,000	783
California	38,791,181,000	1,124
Colorado	5,532,611,000	1,252
Connecticut	3,556,800,000	1,038
Delaware	1,028,488,000	1,292
Florida	19,977,170,000	1,218
Georgia	9,372,042,000	1,118
Hawaii	2,729,595,000	2,229
Idaho	1,183,084,000	896
Illinois	13,442,251,000	1,077
Indiana	6,507,865,000	1,064
Iowa	2,743,588,000	939
Kansas	2,589,664,000	961
Kentucky	3,876,847,000	954
Louisiana	3,976,505,000	891
Maine	1,278,021,000	993
Maryland	5,949,301,000	1,107
Massachusetts	7,887,413,000	1,236
Michigan	10,386,132,000	1,040
Minnesota	5,207,177,000	1,047
Mississippi	1,866,886,000	653
Missouri	5,909,281,000	1,050
Montana	1,053,856,000	1,165
Nebraska	1,768,602,000	1,032
Nevada	2,635,773,000	1,252
New Hampshire	1,374,268,000	1,091
New Jersey	8,435,056,000	994
New Mexico	1,953,459,000	1,068
New York	18,624,395,000	980
North Carolina	8,565,389,000	1,046
North Dakota	618,254,000	974
Ohio	12,108,456,000	1,065
Oklahoma	3,276,514,000	947
Oregon	3,961,123,000	1,141
Pennsylvania	11,757,078,000	957
Rhode Island	1,112,729,000	1,051
South Carolina	4,350,145,000	1,071
South Dakota	737,355,000	975
Tennessee	6,033,354,000	1,051
Texas	22,516,648,000	1,056
Utah	2,035,897,000	897
Vermont	672,066,000	1,096
Virginia	7,163,242,000	997
Washington	7,223,415,000	1,206
West Virginia	1,357,741,000	753
Wisconsin	5,504,860,000	1,019
Wyoming	577,941,000	1,169
U.S.	**303,326,361,000**	**1,065**

Source: National Restaurant Association

among all U.S. states, Alaska's multiplier not surprisingly ranked weakest. Very little of the food and drink consumed by patrons is produced in the state. Other economic leakages also exist.

The 2000 expenditure survey conducted by the U.S. Department of Labor established that Anchorage residents spent more than a third (36 percent) of their food budget on food consumed away from home, while the average American consumer spent 42 percent of their food dollar away from home—a significantly higher figure. The difference is puzzling, given Anchorage's demographics that favor dining out. Per capita expenditures on dining out paint an altogether different picture. Per capita spending in eating and drinking places was $1,546 in Alaska versus $1,065 nationally–a full 45 percent above the national average, according to the National Restaurant Association's 2001 figures. In proportion of food dollars spent on meals eaten out, Alaska is below the national norm, suggesting room for more growth. The per capita expenditures, on the other hand, mean Alaska's eating and drinking industry benefits from the patronage of non-Alaskans.

Visitors are big patrons of eating and drinking

Visitors are important patrons of the eating-away-from-home industry, and the visitor industry in Alaska has grown much faster than most other industries. According to a 1999 visitor expenditure study, visitors spent $63 million for eating and drinking and generated 4,120 eating and drinking jobs in Alaska in 1998. This represents nearly a third of all of the jobs in the industry. Only hotels and lodging generated more jobs. The Denali Borough, where the visitor industry reigns king, provides a special example of the influence visitors have on the eating and drinking sector. In 2001, there were 36 Alaskans for each eating and drinking job in the state, and only four residents for each such job in the Denali Borough. (See Exhibit 4.) Visitors, of course, are not counted in resident population figures, and during the summer months they far outnumber the resident population. Visitors spend most of their food dollar in local eating establishments, boosting the jobs-to-residents ratio way above the statewide average. Visitor impact on

this industry also probably explains why Alaska ranks number two among the states in per capita eating and drinking sales, bested only by Hawaii. (See Exhibit 5.)

The visitor share of the eating and drinking industry also explains most of its seasonal nature. In 2001, the low point in this industry's employment was January at 15,200 compared to its peak in August at 19,800. (See Exhibit 6.)

Restaurant food sales vary across state

Alaska's eating and drinking industry grossed over $730 million in 1997. (See Exhibit 7.) On a statewide basis, full service restaurants took in the largest share of revenues, followed by fast food and food service companies. Bar sales were 11 percent of the statewide eating and drinking revenues in 1997. (See Exhibit 8.) Anchorage claimed well over half of all restaurant and bar sales in the state, a disproportionately large share. Fairbanks, the Kenai Peninsula, Juneau, and the Mat-Su Borough fell in line in descending order. In 1997, 41.7% of Alaska's population lived in Anchorage but it booked 56 percent of Alaska's restaurant/bar industry sales. As Alaska's commercial center, Anchorage entertains business and in-state travelers, tourists, commuters, and its own growing population. Anchorage's relative high income compared to the rest of the state also helps to support the large number and variety of dining places.

Anchorage's restaurants tend to be large

Anchorage, the culinary hot spot of the state, had nearly 600 eating and drinking places in 2001. According to municipal records, about a third of Anchorage restaurants are small with seating up to 25; nearly 17 percent of the restaurants can seat between 26 and 50 patrons; but over half can seat more than 50 guests. (See Exhibit 9.) Many of the small places sell take-out fast food such as pizzas, hamburgers, sandwiches, Asian, and Mexican food specialties. Cafés, delis, and snack bars in hotels, meeting places, and grocery and convenience stores are sub-groups of the small eating establishments. The medium and large sized establishments sell similar food items but many are more specialized and offer more variety on their menus.

Asian food leads Anchorage's specialty menu

Among the specialty eating establishments, Asian restaurants, pizza, and hamburger places claim the top spots. (See Exhibit 10.) Many other specialty places present choices. Steakhouse and seafood restaurants are classified in the all variety section, which forms the largest portion of Anchorage's restaurant mix. Among Asian restaurants the Chinese kitchen dominates, and Mexican restaurants are in the runner-up position in the foreign food specialty group. (This assumes that pizza is an all-American food.) In continental specialties, restaurants featuring Italian cuisine (excluding pizzerias) are in the lead spot.

In restaurants, services personnel dominate the employment mix

Eating places have distinct occupational patterns by type. In catering establishments or camp kitchens, for example, food preparation workers

Employment Swings Seasonally 6

In the eating and drinking business

Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

form the largest portion of the staff. In Alaska, they are the largest occupation in the eating and drinking industry because of full food service support to industries with remote work site locations such as the North Slope and the Northwest Arctic Borough. Cafeterias, fast food, take-out places, and even delis tend to have more kitchen staff, but restaurants employ mainly services personnel.

Data compiled from a sample of 28 full service restaurants in the state show waiters and waitresses claiming the largest occupational slice. (See Exhibit 11.) In combination with other service personnel, nearly 52 percent of all staff had direct contact with the customer. Basic kitchen functions were carried out by 34 percent of the employees, and support functions, including management, make up the remaining 14 percent of all restaurant staff.

7 Eating and Drinking Sales
By area–1997

	Restaurant Sales
Statewide	$730,221,000
Aleutians West Census Area	n/a
Aleutians East Borough	n/a
Anchorage, Municipality	408,202,000
Bethel Census Area	1,115,000
Bristol Bay Borough	1,545,000
Denali Borough	2,659,000
Dillingham Census Area	n/a
Fairbanks North Star Borough	79,155,000
Haines Borough	2,935,000
Juneau Borough	40,315,000
Kenai Peninsula Borough	43,544,000
Ketchikan-Gateway Borough	15,485,000
Lake and Peninsula Borough	n/a
Northwest Arctic Borough	8,551,000
Kodiak Island Borough	10,773,000
Matanuska-Susitna Borough	37,854,000
Nome Census Borough	4,535,000
North Slope Borough	26,610,000
Prince of Wales-Outer Ketchikan CA	4,611,000
Sitka Borough	10,273,000
Skagway-Hoonah-Angoon CA	3,163,000
Southeast Fairbanks Census Area	3,623,000
Valdez-Cordova Census Area	9,897,000
Wade Hampton Census Area	n/a
Wrangell-Petersburg Census Area	n/a
Yakutat Borough	n/a
Yukon-Koyukuk Census Area	2,931,000

Source: U.S. Census Bureau, 1997 Economic Census

Alaska's eating and drinking workforce is large and dynamic

In 2001, the eating and drinking industry employed more than 49,600 individual workers, which compares with an average annual job count of 17,300. This indicates considerable turnover in the industry. Seasonality, lower wages, and part-time employment help drive turnover. In 2000, over 30,650 new hires were recorded for the industry. A new hire is a worker who did not work for the same employer in the previous four quarters. According to national statistics, 38 percent of all eating and drinking industry workers are part-time employees, double the overall average, and they work typically 25.5 hours per week. The industry is attractive to workers seeking a flexible schedule, income during slack times such as for students, or to supplement existing employment in other industries. Many employees in Alaska work only the summer season, which implies that students from other places and transient workers form a large group within the seasonal workforce. In 2000, nearly 6,400 or 23 percent of Alaska's eating and drinking workforce were non-resident workers, considerably above the all-industry average of 18 percent.

Workforce is young and female

According to a 1999 workforce age analysis, the typical eating and drinking industry worker is only 29.2 years old, making it the youngest major industry workforce in the state. The average age of an Alaska worker was 37.3 years. Women workers predominate in the industry, which has 130 women workers for every 100 men. Four out of every five wait-staff are females. But some

occupations are male dominated; the male/female ratio for cooks, for example, is 140 to 100.

Wages tend to be low

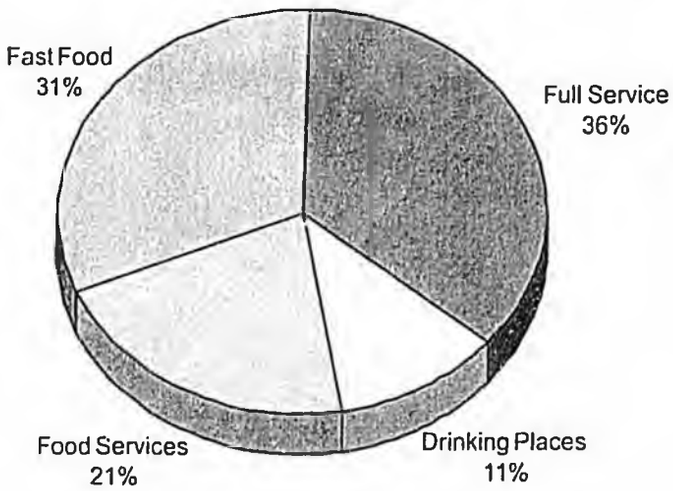
In general, eating and drinking jobs do not require previous training, which in part explains the relatively low hourly earnings. (See Exhibit 12.) The higher paying jobs in the industry usually require work experience and/or specialty training. Chefs/head cooks, food service managers, other food preparation supervisors, and bookkeepers belong to this group. In all, Alaska's hourly wages in 2000 compare favorably to the national averages. In some cases the differential is quite significant. The hourly pay rate for cooks in institutions or cafeterias in Alaska, for example, exceeded the national average by 62 percent. Fast food cooks and food preparation workers also earn substantially more per hour than their colleagues in the rest of the nation. Their differentials were 50 percent and 46 percent higher than the national average. Only a few exceptions countered the higher Alaska pay rule. Hourly pay rates for food service managers and drivers were a bit lower in the state than in the nation.

Tip earning personnel, such as waiters, waitresses and bartenders, gross more per hour than their posted wage rates. Many restaurant and bar patrons add about fifteen percent for tips to their food/bar bill for good service. Theoretically, tips are included in pay rates, but often only those noted on credit card sales are included. Cash tips may not be considered in wage rate surveys, simply because they bypass the employer's business records.

Geographic earning differentials exist within the state

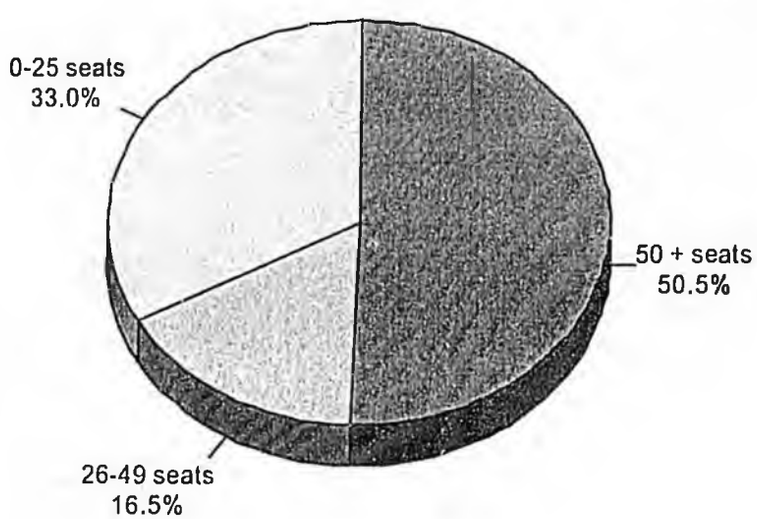
In some ways, the concentration of food service companies explains the vast disparities in earnings in different Alaska locations. In 2001, the highest average quarterly earnings per industry worker occurred on the North Slope, where the food service employees support the oil industry workforce on a year round basis. Overtime plays

Where the $730M is Spent 8
In the state's eating/drinking places



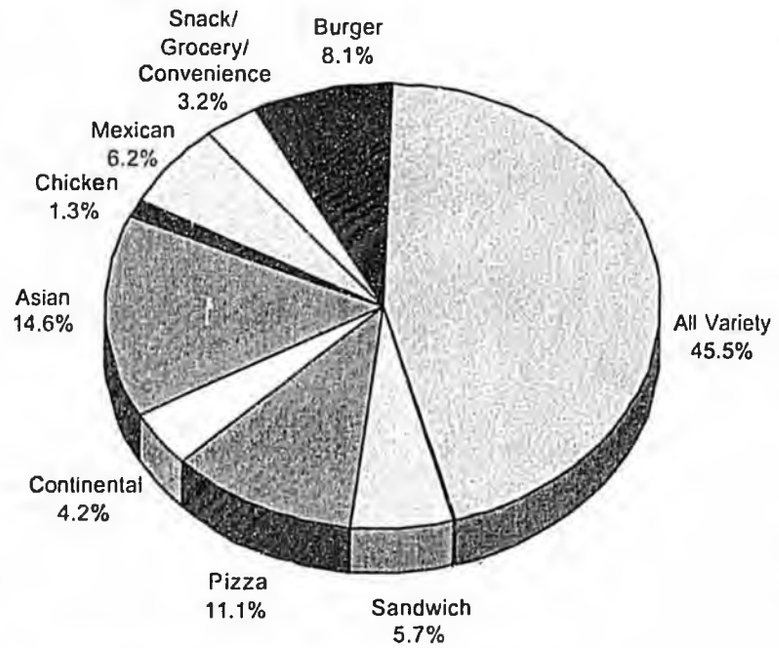
Source: U.S. Census Bureau, 1997 Economic Census

Large Restaurants Dominate 9
In Anchorage



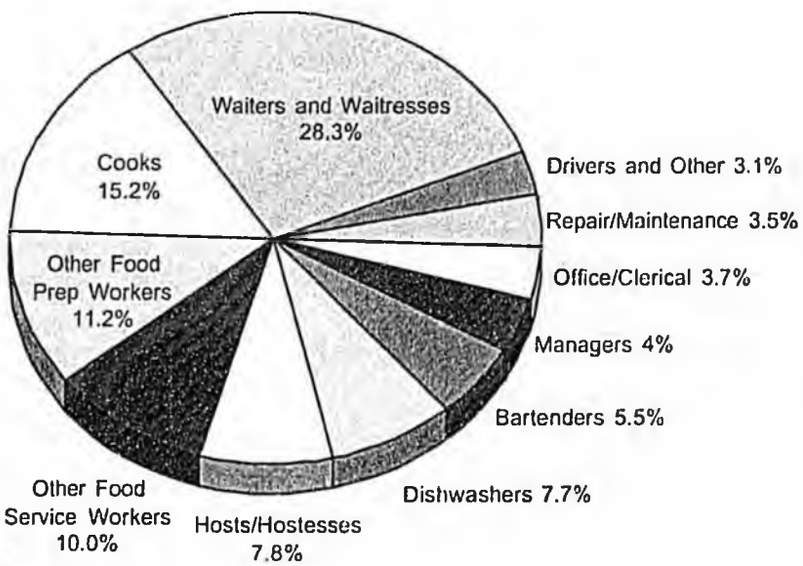
Source: Municipality of Anchorage, Food Safety and Sanitation Program

10 Anchorage Specialty Menus Offer variety



Source: Municipality of Anchorage, Food Safety and Sanitation Program

11 Employee Occupation Mix At 28 Alaska full service restaurants



Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

a big role in these wages. Food service workers typically are on shift rotation just like the oil industry workforce. The Northwest Arctic Borough's eating and drinking wages were the second highest because of the Red Dog Mine. Its remote work site location and year-round operation explain these higher wages. The Denali Borough's third place is harder to explain. Here, most money is earned during the second and third quarters of the year. Above average hourly pay and considerable overtime most likely play a role.

In some ways Alaska's eating and drinking industry is unique

Among the largest employers in Alaska's eating and drinking industry are food service companies and caterers. (See Exhibit 13.) Remote camp support, institutional kitchens, and resorts are their marketing niche. Companies such as Nana/ Marriott, Doyon/Universal Ogden, Aramark Leisure Services, and Skychefs contract with oil, metal mining, resort, and airline industries. Currently, both Aramark and Nana/Marriott also have cafeteria contracts with the University of Alaska in Anchorage and Fairbanks. Several chain restaurants, managed by specific franchise holders in the state, also made the state's list of the largest eating and drinking employers. However, most eating and drinking industry employees work for small employers. (See Exhibit 14.)

The future of eating and drinking

Continued growth in the eating and drinking industry appears certain—particularly in Alaska's urban communities. A recent ten-year industry forecast predicted that the eating and drinking places industry will grow faster than the overall economy. Many factors will influence the rate and shape of this growth. The state of the economy, growth in consumer income and spending power, population growth, demographics, trends in the visitor industry, and consumer preferences will all be important determinants. The long-term outlook for Alaska's visitor industry remains a big positive—not just in urban Alaska but also in the more rural parts of the state. In ten years, the eating and drinking landscape in Alaska will offer residents even more entrée choices. *Bon appétit.*

Wage Rates for Eating and Drinking Occupations 12

2000

	Alaska Average Hourly Wage *	National Average Hourly Wage *
Food Preparation		
Combined Food Preparation and Serving Workers, Including Fast Food	$7.42	$6.84
Cooks, Restaurant	11.12	9.68
Food Preparation Workers	11.65	7.78
Food Preparation and Serving Related Workers, All Other	13.28	n/a
Cooks, Fast Food	9.87	6.78
Cooks, Short Order	9.83	7.92
First-Line Supervisors/Managers of Food Preparation and Serving Workers	14.00	11.83
Cooks, Institution and Cafeteria	14.10	8.68
Chefs and Head Cooks	14.68	13.73
Bakers	10.54	10.12
Food Service		
Waiters and Waitresses	7.39	7.09
Dishwashers	8.50	7.00
Bartenders	9.38	7.77
Dining Room and Cafeteria Attendants and Bartender Helpers	7.41	6.95
Counter Attendants, Cafeteria, Food Concession, and Coffee Shop	8.81	7.23
Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop	7.79	7.32
Food Servers, Nonrestaurant	8.47	7.77
Laborers		
Driver/Sales Workers	10.64	11.08
Janitors and Cleaners, Except Maids and Housekeeping Cleaners	11.40	9.17
Office/Clerical		
Food Service Managers	16.10	16.51
Bookkeeping, Accounting, and Auditing Clerks	14.75	12.96

* Based on Occupational Employment Statistics Survey data - 2000

Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

13 Eight of the Top 100

Private sector employers

Are in eating and drinking

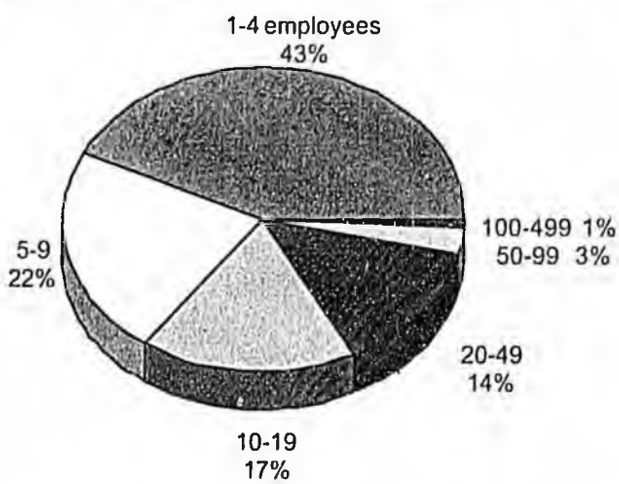
	Employment 2000	Primary function
NANA/Marriott, Joint Venture	1,093	catering
Aramark Leisure Services	520	catering
Doyon/Universal Ogden, JV	519	catering
Pizza Hut	467	restaurants
Burger King	465	restaurants
Denali Food/Taco Bell	381	restaurants
Skychefs	277	catering
McDonalds	258	restaurants

Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

Most Employees 14

Work for small employers

Eating and drinking industry employees–1999



Source: U.S. Department of Commerce, County Business Patterns 1999

Audits and Inspections

Audits

- New and existing establishments will initially be required to submit their SOPs, records, and self-inspections for review.
- Annually, and as part of the permit review process, a percentage of randomly selected establishments will be required to submit their self-inspections and records.

Inspections

- On-site evaluations of establishments will be conducted to determine their control of risk factors, to review SOPs and how they are implemented, and to audit required records and self-inspections.
- Enforcement actions, including administrative fines, may be initiated for risk factors that are not being controlled, imminent health hazards and other serious violations of the regulations.

12/01/2003

Implementing the New System

Target Schedule

GOAL

Public Notice Food Code	Spring	04
Revisions Adopted	Fall	04
CFPM Required	Fall	04
Food Worker Training	Fall	04
AMC Workshops	Fall	04
AMC Required	Fall	05

Elements of this new food safety system will be included in draft revisions to the Food Code (18 AAC 31). Food Establishment operators are encouraged to comment and will be directly notified when the draft regulations go out for public notice.

Your input is important, and can improve the regulations. Every comment will be considered, and changes may be made based on the comments received.

For more information visit our website:
www.state.ak.us/dec/deh/

Food Safety & Sanitation

Active Managerial Control:

Improving Alaska's Food Safety System

Active Managerial Control is a comprehensive food safety system. It includes operators and staff who are knowledgeable about food safety issues, and are responsible for controlling practices and procedures that contribute to foodborne illness. It can be implemented in both urban and remote settings.

This new system offers greater assurance that safe food is served throughout Alaska.

Alaska Department of Environmental Conservation
Division of Environmental Health
Food Safety and Sanitation Program
555 Cordova Street
Anchorage, AK 99501
(907) 269-7501 FAX (907) 269-7510

Elements of "Active Managerial Control"

Elements of Alaska's Food Safety System include trained food workers, standard operating procedures, monitoring and recordkeeping of certain risk factors, self-inspections, audits, and field evaluations. The details of these elements are explained below.

1. Training

- Establishments that serve unpackaged food will need to have a Certified Food Protection Manager (CFPM). She/he must pass a nationally recognized exam to become certified.
- All food workers must have food safety training and pass an exam.
- Many options will be available for both manager and food worker training, including self-study, online, and classroom training.

2. Written SOPs (Standard Operating Procedures)

Establishments must have SOPs that describe their policies on,

- proper handwashing,
- employee health,
- training,
- food sources,
- receiving and storage,
- chemical use and storage, and
- sanitation.

3. SOPS, monitoring, and recordkeeping will also be required, where applicable, for the following:

- hot and cold holding
- cooking,
- cooling,
- reheating, and
- handling ready-to-eat food.

4. Food Safety Checks

- Regular food safety checks, conducted by the operator, will help verify that the establishment's procedures, and good retail practices are being followed, and any required records are maintained.

The 5 Risk Factors for Foodborne Illness

Unsafe Holding Temperatures
Inadequate Cooking
Contaminated Equipment
Food from Unsafe Sources
Poor Personal Hygiene

Food Safety and Sanitation Program: Operator Assistance

DEC will hold workshops and provide training to help operators understand and implement Active Managerial Control. In addition, FSS plans to:

Provide Food Safety Training Opportunities

- Publish a list of CFPM Training Courses and Exams.
- Conduct Train the Trainer courses for employers and others who want to provide food worker employee training.
- Offer food worker training, testing, and certification online.
- Provide free training materials online and in print.

Provide Model SOPs and Forms

- Publish a Compliance Manual which will include permit applications, plan review requirements, instructions on identifying processes and risk factors, templates for writing customized SOPs, and example forms for recordkeeping and self-inspections. It will be available online and in print.
- Publish a Resource Manual to help operators implement their active managerial control system. It will include procedures for controlling risk factors, examples of policies, reproducible signs, and other information.

HB 380

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: February 23, 2004

TO: House Health, Education, and Social Services Committee Members

FROM: Representative Kevin Meyer K

RE: HB 380 Aggravating Factors for Drug Overdose Sale

There were a few questions left over from the Thursday, February 19 committee hearing on HB 380 Aggravating Factors for Drug Overdose Sale. I would like to take this opportunity to answer these questions for the committee members.

1. A pharmacist that distributes the wrong medication or dosage to a person:
If the pharmacist is distributing illicit drugs to a person, for money, and it can be proven that this act is in violation of AS 11.71, and the consumer dies, this aggravator could be used if the pharmacist is convicted of the crime. In this case, criminal intent is necessary. It must be proven that the pharmacist was acting illegally and committing a crime under AS 11.71.

For example, if a pharmacist hands a consumer oxycotin instead of birth control pills, on accident, and the person dies, then it has to be proved that the pharmacist acted with criminal intent to commit a crime. A mistake doesn't necessarily constitute a crime. The burden would be on the State to provide evidence that the pharmacist was criminally negligent.

2. An accomplice in a crime under AS 11.71 who distributes drugs to a person and they die:
An accomplice in a crime may also receive an aggravated sentence if the accomplice is also convicted of a crime under AS 11.71. There was a question about whether there was a "dual standard" between the offender and an accomplice. If the accomplice is also convicted of a crime under AS 11.71, they may also receive an aggravated sentence.

Aggravators only apply if a defendant is convicted of a crime. The aggravator that is being proposed under HB 380 would only apply if a person were convicted of a crime under AS 11.71 Controlled Substances.

I hope that the information I have provided you answers the remaining questions from Thursday's committee hearing. If you have any other questions, or would like more information, please do not hesitate to contact my office.

Thank you for your time and consideration of this matter.

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Session: State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-4945 Fax: (907) 465-3476
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0199 Fax: (907) 269-0197

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

SPONSOR STATEMENT

HOUSE BILL 380 AGGRAVATING FACTORS FOR DRUG OVERDOSE SALE

"An Act relating to aggravating factors at sentencing."

House Bill 380 adds a sentencing aggravator for illegal drug sales that result in a fatal overdose. If a defendant is convicted of an offense specified under AS 11.71, then a judge may apply a sentence of no less than the presumptive term, and no more than the maximum term.

In a case last year, the Alaska Court of Appeals was asked to consider a case that involved a defendant who was convicted of selling heroine, a felony crime. The defendant later confessed to selling heroine to a person who was found dead by police from a drug overdose. The judge, during sentencing, determined that the death was a direct result of the criminal action, and applied a sentencing aggravator to the five-year presumptive term.

Current Alaska sentencing laws allow for increases (aggravators) and decreases (mitigators) in required sentences, if a judge finds an aggravator or a mitigator that justifies a deviation from the normal sentence. The aggravator that was used by the judge in the case of the convicted drug dealer says a defendant can be punished more severely if "a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct."

The question that faced the Alaska Court of Appeals was whether the death could be considered a direct result of the defendant's action. HB 380 would clarify this in statute. Under HB 380, the fatal overdose would be considered a direct result of the defendant's illegal action, and would permit a judge to increase a sentence for a crime involving the distribution of controlled substances.

If a defendant is convicted of felony charges for misconduct involving a controlled substance, then there should be an allowable deviation from the normal sentencing if the drugs that were sold were the cause of a death. HB 380 allows for a judge to decide if the sentencing for an illegal act should be increased because the result of the initial crime resulted in the death of a person.

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aggravating factors AS12.55.155

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Anchorage Daily News

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Appeals court mulls role of dealer in drug death

OVERDOSE: At issue is sentence for selling to man who later died.

By SHEILA TOOMEY
Anchorage Daily News
(Published: May 11, 2003)

The Alaska Court of Appeals is not sure if a person who sells drugs to someone who ends up dead of an overdose should be held at all responsible for that death.

In a memorandum issued Wednesday, the three-judge appeals court returned the case of Shaun Whitesides to a Ketchikan judge with instructions to collect more information and send it back to them.

At issue is Whitesides' sentence for selling heroin, which included three years of suspended time tacked onto the required five-year prison term.

On July 11, 2000, Ketchikan police found Robert Glenn dead of a heroin overdose. Ten days later Whitesides admitted to police that she sold Glenn a gram of heroin for $150. A jury eventually convicted her of felony misconduct involving a controlled substance.

No one suggested Whitesides was criminally responsible for Glenn's death. He took the drug himself, and she apparently wasn't there when he did it. But Ketchikan Superior Court Judge Trevor Stephens concluded that Glenn died as "a direct result" of her conduct and increased her sentence by adding the three suspended years.

Stephens also sentenced Whitesides to two years with 11/2 years suspended for possession of methamphetamine.

Suspended time is held over the head of a defendant upon release from prison to encourage compliance with probation conditions. If found violating probation, a defendant can be returned to prison and forced to serve the suspended time.

Alaska sentencing law allows increases or decreases in required sentences if a judge finds "aggravators" or "mitigators" that justify deviation from the norm. The aggravator Stephens found says a defendant can be punished more severely if "a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct."

The question facing the appeals court is "When a defendant sells or otherwise furnishes illegal drugs to a willing consumer, and the consumer later dies of an overdose after taking these drugs, can this death be termed 'a direct result' of the defendant's conduct?"

Case law around the country is divided on this question, the court said. It instructed Stephens to either change Whitesides' sentence or get more substantial legal arguments from the lawyers involved and send back a written decision.

Daily News reporter Sheila Toomey can be reached at stoomey@adn.com.

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IN THE COURT OF APPEALS OF THE STATE OF ALASKA

SHAUN M. WHITESIDES, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-8274 Trial Court No. 1KE-00-656 Cr MEMORANDUM OPINION [No. 4700 — May 7, 2003]

Appeal from the Superior Court, First Judicial District, Ketchikan, Trevor N. Stephens, Judge.

Appearances: Michael P. Heiser, Ketchikan, for Appellant. James Scott, Assistant District Attorney, Ketchikan, and Bruce M. Botelho, Attorney General, Juneau, for Appellee.

Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

MANNHEIMER, Judge.

In this sentence appeal, we are asked to construe AS 12.55.155(c)(1), one of the statutory aggravating factors that authorize a sentencing judge to exceed the presumptive term of imprisonment in cases governed by presumptive sentencing. Subsection (c)(1) states that a defendant's presumptive term can be aggravated if "a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct". The question presented in this appeal is whether Subsection (c)(1)

applies when a defendant illegally sells drugs and one of the defendant's customers dies from an overdose.

For the reasons explained here, we decline to decide this question of statutory interpretation at the present time. Instead, we remand this case to the superior court for further consideration of this issue.

Underlying facts

On July 11, 2000, the Ketchikan police received a report of a drug overdose. When they arrived at the scene, they discovered that the victim, Robert Glenn, was dead. The State Medical Examiner concluded that Glenn's death was due to a heroin overdose.

Ten days later, the Ketchikan police received information that Shaun M. Whitesides was selling cocaine and was also using methamphetamine. Based on this information, the police obtained a search warrant for Whitesides's apartment.

During the execution of that warrant, the police found a small amount (.6 grams) of methamphetamine. While they were there, the police interrogated Whitesides about the report that she was selling drugs. Whitesides initially denied selling any drugs. But when the police informed Whitesides that Glenn was dead, and that he appeared to have died from a drug overdose, Whitesides began to cry. She then admitted that Glenn had come to her, looking for heroin, and that she had sold him a gram of heroin for $150.

Based on the foregoing, Whitesides was indicted for second-degree controlled substance misconduct (sale of heroin) and fourth-degree controlled substance misconduct (possession of methamphetamine).[1] She pleaded guilty to the methamphetamine possession charge, but she chose to go to trial on the sale of heroin charge. The jury found her guilty.

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[1] AS 11.71.020(a)(1) and AS 11.71.040(a)(3)(A), respectively.

Second-degree controlled substance misconduct is a class A felony.[2] Whitesides was a first felony offender for presumptive sentencing purposes, so her sentencing was governed by AS 12.55.125(c)(1)-(2). Under the pertinent portions of these two subsections of AS 12.55.125(c), Whitesides faced a 7-year presumptive term if she "caused serious physical injury during the commission of the offense"; otherwise, she faced a 5-year presumptive term. The prosecutor took the position that Whitesides's presumptive term was 5 years, and neither the defense attorney nor the sentencing judge disputed the prosecutor's legal conclusion.

Under Alaska Criminal Rule 32.1(c), after the pre-sentence report is distributed to the parties, the State must notify the defendant of any aggravating factors that the State intends to rely on at sentencing. And under Criminal Rule 32.1(d), after the defense attorney receives the State's notice, the defense attorney must similarly notify the State of any mitigating factors that the defendant intends to rely on. In Whitesides's case, the State did not propose any aggravating factors in advance of the sentencing hearing, nor the defense propose any mitigating factors in advance of the hearing.

The events of the sentencing hearing

Because the parties proposed no aggravating or mitigating factors, it appeared that Whitesides would inevitably receive the unadjusted 5-year presumptive term. Nevertheless, when the sentencing hearing began, the prosecutor argued at length that the court should not reduce Whitesides's sentence below the 5-year presumptive term simply because her offense involved such a small amount of heroin.

After hearing the prosecutor's oration, the defense attorney allowed that there was one mitigator he should have mentioned: AS 12.55.155(d)(14) — that Whitesides's

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[2] AS 11.71.020(c).

offense involved only a small quantity of a controlled substance. The defense attorney apologized for not raising this mitigating factor earlier, but he pointed out that he had not been Whitesides's trial attorney and, because he came into the case late, he "[had not] know[n] all of [this] information".

Superior Court Judge Trevor N. Stephens agreed that the defense attorney had a good excuse for not raising this mitigating factor earlier. He told the defense attorney, "If you want [more] time to file mitigators, I'll give you [more time, because] you did come in late."

At this point, the prosecutor protested that the State was being prejudiced. He told Judge Stephens that the State had declined to propose any aggravating factors because the State was relying on the fact that the defense had proposed no mitigating factors.

This explanation holds no water. Under Criminal Rule 32.1, the State announces its proposed aggravators first, and then the defense attorney responds with proposed mitigators. Judge Stephens perceived this flaw in the prosecutor's argument. He told the prosecutor, "I have a hard time conceptualizing [your claim of prejudice] because ... , typically, you don't wait to see if a mitigator is filed before you file an aggravator." The prosecutor conceded that this was true. He nevertheless argued that if Whitesides was going to be allowed to argue mitigators, it was only fair to allow the State to argue aggravators.

Judge Stephens suggested that the defense attorney might not "[be] prepared to address aggravators today", but the defense attorney immediately responded, "I can address the aggravators, Your Honor." A few minutes later, the defense attorney reiterated that he "[felt] comfortable that [he was] prepared to do [the] sentencing". So the parties then argued aggravators and mitigators.

Whitesides's attorney argued "small quantity", and Judge Stephens found this mitigator. For his part, the prosecutor proposed two aggravating factors — both of which Judge Stephens rejected. But in an unusual turn of events, Judge Stephens then found an aggravating factor that the prosecutor had rejected — (c)(1): that a person, other than an accomplice, sustained physical injury as a direct result of Whitesides's conduct.

The prosecutor told Judge Stephens that the State had considered and rejected aggravator (c)(1) because the district attorney's office had concluded that "direct result" meant "without the independent action of another". Based on this reading of the statute, the prosecutor told Judge Stephens that aggravator (c)(1) did not apply to Whitesides's sale of heroin because "Mr. Glenn had a hand in his own death".

But Judge Stephens was not convinced by the prosecutor's argument:

> *The Court*: I don't agree at all that this aggravator can't apply to [a sale of controlled substances] such as this. Physical injury is not an element of the offense; [nor is it] a circumstance that would [trigger] a higher presumptive [term] .... And, just in quickly doing some research, I'm not aware of any cases that specifically define "a direct result of the defendant's conduct". ...
>
> In my view, there's clear and convincing evidence that the heroin that [Whitesides] provided [to Glenn] is [the heroin] which Mr. Glenn injected and which led to his death. And it might be [that] there is a difference between legal responsibility or culpability [for that death] and "a direct result". [Whitesides] ... was not charged, has never been charged with a crime that's tied directly to Mr. Glenn's death. She's not charged with any of the homicide offenses or anything like that. But in my view, that's a different set of circumstances [than] a "direct result", and I think [that] this aggravator applies.

Having found the "small quantity" mitigator and the "physical injury" aggravator, Judge Stephens concluded that "the aggravator far outweighs the mitigator". In fact, Judge Stephens declared that even if the aggravator had not been proved, he "wouldn't have mitigated the sentence" because Whitesides had poor prospects for rehabilitation.

(Even though Whitesides was technically a first felony offender for presumptive sentencing purposes, she had a prior conviction for a drug felony (sale of cocaine) — a conviction that was set aside after she successfully completed her suspended-imposition-of-sentence probation.)

At the same time, Judge Stephens declared that he would not increase Whitesides's time to serve based on the aggravating factor. Rather, he added 3 years of suspended imprisonment to Whitesides's 5-year presumptive term. That is, Whitesides received 8 years with 3 years suspended for the crime of second-degree controlled substance misconduct. [3]

For the remaining offense (possession of methamphetamine), Judge Stephens sentenced Whitesides to a consecutive term of 2 years with 1½ years suspended (six months to serve). Thus, Whitesides's composite sentence for her two offenses is 10 years' imprisonment with 4½ years suspended — 5½ years to serve.

Does aggravator (c)(1) apply to the facts of Whitesides's case?

Whitesides raises a number of claims in this sentence appeal, but all of these claims ultimately turn on, or are substantially affected by, Judge Stephens's ruling that

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[3] In their briefs to this Court, both Whitesides and the State incorrectly declare that Whitesides received a sentence of 8 years with 5 years suspended (*i.e.*, 3 years to serve). This is wrong. Both the sentencing transcript and the written judgement confirm that Whitesides received a sentence of 8 years with 3 years suspended — 5 years to serve.

Whitesides's case is aggravated under AS 12.55.155(c)(1). We therefore turn our attention to this ruling.

Whitesides challenges the superior court's ruling on two grounds. First, she contends that the State is estopped from defending the court's ruling — *i.e.*, estopped from arguing in favor of aggravator (c)(1) on appeal — because the prosecutor did not argue for this aggravator at the sentencing hearing.

But Judge Stephens was authorized to find this aggravator despite the contrary positions of the parties. [4] And, on appeal, it is the State's duty to either support the superior court's ruling or concede that the ruling is erroneous. Apparently, the State is now persuaded that Judge Stephens was correct and that the district attorney's narrower interpretation of the aggravator was wrong. The State may therefore properly argue in favor of Judge Stephens's ruling in this appeal.

Whitesides's second argument is that Judge Stephens misinterpreted AS 12.55.155(c)(1). This argument is more difficult to resolve.

As explained above, AS 12.55.155(c)(1) declares that a felony is aggravated if "a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct". The question presented by Whitesides's case is this: When a defendant sells or otherwise furnishes illegal drugs to a willing consumer, and the consumer later dies of an overdose after taking these drugs, can this death be termed "a direct result" of the defendant's conduct?

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[4] *See Hartley v. State*, 653 P.2d 1052, 1055-56 (Alaska App.1982) (holding that a sentencing judge is authorized to take notice of potential aggravators and mitigators *sua sponte*, even when these factors are not presented by the prosecutor or the defense attorney, but requiring the judge to give the parties notice and an opportunity to be heard before the judge rules on these proposed sentencing factors). *See also Wylie v. State*, 797 P.2d 651, 662 n. 9 (Alaska App. 1990).

In his sentencing remarks, Judge Stephens declared that he did not quarrel with the State's conclusion that Whitesides was not criminally responsible for Glenn's death. That is, the judge agreed that Whitesides should not be charged with criminal homicide on account of Glenn's death. But Judge Stephens then concluded that Glenn's death could be considered a "direct result" of Whitesides's criminal conduct (for purposes of assessing aggravator (c)(1)) even though Whitesides was not criminally responsible for Glenn's death. Judge Stephens offered no legal authority in support of this conclusion, and we are not sure that it is correct.

Normally, a person who commits a criminal act can be held responsible for an ensuing result if the person's criminal conduct was a "substantial factor" in causing that result. *See State v. Malone*, 819 P.2d 34, 36 (Alaska App. 1991); Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* (3rd edition 1982), pp. 779-780. Aggravator (c)(1) does not use the "substantial factor" test. Rather, aggravator (c)(1) requires proof that the prohibited result — physical injury — was a "direct result" of the defendant's conduct.

As Judge Stephens noted, there is no case law defining the phrase "direct result". Further, there appears to be no legislative commentary to help us determine what the legislature intended this phrase to mean. However, based purely on the wording of aggravator (c)(1), there is good reason to believe that Judge Stephens was wrong when he concluded that the aggravator could be proved even in instances when the defendant could not be held criminally responsible for the victim's physical injury.

If anything, aggravator (c)(1)'s requirement of "direct result" suggests a stricter connection between the defendant's conduct and the ensuing injury than the "substantial factor" test that is employed to assess criminal responsibility. [5] That is, even

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[5] The most attenuated physical injury discussed in published Alaska appellate opinions is found in *Marker v. State*, 829 P.2d 1191 (Alaska App. 1992). In *Marker*, the defendant and an accomplice sexually assaulted a woman in a baseball field. When the

when a defendant can be held criminally accountable for the victim's injury (because the defendant's conduct was a substantial factor in causing that injury), the government would have to prove something more in order to establish the aggravator.

But even if we construed "direct result" as shorthand for the "substantial factor" test, the proper application of the aggravator to Whiteside's case would still be unclear — because, even under the "substantial factor" test, it is unclear whether Whitesides's sale of heroin to Glenn was a legal cause of his death.

As already explained, the district attorney's office concluded that Whitesides could *not* be held criminally responsible for Glenn's death, and Judge Stephens accepted this conclusion. Thus, this issue — whether the sale of a controlled substance should be considered a "substantial factor" in causing a later death by overdose — was not actively litigated in Whitesides's case. Case law from around the country is split as to whether Whitesides could be convicted of criminal homicide in connection with Glenn's death under the facts of this case.

Several state courts have held that a seller of controlled substances will normally be criminally liable for an ensuing death caused by the ingestion of those controlled substances. *See Commonwealth v. Vaughn*, 687 N.E.2d 270, 272-73 (Mass. App. 1997); *State v. Wassil*, 658 A.2d 548, 555-56 (Conn. 1995) (seemingly); *Shirah v. State*, 555 So.2d 807, 811 (Ala. Crim. App. 1989); *Heacock v. Commonwealth*, 323 S.E.2d 90, 95 (Va. 1984); *State v. Thomas*, 288 A.2d 32, 33 (N.J. App. 1972).

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victim saw a car coming down an adjacent street, she ran out into the street in an attempt to get help, and she was struck by the car. The sentencing judge found that the woman's injury was "a direct result" of the sexual assault, and thus Marker's crime was aggravated under AS 12.55.155(c)(1). *Id.* at 1192. Although our opinion in *Marker* mentions the sentencing judge's ruling, that ruling was not challenged on appeal, so we did not decide whether aggravator (c)(1) was properly applied to these facts.

On the other hand, many courts have adopted the view that the seller will be criminally responsible for a drug-user's death only if the seller was aware of special circumstances that made ingestion of the drug especially dangerous — aware, for instance, that the victim intended to ingest a potentially lethal amount of the drug, or that the victim had previously suffered a severe adverse reaction to the drug, or that the drug itself was tainted or abnormally powerful. *See Hulme v. State*, 544 S.E.2d 138, 141 (Ga. 2001); *Lofthouse v. Commonwealth*, 13 S.W.3d 236, 241-42 (Ky. 2000); *Palmer v. State*, 871 P.2d 429, 433 (Okla. Crim. App. 1994); *State v. Theriault*, (unpublished), 1993 WL 499096, *6 (Conn. Super. 1993), *reversed on other grounds*, 663 A.2d 423 (Conn. App. 1995); *State v. Randolph*, 676 S.W.2d 943, 947-48 (Tenn. 1984); *Sheriff of Clark County v. Morris*, 659 P.2d 852, 859 (Nev. 1983); *State v. Mauldin*, 529 P.2d 124, 126-27 (Kan. 1974); *People v. Cruciani*, 353 N.Y.S.2d 811, 812-13 (N.Y. App. 1974); *Commonwealth v. Bowden*, 309 A.2d 714, 718 (Pa. 1973).

We cite this case law, not in an effort to resolve this question of law, but rather to point out the difficulty of ascertaining whether, as a matter of law, Whitesides's act of selling heroin to Glenn was even a "substantial factor" in causing Glenn's death, much less the direct cause of that death.

The parties to this appeal have not advanced our inquiry. Both the attorney representing the State and the attorney representing Whitesides devote only one paragraph of their briefs to this issue, and neither lawyer cites any legal authority in support of their competing arguments.

Given these circumstances, we decline to resolve whether Glenn's death was a "direct result" of Whitesides's sale of heroin. That is, we decline to resolve whether Judge Stephens was correct when he found that aggravator (c)(1) had been proved by clear and convincing evidence. Instead, we vacate Judge Stephens's ruling on this issue, and we remand Whitesides's case to the superior court so that this issue can be revisited.

If, on reconsideration, Judge Stephens again concludes that aggravator (c)(1) has been proved, he shall issue a written decision explaining his legal reasoning and shall forward a copy of that decision to this Court. The parties will then have 30 days to file memoranda responding to Judge Stephens's decision.

On the other hand, if Judge Stephens concludes that aggravator (c)(1) has not been proved by clear and convincing evidence, he shall re-sentence Whitesides. Under these circumstances, one mitigator (the "small quantity" mitigator) will have been proved, but no aggravators. Judge Stephens shall forward a copy of the revised judgement to this Court.

If Whitesides is re-sentenced, and if Whitesides wishes to appeal the revised sentence, Whitesides shall have 30 days to file a supplemental sentencing memorandum. The State shall have 30 days thereafter to file a responding sentencing memorandum.

Conclusion

Whitesides's sentence is VACATED, and this case is REMANDED to the superior court for further proceedings in accordance with this opinion.

Alaska Statute 12.55.125 Sentences of Imprisonment for Felonies
HB 380 Aggravating Factors for Drug Overdose Sale
House HESS Committee Hearing
February 12, 2004

AS 12.55.125. Sentences of imprisonment for felonies

(a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture; or

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery.

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 10 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

(c) A defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five years;

(2) if the offense is a first felony conviction

(A) other than for manslaughter and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven years;
(B) for manslaughter and the conduct resulting in the conviction was knowingly directed towards a child under the age of 16, seven years;
(C) for manslaughter and the conduct resulting in the conviction involved driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, seven years;

(3) if the offense is a second felony conviction, 10 years;
(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (1) of this section, 15 years.

(d) A defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a second felony conviction, four years;
(2) if the offense is a third felony conviction, six years.
(3) [Repealed, Sec. 6 ch 6 SLA 1996].

(e) A defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a second felony conviction, two years;
(2) if the offense is a third felony conviction, three years.
(3) [Repealed, Sec. 6 ch 6 SLA 1996].
(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720 (a)(15), one year.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080 ;
(2) imposition of sentence may not be suspended under AS 12.55.085 ;
(3) imprisonment for the prescribed minimum or mandatory term may not be reduced, except as provided in (j) of this section.

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(4), or (i) of this section, except to the extent permitted under AS 12.55.155 - 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080 ;
(2) imposition of sentence may not be suspended under AS 12.55.085 ;
(3) terms of imprisonment may not be otherwise reduced.

Alaska Statute 12.55.125 Sentences of Imprisonment for Felonies
HB 380 Aggravating Factors for Drug Overdose Sale
House HESS Committee Hearing
February 12, 2004

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person convicted of murder in the first or second degree in circumstances other than those enumerated in (a).

(i) A defendant convicted of sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, eight years;
(2) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;
(3) if the offense is a second felony conviction, 15 years;
(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (1) of this section, 25 years.

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010 , or (2) definite term of imprisonment under (1) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving the greater of (A) one-half of the definite term or (B) 30 years. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

(k) A first felony offender convicted of an offense for which a presumptive term of imprisonment is not specified under this section

(1) may be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second or third felony offender convicted of the same crime if the offender is convicted of criminally negligent homicide and the victim is a child under the age of 16;
(2) except as provided in (1) of this subsection, may not be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second felony offender convicted of the same crime unless the court finds by clear and convincing evidence that an aggravating factor under AS 12.55.155 (c) is present, or that circumstances exist that would warrant a referral to the three-judge panel under AS 12.55.165 .

Alaska Statute 12.55.125 Sentences of Imprisonment for Felonies
HB 380 Aggravating Factors for Drug Overdose Sale
House HESS Committee Hearing
February 12, 2004

(l) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of at least 40 years but not more than 99 years when the defendant has been previously convicted of two or more most serious felonies and the prosecuting attorney has filed a notice of intent to seek a definite sentence under this subsection at the time the defendant was arraigned in superior court. If a defendant is sentenced to a definite term under this section,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080 ;

(2) imposition of sentence may not be suspended under AS 12.55.085 ;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

(m) Notwithstanding (a)(4) and (f) of this section, if a court finds that imposition of a mandatory term of imprisonment of 99 years on a defendant subject to sentencing under (a)(4) of this section would be manifestly unjust, the court may sentence the defendant to a definite term of imprisonment otherwise permissible under (a) of this section.

Alaska Statute 12.55.155 Factors in Aggravation and Mitigation
HB 380 Aggravating Factors for Drug Overdose Sale
House HESS Committee Hearing
February 12, 2004

AS 12.55.155. Factors in aggravation and mitigation.

(a) If a defendant is convicted of an offense and is subject to sentencing under AS 12.55.125 (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(4), or (i) and

(1) the presumptive term is four years or less, the court may decrease the presumptive term by an amount as great as the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation;

(2) the presumptive term of imprisonment is more than four years, the court may decrease the presumptive term by an amount as great as 50 percent of the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation.

(b) Sentence increments and decrements under this section shall be based on the totality of the aggravating and mitigating factors set out in (c) and (d) of this section.

(c) The following factors shall be considered by the sentencing court and may aggravate the presumptive terms set out in AS 12.55.125 :

(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;

(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;

(3) the defendant was the leader of a group of three or more persons who participated in the offense;

(4) the defendant employed a dangerous instrument in furtherance of the offense;

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

(6) the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;

(7) a prior felony conviction considered for the purpose of invoking the presumptive terms of this chapter was of a more serious class of offense than the present offense;

(8) the defendant's prior criminal history includes conduct involving aggravated or repeated instances of assaultive behavior;

(9) the defendant knew that the offense involved more than one victim;

(10) the conduct constituting the offense was among the most serious conduct included in the definition of the offense;