

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11156 SENATE JUDICIARY

rural community. YKHC does not have the capacity to write competitive grants in the rural communities that are often available to people in urban areas. The population in rural villages does not provide the skills necessary. If services are lost in rural communities, other communities would have to provide those services. YKHC is concerned that people might not seek services if they are not available until they get into a crisis situation, at which time they would have to be transported several hundred miles from home to get the necessary services. In addition, those people will have no follow-up services when they return home.

CHAIRWOMAN GREEN informed participants that today's hearing is not a budget hearing.

MS. MIRONOV said she understood but that the budget request unit is a very important income stream to YKHC and she wanted to get the information on the table for the committee's consideration throughout its deliberations on Medicaid.

CHAIRWOMAN GREEN asked Ms. Mironov if she is referring to the non-competitive grants.

MS. MIRONOV's answer was indiscernible.

CHAIRWOMAN GREEN noted that when the non-competitive grant process began, outline units were not billing or collecting all reimbursements or co-payments. That circumstance no longer exists. The Legislature is trying to figure out what to do with those facilities that are not built [billed], those without insurance, those without co-pay, yet have the same responsibilities of YKHC. Many of the larger facilities have the ability to bill Medicaid. The Legislature needs to decide how to use that pocket of money to serve those people who have no ability to get reimbursed. She pointed out the competitive grant process would still be available for more sophisticated organizations.

MS. MIRONOV concluded by saying there is still a significant population in rural Alaska that is not covered by Medicaid. The budget request unit funding stream helps those people access services in rural Alaska. It is very important as a supplement to the Medicaid program for rural Alaskans.

MR. DAN WINKELMAN, legal counsel to the YKHC, gave the following testimony.

Good afternoon Chair and Subcommittee members. My name

is Dan Winkelman, I am Legal Counsel for the Yukon-Kuskokwim Health Corporation located in Bethel. Thank you for this opportunity to participate at this Subcommittee meeting, to discuss the future of our State's health care and welfare.

YKHC is comprised of 58 federally recognized tribes operating pursuant to a compact with the federal government under the Indian Self-Determination Education and Assistance Act. We operate the only hospital in Bethel as well as 49 village-based clinics staffed with community health aide practitioners and 3 sub-regional clinics staffed with community health aide practitioners, registered nurses and mid-level practitioners.

YKHC urges this Subcommittee, when considering Medicaid cost-containment measures for the next fiscal year, to understand that under the Indian Health Care Improvement Act, the Federal government subsidizes 100% of the cost of providing medical services to Medicaid-eligible Alaska Native patients through Alaska Native tribe or tribal health organization facilities. Alaska's Federal Match Percentage, otherwise known as the Federal Medical Assistance Percentage or "FMAP", is 100% for health care services provided to Medicaid-eligible Alaska Native patients. Indeed, when Congress enacted this law, the U.S. Senate Select Committee on Indian Affairs stated in its Senate Report, and I quote:

*Thus, the Federal Government would pay for 100% of the reimbursements to tribally-owned health facilities for services provided to Medicaid-eligible Indian patients. This, in turn, would reduce the states' current share of Medicaid expenditures to 0% for these same facilities. As a result, Native Americans will have better access to health care services and will be able to more fully utilize third party resources to which they are entitled.*

Therefore, 100% of Medicaid costs for Alaska Native patients is 100% federal pass-through monies resulting in a State Medicaid expenditure of 0%. Accordingly, any reduction in Medicaid rates proposed by this Subcommittee would be a reduction of federal, not state monies for Medicaid eligible Alaska Native patients resulting in a decrease of health care services to Alaska Natives and contrary to Congress' intent. For

the foregoing reasons, YKHC strongly urges this subcommittee to not reduce the state's Medicaid Program.

Lastly, I would like to invite the Subcommittee to personally tour YKHC and meet with your rural constituents before the Subcommittee proposes health care legislation that would negatively [affect] rural Alaska.

Thank you.

CHAIRWOMAN GREEN announced that the committee would hear from a representative from Senator Murkowski's office.

MR. JOEL GILBERTSON, legislative director for U.S. Senator Frank Murkowski, stated that today's meeting could not be more timely because the Senate Finance Committee will be doing a mark-up of the economic stimulus package as put forth by Senator Baucus. He did not expect the economic stimulus package to have too much to do with state health care and welfare programs, but right now the committee is debating a bill that will provide \$75 to \$80 billion, to be paired up with \$20 billion of direct spending from floor amendments. Of that, provisions will affect states that administer Medicaid programs, unemployment insurance, and formula adjustments for the FMAR program. Those provisions were unexpected and may have an uphill fight once the bill reaches the Senate floor.

MR. GILBERTSON said when he first prepared his remarks to the committee, he focused on bills that have been pending at the federal level and the prospects for any true changes to some of the formula-driven, state administered health and welfare programs. That focus has changed in the last week because of the adjustment to what will be included in Senator Baucus's economic stimulus package. Originally, he thought there would be very few changes made at the federal level. A number of proposals have been brought forth to address issues with federal [indisc.] rates, and issues of what Medicaid expansions will be made optional for states, additional services, and modernization of the CMS infrastructure in Washington that replaced HCRA. Those issues were considered to be in a low priority category at the beginning of this year on the federal level. However, the events of September 11 have presented new priorities to Congress: aviation security; the economic stimulus package; a bio-terrorism bill; a few measures to fight against terrorism; and increased appropriations for the defense industry and the military. That put a lot of the health and welfare programs on a back burner and has created a lot of uncertainty as to what direction will be taken within the committee of jurisdiction on the Senate side and the Finance Committee under the new chairman, Senator Baucus. He

pointed out that two days ago, Senator Baucus included the following provisions:

- temporarily extend and broaden unemployment insurance benefits,
- create a new federal subsidy of 75 percent for COBRA continuation coverage,
- give new authority to states to expand the Medicaid program to cover displaced workers and their families,
- enhance the CHIP match rate for states,
- give states the option to use Medicaid funds at the CHIP match rate to subsidize the remainder of COBRA premiums for low-income individuals,
- adjust the federal medical assistance percentage (FMAP) for all states - it was originally drafted to hold harmless all states scheduled for an FMAP reduction in the coming year,
- provide a one point bonus for all states, and
- classify all states with an undefined level in the increase of unemployment debts an additional one point bonus. Last night that was expanded to a 1½ percent bonus for all states and another 1 1/2 percent bonus for states deemed to have an enhanced amount of unemployment as the result of a compromise with Senator Bingaman.

MR. GILBERTSON said everything has changed in the last 24 hours so he will answer questions to the best of his ability. In addition, the bill is undergoing a mark-up in the Senate Finance Committee right now. He informed the committee that over 140 amendments have been filed and Senator Murkowski has not yet expressed how he will vote on some of these issues.

MR. GILBERTSON said that Senator Murkowski is very sensitive to the unfair treatment that the current Medicare formula has created for rural states, particularly Alaska. The FMAP formula itself, from Senator Murkowski's position, was poorly drafted and has not been adjusted to reflect new data that shows that looking solely at per capita income and ignoring the cost of providing services is an inaccurate way to determine how states should be reimbursed for providing health care services. Senator Murkowski is not supportive of the proposal put forth by Senator Bingaman that was incorporated into Senator Baucus's bill to give an across-the-board FMAP increase to all states. Some states already receive more than they should while others receive less. That is one reason Senator Murkowski pushed a \$200 billion five-year adjustment last year of the states' FMAP rate. Unfortunately, it was followed up by a change in the Bureau of Economic Analysis's definition of "per capita income," which led to an artificial decrease.

MR. GILBERTSON repeated that Senator Murkowski does not believe

an across-the-board increase in the FMAP rate is the right approach. First it is only for one year. Second, after it sunsets, it does nothing to address the underlying problem. The formula itself has never been adjusted or modified to affect the realities of preventive care in Alaska. Senator Murkowski has informed the committee that this approach will waste billions of federal dollars and delay, for one year, the debate that needs to occur, that being to focus on fixing the formula so that it reflects the high cost of providing services in rural areas.

CHAIRWOMAN GREEN pointed out the latest outcome on the FMAP issue is certainly more optimistic than what she expected from their conversation several weeks ago.

MR. GILBERTSON said that obviously, if the current language passes, Alaska will benefit and that, 99 percent of the time, is the standard Senator Murkowski uses to decide whether to support legislation. The problem is that it is tied in with many things that are bad for the program, for example, to bring in a COBRA subsidy at the federal level to put pressure on states to expand coverage for displaced workers. He pointed out that this method of handling the COBRA subsidy issue would create an inefficient system. The Administration and the Republicans on the committee feel it is much more efficient to look toward national emergency grants already established under the energy program system to distribute funds to states pursuant to Department of Labor policies developed back in 1982 and refined in 1998. Those policies allow governors to step in, submit an application, and certify that the events are September 11 related. The states can use that money without having to provide matching funds to establish emergency assistance programs in communities that are disproportionately harmed. By instead providing a COBRA subsidy, funds will have to be distributed to the states only after the Departments of Transportation and Labor promulgate regulations to set up a program. In addition, states will have to establish infrastructure capable of administering the funds. New mandates will be put on states to identify and certify who is COBRA-eligible. It will require states to make payments to those recipients or to the insurance carrier. In addition, states may have to subsidize the cost of COBRA premiums as well. Again, Senator Murkowski believes a temporary across-the-board FMAP rate increase is not the right approach to fix Alaska's problem. That temporary boost will prevent the Senate Finance Committee from working on the problem over the next year, therefore it will be placed into another political cycle and will start from ground zero again.

SENATOR TAYLOR commented that Senator Murkowski has been the lead person in the Alaska delegation on the rewrite of the FMAP formula. He stated he appreciates the work of the staff members who helped with that project.

MR. GILBERTSON noted this has always been an uphill battle and that delegation members have done well channeling their energies within their areas of jurisdiction. The state was looking at some very difficult financial hardships going into 1997. At that time the match rate was 50/50. Senator Murkowski's first effort was to raise and get a three-year extension of the Alaska FMAP rate at 59.8 percent and, after that expired to secure another extension. He was able to put a five-year extension on to that which decreased Alaska's per capita income by five percent before being inserted into the formula. That will generate an extra \$40 million for the state over the next five years. Senator Murkowski's concern is what will happen in 2005 when that extension expires, which is why he feels it is most appropriate to fix the FMAP formula now.

CHAIRWOMAN GREEN thanked Mr. Gilbertson for his briefing.

MR. BOB LABBE, Director of the Division of Medical Assistance, presented a power point presentation on Alaska's Medicaid program to the commission, of which highlights follow.

**TAPE 01-48, SIDE A**

MR. LABBE discussed the following overview of the Medicaid program.

- Administered by each State under a host of federal rules, with both sharing in the cost of the program.
- Eligible groups per federal law
  - Mandatory: Family Medicaid; Newborns and Children in Lowest Poverty Levels; SSI recipients
  - Optional: APA recipients; Denali Kid Care; Pregnant women
- Services allowed per federal law
  - Mandatory
  - Optional
- Federal law requires each State to have a committee (MCAC) to advise the Medicaid agency in order to obtain federal matching funds.
- Established by the Social Security Act Amendments of 1965 to pay for medical assistance for certain individuals and families with low incomes and resources.

He explained that those the state is required to cover under Medicaid are temporary assistance recipients, recipients of Supplemental Security Income (SSI), pregnant women with incomes below 133 percent of the federal poverty level, and children who fall at different income levels depending on age. In addition, optional groups of people can be served. Currently, children whose family income is up to 200 percent of the poverty level are eligible, as well as certain aged and disabled recipients that

fit state-only cash assistance grants. About 40 different Medicaid-eligible categories exist; states must cover certain services but can elect to cover others. States are required to have a medical care advisory committee to receive federal funds.

The Alaska statutes that authorize DHSS to participate in the Medicaid program fall under AS 47.07 (.020, .030, .035).

MR. LABBE reviewed the eligibility criteria on the following chart and pointed out, for reference, that DHSS would be required to cover a pregnant woman in a family of three with an income under \$24,000.

### **Eligible Persons**

Federally mandated groups include:

- Family Medicaid
- Newborns and children at lowest poverty levels
- SSI recipients
- Children at lower poverty levels
- Pregnant women at lower poverty levels

Optional groups include:

- Some APA recipients
- Children at higher poverty levels
- Pregnant women of higher poverty levels

### **Eligibility: In Simpler Terms...**

Aged

Blind

Disabled

A Child

A Caretaker of a Child

A Pregnant Woman

CHAIRWOMAN GREEN asked if the SSI program is a federal program.

MR. LABBE said it is 100 percent federally funded and operated. States are required to provide a state supplement, which in Alaska, is the adult public assistance payment (APA). SSI recipients are then eligible for Medicaid. Some of the groups who receive APA payments are required by federal law, some are optional. The SSI program started in 1974. Prior to that, the program was administered by states and required a state match.

MR. LABBE pointed out that Alaska's Medicaid program does not cover everyone who is low-income. Some states have special grants and demonstration waivers to cover low-income groups that are excluded from Alaska's program.

REPRESENTATIVE DYSON commented that hospitals must spread the cost of treating folks without coverage. He asked if other jurisdictions have figured out how to solve that problem.

MR. LABBE replied that some states have concluded that making sure that everyone is covered in some way reduces the cost shifting. That is the theory behind Oregon's health plan that moved toward universal coverage. That program provides coverage in several ways; part-Medicaid, buy-in programs, part-insurance. The idea behind it is that if everyone has coverage, some level of payment takes place so there is less subsidization from cost-shifting.

REPRESENTATIVE DYSON asked if those states have seen the costs to third party payers decrease since cost subsidization isn't happening within institutions.

MR. LABBE said he does not have the answer to that question but can look into it. He added that he is not aware of any state in which everyone is fully covered but Hawaii and Tennessee seem to have the broadest programs.

CHAIRWOMAN GREEN recognized the arrival of Representative Cissna.

REPRESENTATIVE CISSNA pointed out, in reference to Representative Dyson's question, that the costs of health care have accelerated so quickly so that everyone is scrambling to keep up with the costs while nothing has been done to stabilize those costs. She asked if that is a correct assessment of what has been happening.

MR. LABBE said the fact that costs have accelerated rapidly is correct and is a national issue. He noted the rate of increase slowed down for a few years but it is now accelerating again.

MR. LABBE provided the following chart of federally mandated services. He pointed out that for children, all the services are mandatory as the result of a modification of the federal law in 1989. That modification required states to provide necessary services for a child to correct a condition, even if that service is not covered in general by the state's Medicaid program. An example would be physical therapy, which is not listed as a mandatory service.

**Federally Mandated Services - Mandatory Services: Sec. 1905,  
Social Security Act**

Inpatient hospital services  
Outpatient hospital services  
Prenatal care  
Vaccines for children  
Physician services  
Nursing facility services

Family planning services and supplies  
Rural health clinic services  
Home health care for persons eligible for skilled-nursing services  
Laboratory and x-ray services  
Pediatric and family nurse practitioner services  
Nurse-midwife services  
Federally qualified health-center (FQHC) services  
Early and periodic screening, diagnostic, and treatment (EPSDT)

### **Children's Services**

All medically necessary health care services must be covered for eligible children.

*-Within the scope of mandatory or optional services under Federal law.  
-Even if those services are not included as part of the covered services in that State's plan.*

MR. LABBE then discussed the following optional services that states may elect to cover.

### **Optional Services**

AS 47.07.030

(♦ Selected by the Alaska Legislature for coverage)

- ♦ Ambulatory surgery center services
- ♦ Case management services
- Chiropractic
- Christian Science sanatorium
- Clinic services
- Community supported living arrangements
- ♦ Dental (*adults limited to emergency treatment for pain and infection*)
- Dentures
- Diagnostic services
- ♦ Durable medical equipment
- Emergency hospital services (*for hospitals not enrolled*)
- ♦ Home and community care
- ♦ Home health
- ♦ Hospice services
- ♦ Intermediate Care Facility for the Mentally Retarded (ICF/MR)
- ♦ Services in an inpatient psychiatric facility for age 65 and older
- ♦ Medical supplies
- ♦ Occupational therapy
- Optometrist services
- ♦ Personal care services
- ♦ Physical therapy
- Podiatry
- ♦ Prescription drugs
- Preventive services
- Private duty nursing
- ♦ Prosthetics and orthotics
- ♦ Rehabilitation services (*mental health and substance abuse*)
- Respiratory therapy
- Screening services
- ♦ Speech, language and hearing services
- ♦ Vision services

MR. LABBE said some of the eligibility groups are up through age 18, but a disabled person who is 20 would be considered a child for the purpose of the Medicaid package.

CHAIRWOMAN GREEN asked how a minor who is a ward of the state would be treated.

MR. LABBE said the state currently covers 19 and 20 year olds under that system. He clarified that home and community based services are not considered medical services typically so the state is not required to cover those services for children but it does have waivers specific to disabled children.

MR. LABBE showed the following list of priority services in statute.

**AS 47.07.035 Priority of medical assistance**

Priority	Type of Service	FY01	
		Recipients	Cost
1	Clinical Social Workers Services	0	\$0
2	Psychologists Services	0	\$0
3	Chiropractic Services	0	\$0
4	Advanced Nurse Practitioner Services	0	N/A
5	Adult Dental Services	4,798	\$1,699,255
6	Emergency Hospital Services	0	\$0
7	Midwife Services	0	N/A
8	Treatment of Speech, Hearing, and Language Disorders	1,586	\$920,912
9	Optometrists Services and Eyeglasses	9,407	\$1,135,807
10	Occupational Therapy	292	\$404,894
11	Mammography Screening	928	\$33,733
12	Prosthetic Devices	285	\$248,949
13	Medical Supplies and Equipment	1,874	\$2,564,022
14	Targeted Case Management Services	0	\$0
15	Rehabilitative Services for Substance Abusers and Emotionally Disturbed or Chronically Mentally Ill Adults	735	\$2,507,124
16	Clinic Services	4,005	\$42,516,123
17	Physical Therapy	9,316	\$918,404
18	Personal Care Services in a Recipient's Home	1,198	\$6,251,068
19	Prescribed Drugs	26,664	\$27,659,154
20	Hospice Care	5	\$7,494
21	Long-Term Care Noninstitutional Services	2,246	\$55,495,465
22	Inpatient Psychiatric Facility Services	490	\$13,845,681

23	Intermediate Care Facility Services for the Mentally Retarded	0	\$0
24	Intermediate Care Facility Services	0	\$0

Source: MMIS MARS MR-O-12 Reports

MR. LABBE said the big costs begin with clinic services, which are the community mental health clinics. The costs are borne by total fund dollars, not only general fund dollars which pays about 33 percent.

CHAIRWOMAN GREEN asked if Mr. Labbe has any suggestions regarding the list.

MR. LABBE said he does not; he showed the list to point out that when people talk about going down the list, the program will have to cut one dollar to save 33 cents, and a number of services will be eliminated, such as medical supplies and equipment. When he has looked at that approach in the past, the question of whether the Medicaid program will no longer cover mental health services or prescription drugs is the kind of question that has to be answered. He feels that approach is draconian.

REPRESENTATIVE DYSON asked Mr. Labbe to clarify what he meant by this approach.

MR. LABBE said he was referring to reducing costs by cutting services. He stated some services cannot be cut; so, to save \$50 million in general funds for example, the program would have to no longer provide prescription drug coverage and other services.

REPRESENTATIVE CISSNA said another way to look at that is to figure out what the real cost is. When the legislature looks at any kind of cuts, it needs to know the total cost because the state will lose if it cuts certain things.

MR. LABBE pointed out the list only shows what DHSS spent in a particular service. Several years ago, perhaps in 1994, adult dental services were added back into the program. At that time, DHSS found it was spending quite a bit of money on outpatient hospital services because people who could get no dental care would show up there when they had a dental emergency. He said although the Adult Dental Services program is not comprehensive, it provides relief from pain and infection and reduces the outpatient service cost. He said his point is that if something is cut, the cost will show up elsewhere.

CHAIRWOMAN GREEN asked if the amounts on the priority list reflect the amounts actually paid.

MR. LABBE said that is correct.

CHAIRWOMAN GREEN asked how the list of 24 services was prioritized.

MR. LABBE said the first service on the list would be the first to go so that the list is in reverse order of the importance of services. He noted the first three items on the list are not currently provided. He explained that number 23 refers to payments to Harborview and number 24 refers to nursing home payments. DHSS had no expenditures on FY 01. He indicated that number 24 should probably be removed from the statute since nursing facility services are mandatory.

CHAIRWOMAN GREEN asked if the first expenditure is number 22.

MR. LABBE said number 22 would be the last service cut.

CHAIRWOMAN GREEN asked, if DHSS ran out of money, would it quit paying for services for numbers 22, 21, and 20.

MR. LABBE said it would not happen that way and that this is a difficult issue. When he met with the Finance Committee over the last several years on this question, they discussed making this decision before the end of session. The discussion has revolved around whether it is better to project expenses low and come back for supplemental funding if necessary. He has found that DHSS cannot cut services without promulgating regulations and giving clients notice. In addition, some payments are in the "pipeline" and there is a payment lag. Therefore, to make a cut effective and generate the dollar, DHSS has to have this in place at the first of the fiscal year or shortly thereafter. Once the fiscal year begins, the regulation process, the client notice process, and the payment lag run into the next year.

SENATOR TAYLOR commented that legislators have been told during the session that DHSS will have to cut out adult dental services and other services if the legislature does not act immediately. However, that does not occur.

MR. LABBE said that happens when DHSS presents a budget and is told the program will only be funded at a certain level. DHSS then does an impact analysis and that is what it would have to do. He noted that changing the benefit package would not happen without a discussion with the legislature.

CHAIRWOMAN GREEN asked Mr. Labbe if he is prohibited from pro-rating payments if he foresees a shortage.

MR. LABBE said he believes there is a federal problem with pro-ration but he would have to research that further. He said DHSS has state authority to adjust payment rates but certain rules

apply and the adjustments are not typically across the board. For example, Alaska statute requires DHSS to pay a fair rate for health facilities. The same requirement does not exist for physician rates. He knows in the past, when states have tried to do across the board cuts, the federal agency says a program cannot be driven by budget.

REPRESENTATIVE DYSON said he assumes DHSS cannot pro-rate the qualifying family income.

MR. LABBE said that is correct. Moving on with the presentation, Mr. Labbe explained each state is required to have a medical care advisory committee (MCAC), composed of six health care providers and six consumer representatives. DHSS has aimed for a fair geographic distribution as well as representatives from the different user groups and medical fields.

CHAIRWOMAN GREEN asked if a charge of the medical care advisory committee is to review Medicaid provisions and agencies and whether it comes up with proposed programs or changes.

MR. LABBE said the committee makes recommendations to DHSS for regulatory changes and on operational issues. He told committee members that the MCAC hears from the public and tries to advocate for all participants, both providers and consumers.

CHAIRWOMAN GREEN asked if the MCAC is supposed to act as an advocate or lobby.

MR. LABBE said he would not characterize the MCAC that way. He believes its members are very interested in health care but their primary role is to make sure the system is working well. For example, DHSS developed a survey of providers, which the MCAC reviewed and gave DHSS practical feedback and advice.

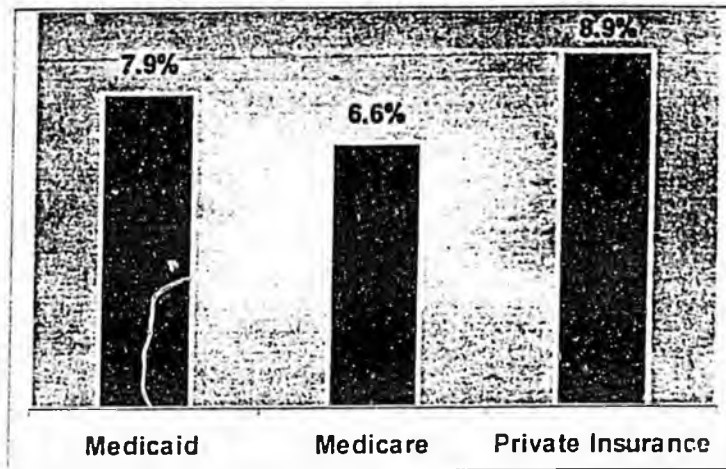
REPRESENTATIVE DYSON said he believes, by definition, the role of the MCAC is advocacy.

MR. LABBE said he brings the MCAC a lot of material for review..

CHAIRWOMAN GREEN asked if the MCAC's role is to advise DHSS or the legislature.

MR. LABBE thought the federal government envisioned the MCACs to advise the program and to allow program managers to have some input into the process.

REPRESENTATIVE CISSNA said she felt compelled to say that it is "sticky" because every single person in Alaska wants to advocate for help. Therefore, it is difficult to determine when one group may be asking too much.



MR. LABBE said his next chart speaks to what is happening nationally.

**Nationwide Medicaid Expenditure Growth  
Converging Trends are Causing  
Medicaid Expenditure Growth**

- Increasing Inflation in Health Care Market
  - Pressure to increase provider payments
  - Higher costs for brand and generic prescription drugs
- Changing Health Care Utilization
  - Reliance on home & community based services
  - Greater use of prescription drugs, new technology
- Expanding Enrollment
  - Eligibility expansions
  - Growth of the disabled population in Medicaid
  - Use of Upper Payment Limit (UPL) Arrangements

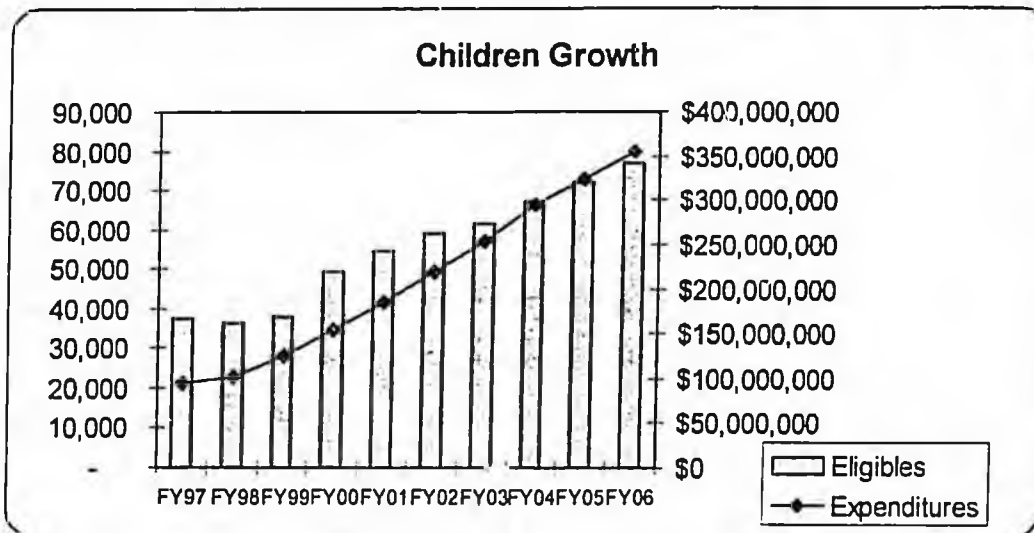
MR. LABBE said, regarding inflation, costs were fairly flat for awhile but are beginning to increase again. The big issue nationally is prescription drugs. He thought Mr. Gilbertson might discuss prescription drugs but he believes that agenda is on the back burner with Congress right now. He noted states would benefit if prescription drugs for seniors were covered.

**National Projected Average Annual Growth Rate in Medicaid,  
Medicare, & Private Health Insurance, 2000-2005**

MR. LABBE stated:

I think if you look at the next page where it shows the growth rates projected - Medicaid, Medicare and private insurance - the one that I thought was interesting here was that Medicare was lower than Medicaid and private insurance and I think the Medicare, again, the areas like prescription drugs, which they don't cover, are one of the biggest drivers in Medicaid so Medicaid will go up. The other thing that Medicare doesn't really do much of is long-term care. It's a very short stay following hospitalization. They say up to 100 days but it's typically 8 to 10 days that Medicare will pay for

and then if the person stays in a nursing facility, the primary payer tends to become the Medicaid program, which is state match. The same thing in the home and community based services. Medicare does cover some home health benefit. Again that's more short term but if you get the longer term supports - personal care attendant services, some of these things, essentially it's a state Medicaid business. So I think that's partly - those areas are growing in Medicaid and the basic - the hospital and the doctor stuff is probably



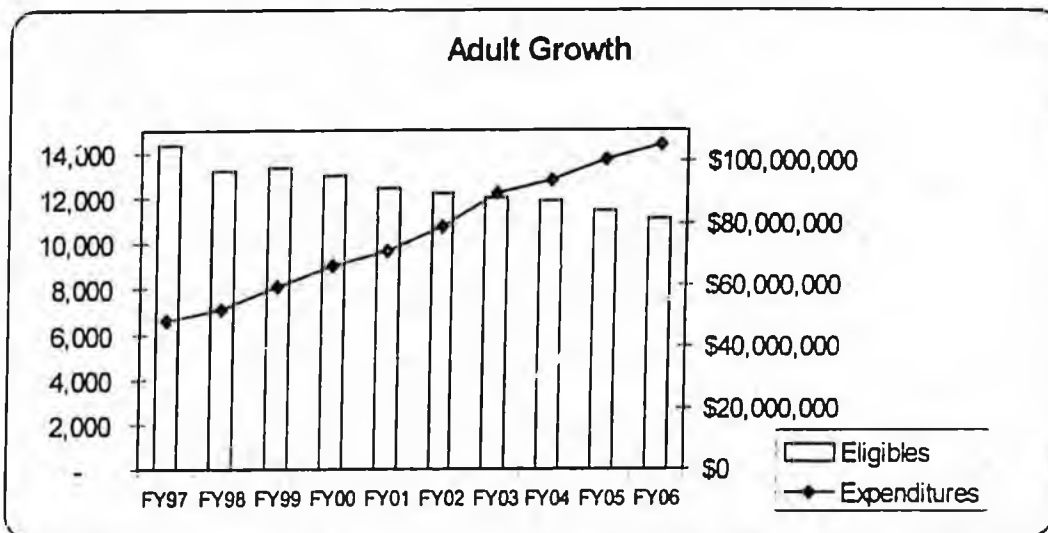
the same but when you add these prescription drugs, home care, nursing home care, Medicaid will be growing.

MR. LABBE then discussed the information on the following chart.

- **Children's eligible recipient numbers**
  - ~ FY01 eligible numbers represent 24% of Alaska's total population ages 0 - 18
  - ~ Average increase in eligible growth over last 4 years has been 10.4%
  - ~ Children's eligible recipient rate of growth decreased by more than 50% in FY 01
  - ~ FY01 average cost per month per eligible child was \$280
- **Children's expenditures:**
  - ~ 35% of total FY01 Medicaid expenditures are attributed to Alaska's children.
  - ~ Over the past 4 years, Medicaid's total rate of expenditure growth has averaged 15%
  - ~ Over the past 4 years, the average increase in expenditure growth for children has been 18.8%
  - ~ 55% of FY 01 expenditure growth was attributable to increased eligibles

FY04 through FY06 total projections are based on a simple linear trend with a 7.1%

### Adult Growth



health spending growth rate applied. Source of Rate: March 2001 Center for Medicare & Medicaid Services' "National Health Care Expenditures Projections: 2000-2001". These projections assume no changes to the existing program.

MR. LABBE explained the chart projects the growth of the Denali Kid Care program through FY 06. The rate of growth increased more than 50 percent in FY 01; the future rate of growth is projected to be lower. DHSS expanded Medicaid services in the early 1990s when it began to cover children and pregnant women at a higher income level. DHSS served 77,422 children last year, about 24 percent of Alaska's children.

REPRESENTATIVE DYSON asked if any jurisdiction, other than private health, figured out how to reward and encourage healthy behaviors.

MR. LABBE said some programs encourage pregnant women to access prenatal care sooner but he did not think DHSS could reward certain behaviors.

REPRESENTATIVE CISSNA noted that Native health agencies are putting a lot of effort into education because many people do not know what healthy habits are.

SENATOR TAYLOR pointed out that the number of eligible participants will be less than the funding by FY 06. He asked for clarification.

MR. LABBE said when the program was implemented, that some of the costs per person dropped. The later years show that once the population is well covered, the costs will increase as health care costs increase so that expenditures will exceed the number of eligible people. He added that same scenario is more evident on the next chart with the adult population, where the population is decreasing but the expenditures are increasing.

He pointed out the adult population is made up, primarily, of the temporary assistance population and pregnant women. DHSS expanded coverage several years ago so that pregnant women with a

higher income level were eligible. At the same time, temporary assistance cases have been lower cost because those clients receive coverage based on the fact they receive cash grants: they do not necessarily apply for the purpose of health coverage. People move off of the temporary assistance program so that those who remain are those with the most difficulties in moving into the work force and frequently have more health problems and use more services. Consequently, the cost per person has increased while the caseload has dropped.

SENATOR TAYLOR said one of his concerns regarding the previous chart is how many of the 77,000 children are also covered by the Public Health Service or private insurance. He noted Medicaid has become the first payer.

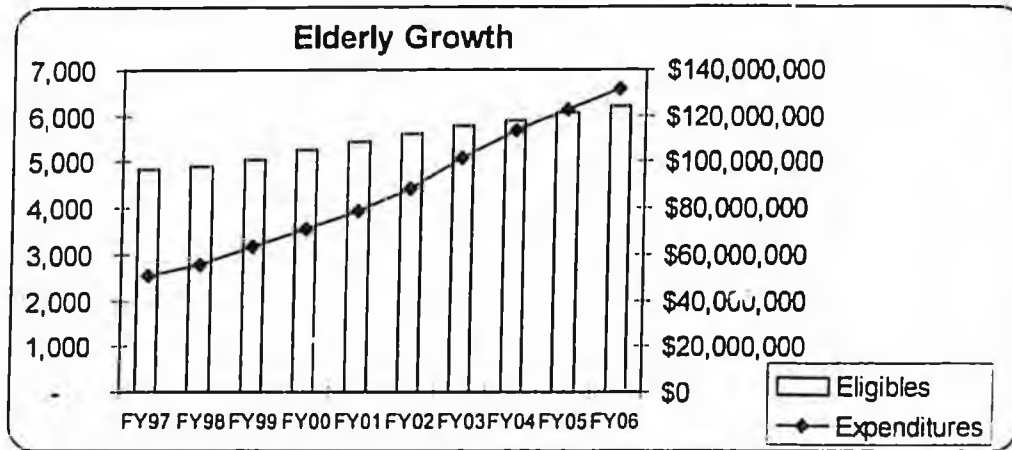
MR. LABBE explained that some children have other health insurance but that is not a factor that makes a person ineligible for the Medicaid program. If a client has other insurance, Medicaid acts as the last payer. In addition, the Medicaid program may offer some benefits that private insurance does not, for example dental services. He noted that many seniors are eligible for both Medicare and Medicaid. Medicare pays first but it does not cover prescription drugs so those drugs are paid through Medicaid. Payments for Medicare and Medicaid services are coordinated so that, for example, Medicare may pick up 80 percent of the costs while Medicaid pays the other 20 percent. He informed members that if private insurance is available, DHSS has a unit that goes after the insurance company and recovers for the state.

SENATOR TAYLOR asked why the Medicaid program would cover a bill for someone who is eligible for and fully covered by a Native health service. He questioned why, if the Native program is fully paid for with federal funds, the state should get a bill for any services for that person.

MR. LABBE said his understanding is that the federal law directs states to enroll and allow tribal programs to bill as a way to help supplement declining appropriations. However, when the state pays those providers, it claims that payment at 100 percent federal funds so no general fund payment is being made.

MR. WINKELMAN, legal counsel for the YKC Health Corporation, explained that Congress views the Alaska Native citizen as a citizen of Alaska and the United States, and a citizen with a trust relationship with the federal government. Therefore those citizens are entitled to both Medicare and Medicaid. The federal government pays 100 percent for their health care under the FMAP so no state funds are being expended for Alaska Native Medicaid-eligible patients.

MR. LABBE continued his presentation by describing Alaska's elderly in regard to the Medicaid program.



FY04 through FY06 total projections are based on a simple linear trend with a 7.1% health spending growth rate applied. Source of Rate: March 2001 Center for Medicare & Medicaid Services' "National Health Care Expenditures Projections: 2000-2001". These projections assume no changes to the existing program.

MR. LABBE pointed out the growth of Alaska's senior population in the Medicaid program has been very consistent. In terms of

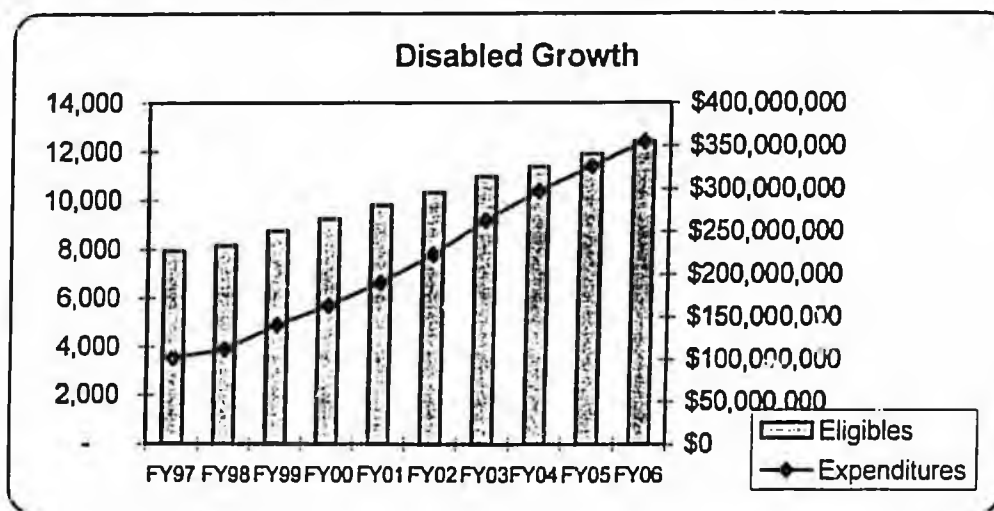
- **Elderly Eligible Recipient Number:**
  - Elderly eligible growth has averaged 3% for the past 4 years
  - Elderly Rate of growth is Medicaid's most consistent
  - FY01 average cost per month per eligible elderly person was \$1,209
- **Elderly Expenditures**
  - Expenditure growth for the elderly has average 12% for 3 years
  - 29% of FY01 expenditure growth was attributable to increased eligibles

demographics, he believes the general population is growing at a lower rate than the senior population. There has been concern expressed about long-term care needs in 20 years because of a large number of seniors who will be over age 85. However, the population that is aging in Alaska typically has more assets and higher income so they will not qualify for these programs until they are in need of nursing home services. The growth is very predictable. Services for Alaska's elderly comprise a fairly

expensive portion of the Medicaid caseload. Last year, Medicaid served 7,159 elderly individuals at a cost of \$70 million. However, the services they need are expensive, such as prescription drugs and long-term care. If those clients did not have Medicare coverage, Alaska's cost would be very high. DHSS is required to pay premiums for low-income Medicare beneficiaries. The federal government matches that payment.

CHAIRWOMAN GREEN asked where the costs for the assisted living services show up.

MR. LABBE said assisted living services fall under the home and community based waivers. He noted the charts show aggregate costs and that he would provide more detail later.



MS. RYNNIEVA MOSS, staff to Representative Moss, noted that assisted living homes take in vulnerable adults and apply for Medicaid waivers. Often, they provide medical services three months before the waiver is approved and they cannot be reimbursed for those three months. It is her understanding that could be changed at the federal level because assisted living homes are in the unique position of not being able to be reimbursed retroactively. She asked Mr. Labbe if he has talked to the federal government about those possible changes, which, to her understanding, will have to be made legislatively.

MR. LABBE said he has not talked to anyone in the federal government about retroactive payments. That issue has been under discussion in the Department of Administration. He stated the issue is that a person cannot be put on a home and community based waiver retroactively. If the services begin before a person has a level of care determination, those services cannot be paid prior to the date of determination. He said he has no new information on that issue but will find out.

CHAIRWOMAN GREEN announced that the committee would break in 20 minutes for lunch and reconvene at 1:30 p.m.

MR. LABBE continued his presentation and discussed the disabled clients in Alaska's Medicaid program. He referred to the following chart and stated that last year, the Medicaid program served 12,194 clients, both children and adults with disabilities.

• **Disabled Eligible Recipient Number:**

- Disabled eligible numbers have maintained a steady increase of about 5% for 4 years
- FY01 average cost per month per disabled recipient was \$1,624

• **Disabled Expenditures:**

- Expenditure growth has averaged more than 17% for 4 years
- 28% of FY01 expenditure growth was attributable to increased eligibles

CHAIRWOMAN GREEN stated the Mat-Su Valley is growing faster than any other area of the state, population-wise. She asked Mr. Labbe if his charts take that growth into account.

MR. LABBE said the projections are from DHSS data.

CHAIRWOMAN GREEN said the projections could be an underestimate.

MR. LABBE said they could go either way and, in fact, DHSS has been looking into the growth rate in the number of disability clients. A researcher suggested the disability growth for the adult public assistance population followed the birth rate plus 18 years. He suspects that as the birth rate dropped, the rate could level out. He pointed out this category is the most expensive on a per person basis. About 50 percent of these clients also receive Medicare.

REPRESENTATIVE DYSON commented, regarding Senator Taylor's question about expenditures increasing at a higher rate than enrollees, the services should be based on the needs of the people rather than what is available. He asked:

How do we keep new people providing services from being salesmen who are saying, oh my goodness, there's another program you can sign up for - you need to do this - just because the program is available as opposed to the needs of the client or patient?

MR. LABBE replied in the medical service area, DHSS is quite dependent on the physician prescribing services. DHSS also has case management programs to monitor utilization and to assist families in finding a more efficient use of services. He pointed out that one of the factors that is driving up the cost of prescription drugs nationally is not only new technology but direct advertising. He noted DHSS has a committee that works on these issues, including education.

REPRESENTATIVE DYSON said he is on a crusade to create a process where every person who receives assistance from the state only has to deal with one agency and minimal paperwork. He asked Mr. Labbe if he believes that is an impractical goal.

MR. LABBE said he believes it is an ambitious goal but it may not be impractical, especially in some areas. The Division of Medical Assistance does not directly interact with consumers, for the most part. Clients submit a public assistance application. During that process, a client may encounter multiple agents.

REPRESENTATIVE DYSON said he is aware of people who receive temporary assistance and, in addition, need child care assistance. Those people have to recap all of their information and comply with schedules that are very difficult, particularly in light of the fact that they are dealing with child care and transportation problems. He said he longs for the day when those people can fill out one form that would qualify them for several programs and in which one person acts as the broker for the family. He asked if any jurisdiction in the country uses such a process.

MR. LABBE said the State of Oregon is moving into that model and he believes one or two other states are moving in that direction.

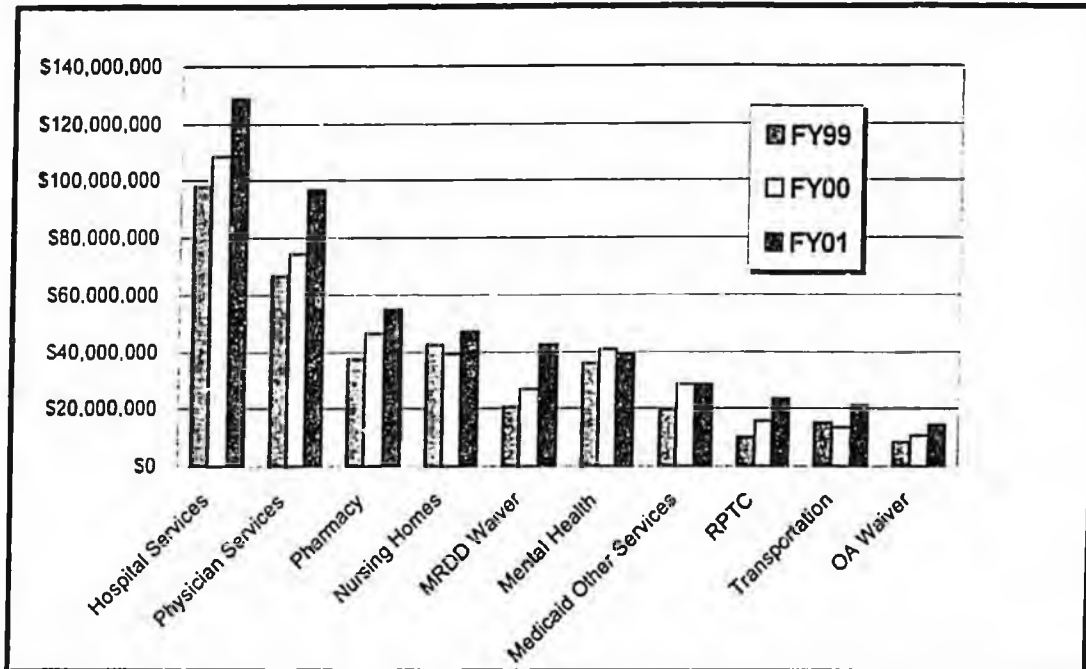
REPRESENTATIVE DYSON said if the state made it work better for recipients, the delivery of services would become more efficient and possibly reduce costs.

MR. LABBE pointed out the Division of Public Assistance has a web page but he has not been involved in that project.

REPRESENTATIVE CISSNA said she did some volunteer work for a program for the long-term mentally ill that was established by the California State Legislature to find a solution similar to what Representative Dyson suggested. Funding stays with the client so that if money is saved by hospitalization so that, for example, some of the clients were able to receive college educations with the extra funds saved. She felt such a program is worth looking at.

MR. LABBE drew attention to the following chart.

### Cost Center Growth Top Ten Expenditure Categories



Categories include Indian Health Services

He explained that the category entitled "Medicaid Other Services" includes lab work, x-rays, medical supplies, vision, home health, family planning, physical and speech therapy, and personal care attendants. He noted that clearly, the largest expenditure categories are for hospital and physician services. He said the one area that has remained fairly level is the nursing home category.

SENATOR TAYLOR asked why such a dramatic increase in hospital services in two years.

MR. LABBE said that reflects an increase in the caseload of children.

SENATOR TAYLOR asked if that is due to Denali Kid Care.

MR. LABBE said it is. DHSS has added about 18,000 to 20,000 children since 1999. DHSS has also added a new group of disabled workers that can buy into the program. In addition, costs have increased.

SENATOR TAYLOR said he is floored by the almost 50 percent increase in costs of physician services over three years and asked how that can be rationally budgeted for in the next three

years.

REPRESENTATIVE CISSNA maintained that insurance costs are rising in the same manner.

SENATOR TAYLOR disagreed and said insurance costs have not increased 50 percent in two years.

MR. LABBE pointed out the chart shows the total dollars expended, including Indian Health Service costs. The tribal programs have had an increasing ability to bill the Indian Health Service so the data is coming in now. In addition, there have been some rate increases from the federal government.

SENATOR TAYLOR asked Mr. Labbe if those factors may have skewed those categories a bit.

MR. LABBE said they have.

CHAIRWOMAN GREEN felt the rate of growth should be fairly static and that the chart is reflective of what she saw on the Finance Committee last year - a \$40 to \$60 million increase in one year in Medicaid participation. That amount equals half of the Department of Public Safety's budget. She said that regardless of how endearing these programs are, the legislature has to ask if this is the best way to provide those services.

MR. LABBE presented four pie charts to demonstrate service use by the four population groups. He noted the population group of children includes newborns; he would prefer to split the group in two because expenses are much higher for the first year of life.

CHAIRWOMAN GREEN asked Mr. Labbe if he would prefer to separate out the high incidence children.

MR. LABBE said yes and, similarly, he would like to separate out costs for pregnant women from the adult category. He plans to split the groups because the current categories mask what is going on.

REPRESENTATIVE DYSON asked what percentage of the total state population are disabled, what percentage are children, and what percentage is classified as adult.

MR. LABBE offered to get that information from the Census Bureau data.

CHAIRWOMAN GREEN announced the committee would recess until 1:30 p.m.

CHAIRWOMAN GREEN called the subcommittee back to order at 1:40

p.m. and announced the next item on the agenda was an overview of Medicaid fraud.

MR. STEVE BRANCHFLOWER, Director of the Alaska Medicaid Fraud Control Unit (MFCU), informed subcommittee members that he distributed a handout that he prepared in May of 2000 for the Medical Care Advisory Committee. He explained the essential difference between Medicaid and Medicare is that Medicaid is a health care program for low income and disabled people, funded by the state and federal government, while Medicare is 100 percent federally funded and provides medical benefits for retired people. State participation in Medicaid is optional. If states decide to participate, they must provide certain minimum health care services, establish a payment structure, and provide for oversight of the providers. Alaska's split was 50/50 until Senator Murkowski was able to enact legislation that changed the split to 60/40. Alaska's statutory scheme for its Medicaid program is embodied in AS 47.

MR. BRANCHFLOWER explained that each state that participates in Medicaid must have a Medicaid fraud control unit to investigate and prosecute crimes against the Medicaid fund. The MFCU is a separately identifiable legal entity. Although it functions as part of the Department of Law, it is separate from the Division of Medical Assistance.

The MFCU has three objectives:

- to conduct a statewide program to investigate and criminally prosecute providers who steal money;
- to investigate fraud in the administration of the program;
- to review complaints of abuse and neglect against patients in health care facilities receiving Medicaid funding.

The MFCU was created in 1992. It is funded with 75 percent federal funds and 25 percent state funds. The office is staffed with two investigators, an internal auditor, and Mr. Branchflower. He is cross-designated, meaning he can prosecute in either state or federal court. Alaska's criminal statutes are not tailored to the investigation or prosecution of health care crimes, therefore he often prosecutes in federal court.

REPRESENTATIVE DYSON asked Mr. Branchflower if he recommends changing Alaska's statutes.

MR. BRANCHFLOWER said he believes there is a lot of room for improvement and offered to provide suggestions.

REPRESENTATIVE CISSNA maintained that the cost factor of statutory changes should be taken into consideration.

MR. BRANCHFLOWER informed the subcommittee that the MFCU is located in the Office of Special Prosecution and Appeals within the Department of Law. He provided the following statistics to show the rising costs per participant:

In FY 99 -

- the total number of participating providers was 3,787
- the total number of recipients was 79,777
- the number of claims lines processed equaled 3,091,484
- the total reimbursements paid equaled \$378,451,845 equating \$4,783.87 per recipient.

In FY 00 -

- the number of providers escalated to 10,345
- the number of recipients increased to 92,103
- the claims lines processed jumped to 4,683,421
- the total reimbursements paid was \$467 million which equates to \$5070 per recipient.

He pointed out the total expenditures progressed from \$257 million in FY 95 to \$467 million in FY 00. From 1995 to the present, the Medicaid claims paid amounts to almost \$2 billion. (HCRA) reports that, nationally, approximately 10 to 20 percent of health care dollars spent go to fraud, waste and abuse, amounting to a considerable amount of money.

MR. BRANCHFLOWER explained that DMA contracts with the First Health Services Corporation, to conduct the day-to-day business of DMA. They enroll Medicaid providers. He pointed out that any business that provides a service to a recipient can become an enrolled provider, such as an airline, hotel, or taxi cab company. First Health Services Corporation also processes Medicaid claims. DMA has a term contract with the First Health Services Corporation, which will soon be up for renewal.

**TAPE 01-49, SIDE A**

MR. BRANCHFLOWER told the subcommittee that providers can submit bills to First Health Services Corporation either on paper or electronically. More and more providers are submitting claims electronically because the reimbursement process is much faster. Essentially, a recipient goes to a provider who provides services and submits a bill to the First Health Services Corporation. The claim is processed and, if approved, a check is deposited directly in the provider's checking account. The turnaround time is relatively short and can take a matter of days. Because of the high volume of service and claims, the system does not allow for a check on whether or not services were actually provided. The whole system runs on good faith. It is only after the fact,

if an effort is made to reconcile the billings with patient charts, can fraud be found. Many checks have been put into the system, but the ability to steal large amounts of money in a short period of time is there.

CHAIRWOMAN GREEN asked if that is the case nationwide.

MR. BRANCHFLOWER said it is. He then noted that Alaska has what is called a "fee for service" program, as opposed to health maintenance organizations (HMOs). In the HMO scenario, the government gives a group of doctors a certain amount of money to provide services under a contract. Recipients may complain that the services are not being provided so the HMO is underutilized. Alaska is one of three states with a fee for service program. The problem here is over-utilization because anyone who provides a service gets paid for it.

REPRESENTATIVE DYSON maintained that with a fee for service system, services may outweigh demand.

MR. BRANCHFLOWER agreed. He said a reasonable medical necessity must be associated with the service but, from time to time, the MFCU sees over-utilization with no justification, for example over prescribing, over testing, and over medication.

REPRESENTATIVE DYSON asked if that occurs in non-profit organizations.

MR. BRANCHFLOWER said it does. He then went on to explain that the major components of a Medicaid claim are:

- a recipient number
- a provider number
- date of service
- diagnosis
- procedure code for the treatment provided
- reimbursement

He exhibited a chart of four columns: a description of services, such as whether the patient is new or established or the appointment was a consultation; the CPT code; the service category, which ranges from minimal to comprehensive; a description of the services provided; and the Medicaid reimbursement rate. He pointed out that if a doctor codes a bill for a comprehensive exam when in actuality the doctor only renewed a prescription, the doctor will be reimbursed at a much higher rate. In a case that he recently tried, a doctor billed Medicaid for consultations for almost 80 percent of all of his billings, which are reimbursed at a higher rate. His billings equaled \$180,000. This doctor did not have the training to

qualify as a consultant, no other physician had referred any patients to him for a consultation, and no consultation took place. He maintained that trusting providers to act in good faith works most of the time, but some people take advantage of the system.

CHAIRWOMAN GREEN asked if the time lag has always been the case with Medicaid.

MR. BRANCHFLOWER replied, "I think it's in the nature of the system because when you have hundreds of hundreds of thousands, there's no way that you can have a bureaucracy that would ever require proof of services provided."

He said it is difficult for him to accept because most people are used to receiving a service before it is paid for.

REPRESENTATIVE DYSON said he assumes the medical profession has not been proactive about weeding out the charlatans.

MR. BRANCHFLOWER said these cases are very tough to investigate and prosecute compared to rape and murder cases because there is no crime scene, no physical evidence, no eye witnesses and no lab evidence. In addition, everyone is opposed to rape and murder and jurors have no difficulty understanding the law in those areas. In Medicaid fraud cases, there is no crime scene, no witnesses, no physical evidence, and juries are dealing with issues they are not familiar with, such as quality of care. These fraud cases end up being a battle of the experts. Often, medical experts within the state do not want to get involved.

REPRESENTATIVE DYSON asked Mr. Branchflower if the medical profession is doing much to police itself, for example does the Alaska Medical Association's disciplinary process work well.

MR. BRANCHFLOWER said he sees a very high level of professionalism in Alaska's medical community but he does not know whether the profession is policing itself in an effective manner. He indicated that the medical board has been very cooperative.

REPRESENTATIVE DYSON asked if doctors report to the MFCU when they see fraudulent activity.

MR. BRANCHFLOWER said they do not. He acknowledged that reports can be made anonymously.

REPRESENTATIVE CISSNA asked if proving whether services have been provided is part of the problem.

MR. BRANCHFLOWER said it is. He informed the committee that in

1997, the DMA contracted with Deloitte and Touche to do some random audits over a three-year period. Of the 70 audits done, 40 were on-site. In an on-site audit, the auditing team visits the provider's office and looks at the patient charts to reconcile the patient chart entries with the billings. As a condition of enrollment in the Medicaid program, doctors must agree to make patient files available. Correspondingly, Medicaid recipients must waive their doctor-patient privilege. The patient populations of the doctors are usually considerable. So to do a full audit would be very costly and ineffective. Instead, the auditing firm consulted with a statistician about its findings and projected the loss to the entire patient population. A total of 164 were done. He maintained the single most effective deterrent to fraud and abuse of Medicaid funds would be to continue the audits. The total cost of the three-year audit was \$1,431,750. He has collected and put back into the state treasury \$2,741,126 since July of 1998. Of the total collected, \$2,112,980 came directly from the audits. In addition, he has eight audits sitting on his desk, which could bring in an additional \$18 million. One provider would be liable for \$16 million.

CHAIRWOMAN GREEN asked if the audits began after Mr. Branchflower became employed.

MR. BRANCHFLOWER said the first audit contract was let in October, 1997; he began in July of 1998. When he began, the audits were complete and he was the beneficiary of a great amount of information.

CHAIRWOMAN GREEN asked if the money collected comes through the court system.

MR. BRANCHFLOWER said he can do one of two things: he can either prosecute a person criminally, in which case he would ask for a jail term with restitution. He acknowledged that does not often happen because these cases are difficult to investigate and prove. More often he does civil recoveries. After he reviews an audit, he meets with the provider and his attorney and share the information in the audit. Usually, once they have reviewed the findings they find they have been overpaid. Regulations governing the Medicaid program require participants to reimburse for overpayments. Depending on the conduct of the provider, MFCU can employ a range of options, for example treble damages or filing a false claim act. He often, when settling a case, asks for double the reimbursement amount, recovery of investigative costs, plus interest.

CHAIRWOMAN GREEN asked what happens if the doctor settles but does not pay.

MR. BRANCHFLOWER said they always pay. He said many bad things can happen to providers, one being disenrollment from the program. If a hospital that is part of a national chain is disenrolled, the entire chain might be disenrolled. He indicated that most providers want to make restitution because many times the problems are caused by billing or human errors.

SENATOR DAVIS asked if the settlement money goes directly to the state or whether it is shared with the federal government.

MR. BRANCHFLOWER said that depends on the settlement but usually a portion goes to the federal government. In actuality, MFCU sends the check to the Division of Medical Assistance where the apportionment is made. Sometimes he also settles with the federal government in which it keeps the money. In one case, a national hospital chain settled a national case, which was filed by the federal government with help from the states. He received a check from which the federal portion had already been subtracted.

REPRESENTATIVE CISSNA indicated that Mr. Branchflower said it is incumbent upon the providers to know the rules but she expressed concern that when she was more actively involved in the Medicaid program in the early 1990s, the standards were a moving target. She maintained that many providers are small non-profit agencies.

MR. BRANCHFLOWER agreed that many providers are very unsophisticated regarding the rules and regulations.

REPRESENTATIVE CISSNA said that to be a player, a provider almost has to be affiliated with a national group to be safe and not make mistakes because of the sophistication that is required.

MR. BRANCHFLOWER responded that the larger the provider, meaning the more services that are provided, the greater the risk that when something goes wrong it will involve a major chunk of change. For that reason, those people hire experts to do their billing. On the other hand, the "mom and pop" business cannot afford to do that. That is a legitimate problem because all are required to play by the same rules. One of the ways the Medicaid program aids all providers is by drafting a provider manual. Every enrollee receives one of these "how to" books, depending on provider type. In his estimation, those manuals need to be revised. They are out-of-date and lack specificity. He suggested once revised, the manuals should be reviewed by a lawyer or someone who could be called upon to prosecute a case. He cautioned that provider manuals are often an abbreviated form of the regulations and he believes the manuals should be more "in sync." He feels a lawyer who might be called upon to prosecute someone should have a hand in reviewing the provider manual because a common defense is that the information in the provider

manual was unclear.

MR. BRANCHFLOWER felt another issue that merits follow-up is the fact that no record is kept when a provider calls First Health Services Corporation for clarification or information. Consequently, when he questions a provider about not following a procedure in the manual, he is told the provider called First Health Services Corporation and was told what he was doing was acceptable. The First Health Services Corporation provides assistance; however, it needs to document those calls.

REPRESENTATIVE CISSNA asked if e-mail responses to questions would be considered proof in court.

MR. BRANCHFLOWER said it would and that a copy of the message should be placed in the provider's file.

SENATOR TAYLOR asked what the acronym CPT represents.

MR. BRANCHFLOWER said it is an acronym for a current procedural terminology code. Providers agree to use a universal language of services. Each service is assigned a particular number so that instead of having to fully describe each service, a number can be assigned.

SENATOR TAYLOR asked if it was derived from the California code.

MR. BRANCHFLOWER said it was derived from the American Medical Association.

SENATOR TAYLOR commented:

Which was a code that they had to come up with when they first came up with the system because the gross abuse and thievery within the system and compounding of bills was so out of control that they actually went to California and other places in the United States tried to figure out what the average high price [indist.] was for all services and then said to the doc, you're going to get to bill this amount for this procedural service.

CHAIRWOMAN GREEN asked who writes the manuals.

MR. LABBE answered, "First Health drafts the manual - it's kind of a joint effort."

CHAIRWOMAN GREEN asked if the manual is a regulatory interpretation of state law.

MR. BRANCHFLOWER said it is a summary of statutes and

regulations. He then explained that a major glitch in the system is that DMA does not send explanation of benefit (EOB) forms to every recipient. EOB forms are a way of informing recipients of the services providers are claiming to have performed. Medicaid patients almost never get an explanation of benefits. A random sample of 400 EOBs are sent out on a monthly basis by DMA, even though there are thousands of recipients and recipients are not required to respond and return the EOBs. Historically, DMA receives very few responses. Requiring Medicaid recipients to respond, as a condition of eligibility, would provide another layer of protection.

CHAIRWOMAN GREEN asked if such a requirement would require legislation.

MR. BRANCHFLOWER thought that could be done administratively.

CHAIRWOMAN GREEN recalled that in days past, when patients were expected to pay the bill at the time of service, the patient would notice when costs increased and payment acted as a form of approval. She felt that another condition of eligibility could be to require patients to fill out a form at the time of service.

MR. BRANCHFLOWER said he attends Medicaid conferences nationwide and is aware of what other states provide. He feels Alaska provides a "Cadillac" system in the level of services provided to recipients. He believes if recipients were required to answer EOBs and the number of EOBs is increased, that action would have a chilling effect on the ability of providers to file fraudulent claims.

CHAIRWOMAN GREEN asked Mr. Branchflower if the subcommittee could look at other states' models regarding what is required of recipients in relation to verification of services.

MR. BRANCHFLOWER said it could, and recipient responses would be successful especially if the form is one page and postage paid envelopes are provided. He noted an added benefit would be that those who do not respond could be tracked.

CHAIRWOMAN GREEN asked if that would require legislation.

MR. BRANCHFLOWER was not sure. He went on to explain that the Medicaid program does exclude payment for certain services, those being:

- expenses not reasonably necessary to the diagnosis and treatment of an illness;
- items and services not properly described;
- school check-ups;

- cosmetic surgery;
- telephone consultations;
- sex change operations;
- services for inmates who are in custody; and
- weight loss therapy.

MR. BRANCHFLOWER informed the committee that the federal laws are much more comprehensive than the laws of the State of Alaska. Federal laws include the False Claims Act, statutes dealing with false statements, mail fraud, wire fraud, money laundering, specific statutes that deal with Medicaid and Medicare fraud, the RICO statutes, the Health Insurance Portability and Accountability Act (HIPAA), conspiracy, theft of government property, obstruction of justice and anti-kickback statutes. In contrast, Alaska has theft statutes that are "one size fits all," and statutes dealing with forgery, scheme to defraud, falsifying business records, and misconduct involving a controlled substance statutes.

CHAIRWOMAN GREEN asked if Alaska statutes should specifically address welfare fraud.

MR. BRANCHFLOWER said he believes so. He noted Alaska has no statutes tailored toward health care crimes.

**TAPE 01-49, SIDE B**

MR. BRANCHFLOWER said he has been surveying statutes from all 50 jurisdictions during the last few days and when he retires in June, he plans to go through all of the statutes and come up with a model statutory scheme. He then listed the following common rip-offs used in Medicaid fraud:

- billing for goods and services not provided;
- billing for phantom patient visits;
- upcoding;
- unbundling;
- double billing;
- billing for medically unnecessary services;
- billing for non-covered services;
- billing Medicaid higher than other payers; and
- kickbacks.

In terms of crimes against persons and patient abuse, Alaska has a very good statutory scheme that deals with crimes of violence and endangering a welfare or vulnerable patient. He noted he prosecuted a doctor in Fairbanks earlier this year who was exchanging prescriptions with some of his female patients for

sex. The doctor was billing Medicaid for "services" that he was not actually providing and Medicaid was paying for the prescriptions.

MR. BRANCHFLOWER reviewed several slides that showed the investigative tools available to him. Federal law requires MFCU and the Department of Law to have a memorandum of understanding. The original memorandum of understanding dated back to 1992; in 1999 it was redrafted and renewed. He then informed the subcommittee that as of this morning, MFCU has 51 investigations open. He then reviewed a chart of the investigative process.

CHAIRWOMAN GREEN asked about the MFCU budget.

MR. BRANCHFLOWER said that MFCU spent \$460,000 last year and the unit was able to bring in over \$2 million. In addition, the MFCU budget is comprised of 75 percent federal funds and 25 percent state funds.

CHAIRWOMAN GREEN noted that if 10 to 20 percent of the Medicaid budget is used fraudulently, it would not take many years to add up to a few billion dollars. She then asked if anyone has been administratively sanctioned.

MR. BRANCHFLOWER said that DMA has a regulatory system that provides for sanctions, meaning the equivalent of an accusation is filed against a provider and a hearing is held to determine whether the accusation has merit. The provider can be disenrolled. He explained that it is similar to the adjudicatory process but is done at the administrative level.

CHAIRWOMAN GREEN asked if that is a common occurrence.

MR. BRANCHFLOWER stated that, to his knowledge, DMA has sanctioned one provider since 1995.

CHAIRWOMAN GREEN asked what happened to the others.

MR. BRANCHFLOWER deferred to Mr. Labbe for an answer to that question. He then indicated that of the 164 Deloitte and Touche audits, he has taken over less than 20. Federal law says that if the MFCU refers a case to DMA in which a loss has been identified, then DMA is required by law to institute an action to recover the identified overpayment.

CHAIRWOMAN GREEN asked if DMA reports back to the MFCU when cases have been resolved.

MR. BRANCHFLOWER said it does not. He said in the last three years, he has identified; with the assistance of the Deloitte and Touche audits, \$22,300,000 in overpayments. He has sent letters

to DMA in each case citing the federal statutes and asking DMA to undertake administrative hearings to recover that money. He does not know the status of those cases.

CHAIRWOMAN GREEN asked how many people work in the recovery effort at DMA.

MR. BRANCHFLOWER said he knows of one person.

CHAIRWOMAN GREEN asked if the federal agency acts as a watchdog to make sure overpayments are collected or whether that is a state function.

MR. BRANCHFLOWER said the watchdog agency is the Office of the Inspector General. Alaska is one of the only states that office does not have a presence in. In terms of requirements, states are required to follow federal regulations as a condition of funding the Medicaid program. One of those regulations says that if the MFCU refers a case to the DMA for recovery, DMA is required to try to get the money back. He repeated in the last three years he sent 140 letters to DMA, amounting to over \$22 million. He referred them to DMA because the cases are not sufficiently strong in terms of evidence for him to pursue in court. Those cases are better suited to be handled on an administrative basis. Different standards of proof, rules of evidence and rules of procedure apply.

CHAIRWOMAN GREEN asked why the Office of the Inspector General does not have an office in Alaska.

MR. BRANCHFLOWER said it seems to him that Alaska has a sufficient volume of dollars to merit its presence but he is not aware of the reason.

REPRESENTATIVE CISSNA asked if, regarding the audits, an appeal procedure exists.

MR. BRANCHFLOWER said that when he refers a case to DMA, he meet with the provider and offer them an opportunity to explain the audit. Oftentimes there are explanations, perhaps an x-ray was missing from a patient's file, and that corresponds to reductions in the overpayments. The findings are calculated on the basis of 100 patients. Perhaps the auditor finds a lack of documentation for \$150 worth of services. The mathematician then extrapolates to the entire patient population the probability that there are undocumented services throughout the patient population based upon that number. That formula motivates providers to get the first figure lowered.

REPRESENTATIVE CISSNA asked if a filtering process exists to separate those who may have made a mistake from those who

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intentionally commit fraud.

MR. BRANCHFLOWER said that Representative Cissna put her finger on one of the most difficult jobs of his agency. They must judge the strength of evidence and decide which cases involve egregious conduct. It is very difficult to prove these cases in court because they often involve questions of medical necessity and medical judgment. He said defining fraud is also a matter of semantics. The problem occurs when one gets away from the extreme cases. Many of those cases lend themselves well to administrative hearings.

REPRESENTATIVE DYSON asked if he gets any referrals from the Ombudsman.

MR. BRANCHFLOWER said he does not. He said his jurisdiction is limited by institutions funded by federal dollars so he is not involved with the Pioneers' Homes. He noted that most of the MFCU's work deals with conduct of providers; recipient problems are investigated by another lawyer in the Department of Law.

CHAIRWOMAN GREEN asked how to go about continuing the audits.

MR. BRANCHFLOWER said he is unaware of the mechanics of the initial audits. He thought it was done via an executive decision.

SENATOR TAYLOR asked Mr. Branchflower when he will "run out" of new audits.

MR. BRANCHFLOWER said he just finished looking at the list of 33; of those he kept about 8. When he finishes with those, the "grist for his mill" will be gone.

CHAIRWOMAN GREEN asked what percentage Deloitte Touche would have and how many prosecutors would be needed.

MR. BRANCHFLOWER said the first year Deloitte Touche did 70 and about 30 the second year. He pointed out that is a realistic number because a lot of factors are considered when selecting providers. He meets with the auditors once per month to discuss provider issues and fraud issues. If certain names continue to come up, an audit may be planned. He surmised that the audits have a high deterrent value on all providers.

SENATOR TAYLOR told Mr. Branchflower that the Senate Judiciary Committee would introduce legislation for him. He then asked Mr. Branchflower his opinion of using partial payment of claims as another tool to get recipients to respond to the EOBs. He pointed out if the patient must pay 5 percent of the cost of a visit, the patient may pay more attention to the accuracy of the

bill.

MR. BRANCHFLOWER said he feels that is a political question. He does not disagree with that approach, but said that some recipients are very poor.

CHAIRWOMAN GREEN thanked Mr. Branchflower for his presentation and asked Mr. Labbe to complete his.

MR. LABBE continued with his power point presentation (page 19) and discussed the ten fastest growing categories of service over the last three years. The number of persons on the "Adults With Physical Disabilities waiver (APD) grew rapidly, based on pent up demand.

CHAIRWOMAN GREEN asked when that category of individuals began to receive services.

MR. LABBE said it was in 1993 or 1994. The first year about 50 people were eligible for the APC waiver and then it went way up.

CHAIRWOMAN GREEN asked what has caused such an increase between 1999 and 2001.

MR. LABBE said that for a number of years the program was administered by the Division of Mental Health and Developmental Disabilities and the adult disabled were "submerged" into the much larger waiver for the developmentally disabled. The program was moved to the Division of Senior Services where people became more aware of the backlog. He said in addition, the Supreme Court issued a decision that stimulated a lot of interest in community-based services for people with disabilities. He said he does not believe the same level of growth will continue.

MR. LABBE explained the second fastest growing category of service is for residential psychiatric treatment centers (RPTC) for children. Two facilities are located within the state. Last year about 596 clients were served. Alaska clients are also being served in about 15 out-of-state facilities. DHA has been working with the Alaska Mental Health Board on a project to investigate how Alaska children ended up in out-of-state facilities. At one point in time, about 75 percent of these children were in state custody but the opposite is true now. DHA and the Alaska Mental Health Board are also looking at how much in-state capacity exists.

CHAIRWOMAN GREEN asked for a description of the type of children who would need these services.

MR. LABBE said these children are generally between 11 and 16 with serious emotional disturbances. They are sometimes

dangerous to themselves.

SENATOR TAYLOR asked, "Usually they are not in the custody of the state anymore, but the numbers have gone up. That's bizarre."

MR. LABBE said at one point that category was made up predominantly of children in custody and now about 75 percent are not in custody. That is one of the issues being studied and whether there are better ways to approach that.

REPRESENTATIVE DYSON noted that the residential treatment centers can be very expensive, up to \$700 to \$800 per day.

MR. LABBE said there have been a few at that level but now the rates are more uniform. The maximum rate for out-of-state facilities paid by the state is \$330 per day. Costs out-of-state are typically lower than in state.

REPRESENTATIVE CISSNA asked Mr. Labbe if there are other costs, such as educational fees.

MR. LABBE said he believes the Department of Education and school districts pay for educational costs of children in residential facilities.

REPRESENTATIVE CISSNA clarified that the school district in which the parents reside pay for the cost. She stated that legislators need to know the total cost of sending clients to residential facilities.

CHAIRWOMAN GREEN asked about the CCMC waiver category.

MR. LABBE explained it represents children with complex medical coverage, such as a child who requires a ventilator. He then referred to page 20 and explained that it compares waiver and nursing home costs. Looking at the demographics, Alaska can expect to have a large segment of its population in need of these kinds of services in the future. The legislative Long Term Care Task Force discussed that issue quite a bit. The chart illustrates the issue of developing community-based services as an alternative to more expensive institutional services. The condition to qualify for elderly community-based waiver service is the same as the condition to qualify for a nursing home. The chart demonstrates the cost-effectiveness or cost-avoidance of using community-based services waivers.

SENATOR TAYLOR said that waiver has only been in place for about two years, as he co-sponsored legislation to create it. He asked about the status of regulations for that waiver and then clarified that he was referring to the adult assisted living program.

MR. ELMER LINDSTROM, Deputy Commissioner, Department of Health and Social Services (DHSS), said an assisted living licensure bill first passed in about 1993. Facilities were licensed as assisted living facilities from that point forward and at this time, there are more beds in assisted living homes than in nursing homes. However, the funding mechanism is complicated because there are some private pay individuals, people who receive general relief, which is paid with general fund dollars, and people who receive some reimbursement for assisted living services through the Medicaid waiver. The bill that passed several years ago, Senator Mike Miller's bill, increased the general relief payment, which is outside of the jurisdiction of DMA. He noted regulations were promulgated with some provisions relating to licensing requirements and background checks. One phase of those regulations have been filed; another portion is still being reviewed internally and have not yet been adopted. Another set of general relief regulations pertain to general relief reimbursement. During the public comment period, many comments were received and a number of changes were proposed by the agency. The draft regulations then went out again for public comment. The comment period is now closed and the Departments of Administration and Health and Social Services are still reviewing the comments.

CHAIRWOMAN GREEN said one issue she believes will continue to surface is the concern that licensure falls under the jurisdiction of DHSS.

MR. LINDSTROM said it is particularly complex when two agencies are involved. The Department of Administration licenses assisted living homes primarily for the senior population. DHSS licenses assisted living homes under the same law and regulations for mentally ill individuals residing in assisted living homes.

**TAPE 01-50, SIDE A**

SENATOR TAYLOR said he believes the assisted living home amount needs to be increased three or four times.

MR. LABBE said, according to the 2000 Census, Alaska's total population is 626,932. The number of children under 18 is 190,587. The number of adults 18 to 65 equals 400,610. The number of elderly Alaskans over 65 equals 35,735.

MR. LINDSTROM told subcommittee members that the 2000 Census does contain disability status for the civilian non-institutionalized population in Alaska. He was not aware of what definition of "disability" was used. The Census designated approximately 12 percent of Alaska's population disabled, amounting to 75,735 individuals. That category does not contain a breakdown for

children under the age of 5, but the number of disabled aged 5 to 20 years was 12,387; the number of disabled aged 21 to 64 was 47,357; and the number over the age of 65 was 15,991.

REPRESENTATIVE DYSON asked if the folks that pay their own costs are included in the chart.

MR. LABBE said they are not; the chart only represents Medicaid clients. He pointed out the standard used for eligibility for the disability category is tied to the Social Security Administration's disability definition, which is fairly rigorous. Therefore, many people are disabled who do not meet that standard.

MR. LABBE referred to page 21 of his power point presentation and said on average, states spent 14.7 percent of their general fund expenditures on their Medicaid programs in FY 01 while Alaska spent 10.8 percent. Alaska was 46<sup>th</sup> in the nation for state fund spending during FY 98. In terms of total expenditures, Alaska ranks low because it has a small population.

CHAIRWOMAN GREEN asked if Alaska's number is skewed upward because it does not have a county system.

MR. LABBE said in terms of state Medicaid programs, a few states have a county share but most programs are centrally administered. He offered to provide more back-up material from the reports these numbers were generated from.

SENATOR TAYLOR expressed concern that when comparisons are made with Alaska's general fund expenditures,

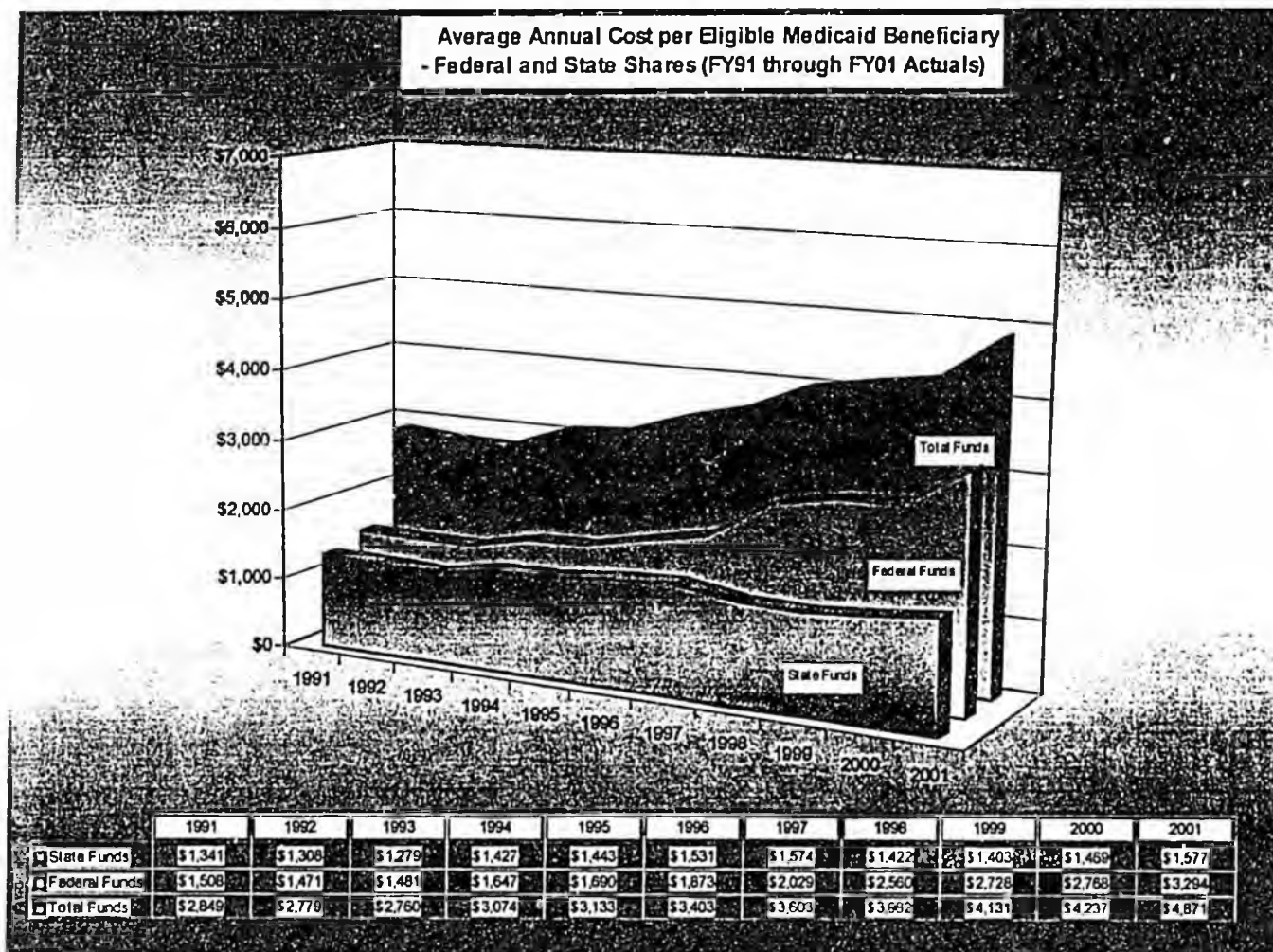
... for the last - gosh I don't know how many years now - we've been involved in an exercise in Juneau creating other quote, special funds. And every time a department or agency wanted to go out and [indisc.] a little more income for their agency, they went out and created a new fee schedule and their new fee schedule became part of their specific fund base for their agency - whether it was \$5 bucks additional per license for every person who wanted to catch a king salmon so the fish and game department got a significant increase. And rather than have the budget reflect the [indisc.] Department of Fish and Game had gone up, what we did was we called that other funds - not general funds, other funds. And that other funds [indisc.] we make certain it's not dedicated of course, we make certain it goes to the Department of Fish and Game. So their budget actually went up \$5 million bucks but does that reflect as a general fund? No, the general fund budget didn't go up. So when I see a comparison being

made between what is stated as general fund allocation, and a comparison is then made up of what our expenditures are either per capita or on a national level, it really is becoming less and less of a meaningful comparison is all I'm getting at....

MR. LABBE stated that would lower Alaska's percentage.

SENATOR TAYLOR said it should, and that is what he was getting at.

MR. LABBE referred to the following chart and said the purpose of



the graph is to show that over the last 10 years, the general fund outlay has not been extreme in terms of increases. Although the total cost of the program has increased, most of the increase has been with federal funds. He noted between 1994 and 1999, the average general fund increase was about 3 percent per year. The federal increase was 16 or 17 percent per year. He felt that was

primarily due to the match rate change, but also Alaska has been progressive in maximizing the 100 percent IHS reimbursement and in taking other cost containment measures. He said he is always concerned about the cost of the general fund. He stated that a 3 percent increase per year per person is not too bad. Essentially, the state is cost shifting and trying to avoid cost shifting by the federal government.

CHAIRWOMAN GREEN said if one looks at the increase from 1991 to 2001 in total funds, it amounts to about a 75 percent increase. She said she is concerned about accepting a prior year increase as the norm and that the federal match rate will continue because at some point, the state will have no control over the cost.

MR. LABBE said he agrees with Mr. Gilbertson's concern that Congress needs to take an honest look at that match rate. DMA has been doing some work internally to help support Senator Murkowski's effort by providing data and looking at what other private payers pay in Alaska relative to what they pay in other states. DMA now has access to a program that provides expenditures by codes in other areas and has started to compile information that shows that Alaska's payment per beneficiary is higher than most states. It is also higher for Blue Cross or Aetna by a similar percentage. He felt that demonstrates that costs are higher in Alaska, not that the state is overpaying.

SENATOR TAYLOR said:

You are living in a world that is so Alice in Wonderland, none of us are in Kansas anymore. As your local hospital what the bill is for a room for a day. Do you know what the answer is you're going to get back? You will find out that that local hospital has probably six or seven schedules for what that room is worth. It's worth this much if you're a Medicare patient, it's worth this much if you're a Medicaid patient, it's worth this much if you're Blue Cross. You'll find that's right at the top because everybody else has some advocacy group that comes in and negotiates with that hospital to set rates. Probably the most controversial thing I got my little nose stuck into for the last two or three years was when I took on you guys on the issue of the revolving door on rate hearings and when we were going to make some decisions and how are we going to set them and then Torgy jumped in too and says, look, if you don't want to just take care of part of the problem, I'll take care of all of it and I'll set your rates for you. All of a sudden people decided to get to the table.

I can guarantee you, the marketplace has absolutely nothing to do with anything going on out there. It's all bureaucracy and you as bureaucrats get to negotiate with hospitals what you're going to pay and they negotiate back with you guys and then the insurance industry shows up and they try and do some of the same stuff. There's literally a rate out there for the guy who has no insurance but has a business and can pay his bills. Then there's a separate rate, a different one for the insurance company and a different rate for each state agency so why take and compare based on zip codes what somebody may be paying in Arkansas? It's just that the Arkansas docs and the hospitals haven't raped their people down there yet but believe me, they're coming around the corner just like you guys have so badly in California that when the federal government started this whole process, they had to go down there and take an average because they were seeing a cost - or bills coming in from doctors, where in a six month period the price of the same process in surgery and so on had gone up 200 percent with the same doc because he was bidding each time to see, well, he'd tell the guy he's playing golf with, well gosh, I got \$200 for an appendectomy last week and the other guy said, well by gosh George, you get \$200, my appendectomy is worth \$300 so he would charge three and the next week the other guy charges four and it just kept evolving up.

So, I don't know where any of that gets us - what it gets me - it gets me very frustrated that we have an awful lot of state and federal bureaucrats involved in the process of setting rates which we then have to fund in the form of a budget that's going to cap out within the next year or two at a billion dollars just for this state....

SENATOR TAYLOR said he really believes that if we don't pay attention to this and find a solution, we will find a lot of people relying on services that the state will not be able to provide.

MR. LABBE said that across the nation Alaska ranks number 47 in total expenditures for Medicaid. He explained that a Supreme Court decision regarding the Americans With Disabilities Act said that the state would be required to provide services that would permit individuals to live in the community rather than an institution. The case called Olmstead involved a couple of women in Georgia who were in a state hospital. Their medical providers felt could leave the hospital, but the state wasn't moving them

out.

The plaintiffs won that and since that time, there has been quite a bit of work around the country. His division was told by the federal Medicaid Agency (HCFA) that the Medicaid Program can help states comply with the Supreme Court decision, because the federal government will help share in the expense with community based services. Alaska has moved further along than many states in terms of our community base care program and closed Harbor View, consistent with the view that people aren't inappropriately institutionalized and that there are options. They are still waiting lists of issues for services and significant capacity problems in terms of people providing supports in the community, especially in smaller communities. Medicaid can help these issues and that's what they have been doing through the home and community based waivers.

CHAIRMAN GREEN thanked him for his testimony and further discussions would be needed.

MR. LABBE added that there were several things that Steve Branchflower mentioned and he wanted to respond to one comment that was misunderstood. When he said we were only one of three states that operate in the fee for service Medicaid Program and all the rest have HMOs, every state has a fee for service program. Many of them also have an HMO. You have the same dynamic in 50 states of providers billing and some states have a percentage of their population signed up on the prepaid plan, but it's still less than 50% of the total national Medicaid population involving HMOs.

SENATOR TAYLOR said a Sitka constituent had a question about what an alcohol counselor can be called and how they get reimbursed based upon that. The legislature passed a law or there was a regulation saying that a person needed to have a master's degree or better to be in alcohol counseling.

MR. LABBE responded that the Mental Health has that kind of rule, but he didn't think that was required for alcohol.

SENATOR TAYLOR asked him to look into it and he agreed.

SENATOR DAVIS asked him to address the building manual and the audits.

MR. LABBE replied that they were directed by the legislature in '97 to initiate a series of cost containment actions, one of which was the provider audits. They have to work through backlogs.

SENATOR DAVIS asked if they have administrative procedures for

prosecution and how many people are working in that area. She also wanted to know how many cases he had been able to get funds for.

An unidentified woman responded that just doing this in the spirit of prosecution is sometimes a negative way to look at it, because there were built-in improvements.

MR. LABBE said that the focus was particularly on the patient and one of the problems with the \$22 million is what Mr. Branchflower perceives are the draft reports from the contractor concurrently with the state. The state had to make a number of policy changes, which is a lengthy process.

For the most part, we didn't do the extrapolation because this was like our first time really going out. What we are doing is working on compliance and correction...If you look at our physician expenditures, they're practically flat for about three years before we expand the populations. So, I believe the attempt of the legislature was to slow the growth of the program. It was not aimed so much at the recovery mode...We had some problems with it, too.

SENATOR TAYLOR thanked him for his excellent presentation and said they would next take public testimony.

4:09

MR. BILL HOGAN, Executive Director, Lifquest Regional Health Center, said he is also a member of the Alaska Community Mental Health Services Association, which is the mental health providers association. Today he is speaking for the Alaska Mental Health Board. He said:

Programs such as Alaska Temporary Assistance program, Adult Public Assistance and General Relief provide basic support for many Alaskans, helping them to meet fundamental expenses such as food, shelter, clothing and transportation. Whether transitional or long-term in nature, these programs allow participants to live as independently as possible and with dignity in their community of choice. These programs also help Alaskans avoid homelessness and minimize higher costs, more restrictive settings, including hospitalization, nursing home placement and incarceration.

The Board asked that the subcommittee as they review programs, do so based on the following principles:

- All Alaskans have the basic human need to achieve and maintain the highest possible level of independence.
- The State has a responsibility to address the basic human needs of individuals who do not have other means to meet those needs on either a short or long-term basis.
- Support levels should be sufficient to allow individual to live with dignity in the community
- Programs should be readily accessible to eligible applicants.
- Programs and services should be managed to promote efficiency and maximize resources.

MR. HOGAN recommended they review the programs in a thoughtful manner.

- None of the proposed changes have a negative impact on the ability of participants to meet basic living needs.
- Review of the programs should be on a program-by-program basis.
- No major changes should be made without meaningful input from the program recipients.

MR. HOGAN said he firmly believes that as a provider they have an obligation to the taxpayers of Alaska and the legislature to make sure they are getting the best bang for the buck. He said they are concerned about access.

In many instances publicly funded programs are the only source of health care for many Alaskans and that's not entirely true for a number of folks who have no insurance at this point. Without Medicaid and other publicly funded health care programs, many persons would have nothing.

He emphasized the importance of treating mental illness and mental health care in a similar way to physical health. The Surgeon General's Report on Mental Health from 1999 - 2000 advocates strongly for states passing mental health parity legislation and the federal government just passed a mental health parity law.

He wanted to comment on Representative Dyson's suggestion to begin looking at integrating primary care mental health and substance abuse. Most mental health and substance abuse providers feel that makes a lot of sense and many communities need a one-

stop shop where people can go and get everything they need without being shuffled.

Also, many mental health providers have undertaken an effort to develop corporate compliance plans in regards to Medicaid and Medicare fraud. They have had at least one consultant up from down south to help mental health centers begin to develop their compliance limits. The Medicaid regulations are very complicated and they are equally complicated for providers to comply with.

As a Mental Health Board member, they are concerned about out-of-state placement for kids. There are about 250 kids for about \$14 million.

We are committed to develop in-state capacity to keep kids in Alaska close to their own homes. It's pretty difficult to do family therapy with a kid and try to reunite a child with their family of natural origin if the kid is in Idaho or Montana...

MR.HOGAN next commented on the disabled and his best guess at prevalence of mentally disabled in Alaska is about 24,000 individuals or about 4% of the population. If the 75,000 figure is accurate, it might be safe to say about a third of those are mentally disabled.

An unidentified person asked how many were related to fetal alcohol syndrome.

MR. HOGAN guessed about 10 - 15 percent, but it could be higher.

MS. JILA BERRY, Manager, Circle of Care, said she wanted to discuss care coordination. She explained that Circle of Care began about 12 years ago in response to a community tragedy where an elderly woman who lived by herself had many people involved in her care, but no one really knew about her day-to-day activities. So there was no coordination. She died and was found several days later.

MS. BERRY said that geriatric care coordinators can be found in all parts of the United States and many parts of the world. They assist seniors and adults with physical disabilities with doing screenings, consultation and assessments to help people get through mazes of eligibility. She helps them problem solve and obtain services so that they stay as safe and healthy as possible. This may mean assisting seniors who cannot afford their current housing, their food or their medication and protect them from financial exploitation.

**TAPE 01-50, SIDE B**

MS. BERRY continued:

Hundreds of seniors and disabled person benefit from the choice waiver program and as our senior population is rapidly growing and is predicted to continue to grow, we need to enhance and improve our menu of services for seniors and for those with adult physical disabilities, but there are gaps in services for people with chronic illnesses. The safety net for people who are chronically ill is inadequate to meet the needs of our residents. There is the person who might be \$10 over Medicaid or have a chronic illness that's not covered by the PMO. For example, if you have a respiratory illness, you're out of luck. You're not covered. Or there might be the person who hasn't worked enough quarters to be eligible for disability under [indisc].

Oregon is one example of innovative ways to meet the needs of the chronically ill who might not be eligible for traditional Medicaid. I am asking that some consideration be given to this population with one area, the people with respiratory illnesses who are not currently eligible for Medicaid.

MS. KRIS MOORE, Wasilla parent, said she has four children, two have been adopted from within the family. She said that parents should plan to have their children and make sure they have coverage before they have children. Neither she nor her husband have jobs that offer reasonable health insurance and she was recently unexpectedly laid off. "Many families experience these kinds of unexpected transitions...In the case of a medical emergency or for the necessary basic care during these times, we would be set back financially for years were it not for Denali Kid Care coverage."

CHAIRMAN GREEN asked if she had received a message about Denali Kid Care.

MS. MOORE replied that she hadn't specifically heard anything."

CHAIRMAN GREEN said that tomorrow's discussion was going to be about how to find alternative methods of health insurance and get coverage in places. She did not think the Denali Kid Care model is the ideal model. She said it might need to be retooled where people have the ability to participate in the selection, the types of coverage and phase into a regular health insurance policy. She did not want to strip the Denali Kid Care. She said, "The CHIPS Program is in probably going to be changed. What does that do to Denali Kid Care when it comes down from the feds to

us? I don't know. It's a dilemma."

MS. MOORE responded that her point is that they need to make sure they are considering the resources parents and families receive in these programs. She urged them to find a way to deal with the fraud issues.

MS. ELAINE MANNING said she has a Medicaid waiver. Before it came, she and her husband didn't know if they could stay in their home where they want to be. "If we could keep, for instance, 100 people in their home where they want to be, we would save our state millions of dollars and I think we're going in the right direction..."

MS. MONTA FAYE LANE, President, Alaska Caregivers Association, said the assisted living homes are far more cost effective than they realize. SB 73 had a lot of support in the legislature, but now it seems that people want to change the intent, which was to give providers a raise in the daily room and board rate they receive for taking care of indigent and elderly people, alcoholics, chronically mentally ill, etc. She explained that when she worked with Senator Mike Miller on this bill, they were receiving \$34.50 per day room and board to care for these people and they figured it should be \$150 per day. There was no Medicaid money at that time. It was increased to \$50 per day in 2000. In 2001 it went up to \$60 and in 2002 it will be \$70. She said that the State wants to take away 60 percent of that. "That's going to make us receive for room and board for these people less than the 1982 \$31.90."

Additionally, people are being kicked out of hospitals quicker and sicker than they ever have before in the history of the United States. She said, "I can't see why they can't figure out what a savings assisted living is to the State of Alaska when you set and look at the numbers."

MS. LANE told the committee that she was taking care of a quadriplegic patient for \$3,500 a month and he was kicked out of a nursing home that was charging \$15,000. He was an alcoholic and there was no way to recover any damages he did to their home. She couldn't just kick him out and continues to take his abuse. She asked that the legislature:

Redefine the way they handle the Medicaid Program of the PA numbers. When I talk about PA numbers, I'm talking about getting paid that little \$68.41 a day. I had to wait 180 days to get my money and I think that's atrocious. I'm supposed to carry the State of Alaska on my back?

MS. MARY OLSON, physical therapist, said she worked for 25 years

with children and serves on the National Board of the American Physical Therapy Association's Pediatric Section. She got an e-mail stating the committee was going to address the Denali Kid Care Program and she sees the importance of the program to the Medicaid waivers. Her first job as a physical therapist was in a boarding school for kids 5 - 21 years old because they had a physical disability. The requirement was that they had a physical disability, but intellectually normal. She has since worked with other families where the Medicaid waivers have made it possible for patients to be at home.

The important thing is that the services be financially accessible to all children, particularly. I'm a strong believer in early intervention. That's where we were going to make a difference and a kid's life...and to pregnant women...Stop these problems before they occur...If they are there, get these kids on as soon as possible doing the best they can.

MS. OLSON said in her private practice that regulation and paperwork are two-thirds of her cost. "If I would just get paid for the work I do and I love to do, I would be thoroughly satisfied, but you've got to pay me for that other stuff you make me do."

MS. OLSON asked if Medicaid in schools had been addressed. She said there are many ways people receive assistance and there was no coordination or any one to take ultimate responsibility.

MS. SUE DROVER said she was not representing anyone and wanted to talk about Denali Kid Care. Her son tried to commit suicide 14 months ago and the doctors said he needed long-term care. She would have had to take him home where he would have to be watched all the time, because she could not afford to send him to a long-term facility. Fortunately, he qualified for Denali Kid Care allowing him to get the treatment and round-the-clock care that he needed and she felt that was the only reason he was alive today. She requested that they fund an in-state residential treatment center. She said there is no alcohol or drug abuse involved in her son's case.

CHAIRMAN GREEN asked someone from the Department if he knew of any those facilities were being planned. He answered that there are two facilities in-state that are long-term - North Star Behavioral Health and Alaska Children's Services Center - and Providence in short-term.

CHAIRMAN GREEN asked if the two long-term facilities were residential. He answered that they are and added that they have vacancies.

MS. DROVER said that at the time it may have been an availability issue at the time, but now he is so ingrained with the treatment and doing well in Utah that he wouldn't want to leave.

CHAIRMAN GREEN thanked her for coming in and added that she thought they would be hearing more about these facilities.

MS. DROVER added that if anything happens outside of the facility, that their regular medical insurance takes care of it. Denali Kid Care covers the residential facility fees which are about \$9,000 per month.

MS. RUTH TITLER said she is a 61-year old diabetic and had been dependent on insulin for 52 years. She has other major complications directly related to the diabetes. About three years ago, her physician requested that Circle of Care evaluate her needs at home. It was determined that she needed additional help with showers, cooking and laundry. Once she was approved by the Choice Labor Program, life became better. Her care coordinator contacts her at least twice a month - one of them is a face to face visit; they monitor how her outside help is doing. Her family lives in the Lower 48 and Circle of Care has given her emotional support as well, which is very important in a person's outlook on life.

MS. TITLER said because the state opted out of the Social Security System, she is denied disability and doesn't qualify for Medicare until she is 65. "If it was not for a Choice waiver, Medicaid and Circle of Care, I believe I would not be able to maintain independent living..."

She supported continuing Medicaid money to those who need it most.

DR. DAVID ALEXANDER, physician member of the Medical Care Advisory Committee (MCAC), said he faxed them a copy of his comments. The main thing is that the State Medicaid Program has been closely reviewed by the MCAC with Bob Labbe meeting with them for two days four times a year. This Committee came up with some recommendations. The first one was: "It ain't broke; so don't try to fix it. Beyond that, it can clearly be tweaked and improved."

As an example, he said there is money spent for disaster dental care for adults, but if you're going to do that, there should be some way to fund preventive care as well, because it's a lot cheaper in the long run. He said second, the issue of payment for transportation charges needs review; it's unclear why the state is trying to be fiscally conservative and insist on paying top dollar for air tickets, because tickets can only be purchase if

they are totally refundable so they have to wait until the last minute to buy it.

Speaking as a pediatrician, he said the federal government is proposing cost neutral health insurance flexibility and accountability waivers that will allow coverage for more adults, but only contracting the amount that's available to children (because it has to be cost neutral). In addition, some of the current Medicaid money would have to go to set up the program, which is complex. He thought it was poor economic policy to drop people from the program when they finally get just above the poverty level.

MR. DENNIS DUNN, Principal at Kenai Alternative High School, said that he is here to represent the voiceless. He has about 75 kids and about a third of them a different times qualify as homeless and well over half of his population utilize the Denali Kid Care Program.

Without this program, it's unquestionably clear that they would not get the medical services that they are now providing. Now these students have access to vision services, general medical care and mental health care. In addition, some of our students are also parents that have children. In many cases both the student and our school as well as their child is a recipient of the Denali Kid Care. I just cannot emphasize the difference this is making in the lives of these kids. These are kids who have nowhere to go, no access to any kind of health care, whatsoever until this program came along.

MR. DUNN said a couple of problems he had with his kids is that several providers are reluctant to take Denali Kid Care, in particular dentists. He said some psychologists are now being allowed to bill. Also, many of his kids are on their own, but they can't be seen unless they have someone who is over 18. If they have a Denali Kid Care card, it would help if they could go without someone 18 years old. He strongly supported continuing the program.

CHAIRMAN GREEN thanked him and said that emancipation was another issue they would have to deal with.

SENATOR TAYLOR said, "There's a whole series of things we need to take up, Madam Chairman. When it comes to parental responsibility, the idea of a throw away kid in Alaska is more than offensive to me..."

CHAIRMAN GREEN thanked everyone for their testimony and adjourned the meeting at 5:05 p.m.



# ALASKA DEPARTMENT OF LAW

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## ALASKA MEDICAID FRAUD CONTROL UNIT

### Message Hotline to Report Medicaid Fraud 1-907-269-6279

The Alaska Medicaid Fraud Control Unit (MFCU) has been part of the Attorney General's Office since January 1992. The unit is located in Anchorage and has statewide jurisdiction. It has the responsibility for investigating and prosecuting Medicaid fraud and the abuse, neglect or financial exploitation of patients in any facility that accepts Medicaid funds. The Director of the MFCU is Assistant Attorney General Donald R. Kitchen, a career criminal prosecutor with more than a quarter century of experience in the criminal justice system. There are 47 MFCU's across the U.S.

Although the vast majority of health care providers are honest and dedicated to providing the highest quality health care to their patients, Medicaid provider fraud costs American taxpayers hundreds of millions of dollars annually and threatens the integrity of the Medicaid program. Nationally, it is estimated that Fraud, Waste and Abuse account for 10 to 20 percent of the payments made by Medicaid. If the National trends hold true for the State of Alaska, these percentages equate to 30 million to 70 million Medicaid dollars annually, resulting in a substantial reduction in moneys available to provide necessary medical services to needy Alaskans.

Fraud is "intentional" deception or misrepresentation which results in an "unearned benefit", usually in the form of an excess payment. While health care fraud can take many forms, the most common involves billing for services not performed or billing for more expensive services than those actually provided. Medicaid patients may not suspect fraud, as they are seldom made aware of the procedures or dollar amounts billed to Medicaid. An unscrupulous provider can generate a fraudulent Medicaid payment simply by filing a false claim with an eligible recipient's identification number and a valid procedure code.

### Examples Of Fraud Schemes In Health Care

- BILLING FOR SERVICES NOT RENDERED
- BILLING FOR HIGHER LEVEL OF SERVICES THAN ACTUALLY PERFORMED
- BILLING FOR MORE SERVICES THAN ACTUALLY PERFORMED
- CHARGING HIGHER RATES FOR SERVICES TO MEDICAID THAN OTHERS
- CODING BILLINGS TO GET MORE REIMBURSEMENT

- PROVIDING AND BILLING FOR UNNECESSARY SERVICES
- MISREPRESENTING AN UNALLOWABLE SERVICE IN A MEDICAID BILLING
- FALSELY DIAGNOSING SO MEDICAID WILL PAY FOR MORE SERVICES

**ALASKA DIVISION OF  
MEDICAL  
ASSISTANCE**



**ALASKA  
DEPARTMENT OF  
LAW**

If you suspect Medicaid health care fraud or patient abuse, do your part to protect the integrity of the Medicaid program and the public resources that fund it! Contact the Medicaid Fraud Control Unit Hotline at 1-(907) 269-6279 and ask to speak to an investigator or simply leave a message. Our fax is 1-(907) 269-6202. Or call the Crimestoppers Hotline at 1-(907) 561-7867. You need not give your name and you may be eligible for a reward.

*Alaska Medicaid Fraud Control Unit  
Office of Special Prosecutions and Appeals  
310 K Street, Suite 308  
Anchorage, AK 99501*

E-MAIL at [medfraud@law.state.ak.us](mailto:medfraud@law.state.ak.us)

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**Testimony  
Before the Finance Committee  
United States Senate**

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**Improper Payments**

**Statement of  
Michael F. Mangano  
Acting Inspector General**

**April 25, 2001**

**Office of Inspector General  
Department of Health and Human Services**

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Good morning Mr. Chairman. My name is Michael F. Mangano. I am the Acting Inspector General for the Department of Health and Human Services (HHS). It is my pleasure to be here today to give you an update on our work with regard to improper payments in Departmental programs.

Today, I will provide an overview of the types of payment errors revealed by our most recent Health Care Financing Administration (HCFA) audit. Over the past five years, the Office of the Inspector General (OIG) has undertaken audits of Medicare's fee-for-service claims to estimate the extent of payments that did not comply with Medicare laws and regulations. These payment errors, comprised of improper provider billings, make up the largest category of inappropriate payments in the Medicare program. These errors can include simple billing mistakes as well as fraudulent billings. We continue to believe that most health care providers do their best to provide high quality care and are honest in their dealings with Medicare. At the same time, we must be concerned about all errors, even those which are totally innocent. Our annual measurement of Medicare payment errors not only allows HCFA to focus on the areas where increased compliance is needed, but also enables HCFA to identify approaches to building a better Medicare program.

I will also describe instances of specific inappropriate payments made as a result of the complex, antiquated, and incompatible technology environment in which Departmental programs operate. These examples include Medicare and Medicaid payments made on behalf of deceased or incarcerated beneficiaries, as well as Temporary Assistance for Needy Families (TANF) payments made to fugitive felons. Taken together, these problems indicate systemic vulnerabilities which could lead to much more serious losses of funds if not remedied.

#### **MEDICARE PAYMENT ERROR RATE**

We recently released our report *Improper Fiscal Year 2000 Medicare Fee-for-Service Payments* (A-17-00-02000) in which we present the results of our review of Fiscal Year (FY) 2000 Medicare fee-for-service claims. Based on our statistical sample, we estimate that improper Medicare benefit payments made during FY 2000 totaled \$11.9 billion, or about 6.8 percent of the \$173.6 billion in processed fee-for-service payments reported by HCFA. It is important to note that this is an error rate estimate and not a fraud estimate. These improper payments could fall on a continuum anywhere from simple inadvertent mistakes to outright fraud and abuse.

When the sampled claims were submitted for payment to Medicare contractors, they contained no visible errors. We found that the contractors' claim processing controls were generally adequate for: (1) ensuring beneficiary and provider Medicare eligibility; (2) pricing claims based on information submitted; and (3) ensuring that the services as billed were allowable under Medicare rules and regulations. However, their controls were not effective in detecting the types of errors we found. Instead, reviews of patient records by medical professionals detected 92 percent of the improper payments. Our historical analysis of payment errors from FY 1996 through FY 2000 identified four major payment error categories: medically unnecessary services, unsupported services, coding errors, and noncovered services.

**Medically unnecessary services**, the largest error category this year, amounted to \$5.1 billion in improper payments. This category covers situations in which the medical review staff found enough documentation in the medical records to make an informed decision that the medical services or products received were not medically necessary. The following is an example of services that were determined not medically necessary:

- A physician was paid \$3,305 for 40 hypnotherapy sessions with an Alzheimer's patient. The medical records stated that the patient was neither attentive nor cooperative during the initial mental status exam. Since the patient could not participate in that exam, the medical reviewer determined that hypnotherapy treatment was not medically necessary, reasonable, or appropriate for a 95 year old Alzheimer's patient.

**Unsupported services** represented the largest error category in three of the last 5 years. In FY 2000, they accounted for an estimated \$4.3 billion in improper payments. Such services include those where there is insufficient documentation to determine the patient's overall condition, diagnosis, and extent of services performed (\$2.3 billion) or where there was no documentation to support the services provided (\$2 billion). An example of unsupported services follows:

- A hospital was paid \$722 for outpatient radiation therapy services. The medical records contained no documentation to support the provision of these services. After repeated unsuccessful attempts to obtain such documentation, the claim was denied.

**Coding errors** represented \$1.7 billion in improper payments (the net of upcoding and downcoding errors). For most of the coding errors found, the medical reviewers determined that the documentation submitted by providers supported a lower reimbursement code. Physician and inpatient Prospective Payment System (PPS) claims accounted for over 90 percent of the coding errors over the 5 years reviewed. An example of incorrect coding includes:

- A hospital was paid \$19,452 for providing a diagnostic related group service to a patient admitted with a chronic inflammation of the membrane lining the abdominal wall. The principal diagnosis code was shown as another infection. The medical reviewers concluded that the diagnosis code should have been related to an infection due to a dialysis catheter. As a result, \$7,125 was denied.

**Noncovered services and other errors** consistently constituted the smallest error category. Noncovered services are defined as those that Medicare will not reimburse because the services do not meet Medicare reimbursement rules and regulations. Such services include most routine physical examinations; eye and ear examinations to prescribe or to fit glasses or hearing aids; and, most routine foot care.

Since we developed the first error rate for FY 1996, HCFA has closely monitored Medicare payments and has instituted appropriate corrective actions. The HCFA has also worked with provider groups to clarify

reimbursement rules and to impress upon healthcare providers the importance of fully documenting services. Additional initiatives on the part of the Congress, HCFA, the Department of Justice, and the Office of Inspector General have focused resources on preventing, detecting, and eliminating fraud and abuse. All of these efforts, we believe, have contributed to reducing the improper payment rate by almost half -- from \$23 billion, or about 14 percent of Medicare program expenditures, in FY 1996 to \$11.9 billion, or about 6.8 percent of the \$173.6 billion in Medicare payments, in FY 2000.

The decrease in improper payments has had a positive effect on Medicare's financial situation. From 1991 to 1996, the Congressional Budget Office (CBO) reported that Medicare's rate of inflation averaged 10.9 percent per year. In FY 1998, the rate of inflation for the Medicare fee-for-service program dropped to the lowest in the program's entire history (since 1965) -- 1.5 percent. Overall, CBO calculated the average Medicare inflation rate for FY 1997 to FY 2000 at 3.2 percent. CBO commented that: "Most of the decline can be explained by a strong effort to ensure compliance with payment rules." (The Budget and Economic Outlook: Fiscal Years 2002-2011, CBO, January 2001)

As of 1996, the Trustees of the Medicare Part A Trust Fund projected that the Trust Fund would be insolvent in 1999. However, over the past 5 years, the Trustees have extended their estimate of the financial life of the Trust Fund by 30 years, from 1999 until 2029. One of the primary contributing factors cited by the Trustees has been "the continuing efforts to combat fraud and abuse." (Status of the Social Security and Medicare Programs, Trustees Annual Report, March 1999). We believe that these positive economic findings with respect to the financial integrity of the Medicare program, which will positively impact on both taxpayers and beneficiaries, are due in large part to the fact that the vast majority of health care providers are engaged in submitting accurate claims to HCFA and providing high quality, medically necessary services.

## INAPPROPRIATE MEDICARE AND MEDICAID PAYMENTS

Numerous OIG audits and investigations have revealed instances where antiquated and complex computer systems have resulted in inappropriate payments being made on behalf of Medicare beneficiaries and Medicaid recipients. Several recent OIG audits and inspections examined whether the Medicare or Medicaid programs were being billed for services which occurred after the date of a beneficiary's death and whether these programs were paying for such services. We have also recently completed work to identify inappropriate payments made on behalf of incarcerated Medicare beneficiaries.

### *Payments Made on Behalf of Deceased Beneficiaries*

**Medicare Services:** In our inspection, *Medicare Payments for Services After Date of Death* (OEI-03-99-00200), we found that Medicare paid an estimated \$20.6 million in 1997 for services that started after a beneficiary's date of death. These payments were made because of several system problems. Approximately \$12.6 million was paid because Medicare had not yet received beneficiary date of death information from the Social Security Administration (SSA) Master Beneficiary Record at the time the claim was processed. For example, for one beneficiary who died in May 1997, HCFA did not receive the date of death information until October 1997. This delay allowed three months of rental payments for a nebulizer to be paid in June, July, and August 1997.

The remaining \$8 million was paid for services where the beneficiary's date of death was in its system at the time the claim was processed and approved for payment, but HCFA's Common Working File system, the system used by fiscal intermediaries and carriers to process fee-for-services claims, did not prevent the claims from being paid. Over half of the \$8 million was for durable medical equipment claims. For example, for one beneficiary who died in November 1997, HCFA received the date of death information in

that same month. However, in January 1998, HCFA paid claims on behalf of that beneficiary for durable medical equipment items with service dates in December of 1997.

We also found some payments for services where HCFA's Enrollment Database, which contains entitlement data for Medicare beneficiaries, and the Common Working File contained different dates of death. In one example, a beneficiary received four services relating to ambulance transport on May 12, 1997. Although data from the Enrollment Database indicated that the beneficiary died on May 9, 1997, the Common Working File contained a different date of death of May 13, 1997. In such examples, we found no indication of which file contained the accurate date of death and therefore do not know whether or not the claims were paid in error.

As a result of our findings, we recommended that HCFA require contractors to conduct annual post-payment reviews to identify and recover payments made for services after death; revise their Common Working File system edit to ensure that durable medical equipment payments are not made for deceased beneficiaries; and periodically reconcile date of death information between the Enrollment Database and Common Working Files. In January 2001, HCFA implemented the system change necessary to revise the Common Working File edits to prevent payment of durable medical equipment services billed after the beneficiary's date of death. HCFA has also recently issued instructions to Medicare contractors requiring them to conduct the necessary post-payment review activities to identify payments made on behalf of deceased beneficiaries. However, HCFA indicated that there is no way to systematically compare the Enrollment File and Common Working File to determine which date of death is accurate without a manual review; therefore, they will need to take into account contractor workload while implementing this recommendation.

**Medicaid Services:** In 1994, the OIG began an initiative to work more closely with State Auditors in reviewing the Medicaid program. Through this initiative, the OIG/State Audit Partnership Plan was developed to expand Medicaid program audits and allow State Auditors to apply methodologies we have successfully used in our Medicare audits. As an example, the State of Ohio's Office of the Auditor examined whether Medicaid was paying for services on behalf of deceased recipients (*Payments for Medicaid Services to Deceased Recipients*, A-05-00-00045). The audit determined that, during a period of almost 6 years, the Ohio Department of Human Services (ODHS) paid \$82 million for services to Medicaid recipients after the recipients' date of death. This amount consisted of 115,000 payments to over 4,000 different providers for services provided to almost 27,000 apparently deceased recipients. The average time to discover and recover an overpayment was just over five months after the recipient's date of death. About 93 percent of the unrecovered payments were in four categories of service: skilled nursing facility (75 percent of the unrecovered payments), intermediate care facility (7 percent), pharmacy (6 percent), and durable medical equipment (5 percent).

Subsequent analysis by the Ohio Department of Human Services confirmed that information in the Medicaid recipient master file is not always accurate. Ohio auditors determined that almost 30 percent of 34,330 Medicaid recipients who died during 1997, according to the Ohio Department of Health's Vital Statistics file, did not have a date of death entered on the recipient master file (meaning that providers could still bill and be reimbursed for Medicaid services). Moreover, 4.6 percent of the 24,463 recipients who had a date of death on the recipient master file had a death date that differed from the Vital Statistics death date by more than one day.

The Office of the Auditor recommended that the Ohio Department of Human Services recover the outstanding amount when feasible and cost effective, make corrections to prevent additional overpayments from being made for deceased recipients, and seek legislative authority to develop and apply sanctions against providers who do not timely report a recipient's death or who bill for or retain unearned

reimbursements. The State has now recovered all of the overpayments identified in this audit.

### *Payments Made on Behalf of Incarcerated Beneficiaries*

**Medicare Payments:** We are currently conducting a series of audits on Medicare payments provided on behalf of beneficiaries who were in the custody of Federal, State, or local law enforcement agencies at the time services were provided. Under current Federal law and regulations, payments for such services are generally unallowable. The State or other government component operating the prison is presumed to be responsible for the medical needs of its prisoners.

The rules for determining whether Medicare will pay are complex and administratively cumbersome. Under sections 1862(a)(2) and (3) of the Social Security Act, the Medicare program will not pay for services if the beneficiary has no legal obligation to pay for the services and if the services are paid for directly or indirectly by a governmental entity. Regulations at 42 Code of Federal Regulations (CFR) 411.4(b)(1) and (2) state the Medicare program may not pay for services provided to beneficiaries who are in the custody of penal authorities *unless* the authorities require that all individuals pay for such services and enforce that requirement by pursuing collection for repayment. The State or other Government component operating the prison is presumed to be responsible for the medical needs of its prisoners. According to HCFA's procedural manuals for its contractors, this is a rebuttable presumption that may be overcome only at the initiative of the Government entity. The entity must establish that it enforces the requirement to pay by billing and seeking collection from all individuals in custody, whether insured or uninsured, with the same vigor it pursues the collection of other debts. It must pursue collection, including the filing of lawsuits to obtain liens against an individual's assets outside the prison and income from non-prison sources.

The Social Security Administration, on the other hand, has a simple rule regarding payments to prisoners. A person's Social Security benefits are suspended if he/she is incarcerated for a month or more.

In our report *Review of Medicare Payments for Services Provided to Incarcerated Beneficiaries*(A-04-00-05568), we found that the Medicare program is vulnerable to improper payments for services provided to incarcerated beneficiaries. According to data provided to us by the SSA, there were 38,600 Social Security beneficiaries entitled to Medicare who were incarcerated as of July 2000. We used this data to determine whether Medicare claims have been paid on behalf of any of these beneficiaries during Calendar Years 1997 through 1999. To date, we have identified \$32 million in Medicare fee-for-service payments on behalf of 7,438 incarcerated beneficiaries during Calendar Years 1997 through 1999. We also found that some incarcerated beneficiaries were enrolled in Medicare managed care plans during their incarceration.

We are in the process of determining the amount of Medicare payments made on behalf of incarcerated beneficiaries which may be improper. We are concerned, however, because, in general, no Medicare payments should be made for services rendered to prisoners unless certain strict conditions are met by the government component (i.e., Federal, State, or local) which operates the prison. We are now determining if the government components operating prisons meet the strict conditions for Medicare payments to be allowable. The development underway includes researching State laws to determine if prisoners are required to repay their medical expenses. If such a law exists, the government entity must then prove that it enforces this requirement. Examples we are investigating include:

- Medicare paid \$25,423 for services to an inmate charged with killing his mother.
- In another State, Medicare paid a facility \$97,283 on behalf of nine inmates who were incarcerated

for various crimes including arson, attempted assault, breaking and entering, and burglary.

The HCFA does not identify Medicare beneficiaries who are in prison, making it virtually impossible for Medicare contractors to prevent improper payments. To minimize this risk, we recommend that HCFA formalize its efforts to obtain additional data from SSA in the daily transmission of enrollment data, which identifies incarcerated beneficiaries, and design and implement system controls in the Enrollment Database and Common Working File to alert contractors when a Medicare claim is submitted for services for an incarcerated beneficiary. We recognize that implementing the routine transfer of necessary information from SSA and making the necessary system enhancements will take time. In the interim, we recommend that HCFA periodically obtain a file on incarcerated beneficiaries for post-payment reviews from SSA similar to the file we obtained during our review.

**Medicaid Payments for Inmates of Public Institutions:** We are in the process of reviewing Medicaid payments for services provided to inmates of public institutions. Our involvement began with information received from the Louisiana Office of Legislative Auditor. The Auditor was concerned that the Louisiana Department of Health and Hospitals was including the cost of services provided to inmates in determining its Medicaid net uncompensated care costs for disproportionate share hospital payments made to State operated hospitals. The Louisiana Office of Legislative Auditor had interpreted that neither disproportionate share hospital payments nor Federal financial participation payments are allowable for services provided to inmates of public institutions, specifically prisoners in a penal institution.

Based on audit work to date, we found that HCFA has not established a definitive coverage policy that is consistent with the intent of the governing statute that generally prohibits Federal financial participation payments for inmates of public institutions. The current Medicaid coverage policy contains a provision allowing for Federal financial participation payments for services provided to inmates of public institutions when the inmate is an inpatient in a medical institution. We believe this provision is contrary to the intent of the Medicaid statute. We believe the intent was to ensure that Medicaid funds are not used to finance care that has traditionally been the responsibility of the State and local governments. Also, HCFA has no specific guidance on the availability of disproportionate share hospital payments to hospitals for uncompensated care provided to inmates. We expect to complete our review this summer.

#### *Other OIG Work*

In addition to the improper payments described above, we have also done extensive work through audits and inspections to identify duplicate payments made in the Medicare and Medicaid programs. For example, we have examined if Medicare fee-for-service payments were made on behalf of beneficiaries enrolled in Medicare managed care plans. This work involves identification of specific overpayments, as well as identification of the system vulnerabilities, which have allowed such payments to occur. Additionally, we have work underway to identify whether Medicare payments are being made on behalf of deported aliens. Preliminary results indicate that such payments are being made.

#### **TANF BENEFICIARIES WHO ARE FUGITIVE FELONS**

The problems of ensuring the appropriateness of payments in a complex program environment are not limited to Medicare and Medicaid. This is illustrated in the following account of income assistance payments which we discovered were being made to fugitive felons.

The U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, oversees the Temporary Assistance for Needy Families (TANF) program. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 increased the flexibility of the States in

operating the TANF program. The Act allows States to provide assistance so that children may be cared for in their own home; promote job preparation, work and marriage; prevent and reduce the incidence of out-of-wedlock pregnancies; and encourage the formation and maintenance of two parent families. Section 408 of the Act identifies prohibitions and other requirements for the TANF program including a requirement that States not use any part of the grant to provide assistance to any individual who is fleeing to avoid prosecution, custody or confinement after conviction for a felony, as defined under the laws of the place from which the individual flees.

Project Cornhusker is an initiative of our Office to reduce fraudulent TANF payments in the metropolitan area of Omaha, Nebraska. This is the first such joint project we have undertaken with local law enforcement to identify individuals with felony fugitive warrants who are recipients of federal assistance in violation of the Welfare Reform Act of 1996. As part of this effort, the active felony warrants for Douglas County, including Omaha, were matched with the active TANF beneficiary files maintained by the Nebraska Department of Health and Human Services. This computer match produced 64 wanted individuals.

On March 21 and 22, 2001, OIG agents assisted the Douglas County Sheriff's Office and the Omaha Police Department in the arrest of 24 individuals wanted for felonies committed in their jurisdiction. These arrests were made possible because of the cooperation of the Nebraska Department of Health and Human Services, local police and OIG. Twelve additional arrests were made without OIG assistance.

The majority of the arrested subjects were wanted for non-violent crimes, such as felony theft, bad checks, burglary and crimes against property. Three subjects were arrested on warrants for assault, one with a deadly weapon. Specific information concerning some of the arrests are identified below:

- A subject was arrested and found to have three Social Security cards in another individual's name. He also had a birth certificate in that subject's name with two passport photos of himself. This information was sent to the Social Security Administration, Office of Inspector General, Office of Investigations.
- An individual was arrested and found to be in possession of black tar heroin.
- Upon request, an individual present during the arrest of a TANF recipient produced identification. A check of law enforcement records showed that the individual was currently wanted in Louisiana for failure to pay court ordered child support. He was subsequently arrested on that charge.

Because of the success of this effort, we are considering replicating this type of joint initiative in the future.

## **MODERNIZING DEPARTMENT INFRASTRUCTURE**

The Secretary of the Department of Health and Human Services has named reforming the management of the Department's operations as one of his top priorities. Specific priorities include improving the management of HCFA and making appropriate investments in Department management and infrastructure.

*Improve the Management of the Health Care Financing Administration:* The demands on HCFA have grown dramatically in the last few years. On the one hand, the agency needs adequate resources to successfully administer the Medicare, Medicaid, and State Children's Health Insurance programs; on the other hand, it must be recognized that patients, providers and States have legitimate complaints about the scope and complexity of the regulations and paperwork that govern these programs. The Department has

therefore begun a thorough examination of HCFA's missions, its competing demands, and its resources.

***Invest in Department Management and Infrastructure:*** The Secretary has noted that one of the major challenges in a large, decentralized Department such as HHS is finding ways to bring together diverse activities and to develop coordinated systems for managing its programs.

In the area of financial management, the Secretary has proposed an additional \$50 million investment in a unified financial accounting system. The OIG has found major problems with the Department's current system structure, which involves separate accounting systems operated by multiple agencies. Department plans to replace these antiquated systems with one or two unified financial management systems should help to increase standardization, reduce security risks, and allow HHS to produce timely and reliable financial information needed for management decision-making, and provide accountability to the external customers.

In the information technology arena, the Secretary has proposed \$30 million to improve information technology systems through investments in the Information Technology, Security and Innovation Fund. As seen in my examples today, these systems are highly antiquated, incompatible, and vulnerable to exploitation. The Secretary has proposed that funds would be used to implement an Enterprise Infrastructure Management approach across the Department that would minimize vulnerabilities while maximizing cost savings and the ability to share information.

We fully support these proposals and continue to promote adequate departmental resources to ensure efficient and effective claims processing, policy development and regulation, and quality assurance. We remain concerned that the currently inadequate internal controls leave the Medicare program vulnerable to potential loss of funds, misstated financial statements, disclosure of sensitive information, and disruption of critical claim processing. Further, out-of-date and overly complex computer systems are not adequately preventing inappropriate program payments.

Over the past 5 years, the Trustees have extended their estimate of the financial life of the Trust Fund by 30 years, from 1999 until 2029. The expanded solvency projection provides a window of opportunity to develop a departmental technology infrastructure for the 21<sup>st</sup> century. Over time, such an investment will lead to further savings -- by reducing payment errors of all types and by making program operations more efficient.

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This concludes my testimony. I would be happy to answer any questions.

**S B**

**4 5**

CS FOR SENATE BILL NO. 45( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATOR GREEN

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to the Legislative Budget and Audit Committee."

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

3 \* Section 1. AS 11.56 is amended by adding new sections to article 6 to read:

4 Sec. 11.56.870. **Hindering the Legislative Budget and Audit Committee in**  
5 **the first degree.** (a) A person commits the crime of hindering the Legislative Budget  
6 and Audit Committee in the first degree if the person violates AS 11.56.880(a) and the  
7 person is a public servant.

8 (b) Each failure to comply with a request from the committee or its staff is a  
9 separate violation of this section.

10 (c) Hindering the Legislative Budget and Audit Committee in the first degree  
11 is a class A misdemeanor. A state employee who is convicted under this section  
12 immediately forfeits the employee's office or position. In this subsection, "state  
13 employee" has the meaning given in AS 39.25.990.

14 Sec. 11.56.880. **Hindering the Legislative Budget and Audit Committee in**  
15 **the second degree.** (a) A person commits the crime of hindering the Legislative

1 Budget and Audit Committee in the second degree if the person knowingly directs,  
 2 orders, discourages, threatens, restrains, coerces, forces, or prevents a person from  
 3 giving full cooperation to the committee or its staff in assembling or furnishing  
 4 requested information to the committee or its staff.

5 (b) Each failure to comply with a request from the committee or its staff is a  
 6 separate violation of this section.

7 (c) Hindering the Legislative Budget and Audit Committee in the second  
 8 degree is a class B misdemeanor. A state employee who is convicted under this  
 9 section immediately forfeits the employee's office or position. In this subsection,  
 10 "state employee" has the meaning given in AS 39.25.990.

11 \* Sec. 2. AS 24.20.201 is amended by adding a new subsection to read:

12 (c) When the Legislative Budget and Audit Committee or its staff requests  
 13 information from a state official or from an agency or department of the state, the  
 14 official or the agency or department may not refuse to provide that information by  
 15 claiming the information is privileged unless the official, or the commissioner of the  
 16 department or the head of an agency if the information is requested from a department  
 17 or agency, asserts the privilege and the basis for the privilege under oath. The  
 18 committee may consider the assertion of privilege, and, if the committee disagrees, the  
 19 committee may seek review of the claim of privilege in the superior court.

20 \* Sec. 3. AS 39.25.020 is amended by adding a new subsection to read:

21 (b) An appointing authority may not appoint a person to state service if the  
 22 person has been convicted of a crime under AS 11.56.870 or 11.56.880.

23 \* Sec. 4. AS 39.90.140(3) is amended to read: *(Delayed imposition of sentence)*

24 (3) "matter of public concern" means

25 (A) a violation of a state, federal, or municipal law, regulation,  
 26 or ordinance;

27 (B) a danger to public health or safety;

28 (C) gross mismanagement, a substantial waste of funds, or a  
 29 clear abuse of authority; [OR]

30 (D) a matter accepted for investigation by the office of the  
 31 ombudsman under AS 24.55.100 or 24.55.320; or

1  
2  
3  
4

(E) interference or any failure to cooperate with an audit or other matter within the authority of the Legislative Budget and Audit Committee;

\* Sec. 5. AS 24.20.201(a)(9) and 24.20.206(1) are repealed.

● SSB45

Amnd #1

Page 2, line 3

after the word "the" add:

"legislative auditor or the legislative fiscal analyst"

Delete [committee or its staff]

Page 2, line 4, delete after the word "information"

[to the committee or its staff]

Then, to conform language elsewhere in the bill according,

(specifically , page one, line 8  
, page two, line 5  
, page two, line 12)



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**LEGAL SERVICES****DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**(907) 465-3887 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 8th St., Rm. 329MEMORANDUM

March 14, 2003

**SUBJECT:** Legislative Budget & Audit Committee Draft CS( )  
(Work Order No. 23-LS0205V)

**TO:** Senator Lyda Green  
Attn: Jacqueline

**FROM:** Gerald P. Luckhaupt *[Signature]*  
Legislative Counsel

Enclosed is the CS( ) you requested. You also had several questions.

1. You have asked if the legislature has provided that state employees lose their jobs and ability to be again hired as a state employee when they are convicted of certain crimes. Apart from qualifications for certain offices<sup>1</sup> or statutes that restrict, for example, sex offenders, from working with children, the legislature has not previously provided that persons convicted of certain crimes forfeit their state employment and cannot be reappointed to state employment. As an example, a state employee convicted of tampering with public records or official misconduct does not automatically lose their state employment by that conviction<sup>2</sup> and could be rehired by the state at some time in the future.

2. You have asked what is meant by "the committee or its staff" in the bill and who is included in that term. That term was used in the draft your office supplied to me to guide my initial drafting efforts and I continued the use of that term in the bill. I note that the term "committee or its staff" exists in AS 24.20.201(a)(3)<sup>3</sup> and I assume that this was the

---

<sup>1</sup> For example, a person may not be a candidate for a public office of the state unless the person is a registered voter. Art. II, § 2; art. III, §§ 2 and 7, Constitution of the State of Alaska. A person may not register to vote if the person has been convicted of a felony involving moral turpitude. AS 15.05.030. Upon the person's unconditional discharge from the conviction the person may again register to vote and may again be a candidate for public office. "Felony involving moral turpitude" and "unconditional discharge" are defined in AS 15.60.010.

<sup>2</sup> However, I would assume that the person would be terminated for that misconduct.

<sup>3</sup> AS 24.20.201(a)(3) provides:

Senator Lyda Green  
March 14, 2003  
Page 2

source of the term. As for what the term means and who is referred to by that term, that is not so easily answered. Clearly the term means the Legislative Budget and Audit Committee as a whole. It also seems clear to me that the term includes the (1) legislative finance division as AS 24.20.211 establishes the division as the "permanent staff agency responsible to the" committee "for performance of fiscal analysis and budget review functions;" and (2) legislative audit division as AS 24.20.241 establishes the division as the "permanent staff agency to the" committee "responsible for completion of the post-audit function." I conclude that the term also includes the chairman of the committee when the chairman's action is authorized by a majority of the committee.<sup>4</sup> The term would also include any personal staff of the chairman or a member of the committee when the staff person's action is authorized by a majority of the committee.

GPL:lmb  
03-079.lmb

Enclosure

---

(a) The Legislative Budget and Audit Committee has the power to

....  
(3) require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

<sup>4</sup> This conclusion is based upon the language of AS 24.25.010 which refers to the chairman of a committee issuing subpoenas when a majority of the committee has authorized the chairman to do so. While AS 24.20.010 does not apply to the LB&A committee, the language is still instructive as to what is meant here.

WORK DRAFT

WORK DRAFT

WORK DRAFT

23-LS0205V  
Luckhaupt  
3/13/03

**CS FOR SENATE BILL NO. 45( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): SENATOR GREEN**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the Legislative Budget and Audit Committee."**

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

3 **\* Section 1. AS 11.56 is amended by adding new sections to article 6 to read:**

4 **Sec. 11.56.870. Hindering the Legislative Budget and Audit Committee in**  
5 **the first degree. (a) A person commits the crime of hindering the Legislative Budget**  
6 **and Audit Committee in the first degree if the person violates AS 11.56.880(a) and the**  
7 **person is a public servant.**

8 **(b) Each failure to comply with a request from the committee or its staff is a**  
9 **separate violation of this section.**

10 **(c) Hindering the Legislative Budget and Audit Committee in the first degree**  
11 **is a class A misdemeanor. A public employee who is convicted under this section**  
12 **immediately forfeits the employee's office or position. In this subsection, "public**  
13 **employee" has the meaning given in AS 39.52.960.**

14 **Sec. 11.56.880. Hindering the Legislative Budget and Audit Committee in**  
15 **the second degree. (a) A person commits the crime of hindering the Legislative**

WORK DRAFT

WORK DRAFT

23-LS0205V

1 Budget and Audit Committee in the second degree if the person knowingly directs,  
2 orders, discourages, threatens, restrains, coerces, forces, or prevents a person from  
3 giving full cooperation to the committee or its staff in assembling or furnishing  
4 requested information to the committee or its staff.

5 (b) Each failure to comply with a request from the committee or its staff is a  
6 separate violation of this section.

7 (c) Hindering the Legislative Budget and Audit Committee in the second  
8 degree is a class B misdemeanor. A public employee who is convicted under this  
9 section immediately forfeits the employee's office or position. In this subsection,  
10 "public employee" has the meaning given in AS 39.52.960.

11 \* Sec. 2. AS 24.20.201 is amended by adding a new subsection to read:

12 (c) When the Legislative Budget and Audit Committee or its staff requests  
13 information from a state official or from a department of the state, the official or the  
14 department may not refuse to provide that information by claiming the information is  
15 privileged unless the official or the commissioner of the department, if the information  
16 is requested from a department, asserts the privilege and the basis for the privilege  
17 under oath. The committee may consider the assertion of privilege, and, if the  
18 committee disagrees, the committee may seek review of the claim of privilege in the  
19 superior court.

20 \* Sec. 3. AS 39.25.020 is amended by adding a new subsection to read:

21 (b) An appointing authority may not appoint a person to state service if the  
22 person has been convicted of a crime under AS 11.56.870 or 11.56.880.

23 \* Sec. 4. AS 39.90.140(3) is amended to read:

- 24 (3) "matter of public concern" means
  - 25 (A) a violation of a state, federal, or municipal law, regulation,
  - 26 or ordinance;
  - 27 (B) a danger to public health or safety;
  - 28 (C) gross mismanagement, a substantial waste of funds, or a
  - 29 clear abuse of authority; [OR]
  - 30 (D) a matter accepted for investigation by the office of the
  - 31 ombudsman under AS 24.55.100 or 24.55.320; or

CSSB 45( )

-2-

New Text Underlined [DELETED TEXT BRACKETED]

WORK DRAFT

WORK DRAFT

23-LS0205V

- 1
- 2
- 3

(E) interference or any failure to cooperate with an audit or other matter within the authority of the Legislative Budget and Audit Committee;

L

# ALASKA STATE LEGISLATURE



*Interim:*  
600 East Railroad Avenue  
Wasilla, Alaska 99654  
(907) 376-3370  
(907) 376-3157 Fax

*Session:*  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-6600  
(907) 465-3805 Fax

**SENATOR LYDA GREEN**  
SENATE DISTRICT G

## SPONSOR STATEMENT FOR SENATE BILL 45

**“An act relating to the Legislative Budget and Audit Committee.”**

AS 24.20.201(a)(3) states that the **Legislative Budget and Audit Committee** has the power to **“require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information.”** Unfortunately, this well-intentioned statute is **unenforceable because it lacks any penalties** for those who are uncooperative or who undermine the work of this committee. Senate Bill 45 is designed to remedy this by **providing prosecutors with the necessary tools to deter and punish** those who hinder the investigative work of the legislative budget and audit committee.

Senate Bill 45 also **clarifies the process by which privilege is claimed and the process by which it is determined.**

When the legislature created the **Legislative Budget and Audit committee**, it envisioned this committee would have **full access to all information necessary to carry out their work.** Senate Bill 45 helps to ensure that this vision can occur.

I urge your support and swift passage of this important legislation.

23-LS0205VH  
Luckhaupt  
3/4/03

CS FOR SENATE BILL NO. 45( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATOR GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Legislative Budget and Audit Committee."

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

3 \* Section 1. AS 11.56 is amended by adding new sections to article 6 to read:

4 Sec. 11.56.870. Hindering the Legislative Budget and Audit Committee in  
5 the first degree. (a) A person commits the crime of hindering the Legislative Budget  
6 and Audit Committee in the first degree if the person violates AS 11.56.880(a) and the  
7 person is a public servant.

8 (b) Each failure to comply with a request from the committee or its staff is a  
9 separate violation of this section.

10 (c) Hindering the Legislative Budget and Audit Committee in the first degree  
11 is a class C felony. A public employee who is convicted under this section  
12 immediately forfeits the employee's office or position. In this subsection, "public  
13 employee" has the meaning given in AS 39.52.960. *and is ineligible for re-hire as a  
public employee.*

14 Sec. 11.56.880. Hindering the Legislative Budget and Audit Committee in  
15 the second degree. (a) A person commits the crime of hindering the Legislative

1 Budget and Audit Committee in the second degree if the person knowingly directs,  
2 orders, discourages, threatens, restrains, coerces, forces, or prevents a person from  
3 giving full cooperation to the committee or its staff in assembling or furnishing  
4 requested information to the committee or its staff.

5 (b) Each failure to comply with a request from the committee or its staff is a  
6 separate violation of this section.

7 (c) Hindering the Legislative Budget and Audit Committee in the second  
8 degree is a class A misdemeanor. A public employee who is convicted under this  
9 section immediately forfeits the employee's office or position. In this subsection,  
10 "public employee" has the meaning given in AS 39.52.960.

11 \* Sec. 2. AS 24.20.201 is amended by adding a new subsection to read:

12 (c) When the Legislative Budget and Audit Committee requests information  
13 from a public officer of the state or from a department of the state, the officer or the  
14 department may not refuse to provide that information by claiming the information is  
15 privileged unless the officer or the commissioner of the department, if the information  
16 is requested from a department, asserts the privilege and the basis for the privilege  
17 under oath. The committee may consider the assertion of privilege, and, if the  
18 committee disagrees, the committee may seek review of the claim of privilege in the  
19 superior court.

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB45  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title An Act relating to the Legislative BRU Centralized Administrative Services  
Budget & Audit Committee Component Administrative Services  
Sponsor Senator Green  
Requester (H) FIN Component No. 46

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

No fiscal impact on the Department.

Prepared by: Dan Spencer, Director  
Division: Division of Administrative Services  
Approved by: Mike Miller, Commissioner  
Agency: Department of Administration

Phone 465-5655  
Date/Time 2/20/03 11:45 AM  
Date 2/20/2003

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 45  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (correction): 2/25/03 2:18 PM Dept. Affected: Law  
 Title: "An Act relating to the Legislative Budget and Audit Committee." BRU: Criminal Division  
 Component: All  
 Sponsor: Senator Green  
 Requester: Senate Judiciary Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill creates new crimes: Hindering the Legislative Budget and Audit Committee in the first and second degrees. Hindering the LB&A Committee in the first degree is a class B felony. Hindering the LB&A Committee in the second degree is a class C felony.

The Department of Law does not anticipate many new cases from passage of this legislation, and does not expect a measurable fiscal impact.

Prepared by: Joan M. Kasson  
 Division: Attorney General's Office  
 Approved by: Kathryn Daughhettee for Gregg D. Renkes, Attorney General  
 Agency: Department of Law

Phone: (907) 465-5370  
 Date/Time: 2/25/03 2:18 PM  
 Date: 2/25/2003

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB45  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title An Act relating to the Legislative BRU Centralized Administrative Services  
Budget & Audit Committee Component Administrative Services  
Sponsor Senator Green  
Requester (H) FIN Component No. 46

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2003) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

No fiscal impact on the Department.

Prepared by: Dan Spencer, Director Phone 465-5655  
Division Division of Administrative Services Date/Time 2/20/03 11:45 AM  
Approved by: Mike Miller, Commissioner Date 2/20/2003  
Agency Department of Administration

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB 45  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (correction): 2/25/03 2:18 PM Dept. Affected: Law  
Title: "An Act relating to the Legislative Budget and BRU Criminal Division  
Audit Committee." Component: All  
Sponsor: Senator Green  
Requester: Senate Judiciary Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's F-Y 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill creates new crimes: Hindering the Legislative Budget and Audit Committee in the first and second degrees. Hindering the LB&A Committee in the first degree is a class B felony. Hindering the LB&A Committee in the second degree is a class C felony.

The Department of Law does not anticipate many new cases from passage of this legislation, and does not expect a measurable fiscal impact.

Prepared by: Joan M. Kasson  
Division: Attorney General's Office  
Approved by: Kathryn Daughhettee for Gregg D. Renkes, Attorney General  
Agency: Department of Law

Phone: (907) 465-5370  
Date/Time: 2/25/03 2:18 PM  
Date: 2/25/2003

HC02 Box 7691A  
Palmer, Alaska 99645  
January 30, 2003

The Honorable Lyda Green  
State Capital Building, Room 561  
Juneau, Alaska 99508-1182

**RE: SB 45**

Dear Senator Green:

This correspondence is to let you know that I support SB 45.

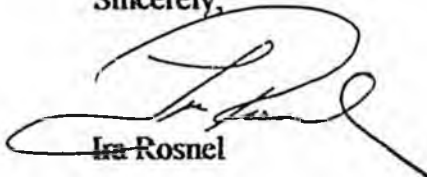
*Attached copy  
of bill*

During these times of diminishing revenues, I believe that every effort must be made to maximize our ability to manage public funds while minimizing mismanagement, a problem all too common in government.

The only way that an accurate accounting can be made of each department and division in state government is by requiring state officials and bureaucrats to fully cooperate with, and address the concerns of, legislative auditors. SB 45 supports state employees' appropriate use of public funds in service to Alaskan citizens.

Thank you for your representation.

Sincerely,

  
Ira Rosnel