

11420 HOUSE HEALTH, EDUCATION & SOCIAL SERVICES



supports or accommodations in school the student requires in order to access an appropriate education.<sup>54(p.337)</sup>

When a child's asthma is disabling to the extent that the child needs "special education and related services,"<sup>55,46</sup> under IDEA a school is obligated to offer that student sufficient specialized services (e.g., allowing a student to carry an asthma inhaler) so that the student may benefit from his or her education.<sup>50,64</sup> During 2000–2001, the US Department of Education estimated that 292 000 children aged 3 to 21 years were served under IDEA as a result of a disability categorized as "other health impairment."<sup>65</sup> The US Supreme Court, in *Cedar Rapids Community School District v Garret F.*, established that under IDEA, those services may go as far as providing a full-time, one-on-one nurse or health assistant.<sup>66</sup> If a student has no other disability and the student's asthma does not affect his or her educational performance, IDEA does not apply.<sup>67</sup> However, students who need access to an asthma inhaler because their asthma places a substantial limitation on major life activities (i.e., the child is disabled because of his or her medical condition) but do not need special education remain qualified under Section 504 and Title II of ADA<sup>68,69</sup> and may avoid being labeled as children who need special education.

To succeed in a Section 504 or Title II of ADA claim alleging that an accommodation was not granted, the claimant must show that the accommodation was de-

nied because of the student's disability (i.e., was discriminatory).<sup>54,70,71</sup> In *East Helena (MT) Elementary School District # 9*, the school district refused to either administer or ensure that the student took asthma medication prescribed and filled by a naturopathic physician.<sup>70</sup> Instead, the school offered to allow a family member to administer the child's medication. In refusing to administer the medication, the school district was following a state law that prohibited the administration of medication unless the prescription was filled by a pharmacist. In that case, the court upheld the policy because the refusal applied to all students regardless of disability status.

Similarly, in *DeBord v Board of Education of the Ferguson-Honssant School District*<sup>54</sup> and *Davis v Francis Howell School District*,<sup>71</sup> schools refused to administer a prescription medication (methylphenidate [Ritalin] for attention deficit hyperactivity disorder) because the doses exceeded that recommended by the *Physicians' Desk Reference*. Both school districts had policies prohibiting schools from administering such prescriptions, although both were willing to let a parent or designee come to the school to administer the medication. The schools argued that the policies were to protect students' health and minimize potential liability. Courts in both cases found that because the school policies were neutral and applied to all students regardless of disability status, no discrimination had taken place. *DeBord, Davis, and East Helena* are examples of situ-

ations in which the claimant could not show that the school district's refusal to accommodate the child was based solely on a disability; therefore, no violations of Section 504 or Title II of ADA were found.<sup>54,70,71</sup>

Although some school policies that forbid staff to administer medications to students have been upheld by courts if uniformly applied, it is unlikely that a "no medications" policy (i.e., a policy that denies the administration of any and all medications at school) applied to all students would stand up in court because those policies have the effect of denying children with disabilities the free appropriate public education to which they are entitled under IDEA and perhaps Section 504, or reasonable accommodations under Section 504 and Title II of ADA.<sup>57,72,73</sup> A free appropriate public education must be specifically designed to meet the unique needs of the child,<sup>74</sup> and consequently, related services, including medications, must accompany that design.<sup>55,56,66</sup> Likewise, under Section 504, health services provided as part of related services must be individually evaluated and prescribed.<sup>58</sup>

#### INDIVIDUAL EDUCATION PROGRAMS

Under IDEA, a "child with a disability" must be provided with an appropriate individualized educational program (IEP).<sup>49,75</sup> Federal regulations promulgated under Section 504 indicate that schools may use IEPs or other plans as a means of meeting free appropriate public education re-

quirements included in those regulations<sup>55</sup> (whether Section 504 includes such requirements is less clear<sup>57</sup>). An IEP is a written statement designed to identify a child's educational needs and other programs and related services the child requires to progress in the general curriculum.<sup>49</sup> IEPs are developed by an IEP team that typically includes the disabled child's parents, regular and special education teachers, and other representatives from the local education agency who are best suited to assist the child in meeting his or her educational needs.<sup>49</sup> A school nurse may be part of the IEP team when school health services (e.g., administration of medications) are necessary.<sup>76</sup> This team, created specifically for each individual child, ensures that all aspects of the child's educational and related services needs are tailored to that child. This team, along with consultation from the child's health care provider, is best equipped to determine on a case-by-case basis whether self-medication using asthma inhalers is appropriate.

For students with asthma, an *asthma management plan* (Table 1) is an appropriate part of an IEP.<sup>5</sup> Health care providers give instructions on how best to manage the child's asthma during the school day. For a student with asthma, it is helpful if part of the IEP (or 504 plan or individual health service plan or asthma management plan) includes specific information about where, when, and how each asthma medication is to be taken, including when medication possession



**TABLE 1—Elements of Typical Asthma Management Plan**

- Student's asthma history
- Student's asthma symptoms
- How to contact student's health care provider and parent or guardian
- Signatures of physician and parent or guardian permitting use of medications in school
- List of factors that make student's asthma worse
- Student's best peak flow reading (if student uses peak flow monitoring)
- List of student's asthma medications
- Student's treatment plan, including actions school personnel can take to help handle asthma episodes

Source: NIH Publication 95-3651.<sup>5</sup>

and self-administration provisions are appropriate.

It is best if asthma management plans are on file in the school office or health services office and available to teachers and coaches. From a legal perspective, it is recommended that the asthma management plan include parental permission for the plan to be shared with relevant school personnel to avoid possible violations of the Family Education Rights and Privacy Act of 1974 (FERPA), which prohibits the unauthorized disclosure of confidential information in education records (including school health records in most cases).<sup>77,78</sup> However, under FERPA education records may be released to school officials without written consent of students' parents, including to teachers within the educational institution or local education agency, who have a "legitimate educational interest."<sup>79</sup> Under FERPA, it is important to note a narrow emergency exception whereby a school may disclose personally identifiable information to appropriate parties in connection with an emergency

if knowledge of the information is necessary to protect the health or safety of the student.<sup>77,80</sup>

### OVERCOMING POTENTIAL DISADVANTAGES

Although many advantages to self-medication exist, families and schools need to recognize some theoretically possible disadvantages of students' being responsible for carrying and administering their own medication. These disadvantages can be minimized, however. First, students may unintentionally leave their inhalers at home or misplace their inhalers at school. One possible solution is to keep a spare inhaler in a school nurse's office or health room.

Second, self-medication may make it more difficult for the school to keep medication records. Such documentation ensures that medication adherence can be communicated to parents and children's health care providers; documentation might be required as part of an IEP or Section 504 plan or might be recommended by school boards as a way to

monitor the health and safety of students. To solve this problem, schools could require that students report each inhaler use to a school nurse or record each medication use in a diary.

Third, students may not be well educated about when to take their medications,<sup>80,81</sup> may be embarrassed to take their medications in front of peers,<sup>8</sup> or may lack the maturity to use their medications appropriately (e.g., most elementary school students). Health care providers and parents are primarily responsible for teaching children about administering asthma medications and determining on a case-by-case basis whether the student has reached a level of maturity necessary for self-medication. School-based programs can supplement student education by helping students with asthma understand their disease and the importance of asthma self-management<sup>82,85</sup> as well as destigmatize the need for using asthma inhalers during the school day.<sup>63</sup>

### CONCLUSION

Not all students with asthma have their asthma under good control.<sup>14</sup> Patient education and medical management about the proper use of asthma medication are crucial to preventing asthma morbidity and mortality.<sup>86,87</sup> For optimal asthma management, it is important that students with asthma not be denied appropriate access to their medications in school.<sup>5,6,11,88,89</sup> Many states have laws or policies that allow students to self-medicate with

asthma inhalers at school (there is no evidence on whether state laws or policies are more effective to ensure immediate access for students in schools). In addition, 3 federal laws require schools to accommodate students whose asthma qualifies as a disability under IDEA, Section 504, or Title II of ADA. Such accommodations may include allowing students to carry their asthma inhalers so they can self-medicate as indicated in their asthma management plan. Of note, the US Department of Education, Office of Safe and Drug-Free Schools has issued guidance clarifying that "a student's prescription drugs, and related equipment, are not illegal drugs and are not prohibited by the [Safe and Drug-Free Schools and Communities Act]."<sup>90</sup>

Although these laws and policies are important, they cannot provide an individualized answer to asthma management. Ideally, parents or guardians, the child's health care provider, and school personnel, including the school nurse, will work together as a team to determine the best way to manage a student's asthma in school. Table 2 outlines some factors that should be considered in determining the appropriateness of self-carrying and self-administering inhalers in school. For example, whether a child with asthma should be permitted to self-medicate ought to be determined on a case-by-case basis, based on a child's abilities and interest and maturity and the situation at the school. When that team deems the child skilled and mature enough, the student with



**TABLE 2—Elements to Consider When Determining Appropriateness of Self-Carrying and Self-Administering of Inhaler Medication in Schools**

**Student factors**

- Asthma severity and morbidity (hospitalizations, emergency department visits, severe episodes, types of triggers)
- Student's asthma knowledge, attitude, skills, and behavior (awareness of asthma signs and symptoms, desire to self carry inhaler, willingness to self administer and report use of inhaler, understanding of importance of not sharing inhaler with other students, correct peak flow and inhaler technique)
- History of asthma episodes at school
- Adherence to school rules regarding medication administration
- Inhaler self-carrying experience in other settings (child care, camp, after-school care, at friends' homes)

**Family factors**

- Desire of parents/guardians for student to self-carry and self-administer medications with an inhaler
- Collaboration of parents/guardians with school team; permission for physician and school to share information

**School factors**

- Health staff availability (whether or not there are full-time school nurses or health assistants)
- School size (whether or not there is quick and easy access to health room)
- Ability to reduce student's triggers at school
- Proximity and availability of inhalers from local emergency medical services

**Health care provider factors**

- Completion of physician's or other health care provider's written asthma management plan and all required forms
- Student's education by physician or other health care provider about asthma generally, controlling asthma, and proper use of inhalers, spacers, and peak flow meters
- Assessment by physician or other health care provider of student's technique for inhaler, spacer, and peak flow meter use

asthma should be allowed to keep asthma inhalers in his or her possession<sup>11,88</sup> to reduce the chances of a full-blown asthma episode, asthma-related school absences, and the need for emergency medical care.<sup>88,89</sup> Some students may not want or need to carry their inhalers, for example, when the school building is very small and health staff are available during all school hours. Each student needs individual as-

essment as part of the implementation of that student's personal asthma management plan.

In some circumstances, parents may need assistance from the child's physician or other health care provider in advocating for the student to gain the right to self-carry an asthma inhaler. By knowing the rights of students with asthma, physicians and other health care providers can help ensure that students

have appropriate access to medications at school. An informed health care provider can bring to the attention of school administrators and educators, as well as parents, the legal requirements of schools with students with asthma, and the benefits of self-administration and adequate control of asthma (e.g., improved health and fewer school absences). For example, health care providers can obtain parental permission to send a written asthma management plan to schools including specific guidance about the student's skill and maturity regarding self-administering the asthma inhaler. They can personally contact the principal if there is reluctance to permit self-carrying of inhalers. Students are more likely to be able to control their asthma when school personnel, parents or guardians, and health care providers know about disability laws and about appropriate asthma management. ■

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**Contributors**

S Everett Jones collected, analyzed, and synthesized the literature and wrote the article. L Wheeler assisted in synthesizing the literature and contributed to the writing of the article.

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Fax transmittal sheet

To Leg Legal  
Fax # 465-2029  
From: Kathy Hope Erickson for Representative Peggy Wilson  
Re: HB 85, Prescribed medication for students

Date February 16, 2005  
1 page

Comments: HESS Committee has passed HB 85 out of Committee, and has made these two amendments:

① Page 1 line 8: DELETE ", or other potentially life-threatening illness"; and  
Page 1, line 13-14: DELETE ", or other potentially life-threatening illness"  
(and any corresponding grammatical and punctuation corrections);  
and

② Page 2, beginning on line 3: REPLACE (C) with: the student has demonstrated to the health care provider the skill level necessary to use the medication and any device that is necessary to administer such medication as prescribed;

ADD: (D) the health care practitioner formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours; and  
(E) the student's parent or guardian has completed and submitted to the school any written documentation required by the school, including the treatment plan formulated under subsection (D) and other documentation (\*related to liability).

Wording for this amendment is from HR 2023. If you would like a copy of this legislation, please give me a call.

I am also requesting a final of CSHB 85 (HESS). Thank you for everything.

\* Representative McGuire trailed off and had a sort of a question mark at this phrase, possibly because liability is covered in section (C). I have left a copy of this request with Rep. McGuire's staff, and expect to hear from her before 10 a.m. on her intention. Please let me know if I should do something else???

Thanks much.

**HB**

**95**



# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 95  
 ( H ) Publish Date: 1/21/05  
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title RELATING TO PUBLIC HEALTH AND PUBLIC HEALTH EMERGENCIES

RDU Public Health  
 Component Public Health Admin Svcs

Sponsor (RLS) BY REQUEST OF THE GOVERNOR

Requester GOVERNOR

Component No. 292

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (0)</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
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 (FY2005) cost: \_\_\_\_\_

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Passage of this legislation is not expected to have a budget impact on the Division of Public Health, as the bill simply clarifies legal authority and provides new due process provisions for programmatic activities already conducted by the Division. The bill does not add new functions or mandates to the Department of Health & Social Services' legal responsibilities.

Prepared by: Richard Mandsager, M.D.  
 Division: Public Health  
 Approved by: Joel S. Gilbertson, Commissioner  
 Agency: Department of Health and Social Services

Phone 465-3090  
 Date/Time 01/05/2005  
 Date 01/06/2005

# LEGAL SERVICES

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## MEMORANDUM

February 2, 2005

**SUBJECT:** Public Health, HB 95 (HB 95 (Work Order No. 24-GH1002\A))

**TO:** Representative Peggy Wilson  
Attn: Kathy Erickson

**FROM:** Jean M. Mischel  
Legislative Counsel



You have asked generally whether there exist legal or drafting problems with the above referenced bill. Since this bill authorizes the Department of Health and Social Services to take actions that impinge on an individual's constitutional rights in the broadest sense, much of the authority will be subject to judicial review and interpretation. The bill allows for the isolation and quarantine of individuals and groups of individuals, medical screening and testing of an individual, and condemnation of facilities and businesses, all of which require, at a minimum, due process. Courts have generally upheld the exercise of broad police powers to protect public health but the following issues are brought to your attention. Most of the constitutional issues described in this memorandum can be addressed in regulation by the department.

With the exception of emergency orders, protective custody, and procurement "by condemnation or otherwise" of businesses or facilities, the bill establishes a court petition procedure in which the individual has a right to be heard before being deprived of a liberty or privacy interest. While the filing of a court petition implies sufficient notice under the applicable court rules, explicit notice requirements should be, and are not, included in this bill, particularly with regard to procurement and emergency administrative orders. For example, the bill at page 10, lines 2-7, requires the department to obtain a state medical officer's order and, if an individual objects to that order, an *ex parte* order of the court, to conduct screening, examination and testing of an individual who has or "may have been exposed to a contagious disease" without notice or an opportunity for hearing. In a public health emergency, covered in a different section of the bill, a deprivation of due process before the deprivation of the fundamental rights to privacy and association, may be supportable under the state's police powers. But when the deprivation is for the "prevention and control" of a contagious disease and the existence of the disease is speculative, the procedures eliminating notice and an early opportunity for hearing may be constitutionally infirm. In this instance, the bill does not even require that a copy of the orders be provided to the individual once the orders are issued.

It is surprising in light of such limited process available to an individual prior to being tested, examined or screened that the bill at page 11, lines 14-15 permits the refusal of

Representative Peggy Wilson

February 2, 2005

Page 2

medical treatment when an individual is screened for a contagious disease and found to be a carrier. Since isolation is available, the department may isolate the individual. However, isolation costs money and resources (for monitoring, etc.) and may be necessary indefinitely. The model public health act recommends the option of compulsory medical treatment in these circumstances, an option that raises constitutional questions of its own. The deprivation of constitutional rights in order to conduct the screening and examinations, (including protective custody) however, seems to be serving a less compelling interest when the existence of the disease is allowed to be perpetuated in this way.

Conspicuously absent in the bill is a penalty provision associated with violations of section 8 should an individual fail to cooperate or comply with an order. Presumably, contempt of court proceedings could be initiated when a court order has been issued but some of the authority of the department is not dependent upon the issuance of a court order. Moreover, contempt proceedings take time when time may be of the essence. A criminal penalty option may provide a greater incentive for compliance.

Access to an individual's medical records by the department, without the consent of the individual, at page 9, line 24, runs afoul of some federal laws, particularly the Health Information Privacy Act, and implicates privacy interests. The bill does not deal with the due process issues pertaining to the records access either.

In addition to clarifying the notice and penalty provisions, I recommend a review of the relevant court rules to identify whether an indirect or direct court rule amendment is being made by this bill. The review of emergency and temporary orders and the relatively short time frames for hearings on petitions and continuances appear to me to affect the court rules. If you would like me to draft something in this regard, let me know.

The quarantine and isolation authority extends to unemancipated minors. While a guardian ad litem and even an attorney may be appointed to represent the minor by the authority conferred in this bill, the parent is deprived of party status at page 15, lines 16-17 in proceedings affecting the minor.

The shared jurisdiction of the Departments of Health and Social Services and Environmental Conservation in cases involving "contaminated material" as defined at page 17, lines 25-26 is not dealt with in the bill.

In addition to the legal issues, some drafting corrections could be made to bring the bill into full compliance with the drafting manual. However, none of the drafting issues appear to raise any additional substantive concern.

If I may be of further assistance, please advise.

JMM:lmb  
05-028.lmb



# **PUBLIC HEALTH**

**PROTECTING AND PROMOTING THE  
HEALTH OF ALL ALASKANS**

## **HB 95: An Act Relating to Public Health**

**Presentation to the House HESS Committee**

February 10, 2005

Richard Mandsager, M.D., Director

Alaska Department of Health & Social Services

Division of Public Health

“Public Health is what we, as a society, do collectively to assure the conditions in which people can be healthy.”

*Institute of Medicine*

# PUBLIC HEALTH IS NOT HEALTH CARE

- Focus on **Populations**, not individuals
- Focus on **Prevention**, not treatment
- **Government** plays a unique role – legal obligations to prevent disease, disability, injury, and illness among populations

## Preparedness Weaknesses

- Inadequate legal authorities (HB 95)
- Inadequate laboratory facility for virology (HB 100)
- Dependence on federal funds
- Insufficient staff capacity to allow time for both  
1) response to existing priorities, and 2) training  
and exercises for disasters

# Old Public Health Enemies



**PUBLIC HEALTH**  
PROTECTING AND PROMOTING THE  
HEALTH OF ALL ALASKANS

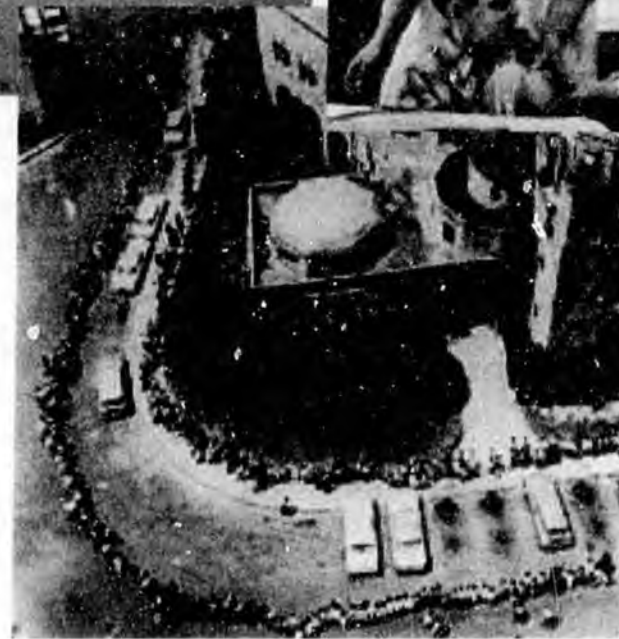
# Traditional Disease Control

**QUARANTINE**  
**CONTAGIOUS DISEASE**

NO ONE SHALL ENTER OR LEAVE THIS HOUSE WITHOUT WRITTEN PERMISSION OF THE LOCAL HEALTH AUTHORITY. (AKS, 407 - V.A.C.S.)

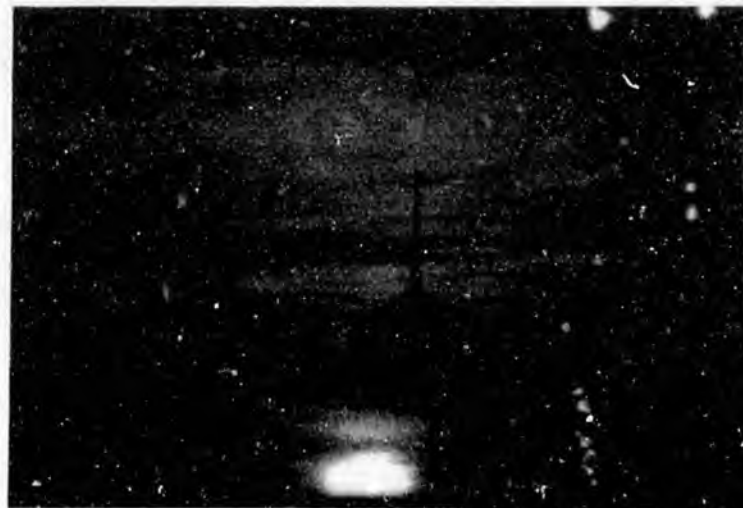
NO PERSON EXCEPT AN AUTHORIZED EMPLOYEE OF THE HEALTH DISTRICT SHALL REMOVE THIS SIGN OR REMOVE THIS CARD. (AKS, 407 - V.A.C.S.)

VIOLATION WILL BE FINED NOT LESS THAN \$100 FOR EACH VIOLATION. (AKS, 407 - V.A.C.S.)



**PUBLIC HEALTH**  
PROTECTING AND PROMOTING THE  
HEALTH OF ALL ALASKANS

# The Next SARS?



**PUBLIC HEALTH**  
PROTECTING AND PROMOTING THE  
HEALTH OF ALL ALASKANS

# Alaska Public Health Law Reform Proposal

## The Problem – *Our laws don't protect us anymore*

- Alaska's public health laws are antiquated and layered – Alaska Law Review, 2000
- Alaska is the only state in the nation that does not have adequate statutory authority to quarantine – Trust for America's Health, 2004

1949: AS 18.05.010

Administration of Laws by the  
Department

1995: AS 18.15.120

Tuberculosis Control

2003: AS 18.15.350

SARS Control

# Alaska Public Health Law Reform Proposal

## The Proposed Solution - Updated Laws that Provide:

- A statutory framework that supports the public health mission, services and role
- Clear authority for control of conditions of public health importance; and,
- Modern due process provisions for the protection of individual rights

# HB 95: An Act Relating to Public Health

- Defines “Essential Public Health Services”
- Describes State’s role in health protection and promotion
- Provides clear authority for disease control through:
  - Surveillance
  - Epidemiologic Investigation
  - Medical Treatment, Quarantine & Isolation
- Requires protection of individual rights - due process
- Strengthens requirements for confidentiality and data security

# HB 95: An Act Relating to Public Health

- I. Purpose/Intent (Sec. 1)
- II. Administration of Public Health Laws by the Department (Sec. 4, 5, 7)
- III. Public Health Authority and Powers (Sec. 8)
- IV. Legal Representation and Court Powers
  - a) Right of indigent person to counsel (Sec. 9)
  - b) Judicial powers augmented (Sec. 10)
  - c) Guardian ad litem responsibilities (Sec. 11)
- V. General Provisions
  - a) State Immunity (Sec. 2)
  - b) Repeal and changes to citations of statutes (Sec. 3, 6, 12)
  - c) Effective Date (Sec. 13)

# HB 95: An Act Relating to Public Health

## I. Purpose/Intent (Sec. 1)

- To protect and promote the health of the citizens of this state to the greatest extent possible through the public health system
- Not intended to mandate provision of certain services or implementation of unfunded programs

## II. Administration of Public Health Law by DHSS (Sec. 4, 5, and 7)

- Modernize and clarify department's public health powers
- Clarifies nature of mandated regulations for public health reporting and adds regulatory mandate for data security and confidentiality
- Adds definition of "conditions of public health importance"

## III. Public Health Powers and Authority (Sec. 8)

- Prevention and control of conditions of public health importance
- Surveillance through data collection and public health reporting
- Epidemiological investigations
- Medical treatment
- Quarantine and isolation
- Public health disasters

## **PUBLIC HEALTH**

**PROTECTING AND PROMOTING THE  
HEALTH OF ALL ALASKANS**

# HB 95: An Act Relating to Public Health

## Response to Feb. 2, 2005 Legal Services Memo

Legal Services/LAA Questions	DHSS & Dept. of Law Response
<ul style="list-style-type: none"> <li>Sufficient notice provided in due process provisions?</li> </ul>	<p>The due process provisions included in the bill strike a fair balance between individual rights and public protection.</p>
<ul style="list-style-type: none"> <li>Why is refusal of medical treatment allowed?</li> </ul>	<p>While forced medical treatment may benefit the physical health of an individual with a contagious condition, it does not serve a public health purpose if the individual can be isolated from the public.</p>
<ul style="list-style-type: none"> <li>Why no criminal penalties for non-compliance?</li> </ul>	<p>Civil contempt proceedings would be utilized for non-compliance because 1) it will be required very infrequently and 2) in most of these very rare cases non-compliance will be motivated by fear, not criminal intent.</p>
<ul style="list-style-type: none"> <li>Are access to medical records provisions HIPAA compliant?</li> </ul>	<p>Yes, under the public health exemption provided by HIPAA (45 CFR 164.512(b)).</p>
<ul style="list-style-type: none"> <li>Is an indirect court rule amendment made by this bill?</li> </ul>	<p>Yes – <b>an amendment is proposed</b> to address this issue.</p>
<ul style="list-style-type: none"> <li>Why are parents deprived party status in quarantine/ isolation hearings of unemancipated minors?</li> </ul>	<p>No legal or public health purpose for denying parents party status can be identified – <b>an amendment is proposed</b> to remove this provision.</p>
<ul style="list-style-type: none"> <li>Is shared jurisdiction with DEC in cases involving contaminated material in a public health disaster addressed?</li> </ul>	<p>The bill clearly designates DHSS and DMVA as the lead agencies for providing this type of service in a disaster and no further clarification in the bill is required. (DEC was consulted)</p>

# State Quarantine Authority

Source: Trust For America's Health with analytic and research support from the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities.

49 states and D.C. have adequate statutory authority to quarantine in response to a hypothetical bioterrorism attack scenario

Alabama *	Indiana *	Montana *	Pennsylvania *
Arizona *	Iowa *	Nebraska	Rhode Island *
California	Kansas	Nevada *	South Carolina *
Colorado	Kentucky	New Hampshire *	South Dakota *
Connecticut *	Louisiana *	New Jersey	Tennessee *
Delaware *	Maine *	New Mexico *	Texas
D.C. *	Maryland *	New York	Utah
Florida *	Massachusetts *	North Carolina *	Vermont
Georgia *	Michigan *	North Dakota	Virginia *
Hawaii *	Minnesota *	Ohio *	Washington ^
Idaho *	Mississippi	Oklahoma *	West Virginia *
Illinois *	Missouri	Oregon	Wisconsin *
			Wyoming *

\* State has statutory quarantine powers that may be enhanced or capable of expedited performance during general or public health emergencies.

1 state does NOT have adequate statutory authority to quarantine in response to a hypothetical bioterrorism attack scenario

Alaska



^ Washington state has regulatory vs. statutory quarantine authority.

# Alaska Civil Liberties Union

*An Affiliate of the American Civil Liberties Union*

P. O. Box 201844, Anchorage, AK 99520-1844

Phone: (907) 258-0044 Fax: (907) 258-0288 Email: [akclu@akclu.org](mailto:akclu@akclu.org)

February 10, 2005

**To:** Rep. Peggy Wilson, Chair  
Members of the House Health, Education and Social Services Committee  
**From:** Michael W. Macleod-Ball, Executive Director

**RE:** House Bill No. 95  
*An Act relating to public health and public health emergencies and disasters . . .*

Thank you, Rep. Wilson and members of the committee, for allowing me the opportunity to offer input on this important bill. I would also like to thank Dr. Mandsagar, who brought this bill to my attention a couple of weeks ago. He and I were unable to meet to discuss the bill before this past Monday, but I appreciate his effort to solicit the input of the Alaska Civil Liberties Union. It reflects the sincerity of his comments to the Senate committee yesterday when he spoke of the need to find a balance between the public health needs and our desire to preserve our individual freedoms under the US and Alaska Constitutions.

By its very nature, this bill contemplates that individual Alaskans will give up some of their personal freedoms and permit the government to intrude on their privacy in certain circumstances. We agree that under some of the dire circumstances cited by the administration that such restrictions may be appropriate. Our concern with this bill, however, is that -- as drafted -- it contemplates giving the government the right to quarantine and isolate individuals and to inspect and retain private medical records in circumstances not nearly so dire as the examples cited. We do not oppose the intent of this bill, rather we seek to limit the circumstances when the government can exercise these intrusions on our liberty and privacy solely to those dire emergencies that demand extraordinary government action to preserve our society. The Alaska Civil Liberties Union believes we can be both safe AND free. We have not presented a section-by-section analysis of this bill to the committee yet because Dr. Mandsagar has offered to meet with us to review our concerns with the bill. We are scheduled to meet tomorrow morning and thereafter I would hope to be able to provide you with some more detailed input. For purposes of today's hearing, I will speak for the most part in broader terms.

The bill outlines two broad areas for consideration: the substantive basis for action by the public health director and the procedure to be followed when that basis for action arises. Our concern is primarily with the former category: what circumstances must exist for the government to exercise the extraordinary powers available to it under this bill?

- 1) The government's right to quarantine or isolate an individual against his or her will, or to access that individual's private medical records, should only exist in a narrow set of limited circumstances.

As written, we believe the right to access identifiable private medical records, and to quarantine or isolate an individual against his or her will is too broad. The department's authority to access records or to quarantine or isolate derives from section 355 – page 7 of the bill. There it states that the department may use the powers set out in the bill “to prevent, control, or ameliorate conditions of public health importance or accomplish other essential public health services and functions.” By our reading, that would give the department the right to impose a quarantine or isolation order on an individual, or to access private medical records, based on nothing more than routine administrative purposes. “Essential public health services and functions” is defined in section 390 (page 18) and includes a list of routine functions, which list is not unreasonable in any sense. However, that list of functions should NOT serve as the basis for the department's exercising its extraordinary authority to quarantine or isolate individuals against their will or to access their private medical records. Instead, that authority should not be triggered except in the most unusual circumstances.

We believe the other phrase – “conditions of public health importance” – is the key phrase here. If the definition of this phrase was very narrow so as to define extreme public health emergencies, then the department's right to use the quarantine and isolation authority would only be available in those extreme cases. Our concern, however, is that the definition of “conditions of public health importance” is rather broad. In section 390 (2), a condition of public health importance arises from a “threat to health that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community.” By that standard, the department could trigger its ability to restrict individual liberty interests and to invade personal medical privacy in the event of a minor bug that runs through a community without endangering anyone's lives.

We do not believe that it is the intent of the department to interpret this bill in this fashion – but the fact remains that the language of the bill can reasonably and fairly be interpreted in this way as it stands. We would strongly recommend that the definition of “condition of public health importance” be narrowed to reflect only far more serious public health events, giving due consideration to the nature of the disease, the level of contagion, the means of transmission, and seriousness of the impact on individual patient.

We have similar concerns with several other definitions, which seem to us to be too broad for the government's need. All the definitions appear in section 390: “contagious disease”, “disease outbreak”, “epidemic”, “infectious disease”, “isolation”, and “quarantine”.

- 2) The government should be required to affirmatively protect the privacy of identifiable medical records and to destroy such records when no longer needed to address a crisis.

We also are concerned with the language surrounding the government's right to access and retain identifiable medical records. In Section 360(d), the statute contemplates issuance of regulations to govern the department's access to such private information. The only standard to limit the regulatory scheme is set forth in Section 365, which does mandate that such records be

held in confidence. We would prefer a more rigorous set of standards to govern the rulemaking process, including the following:

- A specific prohibition on the use of private medical records for any purpose other than those in connection with the disease outbreak that served to justify the collection of the record in the first place
  - A specific prohibition on the disclosure of such information to anyone other than those public health officials involved in the disease outbreak
  - The obligation to destroy copies of such records upon the conclusion of the crisis and to return originals to their source
  - An affirmative statement that such records cannot be used in any civil or criminal proceeding without the individual's consent
- 3) The bill should contain affirmative protections that the affected individuals will not suffer negative impacts in their civil transactions or criminal proceedings due solely to the government's actions.

We also believe the law can be improved by adding affirmative protections for the individuals directly impacted by the quarantine, isolation, and medical records authority. We would like the bill to include the following assurances:

- That the quarantine, isolation or medical records access will have no impact on the individual's housing, employment, parental rights, or other civil rights
  - That the action will have no impact on any civil or criminal proceedings involving the individual
  - That the individual be compensated for any property taken or lost through the government's exercise of its authority
  - That the action does not act to waive the doctor - patient confidentiality and imposes such a restriction on any medical professional who gains access to the information as a result of the government action (except as necessary to deal with the public health event)
  - That no individual will bear any cost associated with challenging the government's exercise of its authority
- 4) The affected individual should have access to the legal system throughout the process and the restrictions imposed should be narrowly drawn.

We also have some concerns about the procedural regimen proposed. We appreciate the efforts of the department to provide a clear process and though our concerns are significant, it is clear that there is a process available to individuals whose rights have been restricted. Most of our concerns in the procedural area could be resolved by the following.

- Removing the availability of an ex parte proceeding. Section 375 contemplates a proceeding to which the affected individual would have no access. But under the statute, that individual would already have been made aware of the department's concern and therefore there is no reason to bar his or her access to the legal proceeding.
- The isolation or quarantine order should include a specific date of termination based on the projected course of contagiousness. The statute allows an open-ended term up to 30 days, with the individual having the right to challenge. Instead, we believe the state should have to show how long the order should be in place at the outset – and then put the burden on the state to seek an extension, if necessary.
- Change and heighten the standard for issuing a quarantine or isolation order. As written, the standard is "substantial risk to the public health". Instead, we would prefer a defined term more closely aligned with the basis for the action. As before, we would like due consideration given to the nature of the condition, the level of contagion, the means of transmission, and the impact on the individual.

#### Summary

In short, because this law contemplates placing restrictions on an individual's liberty and because it contemplates granting the government access to someone's most private records, the closest scrutiny is required. For each element of this bill, we would urge the committee to ask:

- 1) Is there a compelling state interest?
- 2) Is the state action targeted narrowly?
- 3) Is the state action the least restrictive in both time and scope?
- 4) Do the individual have an effective right to object before imposition of the restrictions?

If each of these questions can be answered in the affirmative, then the bill will be better than in its current form. We look forward to working with the department and the committee to fashion a bill that allows Alaska to remain both safe and free.

Thank you for your time.

# STATE OF ALASKA

DEPARTMENT of HEALTH & SOCIAL SERVICES  
DIVISION of PUBLIC HEALTH

FRANK H. MURKOWSKI, GOVERNOR

OFFICE OF THE DIRECTOR  
P.O. BOX 110610  
JUNEAU, AK 99811-0610  
PHONE: (907) 465-3090  
FAX: (907) 465-4632

February 8, 2005

The Honorable Peggy Wilson  
Alaska House of Representatives  
State Capitol Room 108  
Juneau, AK 99801-1182

Dear Representative Wilson,

Thank you for taking the time to meet with me last week regarding HB 95, the public health bill, and HB 100, the bill that authorizes certificates of participation for the construction of a new virology laboratory in Fairbanks.

As we discussed, I have an amendment to propose to HB 95 that clarifies the right counsel and authority to request guardian ad litem services. A description of the proposed amendment (enclosed) follows:

The current bill provides the right to counsel for a person in a court action when the department asks a court for an order to quarantine or isolate that person to protect the public from substantial risk due to exposure to an infectious disease. Appointed counsel will be provided to the person if he or she can not afford their own. The bill also gives the court in such a proceeding authority to direct the Office of Public Advocacy to provide guardian ad litem services to the person upon the request of the person's attorney. These provisions are found in AS 18.15.385(g).

The amendment would delete these provisions from AS 18.15.385(g) and insert a new statutory provision, AS 18.15.389, devoted solely to the issues of representation and guardian ad litem services. This section would expand the right to counsel to include proceedings brought pursuant to AS 18.15.375(e) (challenging ex parte testing orders) as well as isolation/quarantine provisions. The section would also give the court authority, on its own motion or at the request of a party, to direct the Office of Public Advocacy to provide guardian ad litem services for the person responding to the court proceeding. Current language in the bill would only allow the appointment of a guardian ad litem if requested by the lawyer of the person.

Representative Peggy Wilson

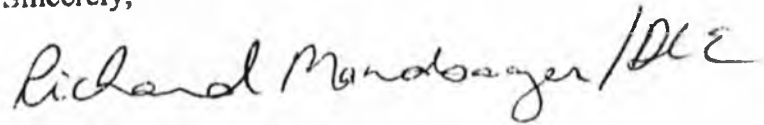
-2-

February 8, 2005

Also enclosed for the committee is a copy of the Sectional Analysis on HB 95 prepared by the Department of Law.

Thank you for your consideration and assistance in advancing the proposed amendment and sharing the Sectional Analysis with the HESS Committee members. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Richard Mandsager / DLE". The signature is written in dark ink and is positioned above the printed name and title.

Richard Mandsager, M.D.  
Director, Division of Public Health

enclosures

AMENDMENT

OFFERED IN THE HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES COMMITTEE  
TO: HB 95

BY \_\_\_\_\_

1 Page 13, line 28, following "(g)," through page 13, line 31:

2 Delete all material.

3

4 Page 14, line 1:

5 Delete "the office of public advocacy to provide a guardian ad litem for the individual."

6

7 Page 17, following line 14:

8 Insert the following new material:

9 "Sec. 18.15.389. Representation; guardian ad litem. An individual who is the  
10 respondent in proceedings under AS 18.15.375(e) or 18.15.385 has the right to be  
11 represented by counsel in the proceedings. If the individual cannot afford an attorney, the  
12 court shall direct the public defender agency to provide an attorney. The court may, on  
13 its own motion or upon request of the individual's attorney or a party, direct the office of  
14 public advocacy to provide a guardian ad litem for the individual."

## **Sectional Analysis of HB 95/SB 75 (Public Health)**

*(Prepared by the Department of Law and the Department of Health and Social Services,  
January 25, 2005)*

HB 95/SB 75 would clarify the Department of Health and Social Services' legal authority to detect and respond to a public health threat, including the authority to conduct testing, screening, and examination of individuals, as well as quarantine and isolation powers with court authority; and the authority to collect relevant data; the Department's powers are augmented in conjunction with the Department of Military and Veterans' Affairs when the governor declares a condition of disaster emergency related to public health; and legal representation and court powers are clarified with respect to court proceedings related to conditions of public health importance.

### **I. Purpose and Intent (Section 1):**

**Sec. 1:** Section 1 sets out the purpose and intent of the bill.

### **II. Changes to kinds of claims that may not be brought against the state or its agents, officers, or employees (Section 2):**

**Sec. 2: Types of damage:** Section 2 adds acts or omissions related to isolation, quarantine, medical treatment, or other actions taken under the state's public health authority and power to a list of damages for which an action may not be brought against the state or its agents, officers, or employees.

### **III. Repeal of statutes and changes to citations of repealed statutes (Sections 3, 6, and 12):**

**Sec. 3:** Section 3 deletes a citation to a statute that would be repealed by the bill regarding tuberculosis screening of public school employees.

**Sec. 6:** Section 6 renumbers citations to reflect statutes that would be repealed by the bill regarding registry of person with impairments.

**Sec. 12:** Section 12 repeals certain statutes regarding registry of persons with impairments and regarding tuberculosis and other disease control.

### **IV. Changes to general section regarding the Department of Health and Social Services' administration of public health laws (Sections 4, 5, and 7):**

**Sec. 4:** Section 4 rewrites the section on the administration of public health laws to modernize and more clearly and accurately reflect the Department of Health and Social Services' public health powers.

**Sec. 5:** Section 5 clarifies the nature of the regulations the Department of Health and Social Services is charged with adopting as regards reporting of conditions of public health importance and confidentiality of information received under provisions regarding public health authority and powers.

**Sec. 7:** Section 7 adds a definition of "condition of public health importance" to the chapter regarding the administration of public health laws.

**V. Updates to the Department of Health and Social Services' public health powers and authority (Section 8):**

**Sec. 8:** Section 8 adds new sections regarding the Department of Health and Social Services' public health authority and powers to the chapter dealing with disease control. These sections replace provisions for two disease-specific conditions (tuberculosis and SARS), repealed under sec. 12, and provide authority that is not specific to a particular disease. The new sections are described as follows:

- prevention and control of conditions of public health importance
- data collection
- requirement to maintain confidentiality of information obtained
- requirement to maintain list of reportable diseases
- power to conduct epidemiological investigation
- medical treatment powers and authority
- isolation and quarantine powers and authority
- powers in a public health disaster
- definitions

Section 8 also balances the state's public health powers with modernized due process provisions for protection of individual rights.

**VI. Changes to legal representation and court powers (Sections 9-11):**

**Sec. 9:** Section 9 amends the right of an indigent person to counsel to include when the person is subject to isolation, quarantine, testing, screening, or examination related to disease control. If eligible, such right to counsel may be provided by the Public Defender Agency.

**Sec. 10:** Section 10 gives magistrates and district court judges the power to issue orders related to testing, screening, and examination of individuals related to disease control.

**Sec. 11:** Section 11 expands the Office of Public Advocacy's responsibilities to include acting as guardian ad litem for individuals in court proceedings related to testing, screening, examination, isolation, and quarantine related to disease control.

**VII. Effective date (Section 13):**

**Sec. 13:** Section 13 sets out an immediate effective date for the bill.

# LEGAL SERVICES

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

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

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


## MEMORANDUM

February 2, 2005

**SUBJECT:** Public Health, HB 95 (HB 95 (Work Order No. 24-GH1002\A))

**TO:** Representative Peggy Wilson  
Attn: Kathy Erickson

**FROM:** Jean M. Mischel  
Legislative Counsel



You have asked generally whether there exist legal or drafting problems with the above referenced bill. Since this bill authorizes the Department of Health and Social Services to take actions that impinge on an individual's constitutional rights in the broadest sense, much of the authority will be subject to judicial review and interpretation. The bill allows for the isolation and quarantine of individuals and groups of individuals, medical screening and testing of an individual, and condemnation of facilities and businesses, all of which require, at a minimum, due process. Courts have generally upheld the exercise of broad police powers to protect public health but the following issues are brought to your attention. Most of the constitutional issues described in this memorandum can be addressed in regulation by the department.

With the exception of emergency orders, protective custody, and procurement "by condemnation or otherwise" of businesses or facilities, the bill establishes a court petition procedure in which the individual has a right to be heard before being deprived of a liberty or privacy interest. While the filing of a court petition implies sufficient notice under the applicable court rules, explicit notice requirements should be, and are not, included in this bill, particularly with regard to procurement and emergency administrative orders. For example, the bill at page 10, lines 2-7, requires the department to obtain a state medical officer's order and, if an individual objects to that order, an *ex parte* order of the court, to conduct screening, examination and testing of an individual who has or "may have been exposed to a contagious disease" without notice or an opportunity for hearing. In a public health emergency, covered in a different section of the bill, a deprivation of due process before the deprivation of the fundamental rights to privacy and association, may be supportable under the state's police powers. But when the deprivation is for the "prevention and control" of a contagious disease and the existence of the disease is speculative, the procedures eliminating notice and an early opportunity for hearing may be constitutionally infirm. In this instance, the bill does not even require that a copy of the orders be provided to the individual once the orders are issued.

It is surprising in light of such limited process available to an individual prior to being tested, examined or screened that the bill at page 11, lines 14-15 permits the refusal of

Representative Peggy Wilson

February 2, 2005

Page 2

medical treatment when an individual is screened for a contagious disease and found to be a carrier. Since isolation is available, the department may isolate the individual. However, isolation costs money and resources (for monitoring, etc.) and may be necessary indefinitely. The model public health act recommends the option of compulsory medical treatment in these circumstances, an option that raises constitutional questions of its own. The deprivation of constitutional rights in order to conduct the screening and examinations, (including protective custody) however, seems to be serving a less compelling interest when the existence of the disease is allowed to be perpetuated in this way.

Conspicuously absent in the bill is a penalty provision associated with violations of section 8 should an individual fail to cooperate or comply with an order. Presumably, contempt of court proceedings could be initiated when a court order has been issued but some of the authority of the department is not dependent upon the issuance of a court order. Moreover, contempt proceedings take time when time may be of the essence. A criminal penalty option may provide a greater incentive for compliance.

Access to an individual's medical records by the department, without the consent of the individual, at page 9, line 24, runs afoul of some federal laws, particularly the Health Information Privacy Act, and implicates privacy interests. The bill does not deal with the due process issues pertaining to the records access either.

In addition to clarifying the notice and penalty provisions, I recommend a review of the relevant court rules to identify whether an indirect or direct court rule amendment is being made by this bill. The review of emergency and temporary orders and the relatively short time frames for hearings on petitions and continuances appear to me to affect the court rules. If you would like me to draft something in this regard, let me know.

The quarantine and isolation authority extends to unemancipated minors. While a guardian ad litem and even an attorney may be appointed to represent the minor by the authority conferred in this bill, the parent is deprived of party status at page 15, lines 16-17 in proceedings affecting the minor.

The shared jurisdiction of the Departments of Health and Social Services and Environmental Conservation in cases involving "contaminated material" as defined at page 17, lines 25-26 is not dealt with in the bill.

In addition to the legal issues, some drafting corrections could be made to bring the bill into full compliance with the drafting manual. However, none of the drafting issues appear to raise any additional substantive concern.

If I may be of further assistance, please advise.

JMM:lmb  
05-028.lmb



# ALASKA PUBLIC HEALTH ASSOCIATION

Committed To Advancing Alaska's Public Health Since 1978

**HB 95 (H) Calendar  
April 4, 2005**

## In Support of HB 95 Public Health Disasters and Emergencies

Dear Representative:

HB 95 "Public Health Disasters and Emergencies" is on the House calendar for Monday April 4 2005. **We urge you to support HB 95 as presented and to not amend this bill.**

The Alaska Public Health Association Board of Directors has affirmed its support for the framework of HB 95 and the recent amendments to the bill and its companion, SB 75. We are carefully examining the developments on these bills, to assure the proper balance in protecting the public's health and allowing for due process.

However the **suggested amendment to HB 75- which we oppose - is a provision that would make state employees personally liable for civil penalties for violating provisions of the quarantine and isolation requirements.** The bill already includes a criminal penalty.

There many concerns regarding the civil penalty provisions - 1) it's not consistent with state law generally (state employees are generally criminally liable, but usually exempt from civil penalty for abusing their governmental powers); 2) the state might be viewed as the "deep pocket" and opened up to more frivolous law suits; 3) added burden for the Division of Public Health to recruit and retain good staff, as state employees may be reluctant to work under this threat; most significantly 4) the threat of criminal penalty hanging over public health officials' heads when they are responding in an emergency could result in their being hesitant to do the right thing to protect the public if they are worried too much about going too far with a quarantine order, and not acting promptly and decisively in an emergency could result in disaster.

There are already enough measures in place to assure state employees act in the best interest of the public, during times of public health disasters and emergencies. These range from Division of Public Health officials' medical license requirements, to public health professional ethics, the threat of losing their job, and criminal penalties (including fines and jail) to guarantee appropriate action. **Adding personal liability goes too far when employees are just trying to do their jobs.**

After several amendments being added to HB 95 (and its companion SB 75), the standards and due process provisions around quarantine and isolation will result in individual rights during a public health emergency and disaster being fairly protected. If this bill passes, the due process provisions will be the strictest in the nation.

Recognizing that Alaska's statutes need revision in order to better meet the health needs of all Alaskans, the Alaska Public Health Association urges you to pass HB 95 as it is presented - to not amend this bill - and to make its passage a priority this session.

Sincerely,

Marie J. Lavigne, LMSW Executive Director  
Alaska Public Health Association

# STATE OF ALASKA

## DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110601  
JUNEAU, ALASKA 99811-0601  
PHONE: (907) 465-3030  
FAX: (907) 465-3068

January 24, 2004

Honorable Peggy Wilson, Chair  
House Health, Education and  
Social Services Committee  
Alaska State Capitol; Rm. 108  
Juneau, AK 99801

Dear Representative Wilson,


The Department of Health and Social Services respectfully requests a hearing in the Senate Health, Education, and Social Services Committee on House Bill 95 "An Act relating to public health and public health emergencies and disasters; relating to duties of the public defender and office of public advocacy regarding public health matters; relating to certain claims for public health matters; making conforming amendments; and providing for an effective date."

This bill is the culmination of a number of years work to develop a modern public health statute for Alaska.

A copy of Governor Murkowski's transmittal letter providing additional information on the bill and the associated fiscal note should be on file with the committee. The department is preparing a detailed sectional analysis of the bill that will be provided to your committee staff within the next several days.

Your favorable consideration of this request will be appreciated.

Sincerely,

  
Sherry Hill, Special Assistant  
Office of the Commissioner

cc: Kevin Jardell, Legislative Director  
Office of the Governor

Dr. Richard Mandsager Director  
Division of Public Health

**HB**

**100**



# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
 Bill Version: HB 100  
 (H) Publish Date: 1/21/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title Virology Lab Lease-Purchase RDU Revenue Programs & Services  
 Component Treasury Management  
 Sponsor Rules Committee  
 Requester Request of the Governor Component No. 121

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel	10.0					
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Debt Service		2,370.4	2,373.1	2,371.8	2,372.5	2,371.3
<b>TOTAL OPERATING</b>	<b>10.0</b>	<b>2,370.4</b>	<b>2,373.1</b>	<b>2,371.8</b>	<b>2,372.5</b>	<b>2,371.3</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	10.0	2,370.4	2,373.1	2,371.8	2,372.5	2,371.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Certificates sale proceeds	0.0					
<b>TOTAL</b>	<b>10.0</b>	<b>2,370.4</b>	<b>2,373.1</b>	<b>2,371.8</b>	<b>2,372.5</b>	<b>2,371.3</b>

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill authorizes sale of \$24 million in certificates of participation (in a state lease financing obligation) to finance construction of a virology laboratory on the University of Alaska Fairbanks Campus. This fiscal note and analysis contemplates 15-year level debt service, debt issuance costs of 200,000, a competitive sale, and state credit ratings remaining at current levels. The financing could take place 60 to 90 days after authorization became effective.

Financing assumptions include debt service beginning in FY07, and a 4.9% interest rate/true interest cost.

Prepared by: Deven Mitchell Phone 465-3750  
 Division: Treasury Division Date/Time 1/19/05 1:33 PM  
 Approved by: Jerry Burnett, Special Assistant to the Commissioner Date 1/19/2005  
 Agency: Department of Revenue

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: HB 100  
 ( H ) Publish Date: 1/21/05  
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title CONSTRUCTION OF A STATE PUBLIC HEALTH VIROLOGY LAB IN FAIRBANKS RDU Public Health  
 Component Public Health Laboratories

Sponsor (RLS) BY REQUEST OF THE GOVERNOR

Requester GOVERNOR Component No. 2252

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual					200.0	200.0
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>200.0</b>	<b>200.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (0)</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF					200.0	200.0
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
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>200.0</b>	<b>200.0</b>

Estimate of any current year (FY2005) cost: \_\_\_\_\_

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The Department is requesting funds for construction of a new virology laboratory in Fairbanks. The project would be financed through Certificates of Participation (COPs). As a result of the project, the operational expenses of the building will increase. The Department currently pays \$150,000 annually to the University under a lease for the cost of building operational expenses. This includes all utilities, building insurance, fire and police protection, waste disposal, custodial, grounds keeping, maintenance and repair, and snow removal. This cost will increase by an estimated \$200,000 annually due to the increased size of the proposed virology laboratory. Since maintenance and repair are included in this amount, the Department will not need to include this building in the Department's overall deferred maintenance capital request when renovation and repair needs arise. The increase will take effect in FY 2010, when the new lab is expected to be completed and occupied by public health staff.

Prepared by: Janet Clarke, Assistant Commissioner  
 Division: Finance and Management Services  
 Approved by: Joel S. Gilbertson, Commissioner  
 Agency: Department of Health and Social Services

Phone: 465-1630  
 Date/Time: 01/10/2005  
 Date: 01/20/2005

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 100  
 ( H ) Publish Date: 1/21/05  
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title CONSTRUCTION OF A STATE PUBLIC  
HEALTH VIROLOGY LAB IN FAIRBANKS

RDU Departmental Support Services

Component Administrative Support Svcs

Sponsor (RLS) BY REQUEST OF THE  
GOVERNOR

Requester GOVERNOR

Component No. 320

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous		2,375.0	2,375.0	2,375.0	2,375.0	2,375.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>2,375.0</b>	<b>2,375.0</b>	<b>2,375.0</b>	<b>2,375.0</b>	<b>2,375.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (0)</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		2,375.0	2,375.0	2,375.0	2,375.0	2,375.0
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>2,375.0</b>	<b>2,375.0</b>	<b>2,375.0</b>	<b>2,375.0</b>	<b>2,375.0</b>

Estimate of any current year (FY2005) cost: \_\_\_\_\_

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The legislation identified \$24.2 million in funding for the design, construction and equipping of a state owned and operated virology laboratory in Fairbanks. The funding is comprised of \$24,000,000 in proceeds from the sale of Certificates of Participation (COP); and \$200,000 in investment earning on the COPs.

Annual debt service on the \$24.2 million is estimated at \$2,375,000 using the assumptions of a 15-year term and a true interest cost of 4.09%. Debt service will begin in fiscal year 2007, with total repayment estimated at just under \$35,575,000. The interest rate listed here is an estimate based on current rates. The rate at the time of the sale of the bonds may slightly differ.

An appropriation of debt service in the language section of the annual operating or capital budget will be made to the debt service fund.

Prepared by: Janet Clarke, Assistant Commissioner

Phone 465-1630

Division Finance and Management Services

Date/Time 01/18/2005

Approved by: Joel S. Gilbertson, Commissioner

Date 01/20/2005

Agency Department of Health and Social Services

# STATE OF ALASKA

## DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110601  
JUNEAU, ALASKA 99811-0601  
PHONE: (907) 465-3030  
FAX: (907) 465-3068

February 23, 2004

Honorable Peggy Wilson, Chair  
House Health, Education and  
Social Services Committee  
Alaska State Capitol; Rm. 108  
Juneau, AK 99801

Dear Representative Wilson,

The Department of Health and Social Services respectfully requests a hearing in the House Health, Education, and Social Services Committee on House Bill 100 "An Act relating to a lease-purchase agreement for the construction, equipping, and financing of a state virology laboratory in Fairbanks, on land provided by the University of Alaska, Fairbanks, to be operated by the Department of Health and Social Services; relating to the issuance of certificates of participation for the laboratory; relating to the use of certain investment income for certain construction and equipment costs for the laboratory; and providing for an effective date."

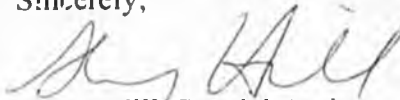
This bill would authorize the construction of a public health virology laboratory to replace the existing substandard Fairbanks facility.

The House State Affairs Committee has heard the bill and recommends it be replaced with CS HB 100 (STA). The department supports the House State Affairs Committee amendments.

A copy of Governor Murkowski's transmittal letter providing additional information on the project and the associated fiscal notes should be on file with the committee.

Your favorable consideration of this request will be appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sherry Hill".

Sherry Hill, Special Assistant  
Office of the Commissioner

cc: Kevin Jardell, Legislative Director  
Office of the Governor

Dr. Richard Mandsager, Director  
Division of Public Health

# STATE OF ALASKA

DEPARTMENT of HEALTH & SOCIAL SERVICES  
DIVISION of PUBLIC HEALTH

FRANK H. MURKOWSKI, GOVERNOR

OFFICE OF THE DIRECTOR  
P.O. BOX 110610  
JUNEAU, AK 99811-0610  
PHONE: (907) 465-3090  
FAX: (907) 465-4632

February 10, 2005

The Honorable Paul Seaton  
Alaska House of Representatives  
State Capitol Room 102  
Juneau, AK 99801-1182


Dear Representative Seaton,

Enclosed is an amendment to HB 100, related to the construction of a new state virology laboratory in Fairbanks, for consideration by the House State Affairs Committee.

The original language of the bill states that the laboratory will be built on land provided by the University. Since the University is a land grant college and also holds title to the property, the Legislature does not have the power to direct the University as to the use of their property. This amendment makes a few minor adjustments to change references to the University providing the land, to the state leasing the land. On that issue, we have negotiated an agreement with the University for a no-cost lease should this legislation pass.

Thank you for your consideration and assistance in advancing the proposed amendment. Please contact me if you have any questions.

Sincerely,

  
Richard Mandsager, M.D.  
Director, Division of Public Health

enclosure

**Proposed Amendment** #1

24G-1  
2/4/2005  
(11:02 AM)

AMENDMENT

OFFERED IN THE HOUSE STATE AFFAIRS  
COMMITTEE  
TO: HB 100

BY \_\_\_\_\_

- 1 Page 1, lines 2 - 3:
- 2 Delete "on land provided by the University of Alaska, Fairbanks,"
- 3
- 4 Page 1, line 11:
- 5 Delete "provided"
- 6 Insert "leased from"
- 7
- 8 Page 1, line 12:
- 9 Delete "by"

# STATE OF ALASKA

DEPARTMENT of HEALTH & SOCIAL SERVICES  
DIVISION of PUBLIC HEALTH

FRANK H. MURKOWSKI, GOVERNOR

OFFICE OF THE DIRECTOR  
P.O. BOX 110610  
JUNEAU, AK 99811-0610  
PHONE: (907) 465-3090  
FAX: (907) 465-4632

February 15, 2005

The Honorable Paul Seaton  
Alaska House of Representatives  
State Capitol Room 102  
Juneau, AK 99801-1182

Re: HB 100, related to the construction of a new state virology laboratory in Fairbanks

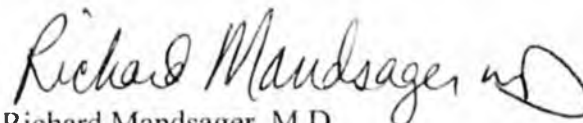
Dear Representative Seaton,

Enclosed is a copy of a memo from Theresa Bannister of Legal Services to Senator Dyson regarding SB 73, the companion bill in the Senate to HB 100. Ms. Bannister recommends amending the wording of the bill in sec. 2(b) to clarify meaning relating to costs.

The Department of Health and Social Services and Department of Law have no objection to this proposed amendment, and have notified Senate Finance (the committee of referral for CS SB 73) of our support. Please consider adopting this same amendment to HB 100 when it comes up for hearing in House State Affairs next week.

Thank you for your consideration and assistance in advancing this proposed amendment. Please contact me if you have any questions.

Sincerely,



Richard Mandsager, M.D.  
Director, Division of Public Health

enclosure

**Proposed Amendment** #2

## LEGAL SERVICES

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

(907) 485-3887 or 485-2450  
FAX (907) 485-2029  
Mail Stop 3101


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

### MEMORANDUM

February 10, 2005

**SUBJECT:** CSSB 73(HES) (Work Order No. 24-GS1117G)

**TO:** Senator Fred Dyson  
Attn: Jason

**FROM:**  Theresa Barnister  
Legislative Counsel

This memo accompanies the bill described above. The following is a suggestion for the bill. Since the bill has passed out of your committee, you may wish to send this memo along with the bill to the next committee of referral.

In sec. 2(b) of the bill, the use of "other costs" suggests that the preceding reference to "acquisition" means the cost of acquisition. However, the bill does not actually say that because of the way the words are arranged and used. So I suggest that the phrase, "cost of construction, acquisition, and other costs," be replaced with the phrase, "cost of construction, cost of acquisition, and other costs."

If I may be of further assistance, please advise.

TLB:jad  
05-085.jad

Enclosure

5861877

# STATE OF ALASKA

**DEPT. OF HEALTH AND SOCIAL SERVICES**

OFFICE OF THE COMMISSIONER

**FRANK H. MURKOWSKI, GOVERNOR**

P.O. BOX 110601  
JUNEAU, ALASKA 99811-0601  
PHONE: (907) 465-3030  
FAX: (907) 465-3068

January 24, 2004

Honorable Paul Seaton, Chairman  
House State Affairs Committee  
Alaska State Capitol; Rm. 102  
Juneau, AK 99801

Dear Representative Seaton,


The Department of Health and Social Services respectfully requests a hearing in the House State Affairs Committee on House Bill 100 "An Act relating to a lease-purchase agreement for the construction, equipping, and financing of a state virology laboratory in Fairbanks, on land provided by the University of Alaska, Fairbanks, to be operated by the Department of Health and Social Services; relating to the issuance of certificates of participation for the laboratory; relating to the use of certain investment income for certain construction and equipment costs for the laboratory; and providing for an effective date."

This bill would authorize the construction of a public health virology laboratory to replace the existing substandard Fairbanks facility.

A copy of Governor Murkowski's transmittal letter providing additional information on the project and the associated fiscal notes should be on file with the committee.

Your favorable consideration of this request will be appreciated.

Sincerely,

  
Sherry Hill, Special Assistant  
Office of the Commissioner

cc: Kevin Jardell, Legislative Director  
Office of the Governor

Dr. Richard Mandsager, Director  
Division of Public Health

HB100



FRANK H. MURKOWSKI  
GOVERNOR  
GOVERNOR@GOV.STATE.AK.US

P.O. Box 110001  
JUNEAU, ALASKA 99811-0001  
(907) 465-3500  
FAX (907) 465-3532  
WWW.GOV.STATE.AK.US

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 20, 2005

The Honorable John Harris  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to a lease-purchase agreement for the construction, equipping, and financing of a state virology laboratory in Fairbanks, on land provided by the University of Alaska, Fairbanks, to be operated by the Department of Health and Social Services; relating to the issuance of certificates of participation for the laboratory; and relating to the use of certain investment income for certain construction and equipment costs for the laboratory.

It is imperative that Alaska maintain the capacity for rapid and accurate virological laboratory services as a core element of our public health system. Testing for significant diseases of public health concern such as rabies, measles, mumps, rubella, Norovirus, human immunodeficiency virus (HIV), and influenza, and the threat of emerging diseases, including severe acute respiratory syndrome (SARS) and West Nile virus, requires a modern, well-equipped laboratory.

A virology laboratory has been in operation in Alaska since 1948. The existing facility has been located on the University of Alaska, Fairbanks (UAF) campus since 1967. An independent assessment by the Association of Public Health Laboratories and the Centers for Disease Control and Prevention concluded that the existing facility has severe space limitations and the physical plant itself does not provide for the necessary bio-safety containment processes and facilities necessary for virological testing. The assessment team recommended that a new virology laboratory should be built on the UAF campus, which would preserve the existing technical expertise in virology and enhance the collaboration between the UAF and the Department of Health and Social Services.

The state Public Health Laboratory, located in Anchorage and built in 1999, lacks the space and physical infrastructure to perform the services provided by

The Honorable John Harris  
January 20, 2005  
Page 2

the existing Fairbanks virology laboratory. The Anchorage facility provides testing for diseases caused by bacteria, fungi, tuberculosis, and parasites, as well as analytical chemistry services for clinical diagnostics, forensic toxicology, and bio-monitoring. The Anchorage laboratory is also the only biological-safety-level-three facility in the state and thus serves as the central analytical agency for state and federal biological and chemical terrorism response.

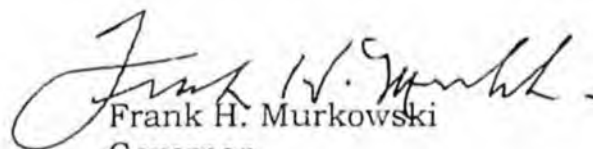
The UAF has agreed to provide land and supporting infrastructure for the new state facility under a long-term lease at no cost. Co-location of the state's virology laboratory on the Fairbanks campus would have many advantages for both academic researchers and public health practitioners. This would include providing additional biological-safety-level-three space that should fulfill the need for surge capacity and provision of basic services in the event of a natural disaster affecting the Anchorage laboratory. It also will provide opportunity for enhanced collaboration with UAF's health research program.

This bill would authorize a lease-purchase agreement under AS 36.30.085, subject to annual appropriation, to finance the new laboratory. It would authorize the state bond committee to issue certificates of participation in the aggregate principal amount of \$24,000,000 for the construction of the virology laboratory. Additionally, the bill would provide that the remaining balance and equipping costs be paid from investment income of \$200,000 earned on the proceeds of the sale of the certificates of participation. The estimated annual amount of rental obligations under the lease-purchase agreement would be \$2,375,000. The estimated total cost of construction, acquisition, and other costs of the project, would be \$24,200,000. An immediate effective date is requested in the bill.

Your support for this virology laboratory would further Alaska's commitment to provide a modern public health system.

I urge your prompt and favorable action on this measure.

Sincerely yours,

  
Frank H. Murkowski  
Governor

Enclosure



# **PUBLIC HEALTH**

**PROTECTING AND PROMOTING THE  
HEALTH OF ALL ALASKANS**

## **HB 100: Construction of a State Public Health Virology Laboratory in Fairbanks**

**Presentation to the House HESS Committee**

March 1, 2005

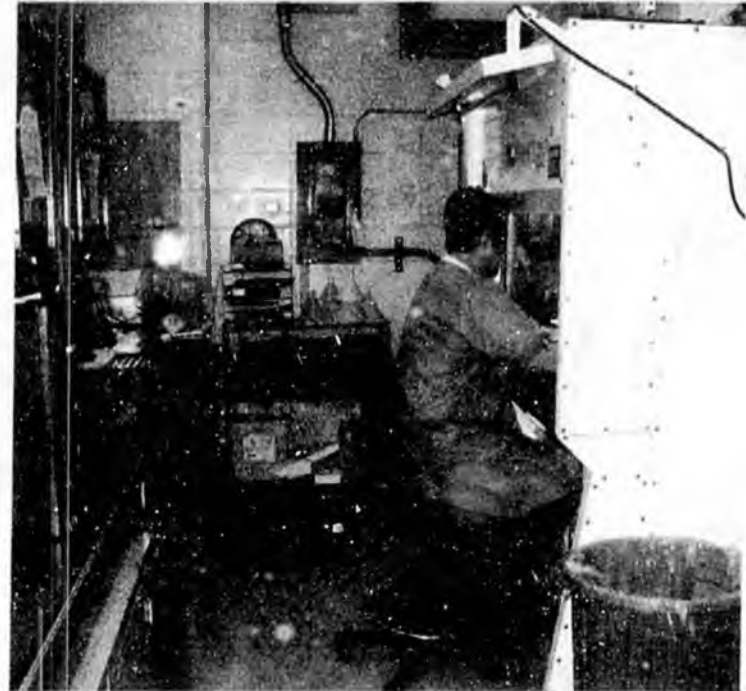
Richard Mandsager, M.D., Director

Alaska Department of Health & Social Services

Division of Public Health

# The Alaska State Virology Laboratory

- Provides specialized testing services for the purpose of diagnosing human and animal viral infections, such as
  - Influenza
  - Rabies
  - Hepatitis A, B and C
  - HIV
  - SARS
  - West Nile Virus
  - Norovirus
  - Measles
  - Mumps
  - Rubella



- Tested 36,267 specimens in FY 04
- FY 05 GF Budget = \$991.0

**PUBLIC HEALTH**  
PROTECTING AND PROMOTING THE  
HEALTH OF ALL ALASKANS

# Current Fairbanks Virology Laboratory

- Located on UAF Campus since 1967
- 5,255 sq. ft. in Cold War-era Building
- Problem:
  - Severe space limitations
  - Inadequate lighting and ventilation
  - Fails to meet today's laboratory building and ADA accessibility standards
  - Potential for future eviction
  - “an accident waiting to happen”



**PUBLIC HEALTH**

PROTECTING AND PROMOTING THE  
HEALTH OF ALL ALASKANS

# Proposed Virology Laboratory Solution

- **Collaboration with UAF on a new Laboratory Facility in Fairbanks**
  - Provides critical laboratory capacity for rapid identification of known and “new” viruses
  - Provides redundant and surge capacity in the event of a terrorist attack or natural disaster
  - Retains valuable trained and experienced scientific staff resources



- Facilitates sharing of ideas and new knowledge between UAF Health Research Program and DHSS

# HB 100: Construction of a State Public Health Virology Laboratory in Fairbanks

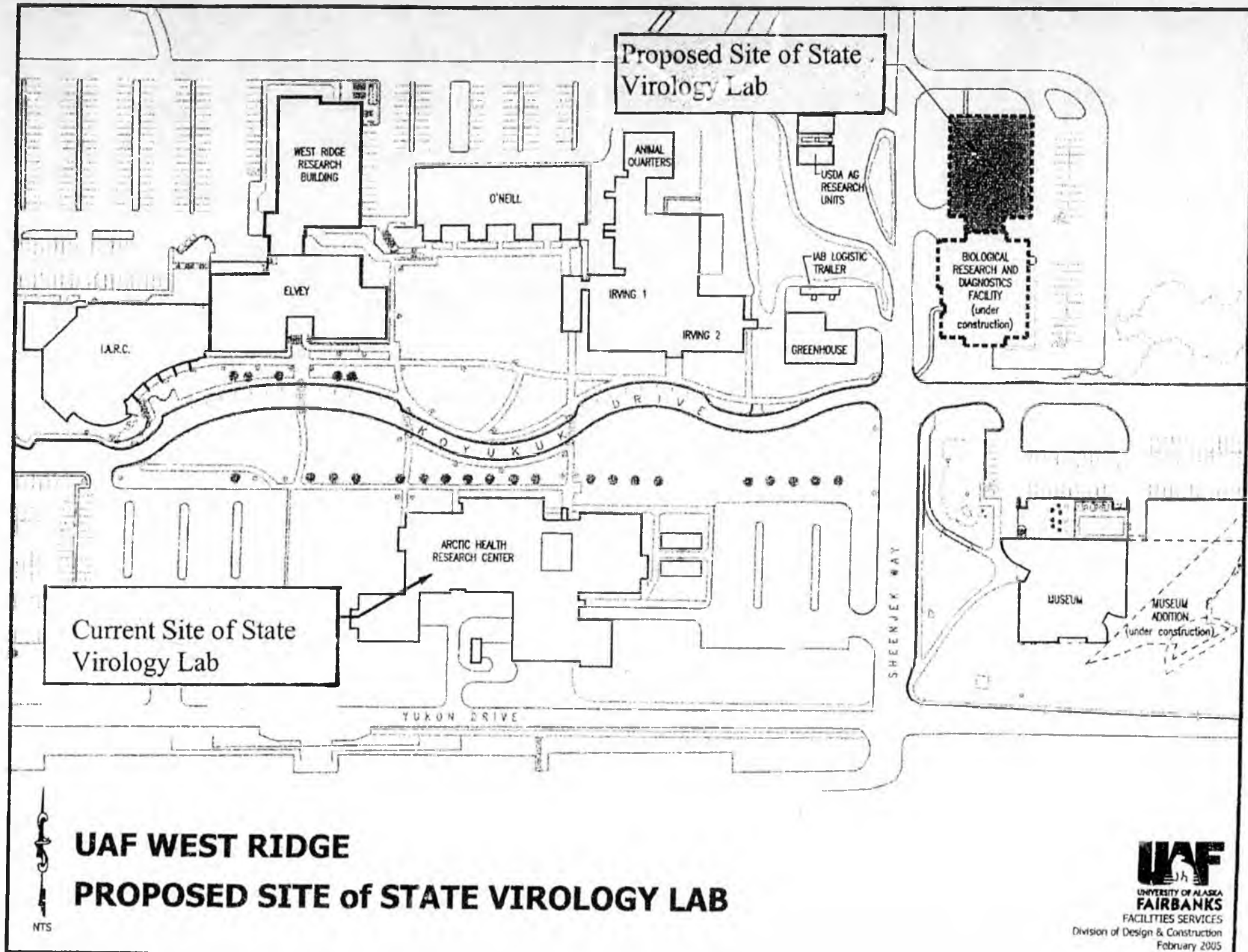
- **Cost: \$24.2 Million for**
  - Design
  - Construction
  - Equipping
- **Financing: Certificates of Participation (COPs)**
- **Annual Lease-Purchase (estimated)**
  - 15-year term
  - 4.90% interest
  - \$2,375.0/year



- **Long term land lease negotiated with UAF (no cost)**

## **PUBLIC HEALTH**

PROTECTING AND PROMOTING THE  
HEALTH OF ALL ALASKANS



**UAF WEST RIDGE  
PROPOSED SITE of STATE VIROLOGY LAB**



UNIVERSITY OF ALASKA  
**FAIRBANKS**  
FACILITIES SERVICES  
Division of Design & Construction  
February 2005

NTS

**HB**

**105**





# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 105  
 ( H ) Publish Date: 1/24/05  
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction): \_\_\_\_\_

Title ADULT DENTAL COVERAGE UNDER MEDICAID

RDU Health Care Services  
 Component Medicaid Services

Sponsor (RLS) BY REQUEST OF THE GOVERNOR

Requester \_\_\_\_\_ Component No. 2077

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	3,469.4	11,548.1	11,912.5	11,081.4	10,814.9	11,166.7
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>3,469.4</b>	<b>11,548.1</b>	<b>11,912.5</b>	<b>11,081.4</b>	<b>10,814.9</b>	<b>11,166.7</b>

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

<b>CHANGE IN REVENUES (0)</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	2,285.1	7,608.7	7,790.9	7,212.5	7,058.8	7,356.6
1003 GF Match	759.3	2,514.4	2,696.6	2,818.9	3,056.1	3,460.1
1004 GF						
1037 GF/Mental Health						
1092 MHTAAR	425.0	1,425.0	1,425.0	1,050.0	700.0	350.0
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>3,469.4</b>	<b>11,548.1</b>	<b>11,912.5</b>	<b>11,081.4</b>	<b>10,814.9</b>	<b>11,166.7</b>

Estimate of any current year (FY2005) cost: \_\_\_\_\_

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Historically Medicaid Dental Benefits for recipients 21 years or older, have been limited to immediate relief of pain and acute infection. No preventive or restorative services have been covered.

Under this bill, Dental Benefits for Adults would be expanded to include preventive and restorative care up to a cap of \$1,150 per person annually. Examples of services that could be provided at that level are: one exam, 4 bitewing radiographs, cleaning and about 8 restorations or extractions, or; one exam and an upper or lower full denture.

con't on next page

Prepared by: Dwayne Peoples, Director  
 Division Health Care Services  
 Approved by: Joel S. Gilbertson, Commissioner  
 Agency Department of Health and Social Services

Phone \_\_\_\_\_  
 Date/Time \_\_\_\_\_  
 Date 12/29/2004

FISCAL NOTE

FN # 1

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

BILL NO. HB 105

ANALYSIS CONTINUATION

Analysis Con't

It is estimated that approximately 41,000 individuals would be eligible for the expanded Medicaid Dental Benefits.

Factoring in those individuals who are eligible for 100% federal reimbursement, the federal contribution (through FY 2011) will cover approximately 66% of the costs. State GF will constitute about 25% and Mental Health Trust about 9% of the matching funds.

It is anticipated that the program will be operational the last quarter of FY06 so costs in that year are calculated at approximately 25% of FY07 costs and adjusted higher to allow for pent up demand.

A 3% growth in utilization is included to reflect possible increases in eligible adults and/or an increased percentage of adults accessing the dental services. This utilization is partially offset by projected savings in FY09, FY10 & FY11 under the assumption that adults on the program for several years would eventually have their major treatment needs met and move to a "maintenance" level of care (e.g., routine exam and cleanings but less restorative needs).

24-GH1081VG  
Mischel  
2/7/05

**CS FOR HOUSE BILL NO. 105(HES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to coverage for adult dental services under Medicaid; and providing**  
2 **for an effective date."**

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

4 **\* Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

6 **PURPOSE; INTENT.** (a) The purpose of this Act is to increase adult dental care  
7 services for an eligible recipient of Medicaid under AS 47.07 to ensure that services critical to  
8 a recipient are implemented first, while controlling the overall growth of the costs of the  
9 increase in services.

10 (b) It is the intent of the legislature that the Department of Health and Social Services  
11 implement the increase in adult dental care services authorized by this Act through the  
12 adoption of regulations consistent with the department's obligation to contain the costs of the  
13 increased services in order to provide the services within appropriation limits. It is further the  
14 intent of the legislature that the Department of Health and Social Services implement

1 mechanisms to contain costs, which may include establishing a maximum amount of benefits  
2 for each eligible recipient in a fiscal year for the services and specifying the scope of the  
3 services.

4 \* **Sec. 2.** AS 47.07 is amended by adding a new section to read:

5 **Sec. 47.07.067. Payment for adult dental services.** (a) The department shall  
6 pay for adult dental services provided under AS 47.07.030(b) and under regulations  
7 adopted by the commissioner in conformity with applicable federal requirements and  
8 this chapter. Regulations adopted under this section may include the following:

9 (1) a maximum amount of benefits for adult dental services for each  
10 eligible recipient in a fiscal year; this paragraph does not apply to minimum treatment  
11 for the immediate relief of pain and acute infection provided by a licensed dentist; and

12 (2) specification of the scope of adult dental services.

13 (b) As used in this section, "minimum treatment" means the application or  
14 prescription of a medication or material deemed necessary by the dentist for the  
15 palliative treatment of pain or for the reduction of the spread of infection.

16 \* **Sec. 3.** AS 47.07.900(1) is repealed.

17 \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
18 read:

19 **TRANSITION: REGULATIONS.** The Department of Health and Social Services  
20 may proceed to adopt regulations necessary to implement the changes made by this Act. The  
21 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the  
22 effective date of the statutory changes.

23 \* **Sec. 5.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

24 \* **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect July 1, 2005.

# LEGAL SERVICES

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

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

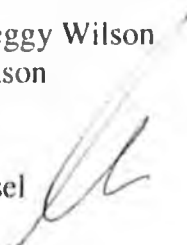
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 31, 2005

**SUBJECT:** Medical Assistance for Adult Dental Services (HB 105)

**TO:** Representative Peggy Wilson  
Attn: Kathy Erickson

**FROM:** Jean M. Mischel  
Legislative Counsel 

You have asked for an opinion on the existence of legal and drafting problems in the above referenced bill. As a general matter, the necessity of a legislative purpose and intent section, as drafted in sec. 1 of this bill, carries little substantive weight and is useful only if the drafting of the substantive provisions leads to an unclear result. In this case, however, it appears that the legislative intent is covered adequately in section 2 of the bill that contains the substantive effect.

I find nothing objectionable from a legal standpoint in authorizing adult dental services, in conformance with federal requirements, and including the cost containment restrictions, as provided for in bill section 2.

As a drafting matter, certain improvements should be made to conform with the legislative drafting manual. For example, the use of the term "per" at page 2, lines 2, 8, and 9 should be changed. The exception for "minimum treatment" for the immediate relief of pain should be defined; however, I note the current use of that term in AS 47.07.900 so that the term may have been previously interpreted by the department.

If I may be of further assistance, please advise.

JMM:jad  
05-059.jad

# STATE OF ALASKA

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### *Alaska Commission on Aging*

February 7, 2005

The Honorable Peggy Wilson, Chair  
House H.E.S.S. Committee  
State Capitol Room 108  
Juneau, AK 99801-1182

Re: HB 105, Adult Dental Services Medicaid Program


Dear Representative Wilson:

The members of the Alaska Commission on Aging would like to voice their support for passage of the Governor's Medicaid for Adult Dental Services Bill, HB 105. The Commission is charged with making recommendations to the Governor and the Legislature with respect to legislation, regulations and appropriations for programs and/or services that support the health and well-being of older Alaskans.

While HB 105 proposes dental coverage for all adults who are Medicaid eligible and not just for seniors, the Commission believes this bill will be particularly helpful to our most needy and vulnerable older Alaskans who receive their medical care through Medicaid services. There is extensive research which shows a correlation between good dental health and longevity. Dental health has also been linked to overall physical and emotional well-being. The Governor's proposed bill would fill an important gap in Alaska's continuum of care for older Alaskans as it will provide preventative care and one set of dentures per year, which would add up to cost savings in the future.

The members of the Commission on Aging respectfully ask your consideration and support for passage of HB105 and sufficient funding to ensure this program is successful.

Sincerely,



Linda Gohl, Executive Director  
Alaska Commission on Aging

FRANK H. MURKOWSKI  
GOVERNOR

P.O. BOX 110693

JUNEAU, ALASKA 99811-0693

PHONE: (907) 465-3250

FAX: (907) 465-1398



**TANANA CHIEFS CONFERENCE**  
 Health Services Dental Clinic  
 Dr. Michael Kwasinski, Director  
 Chief Peter John Tribal Building  
 122 First Ave.  
 Fairbanks, AK 99701  
 (907) 452-8251 Fax: 459-3837  
 Toll Free in Alaska 1-800-478-7822

10 February 2005

TO: Fairbanks Legislative Information  
 FROM: Dr. Michael Kwasinski, Director TCC Dental Clinic  
 RE: Medicaid Adult Dental Services - HB 105

Medicaid adult dental services now only cover services for pain or acute infection. Many times by the time a tooth hurts or is infected, it is too late to do anything but, extract the tooth. Once individuals begin loosing their teeth self-sufficiency often becomes more of an obstacle, particularly in the job market. Also, it is more difficult to eat a balanced diet, possibly leading to other health problems. Only very soft foods are eaten; leaving out fruits and vegetables and many times meat. This is especially difficult with a subsistence diet.

TCC Dental Services supports the expansion of adult dental services covered by Medicaid, HB 105. Access to dental exams, x-rays, fillings, and dentures would assist in preventing the loss of teeth due to infection. Dental cleaning would prevent the loss of teeth due to periodontal disease. Medicaid recipients would be better able to maintain a healthy diet and keep an adequate presentation of their smile, important to self-esteem and self-sufficiency in today's competitive work force.

Please feel free to contact me at 907-4552-8251 x3207 for further clarification. Thank you.

*CAPT Michael Kwasinski DDS  
 U.S.P.H.S. Dental Corps*

Our Vision  
 Healthy People across Generations.

Our Mission  
 TCC Health Services, in partnership with those we serve, promotes and enhances spiritual, physical, mental and emotional wellness through education, prevention and the delivery of quality services.



**FRANK H. MURKOWSKI, GOVERNOR**  
State of Alaska

**GOVERNOR'S COUNCIL ON DISABILITIES AND SPECIAL EDUCATION**

P.O. Box 240249 • Anchorage, Alaska 99524-0249 • Phone: 907-269-8990 • Fax: 907-269-8995 • Toll Free 888-269-8990

February 10, 2005

The Honorable Representative Peggy Wilson, Chair  
House Committee on Health, Education & Social Services  
State Capital, Room 108  
Juneau, AK 99801-1182

Re: HB 105 Adult Dental Services

Dear Representative Wilson:

The Governor's Council on Disabilities & Special Education is in full support of HB 105 which will provide critical dental care for adults through Medicaid. This bill will include preventive and restorative dental services to a capped amount of \$1,150 per year. This legislation is among the top three legislative priorities for the Council, which has long advocated for dental coverage.

Adult individuals with developmental disabilities are among those currently not receiving dental services. As most individuals with developmental disabilities are Medicaid recipients, this service is currently unavailable to the majority of those the Council represents. In addition, the limited amount of financial resources people with developmental disabilities can earn and save, makes it very difficult to afford any dental care.

Healthy teeth are essential for proper nutrition and good general health, as well as for employability and general appearance. Some individuals with developmental disabilities take medications that complicate their dental health, so this population in particular, has a high need for dental care. With the commitment of a \$5 million contribution from the Alaska Mental Health Trust Authority over five years as well as the federal match, the State is able to minimize its cost. Over time, the State's investment, coupled with the Trust funded donated dental and dental training programs, will significantly reduce the cost for emergency dental services.

In summary, the Council urges adoption of the Governor's legislation to include adult preventive dental coverage under Medicaid.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth Edmands".

Beth Edmands  
Chair

*Creating Change That Improves The Lives Of People With Disabilities*



**NFDH**

NATIONAL FOUNDATION  
OF DENTISTRY  
FOR THE HANDICAPPED

A charitable affiliate of the  
American Dental Association

1800 15th Street  
Suite 100  
Denver, Colorado 80202  
Phone 303/534-5060  
Fax 303/534-5290  
www.nfdh.org

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Alicia Ann (Pat) Anderson  
Catherine (Pat) Anderson  
Linda (Pat) Anderson  
Linda (Pat) Anderson  
Linda (Pat) Anderson  
Linda (Pat) Anderson

**National Foundation  
of Dentistry for the  
Handicapped**

# Fax

To:	Maria Ryan	From:	Fred Laviton
Fax:	907 200-8895	Date:	February 10, 2005
Phone:		Pages:	Cover
Re:	Testimony on HB 105	CC:	[Click here and type name]

**To the House Committee on Education and Social Services**

The Foundation of Dentistry for the Handicapped (FDH) supports HB 105 that would increase dental services for Alaska's Medicaid recipients. Since 1984, our organization - with the Alaska Dental Society- has provided dental care to many Medicaid recipients who are disabled or elderly through a network of 77 dentists throughout Alaska who each donate treatment for one or two such individuals each year through the Alaska Donated Dental Services (DDS) program.

Because of their ages or disabilities, these people cannot work or earn minimal incomes and cannot afford dental care. Mr. M. from Anchorage is one of the disabled and aged people helped through the DDS program. This 68 year-old man has struggled with three serious and persistent mental illnesses for most of his adult life - Schizophrenic Disorder, Depression, and Anxiety Disorder. Making his life even more difficult, he also is challenged with Glaucoma. Mr. M. applied for help because he was experiencing constant pain and difficulty chewing due to the poor condition of his teeth. His total monthly income from SSI, Alaska Public Assistance, and a part time job is \$849, which is barely enough to pay for his housing, food, medications, and transportation. Paying for costly dental treatment was out of the question for him.

Through a caring dentist who volunteers for the DDS program, Mr. M. was referred to a generous

**volunteer dentist who donated the care he so desperately needed: several extractions, restorations, sealing, and a partial denture.**

**Since 1984, over 1,000 people have applied for help through the DDS program because they had no where else to turn for needed care for seriously-neglected problems. Though some are not qualified for Medicaid because their income is a little too high for eligibility, many others are Medicaid recipients who were suffering because Medicaid has not paid for needed dental care.**

**Even if the state were to include such treatment in the public aid program, many others would not qualify and we could still serve some through the Donated Dental Services program. Many others who we cannot help and are so vulnerable would benefit enormously from the passage of HB 105 and could get care before their problems progressed to where Mr. M. found himself needing over \$5,000 worth of treatment and suffering so much. We hope the Legislature can pass HB 105.**

# STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER  
FINANCE AND MANAGEMENT SERVICES

FRANK H. MURKOWSKI, GOVERNOR

P.O. Box 110650  
Juneau, AK 99811-0650  
Phone: (907) 465-3082  
Fax: (907) 465-2499

February 11, 2005

Representative Peggy Wilson, Chair  
Representative Paul Seaton, Vice-Chair  
House HESS Committee  
State Capitol, Room 108, 102  
Juneau, AK 99801-1182

Dear Rep. Wilson and Rep. Seaton;

The following information is provided in response to the HESS Hearing of February 8, 2005 on the Adult Dental Bill, HB 105.

➤ *Base FMAP rate used in calculating the federal funds, 50% or higher?*

Staff did a projection of the number of native recipients based on actual adult dental claims (from FY03) and calculated that 75% of those would use the tribal dental system (100% FFP). The balance of recipients was calculated at 50% FMAP.

➤ *Were any travel costs included in the estimate?*

Transportation costs of \$150.0 were included for the full base year (FY07). We anticipate travel for restorative/preventive would be less frequently utilized than for emergency dental services and some of the adults traveling now for emergencies would just get additional dental services on the same trip.

➤ *What complaints have been received from dentists about the Medicaid provider agreements?*

There is variation in private dental participation in Medicaid/Denali KidCare across the state. This variation is based on the distribution of dentists, length of practice (established practices may take fewer Medicaid clients), and specialties (pediatric dentists generally see more Medicaid clients, children, than the typical general dental practitioner).

One of dentist's concerns with the adult dental benefits in Medicaid is the current level of service, emergency dental, represents a sub-standard level of dental care. This service enhancement would address those concerns and increase access in some practices with the service enhancement. The American Dental Association supports inclusion of adult dental

services in state Medicaid programs and has recognized the need to increase access to dental care.

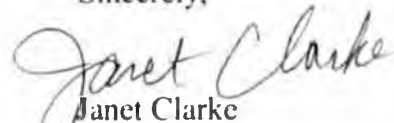
About 1/3 of the estimated recipients of the enhanced dental services would receive services in the Native health corporation dental programs. The enhanced dental services would increase tribal dental program capacity and financing through leveraging federal dollars for the service expansion (100% FFP Medicaid).

A number of Alaskan communities have been the beneficiaries of federal support for establishing community health centers. These centers provide dental services through referral arrangements, contracts with private providers and some are developing in-house dental programs as now offered at the Anchorage Neighborhood Health Center (e.g., Fairbanks and Talkeetna). These community health centers typically see many adults on the medical side of their programs; this service enhancement will support the financial viability of the clinic dental programs as they develop.

This bill will not solve all dental access issues in the Medicaid program. The bill represents a compromise in terms of a cap on preventive and restorative dental benefits (e.g., some clients will have dental treatment needs that exceed the cap) and an incremental approach, while recognizing the need to constrain Medicaid costs. The department feels the enhanced dental services is a priority for a number of reasons, however the department fully recognizes the need to work with private, tribal and non-profit dental programs to address the dental access issue.

Please contact me at 465-1630 if you need any further assistance.

Sincerely,

  
Janet Clarke  
Assistant Commissioner

cc: Representative Tom Anderson, Capitol Building 408  
Representative Vic Kohring, Capitol Building, Room 24  
Representative Lesil McGuire, Capitol Building, Room 118  
Representative Sharon Cissna, Capitol Building, Room 420  
Representative Berta Gardner, Capitol Building, Room 422  
Joel Gilbertson, Commissioner  
Karleen Jackson, Deputy Commissioner  
Sherry Hill, Special Assistant  
Dick Mandsager, Director, Public Health  
Dwayne Peeples, Director, Health Care Services  
Laura Baker, Budget Chief, Finance and Management Services

# STATE OF ALASKA

## DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110601  
JUNEAU, ALASKA 99811-0601  
PHONE: (907) 465-3030  
FAX: (907) 465-3068

January 25, 2004

Honorable Peggy Wilson, Chair  
House Health, Education and  
Social Services Committee  
Alaska State Capitol; Rm. 108  
Juneau, AK 99801

Dear Representative Wilson,

The Department of Health and Social Services respectfully requests a hearing in the House Health, Education, and Social Services Committee on House Bill 105 "An Act relating to coverage for adult dental services under Medicaid; and providing for an effective date."

This bill would allow the Department of Health and Social Services to expand dental coverage to encompass preventative and restorative care for approximately 41,000 Alaskans enrolled in the Medicaid program.

A copy of Governor Murkowski's transmittal letter providing additional information on the bill and the associated fiscal note should be on file with the committee.

Your favorable consideration of this request will be appreciated.

Sincerely,

  
Sherry Hill, Special Assistant  
Office of the Commissioner

cc: Kevin Jardell, Legislative Director  
Office of the Governor

Mr. Dwayne Peeples, Director  
Division of Health Care Services