

June 13, 1997

The Honorable Tony Knowles
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: CCS HB 76 -- Making Appropriations for the
Operating and Capital Expenses of the State's
Integrated Comprehensive Mental Health
Program
A.G. file no: 883-97-0113

Dear Governor Knowles:

At the request of your legislative director, Pat Pourchot, we have reviewed CCS HB 76, making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program.

This bill is similar to HB 76, which was introduced by the House Rules Committee at your request at the beginning of this year's legislative session. One major change is the addition of over \$3 million in capital projects and grants; HB 76 was limited to operating appropriations. The only reduction from your recommended appropriations for capital projects was funded instead in the capital budget appropriation bill, HCS CSSB 107(Fin) am H (\$600,000 of Alaska Housing Finance Corporation receipts to finance chronic alcoholic domiciliary facilities).

The operating appropriations in CCS HB 76 are approximately \$280,000 less than your amended budget request. The majority of this amount reflects statewide reductions made to the amount of PERS contributions, salary adjustments, information technology, data processing, and state equipment fleet. CCS HB 76 also reflects certain additions to HB 76. Among these is \$15,000 added from general funds for the Access Alaska dental referral project in the Governor's Council on Disabilities and Special Education in the Department of Health and Social Services (DHSS).¹ Additions from Mental Health Trust authorized receipts include \$24,000 to conclude a project to assist beneficiaries in redetermining eligibility under federal amendments to the Supplemental Security

¹ This appropriation will cover lab costs for the project, in which Alaska dentists donate their services to provide dental care for disabled Alaskans.

Income definition of disability, and \$200,000 to partially fund operation of two chronic alcoholic domiciliary facilities.

Another change made by the legislature that could have some significance is its restructuring of several components. HB 76 proposed one allocation for foster care, while CCS HB 76 would make three.² HB 76 proposed four allocations for community mental health grants, while CCS HB 76 would make five.³ The totals in each of these two appropriation items are identical between the two bills, but the increased number of allocations gives the administration less flexibility in spending the appropriated money. As you are aware, the administration can transfer money from one allocation to another, but must follow the procedures of AS 37.07.080(e) before doing so.

CCS HB 76 makes changes to two additional components. The component for inmate health in the Department of Corrections was moved from the "Institutions" appropriation into a larger appropriation entitled "Administration and Operations." Also, the component for the Department of Law was modified to reflect the legislature's reorganization of Civil Division financing.

The legislature also added a subsection to sec. 2 of the bill that provides that Alaska Mental Health Trust Authority authorized receipts or administration receipts that exceed the amounts appropriated by the bill are appropriated conditioned upon compliance with the program review provisions of AS 37.07.080(h). Unlike sec. 2(b), ch. 118, SLA 1996, which limited a substantially identical additional appropriation for fiscal year 1997 to \$1.7 million, this appropriation is made without limitation. Without this provision, state agencies could not expend Alaska Mental Health Trust Authority authorized receipts or administration receipts in excess of the amounts appropriated by this bill.⁴

² HB 76 would have made a single allocation of \$1,547,900. CCS HB 76 makes allocations of \$400,000 for foster care augmented rate, \$747,900 for foster care special need, and \$400,000 for foster care Alaska Youth Initiative.

³ HB 76 would have made allocations of \$821,200 to general community mental health grants, \$7,051,700 to crisis intervention services, \$10,801,400 to services to the chronically mentally ill, and \$6,757,700 to services for seriously emotionally disturbed youth. CCS HB 76 makes allocations of \$935,800 to general community mental health grants, \$5,726,100 to psychiatric emergency services, \$10,918,700 to services to the chronically mentally ill, \$1,046,300 to designated evaluation and treatment, and \$6,805,100 to services for seriously emotionally disturbed youth.

⁴ Amounts in the mental health trust settlement account (AS 37.14.036) may only be expended as determined by the Alaska Mental Health Trust Authority. Amounts appropriated conditioned upon compliance with the program review provisions of AS 37.07.080(h) may only be expended if also approved by the Alaska Mental Health Trust Authority. With respect to each appropriation in CCS HB 76 that identifies Mental Health Trust Authority authorized receipts or administration receipts as the funding source, section 2(b) of CCS HB 76 also provides that if the Alaska Mental Health Trust Authority should fail to expend any of these anticipated amounts, the affected
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As with virtually all appropriation bills, CCS HB 76 contains a number of statements of legislative intent. This intent language is a "nonbinding recommendation," which can either be vetoed, or, if not vetoed, ignored at the discretion of the executive. See 1987 Inf. Op. Att'y Gen. at 10, and 12 (Jun. 26; 883-87-0089). An appropriation bill is limited to the designation of an amount appropriated, a statement of the purpose of the appropriation, and the designation of the portion of the public revenue set aside for the appropriation. Art. II, sec. 13, of the Alaska Constitution; Thomas v. Rosen, 569 P.2d 793, 796 (Alaska 1977); 1995 Inf. Op. Att'y Gen. at 3 (Mar. 30; 883-95-0004). These sorts of statements of philosophy are not parts of appropriations per se and are thus separate "items" that can be vetoed, or ignored, or followed as a matter of comity with the legislative branch, if the governor so desires.

The statements of legislative intent made in CCS HB 76 include:

1. Page 5, lines 4 - 28, and page 5, line 30 - page 6, line 24. Following the Medicaid non-facility and Medicaid facilities appropriations, these identical intent statements articulate the assumptions that were made about Medical program changes in the development of the budget. Two more identical intent statements appear in the operating budget bill, CCS HB 75, following the Medicaid non-facility and Medicaid facilities appropriations in that bill (pages 31 - 33). What we said about the intent statements in CCS HB 75 is equally applicable here:

Intent items for the Department of Health and Social Services' (DHSS) Medicaid program set out numerous specific directives to DHSS regarding the type of services to be provided Medicaid eligible recipients. Specifically, DHSS is expected to provide all but the first five medical services set out on the medical assistance prioritization list (AS 47.07.035) throughout the fiscal year. Further, the intent item anticipates that DHSS will take certain specified steps and implement program changes in order to reduce Medicaid expenditures for the fiscal year in order to fully pay for the specifically enumerated services (AS 47.07.035(6) - (31)), some of which are optional services.

Federal and state law establish the type of services required to be provided under the Alaska Medicaid program. Those requirements are set out under 42 U.S.C. 1396d(a)(1)-(5), (17), and (21) as incorporated through 42 U.S.C. 1396a(a)(10)(A) and AS 47.07.030 - 47.07.040. DHSS would be unable to strictly adhere to the legislature's intent if, because of funding shortfalls, DHSS anticipated that it would be unable to ensure the provision of required services for the entire fiscal and state plan year. There required services include inpatient hospital services, outpatient hospital services, other laboratory and x-ray services, nursing facility services, physicians' services,

⁴ (...continued)

appropriation will be reduced by the amount of the shortfall.

nurse-midwife services, and services furnished by a certified pediatric or family nurse practitioner.

In summary, there will be no need to contravene the legislature's intent if appropriations are sufficient to ensure that all required services as well as the specifically enumerated services (AS 47.07.035(6)-(31)) are available to eligible recipients throughout the year, or that a supplemental appropriation is provided, if necessary, in order to ensure that mandatory services are provided. As with other intent items in the bill, these are not binding, could be vetoed as discrete items, or could be honored to the extent that they do not conflict with existing law.

2. Page 8, lines 25-30. Following the community health/emergency medical services appropriation, this intent statement says that the Emergency Medical Services section of DHSS is directed to distribute information to help parents and agencies teach gun safety. The intent statement also says that DHSS should not "distribute information that insinuates guns are the problem when it is solely the misuse of guns that causes the problems." This statement of legislative intent is identical to the statement made within the operating budget appropriation bill, CCS HB 75, at page 37, lines 12-17. The usual rules as to intent statements apply.

3. Page 10, lines 26-29. Following the University of Alaska, Anchorage Campus appropriation, this intent statement instructs the university to seek funding for its proposed physicians' assistant program from the Mental Health Trust Authority. If the Trust Authority chooses to support the program financially, the university is further instructed that it should then request from the Legislative Budget and Audit Committee (LB&AC) authorization for the University to expend monies that would be received from the Trust Authority. This statement of legislative intent is identical to the statement made within the operating budget appropriation bill, CCS HB 75, at page 52, lines 16-19. As we noted in our review of that bill, the language of this statement evidences a misapprehension of the powers of the LB&AC, which are powers of oversight, not powers of appropriation.

Accompanying CCS HB 76 is a report from the legislature explaining the reasons why the appropriations in the bill differ from the recommendations of the Alaska Mental Health Trust Authority for expenditures from the general fund for the state's integrated comprehensive mental health program. This report is required by AS 37.14.005(c), just as you were required by AS 37.14.003(b) to submit a report to the legislature along with HB 76 explaining the differences between the proposed appropriations in that bill and the Alaska Mental Health Trust Authority's recommendations. Note that if you veto all or a part of an appropriation in this bill for the integrated comprehensive mental health program, AS 37.14.003(c) requires that your veto message must explain the vetoes in light of the Alaska Mental Health Trust Authority's recommendations.⁵

⁵ Both of these statutes were enacted by the 1994 legislature, in special session, as part of the settlement of Weiss v. State, 4FA-82-2208 Civil, the mental health trust litigation. They are intended to assure special consideration of appropriations for the state's mental health program, and thereby
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We find no constitutional or other legal problems with the bill.

Sincerely,

Bruce M. Botelho
Attorney General

BMB:JBG:clh

⁵ (...continued)

to improve the state's ability to meet the special needs of Alaskans who utilize any part of the state's integrated comprehensive mental health program.