

# STATE OF ALASKA

DEPARTMENT OF LAW

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June 27, 2001

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

Re: CCS HB 104 -- fiscal year 2002 mental  
health budget  
Our file: 883-01-0036

Dear Governor Knowles:

At the request of your legislative director we have reviewed CCSHB 104, relating to making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program for the fiscal year 2002 (beginning on July 1, 2001, and ending on June 30, 2002).

This version of the bill is similar in many respects to the original versions of the mental health budget (SB 28 and HB 46) that were introduced by the Senate and House Rules Committee at your request at the beginning of the legislative session. The changes include limiting your general fund mental health (GF/MH) proposed budget increase of \$6,955,300 to an increase of \$6,783,500. The legislature also consolidated into a single appropriation what had been proposed as designated grants in separate appropriations for the Department of Health and Social Services grants for public health services, alcohol and drug abuse services, developmental disability services, mental health services, and community health, although the funding available for these services remained the same.

## **I. Required Reports**

Your administration submitted a report in accordance with AS 37.14.003(b) with the transmittal of SB 28 and HB 46 explaining the reasons for the differences between the proposed appropriations in the bills and the recommendations of the Alaska Mental Health Trust Authority (Trust Authority) for expenditures from the general fund for the state's integrated comprehensive mental health program. The legislature is required by AS 37.14.005(c) to provide a similar report explaining the reasons for the differences between the appropriations in the final bill and the Trust Authority's recommendations. A report from the legislature outlining and explaining changes made to the Trust Authority's FY 02 mental health budget and including comparisons between the final bill and your recommended budget has been provided. We believe that the legislature's report and attachment, when read in conjunction with your own report, substantially complies with AS 37.14.005.

Please 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 requires that your veto message explain any veto in light of the Trust Authority's recommendations. You are also advised that the requirement to explain a veto is imposed by the Alaska Constitution. The validity of any explanation will be determined under the standard imposed in the Alaska Constitution. It is not likely that a court would find that the legislature has the power to make this duty more detailed or burdensome.

## **II. Analysis**

The bill contains a number of expressions of legislative intent. In *Alaska Legislative Council v. Knowles*, 21 P.2d 367 (Alaska 2001), the Alaska Supreme Court held that you may not veto legislative expressions of intent as they do not constitute "items" subject to your veto power in regard to appropriation bills. However, the opinion does not indicate that the expressions of intent are binding. Therefore, our advice remains that, as in years past, you can choose to follow or ignore these non-binding expressions, but they are not subject to veto. The expressions of intent are found in section 1 of the bill.

The legislature has attached many of the same conditions to appropriations in the mental health budget bill as it attached to appropriations in CCS HB 103 (the operating budget bill), including provisions related to abortion funding. We note those conditions in this review, but refer you to the detailed analysis contained in our review of CCS HB 103 (our file no. 883-01-0034).

Section 1 of the bill sets out the appropriations, funding sources, and other items for the FY 2002 operating budget. Lines 1-18 on page 2 are identical to the four

introductory paragraphs of section 1 of CCS HB 103 and we refer you to the detailed analysis of those paragraphs contained in our review of that bill. This section of the bill also contains two provisions that attempt to limit the expenditure of funds appropriated to the Department of Health and Social Services for abortions. The provisions at page 3, lines 30-33, continued on page 4, lines 3-5, and page 6, lines 13-14, are the same as those found in CCS HB 103 at page 19, lines 3-9, and page 23, lines 24-25. We discuss these provisions in detail in our review of CCS HB 103; the analysis is the same for CCS HB 104.

Section 2 of the bill sets out the funding for operating expenditures for the purposes of new legislation presumed to have passed during the legislative session. Section 3 of the bill sets out the funding by agency for the operating budget appropriations made in sections 1 and 2 of the bill. Section 4 of the bill sets out the appropriations and funding sources for the FY 02 capital budget. Section 5 of the bill sets out the funding by agency for the capital budget appropriations made in section 4. Section 6 of the bill sets out the purpose of the bill, which is to make appropriations for the state's integrated comprehensive mental health program.

Section 7 of the bill provides that 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). Without this provision, state agencies could not seek Legislative Budget and Audit Committee approval to expend Trust Authority-authorized receipts or administration receipts in excess of the amounts appropriated by this bill.

### **III. Conclusion**

Other than the issues noted above and addressed in detail in our review of CCS HB103, we find no constitutional or other legal issues for your consideration.

Sincerely,

Bruce M. Botelho  
Attorney General

BMB:LLK:saz