

DEPARTMENT OF LAW
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Frank H. Murkowski, Governor

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June 9, 2004

The Honorable Frank H. Murkowski
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99801

Re: CCS HB 377 -- The Mental Health
Budget For Fiscal Year 2005
Our file: 883-04-0036

Dear Governor Murkowski:

At the request of your legislative director, we have reviewed CCS HB 377, the mental health budget for fiscal year 2005. The bill raises some relatively minor legal issues that we identify here for your consideration.

1. Procedural Issues Unique to the Mental Health Budget

As a result of the 1994 agreement settling litigation over state management of mental health trust lands, special procedures apply to the adoption of the mental health budget. The procedures, codified at AS 37.14.003 - 37.14.005, require that the legislature pass an appropriation bill limited to appropriations for the state's integrated comprehensive mental health program. If the mental health budget bill adopted by the legislature differs from the budget proposed by the Mental Health Trust Authority, the bill "must be accompanied by a report explaining the reasons for the differences between the appropriations in the bill and the authority's recommendation for expenditures from the general fund[.]" AS 37.14.005(c).

The bill passed by the legislature this year does differ from the budget proposed by the authority, so a report is required. We have reviewed portions of the legislature's draft report and have identified no legal problems with it. We will maintain communication with the Legislative Finance Division to facilitate the legislature's compliance with the report requirement.

Alaska Statute 37.14.003(c) requires that if you decide to veto all or part of an appropriation in this bill, as authorized by Alaska Const. Art. II, sec. 15, your veto message “must explain the vetoes in light of the authority’s recommendations for expenditures from the general fund for the state’s integrated comprehensive mental health program.” There is some question whether this statutory requirement actually requires a more rigorous explanation of a veto than Alaska Const. Art. II, sec. 15, which requires that any vetoed bill be returned to the house of origin with a statement of objections. If you determine a veto of an item in this bill is desirable, we could advise you further with regard to the wording of a statement of objections.

2. Substantive Issues in Common with General Operating Budget

Like the operating budget bill, CCS HB 375, the mental health budget contains some statements of intent. One statement, beginning at page 2, line 27, says:

It is the intent of the legislature that the Department of Education & Early Development make every effort to reduce interagency charge back between divisions and that the department advance a general fund appropriation for executive administration, including the state board of education and early development and the commissioner’s office in the Governor’s FY2006 budget request.

The second statement of intent, beginning at page 4, line 5, says:

It is the intent of the legislature that the amount appropriated to this program is the full amount that will be allocated to the Designated Evaluation and Treatment (DET) program for the fiscal year ending June 30, 2005. If the amount appropriated is not sufficient to cover the costs of DET, the department shall take steps to reduce costs and shall not seek supplemental funding.

The third statement of intent, beginning at page 4, line 33, says:

It is the intent of the legislature that the Department of Health and Social Services continue cost containment by encouraging lower cost residential based care for the elderly and severely disabled. Further, it is the intent of the legislature that the Department address escalating growth in the Personal Care Attendant program through regulation to avoid the loss of home care provider services and the consequential growth in institutional facilities in this state.

Each of those three statements appears to be a pure expression of intent. Consequently, each is non-binding. Under *Alaska Legislative Council v. Knowles*, 21 P.3d 367 (Alaska 2001), a statement of intent accompanying an appropriation may not be vetoed separately from the appropriation to which it applies. Our review of the operating budget contains further discussion of these issues.

The mental health budget also contains a statement, on page 3, line 9, prohibiting the expenditure of money appropriated to DHSS on an abortion that is not a mandatory service under AS 47.07.030(a). The very same language is included in the operating budget, and we refer you to our review of that bill for our advice on this issue.

3. Substantive Issues Unique to the Mental Health Budget

Section 2 of this bill, on page 7, includes an appropriation for a negative \$100,000. That represents a cost savings expected to result from the anticipated passage of SB 364, which did not, in fact, pass in the legislature. A veto of the negative appropriation is not necessary, however, because the legislature specifically provided at page 7, lines 6 - 8, that if a measure listed in sec. 2 failed to pass, the appropriation for that measure would lapse. Accordingly, the appropriation of a negative \$100,000 will not take effect, and no action is required of you.

Section 9 of this bill, on page 15, provides for appropriation of Alaska Mental Health Trust Authority authorized receipts or administration receipts that are above the amounts appropriated in the bill. That means that if receipts are greater than the amounts assumed for this bill, the extra amounts are appropriated; and if receipts fall short, affected appropriations are reduced by the amount of the shortfall.

These contingent appropriations or reductions raise some potential constitutional questions because the legislature has not expressly provided criteria to determine which appropriations should be increased or decreased should the contingencies be realized. We have addressed similar issues in past simply by raising the issue, noting that we cannot give a definitive answer about whether the approach would be deemed constitutional by a court. *See, e.g.*, 1999 Inf. Op. Att'y Gen. (June 28; 883-99-0062). We adhere to that approach here, and therefore make no recommendation for action based on sec. 9.

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Other than the issues identified above, we find no significant constitutional or other legal issues for your consideration.

Sincerely,

Gregg D. Renkes
Attorney General

GDR:JKG:mw