

June 10, 1998

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

Re: CCS HB 326 -- Making Appropriations for the
Operating and Capital Expenses of the State's
Integrated Comprehensive Mental Health
Program
A.G. file no: 883-98-0128

Dear Governor Knowles:

At the request of your legislative director, Pat Pourchot, we have reviewed CCS HB 326, making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program.

This version of the bill is similar to the original version of HB 326, which was introduced by the House Rules Committee at your request at the beginning of this year's legislative session. However, the state's integrated comprehensive mental health program is funded at \$1,773,300 less than was requested in your amended fiscal year 1999 budget. The program funding approved by the legislature is \$10,727,200 higher than for FY 98. Of that increase, \$6,100,000 is attributable to a fund source change.

I. Required Reports

With the transmittal of HB 326, your administration submitted a report in accordance with AS 37.14.003(b) explaining the reasons for the differences between the proposed appropriations in that bill and the Alaska Mental Health Trust Authority's recommendations. Accompanying this version of the bill is a report from the legislature explaining the reasons why the appropriations in the passed bill differ from your recommended budget. AS 37.14.005(c) requires the legislature to provide a report explaining the reasons for the differences between the appropriations in the bill and the recommendations of the Alaska Mental Health Trust Authority for expenditures from the general fund for the state's integrated comprehensive mental health program.

The legislature expressly noted the changes that you explained between your proposed budget and the Alaska Mental Health Trust Authority's FY99 budget recommendations. In its report, the legislature then outlined and explained any additional changes made from your amended FY99 request. Though it would have been preferable for the legislature's report to directly explain the reasons for differences between the appropriations in the bill and those recommended by the Alaska Mental Health Trust Authority, we believe that the legislature's report, when read in conjunction with your own, substantially complies with AS 37.14.005(c).

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(c) requires that your veto message must explain the vetoes in light of the Alaska Mental Health Trust Authority's recommendations.¹

II. Mission Statements and Performance Measures

In keeping with the legislature's move towards results-based budgeting, CCS HB 326 includes mission statements and performance measures. This is the first time in state history that these types of statements and measures are included in an appropriation bill, rather than substantive law being amended to accomplish any change in general policy goals. We believe that these statements and measures are, in essence, expressions of legislative intent and may be viewed as a nonbinding recommendation similar to legislative intent.

A recent superior court decision draws into question whether the governor has the authority to line-item veto legislative intent language in an appropriation bill. The court held that line-item veto power encompasses only the power to reduce or strike sums of money; of course, if the sum of money is stricken or reduced to zero, any appended language would fall as well. *Legislative Council v. Knowles*, No. 1JU-97-2063 CI. (Alaska Super., May 22, 1998) at 11. The court agreed, however, that the Alaska Constitution requires that appropriation bills be confined to appropriations. Thus, even if not subject to line-item veto, conditions, provisos, riders, and intent language (and we believe mission statements and performance measures) are unconstitutional and without the effect of law. *Id.* at 12-15.

¹ 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 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.

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. Alaska Const. art. II, sec. 13; *Thomas v. Rosen*, 569 P.2d 793, 796 (Alaska 1977); 1995 Inf. Op. Att'y Gen. at 3 (Mar. 30; 883-95-0004); *Legislative Council v. Knowles*, (May 22, 1998). The mission statements and performance measures in CCS HB 326 do not appear to be part of appropriations *per se* and do not carry the force of law. If the superior court is overruled and the prior opinions given by this office prevail, then the mission statements and performance measures could be line-item vetoed. In any event, we believe they can be ignored, or followed as a matter of comity with the legislative branch, if the Administration so desires.

Many of the mission statements and performance measures in CCS HB 326 were developed and added in cooperation with the Alaska Mental Health Trust Authority. Some of the other agencies to which some of the mission statements and performance measures in CCS HB 326 are directed also either participated in drafting them or otherwise have no serious objection to them. Nevertheless, the precedent of using an appropriations bill to attempt de facto to change substantive law or to set objectives clearly assigned to the executive branch by the Alaska Constitution raises significant legal issues for your consideration.

III. Analysis

Section 1 of the bill sets out the purpose of the bill that is to make appropriations for the state's integrated comprehensive mental health program.

The legislature retained sec. 2 of HB 326, providing 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). 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.

Section 3 of the bill sets out the appropriations, allocations, funding sources, and other items for 1999 comprehensive mental health programs. Mission statements and performance measures contained in this section speak for themselves. We note though that several merely repeat mission statements and performance measures of the 1999 general operating budget bill (CCS HB 325 (brf fld)) ("HB 325") and were not tailored to mental health programs financed by this bill. We question whether their over-inclusion will result in meaningful information to evaluate achievements funded by this mental health appropriations bill. Also this section contains one element of legislative intent. Our specific comments are as follows:

1. Department of Community & Regional Affairs, Head Start Grants, page 3, lines 22-28 -- The mission statement does not substantially differ from the general purpose of the Head Start Program, as set out in federal rules and guidelines. The performance measures do not appear to conflict with the general purposes of the Head Start Program.

2. Department of Corrections (DOC), Administration & Operations -- (a) Inmate Health Care, page 4, lines 4-16 -- The mission statement and performance measures set out in this bill are identical to those set out in the general operating appropriations bill (HB 325) for this DOC allocation. These mission and performance statements are consistent with the statutes for the operations of DOC. However, it should be noted that the DOC reports that performance measures relating to recidivism rates are not likely to be easily complied with until DOC's new management information system (MIS) is on line in approximately the year 2000. This is a relevant factor for the DOC to consider in deciding if and when to implement this performance measure -- especially if the performance measure has significant administrative cost or other burdens to implementation in the absence of the MIS being fully operational.

(b) Inmate Programs, page 4, lines 17-33, and page 5, lines 1-6 -- The mission statement and performance measures again are identical to those set out for the programs in the 1999 operating budget (HB 325, sec. 32, page 23, lines 13-23). Again as mentioned in 2.(a) above, DOC's new MIS system is not anticipated to be fully operational until after fiscal year 1999 ends. DOC may weigh the costs and benefits to decide whether to implement this statement and performance measure in the absence of a fully operational MIS system.

3. Department of Health and Social Services -- (a) Medicaid Services, page 5, lines 14-31, and page 6, lines 1-9 -- Again we note that some performance measures listed are not tailored to the 1999 mental health program. For example, one performance measure is the "[p]ercent of Alaskan providers, by type and region, particularly in the Medical Assistance program in the previous fiscal year." This measure relates more appropriately to the Medicaid appropriations as a whole contained in HB 325, because it does not just measure providers of services paid for by the mental health program appropriations that would be made by this bill. We note that these same measures were placed in both this bill and HB 325.

(b) Front Line Social Workers, page 6, lines 17-32 -- Again we note that the legislature includes broad mission statements and performance measures that are not tailored to the 1999 mental health program bill. We question again the appropriateness of placing mission statements and performance measures in this mental health bill that are over-inclusive and are not focused on specific services provided to the population intended to be served by these appropriations.

(c) McLaughlin Youth Center, page 7, lines 4-24 -- The mission statement and performance measures again address general concerns of the youth corrections system and are not tailored to the dollars appropriated for population to be served by this budget. For example, one performance measure is "[r]eading and math grade levels for youth in institutional programs will improve by 1.25 months for every month a youth is in the school program." DHSS is not asked to measure this information specifically for the mental health population intended to be served by this budget.

(d) Maternal, Child, and Family Health, page 9, lines 6 and 7 -- This provision is intent language that the Division of Public Health strictly comply with federal law when awarding a competitive Request for Proposals (RFP) for the federal abstinence grant. This language is

superfluous because the agency is already legally bound to comply with federal law when accepting the federal grant money. We note though there is frequently some flexibility given in federal grants for a state agency to tailor the program to meet the programmatic goals of the grant. This intent statement does not limit any flexibility available under the federal grant program.

(e) Healthy Families, page 9, lines 9-15 -- Again we note that the mission statement and performance measure are not tailored to mental health programs or the population intended to be served by this budget. We also note that the DHSS has raised a question about a possible typographical error in performance measure 1. That measure is "[t]he rate of substantial abuse and neglect among families served." (Emphasis added.) DHSS indicates that it testified before the legislature that the appropriate measure was "substantiated" abuse and neglect. We believe that since there is no definition of substantial in the bill and if DHSS decides to implement this measure, DHSS may reasonably interpret "substantial" as "substantiated." We conclude this because substantiated abuse and neglect likely requires more commitment of DHSS staff effort and costs and, thus, could be viewed as "substantial" abuse and neglect for the purposes of this measure. Also, performance measure 2 used the term "substantiated" and it would be reasonable for a court to conclude based on the legislative history and the context that "substantiated" was also intended in performance measure 1.

(f) General Community Mental Health Grants, page 9, lines 24-33, and page 10, lines 1-9 -- We see no legal concerns that were not already addressed. We note that the mission statement and performance measures are tailored to the mental health program.

4. Fiscal note for HB 170, page 11, lines 28-30 -- We note that the fiscal note on HB 170 concerning service animals for physically and mentally challenged is funded under this mental health program bill. We note that the fiscal note actually related to an earlier version of the bill that required an identification process of service animals to be administered by DHSS. The version passed by the legislature did not include this identification process. Also, we note that many service animals are used by persons who are blind and are not automatically considered as part of the population to be served by the mental health program. You may wish to consider these issues in evaluating the merits of this appropriation.

Conclusion

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

Sincerely,

Bruce M. Botelho
Attorney General