



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Law

CIVIL DIVISION

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June 6, 2018

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

Re: HB 285 – Mental Health Budget (CCS
HB 285)
Our file: 2018200458

Dear Governor Walker:

At the request of your legislative director, we have reviewed CCS HB 285, making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program. The final bill raises some relatively minor legal issues.

I. Required Reports and Veto

With the transmittal of the first version of HB 285 to the House of Representatives, you submitted a report explaining the differences between your proposed mental health appropriations and the appropriation requests proposed by the Alaska Mental Health Trust Authority (trust authority). Your transmittal letter explained generally the reasons for the differences (AS 37.14.003(b)). A similar report from the legislature is required by AS 37.14.005(c), which provides that if the appropriations in the bill passed by the legislature differ from the appropriations proposed by the 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 recommendations for expenditures from the general fund...." The appropriations in CCS HB 285 do differ from the appropriations proposed by the trust authority, and the legislature has drafted a letter and reports describing the differences. We have reviewed your and the legislature's letters and reports and believe that they satisfy the statutory requirements.

If you decide to veto all or part of an appropriation in the bill, AS 37.14.003(c) requires that you must explain the veto "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 as to whether this statutory provision actually requires a more vigorous explanation of a veto than does art. II, sec. 15, of the Alaska Constitution, which requires that any vetoed bill be returned to the house of origin with a statement of objections. If you determine that a veto of an item in this bill is desirable, the Department of Law would be available to advise you further with regard to the wording of a veto message.

II. Analysis

CCS HB 285 contains a number of expressions of legislative intent. In the past, we have advised that most expressions of intent are not binding on the executive branch because the expressions violate the confinement clause of the Alaska Constitution ("[b]ills for appropriations shall be confined to appropriations." art. II, sec. 13). Therefore, we previously have advised that expressions of legislative intent may generally be ignored or followed as a matter of comity. We continue to offer this advice; however, we note that under limited circumstances expressions of intent in an appropriations bill might be legally enforceable. We refer you to a complete discussion of this issue in our review of the fiscal year 2019 operating budget, CCS HB 286. Accordingly, if your office or a recipient agency is not inclined to follow any intent language as a matter of comity, and we have not specifically addressed such language herein, we recommend further consultation with this office so that we can advise as to the extent such language might be enforceable. As we have previously advised in our reviews of appropriations bills, under *Alaska Legislative Council v. Knowles*, 21 P.3d 367 (Alaska 2001), a statement of intent accompanying an appropriation is not an "item" and may not be vetoed separately from the appropriation to which it applies.

Under the appropriation to the Department of Corrections, sec. 1, p. 2, of the bill, the legislature expresses its intent that the commissioner of corrections prioritize funding and implement solutions that reduce the disparity in Alaska Native incarceration throughout the state. This statement of legislative intent strays into the administration of the Department of Corrections' program and is likely not enforceable, but the department may comply as a matter of comity.

Under the appropriation to the Department of Health and Social Services, sec. 1, pp. 3, 5, and 6 of the bill, there are numerous expressions of legislative intent including: (1) that the department review fund sources for all allocations and reduce excess receipt authority if the department believes the collection of receipts is not achievable; (2) that the department submit a report to the House and Senate Finance Committee co-chairs and to the Legislative Finance Division on November 15, 2019, and November 15, 2020,

regarding certain aspects of federal disproportionate share hospital dollars; (3) that the department re-examine models of service delivery to ensure that senior and disabled eligible populations receive appropriate services regardless of location in Alaska and report to the House and Senate Finance Committees and the Legislative Finance Division on the status of the services by February 15, 2019; (4) that the state expeditiously proceed to establish companion services under section 1915(c) of the Social Security Act in order to complement and support services provided by Medicare/Medicaid waiver programs and report to the House and Senate Finance Committees and the legislative finance division on the status of the services by January 31, 2019; (5) that the level of funding for day habilitation services be sufficient to provide up to 624 hours annually per recipient and that the request for additional day habilitation over that number may be approved in order to avoid institutional care or for the safety of Medicaid recipients; (6) that the department work with tribal health organizations for care-coordination agreements with non-tribal providers in order to increase valid referrals for Indian Health Service eligible recipients so as to maximize 100 percent FMAP and that the department outline clearly requirements for 100 percent FMAP services provided to an IHS beneficiary receiving Medicaid benefits in order to reduce general fund spending by approximately \$30 million dollars; (7) that the department work with the Legislative Finance Division to prepare a template for reports to the House and Senate Finance Committee co-chairs and the Legislative Finance Division related to actual Medicaid expenditures and projected expenditures for fiscal year 2019 on January 15, March 15, and June 15, and that the template provide fiscal year 2020 projections; and (8) that the department increase significantly its efforts to reduce the state cost for Medicaid services by managing Medicaid utilization to index with the national average cost per enrollee while taking into consideration a multiplier to the national average to account for reasonably higher cost in Alaska for health care.

As set out above, these statements of legislative intent are likely not enforceable, but the department may comply as a matter of comity. Additionally, to the extent that reporting requirements are not otherwise set out in statute, the department may wish to comply as a matter of comity.

Other than as noted above, sec. 1 of the bill sets out the appropriations, funding sources, and other items for the fiscal year 2019 mental health operating budget, and is unremarkable.

Section 2 of the bill of the bill sets out the funding by agency for the appropriations made in sec. 1 of the bill. Section 3 of the bill sets out the statewide funding for the appropriations made in sec. 1 of the bill. Section 4 of the bill sets out appropriations for mental health capital projects and grants. Section 5 of the bill sets out the funding by agency for the appropriations made in sec. 4 of the bill. Section 6 of the bill sets out the statewide funding for the appropriations made in sec. 4 of the bill. Section

7 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 8 of the bill provides for appropriation of mental health trust authority authorized receipts or administration receipts that are above the amounts appropriated in the bill, and for a reduction in an appropriation affected by a shortfall in receipts.

Section 9 provides that appropriations in sec. 1 of the bill include amounts for state employee salaries and benefits. Employee salary and benefits are established by direct statutory authority such as AS 39.27.011 for certain classified employees, partially exempt employees, and legislative employees; separate statutory authority for certain exempt service employees, Alaska Court system employees, legislators and other public officials; or through collective bargaining agreements authorized under AS 23.40.070 - 23.40.260 and funded by the legislature pursuant to AS 23.40.215. Section 9(a) provides that the appropriations to fund employee salary and benefits including any adjustments are included in the appropriations to agencies in sec. 1. Section 9(a) further provides that the appropriations in sec. 1 include amounts to implement monetary terms for ongoing collective bargaining agreements for the following collective bargaining units: general government unit, Alaska Vocational Technical Center Teachers Association unit; confidential employees unit; public safety employees unit; labor, trades and crafts bargaining unit; and the supervisory bargaining unit.

Section 9(b) provides that the appropriations made to the University of Alaska in sec. 1 of the bill include amounts for salary and benefit adjustments for the fiscal year for university employees who are not members of bargaining units and to implement the monetary terms of employees covered by certain collective bargaining agreements. Section 9(c) provides that the appropriations for employees covered by collective bargaining agreements described in subsection (a) would suffer a corresponding reduction if a collective bargaining agreement is not ratified by the membership of the collective bargaining unit. Section 9(d) provides that the appropriations for employees covered by collective bargaining agreements described in subsection (b) would suffer a corresponding reduction if a collective bargaining agreement is not ratified by the membership of the collective bargaining unit and approved by the Board of Regents of the University of Alaska.

Section 9(e) of the bill provides that the appropriations in sec. 1 of the bill for employee salaries and benefits described in secs. 9(a) and 9(b) of the bill are only for the state's comprehensive mental health program and do not necessarily affect every group of nonunion employees or every collective bargaining unit listed in secs. 9(a) and 9(b) of the bill. This limitation is expressed because a number of state employees are not involved in the state's mental health program and thus appropriations for their salaries would not come from the bill.

Section 10 of the bill provides for an effective date of July 1, 2018.

III. Conclusion

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

Sincerely,

JAHNA LINDEMUTH
ATTORNEY GENERAL

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