THE STATE
of ALASKA
GOVERNOR BILL WALKER

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VIA EMAIL TO senator.john.coghill@akleg.gov & 1ST CLASS MAIL

The Honorable John Coghill
Alaska State Legislature
1292 Saddler Way, Ste. 240
Fairbanks, Alaska 99701

Re: Legal Grounds for Medicaid Expansion

Dear Senator Coghill:

After reading your op-ed "Walker must explain why unilateral Medicaid expansion does not violate federal law," I wanted to provide the Department of Law's position on the legal issues you raise. Ultimately, the Department of Law concluded, as did Legislative Legal Counsel in November 2014, that Alaska's current Medicaid statutes encompass expanding Medicaid services to people whose income falls below 138% of the federal poverty level.[1]

As you correctly state in your op-ed, the analysis comes down to the question of whether expansion covers individuals who are "required" to receive Medicaid services versus individuals or services that are "optional."[2] You assert that because the U.S. Supreme Court decision in *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012) determined that states could not be penalized for not accepting Medicaid expansion, this turns expansion into an "optional" Medicaid service under state law, instead of a required one. However, this does not impact whether Medicaid expansion counts as "required," and therefore already authorized, for purposes of Alaska's state statute. The Department of Law came to this conclusion based on the construction of the state statute, federal law, and the U.S. Supreme Court decision.

As you pointed out, Alaska's Medicaid program automatically covers all categories of people and services that are "required" under federal law.[3] By contrast, "optional" categories of people and services are specifically enumerated in Alaska statutes.[4]

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1 The Affordable Care Act specifically states that it covers people whose incomes falls below 133% of the federal poverty level, but because of the way this is calculated, it is effectively 138%. 42 U.S.C. 1396a(a)(10(A)(i)(VIII).

2 *See* AS 47.07.020(a).

3 AS 47.07.020(a), 47.07.030(a).

The Affordable Care Act (ACA) amended the federal Medicaid statutes to make all people whose income falls below 133% (effectively 138%) of the federal poverty line a "required" category of beneficiaries.[5] Under normal statutory construction, because the federal law has included the group of "expansion" beneficiaries as a "required" category, these people are already covered under Alaska Medicaid by operation of AS 47.07.020(a). The question becomes what impact the U.S. Supreme Court decision had on the statutory construction.

It is true states are not required *in practice* to cover this expanded group of beneficiaries because of the U.S. Supreme Court's decision in *National Federation of Independent Business v. Sebelius*.[6] The specific challenge in that case was to the ACA's mechanism to enforce the Medicaid expansion: a section providing any state that failed to expand Medicaid to the extent required by the ACA could lose some or all of its funding for existing Medicaid programs.[7] The Court ruled it was unconstitutional for the federal government to apply this penalty—denial of all federal Medicaid funds—to states that did not expand Medicaid as provided in the ACA.[8] The Court did not strike down the new required category, but instead, struck down the penalty for not complying with it.

Just because there is no enforcement mechanism does not change the language of federal law or the language of state law. Because Alaska statutes authorize Medicaid coverage for all people who fall under the "required" category in federal law, Alaska statutes already authorize coverage for this new group of potential Medicaid beneficiaries. It is possible that the Alaska statute could have been amended to specifically prohibit expansion following the *Sebelius* decision, but it was not. Under current federal and state law, those benefitting from expansion are included under the "required" category.

This is why when Governor Walker submitted his budget in February he included appropriations for expansion and did not seek to submit a bill amending the statute. The advice from my office was that no substantive statutory change was necessary. It was only after being requested by the legislature to submit a bill to have Medicaid expansion considered that

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4 *See* AS 47.07.020(b) (authorizing coverage of optional categories of beneficiaries, such as pregnant women whose income is less than 175% of the federal poverty line); AS 47.07.030(b) (authorizing coverage of optional Medicaid services such as home and community-based services, prescription drug coverage, and adult dental services).

5 42 U.S.C. 1396a(a)(10(A)(i)(VIII).

6 132 S. Ct. 2566 (2012).

7 42 U.S.C. § 1396c.

8 *NFIB v. Sebelius*, 132 S. Ct. at 2607-09.

Governor Walker introduced HB 148.This was done out of respect for the legislature's wishes and not as an indication that the administration believed a statutory change was needed.

I hope the above clarifies the legal position of the Department of Law and the administration on this issue. I have also attached the opinion from Legislative Legal Counsel from November 2014 for your reference. For your information, we have already received a media request for our position on this matter, and we will be providing a copy of a prior letter sent to Rep. Hawker on the same subject along with the opinion attached.

Sincerely,

Craig W. Richards
Attorney General

cc: Cori Mills, Legislative Liaison, Department of Law
Darwin Peterson, Legislative Director, Office of the Governor