AN ACT
Relating to cooperation of insurers with the Department of Health and Social Services; relating to subrogation, assignment, and lien rights and notices for medical assistance claims; relating to recovery of medical assistance overpayments; relating to asset transfers and income diversion by medical assistance applicants; relating to assets and Medicare enrollment as they affect medical assistance coverage; relating to home and community-based services; relating to medical assistance applications for persons under 21 years of age; requiring a report by the Department of Health and Social Services; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1
AN ACT

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*Section 1. AS 21.09 is amended by adding a new section to read:

Sec. 21.09.240. Cooperation with the Department of Health and Social Services. An insurer, including a pharmacy benefits manager, with respect to medical
assistance programs under AS 47.07, shall cooperate with the Department of Health and Social Services to

   (1) provide, with respect to an individual who is eligible for or is provided medical assistance under AS 47.07, on the request of the department, information to determine during what period the individual or the individual's spouse or dependents may be or may have been covered by the insurer and the nature of the coverage that is or was provided by the insurer, including the name and address of the insurer and the identifying number of the health care insurance plan;

   (2) accept the department's right of recovery and the assignment to the department of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under AS 47.07;

   (3) respond to any inquiry by the department regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of the health care item or service; and

   (4) agree not to deny a claim submitted by the department solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim if

   (A) the claim is submitted by the department within the three-year period beginning on the date on which the item or service was furnished; and

   (B) any action by the department to enforce its rights with respect to the claim is commenced within six years after the department's submission of the claim.

* Sec. 2. AS 47.05.070(b) is amended to read:

   (b) **When** [IF] the department provides or pays for medical assistance for injury or illness under this title, the department is subrogated to not more than the part of an insurance payment or other recovery by the recipient that is for medical expenses provided by the department [THE RIGHTS OF THE RECIPIENT OF THAT MEDICAL ASSISTANCE FOR ANY CLAIM ARISING FROM THE INJURY OR ILLNESS AND TO THE PROCEEDS OF AN
INSURANCE POLICY COVERING THE INJURY OR ILLNESS TO THE EXTENT OF THE VALUE OF THE MEDICAL ASSISTANCE PROVIDED, A RECIPIENT OF MEDICAL ASSISTANCE OR THE RECIPIENT'S ATTORNEY MUST NOTIFY THE DEPARTMENT IN WRITING OF ANY ACTION OR CLAIM AGAINST A THIRD-PARTY PAYOR IF MEDICAL ASSISTANCE WAS PROVIDED BY THE DEPARTMENT TO TREAT AN INJURY OR ILLNESS FOR WHICH THE THIRD PARTY MAY BE LIABLE]. Notwithstanding the assertion of any action or claim by the recipient of medical assistance, the department may bring an action in the superior court against an alleged third-party payor to recover an amount subrogated to the department for medical assistance provided on behalf of a recipient.

* Sec. 3. As 47.05 is amended by adding new sections to read:

Sec. 47.05.071. Duty of a medical assistance recipient. (a) A medical assistance recipient shall cooperate with and assist the department in identifying and providing information concerning third parties who may be liable to pay for care and services received by the recipient under the medical assistance program.

(b) As a condition of medical assistance eligibility, a person who applies for medical assistance shall, at the time of application,

(1) assign to the department the applicant's rights of payment for care and services from any third party to the extent the department has paid medical assistance for care and services;

(2) cooperate with and assist the department in identifying and providing information concerning third parties who may be liable to pay for care and services received by the recipient under the medical assistance program; and

(3) agree to make application for all other available third-party resources that may be used to provide or pay for the cost of care or services received by the medical assistance recipient or that may be used to finance reimbursement to the state for the cost of care or services received by the medical assistance recipient; a medical assistance recipient is under no duty to file a civil or other action for the purpose of reimbursing the state for the cost of care or services.

Sec. 47.05.072. Duty of attorney for medical assistance recipient. (a) An
attorney representing a medical assistance recipient shall notify the attorney general's office.

(b) The notice to the attorney general's office required under (a) of this section includes submission of the following:

(1) identification of the medical assistance recipient's name, last known address, and telephone number, and the date of the injury or illness giving rise to the action or claim;

(2) copies of the pleadings and other papers related to the action or claim;

(3) the identification of each potentially liable third party, including that party's name, last known address, and telephone number;

(4) the identification of any insurance policy potentially responsive to the action or claim; and

(5) a description of the facts and circumstances supporting the action or claim.

(c) An attorney who represents a medical assistance recipient shall give the attorney general's office notice within 30 days of any judgment, award, or settlement in an action or claim by the medical assistance recipient to recover damages for an injury or illness that has resulted in the department's providing or paying for medical assistance.

(d) If a medical assistance recipient is handling the action or claim on a pro se basis, the provisions of this section apply as if the medical assistance recipient were an attorney representing the medical assistance recipient.

Sec. 47.05.073. Judgment, award, or settlement of a medical assistance lien. (a) A medical assistance recipient may not maintain any rights to payment for medical costs as a result of a judgment, award, or settlement of an action or claim for which another person may be legally obligated to pay without first making repayment to the department for costs of past medical assistance services provided to or paid for on behalf of the medical assistance recipient that relate to that action or claim.

(b) A medical assistance recipient may not place any payment as a result of a judgment, award, or settlement of an action or claim for which another person was
legally obligated to pay because of injury or illness into any trust for the purpose of
maintaining public assistance or medical assistance eligibility without first making
repayment to the department for costs of past medical assistance services provided to
the medical assistance recipient related to that action or claim.

(c) The attorney general may only discharge a medical assistance lien under
AS 47.05.075 if the discharge complies with federal law.

(d) Notwithstanding (a) - (c) of this section, a third-party payor shall have no
further liability if it settles or compromises a dispute in good faith and without
knowledge that the individual is a recipient of medical assistance.

Sec. 47.05.074. Conflict with federal requirements. If any provision of this
chapter related to subrogation, assignment, or lien conflicts with federal law
concerning the Medicaid program or receipt of federal money to finance the medical
assistance program, the provision does not apply to the extent of the conflict.

* Sec. 4. AS 47.05.075(d) is amended to read:

(d) A perfected lien under this section has priority over all other liens except
tax liens and a lien perfected for attorney fees and costs [IMMEDIATELY AFTER
A LIEN PERFECTED BY A HOSPITAL, NURSE, OR PHYSICIAN UNDER
AS 34.35.450 - 34.35.480].

* Sec. 5. AS 47.05.080(a) is amended to read:

(a) Benefit overpayments collected by the department in administering
programs under AS 47.07 (medical assistance), AS 47.25.120 - 47.25.300 (general
relief), AS 47.25.430 - 47.25.615 (adult public assistance), AS 47.25.975 - 47.25.990
(food stamps), and 47.27 (Alaska temporary assistance program) shall be remitted to
the Department of Revenue under AS 37.10.050(a), except for overpayments
recovered under AS 47.07 that cover the value of services paid from federal
sources.

* Sec. 6. AS 47.07.020(f) is amended to read:

(f) A person may not be denied eligibility for medical assistance under this
chapter on the basis of a diversion of income or transfer of assets, whether by
assignment or after receipt of the income, into a Medicaid-qualifying trust or annuity
that, according to a determination made by the department,
(1) has provisions that require that the state will receive all of the trust or annuity assets remaining at the death of the individual, subject to a maximum amount that equals the total medical assistance paid on behalf of the individual; and

(2) otherwise meets the requirements of 42 U.S.C. 1396p(d)(4) for a trust and 42 U.S.C. 1396p(c)(1)(F) and 42 U.S.C. 1396p(e)(1) for an annuity.

* Sec. 7. AS 47.07.020 is amended by adding new subsections to read:

(j) A person may not apply for medical assistance coverage on behalf of a child under 18 years of age who is not emancipated unless the person is the parent or legal guardian of the child or, if the parent or legal guardian can be contacted and consents to the application, the person is

(1) an adult caretaker relative who lives with the child and who is exercising care and control of the child; or

(2) an employee of the department who is applying on behalf of a child who is in the custody of the department.

(k) A child who is unemancipated may apply for medical assistance coverage on the child's own behalf if the parent or legal guardian of the child consents to the application. The department may waive consent under this section if the child expresses a reasonable fear of the child's parent or legal guardian or the department has been unable to contact the parent or legal guardian after the department has made reasonable efforts to do so. If a waiver of consent is granted, the department shall document the reason for the waiver in the child's medical assistance record.

(l) Notwithstanding the eligibility provisions under (a) and (b) of this section, a person may not receive medical assistance under this section unless the person first enrolls in the Medicare program under 42 U.S.C. 1395 to the extent that the person is eligible to receive benefits and services under the program.

(m) Except as provided in (g) of this section, the department shall impose a penalty period of ineligibility for the transfer of an asset for less than fair market value by an applicant or an applicant's spouse consistent with 42 U.S.C. 1396p(c)(1).

(n) Except as provided under 42 U.S.C. 1396p(f) and 42 U.S.C. 1396u-1, the department shall include as an asset for eligibility purposes the value of an applicant's home if the equity value in the home exceeds $500,000 at the time the application is
completed. Nothing in this subsection prohibits an applicant from reducing the equity value in the applicant's home by selling the home or by taking out a loan that affects the equity.

*Sec. 8.* AS 47.07 is amended by adding a new section to read:

**Sec. 47.07.045. Home and community-based services.** (a) The department may provide home and community-based services under a waiver in accordance with 42 U.S.C. 1396 - 1396p (Title XIX, Social Security Act), this chapter, and regulations adopted under this chapter, if the department has received approval from the federal government and the department has appropriations allocated for the purpose. To supplement the standards in (b) of this section, the department shall establish in regulation additional standards for eligibility and payment for the services.

(b) Before the department may terminate payment for services provided under (a) of this section,

(1) the recipient must have had an annual assessment to determine whether the recipient continues to meet the standards under (a) of this section;

(2) the annual assessment must have been reviewed by an independent qualified health care professional under contract with the department; for purposes of this paragraph, "independent qualified health care professional" means,

(A) for a waiver based on mental retardation or developmental disability, a person who is qualified under 42 CFR 483.430 as a mental retardation professional;

(B) for other allowable waivers, a registered nurse licensed under AS 08.68 who is qualified to assess children with complex medical conditions, older Alaskans, and adults with physical disabilities for medical assistance waivers; and

(3) the annual assessment must find that the recipient's condition has materially improved since the previous assessment; for purposes of this paragraph, "materially improved" means that a recipient who has previously qualified for a waiver for

(A) a child with complex medical conditions, no longer needs technical assistance for a life-threatening condition, and is expected to be
placed in a skilled nursing facility for less than 30 days each year;

(B) mental retardation or developmental disability, no longer needs the level of care provided by an intermediate care facility for the mentally retarded either because the qualifying diagnosis has changed or the recipient is able to demonstrate the ability to function in a home setting without the need for waiver services; or

(C) an older Alaskan or adult with a physical disability, no longer has a functional limitation or cognitive impairment that would result in the need for nursing home placement, and is able to demonstrate the ability to function in a home setting without the need for waiver services.

* Sec. 9. AS 47.05.070(e) is repealed.

* Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. Sections 2 - 4 of this Act apply to a cause of action related to a subrogation, assignment, or lien by the Department of Health and Social Services that accrues on or after the effective date of secs. 2 - 4 of this Act.

* Sec. 11. The uncodified law of the State of Alaska is amended by adding a new section to read:

REPORT. The Department of Health and Social Services shall prepare a report and deliver the report to the legislature not later than the first day of the First Regular Session of the Twenty-Fifth Alaska State Legislature. The report must include recommendations for statutory, regulatory, and systematic changes that will

(1) assist the department in reducing medical assistance expenditures for services received in mental health treatment facilities located in the state and outside the state, including community mental health facilities, residential psychiatric treatment centers, and substance abuse treatment facilities;

(2) enhance and clarify parental financial responsibility for children receiving services provided by mental health treatment facilities located in the state and outside the state, including community mental health facilities, residential psychiatric treatment centers, and substance abuse treatment facilities; and

(3) maximize all third-party resources available to pay for the cost of services
provided by mental health treatment facilities located in the state and outside the state, including community mental health facilities, residential psychiatric treatment centers, and substance abuse treatment facilities, before a provider seeks reimbursement under AS 47.07.

* Sec. 12. The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS FOR HOME AND COMMUNITY-BASED SERVICES. To the extent that regulations on home and community-based services that are in effect on the effective date of sec. 8 of this Act are not inconsistent with the language and purposes of sec. 8 of this Act, those regulations remain in effect as valid regulations implementing sec. 8 of this Act.

* Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to read:

STATE PLAN. (a) The Department of Health and Social Services shall immediately apply for federal approval of a revised state plan to implement the changes to the medical assistance program made under secs. 1 - 7 and 9 of this Act.

(b) The commissioner of health and social services shall notify the revisor of statutes of the date of the federal approval of the revised state plan submitted under (a) of this section.

* Sec. 14. Sections 8, 12, and 13 of this Act take effect immediately under AS 01.10.070(c).

* Sec. 15. Section 1 of this Act takes effect July 1, 2007.

* Sec. 16. Except as provided in secs. 14 and 15 of this Act, this Act takes effect July 1, 2006, or on the date of notification under sec. 13 of this Act of federal approval of a revised state plan for medical assistance coverage incorporating the changes made by secs. 1 - 7 and 9 of this Act, whichever is later.