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CS for SENATE BILL 74(FIN) *(Version V)*
DRAFT SECTIONAL ANALYSIS

Section 1 (*page 2)* *Previously CS SB 78(FIN) Section 2*

AS 09.10.075. Actions related to claims based on medical assistance payment fraud.
Adopts a new section which establishes time limits in which a person may or may not bring an action under new sections AS 09.58.010-09.58.950, the Alaska Medicaid False Claims Act, and a statute of limitations. An action may be brought within six years of when the act or omission was committed, or three years after the date when the act or omission was known or reasonably should have been known by the attorney general and department, but no action may be brought for a violation more than ten years after the date of violation.

Section 2 *(page 2)* *Previously CS SB 78(FIN) Section 3*

AS 09.10.120(a).
Amends to include reference to new subsection AS 09.10.075, creating an exception for Medicaid fraud action time limits.

Section 3 *(page 2-10)* *Previously CS SB 78(FIN) Section 4*

Chapter 58. Alaska Medical Assistance False Claim and Reporting Act
Establishes the Alaska Medicaid False Claims Act. This language is to comply with Office of Inspector General guidelines for false claims act certification. This allows the state to increase its match on recoveries by five percent for a (45/55 split in favor of the state).

AS 09.58.010. False claims for medical assistance; civil penalty.
This is a general provision which identifies the five types of claims that would give rise to a false claim under this section *(for full list see page 2 line 26 - page 3, lines 11)*. The penalties for false claims would be civil penalties not less than $5500 and not more than $11,000, three times the amount of actual damages, reasonable attorneys' fees and costs as provided in court rules, possible reduction in penalties, and establishes corporate liability for false claims.

AS 09.58.015. Attorney General invitation; civil action.
Authorizes the attorney general to investigate claims brought under this statute and to work collaboratively with DHSS on such matters.

AS 09.58.020. Private plaintiff; civil action.
Provides that a private citizen (relator) can bring a Medicaid False Claims Act case. If a relator brings an action, they must serve the attorney general's office and disclose the evidence upon which the complaint is filed. The relator's action is filed under seal for at least sixty days to allow the attorney general's office to investigate the claim. The attorney general can get an extension of time if the sixty days is not sufficient. After investigation, the attorney general must do one of the following:

(1) Intervene in the matter and take control of the action;
(2) Notify the court that it will not be intervening, but allow the relator to proceed; or
(3) Dismiss the action if the evidence does not support a false claim.

AS 09.58.025. Subpoenas.
Gives the attorney general the authority to issue subpoenas to assist in its investigation of a false claim.

AS 08.58.030. Rights in fraudulent claims actions.
This outlines the relative role of the parties in the event that the attorney general intervenes in a case (exclusive authority over the case/action), including moving to dismiss the case at any time or settling with the provider despite the objection of the relator. If the attorney general defers to the relator, the attorney general can ask to be served on all pleadings and intervene at any time. Further, the attorney general can ask that discovery in the case be stayed during the pendency of the criminal investigation.

AS 09.58.040. Award to false or fraudulent claim plaintiff.
Outlines how the relator will be compensated in a filed claim act.

(1) If the attorney general intervenes, the relator will be awarded 15% to 25% of the total award;
(2) If the attorney general defers and allows the case to go forward, the relator receives 25% to 30% of the total award; and,
(3) Authorizes the court to limit or reduce the award if the evidence takes into account the role of the relator in bringing the case and the overall scheme.

AS 08.58.050. Certain actions barred.
Provides a list of situations that do not constitute a false claim, such as a claim that is currently subject to a criminal or civil action by the State. (*For full list page 8, line 14-28*).

AS 09.58.060. State not liable for attorneys' fees and other expenses.
Provides that the State is not responsible for the costs and fees of a relator in bringing an action.

AS 08.58.070. Employee protection for retaliation.
Provides whistleblower protection for employees who report false claims to the State.

AS 09.58.080. Regulations.
Provides authority for the attorney general to adopt regulations to implement this new cause of action.

AS 09.58.090. Special provision.
Requests a minimum threshold damage amount of $5500.

AS 09.58.100. Definitions

AS 09.58.110. Short title.

Section 4 *(page 10-11)* *New Section*

AS 17.30.200(b)
Amends to require the collection of dispensing data and to update the Prescription Database Monitoring Program (PDMP) on a weekly basis.

Section 5 *(page 11-13)* *New Section*

AS 17.30.200(d)
(3) Amends to authorize a licensed practitioner to delegate database access to supervised employees or clinical staff;
(4) Amends to authorize a registered pharmacists to delegate database access to supervised employees or clinical staff;
(7) Adds a new section to authorize PDMP database access to the State of Alaska Medicaid Pharmacy Program;
(8) Adds a new section to authorize PDMP database access to the State of Alaska Medicaid Drug Utilization Review Committee;
(9) Adds a new section to authorize PDMP database access to the State of Alaska Medical Examiner;
(10) Adds a new section to authorize de-identified PDMP data access to the State of Alaska Department of Health and Social Services Division of Public Health. The Division of Public Health would not need access to identifiable data to fulfill public health objectives regarding controlled substances including prescription opiates.

Section 6 *(page 13)* *New Section*

AS 17.30.200(e)
Amends to require all prescribers and all pharmacists to register with the Alaska PDMP. Failure to register is grounds for the board to take disciplinary action against the license or registration of the pharmacy or pharmacist.

Section 7 *(page 13)* *New Section*

AS 17.30.200(h)
Amends to require prescribers and pharmacists to review the PDMP database when prescribing or dispensing a controlled substance to a patient. Immunity for using the PDMP remains even with the change from optional to mandatory.

Section 8 *(page 13-14)* *New Section*

AS 17.30.200(k)

Amends to adopt regulations to:

(3) Set a procedure and time frame for registration;

(4) Require prescribers and pharmacists to review the PDMP database when prescribing or dispensing a controlled substance to a patient.

Section 9 *(page 14)* *New Section*

AS 17.30.200

Adding new subsections to

(o) Require prescribers and pharmacists to review the PDMP database when prescribing or dispensing a controlled substance to a patient.

(p) Require notification to boards when a practitioner registers with the database.

(q) Authorize the Board of Pharmacy to forward unsolicited notifications to prescribers and dispensers of database information about patients who may be obtaining controlled substances inconsistent with generally recognized standards of care.

(r) Collect dispensing data and updating the PDMP database weekly.

Section 10 *(page 14)* *Previously CS SB 78(FIN) Section 5*

AS 37.05.146(c)

Amends to include a new paragraph (88) adding monetary recoveries from the Alaska Medicaid False Claims Act to the program and non-general fund program receipts definitions.

Section 11 (p*age 14)* *Previously CS SB 78(FIN) Section 6*

AS 40.25.120(a)

Amends to include a new paragraph (15) a conforming amendment to include new AS.09.58.010 to existing public records statutes.

Section 12 *(page 14-15)* *Previously CS SB 74(STA) Section 1*

AS 47.05.015

Amends by adding a new subsection to allow the Department of Health and Social Services (DHSS) to enter into a contract through the competitive bidding process under the State Procurement Code for durable medical equipment or specific medical services provided in the Medicaid program.

Section 13 *(page 15-16)* *Previously CS SB 74(STA) Section 2 (Amended)*

AS 47.05.105 Enhanced computerized eligibility verification system.

Amends by adding a new subsection requiring the department to establish a computerized enhanced eligibility verification system to verify eligibility and to deter waste and fraud. It also requires DHSS enter into a competitively bid contract with a third-party vendor for the eligibility verification system. The annual savings must exceed the cost of implementing the system.

Section 14 *(page 16)* *Previously CS SB 78(FIN) Section 8*

AS 47.05.200(a)

Amends Medicaid Audits statute, changes the number of program audits to no less than fifty per year and adding that the state shall attempt to minimize concurrent state or federal audits.

Section 15 *(page 16-17)* *Previously CS SB 78(FIN) Section 9 (Amended)*

AS 47.05.200(b)

Amends so that the Department may assess interest and penalties on overpayments, identified in audits conducted under this section, by calculating interest using existing statutory rates from the date of the final agency decision.

Section 16 *(page 17)* *Previously CS SB 78(FIN) Section 10 (Amended)*

AS 47.05.235. Duty to identify and repay self-identified overpayments.

Amends by adding a new section which requires all enrolled Medicaid providers to conduct one annual review or audit of all claims, and if overpayments are identified, to report those findings to the department within ten business days, and to establish a repayment agreement with the state.

Section 17 *(page 17-22)*

AS 47.05.250. Civil penalties. *Previously CS SB 78(FIN) Section 11 (Amended)*

Authorizes the department to develop regulations to impose civil fines and sets limits on the amount of the fines.

AS 47.05.260. Seizure and forfeiture of real or personal property in medical assistance fraud cases.

Authorizes the department, after application to the court and a finding of probable cause, to seize certain real or personal property of a medical assistance provider who has committed or is committing medical assistance fraud, to offset the cost of the alleged fraud. The court may authorize seizure of real or personal property to cover the cost of the alleged fraud.

This section provides a list of possible real or personal properties, including bank accounts, automobiles, boats, airplanes, stocks and bonds, and inventory.

This section, upon issuance of the court order of seizure, prohibits the owners of property from disposing of the property, with a provision of good faith in the event property is sold without written permission of the court. This section further authorizes the forfeiture of any seized property if the Medicaid provider is eventually convicted of medical assistance fraud. This section provides instructions to the state to sell or return properties, and depositing funds from disposal of seized properties.

This section also allows for the action of forfeiture to be joined with another civil or criminal action for damages resulting from alleged medical assistance fraud.

AS 47.05.270. Medical assistance reform program. *Previously CS SB 74(STA) Section 4*

Under (a), the reform program must include 11 items:

1) Referrals to community and social support services, including career and education training services available through the Department of Labor & Workforce Development, the University of Alaska, or other sources
2) Electronic distribution of benefits (EOBs) to recipients
3) Expanding the use of telemedicine for primary care, behavioral health and urgent care
4) Enhancing fraud prevention, detection, and enforcement
5) Reducing the cost of behavioral health, senior, and disabilities services provided of Medicaid under the state's home and community-based services waivers
6) Pharmacy initiatives
7) Enhanced care management
8) Redesigning the payment process by implementing fee agreements that include: premium payments for centers of excellence, penalties for hospital-acquired infections, readmission, and outcome failures, bundled payments, or global payments.
9) Stakeholder involvement in setting annual targets for quality and cost-effectiveness
10) Reducing travel by requiring a recipient to obtain care in their home community to the extent appropriate services are available.
11) Establish guidelines for health care providers to develop health care delivery models that encourage wellness and disease prevention.

New Subsection (b): Requires the department to efficiently manage a comprehensive and integrated behavioral health system that uses evidence based practices that are data driven with measureable outcomes. The department and the Alaska Mental Health Trust Authority must provide a plan for a continuum of community based services that includes house, employment and criminal justice issues.

Subsection (c): Has the department identify the areas of the state where improvements in access to telemedicine would be most effective in reducing the costs of Medicaid. Allows the department to enter into agreements with IHS providers if necessary to improve access to telemedicine facilities and equipment.

Subsection (d): Requires the department to prepare and submit a report around reforms, savings and costs related to the Medicaid program on or before October 15 of each year.

Subsection (e): Provides a definition for telemedicine.

Section 18 *(page 22-23)* *Previously CS SB 78(FIN) Section 17 (Amended)*

AS 47.07.030(d)

Amends to require DHSS to implement the primary care case management system. The purpose of this new system is to increase Medicaid enrollees' use of primary and preventive care, while decreasing the use of specialty care and hospital emergency department services.

Section 19 *(page 23-24)* *Previously CS SB 78(FIN) Section 12 (Amended)*

AS 47.07.036

Amends by adding new subsections (d) – (f) to outline cost containment and reform measures DHSS may undertake, including seeking demonstration waivers related to innovative service delivery models, applying for other options under the Social Security Act to obtain or increase federal match, and improving telemedicine for Medicaid recipients. This section also requires DHSS to apply for an 1115 waiver for a demonstration project for one or more groups of Medicaid recipients in one or more geographic area. The demonstration project may include managed care organizations, community care organizations, patient-centered medical homes, or other innovative payment models.

Section 20 *(page 24-27)*

AS 47.07.038. Collaborative, hospital-based project to reduce use of emergency department services. *Previously CS SB 74(STA) Section 6 (Amended)*

Requires the department to partner a statewide professional hospital organization to design and implement a demonstration project to reduce non-urgent use of emergency departments by Medicaid recipients.

AS 47.07.039(a) *New Section*

Requires DHSS to solicit and contract with one or more third-party entities for coordinated care demonstration projects for individuals who qualify for Medicaid benefits on or before December 31, 2016. DHSS may use an innovative procurement process as described under AS 36.30.308. A proposal for considers must include one or more of the following:

(1) Comprehensive primary-care-based management, including behavioral health services
(2) Care coordination, including the assignment of a primary care provider located in the local geographic area of the recipient
(3) Health promotion
(4) Comprehensive transitional care and follow-up care after inpatient treatment
(5) Referral to community and social support services, including career and education training services
(6) Sustainability and the ability to replicate in other regions of the state
(7) Integration and coordination of benefits and services
(8) Local accountability for health and resource allocation

AS 47.07.039(b)

Establishes a project review committee for proposals submitted under (a) of this section. The committee is comprised of:

1) The DHSS commissioner or their designee
2) The director of the Division of Insurance, DCCED or their designee
3) The CEO of the Alaska Mental Health Trust Authority or their designee
4) Three representatives of stakeholder groups appointed by the Governor
5) A Non-voting member of the Senate appointed by the Senate President
6) A Non-voting member of the House of Representatives appointed by the Speaker of the House of Representatives

AS 47.07.039(c)
Grants DHSS authority to contract with third-parties to implement the demonstration projects listed under (a) of this section that include managed care organizations, primary care case managers, accountable care organizations, prepaid ambulatory health plan, or a provider-led entity. Requires a per capita fee and allows for value payment models.

AS 47.07.039(d)
Requires any project under (a) to include cost-saving measures including the expanded use of telemedicine for primary care, urgent care, and behavioral health services.

AS 47.07.039(e)
Requires DHSS to contract with a third-party actuary to review demonstration projects after one year of implementation and make recommendations for the implementation of a similar project on a statewide basis. One or before December 31, 2018, and each year thereafter, the actually shall submit a final report to the DHSS for any project that has been in operation for at least one year.

AS 47.07.039(f)
Directs DHSS to prepare a plan regarding regional or statewide implementation of a coordinated care project based on the results of the demonstration projects under this section. Requires DHSS on or before June 30, 2019 to submit a report to the legislature on any changes or recommendations for wider regional or statewide implementation.

AS 47.07.039(g)
Refers to the definition of telemedicine in AS 47.05.270(e)

Section 21 *(page 27-28)* *Previously CS SB 74(STA) Section 7*

AS 47.07.076 Report to legislature.
Requires the department and the attorney general to annually prepare a report regarding fraud prevention, abuse, prosecution, and vulnerabilities in the Medicaid program.

Section 22 *(page 28)* *Previously CS SB 78(FIN) Section 13 (Amended)*

47.07.900(4)
Amends Medicaid Administration definitions, by removing the grantee status requirement for outpatient mental health clinics serving Medicaid patients.

Section 23 *(page 28-29)* *Previously CS SB 78(FIN) Section 14 (Amended)*

AS 47.07.900(17)
Amends by removing the grantee/contractor status requirement from drug and alcohol treatment centers and outpatient mental health clinics. This change, and the one in the previous section, allows mental health and drug treatment service providers who do not receive grants from the department to become enrolled Medicaid providers and deliver services to Medicaid recipients.

Section 24 *(page 29)* *Previously CS SB 78(FIN) Section 15*

Uncodified: Indirect Court Rule Amendments.

Adds a new section to outline court rule amendments as a result of the enactment of section 3 and 17.

Section 25 *(page 30)* *Previously CS SB 78(FIN) Section 16 (Amended)*

Uncodified: Implement Federal Policy on Tribal Medicaid Reimbursement.

Requires DHSS to collaborate with Alaska Tribal health organizations and the U.S. DHHS to implement new federal policy regarding 100% federal funding for services provided to Medicaid-eligible American Indian and Alaska Native individuals within six months of the rule change being finalized. Requires DHSS to report to the co-chairs of Finance the estimated savings and calculations of savings to the state general fund within thirty days of the rule being finalized.

Section 26 *(page 30-31)* *Previously CS SB 78(FIN) Section 18*

Uncodified: Health Information Infrastructure Plan.

Requires DHSS to develop a plan to strengthen the health information infrastructure, including health data analytics capability, to support transformation of the health system in Alaska.

Section 27 *(page 31)* *Previously CS SB 74(STA) Section 9 (Amended)*

Uncodified: Department of Health and Social Services Feasibility Study.

(a) Requires the department to conduct a study analyzing the feasibility of privatizing the Alaska Pioneers' Homes and select facilities of the division of juvenile justice.

(b) Requires the Alaska Mental Health Trust Authority to conduct a study analyzing the feasibility of privatizing the Alaska Psychiatric Institute.

(c) Requires the Legislative Audit and Budget Committee to conduct a study analyzing the feasibility of creating a Health Care Authority that manages a single community-related risk pool for all State of Alaska Employees, State of Alaska retirees, Teacher retirees, Medicaid Assistance recipients, and active school district employees.

Section 28 *(page 31-32)* *Previously CS SB 74(STA) Section 10*

Uncodified: Medicaid State Plan; Waivers; Instructions; Notice to Revisor of Statutes.

Requires the department to amend the state Medicaid plan and apply for any waivers necessary to implement the projects and programs described in the bill. Requires the Commissioner of Health and Social Services to certify to the revisor of statutes federal approval of specified measures.

Section 29 *(page 32)* *Previously CS SB 74(STA) Section 11*

Uncodified: Transitions: Regulations.

Allows the department to adopt regulations necessary to implement the changes made by the Act. The regulations may not take effect before the dates the relevant provision of the Act takes effect.

Section 30 *(page 32-33)*

Uncodified: Conditional effect. *Previously CS SB 74(STA) Section 12*

Conditional effects.

Previously CS SB 78(FIN) Section 23

Provides that Section 4 is effective conditional on Section 15 receiving a two-thirds majority vote. The new sections of law creating the civil Medicaid false claims act do not take effect unless the indirect court rule change sections of the bill receive the necessary two-thirds vote.

Section 31-37 *(page 33)* *Previously CS SB 74(STA) Section 13-17*

Effective Dates

Provides for effective dates