

March 21, 2016

Honorable Mark Neuman
Honorable Steve Thompson
House Finance Committee
State Capitol, 5th Floor
Juneau, AK 99801

Dear Representatives Neuman and Thompson:

We thank you in advance for the opportunity to provide written comments to the proposed Senate Bill No. 74 (FIN) ("The Bill"). In our opinion, there are several positive aspects to the proposed legislation. On the other hand, the Bill as proposed, includes several provisions that will result in unintended consequences, severely impacting Alaskans and local businesses.

We have taken the liberty of proposing certain changes to The Bill, in order to mitigate some of these unintended consequences. Please note these comments below:

Sec. 10, Chapter 58: FALSE CLAIMS, PENALTIES AND LEGAL FEES ISSUE:

We believe that the addition of penalties, interest, cost, attorneys fees, etc. to Sec. 09.58.010, in any case less than actual "fraud" can result in very significant negative consequences and potential abuse of power on the part of private auditors or the Department.

As you will note, the language in that section refers to "false" claims. This term is not properly defined, and as such it can easily be misinterpreted. In many cases, the concept of "overpayment" due to "false" claims is combined with the concept of "fraud" or "fraudulent claims". However, these two concepts are different from each other and to treat them in like manner gives rise to significant conflict between providers and the Department.

This is especially true, since the private auditors used by the Department to conduct audits will often have perverse incentives, since they are often compensated by the total amount of their own initial finding of liability due to "overpayment". As such, these auditors have all the upside and no downside whatsoever, to throw a variety of potential overpayment claims at providers, just to see what sticks at some future time.

"Overpayment" due to "false" claims is often subject to a wide range of interpretations, where well-meaning people can disagree as to the actual requirements of a single provision in the regulations. Unfortunately, in the past where we have asked the Department for their

interpretation of a particular provision, we have either received no response or the most extreme interpretation possible.

As a result, while the proposed language in the bill related to penalties, interest, attorney fees, etc. may on its face seem innocuous (after all who would disagree that “fraud” should be punishable with penalties), in practice when fraud gets lumped in with “overpayment”, things get very messy. In those cases, if the State has such huge leverage over providers, it completely changes the dynamics of settlement discussions between providers and the Department.

Proposed change of language in Sec. 10, 09.58.010 (a)(1) through (5):

Remove the term “false” from the sections, and limit the penalties to cases of “fraud”.

Add subsection (e) to 09.58.010 (f):

“If a Provider submits specific questions seeking clarification from The Department regarding the interpretation of a regulation or a requirement, wherein such inquiry can avoid a future claim of “overpayment”, the Department shall provide specific response within 45 days of receipt of such inquiry.”

Sec. 17: PHARMACY MANAGED CARE LANGUAGE: Section 17 proposes to amend AS 47.05 by adding new section 47.05.270 requiring the adoption of regulations to design and implement the medical assistance reform program. The proposed language is intended to maximize the benefit that pharmacy initiatives can add to the program. Again, we full-heartedly support the shift to policies that produce better outcomes, better care, and lower costs. In fact, we want to expand this language to include pharmacy services that have an absolutely irrefutable 10x1 return on ROI, relative to lower hospitalization, lower readmissions and better overall health outcomes. As such, we propose the addition of the following language:

Proposed added language for 47.05.270(a)(6):

“ (a)(6) pharmacy initiatives, *including paid Comprehensive Medication Review, use of pharmacy transitional services by hospitals, and other services with a proven record of reducing hospitalization and readmissions*”.

Sec. 18: CONTROLLED SUBSTANCE DATABASE CHECK ISSUE: Section 18 proposes that AS 17.30.200(k) be amended. We note that Class V drugs were removed. That’s a positive

change. However, for a "Long Term Care" pharmacy which provides high volume of medication to chronically-ill patients who are under the supervision of physicians, the requirement of including all schedule III and IV medication seems excessively burdensome. We propose the following addition, in order to account for "long term care" patients under the care of physicians and a clinical "Long Term Care" pharmacy:

Proposed added exception (E) to Sec. 18. AS 17.30.200(k)4(E):

"by a clinical pharmacy providing medication reconciliation and other medication review processes, and that dispenses medication in compliance packaging designed to manage access and adherence, except as it relates to schedule [IA or IIA CONTROLLED SUBSTANCE UNDER STATE LAW OR A SCHEDULE II] controlled substance under federal law."

Sec. 23: COMPETITIVE BID ISSUE: Section 23 proposed to amend AS 47.05.015 to clarify the department's ability to enter into a competitively bid contract for durable medical equipment. We concur with the clarification, but believe it must be to a company serving Alaskan patients in all aspects of durable medical equipment. If select portions of service are allowed to be removed, with only very low or negative margin services remaining, local providers will be forced to stop providing those services, negatively impacting Alaskans. This is a simple policy issue: There is simply no way that the State can expect Alaskan companies to be left with a few crumbs, while still being able to serve the needs of the residents, while the high volume items are outsourced to an out-of-state provider.

Proposed added language to 47.05.015(e):

"(e) Notwithstanding (c) of this section, the department may enter into a contract with an Alaska-based Medicaid and Medicare-enrolled provider through the competitive bidding process under AS 36.30 (State Procurement Code) for medical assistance..."

Thank you for your attention to these very important matters.

Best regards,



Dan Afrasiabi
CEO

cc Senator Pete Kelly