

**TESTIMONY OF DAVE DONLEY
REPRESENTING HOPE COMMUNITY RESOURCES
REGARDING SB74 MEDICAID REFORM MARCH 29, 2016
IN THE HOUSE FINANCE COMMITTEE 3.29.16**

Hope Community Resources Inc., comments on SB74 Medicaid False Claims and Reporting Act

Members of the House Finance committee:

Hope community resources supports the state's efforts toward Medicaid reform and appreciates the work that has gone into SB74. We were disappointed to learn last week that the language contained in the false claims and reporting act has been submitted for federal approval months ago, without the opportunity for public comments and input.

We remain concerned that the current language does not adequately protect honest providers against liability for the bad acts of rouge employees and provides insufficient protections for self-reporting and self-correction of problems. The vast majority of Medicaid providers seek to provide quality services and are the first line of defense against false claims and fraud against Medicaid. Many providers are nationally accredited and have implemented policies designed to prevent false claims and maintain integrity of the service delivery system.

The senate, instead of addressing some of our specific suggestions, chose to place a three year sunset on portions of the Medicaid fraud act section. We are grateful for that sunset provision but continue to believe it would be much better to address the specific concerns prior to passing new law.

We believe we and other providers have asked for very reasonable safeguards for honest law abiding providers. We regret if our suggestions cannot now be considered due to the pending federal approval of the existing language.

It is unclear to me what differences might be allowed in the federal investigator general review process. We have reviewed the many pages of guidelines and find them unclear regarding how much flexibility in some of the federally mandated language is allowed.

This raises the question of if it is worth it for a 5% or maybe sometimes 10% increase in fraud recovery amounts for the state to not attempt to address reasonable concerns raised by the public?

We suggest it be better public policy to first attempt to work out concerns with Alaskan stakeholders, draft language that better fits Alaska, and then submit it to the feds to see if they will approve it and if not then negotiate changes with the federal authorities and bring that language back to the legislature for approval?

SB74 REQUESTED AMENDMENTS

1. Self-reporting protections for providers within Medicaid Fraud Act.

Sec 3. AS 09.58.010 (b) (p7) to read:

A beneficiary of an intentional or inadvertent submission of a false or fraudulent claim under the medical assistance program who later discovers the claim is false or fraudulent shall disclose the false or fraudulent claim to the state nor later than 60 days after discovering the false claim. **The department of health and social services may not assess interest or penalties on an overpayment self- identified and repaid by a medical assistance provider under this section.**

There was testimony last week by state officials that similar language at page 23, Section 27 would apply to the Fraud Act sections but how that would work is unclear since the Fraud Act seems to stand alone.

2. More precise definition of “agent” as used in Sec. 09.58.010(e).

Page 14, Sec. 10, Sec. 09.58.100 Definitions

Add the following definition of “agent”

“agent with apparent authority” does not include someone acting in violation of the policies or instruction of the principal provider without that provider’s knowledge.

3. Protections from liability from actions of rogue employees.

Page 8, Sec. 10, Sec. 09.58.010(e) to read:

Sec. 09.58.010 False claims for medical assistance; civil penalty.

(e) A corporation, partnership, or other individual is liable under this chapter for acts of its agents if the agent acted with apparent authority, regardless of whether the agent acted, in whole or in part, to benefit the principal and regardless of whether the principal adopted or ratified the agent’s claims, representations, statement, or other action or conduct, **unless the evidence shows that the agent or apparent agent acted with intent to deceive the principal.**

Contact: Dave Donley 907-561-8234 / dd1@gci.net