



**State of Alaska
Department of Law**

House Finance

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Department of Law's Presentation on Medicaid Issues

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Topic One

Xerox Litigation

Xerox Contract

- In 2007, DHSS contracted with Xerox to develop and operate a new Medicaid Management Information System for the State of Alaska.
- There are two major parts of this contract:
 - The design and development of the system
 - The operation of the system

Purpose of Litigation

- The claim filed in September 2014 focused on getting Xerox to provide a fully operational system. DHSS did not terminate the contract and has continued to work closely with Xerox to fix the system.
- The litigation appears to have motivated Xerox to prioritize its Alaska project and has resulted in significant improvements. As Ms. Brodie testified, since the claim was filed, Xerox has developed and implemented a corrective action plan to improve claims processing and resolve system defects.

Status of Litigation

- As noted above, Xerox and DHSS agreed to a “go live” date of October 1, 2013.
- As noted by Ms. Brodie, significant problems were identified immediately. DHSS worked with Xerox over the ensuing year to achieve improvement but to little or no avail.
- Per the contract, the parties engaged in a two-day mediation in September 2014. This mediation was not successful.

Status of Litigation

- On September 22, 2014, DHSS filed a contract claim with the Commissioner of Administration which was referred to the Office of Administrative Hearings. The claim sought the following relief:
 - Development of an acceptable corrective action plan
 - Completion and correction of deliverables necessary for a fully operational system that can be certified by the federal government
 - Payment of liquidated damages and other damages resulting from the delays and lack of functionality

Status of Litigation

- A hearing on the liquidated damages was held on February 18 and 19, 2015.
- A hearing on the breach of the contract was scheduled for August 2015.
- On April 2, the administrative law judge stayed the case. The parties agreed to stay the case until August 24, 2015 to allow Xerox to complete its work under the corrective action plan and other deferred work, and to allow DHSS to evaluate the system for acceptance.

Acceptance

- On or before July 31, 2015, the parties are to meet and establish whether the system is acceptable to DHSS, meaning that all major defects have been resolved, all deliverables are complete, and Xerox can be released from the implementation phase of the contract and allowed to focus solely upon operations.
- This means that DHSS will have to determine that the system is functioning at a level and degree that meet its core business needs. But this does not mean that DHSS is the sole arbiter for acceptance—DHSS is in contact with the federal government to assure that their determination of acceptance meets the federal standard so that the system will be certified.

Certification

- Once the system is accepted, DHSS will seek certification for the system. Certification relates to the federal matching for the development and operation of the system, not to the federal match for the payment of services.
- For example:
 - For development of a new MMIS system, the federal government pays 90% of that cost, the state pays 10%
 - For operation of the MMIS system, the federal government pays 75% of that cost and the state pays 45%

Certification

- Currently the federal government is only paying 50% of the cost of the development and is paying 50% of the operation. Once the system is certified the federal government will reimburse the state to the full match noted above, e.g, the additional 40% for design and 25% for operation. And this payment is retroactive.
- Thus, certification relates to funds expended by the state to build and operate the new system and does not impact provider payments for federal match related to those payments.

Topic Two

Other Litigation

State Litigation

Filipino American Assisted Living Providers Association v. DHSS:

This class action complaint for injunction, damages, and declaratory relief related to DHSS' efforts to engage in cost-based rate setting for assisted living home operators.

State Litigation

Putnam and Brown v. State of Alaska, DHSS, DSDS:

Litigation filed on behalf of two Medicaid nursing home recipients, requesting a preliminary injunction, and declaratory and injunctive relief arguing that the notices sent by DHSS violated due process because they did not engage in a material improvement analysis/process similar to what is done when terminating a person from home and community-based waivers under AS 47.07.045.

State Litigation

Henderson v. DHSS, DHCS:

Litigation related to the DHSS' protocols regarding the approval for prior authorization for the hepatitis C drug Sovaldi violated federal and state law. The drug in question is Sovaldi, a relatively new treatment for hepatitis C with a high rate of success in patients with the disease, along with a cost of \$84,000 for each course of treatment. At issue is whether the criteria were properly adopted under the Administrative Procedures Act, whether the policy unjustly discriminates in violation of 42 CFR 440.230(c), and whether the notice of denial comports with due process.

State Litigation

Nafalhu v. SDS:

Litigation related to the Division of Senior and Disabilities Services (SDS) alleging that the process used by SDS to determine eligibility for personal care services violates due process because eligibility is not based solely upon the assessment but is put through a quality control system to assure the accuracy of the assessment in light of all other factors, such as medical diagnoses and medical records.

Federal Litigation

King v. Burwell

The issue is whether a person who purchases insurance on an exchange established by the federal government, instead of on an exchange established by a state, is authorized to get tax credits under Obamacare.

Only 16 states have their own exchange; the remaining states have relied upon the federal exchange. It is estimated that at least 5 and maybe as many as 8 million people will lose their tax credits, if the Court finds that the tax credits do not apply to insurance purchased on the federal exchange.

King v. Burwell

This case will have little to no impact on the expansion population. It will however, impact, Alaska residents who have signed up for insurance through the federal exchange and are receiving credits. DHSS has stated that there are 21,260 Alaskan's enrolled on the federal insurance exchange; 90% of whom qualify for some sort of assistance/tax credit.

A decision is expected before July 1, 2015.

Federal Litigation

Scott v. DSS

On April 29, 2015, Governor Rick Scott, filed suit against the federal Government related to its decision to defund the Low Income Pool, a grant program authorized by the federal government to assist in offsetting cost of care for persons who do not qualify for Medicaid.

Florida receives 1.3 billion to help hospitals cover the cost of care for uninsured persons. The federal Government decided not to re-issue the grant that paid for the Low Income Pool arguing that those persons should be covered by Medicaid expansion.

Governor Scott filed suit arguing that this reduction of the grant was akin to the coercion argument that was struck down by the US Supreme Court in the *Sebelius* case in 2010.

The federal government stated that the program was temporary and had been previously set to expire in June. The pool funding shouldn't be used to pay for costs that would be covered by an expansion of Medicaid.



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Topic 3

Alaska Medicaid Fraud Control Unit

Introduction

- Omnibus Budget Reconciliation Act 1993
 - Requires states to establish Medicaid Fraud Control Units (MFCU)
 - Sets performance standards and guidelines
 - Minimum personnel requirements
- Federal Financial Participation (FFP) grant
 - Funds 75% of MFCU costs

Medicaid Fraud Control Unit

MFCU investigates and prosecutes:

- Medical Assistance Fraud:
- Allegations of abuse or neglect
- Financial exploitation or misappropriation of patient assets

MFCU LIMITATIONS

- Non-Medicaid cases
- Investigating or prosecuting recipient fraud
- Data mining

MFCU Collaboration with DHSS

- Coordination Between
 - Program Integrity
 - Quality Assurance (SDS)
 - Health Care Services QA
 - Behavioral Health QA
 - Department of Law – Civil Division
- Identify Problems or Limitations
 - Criminal vs. Civil Action
 - Regulation modification

Collaboration with other Agencies

- Office of Inspector General (OIG) Agents
- FBI
- Immigrations and Customs Enforcement
- Other Federal Agencies (SSA, DEA, USPS)
- Alaska State Troopers
- Municipality of Anchorage & APD
- Dept. of Labor
- Dept. of Commerce
- Dept. of Corrections

Results

- 102 Criminal Cases Filed since FFY 2012
 - 80 Criminal Convictions
 - Suspension from providing Medicaid services
 - 8 civil resolutions – limitation on providing services
- Restitution Judgments totaling \$2,806,369.70
- Pending Cases:
 - Number of pending and ongoing investigations
 - Potential Restitution: \$4 million in pending criminal cases

Results Cont.

- 121 suspensions of Medicaid providers based on credible allegation of fraud
 - 114 Individual PCAs
 - 4 PCA agencies
 - Transportation service provider
 - Two medical practices

Cost Savings

■ Estimated Savings: \$30 Million

- FFY 2013: \$461,805
- FFY 2014: \$18,089,187
- FFY 2015: \$12,154,541

Funding

ITEM	2012 FFY	2013 FFY	2014 FFY	2015FFY
Total Expenses	\$854,709	\$937,557	\$1,105,990	
Federal Funding - 75%	\$641,032	\$703,168	\$829,493	
State Share - 25%	\$213,677	\$234,389	\$276,497	
Fines	\$3,018	\$24,250	\$32,750	\$10,500
Restitution	\$8,020	\$57,799	\$450,308	\$1,694,010
National Civil Cases	\$1,502,463	\$1,039,835	\$6,365,281	\$63,174
ROI	7.08	4.7	24.7	
# Investigative Staff	4-7	7	7	7
# Convictions	2	21	51	6

Civil Recoveries

2 attorneys/1.5 paralegals

	2012	2013	2014	2015
Third party subrogation	\$1,546,427.13	\$1,879,876.29	\$1,165,688.17	\$560,371.39
Estate recovery	\$343,222.82	\$621,611.96	\$433,110.86	\$12,464.43
Trust Recovery	\$1,942,810.16	\$320,688.08	\$158,699.03	\$14,151.42
Audit	\$253,129.07	\$433,110.86	\$663.105.35	\$369,277.09

Reform

- Collaboration to achieve/implement reform
 - Interest Penalties on Overpayments (HB 148)
 - Civil fines on providers for regulation violations (HB 148)
 - Revisions to Personal Care Attendant Program (draft regulations pending)
 - Revisions to durable medical equipment program (regulations pending)
 - HB 161, pending transmittal to Governor for signature