



LAWS OF ALASKA

2006

Source

SCS CSHB 426(FIN)

Chapter No.

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

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2 relating to subrogation, assignment, and lien rights and notices for medical assistance claims;
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4 income diversion by medical assistance applicants; relating to assets and Medicare enrollment
5 as they affect medical assistance coverage; relating to home and community-based services;
6 relating to medical assistance applications for persons under 21 years of age; requiring a
7 report by the Department of Health and Social Services; and providing for an effective date.

8

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

10 **Sec. 21.09.240. Cooperation with the Department of Health and Social**
11 **Services.** An insurer, including a pharmacy benefits manager, with respect to medical

1 assistance programs under AS 47.07, shall cooperate with the Department of Health
2 and Social Services to

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

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

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

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

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

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

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

26 (b) **When** [IF] the department provides or pays for medical assistance for
27 injury or illness under this title, the department is subrogated to **not more than the**
28 **part of an insurance payment or other recovery by the recipient that is for**
29 **medical expenses provided by the department** [THE RIGHTS OF THE
30 RECIPIENT OF THAT MEDICAL ASSISTANCE FOR ANY CLAIM ARISING
31 FROM THE INJURY OR ILLNESS AND TO THE PROCEEDS OF AN

1 INSURANCE POLICY COVERING THE INJURY OR ILLNESS TO THE
2 EXTENT OF THE VALUE OF THE MEDICAL ASSISTANCE PROVIDED. A
3 RECIPIENT OF MEDICAL ASSISTANCE OR THE RECIPIENT'S ATTORNEY
4 MUST NOTIFY THE DEPARTMENT IN WRITING OF ANY ACTION OR
5 CLAIM AGAINST A THIRD-PARTY PAYOR IF MEDICAL ASSISTANCE WAS
6 PROVIDED BY THE DEPARTMENT TO TREAT AN INJURY OR ILLNESS FOR
7 WHICH THE THIRD PARTY MAY BE LIABLE]. Notwithstanding the assertion of
8 any action or claim by the recipient of medical assistance, the department may bring
9 an action in the superior court against an alleged third-party payor to recover an
10 amount subrogated to the department for medical assistance provided on behalf of a
11 recipient.

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

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

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

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

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

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

31 **Sec. 47.05.072. Duty of attorney for medical assistance recipient.** (a) An

1 attorney representing a medical assistance recipient shall notify the attorney general's
2 office.

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

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

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

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

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

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

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

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

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

30 (b) A medical assistance recipient may not place any payment as a result of a
31 judgment, award, or settlement of an action or claim for which another person was

1 legally obligated to pay because of injury or illness into any trust for the purpose of
2 maintaining public assistance or medical assistance eligibility without first making
3 repayment to the department for costs of past medical assistance services provided to
4 the medical assistance recipient related to that action or claim.

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

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

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

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

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

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

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

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

28 (f) A person may not be denied eligibility for medical assistance under this
29 chapter on the basis of a diversion of income **or transfer of assets**, whether by
30 assignment or after receipt of the income, into a Medicaid-qualifying trust **or annuity**
31 that, according to a determination made by the department,

1 (1) has provisions that require that the state will receive all of the trust
2 **or annuity** assets remaining at the death of the individual, subject to a maximum
3 amount that equals the total medical assistance paid on behalf of the individual; and

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

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

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

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

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

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

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

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

29 (n) Except as provided under 42 U.S.C. 1396p(f) and 42 U.S.C. 1396u-1, the
30 department shall include as an asset for eligibility purposes the value of an applicant's
31 home if the equity value in the home exceeds \$500,000 at the time the application is

1 completed. Nothing in this subsection prohibits an applicant from reducing the equity
2 value in the applicant's home by selling the home or by taking out a loan that affects
3 the equity.

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

5 **Sec. 47.07.045. Home and community-based services.** (a) The department
6 may provide home and community-based services under a waiver in accordance with
7 42 U.S.C. 1396 - 1396p (Title XIX, Social Security Act), this chapter, and regulations
8 adopted under this chapter, if the department has received approval from the federal
9 government and the department has appropriations allocated for the purpose. To
10 supplement the standards in (b) of this section, the department shall establish in
11 regulation additional standards for eligibility and payment for the services.

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

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

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

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

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

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

30 (A) a child with complex medical conditions, no longer needs
31 technical assistance for a life-threatening condition, and is expected to be

1 placed in a skilled nursing facility for less than 30 days each year;

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

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

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

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

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

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

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

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

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

31 (3) maximize all third-party resources available to pay for the cost of services

1 provided by mental health treatment facilities located in the state and outside the state,
2 including community mental health facilities, residential psychiatric treatment centers, and
3 substance abuse treatment facilities, before a provider seeks reimbursement under AS 47.07.

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

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

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

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

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

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

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

20 * **Sec. 16.** Except as provided in secs. 14 and 15 of this Act, this Act takes effect July 1,
21 2006, or on the date of notification under sec. 13 of this Act of federal approval of a revised
22 state plan for medical assistance coverage incorporating the changes made by secs. 1 - 7 and 9
23 of this Act, whichever is later.