

**CS FOR HOUSE BILL NO. 325(HES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 2/28/00

Referred: Judiciary, Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to priorities, claims, and liens for payment for certain medical  
2 services provided to medical assistance recipients; and providing for an effective  
3 date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 \* **Section 1.** AS 34.35.460 is amended by adding a new subsection to read:

6 (b) A hospital or the owner or operator of a hospital, or a physician or licensed  
7 special nurse who files a notice of lien under (a) of this section for hospitalization or  
8 services provided to a recipient of medical assistance under AS 47 shall mail a copy  
9 of the notice of lien to the unit of the Department of Health and Social Services that  
10 administers medical assistance for needy persons under AS 47. The copy must be sent  
11 by certified mail no later than 30 days after the filing of the notice of lien under (a)  
12 of this section.

13 \* **Sec. 2.** AS 34.35 is amended by adding a new section to read:

14 **Sec. 34.35.481. Priority of liens.** A lien perfected by the Department of

1 Health and Social Services under AS 47.05.075 has priority over a lien perfected by  
2 a hospital, nurse, or physician under AS 34.35.450 - 34.35.480.

3 \* **Sec. 3.** AS 44.77.015(a) is amended to read:

4 (a) For the purposes of filing claims for medical services provided under  
5 AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means [(1)  
6 WITHIN SIX MONTHS AFTER THE DATE OF SERVICE, OR AS PROVIDED IN  
7 (b) OF THIS SECTION, IF THERE IS NO THIRD-PARTY CLAIM, OR (2)] within  
8 12 months after the date of service or as provided in (b) of this section [IF THERE  
9 IS A THIRD-PARTY CLAIM]. Except as provided in (c) of this section, a claim may  
10 not be paid if it is not filed promptly; an inference to the contrary may not be drawn  
11 from AS 09.10.053, AS 09.50.250 - 09.50.300, or AS 37.25.010.

12 \* **Sec. 4.** AS 44.77.015(b) is amended to read:

13 (b) In accordance with (a) of this section, a claim may be considered to be  
14 filed promptly if (1) the claim was filed more than 12 [SIX] months after the date of  
15 service because the medical provider had reason to believe that the beneficiary was  
16 ineligible for service under AS 47.07 or AS 47.25.120 - 47.25.300; (2) a court of  
17 competent jurisdiction or an administrative hearing officer finds that the beneficiary  
18 was eligible for service under AS 47.07 or AS 47.25.120 - 47.25.300 on the date of  
19 service; and (3) the claim is filed within 12 [SIX] months after the date that the court  
20 or administrative finding is rendered. The beneficiary is responsible for notifying the  
21 medical provider of the judicial or administrative finding. The department shall make  
22 a good faith effort to notify the medical provider of the judicial or administrative  
23 finding if the department has reason to believe that services have been provided to the  
24 beneficiary.

25 \* **Sec. 5.** AS 44.77.015(c) is amended to read:

26 (c) The commissioner of health and social services may authorize payment to  
27 a medical provider of a claim not promptly filed, upon good cause shown.  
28 [PAYMENTS UNDER THIS SUBSECTION MAY NOT EXCEED 50 PERCENT OF  
29 THE ALLOWABLE CHARGES PRESENTED IN THE CLAIM.]

30 \* **Sec. 6.** AS 47.05.070 (b) is amended to read:

31 (b) If the department provides or pays for medical assistance for injury or

1 illness under this title, the department is subrogated to the rights of the recipient of that  
 2 medical assistance for any claim arising from the injury or illness and to the proceeds  
 3 of an insurance policy covering the injury or illness to the extent of the value of the  
 4 medical assistance provided. **A recipient of medical assistance must notify the**  
 5 **department in writing of any action or claim against a third-party payor if**  
 6 **medical assistance was provided by the department to treat an injury or illness**  
 7 **for which the third party may be liable. Notwithstanding the assertion of any**  
 8 **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**  
 11 **of a recipient.**

12 \* **Sec. 7.** AS 47.05.070(c) is amended to read:

13 (c) If a recipient of medical assistance under this title settles a claim or obtains  
 14 an award or judgment arising from the injury or illness for which the medical  
 15 assistance was received, the **amount of the claim to which the department is**  
 16 **entitled under (b) of this section shall be reduced by a pro rata share of the**  
 17 [DEPARTMENT SHALL REIMBURSE THE RECIPIENT FOR] attorney fees and  
 18 **litigation** costs [COMMENSURATE WITH THE AMOUNT OF THE SETTLEMENT,  
 19 AWARD, OR JUDGMENT TO WHICH THE DEPARTMENT IS ENTITLED  
 20 UNDER (b) OF THIS SECTION]. Regardless of the manner in which the amount of  
 21 the attorney fees is derived **in the particular case, the pro rata reduction of the**  
 22 **subrogated claim for** [,] reimbursement of attorney fees shall be **calculated** in  
 23 accordance with the applicable rules of court governing the award of attorney fees in  
 24 civil matters.

25 \* **Sec. 8.** AS 47.05.070 is amended by adding new subsections to read:

26 (e) Notwithstanding (b) of this section, the department may waive the  
 27 subrogation rights to all or part of the amount of medical assistance paid on behalf of  
 28 a recipient of medical assistance in cases of undue hardship.

29 (f) The department may adopt regulations to interpret and implement this  
 30 section.

31 \* **Sec. 9.** AS 47.05 is amended by adding a new section to read:

1           **Sec. 47.05.075. Medical assistance lien.** (a) The department has a lien upon  
 2 any sum that may be due to the recipient of medical assistance from a third-party  
 3 payor. The lien is in the amount of the medical assistance paid for medical services  
 4 under this title, together with reasonable attorney fees and litigation costs incurred in  
 5 the enforcement of the lien.

6           (b) A lien against a sum due from a third-party payor for medical services  
 7 provided to a recipient of medical assistance under this title attaches and is effective  
 8 upon filing with a recorder's office in any recording district in the state. However, a  
 9 lien filed under this subsection is not perfected and has no effect unless notice of filing  
 10 of the lien is served by the department upon the third-party payor, personally or by  
 11 registered, certified, or insured mail, return receipt requested.

12           (c) If a recipient of medical assistance under this title settles a claim or obtains  
 13 an award or judgment arising from the injury or illness for which the medical  
 14 assistance was received, the amount of the lien to which the department is entitled  
 15 under (a) of this section shall be reduced by a pro rata share of the attorney fees and  
 16 litigation costs. Regardless of the manner in which the amount of the attorney fees is  
 17 derived in the particular case, the pro rata reduction of the lien shall be calculated in  
 18 accordance with the applicable rules of court governing the award of attorney fees in  
 19 civil matters.

20           (d) A perfected lien under this section has priority over a lien perfected by a  
 21 hospital, nurse, or physician under AS 34.35.450 - 34.35.480.

22 \* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section  
 23 to read:

24           **APPLICABILITY.** (a) Sections 3 - 5 of this Act apply to all claims for medical  
 25 services provided under AS 47 to a recipient of medical assistance that are submitted to the  
 26 Department of Health and Social Services on or after the effective date of this Act.

27           (b) Except as provided in (a) of this section, this Act applies to all claims for medical  
 28 services that are provided under AS 47 to a recipient of medical assistance on or after the  
 29 effective date of this Act.

30 \* **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).