

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 41

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATORS GREEN, Taylor, Dyson, Ben Stevens, Ogan, Cowdery, Seekins, Wagoner, Wilken

Introduced: 2/26/03

Referred: Health, Education and Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to medical care and crimes relating to medical care, including medical
2 care and crimes relating to the medical assistance program."

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

4 * **Section 1.** AS 17.30.080 is amended to read:

5 **Sec. 17.30.080. Unlawful administration, prescription, and dispensation of**
6 **controlled substances.** (a) A controlled substance classified under federal law or in a
7 schedule set out in AS 11.71.140 - 11.71.190 may not be administered, prescribed,
8 dispensed, or distributed other than for a [MEDICAL] purpose **that is solely medical.**
9 **A person otherwise authorized may not administer, prescribe, dispense, or**
10 **distribute a controlled substance classified under federal law or in a schedule set**
11 **out in AS 11.71.140 - 11.71.190 unless the substance is reasonably necessary for**
12 **treatment of a person's illness, injury, or medical condition, and the**
13 **administration, prescription, dispensing, or distribution may only be provided**
14 **within the usual course of professional medical practice or research and in**

1 **accordance with a standard of medical care generally recognized and accepted**
 2 **within the medical profession in the United States.**

3 (b) A person who violates (a) of this section, or who otherwise manufactures,
 4 distributes, dispenses, or conducts research with a controlled substance in the state
 5 without fully complying with 21 U.S.C. 811 - 830 (Controlled Substances Act), and
 6 regulations adopted under those sections, is guilty of misconduct involving a
 7 controlled substance under AS 11.71.010 - 11.71.070 in the degree appropriate to the
 8 circumstances as described in those sections. **Upon filing a complaint, information,**
 9 **presentment, or indictment charging a Medicaid provider with misconduct**
 10 **involving a controlled substance under AS 11.71.140 - 11.71.190, the attorney**
 11 **general shall, in writing, notify the commissioner of health and social services of**
 12 **the filing.**

13 * **Sec. 2.** AS 17.30.080 is amended by adding new subsections to read:

14 (c) Upon receiving a notice from the attorney general under (b) of this section,
 15 the commissioner of health and social services shall immediately suspend payment
 16 for, and undertake a prepayment review of, all unpaid claims or requests for
 17 reimbursements attributable to services claimed to have been provided by the person
 18 charged.

19 (d) In this section, "claims" and "Medicaid provider" have the meanings given
 20 in AS 47.07.790.

21 * **Sec. 3.** AS 47.07.010 is amended to read:

22 **Sec. 47.07.010. Purpose.** It is declared **by the legislature** as a matter of
 23 public concern that the needy persons of this state **who are eligible for medical care**
 24 **at public expense under this chapter should** receive uniform and high quality
 25 medical care **that is appropriate to their condition and cost-effective to the state,**
 26 regardless of race, age, national origin, or economic standing. **It is equally a matter**
 27 **of public concern that providers of services under this chapter should operate**
 28 **honestly, responsibly, and in accordance with applicable laws and regulations in**
 29 **order to maintain the integrity and fiscal viability of the state's medical assistance**
 30 **program, and that those who do not operate in this manner should be held**
 31 **accountable for their conduct. It is vital that the department administer this**

1 **chapter in a manner that ensures effective, long-term cost containment while**
 2 **providing medically necessary services to recipients.** Accordingly, this chapter
 3 authorizes the **department** [DEPARTMENT OF HEALTH AND SOCIAL
 4 SERVICES] to apply for participation in the national medical assistance program as
 5 provided for under 42 U.S.C. 1396 - 1396p (Title XIX, Social Security Act).

6 * **Sec. 4.** AS 47.07.074(a) is amended to read:

7 (a) As a condition of obtaining payment under **this chapter, a provider**
 8 [AS 47.07.070, A HEALTH FACILITY] shall allow

9 (1) the department and the commission reasonable access to the
 10 financial records of medical assistance beneficiaries; and

11 (2) audit and inspection of financial records by state and federal
 12 agencies.

13 * **Sec. 5.** AS 47.07.074 is amended by adding new subsections to read:

14 (c) Each year, the department shall award a contract providing for independent
 15 financial audits in order to identify violations of criminal statutes by, or overpayments
 16 to, Medicaid providers. The audits may not be conducted by the department or
 17 employees of the department. The number of annual audits shall be determined by the
 18 department, but may not be fewer than four percent of all enrolled and participating
 19 providers, must include both on-site as well as desk audits, and must be of a variety of
 20 provider types. The department may not award a contract under this subsection to an
 21 organization that does not employ at least one person on the audit team who is an
 22 attorney licensed to practice law in this state, who has been engaged in the active
 23 practice of law in this state for at least five of the 10 years immediately preceding the
 24 award of the contract, and who has significant experience in criminal prosecutions; an
 25 attorney who meets these qualifications shall have ultimate authority on behalf of the
 26 audit team to decide the ratio of desk and on-site audits to the total number selected by
 27 the department and to select the providers to be audited, although the selections shall
 28 be made with the advice of the commissioner.

29 (d) Within 90 days after receiving each audit report, the department shall
 30 begin administrative procedures to recoup overpayments identified in the audits and
 31 shall allocate the reasonable and necessary financial and personnel resources to ensure

1 prompt recovery of overpayments unless the attorney general has advised the
 2 commissioner in writing that a criminal investigation of an audited provider has or is
 3 about to be undertaken, in which case the administrative procedure shall be held in
 4 abeyance until a final charging decision by the attorney general has been made.
 5 Copies of all audit reports shall be provided to the attorney general so that the reports
 6 can be screened for the purpose of bringing criminal charges.

7 (e) Each fiscal year, the state's share of recovered overpayments obtained
 8 because of an audit under this section shall be deposited with the commissioner of
 9 revenue under AS 37.10.050 and separately accounted for by the commissioner of
 10 administration under AS 37.05.142. The legislature may appropriate a portion of the
 11 estimated balance in the account to the department to pay for the annual audits
 12 described in this section.

13 (f) In this section, "provider" has the meaning given in AS 47.07.790.

14 * **Sec. 6.** AS 47.07 is amended by adding new sections to read:

15 **Article 2. Misconduct Involving Medicaid Services.**

16 **Sec. 47.07.700. Misconduct involving Medicaid services in the first degree.**

17 (a) A person commits the crime of misconduct involving Medicaid services in the
 18 first degree if the person knowingly

19 (1) makes or causes to be made a statement that the person knows is
 20 not true on a Medicaid program provider enrollment form application, or on a
 21 document attached to the application, that is submitted to be used to determine the
 22 eligibility for a benefit or payment under the Medicaid program to a person or
 23 organization;

24 (2) conceals or fails to disclose an event that the person knows affects
 25 the initial or continued right of that person or another person to a benefit or payment
 26 under the Medicaid program and, as a consequence, a person receives a benefit or
 27 payment that is not authorized or that is greater than the payment or benefit that is
 28 authorized;

29 (3) applies for and receives a benefit or payment on behalf of another
 30 person under the Medicaid program and converts part of the benefit or payment to a
 31 use other than for the benefit of the person on whose behalf it was received;

1 (4) makes, causes to be made, or solicits the making of a statement that
 2 the person knows is not true concerning the conditions of operation of a health facility
 3 with the intent to aid the health facility in qualifying for certification or recertification
 4 required by the Medicaid program, including certification or recertification as a
 5 hospital, a nursing facility or skilled nursing facility, a hospice, an intermediate care
 6 facility, an intermediate care facility for the mentally retarded, an assisted living
 7 facility, a home health agency, a rehabilitation facility, an inpatient psychiatric facility,
 8 a rural health clinic, an outpatient surgical clinic, or an outpatient community mental
 9 health clinic;

10 (5) makes, causes to be made, or solicits the making of a statement that
 11 the person knows is not true concerning information required to be provided under a
 12 federal, state, or municipal law, rule, regulation, ordinance, or provider agreement
 13 pertaining to the Medicaid program; or

14 (6) provides a product or service to a Medicaid recipient that has been
 15 adulterated, debased, or mislabeled, is dangerous, harmful, or potentially harmful, or is
 16 otherwise medically inappropriate when compared to generally recognized standards
 17 within the provider's particular discipline or within the health care industry in the
 18 United States.

19 (b) Misconduct involving Medicaid services in the first degree is a class B
 20 felony.

21 **Sec. 47.07.710. Misconduct involving Medicaid services in the second**
 22 **degree.** (a) A person commits the crime of misconduct involving Medicaid services
 23 in the second degree if the person knowingly

24 (1) except as authorized under the Medicaid program, charges, solicits,
 25 accepts, or receives a gift, money, a donation, a personal service, or other
 26 consideration, in addition to an amount paid under the Medicaid program, from
 27 another as a condition to the provision of a service or continued service to a Medicaid
 28 recipient if the cost of the service provided to the Medicaid recipient is paid for, in
 29 whole or in part, under the Medicaid program;

30 (2) presents or causes to be presented a claim for payment under the
 31 Medicaid program for a product or a service claimed to have been provided or

1 rendered by a person who, if a license is required in order to provide the service or
 2 product, is not licensed to provide the product or render the service or is not licensed
 3 in the manner claimed;

4 (3) makes a claim under the Medicaid program for a product or service
 5 that

6 (A) was not actually provided to a Medicaid recipient;

7 (B) was not actually provided to a Medicaid recipient as
 8 claimed;

9 (C) has not been approved by a treating physician or licensed
 10 health care practitioner;

11 (D) has not been approved by the Medicaid program;

12 (E) was provided in a manner that violates AS 17.30.080(a); or

13 (F) was provided by a practitioner who was not acting within
 14 the usual course of professional medical practice or who was not acting in
 15 accordance with a standard of care generally recognized and accepted within
 16 the practitioner's profession in the United States;

17 (4) engages in deception in connection with the application or
 18 enrollment of an individual who is eligible as a recipient for services under the
 19 Medicaid program or in connection with marketing the person's services to an
 20 individual who is eligible as a recipient under the Medicaid program; or

21 (5) makes or causes to be made a false statement or representation of
 22 fact in a document containing items of income or expense that is or may be used by
 23 the department to determine a general or specific rate of payment for a product or
 24 service provided or claimed to have been provided by a provider.

25 (b) Misconduct involving Medicaid services in the second degree is a class C
 26 felony.

27 **Sec. 47.07.720. Misconduct involving Medicaid services in the third**
 28 **degree.** (a) A person commits the crime of misconduct involving Medicaid services
 29 in the third degree if the person knowingly or recklessly

30 (1) makes a claim under the Medicaid program and fails to indicate the
 31 correct type of license or the correct identification number of the licensed health care

1 provider who actually provided the service;

2 (2) contracts with the department or another state agency to provide or
3 arrange to provide health care benefits or services to individuals who are eligible
4 under the Medicaid program and fails to provide to

5 (A) an individual a health care benefit or service that the
6 organization is required to provide under the contract; or

7 (B) the department or to another state agency the information
8 that is required to be provided by a law, regulation, or contractual provision.

9 (b) Misconduct involving Medicaid services in the third degree is a class A
10 misdemeanor.

11 **Sec. 47.07.730. Notice of charges.** Upon the filing of a complaint,
12 information, presentment, or indictment charging a Medicaid provider with a crime
13 under AS 47.07.700 or 47.07.720, the attorney general shall, in writing, notify the
14 commissioner of the filing. Upon receiving notice from the attorney general under
15 this section, the commissioner shall immediately suspend payment for, and undertake
16 a prepayment review of, all unpaid claims or requests for reimbursements attributable
17 to services claimed to have been provided by the person charged.

18 **Sec. 47.07.790. Definitions.** In AS 47.07.700 - 47.07.790,

19 (1) "benefit" has the meaning given in AS 11.81.900(b);

20 (2) "claim," in addition to its usual meaning, also means a request for
21 payment for Medicaid benefits attempted to be provided, provided, or claimed to have
22 been provided to another, whether the request is in an electronic format or paper
23 format or both, made or submitted by a person or an organization that is or claims to
24 be a Medicaid provider;

25 (3) "commissioner" means the commissioner of health and social
26 services;

27 (4) "deception" has the meaning given in AS 11.81.900(b);

28 (5) "knowingly" has the meaning given in AS 11.81.900(a);

29 (6) "Medicaid program" means the medical assistance program
30 operated under this chapter;

31 (7) "Medicaid provider" or "provider" means a person or organization

1 that provides, attempts to provide, or claims to have provided Medicaid services to
2 Medicaid recipients and includes a person or organization that participates in or has
3 applied to participate in the Medicaid program as a supplier of a product or a service;

4 (8) "Medicaid recipient" means a person on whose behalf another
5 claims or receives a payment from the Medicaid program, without regard to whether
6 the individual was eligible for benefits under the Medicaid program;

7 (9) "Medicaid services" means a health care benefit available to
8 Medicaid recipients, including health care benefits provided, attempted to be provided,
9 or claimed to have been provided to another by a person or organization enrolled in
10 the Medicaid program;

11 (10) "organization" has the meaning given in AS 11.81.900(b);

12 (11) "person" has the meaning given in AS 11.81.900(b);

13 (12) "practitioner" has the meaning given in AS 11.71.900;

14 (13) "recklessly" has the meaning given in AS 11.81.900(a);

15 (14) "statement" has the meaning given in AS 11.56.240.

16 * **Sec. 7.** AS 47.07.074(b) is repealed.