

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 41(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 3/13/03

Referred: Judiciary

Sponsor(s): SENATORS GREEN, Taylor, Dyson, Ben Stevens, Ogan, Cowdery, Seekins, Wagoner, Wilken

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 health care practice or research and in**

1 **accordance with a standard of health care generally recognized and accepted**
 2 **within the health care 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 medical assistance provider with**
 10 **misconduct involving a controlled substance under AS 11.71.140 - 11.71.190, the**
 11 **attorney general shall, in writing, notify the commissioner of health and social**
 12 **services of 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 undertake a review
 16 of all unpaid claims or requests for reimbursements attributable to services claimed to
 17 have been provided by the person charged.

18 (d) In this section, "claims" and "medical assistance provider" have the
 19 meanings given in AS 47.05.290.

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

21 **Article 2. Medical Care Programs.**

22 **Sec. 47.05.200. Annual audits.** (a) The department shall annually contract
 23 for independent audits of a statewide sample of all medical assistance providers in
 24 order to identify overpayments and violations of criminal statutes. The audits
 25 conducted under this section may not be conducted by the department or employees of
 26 the department. The number of audits under this section each year, as a total for the
 27 medical assistance programs under AS 47.07 and AS 47.08, shall be 0.75 percent of
 28 all enrolled providers under the programs, adjusted annually on July 1, as determined
 29 by the department, except that the number of audits under this section may not be less
 30 than 75. The audits under this section must include both on-site audits and desk audits
 31 and must be of a variety of provider types. The department may not award a contract

1 under this subsection to an organization that does not retain persons with a significant
2 level of expertise and recent professional practice in the general areas of standard
3 accounting principles and financial auditing and in the specific areas of medical
4 records review, investigative research, and Alaska health care criminal law. The
5 contractor, in consultation with the commissioner, shall select the providers to be
6 audited and decide the ratio of desk audits and on-site audits to the total number
7 selected.

8 (b) Within 90 days after receiving each audit report from an audit conducted
9 under this section, the department shall begin administrative procedures to recoup
10 overpayments identified in the audits and shall allocate the reasonable and necessary
11 financial and human resources to ensure prompt recovery of overpayments unless the
12 attorney general has advised the commissioner in writing that a criminal investigation
13 of an audited provider has been or is about to be undertaken, in which case, the
14 commissioner shall hold the administrative procedure in abeyance until a final
15 charging decision by the attorney general has been made. The commissioner shall
16 provide copies of all audit reports to the attorney general so that the reports can be
17 screened for the purpose of bringing criminal charges.

18 (c) Each fiscal year, the state's share of recovered overpayments obtained
19 because of the required contract audits under this section shall be deposited with the
20 commissioner of revenue under AS 37.10.050 and separately accounted for by the
21 commissioner of administration under AS 37.05.142. The legislature may appropriate
22 a portion of the estimated balance in the account to the department to pay for the
23 annual audits described in this section.

24 (d) As a condition of obtaining payment under AS 47.07 and AS 47.08 and for
25 purposes of this section, a provider shall allow

26 (1) the department reasonable access to the records of medical
27 assistance recipients and providers; and

28 (2) audit and inspection of the records by state and federal agencies.

29 (e) This section does not preclude the department from performing audits that
30 are allowed or required under other laws.

31 **Sec. 47.05.210. Medical assistance fraud.** (a) A person commits the crime

1 of medical assistance fraud if the person

2 (1) knowingly submits or authorizes the submission of a claim to a
3 medical assistance agency for property, services, or a benefit with reckless disregard
4 that the claimant is not entitled to the property, services, or benefit;

5 (2) knowingly prepares or assists another person to prepare a claim for
6 submission to a medical assistance agency for property, services, or a benefit with
7 reckless disregard that the person being assisted is not entitled to the property,
8 services, or benefit;

9 (3) except as otherwise authorized under the medical assistance
10 program, confers, offers to confer, solicits, agrees to accept, or accepts property,
11 services, or a benefit

12 (A) to refer a medical assistance recipient to a health care
13 provider; or

14 (B) for providing health care to a medical assistance recipient if
15 the property, services, or benefit is in addition to payment by a medical
16 assistance agency;

17 (4) does not produce medical assistance records to a person authorized
18 to request the records;

19 (5) knowingly makes a false entry in or falsely alters a medical
20 assistance record;

21 (6) knowingly destroys, mutilates, suppresses, conceals, removes, or
22 otherwise impairs the verity, legibility, or availability of a medical assistance record;
23 or

24 (7) violates a provision of AS 47.07 or AS 47.08 or a regulation
25 adopted under AS 47.07 or AS 47.08.

26 (b) Medical assistance fraud under (a)(1), (2), or (3) of this section is

27 (1) a class B felony if the portion of the claim or claims submitted in
28 violation of (a)(1) or (2) of this section, or the value of the property, services, or
29 benefit that is in violation of (a)(3) of this section, is \$25,000 or more;

30 (2) a class C felony if the portion of the claim or claims submitted in
31 violation of (a)(1) or (2) of this section, or the value of the property, services, or

1 benefit that is in violation of (a)(3) of this section, is \$500 or more but less than
2 \$25,000;

3 (3) a class A misdemeanor if the portion of the claim or claims
4 submitted in violation of (a)(1) or (2) of this section, or the value of the property,
5 services, or benefit that is in violation of (a)(3) of this section, is less than \$500.

6 (c) Medical assistance fraud under (a)(4), (5), or (6) of this section is a class A
7 misdemeanor.

8 (d) Medical assistance fraud under (a)(7) of this section is a class B
9 misdemeanor.

10 **Sec. 47.05.220. Notice of charges.** Upon the filing of a complaint,
11 information, presentment, or indictment charging a medical assistance provider with a
12 crime under AS 47.05.210, the attorney general shall, in writing, notify the
13 commissioner of the filing. Upon receiving notice from the attorney general under
14 this section, the commissioner shall immediately undertake a review of all unpaid
15 claims or requests for reimbursements attributable to services claimed to have been
16 provided by the person charged.

17 **Sec. 47.05.230. Determination of value; aggregation of amounts.** In
18 AS 47.05.210, whenever it is necessary to determine the value of property, that value
19 shall be determined in accordance with AS 11.46.980. In determining the degree or
20 classification of a crime described under AS 47.05.210, amounts involved in criminal
21 acts committed under one course of conduct, whether from the same person or several
22 persons, shall be aggregated.

23 **Sec. 47.05.240. Exclusion from medical assistance programs.** (a) The
24 commissioner may exclude an applicant to or disenroll a medical assistance provider
25 in the medical assistance program in AS 47.07 or AS 47.08, or both, for a period of up
26 to 10 years following unconditional discharge on a conviction

27 (1) for medical assistance fraud under AS 47.05.210 or misconduct
28 involving a controlled substance under AS 11.71; or

29 (2) in a court of the United States or a court of another state or
30 territory, for a crime with elements substantially similar to the crimes included under
31 (1) of this subsection.

1 (b) After a period of exclusion under (a) of this section, an applicant may not
 2 participate in a medical assistance program under AS 47.07 or AS 47.08 until the
 3 applicant establishes to the commissioner by clear and convincing evidence that the
 4 applicant possesses all required licenses and certificates and is qualified to participate.

5 **Sec. 47.05.290. Definitions.** In AS 47.05.200 - 47.05.290,

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

7 (2) "claim," in addition to its usual meaning, also means a request for
 8 payment for medical assistance services attempted to be provided, provided, or
 9 claimed to have been provided to another, whether the request is in an electronic
 10 format or paper format or both, made or submitted by a person or an organization that
 11 is or claims to be a medical assistance provider;

12 (3) "commissioner" means the commissioner of health and social
 13 services;

14 (4) "department" means the Department of Health and Social Services;

15 (5) "falsely alters" has the meaning given in AS 11.46.580;

16 (6) "knowingly" has the meaning given in AS 11.81.900;

17 (7) "makes a false entry" has the meaning given in AS 11.56.820;

18 (8) "medical assistance agency" means the department, an agency of
 19 the department, and an agent, contractor, or designee of the department or of one of its
 20 agencies that performs one or more of the activities of the department or an agency of
 21 the department;

22 (9) "medical assistance program" means a program under AS 47.07 or
 23 AS 47.08;

24 (10) "medical assistance provider" or "provider" means a person or
 25 organization that provides, attempts to provide, or claims to have provided services or
 26 products to a medical assistance recipient that may qualify for reimbursement under
 27 AS 47.07 or AS 47.08 or a person or organization that participates in or has applied to
 28 participate in a medical assistance program as a supplier of a service or product;

29 (11) "medical assistance recipient" means a person on whose behalf
 30 another claims or receives a payment from a medical assistance agency, without
 31 regard to whether the individual was eligible for benefits under a medical assistance

1 program;

2 (12) "medical assistance record" means records required to be kept by
3 state or federal law or regulation regarding claims to a medical assistance agency;

4 (13) "organization" has the meaning given in AS 11.81.900;

5 (14) "person" has the meaning given in AS 11.81.900;

6 (15) "property" has the meaning given in AS 11.81.900;

7 (16) "reckless disregard" means acting recklessly, as that term is
8 defined in AS 11.81.900;

9 (17) "services" means a health care benefit available to a medical
10 assistance recipient, including health care benefits provided, attempted to be provided,
11 or claimed to have been provided to another, by a medical assistance provider, or
12 "services" as defined in AS 11.81.900;

13 (18) "unconditional discharge" has the meaning given in
14 AS 12.55.185.

15 * **Sec. 4.** AS 47.07.010 is amended to read:

16 **Sec. 47.07.010. Purpose.** It is declared by the legislature as a matter of
17 public concern that the needy persons of this state who are eligible for health care at
18 public expense under this chapter should seek only [RECEIVE] uniform and high
19 quality medical care that is appropriate to their condition and cost-effective to the
20 state and receive that care, regardless of race, age, national origin, or economic
21 standing. It is equally a matter of public concern that providers of services under
22 this chapter should operate honestly, responsibly, and in accordance with
23 applicable laws and regulations in order to maintain the integrity and fiscal
24 viability of the state's medical assistance program, and that those who do not
25 operate in this manner should be held accountable for their conduct. It is vital
26 that the department administer this chapter in a manner that promotes effective,
27 long-term cost containment of the state's medical assistance expenditures while
28 providing medical care to recipients. Accordingly, this chapter authorizes the
29 department [DEPARTMENT OF HEALTH AND SOCIAL SERVICES] to apply for
30 participation in the national medical assistance program as provided for under 42
31 U.S.C. 1396 - 1396p (Title XIX, Social Security Act).

1 * **Sec. 5.** AS 47.07.074(a) is amended to read:

2 (a) As a condition of obtaining payment under AS 47.07.070, a health facility
3 shall allow

4 (1) the department and the commission reasonable access to the
5 [FINANCIAL] records of medical assistance **recipients and providers**
6 [BENEFICIARIES]; and

7 (2) audit and inspection of **the** [FINANCIAL] records by state and
8 federal agencies.