

**CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 41(FIN) am H**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 5/19/03

Offered: 4/16/03

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

REPRESENTATIVES Foster, Wilson

**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, catastrophic illness  
3 assistance, and medical assistance for chronic and acute medical conditions."

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

5 \* **Section 1.** AS 17.30.080(b) is amended to read:

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

1           **services of the filing.**

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

3                   (c) Upon receiving a notice from the attorney general under (b) of this section,  
4                   the commissioner of health and social services shall immediately undertake a review  
5                   of all unpaid claims or requests for reimbursements attributable to services claimed to  
6                   have been provided by the person charged.

7                   (d) In this section,

8                           (1) "claims" has the meaning given in AS 47.05.290;

9                           (2) "medical assistance provider" has the meaning given in  
10                   AS 47.05.290;

11                          (3) "medical purpose" means a purpose that is solely medical as  
12                   opposed to any other purpose, that is reasonably necessary for treatment of a person's  
13                   illness, injury, or physical or mental health, and that is provided by a practitioner while  
14                   acting within the usual course of professional practice or research and in accordance  
15                   with a standard of care generally recognized and accepted within the medical  
16                   profession in the United States;

17                          (4) "practitioner" has the meaning given in AS 11.71.900.

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

19                                   **Article 2. Medical Care Programs.**

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

1 accounting principles and financial auditing and in the specific areas of medical  
 2 records review, investigative research, and Alaska health care criminal law. The  
 3 contractor, in consultation with the commissioner, shall select the providers to be  
 4 audited and decide the ratio of desk audits and on-site audits to the total number  
 5 selected.

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

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

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

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

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

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

29 **Sec. 47.05.210. Medical assistance fraud.** (a) A person commits the crime  
 30 of medical assistance fraud if the person

31 (1) knowingly submits or authorizes the submission of a claim to a

1 medical assistance agency for property, services, or a benefit with reckless disregard  
2 that the claimant is not entitled to the property, services, or benefit;

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

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

9 (A) to refer a medical assistance recipient to a health care  
10 provider; or

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

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

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

18 (6) knowingly destroys, mutilates, suppresses, conceals, removes, or  
19 otherwise impairs the verity, legibility, or availability of a medical assistance record  
20 knowing that the person lacks the authority to do so; or

21 (7) violates a provision of AS 47.07 or AS 47.08 or a regulation  
22 adopted under AS 47.07 or AS 47.08.

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

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

27 (2) a class C 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 \$500 or more but less than  
30 \$25,000;

31 (3) a class A misdemeanor if the portion of the claim or claims

1 submitted in violation of (a)(1) or (2) of this section, or the value of the property,  
2 services, or benefit that is in violation of (a)(3) of this section, is less than \$500.

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

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

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

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

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

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

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

29 (b) After a period of exclusion under (a) of this section, an applicant may not  
30 participate in a medical assistance program under AS 47.07 or AS 47.08 until the  
31 applicant establishes to the commissioner by clear and convincing evidence that the

1 applicant possesses all required licenses and certificates and is qualified to participate.

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

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

4 (2) "claim" includes a request for payment for medical assistance  
5 services under applicable state or federal law or regulations, whether the request is in  
6 an electronic format or paper format or both;

7 (3) "commissioner" means the commissioner of health and social  
8 services;

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

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

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

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

13 (8) "medical assistance agency" means the department, an agency of  
14 the department, and an agent, contractor, or designee of the department or of one of its  
15 agencies that performs one or more of the activities of the department or an agency of  
16 the department;

17 (9) "medical assistance program" means a program under AS 47.07 or  
18 AS 47.08;

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

24 (11) "medical assistance recipient" means a person on whose behalf  
25 another claims or receives a payment from a medical assistance agency, without  
26 regard to whether the individual was eligible for benefits under a medical assistance  
27 program;

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

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

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

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

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

4 (17) "services" or "medical assistance services" means a health care  
5 benefit that may qualify for reimbursement under AS 47.07 or AS 47.08, including  
6 health care benefits provided, attempted to be provided, or claimed to have been  
7 provided to another, by a medical assistance provider, or "services" as defined in  
8 AS 11.81.900;

9 (18) "unconditional discharge" has the meaning given in  
10 AS 12.55.185.

11 \* **Sec. 4.** AS 47.07.010 is amended to read:

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

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

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

31 (1) the department and the commission reasonable access to the

1 [FINANCIAL] records of medical assistance **recipients and providers**  
2 [BENEFICIARIES]; and  
3 (2) audit and inspection of **the** [FINANCIAL] records by state and  
4 federal agencies.