

**ALASKA STATE LEGISLATURE
SENATE HEALTH, EDUCATION AND SOCIAL SERVICES
STANDING COMMITTEE**

May 7, 2003
1:44 p.m.

TAPE(S) 03-27

MEMBERS PRESENT

Senator Fred Dyson, Chair
Senator Lyda Green, Vice Chair
Senator Bettye Davis
Senator Gretchen Guess

MEMBERS ABSENT

Senator Gary Wilken

COMMITTEE CALENDAR

^BRIEFING: MEDICAID FUNDING AND PROGRAM ISSUES

Federal Center for Medicare and Medicaid Services:

Mr. Richard Strauss, Federal Center for Medicare and Medicaid
Central Office

Ms. Elizabeth Trias, Division of Medicaid and Children's Health,
Federal Center for Medicare and Medicaid Services - Seattle

Mr. John Gaisford, Director, Division of Medicaid, Department of
Health and Social Services

Mr. Ross Soboleff, Public Information Officer, Department of
Health and Social Services

^CONFIRMATION HEARINGS:

^BOARD OF CERTIFIED DIRECT ENTRY MIDWIVES

Ms. Mila Cosgrove

^BOARD OF PHARMACY

Mr. Michael Pauley

^UA BOARD OF REGENTS

Mr. William Altland - David Parks - UAA Board of Regents

^MENTAL HEALTH TRUST AUTHORITY

Mr. Nelson Page - Mental Health Trust Authority

Mr. John Malone - Mental Health Trust Authority
^BOARD OF OCCUPATIONAL AND PHYSICAL THERAPY

Ms. Mary Ann Paul

^BOARD OF OPTOMETRY

Mr. John Cobbett
Mr. Thomas Carter

^STATE MEDICAL BOARD

Mr. John Troxel
Mr. Robert Breffeilh
Ms. Debbie Joslin
Mr. G. Bert Flaming

^BOARD OF DISPENSING OPTICIANS

Ms. Roberta Rawcliffe

BOARD OF DENTAL EXAMINERS

Mr. Kevin Gottlieb
Mr. Robert Warren
Mr. David Eichler

^BOARD OF NURSING

Ms. Mary Weymiller

^PROFESSIONAL TEACHING PRACTICES COMMISSION

Ms. Cynthia Curran

^BOARD OF PSYCHOLOGISTS & PSYCHOLOGICAL ASSOCIATES

Mr. Lorin Bradbury
Mr. John Miller

CONFIRMATIONS ADVANCED

ACTION NARRATIVE

TAPE 03-27, SIDE A

CHAIR FRED DYSON called the Senate Health, Education and Social Services Standing Committee meeting to order at 1:44 p.m. SENATOR DAVIS was present. He said the committee would first take up the briefing by the Federal Center for Medicare and Medicaid Services.

MR. RICHARD STRAUSS, Federal Center for Medicare and Medicaid Services, said he would focus on state operations for the Medicaid program.

MS. ELIZABETH TRIAS, Federal Center for Medicare and Medicaid Services, said she is in the Seattle regional office with the Division of Medicaid and Children's Health. She is the regional office national account representative and Mr. Straus is the central office counterpart.

MR. JOHN GAISFORD said he is Director of Medicaid at the Department of Health and Social Services.

CHAIR DYSON asked if anyone wanted to make a statement.

MR. STRAUSS said that one of their major functions is working with the state on Medicaid and Medicare issues in their capacity as the national account representatives. They wanted to introduce themselves to the legislative branch of government, because a lot of the issues they deal with relate to this committee.

MS. TRIAS said she couldn't add much more, but said this is their second visit with the Alaska legislature and they hope to gather some information on issues of concern to them.

MR. GAISFORD stated that on a semi-annual basis the central and regional offices visit each state. This time, because of the state's financial problems, they are making a point of talking with representatives of the states. He said that this is a friendly and regular visit.

CHAIR DYSON said he hears that we can't get physicians to treat federally reimbursed programs. The physicians represent that they can't afford it and lose money on most of them through a combination of their insurance and overhead. He asked if that is true and what are they and the legislature going to do about it.

MS. TRIAS replied that last year [access to Medicaid and Medicare services] seemed to be the real issue. She believed

this was being addressed with some part of a study by the Center for Medicaid Services (CMS) in Baltimore.

CHAIR DYSON commented that access meant inadequate supply of services due to government price fixing that isn't reflective of what the real market is.

MS. TRIAS agreed, in part, with his statement.

SENATORS GUESS AND GREEN arrived at 1:50 p.m.

SENATOR DAVIS said she knows that all states are having problems with these issues and asked what kind of assistance the federal government is providing to them.

MR. STRAUSS responded that he mostly deals with the Medicaid and the state children's health insurance programs. Those programs are funded as a state/federal partnership according to a formula. He explained there is a certain amount of flexibility in terms of structuring programs they might want to establish in Alaska, like the Alaska Natives doing outreach and claiming those costs in the Medicaid program. The idea is to try and work with the Medicaid agency here to see what can be done in that capacity. "Assuming that these activities are allowable, then there would be money available from the federal perspective to jointly share with you to do those functions..."

He said their focus as national account representative is to try to be more of an advocate within the framework of what they can do for Alaska.

SENATOR DAVIS said she was interested in things they might be able to assist states with, like waivers that could be granted by the federal government, things that other states are doing that might work here and comparisons.

MR. GAISFORD said they had been talking this morning about how to improve the way the state gets a federal match with Indian Health Service claims. The state is working to try to expand all the areas they can match. They did not look at or address what other states may be doing.

CHAIR DYSON asked if there were any limits on co-payments.

MR. STRAUSS answered there are federal limits on what states can charge for co-pays.

CHAIR DYSON asked if there was anything the state could not have co-payment on.

MR. STRAUSS replied there are certain mandatory groups that aren't supposed to have any co-pays and there is certain flexibility with some other options, both with services and eligibility. Some groups would have nominal co-pays.

CHAIR DYSON asked, "Why nominal?"

MR. STRAUSS replied from a historical basis he thought the idea was to give the client the idea that they are responsible for paying something, but not to be overly burdensome.

CHAIR DYSON countered that federal requirements let the federal government define what is overly burdensome.

MR. STRAUSS indicated the answer was yes.

CHAIR DYSON said he talked with major hospitals in our state and found that when they bill for services, those who are reimbursed by Medicaid give between a 40% and a 60% discount. Someone said that was for physician services.

CHAIR DYSON continued that those who have a third party payer, like an insurance company, get a similar discount, "and the poor sap that pays his own bills gets to pay 100%."

It seemed to him that the current administration should be very uncomfortable penalizing people who pay their own bills. He asked if there was any move afoot in D.C. to rectify the old American tradition of taking responsibility for yourself and paying your own bills.

MR. STRAUSS said that was a complex question involving private sector people paying for themselves and Medicaid people somehow paying less. From his perspective, statutes, regulations and policies lay out what he can do. An easier question for him to answer would be what can he do to try to tailor the program to some of the state's specific concerns, like the issue of equitability.

CHAIR DYSON responded:

The net result of government price fixing is that the costs get shifted to the other folks and they end up subsidizing the clientele that Medicaid underpays for

and so then you're driving people out of the category of paying their own bills and taking responsibility and making them, at least in our state, an endangered species, if not extinct.

He said it apparently is a result of not letting the marketplace dictate the cost of services and the net result is that we're getting more of what we don't want and less of what we do want.

MR. STRAUSS reinforced some of his concerns about having better controls in place on how people utilize the services and co-pay is one way of doing that.

CHAIR DYSON said one of the mandatory services is family planning and there is a court decision saying if the state provides any pregnancy related services, it has to provide all of them including terminating an unborn child. He asked if the federal government considered termination of an unborn child as part of family planning.

MS. TRIAS replied that abortions are not considered family planning services and they are allowed under Medicaid regulations if they meet certain criteria, like being due to rape or incest or to save the life of the mother.

CHAIR DYSON said he heard that some family planning clinics are not reporting statutory rape and asked if that were proven to be true, could they be disqualified from receiving federal funds.

MR. STRAUSS responded that their relationship is with the state and not clinics.

MR. GAISFORD added that they have to enroll providers who have to be licensed according to state law. If they were prosecuted and found guilty and their license was taken away, they would not be able to be enrolled. The federal government would intervene if they paid an unenrolled provider.

CHAIR DYSON wanted to know what other jurisdictions were doing to crack down on Medicaid fraud.

MS. TRIAS responded that she is also the fraud and abuse coordinator for region 10 in Seattle. They have a national program called Medicaid Alliance for Program Safeguards that has an individual in each of the regions, a national group of central office people, and a southern consortium in Atlanta. They have been trying to address this by doing program integrity

reviews in different states. From that review, they are trying to assess how well the state is carrying out their activities on fraud and abuse in terms of what methods are in place to address the issues. They talked to the Medicaid Fraud Control Unit (MFCU) to see what kind of relationship they have with state people in terms of their referrals and try to work with them in developing detection systems and decision support systems to enhance ability to detect potentially fraudulent providers. Once they have a picture of what a state is doing, they try to work with the current Health Care Services Division (formerly the Division of Medical Assistance).

MR. GAISFORD told them that national estimates indicate a 10% fraud figure, but Ms. Trias added that they don't know where that figure came from. Fraud is difficult to measure and the term "inappropriate payments" is used.

MR. GAISFORD said that intent is often hard to establish. In many cases the provider doesn't intend to be fraudulent, but there are bad billing practices. Historically, state systems have not been that good. They are hoping to implement a new system and have put out an RFP, but are now in litigation with one of the respondents over the Alaska preferences. There has been an initial finding in their favor, however, and attorneys are assessing whether or not the ruling is firm enough to go forward on. The federal government also must review the contract. They hope to increase the amount of work they can do in this area. He noted that SB 41 on the minimum number of audits that can be ongoing in a state in a year is of interest to them, also.

CHAIR DYSON said he hoped that most of Medicaid billing frauds were inadvertent.

MS. TRIAS noted that technology is great way to key in on poor billing practices and Alaska needs to settle on a decision support system.

SENATOR GREEN said a couple of years ago an announcement was made that all Medicaid payments would be paid within 11 days and therefore any review of the billing was many months later and had to have several red flags and anomalies for either the provider or the recipient. She asked if we are still doing the 11 day payment or is there is system in place that checks the billing immediately so that it doesn't get paid unless it passes muster.

MR. STRAUSS replied that the answer to that question would be more in how the state sets up its system to make the payments within the framework. On the federal side, there are requirements, which is a different concern and that is provider participation. There are requirements in statute for timely payment of claims; almost all of them must be paid within a year and a percent within 30 days, etc. The concern is that the providers get the money as fast as they can along with the idea that you don't pay for something that shouldn't be paid for.

MR. GAISFORD agreed that the rule is 90% within 30 days and the trick to that is clean claims or claims with enough information to be correct. He said there are hundreds of thousands of edits and audits that are checked against each claim. The ones Senator Green was referring to are three basic kinds. Header checks happen when the claim first comes in which makes sure the person is the right person to receive the services; the second is medical checks or is it the right kind of service and provider; and historic audits. All claims go through these audits before payment. He elaborated that historic audits check things like seeing if the recipient is female if a female procedure was done and if an appendix has been taken out more than one time.

SENATOR GREEN said it has to be more difficult for someone who is getting prescriptions filled for street use.

MR. GAISFORD said that is what the audits are intended to identify. One of their cost containment features is to expand the number of people they have targeted as potential misusers of that and have them tied to a particular provider and pharmacy. This is a very difficult thing to do.

SENATOR GREEN said she meant the Medicaid audit where they talk about waste, which is directed more inward toward the system. She asked if 7% waste was a valid figure.

MS. GAISFORD said they didn't know for sure.

SENATOR GREEN said if you add the estimated 7% waste and the 10% erroneous billing, that is a lot of wasted federal and state dollars in a state like Alaska with a very meager population.

MR. STRAUSS agreed that it is a lot, but he emphasized that he identified the waste as inefficiency in the system.

MS. TRIAS addressed Senator Green's concern with edits and audits saying the state has the option of using prepay review, which looks at providers billings.

SENATOR GREEN asked if Alaska does that.

MR. GAISFORD added that we do prior authorizations.

MS. TRIAS said on the recipient side that they could lock someone into using one pharmacy and that wouldn't be viewed as punitive.

CHAIR DYSON asked if they require states to have fraud control and investigation and had they ever disqualified a state because of not meeting standards.

MS. TRIAS said they hadn't done that.

MR. STRAUSS said that they don't disqualify states, but they do recoup money from states.

MS. TRIAS responded to a question Senator Green had about Medicaid fraud saying that they have discovered in a lot of instances there is an error in the billing done by the billing clerk who didn't realize, for instance, some change in code.

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CHAIR DYSON said he thought they were being far too naïve. He thought they should be running stings in every state and holding their feet to the fire.

MR. STRAUSS commented that they had participated in a pharmacy sting in California and are not totally naïve. Both the state and the federal government benefit from preventing and identifying fraud. They share in funding of the programs and recognize that the state administers their program. If the federal government held the state's feet to the fire, there would be some push back because they would not be doing it in the right way.

CHAIR DYSON said their point is that the ones who ultimately pay are the other needy people who don't have the funds.

MR. STRAUSS said that he was sure they would participate in funding anything the state was going to do on fraud.

CHAIR DYSON said he really appreciated all the work they are doing and that they have a huge job ahead of them. The legislators are eager to help.

MR. STRAUSS said that he heard them say today that they are interested in provider participation, inequitable co-pay treatment, family planning, fraud and abuse, waste, and quality issues.

CHAIR DYSON indicated agreement and commented that Ms. Trias said that there were discussions going on about what government price fixing in medical services is doing in, what she calls, access.

MS. TRIAS said she would get that information to Mr. Strauss who would get that to him.

2:37 - 2:38 p.m. - at ease

CHAIR DYSON announced that they would begin the confirmation hearings.

MS. MILA COSGROVE, public member nominee for the Board of Certified Direct Entry Midwives, said she is interested in seeing direct entry midwifery care being an option for women who are having children. She thought it important that direct entry midwives be regulated so there are standards of care and safety and a medical review process.

SENATOR GREEN said that she had reviewed the names before the committee today and she is satisfied with their nominations. She would not be able to stay to forward the names on to the joint bodies.

CHAIR DYSON said there was no objection to that.

2:43 - 2:44 p.m. - at ease

CHAIR DYSON called the meeting back to order and asked Mr. Pauley to tell the committee why he was interested in serving on the Board of Pharmacy.

MR. MICHAEL PAULEY, nominee for the Board of Pharmacy, said the governor appointed him to fill out the remainder of the term for the public seat on the board. He has worked as a legislative aid in Juneau and in Washington D.C. and had an opportunity to work

with legislation that dealt with controlled substance issues, which is one of their big priorities.

MS. DEBBIE JOSLIN, nominee for the Medical Board, said she has been appointed by the governor as the public member of the board and said that there is only one other woman on the board and that it would be good to have another one.

CHAIR DYSON thanked the nominees for their comments and said they would forward all the names to the joint session. There were no objections and he adjourned the meeting at 2:47 p.m.