

CS FOR HOUSE BILL NO. 426(FIN)(title am)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 4/24/06

Offered: 4/19/06

Sponsor(s): REPRESENTATIVES COGHILL, Gardner

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to cooperation of insurers with the Department of Health and Social**
2 **Services; relating to subrogation, assignment, and lien rights and notices for medical**
3 **assistance claims; relating to recovery of medical assistance overpayments; relating to**
4 **asset transfers and income diversion by medical assistance applicants; relating to assets**
5 **and Medicare enrollment as they affect medical assistance coverage; relating to home**
6 **and community-based services; relating to medical assistance applications for persons**
7 **under 21 years of age; requiring a report by the Department of Health and Social**
8 **Services; and providing for an effective date."**

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

10 *** Section 1.** AS 21.09 is amended by adding a new section to read:

11 **Sec. 21.09.240. Cooperation with the Department of Health and Social**
12 **Services.** An insurer, including a pharmacy benefits manager, shall coordinate benefits

1 with medical assistance programs under AS 47.07, and shall cooperate with the
2 Department of Health and Social Services by providing

3 (1) requested information on an insured who is receiving public
4 assistance and on claims made by the department as long as the department agrees to
5 keep the information confidential;

6 (2) prompt verification of an assignment to and right of recovery for
7 the department; and

8 (3) a claim period of at least 36 months from the date of service for
9 eligible claims made by the department.

10 * **Sec. 2.** AS 47.05.070(b) is amended to read:

11 (b) If the department provides or pays for medical assistance for injury or
12 illness under this title, the department is subrogated to the rights of the recipient of that
13 medical assistance for any claim arising from the injury or illness and to the proceeds
14 of an insurance policy covering the injury or illness to the extent of the value of the
15 medical assistance provided. [A RECIPIENT OF MEDICAL ASSISTANCE OR THE
16 RECIPIENT'S ATTORNEY MUST NOTIFY THE DEPARTMENT IN WRITING
17 OF ANY ACTION OR CLAIM AGAINST A THIRD-PARTY PAYOR IF
18 MEDICAL ASSISTANCE WAS PROVIDED BY THE DEPARTMENT TO TREAT
19 AN INJURY OR ILLNESS FOR WHICH THE THIRD PARTY MAY BE LIABLE.]
20 Notwithstanding the assertion of any action or claim by the recipient of medical
21 assistance, the department may bring an action in the superior court against an alleged
22 third-party payor to recover an amount subrogated to the department for medical
23 assistance provided on behalf of a recipient.

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

25 **Sec. 47.05.071. Duty of a medical assistance recipient.** (a) A medical
26 assistance recipient shall cooperate with and assist the department in identifying and
27 providing information concerning third parties who may be liable to pay for care and
28 services received by the recipient under the medical assistance program.

29 (b) A medical assistance recipient may not compromise or resolve an action or
30 claim seeking payment for or related to an injury or illness for which care or services
31 were provided or received under the medical assistance program against an insurer,

1 entity, or other person without first providing notice to the attorney general's office of
 2 the facts and circumstances giving rise to the action or claim and the asserted basis for
 3 supporting the action or claim.

4 (c) A medical assistance recipient may not receive payment from any source
 5 on account of or related to care or services for which medical assistance was received
 6 unless the recipient has received written consent of the attorney general's office and
 7 has paid the department reimbursement of the amount of medical assistance provided
 8 or paid.

9 (d) As a condition of medical assistance eligibility, a person who applies for
 10 medical assistance shall, at the time of application,

11 (1) assign to the department the applicant's rights of payment for care
 12 and services from any third party;

13 (2) cooperate with and assist the department in identifying and
 14 providing information concerning third parties who may be liable to pay for care and
 15 services received by the recipient under the medical assistance program;

16 (3) assign to the department the applicant's right to the applicant's
 17 permanent fund dividend and agree to sign a new assignment each year; the
 18 department shall use the assignment obtained under this paragraph to obtain
 19 reimbursement or enforce repayment when a recipient does not pay to the state
 20 reimbursement received from a third party for care or services provided or paid by the
 21 medical assistance program or fails to satisfy a lien perfected under AS 47.05.075; and

22 (4) agree to make application for all other available third-party
 23 resources that may be used to provide or pay for the cost of care or services received
 24 by the medical assistance recipient or that may be used to finance reimbursement to
 25 the state for the cost of care or services received by the medical assistance recipient.

26 **Sec. 47.05.072. Duty of attorney for medical assistance recipient.** (a) Before
 27 pursuing an action or claim on behalf of a medical assistance recipient for care or
 28 services for an injury or illness for which medical assistance was received, an attorney
 29 representing the medical assistance recipient shall notify the attorney general's office.

30 (b) The notice to the attorney general's office required under (a) of this section
 31 includes submission of the following:

1 (1) identification of the medical assistance recipient's name, last
2 known address, and telephone number, and the date of the injury or illness giving rise
3 to the action or claim;

4 (2) copies of the pleadings and other papers related to the action or
5 claim;

6 (3) the identification of each potentially liable third party, including
7 that party's name, last known address, and telephone number;

8 (4) the identification of any insurance policy potentially responsive to
9 the action or claim; and

10 (5) a description of the facts and circumstances supporting the action
11 or claim.

12 (c) An attorney who represents a medical assistance recipient shall give the
13 attorney general's office 30 days' notice before any judgment, award, or settlement
14 may be satisfied in an action or claim by the medical assistance recipient to recover
15 damages for an injury or illness that has resulted in the department's providing or
16 paying for medical assistance.

17 (d) An attorney representing a medical assistance recipient who has received
18 care or services for the injury or illness provided or paid for by the medical assistance
19 program shall maintain all proceeds paid in connection with the action or claim in a
20 trust account or deposit the proceeds into the registry of the court until any lien
21 perfected by the department under AS 47.05.075 is satisfied or, if a lien has not been
22 filed under AS 47.05.075, 60 days from the attorney's receipt of the proceeds.

23 (e) Notwithstanding AS 47.05.070(c), for pro rata reduction of the
24 department's lien if an attorney fails to comply with this section,

25 (1) the department is entitled to and shall collect the full lien amount
26 from the judgment, award, or settlement;

27 (2) if the attorney has already received payment for the attorney's
28 services through the pro rata reduction as provided in AS 47.05.070(c), the attorney is
29 civilly liable to the department for the amount of that payment.

30 (f) If a medical assistance recipient is handling the action or claim on a pro se
31 basis, the provisions of this section apply as if the medical assistance recipient were an

1 attorney representing the medical assistance recipient.

2 **Sec. 47.05.073. Judgment, award, or settlement of a medical assistance**
3 **lien.** (a) An action or claim brought by a medical assistance recipient or an attorney
4 who represents the medical assistance recipient against a third party or insurer may not
5 be compromised or discharged without the express written consent of the attorney
6 general.

7 (b) A judgment, award, or settlement that requires or results in the
8 compromise of a lien under AS 47.05.075 may not be entered into or granted by a
9 court without the express written consent of the attorney general.

10 (c) A medical assistance recipient may not maintain any rights to payment as a
11 result of a judgment, award, or settlement of an action or claim for which another
12 person may be legally obligated to pay without first making full repayment to the
13 department for costs of past medical assistance services provided to or paid for by the
14 medical assistance recipient that relate to that action or claim.

15 (d) A medical assistance recipient may not place any payment as a result of a
16 judgment, award, or settlement of an action or claim for which another person was
17 legally obligated to pay because of injury or illness into any trust for the purpose of
18 maintaining public assistance or medical assistance eligibility without first

19 (1) making full repayment to the department for costs of past medical
20 assistance services provided to the medical assistance recipient related to that action or
21 claim; and

22 (2) obtaining the express written consent of the attorney general.

23 (e) The department's recovery under a subrogation right, assignment, or
24 enforcement of a lien shall be applied to the entire payment made in satisfaction of
25 judgment, award, or settlement.

26 (f) The doctrine of equitable subrogation, the equitable made whole doctrine,
27 or the common fund doctrine may not be applied to defeat, reduce, limit, or prorate
28 any recovery by the department based upon its subrogation rights, assignment, or lien,
29 or the medical assistance recipient's obligation of repayment.

30 (g) The attorney general may only discharge or give written consent related to
31 a medical assistance lien under AS 47.05.075 if the discharge or consent complies

1 with federal law.

2 **Sec. 47.05.074. Conflict with federal requirements.** If any provision of this
3 chapter related to subrogation, assignment, or lien conflicts with federal law
4 concerning the Medicaid program or receipt of federal money to finance the medical
5 assistance program, the provision does not apply to the extent of the conflict.

6 * **Sec. 4.** AS 47.05.075(d) is amended to read:

7 (d) A perfected lien under this section has priority **over all other liens except**
8 **tax liens and a lien perfected for attorney fees and costs** [IMMEDIATELY AFTER
9 A LIEN PERFECTED BY A HOSPITAL, NURSE, OR PHYSICIAN UNDER
10 AS 34.35.450 - 34.35.480].

11 * **Sec. 5.** AS 47.05.080(a) is amended to read:

12 (a) Benefit overpayments collected by the department in administering
13 programs under **AS 47.07 (medical assistance)**, AS 47.25.120 - 47.25.300 (general
14 relief), AS 47.25.430 - 47.25.615 (adult public assistance), AS 47.25.975 - 47.25.990
15 (food stamps), and 47.27 (Alaska temporary assistance program) shall be remitted to
16 the Department of Revenue under AS 37.10.050(a), **except for overpayments**
17 **recovered under AS 47.07 that cover the value of services paid from federal**
18 **sources.**

19 * **Sec. 6.** AS 47.07.020(f) is amended to read:

20 (f) A person may not be denied eligibility for medical assistance under this
21 chapter on the basis of a diversion of income **or transfer of assets**, whether by
22 assignment or after receipt of the income, into a Medicaid-qualifying trust **or annuity**
23 that, according to a determination made by the department,

24 (1) has provisions that require that the state will receive all of the trust
25 **or annuity** assets remaining at the death of the individual, subject to a maximum
26 amount that equals the total medical assistance paid on behalf of the individual; and

27 (2) otherwise meets the requirements of 42 U.S.C. 1396p(d)(4) **for a**
28 **trust and 42 U.S.C. 1396p(c)(1)(F) and 42 U.S.C.1396p(e)(1) for an annuity.**

29 * **Sec. 7.** AS 47.07.020 is amended by adding new subsections to read:

30 (j) A person may not apply for medical assistance coverage on behalf of a
31 child under 18 years of age who is not emancipated unless the person is the parent or

1 legal guardian of the child or, if the parent or legal guardian can be contacted and
 2 consents to the application and the person is

3 (1) an adult caretaker relative who lives with the child and who is
 4 exercising care and control of the child; or

5 (2) an employee of the department who is applying on behalf of a child
 6 who is in the custody of the department.

7 (k) A child who is unemancipated may apply for medical assistance coverage
 8 on the child's own behalf if the parent or legal guardian of the child consents to the
 9 application. The department may waive consent under this section if the child
 10 expresses a reasonable fear of the child's parent or legal guardian or the department
 11 has been unable to contact the parent or legal guardian after the department has made
 12 reasonable efforts to do so. If a waiver of consent is granted, the department shall
 13 document the reason for the waiver in the child's medical assistance record.

14 (l) Notwithstanding the eligibility provisions under (a) and (b) of this section,
 15 a person may not receive medical assistance under this section unless the person first
 16 enrolls in the Medicare program under 42 U.S.C. 1395 to the extent that the person is
 17 eligible to receive benefits and services under the program.

18 (m) Except as provided in (g) of this section, the department shall impose a
 19 penalty period of ineligibility for the transfer of an asset for less than fair market value
 20 by an applicant or an applicant's spouse consistent with 42 U.S.C. 1396p(c)(1).

21 (n) Except as provided under 42 U.S.C. 1396p(f) and 42 U.S.C. 1396u-1, the
 22 department shall include as an asset for eligibility purposes the value of an applicant's
 23 home if the equity value in the home exceeds \$500,000 at the time the application is
 24 completed. Nothing in this subsection prohibits an applicant from reducing the equity
 25 value in the applicant's home by selling the home or by taking out a loan that affects
 26 the equity.

27 * **Sec. 8.** AS 47.07 is amended by adding a new section to read:

28 **Sec. 47.07.045. Home and community-based services.** (a) The department
 29 may provide home and community-based services under a waiver in accordance with
 30 42 U.S.C. 1396 - 1396p (Title XIX, Social Security Act), this chapter, and regulations
 31 adopted under this chapter, if the department has received approval from the federal

1 government and the department has appropriations allocated for the purpose. To
 2 supplement the standards in (b) of this section, the department shall establish in
 3 regulation additional standards for eligibility and payment for the services.

4 (b) Before the department may terminate payment for services provided under
 5 (a) of this section,

6 (1) the recipient must have had an annual assessment to determine
 7 whether the recipient continues to meet the standards under (a) of this section;

8 (2) the annual assessment must have been reviewed by an independent
 9 qualified health care professional under contract with the department; for purposes of
 10 this paragraph, "independent qualified health care professional" means,

11 (A) for a waiver based on mental retardation or developmental
 12 disability, a person who is qualified under 42 CFR 483.430 as a mental
 13 retardation professional;

14 (B) for other allowable waivers, a registered nurse licensed
 15 under AS 08.68 who is qualified to assess children with complex medical
 16 conditions, older Alaskans, and adults with physical disabilities for medical
 17 assistance waivers; and

18 (3) the annual assessment must find that the recipient's condition has
 19 materially improved since the previous assessment; for purposes of this paragraph,
 20 "materially improved" means that a recipient who has previously qualified for a
 21 waiver for

22 (A) a child with complex medical conditions, no longer needs
 23 technical assistance for a life-threatening condition, and is expected to be
 24 placed in a skilled nursing facility for less than 30 days each year;

25 (B) mental retardation or developmental disability, no longer
 26 needs the level of care provided by an intermediate care facility for the
 27 mentally retarded either because the qualifying diagnosis has changed or the
 28 recipient is able to demonstrate the ability to function in a home setting without
 29 the need for waiver services; or

30 (C) an older Alaskan or adult with a physical disability, no
 31 longer has a functional limitation or cognitive impairment that would result in

1 the need for nursing home placement, and is able to demonstrate the ability to
2 function in a home setting without the need for waiver services.

3 * **Sec. 9.** AS 47.05.070(e) is repealed.

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

6 **APPLICABILITY.** Sections 2 - 4 of this Act apply to a cause of action related to a
7 subrogation, assignment, or lien by the Department of Health and Social Services that accrues
8 on or after the effective date of this Act.

9 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 **REPORT.** The Department of Health and Social Services shall prepare a report and
12 deliver the report to the legislature not later than the first day of the First Regular Session of
13 the Twenty-Fifth Alaska State Legislature. The report must include recommendations for
14 statutory, regulatory, and systematic changes that will

15 (1) assist the department in reducing medical assistance expenditures for
16 services received in residential psychiatric treatment centers and substance abuse treatment
17 facilities;

18 (2) enhance and clarify parental financial responsibility for children receiving
19 residential psychiatric treatment center and substance abuse treatment facilities services; and

20 (3) maximize all third-party resources available to pay for the cost of
21 residential psychiatric treatment center and substance abuse treatment facilities services
22 before a provider seeks reimbursement under AS 47.07.

23 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 **TRANSITION: REGULATIONS FOR HOME AND COMMUNITY-BASED**
26 **SERVICES.** To the extent that regulations on home and community-based services that are in
27 effect on the effective date of sec. 8 of this Act are not inconsistent with the language and
28 purposes of sec. 8 of this Act, those regulations remain in effect as valid regulations
29 implementing sec. 8 of this Act.

30 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 STATE PLAN. (a) The Department of Health and Social Services shall immediately
2 apply for federal approval of a revised state plan to implement the changes to the medical
3 assistance program made under secs. 1 - 7 and 9 of this Act.

4 (b) The commissioner of health and social services shall notify the revisor of statutes
5 of the date of the federal approval of the revised state plan submitted under (a) of this section.

6 * **Sec. 14.** Sections 8 and 12 of this Act take effect immediately under AS 01.10.070(c).

7 * **Sec. 15.** Except as provided in sec. 14 of this Act, this Act takes effect July 1, 2006, or on
8 the date of notification under sec. 13 of this Act of federal approval of a revised state plan for
9 medical assistance coverage incorporating the changes made by secs. 1 - 7 and 9 of this Act,
10 whichever is later.