

SENATE CS FOR CS FOR HOUSE BILL NO. 426(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 5/2/06

Referred: Finance

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, with respect to medical

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

3 (1) provide, with respect to an individual who is eligible for or is
4 provided medical assistance under AS 47.07, on the request of the department,
5 information to determine during what period the individual or the individual's spouse
6 or dependents may be or may have been covered by the insurer and the nature of the
7 coverage that is or was provided by the insurer, including the name and address of the
8 insurer and the identifying number of the health care insurance plan;

9 (2) accept the department's right of recovery and the assignment to the
10 department of any right of an individual or other entity to payment from the party for
11 an item or service for which payment has been made under AS 47.07;

12 (3) respond to any inquiry by the department regarding a claim for
13 payment for any health care item or service that is submitted not later than three years
14 after the date of the provision of the health care item or service; and

15 (4) agree not to deny a claim submitted by the department solely on the
16 basis of the date of submission of the claim, the type or format of the claim form, or a
17 failure to present proper documentation at the point-of-sale that is the basis of the
18 claim if

19 (A) the claim is submitted by the department within the three-
20 year period beginning on the date on which the item or service was furnished;
21 and

22 (B) any action by the department to enforce its rights with
23 respect to the claim is commenced within six years after the department's
24 submission of the claim.

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

26 (b) If the department provides or pays for medical assistance for injury or
27 illness under this title, the department is subrogated to the rights of the recipient of that
28 medical assistance for any claim arising from the injury or illness and to the proceeds
29 of an insurance policy covering the injury or illness to the extent of the value of the
30 medical assistance provided. [A RECIPIENT OF MEDICAL ASSISTANCE OR THE
31 RECIPIENT'S ATTORNEY MUST NOTIFY THE DEPARTMENT IN WRITING

1 OF ANY ACTION OR CLAIM AGAINST A THIRD-PARTY PAYOR IF
 2 MEDICAL ASSISTANCE WAS PROVIDED BY THE DEPARTMENT TO TREAT
 3 AN INJURY OR ILLNESS FOR WHICH THE THIRD PARTY MAY BE LIABLE.]

4 Notwithstanding the assertion of any action or claim by the recipient of medical
 5 assistance, the department may bring an action in the superior court against an alleged
 6 third-party payor to recover an amount subrogated to the department for medical
 7 assistance provided on behalf of a recipient.

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

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

13 (b) A medical assistance recipient may not compromise or resolve an action or
 14 claim seeking payment for or related to an injury or illness for which care or services
 15 were provided or received under the medical assistance program against an insurer,
 16 entity, or other person without first providing notice to the attorney general's office of
 17 the facts and circumstances giving rise to the action or claim and the asserted basis for
 18 supporting the action or claim.

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

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

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

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

31 (3) assign to the department the applicant's right to the applicant's

1 permanent fund dividend and agree to sign a new assignment each year; the
 2 department shall use the assignment obtained under this paragraph to obtain
 3 reimbursement or enforce repayment when a recipient does not pay to the state
 4 reimbursement received from a third party for care or services provided or paid by the
 5 medical assistance program or fails to satisfy a lien perfected under AS 47.05.075; and

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

10 **Sec. 47.05.072. Duty of attorney for medical assistance recipient.** (a) An
 11 attorney representing a medical assistance recipient shall notify the attorney general's
 12 office.

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

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

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

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

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

24 (5) a description of the facts and circumstances supporting the action
 25 or claim.

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

31 (d) Except for payments under AS 23.30, an attorney representing a medical

1 assistance recipient who has received care or services for the injury or illness provided
 2 or paid for by the medical assistance program shall maintain any lump sum settlement
 3 or judgment paid in connection with the action or claim in a trust account or deposit
 4 the proceeds into the registry of the court until any lien perfected by the department
 5 under AS 47.05.075 is satisfied or, if a lien has not been filed under AS 47.05.075, 60
 6 days from the attorney's receipt of the proceeds.

7 (e) An attorney who fails to comply with this section is not entitled to the pro
 8 rata reduction under AS 47.05.070(c). If the attorney has already received payment for
 9 the attorney's services through the pro rata reduction as provided in AS 47.05.070(c),
 10 the attorney is civilly liable to the department for the amount of that payment.

11 (f) If a medical assistance recipient is handling the action or claim on a pro se
 12 basis, the provisions of this section apply as if the medical assistance recipient were an
 13 attorney representing the medical assistance recipient.

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

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

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

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

31 (1) making full repayment to the department for costs of past medical

1 assistance services provided to the medical assistance recipient related to that action or
2 claim; and

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

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

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

11 (g) The attorney general may only discharge or give written consent related to
12 a medical assistance lien under AS 47.05.075 if the discharge or consent complies
13 with federal law.

14 (h) Notwithstanding (a) - (g) of this section, a third-party payor shall have no
15 further liability if it settles or compromises a dispute in good faith and without
16 knowledge that the individual is a recipient of medical assistance.

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

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

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

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

27 (a) Benefit overpayments collected by the department in administering
28 programs under **AS 47.07 (medical assistance)**, AS 47.25.120 - 47.25.300 (general
29 relief), AS 47.25.430 - 47.25.615 (adult public assistance), AS 47.25.975 - 47.25.990
30 (food stamps), and 47.27 (Alaska temporary assistance program) shall be remitted to
31 the Department of Revenue under AS 37.10.050(a), **except for overpayments**

1 **recovered under AS 47.07 that cover the value of services paid from federal**
 2 **sources.**

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

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

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

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

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

14 (j) A person may not apply for medical assistance coverage on behalf of a
 15 child under 18 years of age who is not emancipated unless the person is the parent or
 16 legal guardian of the child or, if the parent or legal guardian can be contacted and
 17 consents to the application and the person is

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

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

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

29 (l) Notwithstanding the eligibility provisions under (a) and (b) of this section,
 30 a person may not receive medical assistance under this section unless the person first
 31 enrolls in the Medicare program under 42 U.S.C. 1395 to the extent that the person is

1 eligible to receive benefits and services under the program.

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

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

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

12 **Sec. 47.07.045. Home and community-based services.** (a) The department
13 may provide home and community-based services under a waiver in accordance with
14 42 U.S.C. 1396 - 1396p (Title XIX, Social Security Act), this chapter, and regulations
15 adopted under this chapter, if the department has received approval from the federal
16 government and the department has appropriations allocated for the purpose. To
17 supplement the standards in (b) of this section, the department shall establish in
18 regulation additional standards for eligibility and payment for the services.

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

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

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

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

29 (B) for other allowable waivers, a registered nurse licensed
30 under AS 08.68 who is qualified to assess children with complex medical
31 conditions, older Alaskans, and adults with physical disabilities for medical

1 assistance waivers; and

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

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

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

14 (C) an older Alaskan or adult with a physical disability, no
15 longer has a functional limitation or cognitive impairment that would result in
16 the need for nursing home placement, and is able to demonstrate the ability to
17 function in a home setting without the need for waiver services.

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

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

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

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

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

30 (1) assist the department in reducing medical assistance expenditures for
31 services received in mental health treatment facilities located in the state and outside the state,

1 including community mental health facilities, residential psychiatric treatment centers, and
2 substance abuse treatment facilities;

3 (2) enhance and clarify parental financial responsibility for children receiving
4 services provided by mental health treatment facilities located in the state and outside the
5 state, including community mental health facilities, residential psychiatric treatment centers,
6 and substance abuse treatment facilities; and

7 (3) maximize all third-party resources available to pay for the cost of services
8 provided by mental health treatment facilities located in the state and outside the state,
9 including community mental health facilities, residential psychiatric treatment centers, and
10 substance abuse treatment facilities, before a provider seeks reimbursement under AS 47.07.

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

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

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

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

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

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

26 * **Sec. 15.** Section 1 of this Act takes effect July 1, 2007.

27 * **Sec. 16.** Except as provided in secs. 14 and 15 of this Act, this Act takes effect July 1,
28 2006, or on the date of notification under sec. 13 of this Act of federal approval of a revised
29 state plan for medical assistance coverage incorporating the changes made by secs. 1 - 7 and 9
30 of this Act, whichever is later.