ALASKA STATE LEGISLATURE
ADMINISTRATIVE REGULATION REVIEW COMMITTEE
February 22, 2006
8:37 a.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Sharon Cissna

MEMBERS ABSENT

Senator Gene Therriault, Vice Chair
Representative Vic Kohring
Senator Ben Stevens
Senator Lyman Hoffman

OTHER LEGISLATORS PRESENT

Representative Lesil McGuire

COMMITTEE CALENDAR

CHANGES TO REGULATIONS ADOPTED BY DEPARTMENT OF HEALTH AND SOCIAL SERVICES 1/11/06 REGARDING DURABLE MEDICAL EQUIPMENT SUPPLIES

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

AMY ONEY
Mama's Assisted Living Home, L.L.C.
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to the adoption of the regulations pertaining to durable medical equipment supplies, and responded to questions.

RACHEL TIPPETS, Billing Manager
Southeast Alaska Medical Suppliers
Juneau, Alaska

POSITION STATEMENT: Provided comments during the discussion about regulations pertaining to durable medical equipment supplies, and responded to questions.

SHERRY METTLER, President
Assisted Living Association of Alaska (ALAA)
Anchorage, Alaska
POSITION STATEMENT: Provided comments during the discussion about regulations pertaining to durable medical equipment supplies, and responded to questions.

PAUL McGUIRE, President/CEO (Chief Executive Officer)
Denali Orthopedics, Inc.
Anchorage, Alaska
POSITION STATEMENT: Provided comments during the discussion about regulations pertaining to durable medical equipment supplies, and responded to questions.

CLINTON B. LILLIBRIDGE, M.D.
Anchorage, Alaska
POSITION STATEMENT: Provided comments during the discussion about regulations pertaining to durable medical equipment supplies.

CAROL SYKES, RN, President
ProCARE Home Medical, Inc.
Anchorage, Alaska
POSITION STATEMENT: Provided comments during the discussion about regulations pertaining to durable medical equipment supplies.

CHERYL CARSON, Branch Manager
Apria Healthcare, Inc.
(No address provided)
POSITION STATEMENT: Provided comments during the discussion about regulations pertaining to durable medical equipment supplies.

MARSHA FOY
Northern Orthopedics, Inc.
Anchorage, Alaska
POSITION STATEMENT: Provided comments during the discussion about regulations pertaining to durable medical equipment supplies.

MARY JO METTLER, Administrator
Northern Lighthouse Assisted Living

Kenai, Alaska
POSITION STATEMENT: Provided comments during the discussion about regulations pertaining to durable medical equipment supplies.

MONTA FAYE LANE
North Pole, Alaska
POSITION STATEMENT: Provided comments during the discussion about regulations pertaining to durable medical equipment supplies, and responded to questions.

KARLEEN JACKSON, Commissioner
Department of Health and Social Services (DHSS)
Juneau, Alaska
POSITION STATEMENT: Provided comments during the discussion about regulations pertaining to durable medical equipment supplies.

ACTION NARRATIVE

CHAIR TOM ANDERSON called the Administrative Regulation Review Committee meeting, which had been recessed on 2/21/06, back to order at 8:37:13 AM. Representative Anderson was present at the call back to order. Representative Cissna arrived as the meeting was in progress. Representative McGuire was also in attendance.

Changes to Regulations Adopted by Department of Health and Social Services 1/11/06 Regarding Durable Medical Equipment Supplies

CHAIR ANDERSON announced that the only order of business would be continuing the discussion regarding the changes made to the regulations pertaining to durable medical equipment supplies.

8:38:39 AM

AMY ONEY, Mama's Assisted Living Home, L.L.C., said she finds herself taking a stand against the adoption of the regulations adopted by the Department of Health and Social Services' (DHSS's) Division of Senior and Disabilities Services. She opined that the department did not listen to public comments that were based on years of true life experiences and hands-on professional expertise. It would be fatal for a private sector business to ignore outside indicators and market directives and proceed with a business plan that eliminates essential suppliers such that they could no longer provide their services or

product. However, that is the course the department has taken in ignoring the immense and significant public outcry against the proposed regulations - in fact the department did not even bother to respond to many of those who called in to testify against the adoption of the regulations regarding durable medical equipment ("DME") supplies.

MS. ONEY said that even using the list of providers the State distributed, neither she nor her staff could find a single local provider of incontinence supplies that would bill Medicaid on behalf of residents.

CHAIR ANDERSON noted that the department sent someone to Wal-Mart to purchase diapers and incontinence supplies to illustrate that those supplies are available.

MS. ONEY said that although Wal-Mart has good prices for baby diapers, when she tries to find adult-sized incontinence supplies at the retail stores the State has on its list but can't find the inserts or other items she needs for her incontinent clients, she then has to go to specialized medical equipment suppliers; the supplies that her clients need cannot be purchased at retail stores like Wal-Mart, she assured the committee, regardless that those stores might have great prices on some items.

CHAIR ANDERSON surmised that Ms. Oney's point is that even though there is a mandate to reduce reimbursables, the cutting of costs has gone too far, particularly given that many necessary supplies aren't available at retail outlets.

MS. ONEY, in response to questions, relayed that she runs four assisted living homes, that between 85-100 percent of her clients fit within the incontinent category, and that when specialized medical equipment suppliers deliver supplies to her businesses, an entire van is filled with her order.

MS. ONEY, in response to another question, explained that her company has no way to pass increased costs on to her Medicaid clients because most of them only have about $100 of income left over after making their contributions, and that even just one of her clients uses approximately $500 worth of supplies in a month. Multiply that amount by five incontinent clients in an assisted living home, the monthly cost for incontinence supplies can reach as high as $2,500 for just one of her homes. Furthermore, the rates that were frozen last year have been extended through next year, even though none of the rates for

incontinent supplies were negotiated. Therefore, those costs will come out of a home's budget; for her four homes, that's a cost of $10,000 per month, and this is not workable. So although she or an employee could go to Costco and save a little bit, she would have increased labor and transportation costs, costs which won't be reimbursed by Medicaid.

MS. ONEY also pointed out that inferior supplies - although cheaper - are not suitable if her clients are to be properly cared for because those supplies simply fall apart; for example, hospital incontinence supplies, because they are meant to be a temporary fix for temporary stays, are of poor quality.

MS. ONEY surmised that those employed by the State who are making the decisions to require assisted living homes to buy their supplies from retail stores like Costco and Wal-Mart are basing their decisions based on the fact that they personally are able to save money when they shop at such stores. They are not reaching out and working with the health care providers to gain insight before writing the regulations. One trip to the emergency room because one didn't have the proper supplies can actually pay for a year's worth of those supplies. She also mentioned that although some argue that people like she could just go get supplies, yet others are pointing out that reimbursements for those types of transportation costs are being eliminated.

8:53:30 AM

RACHEL TIPPETS, Billing Manager, Southeast Alaska Medical Suppliers, relayed that before her company started, people in Southeast Alaska were getting their DME supplies from Anchorage; now that they are in business, Medicaid money is being saved because people aren't shipping DME supplies down from Anchorage. However, as a small business, her company doesn't have the same buying power as do companies such as Geneva Woods Pharmacy and Health Care Services, and thus the aforementioned cuts are prohibitive. Furthermore, manufacturers require a minimum purchase of $20,000 per month on diapers, for example, and her company doesn't sell that kind of volume. So although the State wants to save money, small DME suppliers can't do it given the prices they have to pay, both for supplies and for shipping. She opined that if abuses in the system are occurring, the State should address it where it's occurring, and not just institute blanket regulations. She referred to an example given yesterday about a lift chair and pointed out that her company wouldn't simply deliver such equipment without proper authorization.

MS. TIPPETS, in response to questions, relayed that the aforementioned regulations will result in a 42 percent cut in profits for her company just in incontinence supplies alone; that she concurred with the percentages outlined the Geneva Woods Pharmacy and Health Care Services presentation; that realistically, if there is no change in rising costs or decreasing reimbursements, her company will either have to stop being a Medicaid provider or fold; that the bulk of her company's patients are elderly; that adult-sized diapers are much more expensive than child-sized diapers, particularly quality adult diapers; and that the local retail stores aren't able to keep up with her company's demand for such products.

MS. TIPPETS, on the issue of the new prior authorization process, said that her company has already received complaints from physicians regarding the additional paperwork required; that the process delays her company in providing supplies; that according to physicians the process is taking their time away from patients; and that although there is a certain amount of paperwork involved in billing Medicaid and Medicare, having to do so for gloves and wipes and other items [is cumbersome].

CHAIR ANDERSON surmised that some efficiencies in the process need to be made.

MS. TIPPETS concurred, adding that her company has two employees that do all the prior authorization and intake paperwork for the clients. In response to another question, she explained that Medicaid's certificate of medical necessity, for example, must be filled out manually, faxed over to the doctor who in turn faxes it back, and then it's faxed to Medicaid which in turn mails it back to her company. She surmised that this change in the prior authorization process will raise Medicaid's costs as well.

9:06:53 AM

SHERRY METTLER, President, Assisted Living Association of Alaska (ALAA), relayed that that ALAA has had discussions with well over 80 homes that are [having similar problems with the regulations pertaining to incontinence supplies]. She provided the committee with a spreadsheet illustrating the regulations' effect on costs to assisted living homes that have to purchase incontinence supplies on their own. The additional estimated cost - weekly - for employee, vehicle, and office expenses totaled $257.20, and the cost of the products themselves came to

$49.43 when purchased at Fred Meyer; the cost allowed by the new regulations is $49 and doesn't take into account the aforementioned additional cost of $257.20 for acquiring the products.

MS. SHERRY METTLER relayed that another issue that has come up for quite a few different assisted living homes between Fairbanks and Homer is that of a hospital calling wanting to send a patient over to a home and then the home having to make an extra run to the aforementioned retail stores for incontinence supplies only to find that the necessary supplies are not available. Also, sometimes a hospital will give the prescription for the incontinence supplies to the patient's family member, and the assisted living home has to wait for him/her to bring in that prescription; if this doesn't happen in a timely fashion, the assisted living home cannot get the supplies, doesn't have them on hand, and thus the patient must be returned to the hospital for a couple of days until the home can acquire the necessary supplies.

MS. SHERRY METTLER relayed that most assisted living homes have 5-16 beds and only one or two staff. Under the old system, a home could simply tell the hospital to fax the prescription for incontinence supplies to a medical supply store such as Geneva Woods Pharmacy and Health Care Services, which would then deliver the supplies to the home before the patient arrived from the hospital. She surmised that the department really doesn't want to see patients being returned to the hospital because of a lack of incontinence supplies, but that is exactly what has happened as a result of the new regulations. She added:

> Because ... assisted living is somewhat limited in the whole list of durable medical equipment that we use on a regular [basis], it does really come down to the incontinence supplies, basically, for us. It comes down to the gowns, it comes down [to] those type of things. So ... the other bigger items maybe are not such an issue to us right now, but ... I would have to say, in the homes that I've spoke to, there's none that doesn't have at least half if not two-thirds of their people in the category of needing incontinence supplies in one manner [or] another.
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> The other point I want to make, because I've heard this a couple of times about excess stuff sitting out and frozen, ... is that we order from ... our durable medical [equipment supply] people, [and] they don't

> automatically send us, every month, a supply of incontinence supplies for ... [a particular patient]. We have to specifically go to our closets, ... [determine what was actually used, and] actually make a decision in our home before we order from our durable medical [equipment supply] people, so that there should not be this excess ... amount. The only time that ... [becomes a possibility is if a client] dies and we have ... supplies that were just delivered.

MS. SHERRY METTLER relayed that what happens in those situations, because those supplies cannot be returned, is that sometimes - right or wrong, legal or illegal - those supplies are used on another client if they are appropriate for that client's needs, and then the home simply delays using that client's prescription. Regardless that doing so is illegal, she remarked, it is ludicrous to have cabinets full of things that can't be used. When homes don't use such [leftover] supplies, it results in the aforementioned situation wherein those supplies are just left outside to freeze.

9:13:22 AM

MS. SHERRY METTLER, in response to questions, relayed that the ALAA consists of 83 assisted living homes; that those homes have at least 750 individuals living in them; and that Fred Meyer won't bill Medicaid. In response to another question, she said:

> I don't think we could even begin to understand the frustration or the limitations that are going to come on to the assisted living homes, because of the fact that we are accustomed to ... being able to pick up a phone and [have] ... someone do this as a business. This is basically a side business that you are putting on to the assisted living homes. And I would say that what's going to happen is that you're going to have more acute care, you're going to have more people in the emergency rooms, you're going to have bed sores, you're going to have licensing people in, [and] you're going to have long-term care ombudsmen overburdened because bed sores are going to be a reality, here, because if you can't get the supplies, then how can you take care of the people. ...
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> The domino effect would be tremendous here. So either homes will accept people ... and do a substandard

> [job] - not intentionally - for lack of supplies, or they're going [to] end up [having to absorb] ... incidental [costs]. ... And we don't have any way to absorb these costs, so what will happen [is that] ... we will end up not taking people, we will end up overburdening the acute care or the long-term care [facilities] - be it [a] nursing home - when that isn't necessary. ... I don't think we even know where this is going to take us because, right now, we have [companies] ... like [Geneva Woods Pharmacy and Health Care Services] and other durable medical [equipment supply] people that are just bending over backwards to accommodate us even though maybe they're taking a chance on not getting paid. We can't take a chance on not getting paid.

9:16:41 AM

REPRESENTATIVE LESIL McGUIRE, Alaska State Legislature, asked Ms. Sherry Mettler how she first became aware of regulation change, and how that change was explained to her with regard to why incontinence supplies were chosen as the area in which to save funds.

MS. SHERRY METTLER relayed that she'd first heard of the regulation change via an e-mail, but at the time she didn't think it would affect assisted living homes; she has since come to realize that although ostensibly the regulation change would be affecting DME suppliers, the change has put such a burden on those suppliers that they haven't been able to absorb the costs, causing a trickle down effect on assisted living homes because suppliers will have to either limit or stop supplying the needs of assisted living home clients.

REPRESENTATIVE McGUIRE asked Ms. Sherry Mettler whether she'd had any conversations with the department on this issue.

MS. SHERRY METTLER said she had not, though she had posed questions to Geneva Woods Pharmacy and Health Care Services. She pointed out that there are other products that incontinent patients use, and yet the department chose to alter "the allowable" for the absolute necessities - those items that provide dignity to patients. In response to a question, she acknowledged that she'd initially just assumed that the supply companies would be objecting to the regulation change, though assisted living homes are now joining in on the discussions.

MS. SHERRY METTLER, in response to comments and a question, said that she is also an accountant in this field, and has a clientele of 93 assisted living homes in Alaska, many of which aren't members of the ALAA, and she does "their cost-based reimbursements" and responds to their questions about the regulations. Some homes [that are not part of the ALAA] have relayed to her that they will no longer be able to employ staff unless they do it under the table, to which she has replied that they must not take that route. She added that some of those homes are operating under the thinking that they can circumvent a lot of the issues being raised by the new regulations or kind of fly under the radar or still operate on just the default rate, for example, by just having family members do all the work. Unfortunately, as time goes on, they are finding that they can't really operate that way - the regulations are affecting them just as much as they are anyone else - and when they do attempt to operate in such a fashion it leads to problems with licensing, the long-term care ombudsman, Medicaid recertification, audits and quality control, and the health and safety of the patients.

9:25:39 AM

PAUL McGUIRE, President/CEO (Chief Executive Officer), Denali Orthopedics, Inc., relayed that his company is a prosthetic and orthotic service company, and that one of his concerns pertains to the adoption of Medicare reimbursement rates for prosthetic and orthotic services. He said he had provided the department with lots of information during the public comment period, and opined that this information appeared to "fall on deaf ears." He elaborated:

> I gave them examples and information from the Consumer Price Index [CPI] of how in the years, for instance, from 1984 to 2003, Medicare "O and P" fee schedule allowables increased 28.97 percent - the same period the CPI changed 77 percent. And that's just for that period of time, and the other results are still as dramatic in the sense that we are not able to keep business with the Medicare reimbursement rates. And that, if anybody's been reading the papers, has been history clear across the United States and continues to be.
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> So the adoption of these ... [is] going to prove a severe hardship on many of us in the field. Now, I certainly understand the need for cost containment and

cost control, and I'm not one that simply says, "Don't cut mine, cut someone else's," but I did offer a couple of suggestions about how this could be ... a bargaining position so that it could work for both sides - they could save money and we could have a more realistic reimbursement schedule - but, again, none of those issue were addressed, and their philosophy seemed to be that this is the way it's going to be, pretty much, "no matter what you say to us."

The other concern I have is that it's still not clear to me whether or not prosthetic and orthotic providers will be [the] only ones that will be allowed to provide these services. I know for a fact that a lot of physical therapists do this [kind] of stuff, but what happens is, if they're allowed to both bill for the items and bill for their services using a different coding technique, ... in essence those people aren't affected by this because they still get paid for their rates for ... their services. And so if there are regulations in place that say it's going to be limited to "P and O" providers, then who is actually going to enforce all these regulations against all the other people that are doing this and still doing it on the old system?

Some of the comments I have, concerns and questions, ... [pertain to] prior authorization for diabetic shoes and diabetic foot inserts; if a patient goes to a physician and the physician deems that these people need these things, it's for a reason, so when we get a prescription from a physician it is because it's already been documented as being medically necessary or they wouldn't have the prescription and they wouldn't come to see us. And many times, in the case of diabetic feet, the difference in a week or ten days, in terms of treatment or not treatment, can make a huge difference in their outcome, and usually the outcome is not that they get better but [that it] could possibly lead to infection and further complicate the treatment issues. So they're, ... in my opinion, being a little shortsighted in their efforts. While I understand the need for cost containment, I think there's other approaches that could be done.

9:30:00 AM

CHAIR ANDERSON surmised that Mr. McGuire's view is that the department didn't seem to be responsive during the regulatory process.

MR. McGUIRE agreed, adding that people had gotten a copy of regulations and the proposed changes, and were informed of when they could provide comments and express concerns, which people did but received no response whatsoever from the department. In a discussion he'd had with the commissioner the day prior to regulations going into effect, he relayed, the commissioner indicated that the changes were being mandated by the State of Alaska and thus nothing could be done to address concerns.

CHAIR ANDERSON expressed frustration that legislators, as policymakers, pass laws, with regulations supplementing those laws, and although he would like to believe that the departments are willing to work with the industries to address their concerns, this doesn't always happen. He expressed the hope that in this instance the department will take these Administrative Regulation Review Committee meetings as instruction that the process isn't working.

9:34:26 AM

REPRESENTATIVE McGUIRE concurred, adding her belief that the legislature's policy is that it doesn't want the aforementioned services to only be provided by large, state-run institutions; rather, it wants the private sector to be able to provide those services. The way the regulations have been written, however, indicates that the analysis that the department goes through is not same as that which the legislature has gone through when forming the policy it wants instituted. She predicted that there will be a backlash to the regulations that have recently been adopted - the legislature may very well repeal them as being unacceptable, much as it did last year to the regulations regarding assisted living homes. Although it is true that Medicaid and Medicare costs are rising, so too is the cost of living, and it is unfair to demand that the private sector make cuts without also reflecting the increased costs in providing necessary services. It is so disappointing, she remarked, to hear the same testimony year after year - that being about the DHSS's apparent lack of response to the public's concerns. She suggested that the DHSS should talk with the legislature before instituting regulations that reflect the department's policy so as to ensure that that policy is also the legislature's policy, because to date it has not been.

REPRESENTATIVE CISSNA agreed that the legislature wants to keep people out of large institutions, offering her belief that they are much more expensive. She acknowledged, however, that there is every incentive, in terms of the way the state receives federal funding, to put people in institutions. Her concern is that the legislature doesn't hear much from those who are trying to stay at home, characterizing the issues facing those people as very similar to those that the committee is hearing about today. She said she doesn't fault the department, since its budget is being cut; what the private sector doesn't understand, she posited, is that politically the legislature doesn't have the power to fund the DHSS budget to the level necessary to undertake a preventative approach. She opined that in order to find a solution, the stakeholders, including the private sector, must work with policymakers to address the issues associated with allowing Alaskans to age at home.

9:42:17 AM

CLINTON B. LILLIBRIDGE, M.D., after relaying that he is a recently retired pediatrician, said that one issue that has arisen for the [Alaska Chapter of the American] Academy of Pediatrics (AAP)] is that pediatricians are being asked to sign prescriptions for DME [supplies] that don't make any sense. For example, an order would come for 30 diapers a day for a child who was not particularly incontinent. Were they really changing that child's diaper two or three times every hour? Or there would be an order for 15 washcloths per day, for a total of approximately 450 washcloths per month. Don't such items get washed? The amounts of prescriptions seemed to be greatly inflated, and yet he didn't have the staff to research the individual situations to see what was actually needed. He expressed agreement with Representative Cissna's last comment.

CHAIR ANDERSON surmised, then, that Dr. Lillibridge is suggesting that scrutiny is in order with regard to the ordering of supplies.

DR. LILLIBRIDGE concurred.

9:44:32 AM

CAROL SYKES, RN, President, ProCARE Home Medical, Inc., said she concurs with prior testimony. She characterized the statements that assisted living homes can simply get the necessary DME supplies from the aforementioned retail stores as

misinformation. She pointed out that DME suppliers have huge overhead - for Medicaid and Medicare patients the overhead is approximately 60 percent above product cost because of the additional paperwork requirements and reimbursement delays resulting from the newly instituted regulations. Ms. Sykes relayed that her company was told that they would be involved and consulted in the regulation-making process, that patient qualifications would be published, that everything would be automated, and that the prior authorization requirements would be eliminated. However, the regulations were launched before being given to providers, and the regulations have regressed with regard to prior authorization - now basically everything requires paperwork - and this has increased costs.

MS. SYKES opined that DME suppliers are valuable assets - they keep a lot of people out of the hospital, and are often the only medical professionals that people have contact with after being discharged from the hospital - and so they ought to be able to make a reasonable profit. It's called capitalism, she remarked, adding that if [government] wants good people it has to allow them to make a decent living or they will take their talents to another industry where they can make a decent living. There has been a history of miscommunication and bad relationships and difficulties in communicating between "First Health," Medicaid, and DME supply providers. There had been attempts to relay to [the department's representative] why pricing was the way it was and what supplier's needs and burdens were, Ms. Sykes explained, but there was always a level of intimidation implied in those meetings - [the department's representative] made it quite clear that if she wanted to she could make life very difficult for suppliers "and we literally were afraid of her."

MS. SYKES said that although that person is no longer in that position, the new representative for the department, David Campana, although is supposedly a very good pharmacist, doesn't return phone calls, knows virtually nothing about the DME supply business, and has proven time and again that he is not interested in learning anything about it. This means that DME suppliers have no one within the department to work with; no one is willing to listen to suppliers when they try to explain why costs are as high as they are and what equipment, training, support, insurance, expenses, and staffing are necessary to operate such a business. There are rising costs all around these days, and all other businesses are passing those rising costs along to their customers, but the DME suppliers aren't being allowed to do that and are instead being told that delivering supplies is simply a luxury service; not providing

that service, however, is not a realistic option for patients. Again, the DHSS doesn't have a clue about the nature of the DME supply business.

MS. SYKES said that for years her industry has been asking for the establishment of an advisory committee that will meet regularly with those who set the fee schedules, so that the issues of concern and rising costs can be addressed. When Medicaid adopted the Medicare fee schedule, there were many items in that schedule for which DME suppliers wouldn't accept assignment; with Medicare, DME suppliers have that choice, but not with Medicaid. Who is going to be willing to provide necessary DME supplies at a loss? Not her company, she remarked, adding that she doesn't know of any other companies that will either; the [state] has to be reasonable with regard to reimbursement. If such efforts are not made, the State will be flooded with companies willing to commit fraud, she warned.

MS. SYKES, in conclusion, said:

> I really hope Medicaid and our representatives will continue to work with us, listen to us once in a while, maybe get some education from us - we're very willing to be fair and reasonable ...; DME [supply] providers are going to have to be accredited - that's a Medicare standard that's coming up. Accreditation is incredibly cumbersome, expensive, but it will weed out the fly-by-night players, it should make it easier for Medicaid to not have so much paperwork and auditing. ... They certainly need to publish criteria for their products, what covers people, instead of leaving it to the subjective decision of whoever's desk it lands on. ... [The current system] isn't working, and it's been very unfair, and it was not done fairly. ... We want to be part of the solution, we want to be respected for what we do, and for the people who make the decisions to understand our industry. ... Invite us to the table, we'll participate, but don't ignore us and not return our phone calls and not respond to our concerns - ... we deserve better than that.

9:54:51 AM

CHERYL CARSON, Branch Manager, Apria Healthcare, Inc., said that although her company is a national one, she shares the same concerns regarding the reimbursement aspect [of the new

regulations]. The current rates of reimbursement, minus the costs of servicing patients, put her branch in a difficult position from a business perspective in that it might not be able to "maintain enough margin to continue this service" to patients. As the new regulations stand, with the new reimbursement rates, some very difficult business decisions are going to have to be made. She said that the administrative overhead has increased drastically due to the additional prior authorization requirements, adding that it is still a manual process.

MS. CARSON offered her understanding that there is already a process in place to address instances of fraud and abuse in the system, and she surmised that all providers would prefer that the State take action through that process rather than via the seemingly punitive measures being taken with the reimbursement rates. She pointed out that the industry already does a lot of self regulation, and is eager to see those abusing the system punished, but to punish all providers because of the actions of one unethical provider who left too much product someplace is unfair. She concluded by saying that she supports most of the testimony that's been presented, and that she would like [the State] to reconsider the regulations pertaining to reimbursement.

9:58:22 AM

MARSHA FOY, Northern Orthopedics, Inc., concurred with Mr. McGuire's testimony, and indicated that her company's major concern pertains to the Medicare reimbursement levels. Daily expenses at all levels for all industries continues to increase, and yet when reimbursement levels stay locked, how is a [DME supply] business supposed to continue providing services? She offered her belief that the new regulations pertaining to prosthetics and orthotics are going in the right direction by looking at customized prosthetics and orthotics that come from nationally certified providers, though such providers will be able to use different coding for their specialty items, thus adding to the cost, whereas businesses like hers have their reimbursement rates frozen. She mentioned that many of the comments she was going to make have already been expressed. She questioned whether the department did everything it could with regard to notifying providers; providers need to be at the table to represent their industry when possible changes to regulations are considered.

10:00:59 AM

MARY JO METTLER, Administrator, Northern Lighthouse Assisted Living, said she went to Fred Meyer yesterday and found that the store didn't have some of the necessary products and that some of the products offered were substandard for residents' needs. For example, a bed pad had the same vinyl backing as what could be purchased at Geneva Woods Pharmacy and Health Care Services, but the top material would have shredded during its first washing in a washing machine, and thus her home would have to purchase more of that item to make up for the inferior quality, ultimately costing the home more money. With regard to [prior authorization requirements], she remarked that sometimes physicians are unwilling or lack the time to sign the paperwork.

MS. MARY JO METTLER explained that when a client doesn't receive necessary DME supplies - such as incontinence supplies - his/her dignity is at risk and this can in turn result in self-imposed isolation, depression, a deterioration in health, and a costly physician's visit - all of which are more costly than the price of quality incontinence supplies. "I don't think that what's going on with here in these regulations is cost effective by any means," she opined, adding that no one should have to live in fear of soiling themselves while in the company of other people. So although there may be some abuses of the system, the majority of providers aren't abusing the system.

MS. MARY JO METTLER, in conclusion, suggested that the citizens who are in need of these supplies deserve to live with dignity and have quality of life, adding, "we do want to work with other organizations and the State as a team, and that's what we've been fighting for, for years now."

10:04:53 AM

MONTA FAYE LANE relayed that she is the past president of the Assisted Living Association of Alaska (ALAA) and owns two [assisted living] homes in North Pole. She recalled that many years ago she'd brought to the legislature's attention the need for discussing Medicaid fraud in the state, and noted that she has been subjected to two Medicaid audits in 2004, both of which were conducted by out-of-state companies - she opined that the State could save money if it were to use an Alaskan company for such a task - and all that was found was that she used "whiteout" on one of her daily medication charts. She offered her understanding that Medicaid pays an "up to" certain price for supplies, and questioned how many DME suppliers charge less than that "up to" price.

MS. LANE said that she found that when she needed a special mattress for the oldest Marine [veteran] in the state, she couldn't acquire it even though he was covered by three insurers; had this 82-year-old man been on Medicaid, however, "it would have been taken care of. She assured the committee that assisted living homes in North Pole don't maintain a huge stockpile of DME supplies because they order - on a monthly basis - only what is needed. She then spoke of the risk of contracting diseases from assisted living home patients with incontinence problems, suggested that the Health Insurance Portability and Accountability Act (HIPAA) has had an impact on this issue, and explained that workers in her homes use as many gloves and wipes as they feel is necessary in order to feel safe from possible contamination, even though doing so might seem like an excess use of supplies.

MS. LANE said that it is not true that Medicaid reimbursement rates are included in the allocations for assisted living homes; assisted living homes don't have the money to purchase incontinence supplies, nor do they have allocation for the delivery of such supplies. She questioned why assisted living homes have been included in the new regulations, and requested that they be omitted.

MS. LANE, in response to a question, said that if the State doesn't find a way to address Medicaid waiver "scoring," many people will be left in hospitals and emergency rooms. Assisted living homes now have to fill out Medicaid waiver certifications similar to those filled out by nursing homes, even though they are not nursing homes. She agreed with the concept of establishing an advisory group made up of everyone involved in the industry. In response to a further question, she said that she'd not heard anything about the new regulations pertaining to DME supplies [until after they were adopted].

CHAIR ANDERSON asked Ms. Lane to submit her comments in writing.

MS. LANE agreed to do so.

CHAIR ANDERSON, after ascertaining that no one else wished to testify, closed public testimony. He acknowledged that the department might be having difficulty with regard to budget cuts, but pointed out that the regulation process continues to be problematic.

10:16:04 AM

KARLEEN JACKSON, Commissioner, Department of Health and Social Services (DHSS), suggested that it would be appropriate for the department to respond in writing to the issues that have been raised, and relayed that she'd not heard much of the recent testimony until now. There are different layers of issues, she remarked, with some of them being federal issues over which the department has no control. The department shares the concerns of many of the providers with regard to having to comply with the HIPAA and having to obtain prior authorizations. She said that every provider, from mental health providers to substance abuse providers, have been commenting on the increased costs of doing business, and yet the federal government is cutting funding to states. Furthermore, the Alaska legislature is also telling the department to decrease its budget. She added:

> There are some very real issues that I cannot solve by myself, our department cannot solve by [itself], and we're grateful to have other partners work with us on [those issues], but I can't give you a simple answer today, and certainly just increasing funding isn't going to get us there because I don't have that ability nor do the people in this room.

CHAIR ANDERSON offered his belief that the situation calls for legislation, and expressed the hope that when legislation or budgets are adopted, that the department will engage in a dialogue with those involved. The assisted living homes make a compelling argument with regard to a lack of response from the department, he remarked, and posited that a review of the DHSS's entire [regulation-making] process would be in order.

COMMISSIONER JACKSON said that the department is willing to do what it can within the restraints it has, and that the department will need more information before it can provide its written response.

ADJOURNMENT

There being no further business before the committee, the Administrative Regulation Review Committee meeting was adjourned at 10:22 a.m.