ALASKA STATE LEGISLATURE
SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE
ANCHORAGE
November 3, 2009
1:06 p.m.

MEMBERS PRESENT

Senator Bettye Davis, Chair
Senator Joe Paskvan, Vice Chair
Senator Johnny Ellis
Senator Fred Dyson
Senator Joe Thomas

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

Review: Centers for Medicare and Medicaid Services Moratorium
HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record.

WITNESS REGISTER

REBECCA HILGENDORF, Director
Division of Senior and Disabilities Services
Department of Health and Social Services (DHSS)
POSITION STATEMENT: Delivered presentation on Medicare and Medicaid services in Alaska.

JON SHERWOOD
Medicaid Special Projects
Division of Health Care Services
Department of Health and Social Services (DHSS)
Juneau, AK
POSITION STATEMENT: Provided information related to Medicare and Medicaid services.

JIM BECK, Executive Director
Access Alaska

POSITION STATEMENT: Testified as to how the moratorium affected PCA services.

KAY BRANCH, Coordinator
Elder Health
Alaska Native Tribal Health Consortium
POSITION STATEMENT: Testified as to how the moratorium affected tribal health organizations.

SANDRA KOTTLE, representing her daughter
POSITION STATEMENT: Provided personal perspective of the difficulties receiving Medicare and Medicaid services.

DENISE DANIELLO, Executive Director
Commission on Aging
POSITION STATEMENT: Commented about the value of home and community based Medicaid services.

SHARON HOWERTON CLARK, Chair
Alaska Commission on Aging (ACOA)
POSITION STATEMENT: Stated support for DHSS in its efforts to resolve the problems that led to the Medicaid waiver moratorium.

GWEN LEE, Executive Director
The Arc of Anchorage
Anchorage, AK
POSITION STATEMENT: Gave a provider's prospective of the broken system.

RUTH NIMS, representing herself
POSITION STATEMENT: Testified that she had been denied chore services and has had a hard time understanding why.

JOANNE WEISE, care coordinator
POSITION STATEMENT: Described the SDS denial of service that placed Ms. Nims in great hardship.

DUANE WISE, Environmental Modification Contractor
KaJo Services, LLC.
POSITION STATEMENT: Testified from the perspective of a Medicaid service provider.

JOANNE WISE, Care Coordinator
POSITION STATEMENT: Testified about the status of life after the moratorium.

SHARON METTLER

Assisted Living Industry
POSITION STATEMENT: Testified as to how the moratorium affected assisted living.

BRIAN RICHARDSON, CEO
Immediate Care
POSITION STATEMENT: Testified as to how the moratorium affected PCA and respite services.

ACTION NARRATIVE

1:06:05 PM
CHAIR BETTYE DAVIS called the Senate Health and Social Services Standing Committee meeting to order at 1:06 p.m. Present at the call to order were Senators Ellis, Thomas, and Davis. Senators Paskvan and Dyson arrived soon thereafter.

Review: Centers for Medicare & Medicaid Services Moratorium

CHAIR DAVIS announced the business before the committee is a review of the Medicare and Medicaid services moratorium.

1:07:09 PM
REBECCA HILGENDORF, Director, Division of Senior and Disabilities Services, Department of Health and Social Services (DHSS), said the Medicare and Medicaid Services moratorium was imposed on June 26. It was lifted for personal care services on August 6 and for waivers on August 28. She introduced the department members who were available to assist with questions.

1:09:26 PM
Senator Dyson joined the committee.

MS. HILGENDORF said her presentation will provide an overview of senior and disabilities services including a timeline of events, a summary of contributing factors, the current situation, corrective action plans, short-term strategies, and the context for the Alaska plan moving forward.

SENATOR ELLIS said the committee is trying to understand "why in the heck everything takes so long." In an effort to answer that question, he asked her to address as she goes along whether she has enough staff; whether the federal rules slow things down; whether the AG's office responds too slowly, or if it's that the governor gives poor direction.

MS. HILGENDORF replied she hopes it will be evident in the presentation, but there isn't a problem with the AG's office. That office always provides immediate response and is very helpful.

1:11:56 PM
MS. HILGENDORF outlined the major 2003 DHSS reorganization that created the Division of Senior and Disabilities Services. Medicaid functions and budget and policy issues related to seniors and disabled persons were consolidated into that new division. The mission is to "Promote the independence of Alaskan seniors and persons with physical and developmental disabilities." The core services include, "Institutional and community based services for older Alaskans and persons with disabilities; [and] protection of vulnerable adults."

Today she will only focus on Medicaid services the division is responsible for including: home and community based waiver Medicaid services programs, care coordination, personal care assistance, nursing home authorization, and quality assurance.

MS. HILGENDORF said Medicaid has evolved to allow the state to provide long-term care services that enable people to live in their homes and communities. This allows choice and is less expensive than services in an institutional setting. Both home and community based services waivers and personal care assistance give people the choice of where they live and the services that they receive.

Alaska has four Medicaid waivers that began in 1994: 1) adults with physical disabilities; 2) older Alaskans; 3) children and adults with developmental disabilities; and 4) children with complex medical conditions. Reimbursable waiver services include care coordination, chore services, adult daycare, day habilitation, environmental modifications, intensive active treatments, meals, respite care, residential support, specialized equipment, specialized private duty nursing, supported employment, and transportation.

Care coordinators help the applicant initiate the eligibility determination process, develop the plan of care designed to meet specific needs, and ensure the person's health welfare and safety.

Personal care assistance is typically provided in the home by healthcare paraprofessionals. An individual's limitations are assessed to determine which services they are eligible to

receive and then the services are prior authorized. The division certifies qualified agencies as PCA providers and people can receive PCA services either through an agency or through the consumer direct model.

The division is also responsible for the initial admitting authorizations of Medicaid eligible applicants to 1 of the 15 skilled nursing facilities in the state. The over 700 nursing home beds have an average annualized per person cost of more than $197,000.

The quality assurance unit oversees the senior and disability services certification and licensing staff and investigates complaints against licensed service providers statewide. The unit works closely with Adult Protective Services, the Office of the Long-term care Ombudsman, Medicaid Fraud and Control Unit, and Assisted Living Licensing.

1:17:42 PM
MS. HILGENDORF displayed a pie chart showing the number of clients accessing the various services and programs under the Division of Senior and Disabilities Services. Senior grants represent 54.7 percent and serve 15,590 people; personal care assistance services represent 11.6 percent and serve 3,307 people; developmental disabilities grants represent 6.6 percent and serve 1,819 people; nursing homes represent 6.4 percent and serve 1,819 people; adult protective services represent 5.6 percent and serve 1,603 people; older Alaskans waiver represents 4.7 percent and serves 1,338 people; mental retardation developmental disabilities waiver represents 4.3 percent and serves 1,213 people; adults with physical disabilities waiver represents 3.2 percent and serves 1,213 people; adult protective services general relief represents 2.0 percent and serves 577 people; and children with complex medical conditions waiver represents .8 percent and serves 228 people.

1:19:01 PM
FY09 expenditures for Senior and Disabilities Medicaid Services totals $298,841,000. The breakdown is as follows: nursing homes $80,515,600 or 26 percent; personal care assistance $76,847,200 or 24 percent; and waivers $141,478,700 or 49 percent.

In September 2009 there were 3,676 home and community based waiver recipients. "Earlier I mentioned that 3,307 people were receiving personal care assistance for a total of about 7,000 people receiving either waiver or personal care assistance services in Alaska," she said.

MS. HILGENDORF provided the following timeline of events:

- June 2005 HB 67 passed with intent language specific to personal care assistance services.
- April 2006 the Division of Senior and Disabilities Services implemented new personal care assistance regulations.

Other major activities on the timeline were associated with the backlog of assessments either as a contributing factor or as a response to dealing with the backlog. She highlighted that a repository of information on the history of the reassessment backlog does not exist. To gather information for this presentation, she drew from a wide variety of sources.

MS. HILGENDORF displayed a graph to illustrate the growth in access and popularity of PCA services. These services were established in Alaska in 1986 and expanded in 2001 to offer recipients the choice of hiring and managing their own PCA, known as consumer directed personal care assistance.

- In 2000 PCA served 1,300 clients at a cost of $7.6 million.
- In 2005 PCA served over 3,800 clients at a cost of about $80 million.

1:23:17 PM
In 2005 the 24th Legislature directed DHSS, in the FY06 operating budget, to make regulation changes to control the costs of PCA services. HB 67 had 14 points in the intent language, directed at the Division of Senior and Disabilities Services, to slow and manage the growth of PCA services so there would be no significant reduction in services in the future. The changes in the regulations implemented in April 2006 were designed to make PCA services more effective, accountable, and ensure that those needing the services received them.

The regulatory response to the legislative intent language included:

- Defining and clarifying the scope and purpose of the PCA services.
- SDS piloted, modified, and adopted a new personal care assessment tool (PCAT).
- A physician certification of medical condition was required.
- SDS started conducting the assessments.
- Standby assistance was narrowly defined.
- All PCA services required prior authorization.

- Client eligibility requires substantial assistance in two activities of daily living.
- Availability of formal and informal resources was reestablished.
- PCA provider training, education, experience, and Medicaid certification was defined and required.
- The shared living rule was defined.
- The responsibilities of the consumer directed personal care agencies were clarified.
- Direct solicitation of clients from other PCA agencies was prohibited.

When SDS was first formed in 2003 it tracked information using 40 different databases and spreadsheets that were neither standardized nor linked. By 2006 the data systems were reduced to 21. A business analysis was conducted to identify the various information technology challenges faced by the division. Recommendations that came from that analysis were to be used as a basis for future system development.

MS. HILGENDORF highlighted for Senator Ellis that the division's technology challenges - data or lack of data - have been both part of the problem and solution and are a big reason that things take so long.

The 2006 business analysis identified secondary Access and Excel data systems for which there was little to no support. The confusing maze of data systems, the changes identified in the new PCA regulations, and 3,000 PCA participants coming into the SDS system all at once from numerous providers made it clear that the waiver and PCA assessment processes were in significant trouble.

Most of the databases have been assimilated into DS3, the acronym for the Division of Senior and Disabilities Services data system, she said. In July 2006 another business analysis was completed that related specifically to the assessment processes. In August 2006 the operational data was centralized onto the DS3 server. This framework allowed for the maintenance of client demographic information and was web enabled. Legacy data was migrated to create a master client index and application interfaces were developed so staff could continue to conduct timely and accurate daily business activities. Duplicate client records were eliminated for those clients who received both waiver and PCA services. Because both databases had flat

file architecture, new data overwrote existing data and there was only one year of data in each system.

1:27:11 PM
DS3 was deployed primarily to support the assessment processes and data holes continued to plague the system. In July 2007 a professional programming services contract began in support of the continued development and maintenance of the DS3. For the next two years efforts focused on:

- Converting the existing data structure to one that adhered to DHSS coding standards and migrated to a Microsoft programming standard.
- Creating a system to manage provider entities.
- Building a system to assist with managing PCA services.
- Building a system to manage the assessment process, including scheduling.
- Creating business processes and information technology supports for adult protective services investigations.
- Developing the electronic consumer assessment tool.
- Improving the functionality of the PCA prior authorization system.
- Long-term care capabilities that would allow nursing homes to use DS3 for transmission of nursing home applicant information were built into the system.

DS3 allows electronic processing of information directly related to program management. It currently serves about 150 users, contains client records for about 16,000 individuals, and logs about 15,000 database actions per day. This centralization of data management activities has helped bring SDS operational capabilities into alignment with DHSS regulatory and policy objectives.

1:30:36 PM
MS. HILGENDORFF made the following points regarding the 2006 assessment backlog:

- April 2006 the new PCA regulations went into effect. Previously, the state reviewed about 300 plans per year and the new regulations required prior authorization on every plan. Over 3,000 recipients came in from agency assessors with no documented processes to manage the influx of people and information.
- By June 2006 the contractor was failing to keep up. By August SDS suspended the use of the PCA tool for reassessment and directed the contractor to focus on new assessments. The state extended services.

- By August 2006 the backlog of PCA assessments was 700 and waiver assessments were behind by 200.
- SDS considered phasing out the contract in order to perform assessments in-house. A long-term care study indicated that the state should manage all waiver services through direct control of screening and assessments on a cost neutral basis. The new system in which services were approved or disallowed necessitated a more detailed comprehensive review of plans that placed the legal obligation of defending actions into the hands of the state and not a contractor. The proposal for a phased-in approach was never implemented.
- In September 2006 the division allowed RNs employed by the providers to perform assessments. About 8 providers chose to participate and completed a total of approximately 50 assessments per month. A reclassification of state-employed nurses did not include nurse assessors of senior and disability services so they did not benefit from the pay increase. This further exacerbated the division's inability to recruit and retain RN assessors.
- In October 2006 authorizations for PCA and waivers were extended while SDS focused on completing initial assessments. The extension was deemed the only mechanism available to avoid undue hardship for participants and providers.
- SDS estimated that the assessment backlog would be caught up by the end of June 2007.

1:34:18 PM

MS. HILGENDORF displayed a bar graph showing the number of PCA fair hearings in 2005 through 8/31/09. Fair hearings are a formal process by which Medicaid applicants or participants may get due process and dispute the state's findings related to denial of care or reduction in services. The individual may appear with legal representation before a professionally trained hearing officer who will weigh the evidence and make the final decision. Typically these hearings are preceded by a less formal pre-hearing to allow exchange of information that frequently leads to a resolution thereby negating the need for a fair hearing. In 2005 there were only 25 PCA fair hearings, but when the PCA regulations changed in early 2006 the number of hearings jumped to 429. 2007 was the all time high with 875 hearings and reflected the dissatisfaction with the 2006 change in regulations and the impact they had on service access. She reminded the committee that prior to the change in regulations there was no eligibility status review and most recipients

received 35 hours [of service] per week. About 3,000 people entered the system when the regulations changed and they were assessed by an RN with a new assessment tool. Some didn't meet eligibility criteria and others experienced a reduction or denial of services.

In 2007 SDS had just two nurse assessors working fulltime on pre and fair hearings, which contributed to the assessment backlog. The other SDS nurses did waiver assessments, reviewed reassessments and new assessments coming from contract nurses, and reviewed and approved nursing home authorizations. The dramatic drop in hearings after 2007 is believed to be the result of better explanation of services by the assessors to the clients. Current SDS training is producing more consistency and reliability than when the assessments were contracted out.

1:37:26 PM
In May 2007 SDS stopped assigning assessments to agency nurses because the contractor had hired additional staff and had adjusted workloads. In October 2007 the assessment contract came up for renewal and after some analysis SDS proposed to hire 12 state assessors and contract with 10 other assessors to manage the almost 6,000 assessments being performed annually. The budget analysis indicated that the state could save about $.25 million by doing the assessments itself and so SDS assumed that responsibility in November 2007. A senior manager and four staff were reassigned to the assessment unit and additional assessors were hired with the expectation that all assessments would be on target and on time by January 2008.

1:39:26 PM
MS. HILGENDORF displayed a slide summarizing the contributing factors for the system being overwhelmed since 2003 when SDS was formed.

- There was no well-developed plan or documented processes to manage the 2006 PCA regulation changes.
- The PCA assessment tool and PCA eligibility criteria was changed.
- There was a change in the assessment administration.
- All PCA services must be preauthorized.
- There was no database.
- There were ongoing difficulties recruiting/retaining RNs. The vacancy rate was nearly 40 percent and sometimes approached 50 percent.
- Demands for fair hearings skyrocketed with the regulation changes.

- There was and continues to be a duplication of effort. For example, a person may request both waiver services and personal care assistance services. Both require a different assessment and different service plan.
- Last winter SDS nurse assessors responded to a crisis at the Mary Conrad Center. They did comprehensive assessments on all the residents to ensure that they received the right treatment and care.
- During the hiring freeze last year SDS was only allowed to hire and fill vacancies in the adult protective services unit.
- Since 2003 when SDS was formed it has had 3 directors and 5 PCA managers and is currently recruiting for the 6th PCA manager.
- Lack of continuity, focus, and direction has contributed to delays in integrating systems and developing standard operating policies.

MS. HILGENDORF explained that the backlog of assessments was discussed in a March 2009 teleconference with the centers for Medicare and Medicaid services Region 10. In May an onsite review was conducted and on June 26 a preliminary findings report was issued. A moratorium was imposed so no new participants could be admitted to the four waiver programs or to PCA services. The Division of Senior and Disabilities Services was found to be out of compliance with all required assurances and was ordered to develop a corrective action plan, to participate in mandatory training, and to access technical assistance.

1:42:47 PM
SENATOR ELLIS asked why the turnover in the position of PCA manager is so high.

MS. HILGENDORF replied some of the reasons for leaving include returning to their home state, the job being overwhelming and chaotic, a lack of resources, and better pay in a different job. High turnover and the lack of a well developed plan certainly is a contributing factor to things taking longer, she added.

CHAIR DAVIS asked why problems weren't addressed until things got to the point that the federal government had to step in and impose a moratorium.

1:45:41 PM

MS. HILGENDORF replied her presentation hasn't yet mentioned that many people were and are working hard to resolve these issues. When SDS was established senior services and developmental disabilities were combined and that resulted in a culture clash. Since that time they've been working to integrate processes without having a framework to follow. Also, each of the managers, herself included, have had different work identified and have worked under different administrations that have had different priorities. People who have worked at SDS and in the department haven't been ignorant of the problems. They have been trying to resolve issues and can always use additional resources.

CHAIR DAVIS asked if she has asked the Legislature for additional resources.

MS. HILGENDORF answered yes, part of the SDS director's job is to identify resources and bring them forward. But there's a lot of competition for resources and the directors haven't always gotten what they asked for.

CHAIR DAVIS asked if the requests were put in the governor's budget or if the Legislature had been approached directly.

MS. HILGENDORF replied she has been working as director since December and this will be her second year submitting an outline of the human and technology resources that SDS needs.

1:50:15 PM
SENATOR DYSON mentioned the E-CAT (electronic consumer assessment tool) and asked if that would allow SDS to screen for fraud.

MS. HILGENDORF answered yes. SDS works closely with the Medicaid Fraud and Control unit, Assisted Living Licensing, and the Long-term care Ombudsman Office and it's not uncommon for all those agencies to work together to investigate fraud. SDS receives regular training from the [Department of Law] Medicaid Fraud and Control Unit and reports suspected fraud to that unit.

SENATOR DYSON expressed hope that those cases are vigorously and publicly prosecuted.

1:54:01 PM
SENATOR THOMAS asked her to summarize, as she goes through the corrective action plan, whether the action will correct the system, if it will save money, or if it will create a more

efficient system. He commented that he hopes that the state is using national consultants and that he would be more comfortable if the contractors were paid on a bid versus a per capita basis.

MS. HILGENDORF said in the most recent study HDV Strategies Inc. put together a manual of recommendations for Alaska's long-term care. SDS decided to modify the recommendations and do the things it can without any additional resources. She explained that SDS staff members have done research on what other states have done and they aren't shy about borrowing good ideas. With respect to the CMS involvement starting in May, she said SDS has worked closely with the National Quality Enterprise, a CMS contractor that provides technical assistance. They are very aware of best practices and provide advice on how to develop the system to maximize resources and be more efficient.

1:58:24 PM
MS. HILGENDORF acknowledged that paying the contractor per assessment was criticized at the time. Changes to the assessment process include using state assessors that are paid a wage, adding an educational component, and increased training and oversight. Assessments can take up to four hours and efforts are made to include the care coordinator, family members, and advocates to help ensure that the assessment is comprehensive. The analysis indicated that the state could do the assessments on a cost neutral basis. However, that analysis factored in just $80,000 to $100,000 for assessors' travel and the FY2009 SDS travel budget was over $300,000. It's not uncommon for it to cost several thousand dollars to assess a person living in a small community.

SENATOR DYSON asked if those visits are always preannounced.

MS. HILGENDORF answered yes; that is critical for a comprehensive assessment. She added that while responding to the assessment backlog crisis, SDS started assessing seven days a week.

SENATOR THOMAS said he hopes that the individuals on the ground have the opportunity to provide input into making the system more efficient.

2:04:53 PM
MS. HILGENDORF replied that is always a challenge, but they strive to get feedback from the people who use the services, the service providers, and the care coordinators. Earlier SDS conducted community forums and currently is soliciting input

regarding regulatory changes related to home and community based waivers and PCA. There is need to beef up the quality improvement work group and to include more stakeholders. CMS has also suggested expanding membership on the quality improvement steering committee to include stakeholders. SDS is forming a provider/stakeholder group to work specifically on the long-term care plan, but the current focus is on the corrective action plan.

CHAIR DAVIS recognized that Senator Paskvan had joined the committee via teleconference.

2:06:30 PM
MS. HILGENDORF continued the presentation highlighting the current situation.

- SDS and CMS meet weekly to review the program status. SDS has clarified a number of areas including the quantification of reassessment backlogs and the management of the PCA services.
- On August 7, 2009 CMS lifted the moratorium on PCA applications.
- On August 28, 2009, after receiving assurances from DHSS, CMS lifted the moratorium on all four waivers.
- On September 3, 2009 SDS submitted a corrective action plan (CAP) on time and as assured. This was completed after an extensive effort between SDS staff and the National Quality Enterprise Technical Assistance Group. A mortality review report and a fair hearing analysis were also submitted.
- On October 15, 2009 SDS met the deadline for completing the waiver reassessment backlog and is well on the way to meeting the December 15, 2009 due date for the PCA assessment backlog. As of November 14 there were only 298 PCA assessments in the backlog; 627 had been completed.
- The CAP is currently being revised to include more detail. The target date for approval by CMS is November 20, 2009.

MS. HILGENDORF made the following points with respect to implementation of the CAP:

- It will include quality assurance measures like developing performance measures, monitoring for compliance, and providing for remediation for noncompliance.
- Provider input and education will continue to occur for performance measures, policies and procedures, and other changes that impact service provisions.
- Short, mid, and long term business model decisions are being made and staffing is being adjusted to meet the needs

of the changed system, particularly with the assessment unit, the quality assurance unit, the waiver unit, and the information technology unit.

- A waiver plan amendment for the mental retardation, developmental disabilities reassessment process is under evaluation.
- Rate setting inconsistencies and methodologies are being addressed.
- Some changes will take place through regulation.
    - Changing the model for mental retardation developmental disabilities reassessments.
    - Utilizing a streamline tool for PCA reassessments.
    - Defining processes that impact providers like complete application and due date.
    - Changing the adults with physical disabilities waiver to allow habilitation services that are currently only allowed for people on that waiver with a developmental disability.

2:10:02 PM

MS. HIGENDORF highlighted the following short term strategies:

- All SDS vacancies will be filled. As of July 2009 non-nurse assessors will complete the assessments for PCA services. This will address the backlog and manage the anticipated growth of the service. RN assessors will continue to assess and determine the level of care for waiver applicants. To address the backlog assessors were recruited from other divisions within DHSS, SDS staff was reassigned, and SDS received approval to hire 30 non-permanent assessors. Those positions will remain open until the backlog is resolved. Eight non-permanent office assistants were also hired to provide administrative support.
- Streamlined processes include:
    - Creation of the electronic waiver assessment tool as well as implementation of an offline tool.
    - The refined PCA assessment tool is currently being piloted.
    - Some assessment processes have been automated
    - A refined mortality review process has been implemented.
    - Fair hearings are being resolved based on clarified eligibility criteria that now conform to the PCA state plan.

2:12:09 PM
MS. HILGENDORF said the context for the Alaska Plan moving forward includes planning for a continued increase in population, particularly older Alaskans. She displayed a slide illustrating that in 2010 about 80,000 Alaskans will be over the age of 60 and by 2030 that number will have grown to 150,000. Alaskans over age 85 are expected to grow from about 5,000 in 2010 to over 12,000 in 2030. SDS believes that the number of people with physical and developmental disabilities will also grow and they will require additional support to stay in their homes and communities.

2:13:19 PM
MS. HILGENDORF said that improving quality management is a primary focus as SDS develops and implements the corrective action plan. In the next 18 months SDS will need to build a management system that is consistent with the CMS framework. This will include identifying and selecting performance indicators, collecting data on those indicators, creating management reports, circulating information to individuals who can influence quality, and developing systematic processes for using the information. SDS is preparing to submit waiver renewals prior to July 1, 2011 using quality standards that are different than those used in the 2006 submission. The work of the corrective action plan will help move SDS where it needs to be in order to meet the new standards.

2:14:13 PM
MS. HILGENDORF highlighted the other initiatives that have been incorporated into the corrective action plan as follows:

- Updating provider manuals.
- Making online training available.
- Establishing greater infrastructure to verify that services are provided as prescribed.
- Establishing and implementing processes for evaluating access to and quality of services.
- Utilizing alternative approaches to verify the background of direct-care staff.
- Revising licensing and certification processes for assisted living homes.
- Expanding information technology, building off DS3.
- Expanding the aging and disabilities resource centers as a one-stop-shop resource for information, referral, and access to necessary services.
- Utilizing a stakeholder advisory committee.

2:15:04 PM

SENATOR DYSON mentioned that the foster system is a good business for some, and asked if the Legislature needs to do something to help SDS avoid wrong incentives.

MS. HILGENDORF replied PCA is very important to people and the growth of the program can be attributed to the fact that people really want and need it. Because SDS didn't have a plan or process things got out of whack, but it is working to map out processes, establish policies, procedures and program memos, and posting them. More training is being given and SDS is gearing up the quality assurance unit to do more site visits to meet with providers and offer technical assistance. She maintained that most people are trying to provide a necessary service and they should get a decent wage for doing so. There will always be people who try to take advantage of the system but they will likely be identified sooner as opposed to later.

SENATOR DYSON asked if the 38 new hires are in the upcoming governor's budget.

MS. HILGENDORF replied those are short-term non-permanent positions that coincide with the December deadline. She has identified a number of positions that are needed in all units of senior and disabilities services. With respect to the Medicaid portion, a lot of needed resources have been identified in order to move forward and manage the anticipated growth in the senior population and general Alaska population.

SENATOR DYSON asked if these needs will be in the governor's budget.

MS. HILGENDORF answered she hopes so.

CHAIR DAVIS asked if a request has been made.

JON SHERWOOD, Medicaid Special Projects, Division of Health Care Services, Department of Health and Social Services (DHSS), explained that the governor's budget is in the confidential deliberative process and isn't yet public.

CHAIR DAVIS clarified that the Senator asked if the request was made, not if it made it into the budget.

MR. SHERWOOD deferred on specifics and added that Ms. Hilgendorf said she considered the resources she needs and has put that forward for consideration.

2:23:54 PM
CHAIR DAVIS said she appreciates his answer, but the committee wants to explore this further.

MR. SHERWOOD agreed to take the question back to see what information he can provide.

SENATOR DYSON said he hopes that in this administration departments will fight vociferously for perceived needs.

SENATOR PASKVAN referenced slides 20 and 7 and asked if SDS believes that FY07 and FY08 were statistical anomalies and that the increased expenditures are more in line with slide 20, which shows increasing populations of Alaskans age 60 and age 85. Therefore, it's appropriate to send a number that's greater than $76.8 million, which is the FY09 number.

2:26:39 PM
MS. HILGENDORF said slide 7 shows that PCA services spiked in FY06 and then went down in FY07 and FY08. What it doesn't show is that the numbers are going up again, which reflects the increase in Alaska's population.

SENATOR PASKVAN asked if it's fair to say that future growth may be higher than the FY06 number as compared to the statistical anomalies, which were lower numbers.

MS. HILGENDORF said, based on population growth, she believes they'll see the PCA expenditures reach the FY06 level again in the next few years, and they'll continue to go up after that.

2:28:34 PM
SENATOR PASKVAN asked if DHSS has an estimate of the number of people who will need PCA services in FY11, which is the budget that legislators will look at very soon.

MS. HILGENDORF said she believes that in FY11 about 3,500 people will need PCA services.

SENATOR PASKVAN asked if that is approximately the same as FY08.

MS. HILGENDORF answered yes.

2:29:49 PM
MS. HILGENDORF thanked the DHSS leadership team for their support and recognized the technical guidance from CMS and the

National Quality Enterprise Group. She also thanked the various providers who make it work for people. Acknowledging that the last few months have been rough, she expressed appreciation and gave special recognition to the committed SDS staff. "It's because of their effort, in large part, that the moratorium came to a close," she said. She also recognized the Alaskans who utilize these services and committed SDS to build a system that will provide high quality, professional, and responsive services.

MS. HILGENDORF maintained that the road map and the detail provided in the corrective action plan will serve as a solid foundation going forward.

CHAIR DAVIS said the committee isn't questioning what is or has been done but believes that the public has a right to know what happened and what it can do to assist.

At ease from 2:35:16 PM to 2:43:20 PM.

2:43:29 PM
CHAIR DAVIS opened public testimony.

JIM BECK, Executive Director, Access Alaska, said he would focus on the PCA program and part of that is looking at how the federal government came to shut down new applications to the "precious Alaskan home and community based services programs."

In 2005 SDS didn't listen to outside experts or providers. Prior to the 2006 regulation changes individuals, experts, and providers repeatedly told SDS it could not do the assessments as planned because it didn't have the capacity. He further pointed out that it didn't take a medical professional to do a functional assessment.

Some of the regulation changes, like prior authorization, were good but it was obvious that they would slow the system to a crawl. Access Alaska hoped that SDS would implement that in a way that would work. He's pleased that the division is looking at a different assessment tool because currently it is inhumane and intrusive.

2:46:23 PM
Referencing the spike in the number of PCA fair hearings in 2007, he said the number of successful lawsuits clearly demonstrates that the division was cutting hours when there

hadn't been a change in the recipients' condition. Service hours were being reduced, sometimes for no plausible reason.

MR. BECK said there is an ongoing issue related to the time required for processing and completing assessments, particularly in rural Alaska. Many elders at the village level have given up on the PCA program because it's slow, bureaucratic and doesn't meet their needs. It's a shame that it's forcing some people to end their lives in a nursing home rather than at home next to the river. "We can do better than that, I'm sure of it," he said.

He pointed out that there continues to be a bottleneck in processing the assessments. It's fantastic that SDS has completed some 600 assessments but they aren't being processed, he said. "We have several in our organization that haven't been touched since late June." Someone who has a fast moving disease or disability will need to be reassessed before they receive services, which places an additional burden on the assessment need.

2:48:45 PM
MR. BECK said he hopes that the Legislature sees the need for a solid PCA program. Multiple studies recommend strong home and community based services and PCA services. The National Council on State Legislatures looks at these programs as cost containment tools for long-term care spending, which is fabulous because this is where people want to receive services. He noted that a fairly instructive 2004 legislative research report looked at what it would cost if the PCA program was shut down. It shows what would happen if the state failed to address the growing need for long-term care. In 2004 nursing home care in Alaska cost about $420 per person per day while PCA was $58 per person per day. If all the people in PCA service at that time had been served in nursing homes the cost would have been $383,250,000. Obviously we need a strong, fair PCA and home and community based services program, he said.

2:50:44 PM
MR. BECK said in-home care is a right granted under the Americans with Disabilities Act and is supported by the Olmstead Supreme Court decision. He maintained that the CMS moratorium pushed the state toward a dangerous position in terms of not being able to provide in-home care to people who have a right to it. It was the state's actions that caused the federal government to step in and impose the moratorium, which kept people in nursing homes and hospitals unnecessarily.

He said he remains optimistic and believes SDS has the capacity to listen to its customers. He appreciates the questions about resources because he doesn't believe that SDS has asked for the resources it needs. We need to suck it up, pay for good care, and make sure that people have what they need, he said.

SENATOR ELLIS asked for a brief description of what the blue button he's wearing stands for.

MR. BECK replied it's in support of establishing in statute a schedule of regular and periodic rate reviews for home and community based services as set forth in SB 32.

2:53:02 PM
KAY BRANCH, Elder Health Program Coordinator, Alaska Native Tribal Health Consortium (ANTHC), said she will submit her written comments. ANTHC co-manages the Alaska Native Medical Center and provides statewide health services previously provided under the Indian Health Service. The overarching goal is to ensure that Alaska Natives have access to the full range of long term care services within their home region.

ANTHC appreciates the SDS efforts to conduct timely assessments and service delivery. However, the assessment is only one step in the process of providing services. The total time between submitting a screening and receiving care continues to be problematic. She provided examples of a client who has been awaiting services for five months since the initial screening was submitted and a client who lives in a very remote area and awaited services for 17 months. She noted that in the second example a major factor in the delay was the inability to conduct the assessment while the client was in the Alaska Native Medical Center in Anchorage. Nor could client information on file at the tribal health organization be used. Clearly, the ability to conduct an assessment while somebody is in Anchorage would speed things along.

2:59:15 PM
MS. BRANCH said although the PCA moratorium was lifted earlier than the waiver moratorium, a backlog in completing the assessments and reassessments in the PCA program currently exists. After the 2006 regulation changes, tribal health providers could no longer conduct assessments and now clients and family wait for months before services start. Sometimes this necessitates making intermediary arrangements such as placing a loved one in a far away nursing or assisted living home.

As part of the Medicaid Reform Initiative several years ago, tribal organizations developed a timeline to address the steps between screening and service delivery. This was included in the tribal long term care report presented to the state in December 2008 and ensured that services would be provided to a client within one month of requesting services, given eligibility.

MS. BRANCH noted that in FY08 and FY09 the Alaska tribal health organizations designed a tribal long term care service development plan to increase access to both home and community based and facility services for Alaska Native elders and persons with disabilities. The report, which was distributed to DHSS in December 2008, outlines the barriers to delivering services to Alaska Natives, proposes solutions to increase access to these programs, and details the benefits of service availability through tribal health providers. This includes the 100 percent savings to the state general fund Medicaid budget that is realized when Alaska Natives are provided services from a tribal facility. Copies of the report can be found on the ANTHC website.

MS. BRANCH said that ANTHC looks forward to continued dialog on how Alaska tribal organizations can participate more fully in the delivery of long term care services.

3:02:30 PM
SENATOR THOMAS observed that it would seem to be fairly simple to coordinate an assessment when a remote client is in Anchorage receiving medical care. He asked if it is her understanding that such coordination will not be allowed.

MS. BRANCH replied there has been dialog with DHSS but there are still things to work through.

SENATOR THOMAS asked if it's just technical things that are at issue.

MS. BRANCH replied other factors, like the moratorium, have contributed to delays.

SANDRA KOTTLE said she is speaking on behalf of her daughter who was assessed for personal care and PCA services two months ago. Two weeks ago her daughter called to check on her status and was told she needed to call back the following week. Several days later her doctor told her she has Pancoast cancer; she could live two days or two years. "As she's continually being turned

down, which process is going to win - the cancer or the process of being given some help for the time that she has left?"

MS. HILGENDORF provided her phone number and offered to do what she could to get her daughter into services.

3:07:27 PM
DENISE DANIELLO, Executive Director, Alaska Commission on Aging, Department of Health and Social Services (DHSS), said she is testifying in support of the due diligence of DHSS and SDS in resolving the issues that resulted in the CMS waiver moratorium. She will also talk about the value of home and community based services for older Alaskans. Alaska seniors comprise about 12 percent of the state's population and each year that population is growing between five and six percent.

MS. DANIELLO said about 1,300 older Alaskans are served by the Older Alaskans Medicaid Waiver Program, which was affected by the moratorium. This program provides seniors with home delivered meals, chore help, respite care, transportation services, care coordination, and other services based on their health and income. They would otherwise be served by hospitals and in nursing home settings. She reminded the committee that Alaska was one of the very first states to emphasize the balance between home and community based services and institutionalized care for seniors. Different than other states, Alaska invested in a continuum of services from community support services to in-home support, to assisted living and nursing homes. It's an approach that has been less costly and is more desirable because it provides services closer to home.

MS. DANIELLO said that in Alaska the cost for a private room in a nursing home is more than $219,000. The cost for a semi-private room is $187,000 and the cost for a bed at an assisted living facility is $60,000. The cost to be served by the Older Alaskan Medicaid Waiver Program is $22,247, which means a $40,000-$100,000 savings to the state "That in itself is a way to control costs for long-term care spending," she said. The average age of admission to pioneer homes has increased over the last ten years indicating that home and community based services work.

3:11:47 PM
MS. DANIELLO said DHSS and SDS responded quickly in the last two months, but many vulnerable Alaskans did suffer needless hardship awaiting services prior to and during the moratorium. Hopefully the system will be improved and the department will be

able to ensure the health and welfare of people on the waiver system. The Alaska Commission on Aging believes that there shouldn't be a forced choice between cost controls and responsive services. DHSS and SDS are encouraged to give high priority to prompt assessments and service authorizations for all waiver applicants. "Timely provision of services is the best key to curtailing costs for the Medicaid program," she said.

3:13:45 PM
SENATOR THOMAS asked if she believes that the population increases depicted on slide 20 are relatively accurate.

MS. DANIELLO answered yes; those 2007 estimates came from the Department of Labor. Age 85 and older is the population that is driving the increase, she added.

SENATOR THOMAS asked the source of the annual cost of care figures she quoted.

MS. DANIELLO replied the numbers came from the Genworth 2009 Cost of Care Survey.

3:15:23 PM
SHARON HOWERTON-CLARK, Chair, Alaska Commission on Aging (ACoA), Department of Health and Social Services (DHSS) said ACoA advocated strongly against the Medicaid waiver moratorium. The initial six month waiting period to resolve the problem was totally unacceptable; during the moratorium many seniors suffered needlessly while providers faced financial hardship. It is thanks to DHSS Commissioner William Hogan and his loyal staff that the moratorium, which should not have happened, was lifted in two months.

3:18:48 PM
GWEN LEE, Executive Director, Arc of Anchorage, said she is speaking from the provider point of view on living through the years with a broken system. She reiterated Senator Ellis's question, "Why does it take so long?" She knows the pain of families who are waiting. The moratorium was lifted, but there is still a quiet crisis brewing. Rates have been frozen for five years and things are ready to boil over.

MS. LEE agreed with Ms. Hilgendorf that lack of continuity and focus has plagued SDS. She said that same lack of planning and processes has trickled down to the provider community. The Arc of Anchorage has experienced difficulty continuing to deliver quality services, it has problems planning with the board of

directors, it has problems answering the board of directors, it has problems being competitive with the workforce, and it has problems instituting and keeping up with technology needs. We are unable to be patient much longer, she said.

MS. LEE said The Arc of Anchorage has operated with integrity through the years; it has not brought lawsuits even though the state pays different service providers differently for delivering the same service. This is a serious question that has for years gone unanswered. Until a fair and consistent rate system is established, problems associated with delivering services to vulnerable Alaskans will continue. It's time to put aside the political flack and develop a fair system, Ms. Lee stated.

3:23:23 PM
SENATOR THOMAS asked for some examples of the inequities of provider reimbursement.

MS. LEE explained that in the home and community based waiver system rates were constructed on a person-by-person basis based on the provider's ability to construct a cost that was accepted by the state. Providers were in different positions to put the rates together so there are high rates and low rates. Five years ago rates were frozen. She believes that the state recognized that was problematic and that the approach probably had been in error. We knew those rates weren't accurate, but we were told that they would be fixed in six months. Four and a half years later they haven't been fixed.

CHAIR DAVIS reported that SB 32 is in House Finance.

RUTH NIMS, representing herself, said she had been denied chore and respite services and she has a hard time understanding why. She is on a waiver and has had chore services.

3:28:18 PM

MS. HILGENDORF explained that the denial is probably related to duplication of services. She could have access to choir services through a waiver or through PCA, but not both. Responding to a further question, she said she would call her tomorrow.

3:30:40 PM
JOANNE WISE, care coordinator for Ms. Nims, described the denial of service by SDS that placed her in great hardship.

3:33:03 PM
DUANE WISE, Environmental Modification (EM) Contractor, KaJo Services LLC., said he will provide written testimony. He liked Senator Dyson's question about Medicaid fraud because there is no such investigation in Alaska. He said that the regulations on environmental modifications are clear; they are for the safety, health and welfare of the recipient. However, the Division of Senior and Disabilities Services has no policy and procedure manual for EM services. He provided an example of a dangerous wheelchair ramp and platform that was signed off. For years he has asked SDS to put on a training program for EM contractors but none has been forthcoming. New contractors coming in will be given no training either, he said.

Two years ago he and other EM contractors were asked to submit suggestions for the online cost estimate sheets. He did as he was asked, but the form wasn't changed and it's still not a requirement for EM contractors to use one standardized form. Some don't even know that the form is available. He maintained that the EM program needs to be under the auspices of a person that knows construction codes and ADA requirements.

Access Alaska has Frank Box; he writes a scope of work for every project so everyone is bidding on the same thing. No contractor receives a check until he inspects the work and is sure that the scope of work has been done. That isn't how the waiver program works.

CHAIR DAVIS said the committee might want to hear more about this and she is sure the division is noting his testimony.

MR. WISE said some things are turned down because they are a deemed a "luxury", but the health safety and welfare of the recipient might depend on that modification. He cited bathroom tile and walk-in bathtubs.

3:45:21 PM
JOANNE WISE, Care Coordinator, Wise Care LLC., said she has clients who after 225 days are still waiting for an approved plan of care for the waiver. She cited an example of client who was told she was part of the moratorium, but her level of care had actually been approved prior to the moratorium. This client has health and safety issues yet she still doesn't have services. She cited a second example of a client who is still waiting for services 77 days after her plan of care was sent for renewal.

She claimed that the SDS website does not have current staff information. It isn't clear to whom care coordinators should address their concerns. The division has stated that it has completed the required assessments, but her clients still don't have approved plans of care and are still at risk. What the division has provided is a new form to report critical incidents. It appears that statistics are what is wanted, she said.

On August 26 SDS sent a certified letter to a client stating that the care coordinator had failed to submit a cost sheet and therefore the client could either change care coordinators or be dis-enrolled from the waiver. This shows that the division has limited respect for care coordinators, she said.

She reported that over half of her clients don't have a current level of care letter in their files. SDS reported to CMS that it had corrected these standards, but her clients don't substantiate this claim. This is a hardship for clients and providers.

Responding to a question from Senator Davis, she agreed to provide her written comments to the committee.

3:53:32 PM
SENATOR ELLIS asked if a cost sheet is documentation of actual costs incurred.

MS. WISE said yes; when the care coordinator and client develop a plan of care the annual cost for each service is attached in a cost sheet. She pointed out the fallacy in attaching a cost of service on the date that the level of care is approved when there are no services delivered until the plan of care is approved and prior authorizations are issued.

SENATOR ELLIS asked if the division had asked her for something that she couldn't provide.

MS. WISE explained that the letter was sent because the care coordinator hadn't done a close out. "It's a very difficult working relationship with the Division of Senior and Disabilities Services. … I'll probably have retaliation on behalf of my testimony, but … I represent my clients and the waiver services," she said.

3:56:29 PM

SHARON METTLER, representing the assisted living industry, said the moratorium affected assisted living a little differently than it affected PCA programs. She explained that people often come into assisted living from the hospital as a general relief (GR) $70/day client that is waiting to be assessed for the waiver program. Whether or not those people have been assessed, the assisted living home is still delivering the services as though it were being paid for waiver services. Also, there are a lot of people who are nursing home level of care on those waivers, she said.

3:59:26 PM
MS. METTLER encouraged legislators to visit as many of the 600 some assisted living homes in the state as possible, and to report the ones that aren't up to standard. Put them out of business and place the people in good homes. "There certainly are good homes out there that are providing services that they are supposed to be providing," she said.

Referring to the DHSS presentation showing the FY09 expenditures for Senior and Disabilities Medicaid Services, she suggested that it would be more helpful if it showed a comparison between the personal care assistant program, the assisted living program, and the nursing homes. We provide an extremely valuable service to the state and it's not reflected, she said.

4:03:53 PM
MS. METTLER mentioned the many meetings that have been held trying to establish a fair rate methodology and said it's a difficult task. She provided an example of the taxes on a home in Mountain View versus mid-town and maintained that if the department had done its job in 2002 on the cost based reimbursement and had audited homes at the end of that year, the people who did not perform would be out of business and the people who did perform would be moving forward and providing a good service.

4:06:00 PM
BRIAN RICHARDSON, CEO, Immediate Care, said he has been pleasantly surprised that as a provider the SDS bureaucracy has been easy to access and helpful on a day-to-day basis. However, certain dynamics, such as accountability, are not in play. There is no accountability to providers, PCAs or clients. CMS addressed this in a June 26 letter to SDS stating, "The Medicaid agency must satisfactorily provide CMS with the assurance that necessary safeguards have been taken to protect the health and welfare of the recipients of the services." CMS investigators

interviewed him and he had to say that SDS had done none of the following: conducted an inspection at his offices, contacted him to ask to do an inspection, contacted clients directly to confirm services have been delivered, interacted with PCAs to confirm they were actually doing services. SDS does a good job with us but isn't closing the loop with PCAs and clients, he said. Also, the use of information technology and databases is far behind in the SDS program.

He suggested that to facilitate accountability SDS needs 1) funding for a project team to assist and support organizational change, 2) to report the average number of days between receiving a packet from a provider and issuing a prior authorization number, and 3) funding for a team to verify both client health and safety and that the PCA is actually providing the service.

4:15:34 PM
SENATOR THOMAS asked for copies of his notes. He expressed amazement that there are few requirements for PCAs.

MR. RICHARDSON said there are base requirements, but there is no verification at the state level that they exist.

4:18:12 PM
MS. HILGENDORF thanked Senator Davis. She has been listening carefully and believes that working collaboratively changes will be made.

SENATOR ELLIS asked if she thinks there is a problem with the attention that the Medicaid Fraud Unit focuses on providers as opposed to contractors.

MS. HILGENDORF said she believes that unit works hard and does good work.

4:20:31 PM
MR. SHERWOOD, responding to a question, explained that the federally required Medicaid Fraud Control Unit resides within the Department of Law. DHSS makes provider fraud referrals to that unit. He agreed to provide information on how the agencies work together.

SENATOR ELLIS said it wouldn't surprise anyone to learn that they concentrate on the big fish, but he's also concerned about contractors who may be building substandard non-ADA compliant

facilities. It's a concern for that woman who may drive her scooter off her porch, he said.

MR. SHERWOOD clarified that the Medicaid Fraud Control Unit is responsible for criminally prosecuting for fraud and abuse of Medicaid clients, but many things don't rise to that level and fall back on DHSS to address.

4:23:44 PM
There being nothing further to come before the committee, Chair Davis adjourned the Senate Health and Social Services Standing Committee at 4:23 p.m.