HOUSE BILL NO. 227

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE SEATON

Introduced: 1/19/16
Referred: Health and Social Services, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to medical assistance reform measures; relating to administrative appeals of civil penalties for medical assistance providers; relating to the duties of the Department of Health and Social Services; relating to audits and civil penalties for medical assistance providers; relating to medical assistance cost containment measures by the Department of Health and Social Services; relating to medical assistance coverage of clinic and rehabilitative services; and providing for an effective date."

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

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

MEDICAL ASSISTANCE REFORM: LEGISLATIVE FINDINGS AND INTENT. The legislature finds that the current Medicaid program is not sustainable. Although annual growth has fallen from 6.45 percent to 4.8 percent, further reductions are needed. In order to maintain a viable Medicaid program, it is the intent of the legislature that

(1) the governor, through the Department of Health and Social Services, take all necessary action to capture federal revenue and offset state general funds and evaluate the most cost-effective method for revising expansion coverage, including more efficient benefit plans, cost sharing, utilization control, and other innovative health care financing strategies;

(2) the Department of Health and Social Services be instructed to

(A) evaluate and implement meaningful Medicaid reform measures, including working with tribal and community partners to develop innovative practices leading to a sustainable Medicaid program available for future generations;

(B) evaluate all options available to it, including

(i) obtaining waivers to the Medicaid program to address choice, statewide compatibility, or other core Medicaid requirements; and

(ii) regulatory action to improve provider and recipient compliance with program rules;

(3) the Department of Health and Social Services establish prevention of disease as a primary model of health care in the state, as requested by the legislature in Legislative Resolve 16 of the Twenty-Seventh Alaska State Legislature.

*** Sec. 2.** AS 44.62.330(a) is amended by adding a new paragraph to read:

(47) Department of Health and Social Services relating to civil penalties assessed against medical assistance providers under AS 47.05.250.

*** Sec. 3.** AS 47.05.010 is amended to read:

Sec. 47.05.010. Duties of department. The Department of Health and Social Services shall

(1) administer adult public assistance, the Alaska temporary assistance program, and all other assistance programs, and receive and spend money made available to it;

(2) adopt regulations necessary for the conduct of its business and for carrying out federal and state laws granting adult public assistance, temporary cash assistance, diversion payments, or self-sufficiency services for needy families under the Alaska temporary assistance program, and other assistance;

(3) establish minimum standards for personnel employed by the department and adopt necessary regulations to maintain those standards;

(4) require those bonds and undertakings from persons employed by it that, in its judgment, are necessary, and pay the premiums on them;

(5) cooperate with the federal government in matters of mutual concern pertaining to adult public assistance, the Alaska temporary assistance program, and other forms of public assistance;

(6) make the reports, in the form and containing the information, that the federal government from time to time requires;

(7) cooperate with the federal government, its agencies, or instrumentalities in establishing, extending, and strengthening services for the protection and care of homeless, dependent, and neglected children in danger of becoming delinquent, and receive and expend funds available to the department by the federal government, the state, or its political subdivisions for that purpose;

(8) cooperate with the federal government in adopting state plans to make the state eligible for federal matching in appropriate categories of assistance, and in all matters of mutual concern, including adoption of the methods of administration that are found by the federal government to be necessary for the efficient operation of welfare programs;

(9) adopt regulations, not inconsistent with law, defining need, prescribing the conditions of eligibility for assistance, and establishing standards for determining the amount of assistance that an eligible person is entitled to receive; the amount of the assistance is sufficient when, added to all other income and resources available to an individual, it provides the individual with a reasonable subsistence compatible with health and well-being; an individual who meets the requirements for eligibility for assistance shall be granted the assistance promptly upon application for it;

(10) grant to a person claiming or receiving assistance and who is aggrieved because of the department's action or failure to act, reasonable notice and an opportunity for a fair hearing by the office of administrative hearings (AS 44.64.010), and the department shall adopt regulations relative to this;

(11) enter into reciprocal agreements with other states relative to public assistance, welfare services, and institutional care that are considered advisable;

(12) establish the requirements of residence for public assistance, welfare services, and institutional care that are considered advisable, subject to the limitations of other laws of the state, or law or regulation imposed as conditions for federal financial participation;

(13) establish the divisions and local offices that are considered necessary or expedient to carry out a duty or authority assigned to it and appoint and employ the assistants and personnel that are necessary to carry on the work of the divisions and offices, and fix the compensation of the assistants or employees, except that a person engaged in business as a retail vendor of general merchandise, or a member of the immediate family of a person who is so engaged, may not serve as an acting, temporary, or permanent local agent of the department, unless the commissioner of health and social services certifies in writing to the governor, with relation to a particular community, that no other qualified person is available in the community to serve as local welfare agent; for the purposes of this paragraph, a "member of the immediate family" includes a spouse, child, parent, brother, sister, parent-in-law, brother-in-law, or sister-in-law;

(14) provide education and health-related services and referrals designed to reduce the number of out-of-wedlock pregnancies and the number of induced pregnancy terminations in the state;

(15) investigate reports of abuse, neglect, or misappropriation of property by certified nurse aides in facilities licensed by the department under AS 47.32;

(16) establish state policy relating to and administer federal programs subject to state control as provided under 42 U.S.C. 3001 - 3058ee (Older Americans Act of 1965), as amended, and related federal regulations;

(17) administer the older Alaskans service grants under AS 47.65.010 - 47.65.050 and the adult day care and family respite care grants under AS 47.65.100**;**

(18) establish guidelines for medical assistance providers to develop health care delivery models that encourage adequate nutrition and disease prevention.

*** Sec. 4.** AS 47.05.200(a) is amended to read:

(a) The department shall annually contract for independent audits of a statewide sample of all medical assistance providers in order to identify overpayments and violations of criminal statutes. The audits conducted under this section may not be conducted by the department or employees of the department. The number of audits under this section **<u>may not be less than 50</u>** each year [, AS A TOTAL FOR THE MEDICAL ASSISTANCE PROGRAMS UNDER AS 47.07 AND AS 47.08, SHALL BE 0.75 PERCENT OF ALL ENROLLED PROVIDERS UNDER THE PROGRAMS, ADJUSTED ANNUALLY ON JULY 1, AS DETERMINED BY THE DEPARTMENT, EXCEPT THAT THE NUMBER OF AUDITS UNDER THIS SECTION MAY NOT BE LESS THAN 75]. The audits under this section must include both on-site audits and desk audits and must be of a variety of provider types. The department may not award a contract under this subsection to an organization that does not retain persons with a significant level of expertise and recent professional practice in the general areas of standard accounting principles and financial auditing and in the specific areas of medical records review, investigative research, and Alaska health care criminal law. The contractor, in consultation with the commissioner, shall select the providers to be audited and decide the ratio of desk audits and on-site audits to the total number selected. **<u>In identifying providers who are subject to an audit under this chapter, the department shall attempt to minimize concurrent state or federal audits.</u>**

*** Sec. 5.** AS 47.05.200(b) is amended to read:

(b) Within 90 days after receiving each audit report from an audit conducted under this section, the department shall begin administrative procedures to recoup overpayments identified in the audits and shall allocate the reasonable and necessary financial and human resources to ensure prompt recovery of overpayments unless the attorney general has advised the commissioner in writing that a criminal investigation of an audited provider has been or is about to be undertaken, in which case, the commissioner shall hold the administrative procedure in abeyance until a final charging decision by the attorney general has been made. The commissioner shall provide copies of all audit reports to the attorney general so that the reports can be screened for the purpose of bringing criminal charges. **<u>The department may assess</u>**

interest and penalties on any identified overpayment. Interest under this subsection shall be calculated using the statutory rates for postjudgment interest accruing from the date of the issuance of the final audit.

*** Sec. 6.** AS 47.05 is amended by adding a new section to read:

Sec. 47.05.250. Civil penalties. (a) The department may adopt regulations to assess a civil penalty against a medical assistance provider who violates a provision of this chapter, AS 47.07, or a regulation adopted under this chapter or AS 47.07.

(b) A civil penalty imposed under this section may not be less than $100 or more than $25,000 for each occurrence.

(c) The provisions of this section are in addition to any other remedies available under this chapter, AS 47.07, or regulations adopted under this chapter or AS 47.07.

(d) A medical assistance provider who is assessed a civil penalty under this section may appeal the decision in the manner provided for appeals under AS 44.62 (Administrative Procedure Act). The office of administrative hearings (AS 44.64.010) shall conduct the hearing for an appeal.

*** Sec. 7.** AS 47.07.020(g) is amended to read:

(g) **For a person whose Medicaid eligibility is not calculated using the modified adjusted gross income standard set out in 42 U.S.C. 1396a(e)(14), the** [A] person's eligibility for medical assistance under this chapter may not be denied or delayed on the basis of a transfer of assets for less than fair market value if the person establishes to the satisfaction of the department that the denial or delay would work an undue hardship on the person as determined on the basis of criteria in applicable federal regulations. **The department may only consider information provided by a person claiming undue hardship that the department verifies through a source other than the person's own statement.**

*** Sec. 8.** AS 47.07.020(m) is amended to read:

(m) **For a person whose Medicaid eligibility is not calculated using the modified adjusted gross income standard set out in 42 U.S.C. 1396a(e)(14), and, except** [EXCEPT] as provided in (g) of this section, the department shall impose a penalty period of ineligibility for the transfer of an asset for less than fair market value

by an applicant or an applicant's spouse consistent with 42 U.S.C. 1396p(c)(1).

*** Sec. 9.** AS 47.07.030(d) is amended to read:

(d) The department **shall** [MAY] establish [AS OPTIONAL SERVICES] a primary care case management system or a managed care organization contract in which certain eligible individuals**, including super-utilizers as identified by the department,** are required to enroll and seek approval from a case manager or the managed care organization before receiving certain services. The department shall establish enrollment criteria and determine eligibility for services consistent with federal and state law.

*** Sec. 10.** AS 47.07.030 is amended by adding a new subsection to read:

(h) In an annual report to the legislature, the department shall include information separately describing state costs for optional and mandatory services provided under this section.

*** Sec. 11.** AS 47.07.036(b) is amended to read:

(b) The department, in implementing this section, shall take all reasonable steps to implement cost containment measures that do not eliminate program eligibility or the scope of services required or authorized under AS 47.07.020 and 47.07.030 before implementing cost containment measures under (c) of this section that directly affect program eligibility or coverage of services. The cost containment measures taken under this subsection may include new utilization review procedures, changes in provider payment rates, **and** precertification requirements for coverage [OF SERVICES, AND AGREEMENTS WITH FEDERAL OFFICIALS UNDER WHICH THE FEDERAL GOVERNMENT WILL ASSUME RESPONSIBILITY FOR COVERAGE OF SOME INDIVIDUALS OR SOME SERVICES FOR SOME INDIVIDUALS THROUGH SUCH FEDERAL PROGRAMS AS THE INDIAN HEALTH SERVICE OR MEDICARE].

*** Sec. 12.** AS 47.07.036 is amended by adding new subsections to read:

(d) Notwithstanding (a) - (c) of this section, the department shall

(1) apply for a section 1115 waiver under 42 U.S.C. 1315(a) to use innovative service delivery system models to improve care, increase efficiency, reduce costs, and expand services provided to Indian Health Service beneficiaries through the

Indian Health Service and tribal health facilities;

(2) apply for a section 1915(i) option under 42 U.S.C. 1396n to improve services and care through home and community-based services to obtain a 50 percent federal match;

(3) apply for a section 1915(k) option under 42 U.S.C. 1396n to provide home and community-based services and support to increase the federal match for these programs from 50 percent to 56 percent;

(4) evaluate and seek permission from the United States Department of Health and Human Services Centers for Medicare and Medicaid Services to participate in various demonstration projects, including payment reform, care management programs, workforce development and innovation, and innovative services delivery models; and

(5) enhance telemedicine capability and reimbursement to incentivize its use for Medicaid recipients.

(e) Notwithstanding (a) - (c) of this section and in addition to the projects and services described under (d) of this section, the department shall apply for a section 1115 waiver under 42 U.S.C. 1315(a) to establish one or more demonstration projects focused on innovative payment models for one or more groups of medical assistance recipients in one or more specific geographic areas. The demonstration project or projects may include

(1) managed care organizations as described under 42 U.S.C. 1396u-2;

(2) community care organizations;

(3) patient-centered medical homes as described under 42 U.S.C. 256a-1; or

(4) other innovative payment models that ensure access to health care without reducing the quality of care.

(f) The department shall design and implement at least one demonstration project under (e) of this section that is a coordinated care demonstration project using a global payment fee structure. The demonstration project must include a managed care system that operates within a fixed budget to reduce medical cost inflation, improves the quality of health care for recipients, and results in a healthier population.

The department shall design the managed care system to reduce the growth in medical assistance expenditures with a goal of reducing the per capita growth rate for medical assistance expenditures by at least two percentage points. The managed care system must implement alternative payment methodologies and create a network of patient-centered primary care homes, and will be measured based on quality and performance outcomes. The department shall prepare a report regarding the progress of this demonstration project and shall, on or before February 1, 2019, deliver the report to the senate secretary and the chief clerk of the house of representatives and notify the legislature that the report is available.

(g) In this section, "telemedicine" means the practice of health care delivery, evaluation, diagnosis, consultation, or treatment, using the transfer of medical data through audio, visual, or data communications that are performed over two or more locations between providers who are physically separated from the recipient or from each other.

*** Sec. 13.** AS 47.07.900(4) is amended to read:

(4) "clinic services" means services provided by state-approved outpatient community mental health clinics [THAT RECEIVE GRANTS UNDER AS 47.30.520 - 47.30.620], state-operated community mental health clinics, outpatient surgical care centers, and physician clinics;

*** Sec. 14.** AS 47.07.900(17) is amended to read:

(17) "rehabilitative services" means services for substance abusers and emotionally disturbed or chronically mentally ill adults provided by

(A) a drug or alcohol treatment center [THAT IS FUNDED WITH A GRANT UNDER AS 47.30.475]; or

(B) an outpatient community mental health clinic [THAT HAS A CONTRACT TO PROVIDE COMMUNITY MENTAL HEALTH SERVICES UNDER AS 47.30.520 - 47.30.620];

*** Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DEMONSTRATION PROJECT: REDUCING PRE-TERM BIRTHS. On or before January 1, 2017, the Department of Health and Social Services shall design and implement a

demonstration project for the purpose of reducing pre-term birth rates in the state from the current rate of 8.5 percent. The demonstration project shall provide for the voluntary enrollment of approximately 500 recipients who are eligible for medical assistance under AS 47.07.020(b)(14). The Department of Health and Social Services shall offer pregnancy counselling, nutritional counselling, and, as necessary, vitamin D supplementation to maintain levels of 40 ng/ml vitamin D during pregnancy for participants in the demonstration project. The demonstration project may be modeled after the Protect Our Children NOW! project implemented as a cooperative project of the South Carolina Department of Health and Human Services and private health organizations. The goal of the demonstration project is to achieve a reduction in pre-term births in the state, consistent with the results of the following published studies: Wagner, C. L., et al., "A Randomized Trial of Vitamin D Supplementation in Two Community Health Center Networks in South Carolina," American Journal of Obstetrics and Gynecology 208 (February 2013); Bodnar, L. M., et al., "Maternal 25-Hydroxyvitamin D and Preterm Birth in Twin Gestations," Obstetrics and Gynecology 122 (July 2013).

*** Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

MEDICAID MANAGED CARE FOR SUPER-UTILIZERS. On or before January 1, 2017, the Department of Health and Social Services shall

(1) establish a primary care case management system or a managed care organization contract under AS 47.07.030(d), as amended by sec. 9 of this Act, for super-utilizers, as identified by the department; and

(2) deliver a report on the system or contract to the senate secretary and the chief clerk of the house of representatives and notify the legislature that the report is available.

*** Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to read:

MEDICAID REDESIGN; REPORTS TO LEGISLATURE. (a) On or before May 30, 2016, the Department of Health and Social Services shall deliver to the senate secretary and chief clerk of the house of representatives the Report on Recommended Action and Evaluation Plans for Expansion and Reform prepared for the department under the Medicaid

Redesign and Expansion Technical Assistance study, advertised under request for proposal number 2015-0600-3077, issued April 21, 2015, and the department shall notify the legislature that the report is available.

(b) The Department of Health and Social Services shall prepare a report summarizing cost-sharing measures implemented before October 1, 2015, by the Department of Health and Social Services under AS 47.07.042 and describing the effect of those measures on the state budget. On or before the 20th day following the effective date of this section, the Department of Health and Social Services shall deliver a copy of the report to the senate secretary and chief clerk of the house of representatives and notify the legislature that the report is available.

(c) On or before February 1, 2019, the Department of Health and Social Services shall complete a report informing the legislature of the results of the applications for waivers and options under AS 47.07.036(d)(1) - (3), enacted by sec. 12 of this Act, and shall deliver the report to the senate secretary and chief clerk of the house of representatives and notify the legislature that the report is available. The report must include

(1) information explaining whether the department's applications for a section 1115 waiver under 42 U.S.C. 1315(a), a section 1915(i) option under 42 U.S.C. 1396n, and a section 1915(k) option under 42 U.S.C. 1396n were approved by the United States Department of Health and Human Services;

(2) a description of cost savings to the state resulting from the programs implemented under the waivers, including

(A) the extent to which the programs implemented under the section 1115 waiver under 42 U.S.C. 1315(a) achieved the savings estimated by the department;

(B) the extent to which the programs implemented under the section 1915(i) and (k) options under 42 U.S.C. 1396n achieved the savings estimated by the department.

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

MEDICAID STATE PLAN INSTRUCTIONS; NOTICE TO REVISOR OF STATUTES. The Department of Health and Social Services shall immediately amend and

submit for federal approval a state plan for medical assistance coverage consistent with this Act. The Department of Health and Social Services shall apply to the United States Department of Health and Human Services for any waivers necessary to implement this Act. The commissioner of health and social services shall notify the revisor of statutes in writing if the United States Department of Health and Human Services approves the provisions of AS 47.07.030(d), as amended by sec. 9 of this Act, and the provisions of secs. 12(e), 12(f), 15, and 16 of this Act.

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

TRANSITION: REGULATIONS. The Department of Health and Social Services may adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the relevant provision of this Act implemented by the regulation.

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

REVISOR'S INSTRUCTION. The revisor of statutes is requested to change the catch line of AS 47.07.036 from "Cost containment measures authorized" to "Medical assistance cost-containment and reform measures authorized."

*** Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. (a) AS 47.07.030(d), as amended by sec. 9 of this Act, and sec. 16 of this Act take effect only if the commissioner of health and social services notifies the revisor of statutes in writing under sec. 18 of this Act, on or before January 1, 2017, that all of the provisions added by AS 47.07.030(d), as amended by sec. 9 of this Act, and all of the provisions of sec. 16 of this Act have been approved by the United States Department of Health and Human Services.

(b) Section 12(e) of this Act takes effect only if the commissioner of health and social services notifies the revisor of statutes in writing under sec. 18 of this Act, on or before February 1, 2019, that all of the provisions added by sec. 12(e) of this Act have been approved by the United States Department of Health and Human Services.

(c) Section 12(f) of this Act takes effect only if the commissioner of health and social

services notifies the revisor of statutes in writing under sec. 18 of this Act, on or before February 1, 2019, that all of the provisions added by sec. 12(f) of this Act have been approved by the United States Department of Health and Human Services.

(d) Section 15 of this Act takes effect only if the commissioner of health and social services notifies the revisor of statutes in writing under sec. 18 of this Act, on or before January 1, 2017, that all of the provisions added by sec. 15 of this Act have been approved by the United States Department of Health and Human Services.

*** Sec. 22.** If AS 47.07.030(d), as amended by sec. 9 of this Act, and sec. 16 of this Act take effect, they take effect on the day after the date the commissioner of health and social services makes a certification to the revisor of statutes under secs. 18 and 21(a) of this Act.

*** Sec. 23.** If sec. 12(e) of this Act takes effect, it takes effect on the day after the date the commissioner of health and social services notifies the revisor of statutes in writing under secs. 18 and 21(b) of this Act.

*** Sec. 24.** If sec. 12(f) of this Act takes effect, it takes effect on the day after the date the commissioner of health and social services notifies the revisor of statutes in writing under secs. 18 and 21(c) of this Act.

*** Sec. 25.** If sec. 15 of this Act takes effect, it takes effect on the day after the date the commissioner of health and social services notifies the revisor of statutes in writing under secs. 18 and 21(d) of this Act.

*** Sec. 26.** Sections 17(a), 18, 19, and 21 of this Act take effect immediately under AS 01.10.070(c).