

CS FOR SENATE BILL NO. 74(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 3/7/16

Referred: Rules

Sponsor(s): SENATORS KELLY, Giessel, Micciche, Bishop, MacKinnon, Hoffman, Costello, McGuire, Stedman, Stevens, Coghill, Egan, Meyer

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to diagnosis, treatment, and prescription of drugs without a physical**
2 **examination by a physician; relating to the delivery of services by a licensed professional**
3 **counselor, marriage and family therapist, psychologist, psychological associate, and**
4 **social worker by audio, video, or data communications; relating to the duties of the State**
5 **Medical Board; relating to limitations of actions; establishing the Alaska Medical**
6 **Assistance False Claim and Reporting Act; relating to medical assistance programs**
7 **administered by the Department of Health and Social Services; relating to the controlled**
8 **substance prescription database; relating to the duties of the Board of Pharmacy;**
9 **relating to the duties of the Department of Commerce, Community, and Economic**
10 **Development; relating to accounting for program receipts; relating to public record**
11 **status of records related to the Alaska Medical Assistance False Claim and Reporting**
12 **Act; establishing a telemedicine business registry; relating to competitive bidding for**

1 **medical assistance products and services; relating to verification of eligibility for public**
2 **assistance programs administered by the Department of Health and Social Services;**
3 **relating to annual audits of state medical assistance providers; relating to reporting**
4 **overpayments of medical assistance payments; establishing authority to assess civil**
5 **penalties for violations of medical assistance program requirements; relating to seizure**
6 **and forfeiture of property for medical assistance fraud; relating to the duties of the**
7 **Department of Health and Social Services; establishing medical assistance**
8 **demonstration projects; relating to Alaska Pioneers' Homes and Alaska Veterans'**
9 **Homes; relating to the duties of the Department of Administration; relating to the**
10 **Alaska Mental Health Trust Authority; relating to feasibility studies for the provision of**
11 **specified state services; amending Rules 4, 5, 7, 12, 24, 26, 27, 41, 77, 79, 82, and 89,**
12 **Alaska Rules of Civil Procedure, and Rule 37, Alaska Rules of Criminal Procedure; and**
13 **providing for an effective date."**

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

15 *** Section 1.** AS 08.29.400 is amended by adding new subsections to read:

16 (b) The board may not impose disciplinary sanctions on a licensee for the
17 evaluation, diagnosis, or treatment of a person through audio, video, or data
18 communications when physically separated from the person if

19 (1) the licensee or another licensed health care provider is available to
20 provide follow-up care;

21 (2) the licensee requests that the person consent to sending a copy of
22 all records of the encounter to a primary care provider if the licensee is not the
23 person's primary care provider and, if the person consents, the licensee sends the
24 records to the person's primary care provider; and

25 (3) the licensee meets the requirements established by the board in
26 regulation.

(c) The board shall adopt regulations restricting the evaluation, diagnosis, supervision, and treatment of a person as authorized under (b) of this section by establishing standards of care, including standards for training, confidentiality, supervision, practice, and related issues.

* **Sec. 2.** AS 08.63.210 is amended by adding new subsections to read:

(c) The board may not impose disciplinary sanctions on a licensee for the evaluation, diagnosis, supervision, or treatment of a person through audio, video, or data communications when physically separated from the person if

(1) the licensee or another licensed health care provider is available to provide follow-up care;

(2) the licensee requests that the person consent to sending a copy of all records of the encounter to a primary care provider if the licensee is not the person's primary care provider and, if the person consents, the licensee sends the records to the person's primary care provider; and

(3) the licensee meets the requirements established by the board in regulation.

(d) The board shall adopt regulations restricting the evaluation, diagnosis, supervision, and treatment of a person as authorized under (c) of this section by establishing standards of care, including standards for training, confidentiality, supervision, practice, and related issues.

* **Sec. 3.** AS 08.64.101 is amended to read:

Sec. 08.64.101. Duties. The board shall

(1) examine and issue licenses to applicants;

(2) develop written guidelines to ensure that licensing requirements are not unreasonably burdensome and the issuance of licenses is not unreasonably withheld or delayed;

(3) after a hearing, impose disciplinary sanctions on persons who violate this chapter or the regulations or orders of the board;

(4) adopt regulations ensuring that renewal of licenses is contingent on [UPON] proof of continued competency on the part of the licensee; and

(5) under regulations adopted by the board, contract with private

professional organizations to establish an impaired medical professionals program to identify, confront, evaluate, and treat persons licensed under this chapter who abuse alcohol, other drugs, or other substances or are mentally ill or cognitively impaired;

(6) adopt regulations that establish guidelines for a physician who is rendering a diagnosis, providing treatment, or prescribing, dispensing, or administering a prescription drug to a person without conducting a physical examination under AS 08.64.364; the guidelines must include a nationally recognized model policy for standards of care of a patient who is at a different location than the physician.

* Sec. 4. AS 08.64.364(a) is amended to read:

(a) The board may not impose disciplinary sanctions on a physician for **rendering a diagnosis, providing treatment, or** prescribing, dispensing, or administering a prescription drug **that is not a controlled substance** to a person without conducting a physical examination if

(1) [THE PRESCRIPTION DRUG IS

(A) NOT A CONTROLLED SUBSTANCE; OR

(B) A CONTROLLED SUBSTANCE AND IS PRESCRIBED, DISPENSED, OR ADMINISTERED BY A PHYSICIAN WHEN AN APPROPRIATE LICENSED HEALTH CARE PROVIDER IS PRESENT WITH THE PATIENT TO ASSIST THE PHYSICIAN WITH EXAMINATION, DIAGNOSIS, AND TREATMENT;

(2) THE PHYSICIAN IS LOCATED IN THIS STATE AND] the physician or another licensed health care provider or physician in the physician's group practice is available to provide follow-up care; and

(2) the physician requests that [(3)] the person **consent** [CONSENTS] to sending a copy of all records of the encounter to the person's primary care provider if the prescribing physician is not the person's primary care provider, and, **if the patient consents,** the physician sends the records to the person's primary care provider.

* Sec. 5. AS 08.64.364 is amended by adding new subsections to read:

(c) The board may not impose disciplinary sanctions on a physician for

1 prescribing, dispensing, or administering a prescription drug that is a controlled
 2 substance if the requirements under (a) of this section are met and the physician
 3 prescribes, dispenses, or administers the controlled substance when an appropriate
 4 licensed health care provider is present with the patient to assist the physician with
 5 examination, diagnosis, and treatment.

6 (d) Notwithstanding (b) and (c) of this section, a physician may not

7 (1) prescribe an abortion-inducing drug; or

8 (2) prescribe, dispense, or administer a prescription drug in response to
 9 an Internet questionnaire or electronic mail message to a person with whom the
 10 physician does not have a prior physician-patient relationship.

11 * **Sec. 6.** AS 08.86.204 is amended by adding new subsections to read:

12 (c) The board may not impose disciplinary sanctions on a licensee for the
 13 evaluation, diagnosis, or treatment of a person through audio, video, or data
 14 communications when physically separated from the person if

15 (1) the licensee or another licensed health care provider is available to
 16 provide follow-up care;

17 (2) the licensee requests that the person consent to sending a copy of
 18 all records of the encounter to a primary care provider if the licensee is not the
 19 person's primary care provider and, if the person consents, the licensee sends the
 20 records to the person's primary care provider; and

21 (3) the licensee meets the requirements established by the board in
 22 regulation.

23 (d) The board shall adopt regulations restricting the evaluation, diagnosis,
 24 supervision, and treatment of a person as authorized under (c) of this section by
 25 establishing standards of care, including standards for training, confidentiality,
 26 supervision, practice, and related issues.

27 * **Sec. 7.** AS 08.95.050 is amended by adding new subsections to read:

28 (b) The board may not impose disciplinary sanctions on a licensee for the
 29 evaluation, diagnosis, or treatment of a person through audio, video, or data
 30 communications when physically separated from the person if

31 (1) the licensee or another licensed health care provider is available to

1 provide follow-up care;

2 (2) the licensee requests that the person consent to sending a copy of
3 all records of the encounter to a primary care provider if the licensee is not the
4 person's primary care provider and, if the person consents, the licensee sends the
5 records to the person's primary care provider; and

6 (3) the licensee meets the requirements established by the board in
7 regulation.

8 (c) The board shall adopt regulations restricting the evaluation, diagnosis,
9 supervision, and treatment of a person as authorized under (b) of this section by
10 establishing standards of care, including standards for training, confidentiality,
11 supervision, practice, and related issues.

12 * **Sec. 8.** AS 09.10 is amended by adding a new section to read:

13 **Sec. 09.10.075. Actions related to claims based on medical assistance**
14 **payment fraud.** Except as provided in AS 09.58.070, a person may not bring an
15 action under AS 09.58.010 - 09.58.060, unless the action is commenced by the earlier
16 of (1) six years after the act or omission was committed, or (2) three years after the
17 date when facts material to the action were known, or reasonably should have been
18 known, by the attorney general or the Department of Health and Social Services, but
19 in no event more than 10 years after the date the violation under AS 09.58.010
20 occurred.

21 * **Sec. 9.** AS 09.10.120(a) is amended to read:

22 (a) **Except as provided in AS 09.10.075, an** [AN] action brought in the name
23 of or for the benefit of the state, any political subdivision, or public corporation may
24 be commenced only within six years **after** [OF] the date of accrual of the cause of
25 action. However, if the action is for relief on the ground of fraud, the limitation
26 commences from the time of discovery by the aggrieved party of the facts constituting
27 the fraud.

28 * **Sec. 10.** AS 09 is amended by adding a new chapter to read:

29 **Chapter 58. Alaska Medical Assistance False Claim and Reporting Act.**

30 **Sec. 09.58.010. False claims for medical assistance; civil penalty.** (a) A
31 medical assistance provider or medical assistance recipient may not

1 (1) knowingly submit, authorize, or cause to be submitted to an officer
 2 or employee of the state a false or fraudulent claim for payment or approval under the
 3 medical assistance program;

4 (2) knowingly make, use, or cause to be made or used, directly or
 5 indirectly, a false record or statement to get a false or fraudulent claim for payment
 6 paid or approved by the state under the medical assistance program;

7 (3) conspire to defraud the state by getting a false or fraudulent claim
 8 paid or approved under the medical assistance program;

9 (4) knowingly make, use, or cause to be made or used, a false record or
 10 statement to conceal, avoid, increase, or decrease an obligation to pay or transmit
 11 money or property to the medical assistance program;

12 (5) knowingly enter into an agreement, contract, or understanding with
 13 an officer or employee of the state for approval or payment of a claim under the
 14 medical assistance program knowing that the information in the agreement, contract,
 15 or understanding is false or fraudulent.

16 (b) A beneficiary of an intentional or inadvertent submission of a false or
 17 fraudulent claim under the medical assistance program who later discovers the claim is
 18 false or fraudulent shall disclose the false or fraudulent claim to the state not later than
 19 60 days after discovering the false claim.

20 (c) In addition to any criminal penalties or seizure or forfeiture of property
 21 under AS 47.05, a medical assistance provider or medical assistance recipient who
 22 violates (a) or (b) of this section shall be liable to the state in a civil action for

23 (1) a civil penalty of not less than \$5,500 and not more than \$11,000;

24 (2) three times the amount of actual damages sustained by the state;

25 and

26 (3) reasonable attorney fees and costs calculated under applicable court
 27 rules.

28 (d) Liability for actual damages under (c) of this section may be reduced to not
 29 less than twice the amount of actual damages that the state sustains if the court finds
 30 that a person liable for an act under (a) or (b) of this section

31 (1) furnished the attorney general or the Department of Health and

1 Social Services with all information known to the person about the violation not later
2 than 30 days after the date the information was obtained;

3 (2) fully cooperated with the investigation of the violation under
4 AS 09.58.020; and

5 (3) at the time the person furnished the attorney general with the
6 information about the violation, no criminal prosecution, civil action, investigation, or
7 administrative action had been started in this state with respect to the violation, and the
8 person did not have actual knowledge of the existence of an investigation of the
9 violation.

10 (e) A corporation, partnership, or other individual is liable under this chapter
11 for acts of its agents if the agent acted with apparent authority, regardless of whether
12 the agent acted, in whole or in part, to benefit the principal and regardless of whether
13 the principal adopted or ratified the agent's claims, representations, statement, or other
14 action or conduct.

15 **Sec. 09.58.015. Attorney general investigation; civil action.** (a) The attorney
16 general or the Department of Health and Social Services may investigate an alleged
17 violation of AS 09.58.010. The attorney general may request assistance from the
18 Department of Health and Social Services in an investigation under this section.

19 (b) The attorney general may bring a civil action in superior court under
20 AS 09.58.010 - 09.58.060.

21 **Sec. 09.58.020. Private plaintiff; civil action.** (a) Notwithstanding
22 AS 09.58.015, a person may bring an action under this section for a violation of
23 AS 09.58.010 in the name of the person and the state.

24 (b) To bring an action under this section, a person shall file a complaint, in
25 camera and under seal, and serve on the attorney general

26 (1) a copy of the complaint; and

27 (2) written disclosure of substantially all material evidence and
28 information the person possesses that pertains to the claim.

29 (c) A complaint filed under this section must remain under seal for at least 60
30 days and may not be served on the defendant until the court so orders. The attorney
31 general may elect to intervene and proceed with the action within 60 days after the

1 attorney general receives both the complaint and the material evidence and the
 2 information required under (b) of this section. The attorney general may, for good
 3 cause shown, move the court, under seal, for an extension of the time during which the
 4 complaint remains under seal under this subsection.

5 (d) Before the expiration of the 60-day period or an extension of time granted
 6 under (c) of this section, the attorney general shall conduct an investigation and make
 7 a written determination as to whether substantial evidence exists that a violation of
 8 AS 09.58.010 has occurred. After the investigation and determination are complete,
 9 the attorney general shall provide the person who brought the action and the
 10 Department of Health and Social Services with a copy of the determination unless the
 11 action has been referred to the division of the Department of Law that has
 12 responsibility for criminal cases.

13 (e) Before the expiration of the 60-day period or an extension obtained under
 14 (c) of this section, the attorney general shall

15 (1) intervene in the action and proceed with the action on behalf of the
 16 state;

17 (2) notify the court that the attorney general declines to take over the
 18 action, in which case the person bringing the action has the right to conduct the action;
 19 or

20 (3) if the attorney general determines that substantial evidence does not
 21 exist that a violation of AS 09.58.010 has occurred, or that the action is barred under
 22 AS 09.58.050, the attorney general shall move the court to dismiss the action.

23 (f) The named defendant in a complaint filed under this section is not required
 24 to respond to a complaint filed under this section until after the complaint is unsealed
 25 by the court and a copy of the summons and complaint are served on the defendant
 26 under the applicable Alaska Rules of Civil Procedure.

27 (g) When a person brings an action under this section, only the attorney
 28 general may intervene or bring a related action based on similar facts to the underlying
 29 action.

30 **Sec. 09.58.025. Subpoenas.** In conducting an investigation under
 31 AS 09.58.015 or 09.58.020, the attorney general may issue subpoenas to compel the

1 production of books, papers, correspondence, memoranda, and other records in
2 connection with an investigation under or the administration of AS 09.58.010 -
3 09.58.060. If a medical assistance provider or a medical assistance recipient fails or
4 refuses, without just cause, to obey a subpoena issued under this subsection, the
5 superior court may, upon application by the attorney general, issue an order requiring
6 the medical assistance provider or medical assistance recipient to appear before the
7 attorney general to produce evidence.

8 **Sec. 09.58.030. Rights in false or fraudulent claims actions.** (a) If the
9 attorney general elects to intervene and proceed with an action under AS 09.58.020,
10 the attorney general has exclusive authority for prosecuting the action and is not bound
11 by an act of the person bringing the action. The person who brought the action has the
12 right to continue as a nominal party to the action, but does not have the right to
13 participate in the action except as a witness or as otherwise directed by the attorney
14 general. If the attorney general elects to intervene under AS 09.58.020, the attorney
15 general may file a new complaint or amend the complaint filed by the person who
16 brought the action under AS 09.58.020(b).

17 (b) Notwithstanding the objections of the person who brought the action, the
18 attorney general may

19 (1) move to dismiss the action at any time under this chapter if the
20 attorney general has notified the person who brought the action of the intent to seek
21 dismissal and the court has provided the person who brought the action with an
22 opportunity to respond to the motion;

23 (2) settle the action with the defendant at any time, if the court
24 determines, after a hearing, that the proposed settlement is fair, adequate, and
25 reasonable under all the circumstances; upon a showing of good cause, the hearing
26 described in this paragraph shall be held in camera.

27 (c) If the attorney general elects not to proceed under AS 09.58.020 with the
28 action, the person who brought the action has the right to proceed and conduct the
29 action. The attorney general may request at any time during the proceedings to be
30 served with copies of all documents related to the action, including pleadings,
31 motions, and discovery. The attorney general shall pay for the reasonable copying

1 charges for documents provided under this subsection. If the person who brought the
 2 action proceeds with the action, the court, without limiting the status and rights of the
 3 person who brought the action, shall allow the attorney general to intervene at any
 4 time.

5 (d) Whether or not the attorney general proceeds with the action under this
 6 chapter, on a showing by the attorney general that certain actions of discovery by the
 7 person bringing the action would interfere with pending investigation or prosecution
 8 of a criminal or civil proceeding arising out of the same matter, the court may stay the
 9 discovery for not more than 90 days. The court may extend the 90-day period on a
 10 further showing, in camera, that the state has pursued the criminal or civil
 11 investigation or proceedings with reasonable diligence and that proposed discovery in
 12 the civil action under AS 09.58.010 - 09.58.060 may interfere with the ongoing
 13 criminal or civil investigation or proceedings.

14 **Sec. 09.58.040. Award to false or fraudulent claim plaintiff.** (a) If the
 15 attorney general proceeds with an action brought by a person for a violation of
 16 AS 09.58.010, the person who brought the action shall receive at least 15 percent but
 17 not more than 25 percent of the proceeds of the action or settlement of the claim,
 18 depending on the extent to which the person bringing the action contributed to the
 19 prosecution of the action. The court order or settlement agreement shall state the
 20 percentage and the amount to be received by the person who brought the action. A
 21 payment under this subsection to the person who brought the action may only be paid
 22 from proceeds received from a judgment or settlement under this section.

23 (b) If the attorney general does not proceed with an action brought under
 24 AS 09.58.020, the person bringing the action to judgment or settlement by court order
 25 shall receive an amount that the court decides is reasonable for collecting the civil
 26 penalty and damages based on the person's effort to prosecute the action successfully.
 27 The amount shall be at least 25 percent but not more than 30 percent of the proceeds
 28 of the action or settlement of the claim. A payment under this subsection to the person
 29 who brought the action may only be paid from proceeds received from a judgment or
 30 settlement received under this section.

31 (c) Whether or not the attorney general participates in the action, if the court

finds that the action was brought by a person who planned or initiated the violation alleged in the action brought under AS 09.58.020, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under (a) or (b) of this section, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of AS 09.58.010, the court shall dismiss the person from the civil action and the person may not receive any share of the proceeds of the action or settlement. A dismissal under this subsection does not prejudice the right of the attorney general to continue the action.

(d) In this section, "proceeds of the action or settlement"

(1) includes damages, civil penalties, payment for cost of compliance, and other economic benefits realized by the state as a result of a civil action brought under AS 09.58.010 - 09.58.060;

(2) does not include attorney fees and costs awarded to the state.

Sec. 09.58.050. Certain actions barred. A person may not bring an action under AS 09.58.020 if the action is

(1) based on evidence or information known to the state when the action was brought;

(2) based on allegations or transactions that are the subject of a civil or criminal action or an administrative proceeding in which the state is already a party;

(3) based on the public disclosure of allegations or actions in a criminal or civil action or an administrative hearing, or from the news media, unless the action is brought by the attorney general or the person bringing the action is an original source of the information that was publicly disclosed; in this paragraph, a person is an original source of the information that was publicly disclosed if the person has independent knowledge, including knowledge based on personal investigation of the defendant's conduct, of the information on which the allegations are based, and has voluntarily provided or verified the information on which the allegations are based or voluntarily provided the information to the attorney general before filing an action under AS 09.58.020 that is based on the information; or

(4) against the state or current or former state employees.

Sec. 09.58.060. State not liable for attorney fees, costs, and other expenses.

The state, its agencies, current or former officers, and current or former employees, are not liable for attorney fees, costs, and other expenses that a person incurs in bringing an action under AS 09.58.020.

Sec. 09.58.070. Employee protection for retaliation. (a) An employee of a medical assistance provider who is discharged, demoted, suspended, threatened, harassed, or discriminated against in the terms and conditions of employment by the employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under AS 09.58.010 - 09.58.060, including investigation for, initiation of, testimony for or assistance in an action filed or to be filed under AS 09.58.010 - 09.58.060, is entitled to the same relief authorized under AS 39.90.120.

(b) Notwithstanding (a) of this section, a state employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or a person who brings an action under AS 09.58.020 or in furtherance of an action under AS 09.58.010 - 09.58.060, including investigation, initiation of, testimony for or assistance in an action filed or to be filed under AS 09.58.010 - 09.58.060, is entitled to relief under AS 39.90.100 - 39.90.150 (Alaska Whistleblower Act).

(c) A person may not bring an action under this section unless the action is commenced not later than three years after the date the employee was subject to retaliation under (a) or (b) of this section.

Sec. 09.58.080. Regulations. The attorney general may adopt regulations under AS 44.62 as necessary to carry out the purposes of this chapter.

Sec. 09.58.090. Special provisions. (a) This chapter does not apply to any controversy involving damages to the state of less than \$5,500 in value.

(b) No punitive damages may be awarded in an action brought under AS 09.58.010 - 09.58.060.

Sec. 09.58.100. Definitions. In this chapter,

1 (1) "attorney general" includes a designee of the attorney general;

2 (2) "claim" means a request for payment of health care services or
3 equipment, whether made to a contractor, grantee, or other person, when the state
4 provides, directly or indirectly, a portion of the money, property, or services requested
5 or demanded, or when the state will, directly or indirectly, reimburse the contractor,
6 grantee, or other recipient for a portion of the money, property, or services requested
7 or demanded;

8 (3) "controversy" means the aggregate of one or more false claims
9 submitted by the same medical assistance provider or medical assistance recipient
10 under this chapter;

11 (4) "knowingly" means that a person, with or without specific intent to
12 defraud,

13 (A) has actual knowledge of the information;

14 (B) acts in deliberate ignorance of the truth or falsity of the
15 information; or

16 (C) acts in reckless disregard of the truth or falsity of the
17 information;

18 (5) "medical assistance program" means the federal-state program
19 administered by the Department of Health and Social Services under AS 47.05 and
20 AS 47.07 and regulations adopted under AS 47.05 and AS 47.07;

21 (6) "medical assistance provider" has the meaning given under
22 AS 47.05.290;

23 (7) "medical assistance recipient" has the meaning given under
24 AS 47.05.290;

25 (8) "obligation" means an established duty, whether or not fixed,
26 arising from

27 (A) an express or implied contractual grantor or grantee or
28 licensor or licensee relationship;

29 (B) a fee-based or similar relationship;

30 (C) a statute or regulation; or

31 (D) the retention of any overpayment.

1 **Sec. 09.58.110. Short title.** This chapter may be cited as the Alaska Medical
2 Assistance False Claim and Reporting Act.

3 * **Sec. 11.** AS 09.58.025, added by sec. 10 of this Act, is amended to read:

4 **Sec. 09.58.025. Subpoenas.** In conducting an investigation under
5 AS 09.58.015 [OR 09.58.020], the attorney general may issue subpoenas to compel
6 the production of books, papers, correspondence, memoranda, and other records in
7 connection with an investigation under or the administration of AS 09.58.010 -
8 09.58.060. If a medical assistance provider or a medical assistance recipient fails or
9 refuses, without just cause, to obey a subpoena issued under this subsection, the
10 superior court may, upon application by the attorney general, issue an order requiring
11 the medical assistance provider or medical assistance recipient to appear before the
12 attorney general to produce evidence.

13 * **Sec. 12.** AS 09.58.070(b), added by sec. 10 of this Act, is amended to read:

14 (b) Notwithstanding (a) of this section, a state employee who is discharged,
15 demoted, suspended, threatened, harassed, or discriminated against in the terms and
16 conditions of employment because of lawful acts done by the employee on behalf of
17 the employee [OR A PERSON WHO BRINGS AN ACTION UNDER AS 09.58.020]
18 or in furtherance of an action under AS 09.58.010 - 09.58.060, including investigation,
19 initiation of, testimony for or assistance in an action filed or to be filed under
20 AS 09.58.010 - 09.58.060, is entitled to relief under AS 39.90.100 - 39.90.150 (Alaska
21 Whistleblower Act).

22 * **Sec. 13.** AS 17.30.200(a) is amended to read:

23 (a) The controlled substance prescription database is established in the Board
24 of Pharmacy. The purpose of the database is to contain data as described in this
25 section regarding every prescription for a schedule [IA, IIA, IIIA, IVA, OR VA
26 CONTROLLED SUBSTANCE UNDER STATE LAW OR A SCHEDULE I,] II, III,
27 or IV [, OR V] controlled substance under federal law dispensed in the state to a
28 person other than those administered to a patient at a health care facility. The
29 Department of Commerce, Community, and Economic Development shall assist the
30 board and provide necessary staff and equipment to implement this section.

1 * **Sec. 14.** AS 17.30.200(b) is amended to read:

2 (b) The pharmacist-in-charge of each licensed or registered pharmacy,
3 regarding each schedule [IA, IIA, IIIA, IVA, OR VA CONTROLLED SUBSTANCE
4 UNDER STATE LAW OR A SCHEDULE I,] II, III, or IV [, OR V] controlled
5 substance under federal law dispensed by a pharmacist under the supervision of the
6 pharmacist-in-charge, and each practitioner who directly dispenses a schedule [IA,
7 IIA, IIIA, IVA, OR VA CONTROLLED SUBSTANCE UNDER STATE LAW OR A
8 SCHEDULE I,] II, III, or IV [, OR V] controlled substance under federal law other
9 than those administered to a patient at a health care facility, shall submit to the board,
10 by a procedure and in a format established by the board, the following information for
11 inclusion in the database on at least a weekly basis:

12 (1) the name of the prescribing practitioner and the practitioner's
13 federal Drug Enforcement Administration registration number or other appropriate
14 identifier;

15 (2) the date of the prescription;

16 (3) the date the prescription was filled and the method of payment; this
17 paragraph does not authorize the board to include individual credit card or other
18 account numbers in the database;

19 (4) the name, address, and date of birth of the person for whom the
20 prescription was written;

21 (5) the name and national drug code of the controlled substance;

22 (6) the quantity and strength of the controlled substance dispensed;

23 (7) the name of the drug outlet dispensing the controlled substance;

24 and

25 (8) the name of the pharmacist or practitioner dispensing the controlled
26 substance and other appropriate identifying information.

27 * **Sec. 15.** AS 17.30.200(d) is amended to read:

28 (d) The database and the information contained within the database are
29 confidential, are not public records, and are not subject to public disclosure. The board
30 shall undertake to ensure the security and confidentiality of the database and the
31 information contained within the database. The board may allow access to the

1 database only to the following persons, and in accordance with the limitations
2 provided and regulations of the board:

3 (1) personnel of the board regarding inquiries concerning licensees or
4 registrants of the board or personnel of another board or agency concerning a
5 practitioner under a search warrant, subpoena, or order issued by an administrative law
6 judge or a court;

7 (2) authorized board personnel or contractors as required for
8 operational and review purposes;

9 (3) a licensed practitioner having authority to prescribe controlled
10 substances **or an agent or employee of the practitioner whom the practitioner has**
11 **authorized to access the database on the practitioner's behalf**, to the extent the
12 information relates specifically to a current patient of the practitioner to whom the
13 practitioner is prescribing or considering prescribing a controlled substance;

14 (4) a licensed or registered pharmacist having authority to dispense
15 controlled substances **or an agent or employee of the pharmacist whom the**
16 **pharmacist has authorized to access the database on the pharmacist's behalf**, to
17 the extent the information relates specifically to a current patient to whom the
18 pharmacist is dispensing or considering dispensing a controlled substance;

19 (5) federal, state, and local law enforcement authorities may receive
20 printouts of information contained in the database under a search warrant, subpoena,
21 or order issued by a court establishing probable cause for the access and use of the
22 information; [AND]

23 (6) an individual who is the recipient of a controlled substance
24 prescription entered into the database may receive information contained in the
25 database concerning the individual on providing evidence satisfactory to the board that
26 the individual requesting the information is in fact the person about whom the data
27 entry was made and on payment of a fee set by the board under AS 37.10.050 that
28 does not exceed \$10;

29 **(7) a licensed pharmacist employed by the Department of Health**
30 **and Social Services who is responsible for administering prescription drug**
31 **coverage for the medical assistance program under AS 47.07, to the extent that**

1 the information relates specifically to prescription drug coverage under the
 2 program;

3 (8) a licensed pharmacist, licensed practitioner, or authorized
 4 employee of the Department of Health and Social Services responsible for
 5 utilization review of prescription drugs for the medical assistance program under
 6 AS 47.07, to the extent that the information relates specifically to utilization
 7 review of prescription drugs provided to recipients of medical assistance;

8 (9) the state medical examiner, to the extent that the information
 9 relates specifically to investigating the cause and manner of a person's death; and

10 (10) an authorized employee of the Department of Health and
 11 Social Services may receive information from the database that does not disclose
 12 the identity of a patient, prescriber, dispenser, or dispenser location, for the
 13 purpose of identifying and monitoring public health issues in the state; however,
 14 the information provided under this paragraph may include the region of the
 15 state in which a patient, prescriber, and dispenser are located and the specialty of
 16 the prescriber.

17 * **Sec. 16.** AS 17.30.200(e) is amended to read:

18 (e) The failure of a pharmacist-in-charge, pharmacist, or practitioner to
 19 **register or** submit information to the database as required under this section is
 20 grounds for the board to take disciplinary action against the license or registration of
 21 the pharmacy or pharmacist or for another licensing board to take disciplinary action
 22 against a practitioner.

23 * **Sec. 17.** AS 17.30.200(h) is amended to read:

24 (h) An individual who has submitted information to the database in
 25 accordance with this section may not be held civilly liable for having submitted the
 26 information. [NOTHING IN THIS SECTION REQUIRES OR OBLIGATES A
 27 DISPENSER OR PRACTITIONER TO ACCESS OR CHECK THE DATABASE
 28 BEFORE DISPENSING, PRESCRIBING, OR ADMINISTERING A
 29 MEDICATION, OR PROVIDING MEDICAL CARE TO A PERSON.] Dispensers or
 30 practitioners may not be held civilly liable for damages for accessing or failing to
 31 access the information in the database.

1 *** Sec. 18.** AS 17.30.200(k) is amended to read:

2 (k) In the regulations adopted under this section, the board shall provide

3 (1) that prescription information in the database [SHALL] be purged
4 from the database after two years have elapsed from the date the prescription was
5 dispensed;

6 (2) a method for an individual to challenge information in the database
7 about the individual that the person believes is incorrect or was incorrectly entered by
8 a dispenser;

9 **(3) a procedure and time frame for registration with the database;**

10 **(4) that a pharmacist or practitioner review the information in the**
11 **database to check a patient's prescription records before dispensing, prescribing,**
12 **or administering a controlled substance to the patient; the regulations must**
13 **provide that a pharmacist or practitioner is not required to review the**
14 **information in the database before dispensing, prescribing, or administering a**
15 **controlled substance to a person who is receiving treatment**

16 **(A) in an inpatient setting;**

17 **(B) at the scene of an emergency or in an ambulance; in this**
18 **subparagraph, "ambulance" has the meaning given in AS 18.08.200;**

19 **(C) in an emergency room; or**

20 **(D) immediately before, during, or within the first 24 hours**
21 **after surgery.**

22 *** Sec. 19.** AS 17.30.200 is amended by adding new subsections to read:

23 (o) A pharmacist who dispenses or a practitioner who prescribes, administers,
24 or directly dispenses a schedule II, III, or IV controlled substance under federal law
25 shall register with the database by a procedure and in a format established by the
26 board.

27 (p) The board shall promptly notify the State Medical Board, the Board of
28 Nursing, the Board of Dental Examiners, and the Board of Examiners in Optometry
29 when a practitioner registers with the database under (o) of this section.

30 (q) The board is authorized to provide unsolicited notification to a pharmacist
31 or practitioner if a patient has received one or more prescriptions for controlled

1 substances in quantities or with a frequency inconsistent with generally recognized
2 standards of safe practice.

3 (r) The board shall update the database on at least a weekly basis with the
4 information submitted to the board under (b) of this section.

5 * **Sec. 20.** AS 37.05.146(c) is amended by adding a new paragraph to read:

6 (88) monetary recoveries under AS 09.58 (Alaska Medical Assistance
7 False Claim and Reporting Act).

8 * **Sec. 21.** AS 40.25.120(a) is amended by adding a new paragraph to read:

9 (15) records relating to proceedings under AS 09.58 (Alaska Medical
10 Assistance False Claim and Reporting Act).

11 * **Sec. 22.** AS 44.33 is amended by adding a new section to read:

12 **Article 5A. Telemedicine Business Registry.**

13 **Sec. 44.33.381. Telemedicine business registry.** (a) The department shall
14 adopt regulations for establishing and maintaining a registry of businesses performing
15 telemedicine services in the state.

16 (b) The department shall maintain the registry of businesses performing
17 telemedicine services in the state. The registry must include the name, address, and
18 contact information of businesses performing telemedicine services in the state.

19 (c) In this section,

20 (1) "department" means the Department of Commerce, Community,
21 and Economic Development;

22 (2) "telemedicine services" means the delivery of health care services
23 using the transfer of medical data through audio, visual, or data communications that
24 are performed over two or more locations by a provider who is physically separated
25 from the recipient of the health care services.

26 * **Sec. 23.** AS 47.05.015 is amended by adding a new subsection to read:

27 (e) Notwithstanding (c) of this section, the department may enter into a
28 contract through the competitive bidding process under AS 36.30 (State Procurement
29 Code) for medical assistance products and services offered under AS 47.07.030 if the
30 contract is for durable medical equipment or specific medical services that can be
31 delivered on a statewide basis.

1 * **Sec. 24.** AS 47.05 is amended by adding a new section to article 1 to read:

2 **Sec. 47.05.105. Enhanced computerized eligibility verification system. (a)**

3 The department shall establish an enhanced computerized income, asset, and identity
4 eligibility verification system for the purposes of verifying eligibility, eliminating
5 duplication of public assistance payments, and deterring waste and fraud in public
6 assistance programs administered by the department under AS 47.05.010. Nothing in
7 this section prohibits the department from verifying eligibility for public assistance
8 through additional procedures or authorizes the department or a third-party vendor to
9 use data to verify eligibility for a federal program if the use of that data is prohibited
10 by federal law.

11 (b) The department shall enter into a competitively bid contract with a third-
12 party vendor for the purpose of developing a system under this section to prevent
13 fraud, misrepresentation, and inadequate documentation when determining an
14 applicant's eligibility for public assistance before the payment of benefits and for
15 periodically verifying eligibility between eligibility redeterminations and during
16 eligibility redeterminations and reviews under AS 47.05.110 - 47.05.120. The
17 department may also contract with a third-party vendor to provide information to
18 facilitate reviews of recipient eligibility and income verification.

19 (c) The annual savings to the state resulting from the use of the system under
20 this section must exceed the cost of implementing the system. A contract under this
21 section must require the third-party vendor to report annual savings to the state
22 realized from implementing the system. Payment to the third-party vendor may be
23 based on a fee for each applicant and may include incentives for achieving a rate of
24 success established by the department for identifying duplication, waste, and fraud in
25 public assistance programs.

26 (d) To avoid a conflict of interest, the department may not award a contract to
27 provide services for the enrollment of public assistance providers or applicants under
28 this title to a vendor that is awarded a contract under this section.

29 * **Sec. 25.** AS 47.05.200(a) is amended to read:

30 (a) The department shall annually contract for independent audits of a
31 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 **may not be less than 50** 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. **In identifying providers who are subject to an audit under this chapter, the department shall attempt to minimize concurrent state or federal audits.**

* **Sec. 26.** 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. **The department may assess 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 agency decision to recoup overpayments identified in the audit. In this subsection, the date of issuance of the final agency decision is the later of the date of

(1) the department's written notification of the decision and the provider's appeal rights; or

(2) if timely appealed by the provider, a final agency decision under AS 44.64.060.

* **Sec. 27.** AS 47.05 is amended by adding a new section to read:

Sec. 47.05.235. Duty to identify and repay self-identified overpayments. (a)

Unless a provider is being audited under AS 47.05.200(a), an enrolled medical assistance provider shall conduct a biennial review or audit of a statistically valid sample of claims submitted to the department for reimbursement. If overpayments are identified, the medical assistance provider shall report the overpayment to the department not later than 10 business days after identification of the overpayment. The report must also identify how the medical assistance provider intends to repay the department. After the department receives the report, the medical assistance provider and the department shall enter into an agreement establishing a schedule for repayment of the identified overpayment. The agreement may authorize repayment in a lump sum, a payment plan, or by offsetting future billings as approved by the department.

(b) The department may not assess interest or penalties on an overpayment identified and repaid by a medical assistance provider under this section.

* **Sec. 28.** AS 47.05 is amended by adding new sections to read:

Sec. 47.05.250. Civil penalties. (a) The department may assess a civil penalty against a provider who violates this chapter, AS 47.07, or regulations adopted under this chapter or AS 47.07.

(b) The department shall adopt regulations establishing a range of civil penalties that the department may assess against a provider under this section. In establishing the range of civil penalties, the department shall take into account appropriate factors, including the seriousness of the violation, the service provided by the provider, and the severity of the penalty. The regulations may not provide for a

1 civil penalty of less than \$100 or more than \$25,000 for each violation.

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

5 (d) A provider against whom a civil penalty of less than \$2,500 is assessed
6 may appeal the decision assessing the penalty to the commissioner or the
7 commissioner's designee. The commissioner shall, by regulation, establish time limits
8 and procedures for an appeal under this subsection. The decision of the commissioner
9 or the commissioner's designee may be appealed to the office of administrative
10 hearings established under AS 44.64.

11 (e) A provider against whom a civil penalty of \$2,500 or more is assessed may
12 appeal the decision assessing the penalty to the office of administrative hearings
13 established under AS 44.64.

14 **Sec. 47.05.260. Seizure and forfeiture of real or personal property in**
15 **medical assistance fraud cases.** (a) Upon written application by the attorney general
16 establishing probable cause that a medical assistance provider has committed or is
17 committing medical assistance fraud under AS 47.05.210, the court may authorize the
18 seizure of real or personal property listed in (e) of this section to cover the cost of the
19 alleged fraud. The application may be made ex parte if the attorney general establishes
20 sufficient facts to show that notice to the owner of the property would lead to the
21 waste or dissipation of assets subject to seizure. If the attorney general does not
22 establish sufficient facts to show that notice to the owner would lead to the waste or
23 dissipation of assets subject to seizure, the application for seizure must be served on
24 the owners of the property.

25 (b) Upon issuance of the court order authorizing seizure, the owners of the
26 property may not take any action to dispose of the property through transfer of title or
27 sale of the property without written permission from the court. However, an innocent
28 purchaser may not be required to forfeit property purchased in good faith. The
29 purchaser bears the burden of proof to establish that the property was purchased
30 innocently and in good faith.

31 (c) If a medical assistance provider is convicted of medical assistance fraud

1 under AS 47.05.210 after property is seized under this section, the court may order
 2 that the property be forfeited to the state and disposed of as directed by the court. If
 3 the property has been sold, the proceeds of the sale shall be transmitted to the proper
 4 state officer or employee for deposit into the general fund. The attorney general shall
 5 return to the owner of the property any property seized under this section that the court
 6 does not order to be forfeited as soon as practicable after the court issues a final
 7 judgment in the medical assistance fraud proceeding under AS 47.05.210 and the
 8 medical assistance provider pays any fine or restitution ordered by the court.

9 (d) An action for forfeiture under this section may be joined with a civil or
 10 criminal action brought by the state to recover damages resulting from alleged medical
 11 assistance fraud.

12 (e) Property that may be seized under this chapter includes bank accounts,
 13 automobiles, boats, airplanes, stocks, bonds, the medical assistance provider's business
 14 inventory, and other real or personal property owned and used to conduct the medical
 15 assistance provider's business.

16 **Sec. 47.05.270. Medical assistance reform program.** (a) The department
 17 shall adopt regulations to design and implement a program for reforming the state
 18 medical assistance program under AS 47.07. The reform program must include

19 (1) referrals to community and social support services, including career
 20 and education training services available through the Department of Labor and
 21 Workforce Development under AS 23.15, the University of Alaska, or other sources;

22 (2) electronic distribution of an explanation of medical assistance
 23 benefits to recipients for health care services received under the program;

24 (3) expanding the use of telehealth for primary care, behavioral health,
 25 and urgent care;

26 (4) enhancing fraud prevention, detection, and enforcement;

27 (5) reducing the cost of behavioral health, senior, and disabilities
 28 services provided to recipients of medical assistance under the state's home and
 29 community-based services waiver under AS 47.07.045;

30 (6) pharmacy initiatives;

31 (7) enhanced care management;

1 (8) redesigning the payment process by implementing fee agreements
2 that include one or more of the following:

- 3 (A) premium payments for centers of excellence;
- 4 (B) penalties for hospital-acquired infections, readmissions,
5 and outcome failures;
- 6 (C) bundled payments for specific episodes of care; or
- 7 (D) global payments for contracted payers, primary care
8 managers, and case managers for a recipient or for care related to a specific
9 diagnosis;

10 (9) stakeholder involvement in setting annual targets for quality and
11 cost-effectiveness;

12 (10) to the extent consistent with federal law, reducing travel costs by
13 requiring a recipient to obtain medical services in the recipient's home community, to
14 the extent appropriate services are available in the recipient's home community;

15 (11) guidelines for health care providers to develop health care
16 delivery models supported by evidence-based practices that encourage wellness and
17 disease prevention.

18 (b) The department shall, in coordination with the Alaska Mental Health Trust
19 Authority, efficiently manage a comprehensive and integrated behavioral health
20 program that uses evidence-based, data-driven practices to achieve positive outcomes
21 for people with mental health or substance abuse disorders and children with severe
22 emotional disturbances. The goal of the program is to assist recipients of services
23 under the program to recover by achieving the highest level of autonomy with the least
24 dependence on state-funded services possible for each person. The program must
25 include

26 (1) a plan for providing a continuum of community-based services to
27 address housing, employment, criminal justice, and other relevant issues;

28 (2) services from a wide array of providers and disciplines, including
29 licensed or certified mental health and primary care professionals; and

30 (3) efforts to reduce operational barriers that fragment services,
31 minimize administrative burdens, and reduce the effectiveness and efficiency of the

1 program.

2 (c) The department shall identify the areas of the state where improvements in
3 access to telehealth would be most effective in reducing the costs of medical
4 assistance and improving access to health care services for medical assistance
5 recipients. The department shall make efforts to improve access to telehealth for
6 recipients in those locations. The department may enter into agreements with Indian
7 Health Service providers, if necessary, to improve access by medical assistance
8 recipients to telehealth facilities and equipment.

9 (d) On or before November 15 of each year, the department shall prepare a
10 report and submit the report to the senate secretary and the chief clerk of the house of
11 representatives and notify the legislature that the report is available. The report must
12 include

- 13 (1) realized cost savings related to reform efforts under this section;
- 14 (2) realized cost savings related to medical assistance reform efforts
15 undertaken by the department other than the reform efforts described in this Act;
- 16 (3) a statement of whether the department has met annual targets for
17 quality and cost-effectiveness;
- 18 (4) recommendations for legislative or budgetary changes related to
19 medical assistance reforms during the next fiscal year;
- 20 (5) changes in federal laws that the department expects will result in a
21 cost or savings to the state of more than \$1,000,000;
- 22 (6) a description of any medical assistance grants, options, or waivers
23 the department applied for in the previous fiscal year;
- 24 (7) the results of demonstration projects the department has
25 implemented;
- 26 (8) legal and technological barriers to the expanded use of telehealth,
27 improvements in the use of telehealth in the state, and recommendations for changes
28 or investments that would allow cost-effective expansion of telehealth;
- 29 (9) the percentage decrease in costs of travel for medical assistance
30 recipients compared to the previous fiscal year;
- 31 (10) the percentage decrease in the number of medical assistance

1 recipients identified as frequent users of emergency departments compared to the
2 previous fiscal year;

3 (11) the percentage increase or decrease in the number of hospital
4 readmissions within 30 days after a hospital stay for medical assistance recipients
5 compared to the previous fiscal year;

6 (12) the percentage increase or decrease in state general fund spending
7 for the average medical assistance recipient compared to the previous fiscal year;

8 (13) the percentage increase or decrease in uncompensated care costs
9 incurred by medical assistance providers compared to the percentage change in private
10 health insurance premiums for individual and small group health insurance;

11 (14) the cost, in state and federal funds, for providing optional services
12 under AS 47.07.030(b).

13 (e) In this section, "telehealth" means the practice of health care delivery,
14 evaluation, diagnosis, consultation, or treatment, using the transfer of health care data
15 through audio, visual, or data communications, performed over two or more locations
16 between providers who are physically separated from the recipient or from each other
17 or between a provider and a recipient who are physically separated from each other.

18 * **Sec. 29.** AS 47.07.030(d) is amended to read:

19 (d) The department **shall** [MAY] establish as optional services a primary care
20 case management system or a managed care organization contract in which certain
21 eligible individuals are required to enroll and seek approval from a case manager or
22 the managed care organization before receiving certain services. **The purpose of a**
23 **primary care case management system or managed care organization contract is**
24 **to increase the use of appropriate primary and preventive care by medical**
25 **assistance recipients, while decreasing the unnecessary use of specialty care and**
26 **hospital emergency department services.** The department shall

27 (1) establish enrollment criteria and determine eligibility for services
28 consistent with federal and state law; **the department shall require recipients with**
29 **multiple hospitalizations to enroll in a primary care case management system or**
30 **with a managed care organization under this subsection, except that the**
31 **department may exempt recipients with chronic, acute, or terminal medical**

conditions from the requirement under this paragraph;

(2) define the coordinated care services and provider types eligible to participate as primary care providers;

(3) create a performance and quality reporting system; and

(4) integrate the coordinated care demonstration projects described under AS 47.07.039 and the demonstration projects described under AS 47.07.036(e) with the primary care case management system or managed care organization contract established under this subsection.

* **Sec. 30.** AS 47.07.036 is amended by adding new subsections to read:

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

(1) 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;

(2) 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;

(3) apply for a section 1945 option under 42 U.S.C. 1396w-4 to provide coordinated care through health homes for individuals with chronic conditions and to increase the federal match for the services to 90 percent for the first eight quarters the required state plan amendment is in effect;

(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) provide incentives for telehealth, including increasing the capability for and reimbursement of telehealth for recipients.

(e) Notwithstanding (a) - (c) of this section, and in addition to the projects and services described under (d) and (f) 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

1 assistance recipients in one or more specific geographic areas. The demonstration
2 project or projects may include

- 3 (1) managed care organizations as described under 42 U.S.C. 1396u-2;
- 4 (2) community care organizations;
- 5 (3) patient-centered medical homes as described under 42 U.S.C. 256a-
6 1; or
- 7 (4) other innovative payment models that ensure access to health care
8 without reducing the quality of care.

9 (f) Notwithstanding (a) - (c) of this section, and in addition to the projects and
10 services described under (d) and (e) of this section, the department shall apply for a
11 section 1115 waiver under 42 U.S.C. 1315(a) to establish one or more demonstration
12 projects focused on improving the state's behavioral health system for medical
13 assistance recipients. The department shall engage stakeholders and the community in
14 the development of a project or projects under this subsection. The demonstration
15 project or projects must be consistent with the comprehensive and integrated
16 behavioral health program described under AS 47.05.270(b).

17 (g) In this section, "telehealth" has the meaning given in AS 47.05.270(e).

18 * **Sec. 31.** AS 47.07 is amended by adding new sections to read:

19 **Sec. 47.07.038. Collaborative, hospital-based project to reduce use of**
20 **emergency department services.** (a) On or before December 1, 2016, the department
21 shall collaborate with a statewide professional hospital association to establish a
22 hospital-based project to reduce the use of emergency department services by medical
23 assistance recipients. The statewide professional hospital association shall operate the
24 project. The project may include shared savings for participating hospitals. The project
25 must include

- 26 (1) an interdisciplinary process for defining, identifying, and
27 minimizing the number of frequent users of emergency department services;
- 28 (2) to the extent consistent with federal law, a system for real-time
29 electronic exchange of patient information, including recent emergency department
30 visits, hospital care plans for frequent users of emergency departments, and data from
31 the controlled substance prescription database;

1 (3) a procedure for educating patients about the use of emergency
2 departments and appropriate alternative services and facilities for nonurgent care;

3 (4) a process for assisting users of emergency departments in making
4 appointments with primary care or behavioral health providers within 96 hours after
5 an emergency department visit;

6 (5) a collaborative process between the department and the statewide
7 professional hospital association to establish uniform statewide guidelines for
8 prescribing narcotics in an emergency department; and

9 (6) designation of health care personnel to review successes and
10 challenges regarding appropriate emergency department use.

11 (b) The department shall adopt regulations necessary to implement this
12 section, request technical assistance from the United States Department of Health and
13 Human Services, and apply to the United States Department of Health and Human
14 Services for waivers or amendments to the state plan as necessary to implement the
15 projects under this section.

16 **Sec. 47.07.039. Coordinated care demonstration projects.** (a) The
17 department shall contract with one or more third parties to implement one or more
18 coordinated care demonstration projects for recipients of medical assistance identified
19 by the department. The purpose of a demonstration project under this section is to
20 assess the efficacy of a proposed health care delivery model with respect to cost for,
21 access to, and quality of care for medical assistance recipients. The department may
22 contract for separate demonstration projects to coordinate care for different groups of
23 medical assistance recipients to achieve more effective care for recipients at greater
24 cost savings for the medical assistance program. The department shall request
25 proposals for at least one project under this section on or before December 31, 2016,
26 and may annually request proposals for additional projects under this section
27 thereafter. The department may use an innovative procurement process as described
28 under AS 36.30.308 to award a contract for a project under this section. A proposal for
29 a demonstration project under this section must be submitted to the committee
30 established under (b) of this section and must include three or more of the following
31 elements:

1 (1) comprehensive primary-care-based management for medical
 2 assistance services, including behavioral health services and coordination of long-term
 3 services and support;

4 (2) care coordination, including the assignment of a primary care
 5 provider located in the local geographic area of the recipient, to the extent practical;

6 (3) health promotion;

7 (4) comprehensive transitional care and follow-up care after inpatient
 8 treatment;

9 (5) referral to community and social support services, including career
 10 and education training services available through the Department of Labor and
 11 Workforce Development under AS 23.15, the University of Alaska, or other sources;

12 (6) sustainability and the ability to achieve similar results in other
 13 regions of the state;

14 (7) integration and coordination of benefits, services, and utilization
 15 management;

16 (8) local accountability for health and resource allocation.

17 (b) A project review committee is established in the department for the
 18 purpose of reviewing proposals for demonstration projects under this section. The
 19 project review committee consists of

20 (1) the commissioner of the department, or the commissioner's
 21 designee;

22 (2) the commissioner of administration, or the commissioner's
 23 designee;

24 (3) the chief executive officer of the Alaska Mental Health Trust
 25 Authority, or the chief executive officer's designee;

26 (4) two representatives of stakeholder groups, appointed by the
 27 governor for staggered three-year terms;

28 (5) a nonvoting member who is a member of the senate, appointed by
 29 the president of the senate; and

30 (6) a nonvoting member who is a member of the house of
 31 representatives, appointed by the speaker of the house of representatives.

1 (c) The department may contract with a managed care organization, primary
2 care case manager, accountable care organization, prepaid ambulatory health plan, or
3 provider-led entity to implement a demonstration project under this section. The fee
4 structure for a contract under this subsection may include global payments, bundled
5 payments, capitated payments, shared savings and risk, or other payment structures.
6 The department shall work with the division of insurance, Department of Commerce,
7 Community, and Economic Development, to streamline the application process for a
8 company to obtain a certificate of authority required under AS 21.09.010 as necessary
9 to participate in a demonstration project under this section.

10 (d) A proposal for a demonstration project under this section must include, in
11 addition to the elements required under (a) of this section, information demonstrating
12 how the project will implement additional cost-saving measures including innovations
13 to reduce the cost of care for medical assistance recipients through the expanded use
14 of telehealth for primary care, urgent care, and behavioral health services. The
15 department shall identify legal or cost barriers preventing the expanded use of
16 telehealth and shall recommend remedies for identified barriers.

17 (e) The department shall contract with a third-party actuary to review
18 demonstration projects established under this section. The actuary shall review each
19 demonstration project after one year of implementation and make recommendations
20 for the implementation of a similar project on a statewide basis. The actuary shall
21 evaluate each project based on cost savings for the medical assistance program, health
22 outcomes for participants in the project, and the ability to achieve similar results on a
23 statewide basis. On or before December 31 of each year starting in 2018, the actuary
24 shall submit a final report to the department regarding any demonstration project that
25 has been in operation for at least one year.

26 (f) The department shall prepare a plan regarding regional or statewide
27 implementation of a coordinated care project based on the results of the demonstration
28 projects under this section. On or before November 15, 2019, the department shall
29 submit the plan to the senate secretary and the chief clerk of the house of
30 representatives and notify the legislature that the plan is available. On or before
31 November 15 of each year thereafter, the department shall submit a report regarding

any changes or recommendations regarding the plan developed under this subsection 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, "telehealth" has the meaning given in AS 47.05.270(e).

* **Sec. 32.** AS 47.07 is amended by adding a new section to read:

Sec. 47.07.076. Report to legislature. (a) The department and the attorney general shall annually prepare a report relating to the medical assistance program under AS 47.07. The report must include the following information:

(1) the amount and source of funds used to prevent or prosecute fraud, abuse, payment errors, and errors in eligibility determinations for the previous fiscal year;

(2) actions taken to address fraud, abuse, payment errors, and errors in eligibility determinations during the previous fiscal year;

(3) specific examples of fraud or abuse that were prevented or prosecuted;

(4) identification of vulnerabilities in the medical assistance program, including any vulnerabilities identified by independent auditors with whom the department contracts under AS 47.05.200;

(5) initiatives the department has taken to prevent fraud or abuse;

(6) recommendations to increase effectiveness in preventing and prosecuting fraud and abuse;

(7) the return to the state for every dollar expended by the department and the attorney general to prevent and prosecute fraud and abuse;

(8) the most recent payment error rate measurement report for the medical assistance program, including fee for service programs and pilot or demonstration projects; the report must also explain the reasons for the payment errors and the total amount of state and federal funds paid in error during the reporting period and not recovered by the department at the time of the report;

(9) results from the Medicaid Eligibility Quality Control program.

(b) On or before November 15 of each year, the department shall submit the report required under this section to the senate secretary and the chief clerk of the

house of representatives and notify the legislature that the report is available.

* **Sec. 33.** 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. 34.** 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. 35.** AS 47.55.020(e) is amended to read:

(e) As a condition for receipt of payment assistance under (d) of this section, the department, under regulations adopted by the department, **shall** [MAY] require a person to

(1) apply for other state or federally sponsored programs that may reduce the amount of the payment assistance; and

(2) submit to the department a copy of the person's application for medical assistance coverage under AS 47.07 and the decision letter the person receives regarding the application.

* **Sec. 36.** AS 09.58.020, 09.58.030, 09.58.040, 09.58.050, and 09.58.060 are repealed July 1, 2019.

* **Sec. 37.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENTS. (a) AS 09.58.020, added by sec. 10 of this Act, and repealed by sec. 36 of this Act, has the effect of amending the following court rules in the manner specified from the effective date of sec. 10 of this Act until July 1, 2019:

(1) Rules 4, 5, 7, and 12, Alaska Rules of Civil Procedure, by requiring that a

1 complaint under AS 09.58 be filed in camera and under seal and may not be served on the
2 defendant until unsealed and that a copy of the complaint be served on the attorney general;

3 (2) Rules 41 and 77, Alaska Rules of Civil Procedure, by authorizing the
4 attorney general to move for dismissal of a complaint filed by another person under
5 AS 09.58.020, added by sec. 10 of this Act and repealed by sec. 36 of this Act, and requiring
6 court approval for dismissal of the action.

7 (b) AS 09.58.025, added by sec. 10 of this Act, and amended by sec. 11 of this Act,
8 has the effect of amending Rule 27, Alaska Rules of Civil Procedure, by authorizing the
9 attorney general to issue subpoenas as part of an investigation

10 (1) under AS 09.58.015, added by sec. 10 of this Act, from the effective date
11 of sec. 10 of this Act; and

12 (2) under AS 09.58.020, added by sec. 10 of this Act, from the effective date
13 of sec. 10 of this Act until July 1, 2019.

14 (c) AS 09.58.030, added by sec. 10 of this Act, and repealed by sec. 36 of this Act,
15 has the effect of amending the following court rules in the manner specified from the effective
16 date of sec. 10 of this Act until July 1, 2019:

17 (1) Rule 24, Alaska Rules of Civil Procedure, by authorizing the attorney
18 general to intervene in a civil action filed by another person under AS 09.58.020 added by
19 sec. 10 of this Act, and repealed by sec. 36 of this Act, and limiting the participation of a party
20 to the litigation;

21 (2) Rules 26 and 27, Alaska Rules of Civil Procedure, by authorizing the
22 attorney general to request that the court issue a stay of discovery for a 90-day period, or
23 longer upon a showing by the attorney general.

24 (d) AS 09.58.040, added by sec. 10 of this Act, and repealed by sec. 36 of this Act,
25 has the effect of amending Rules 79 and 82, Alaska Rules of Civil Procedure, from the
26 effective date of sec. 10 of this Act until July 1, 2019, by giving a person who brings an action
27 under AS 09.58.020, added by sec. 10 of this Act, and repealed by sec. 36 of this Act, the
28 right to reasonable attorney fees and costs in an action prosecuted by the attorney general.

29 (e) AS 47.05.260, added by sec. 28 of this Act, has the effect of amending Rule 89,
30 Alaska Rules of Civil Procedure, and Rule 37, Alaska Rules of Criminal Procedure, by
31 authorizing the attorney general to apply to the court for authorization to seize property in

1 conjunction with an action filed under AS 47.05.210.

2 * **Sec. 38.** The uncoded law of the State of Alaska is amended by adding a new section to
3 read:

4 **IMPLEMENT FEDERAL POLICY ON TRIBAL MEDICAID REIMBURSEMENT.**

5 (a) The Department of Health and Social Services shall collaborate with Alaska tribal health
6 organizations and the United States Department of Health and Human Services to fully
7 implement changes in federal policy that authorize 100 percent federal funding for services
8 provided to American Indian and Alaska Native individuals eligible for Medicaid.

9 (b) Within 30 days after the date the Centers for Medicare and Medicaid Services
10 issues a final policy regarding the circumstances in which 100 percent federal funding is
11 available for medical assistance services received through the United States Indian Health
12 Service or tribal health facilities, the Department of Health and Social Services shall notify
13 and submit a report to the co-chairs of the house and senate finance committees of the Alaska
14 State Legislature that includes an estimate of the savings to the state resulting from the final
15 policy. Within six months after the date the Centers for Medicare and Medicaid Services
16 issues the final policy, the Department of Health and Social Services shall fully implement the
17 policy in the state.

18 (c) In this section, "Alaska tribal health organization" means an organization
19 recognized by the United States Indian Health Service to provide health-related services.

20 * **Sec. 39.** The uncoded law of the State of Alaska is amended by adding a new section to
21 read:

22 **HEALTH INFORMATION INFRASTRUCTURE PLAN.** (a) The Department of
23 Health and Social Services shall develop a health information infrastructure plan to strengthen
24 the health information infrastructure, including health data analytics capability. The purpose
25 of the health information infrastructure plan is to transform the health care system in the state
26 by providing

27 (1) data required by health care providers for care coordination and quality
28 improvement; and

29 (2) the information support required by the Department of Health and Social
30 Services and health care providers to enable development and implementation of the other
31 provisions of this Act.

(b) To the greatest extent practicable, the health information infrastructure plan will leverage existing resources, including the health information exchange, and will identify opportunities for integrating and streamlining health data systems administered by the state.

* **Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to read:

FEASIBILITY STUDIES FOR THE PROVISION OF SPECIFIED STATE SERVICES. (a) The Department of Health and Social Services shall procure a study analyzing the feasibility of privatizing services delivered at Alaska Pioneers' Homes and select facilities of the division of juvenile justice. The Department of Health and Social Services shall deliver a report summarizing the conclusions of the Department of Health and Social Services to the senate secretary and the chief clerk of the house of representatives and notify the legislature that the report is available within 10 days after the convening of the First Regular Session of the Thirtieth Alaska State Legislature.

(b) The Department of Health and Social Services, in conjunction with the Alaska Mental Health Trust Authority, shall procure a study analyzing the feasibility of privatizing services delivered at the Alaska Psychiatric Institute. The Department of Health and Social Services and the Alaska Mental Health Trust Authority shall deliver a joint report summarizing the conclusions of the Department of Health and Social Services and the Alaska Mental Health Trust Authority to the senate secretary and the chief clerk of the house of representatives and notify the legislature that the report is available within 10 days after the convening of the First Regular Session of the Thirtieth Alaska State Legislature.

(c) The Department of Administration shall, in collaboration with the house and senate finance committees, procure a study to be completed on or before June 30, 2017, to determine the feasibility of creating a health care authority to coordinate health care plans and consolidate purchasing effectiveness for all state employees, retired state employees, retired teachers, medical assistance recipients, University of Alaska employees, employees of state corporations, and school district employees and to develop appropriate benefit sets, rules, cost-sharing, and payment structures for all employees and individuals whose health care benefits are funded directly or indirectly by the state, with the goal of achieving the greatest possible savings to the state through a coordinated approach administered by a single entity. In developing the study, the Department of Administration shall seek input from the

1 Department of Health and Social Services, administrators familiar with managing government
 2 employee health plans, and human resource professionals familiar with self-insured health
 3 care plans. The study must

- 4 (1) identify cost-saving strategies that a health care authority could implement;
- 5 (2) analyze local government participation in the authority;
- 6 (3) analyze a phased approach to adding groups to the health care plans
 7 coordinated by the health care authority;
- 8 (4) consider previous studies procured by the Department of Administration
 9 and the legislature;
- 10 (5) assess the use of community-related health insurance risk pools and the use
 11 of the private marketplace;
- 12 (6) identify organizational models for a health care authority, including private
 13 for-profit, private nonprofit, government, and state corporations; and
- 14 (7) include a public review and comment opportunity for employers,
 15 employees, medical assistance recipients, retirees, and health care providers.

16 (d) In this section, "school district" has the meaning given in AS 14.30.350.

17 * **Sec. 41.** The uncodified law of the State of Alaska is amended by adding a new section to
 18 read:

19 MEDICAID STATE PLAN; WAIVERS; INSTRUCTIONS; NOTICE TO REVISOR
 20 OF STATUTES. The Department of Health and Social Services shall amend and submit for
 21 federal approval a state plan for medical assistance coverage consistent with this Act. The
 22 Department of Health and Social Services shall apply to the United States Department of
 23 Health and Human Services for any waivers necessary to implement this Act. The
 24 commissioner of health and social services shall certify to the revisor of statutes if the
 25 provisions of AS 47.05.270(a)(5), (8), and (10), added by sec. 28 of this Act, and the
 26 provisions of AS 47.07.038, added by sec. 31 of this Act, are approved by the United States
 27 Department of Health and Human Services.

28 * **Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to
 29 read:

30 TRANSITION: REGULATIONS. (a) The Department of Health and Social Services
 31 may adopt regulations necessary to implement the changes made by this Act. The regulations

1 take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date
2 of the relevant provision of this Act implemented by the regulation.

3 (b) The Board of Pharmacy may adopt regulations necessary to implement the
4 changes made by secs. 13 - 19 of this Act. The regulations take effect under AS 44.62
5 (Administrative Procedure Act), but not before the effective date of the relevant provision of
6 secs. 13 - 19 of this Act implemented by the regulation.

7 * **Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 **CONDITIONAL EFFECT.** (a) AS 47.05.270(a)(5), enacted by sec. 28 of this Act,
10 takes effect only if the commissioner of health and social services certifies to the revisor of
11 statutes under sec. 41 of this Act, on or before October 1, 2017, that all of the provisions
12 added by AS 47.05.270(a)(5) have been approved by the United States Department of Health
13 and Human Services.

14 (b) AS 47.05.270(a)(8), enacted by sec. 28 of this Act, takes effect only if the
15 commissioner of health and social services certifies to the revisor of statutes under sec. 41 of
16 this Act, on or before October 1, 2017, that all of the provisions added by AS 47.05.270(a)(8)
17 have been approved by the United States Department of Health and Human Services.

18 (c) AS 47.05.270(a)(10), enacted by sec. 28 of this Act, takes effect only if the
19 commissioner of health and social services certifies to the revisor of statutes under sec. 41 of
20 this Act, on or before October 1, 2017, that all of the provisions added by
21 AS 47.05.270(a)(10) have been approved by the United States Department of Health and
22 Human Services.

23 (d) AS 47.07.038, enacted by sec. 31 of this Act, takes effect only if the commissioner
24 of health and social services certifies to the revisor of statutes under sec. 41 of this Act, on or
25 before October 1, 2017, that all of the provisions added by AS 47.07.038 have been approved
26 by the United States Department of Health and Human Services.

27 (e) AS 09.58.020, added by sec. 10 of this Act, AS 09.58.025, added by sec. 10 of this
28 Act and amended by sec. 11 of this Act, AS 09.58.030, added by sec. 10 of this Act and
29 repealed by sec. 36 of this Act, AS 09.58.040, added by sec. 10 of this Act, and AS 47.05.260,
30 added by sec. 28 of this Act, take effect only if sec. 37 of this Act receives the two-thirds
31 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

1 * **Sec. 44.** If AS 47.05.270(a)(5), enacted by sec. 28 of this Act, takes effect, it takes effect
2 on the day after the date the commissioner of health and social services makes a certification
3 to the revisor of statutes under secs. 41 and 43(a) of this Act.

4 * **Sec. 45.** If AS 47.05.270(a)(8), enacted by sec. 28 of this Act, takes effect, it takes effect
5 on the day after the date the commissioner of health and social services makes a certification
6 to the revisor of statutes under secs. 41 and 43(b) of this Act.

7 * **Sec. 46.** If AS 47.05.270(a)(10), enacted by sec. 28 of this Act, takes effect, it takes effect
8 on the day after the date the commissioner of health and social services makes a certification
9 to the revisor of statutes under secs. 41 and 43(c) of this Act.

10 * **Sec. 47.** If AS 47.07.038, enacted by sec. 31 of this Act, takes effect, it takes effect on the
11 day after the date the commissioner of health and social services makes a certification to the
12 revisor of statutes under secs. 41 and 43(d) of this Act.

13 * **Sec. 48.** Sections 40, 41, 42(a), and 43 of this Act take effect immediately under
14 AS 01.10.070(c).

15 * **Sec. 49.** Sections 13 - 19 of this Act take effect January 1, 2017.

16 * **Sec. 50.** Section 42(b) of this Act takes effect July 1, 2016.

17 * **Sec. 51.** Sections 11 and 12 of this Act take effect July 1, 2019.