

SENATE BILL NO. 78

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/18/15

Referred: Health and Social Services, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to medical assistance reform measures; relating to eligibility for**
2 **medical assistance coverage; relating to medical assistance cost containment measures**
3 **by the Department of Health and Social Services; and providing for an effective date."**

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

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

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

11 (1) the governor, through the Department of Health and Social Services, take
12 all necessary action to capture federal revenues and offset state general funds and evaluate the
13 most cost-effective method for revising expansion coverage, including more efficient benefit
14 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, after consulting with stakeholders, submit to the legislature not later than January 25, 2016, a proposal to authorize a provider tax up to the maximum extent allowed by federal law to offset some of the cost of the Medicaid program.

* **Sec. 2.** AS 43.23.075 is amended to add a new subsection to read:

(d) The provisions of this section do not apply to persons who are eligible for Medicaid under 42 U.S.C 1396a(a)(10)(A)(i)(VIII) (Title XIX, Social Security Act).

* **Sec. 3.** 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 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. 4.** 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 penalties on any identified overpayment. Interest under this section shall be calculated using the statutory rates for post-judgment interest accruing from the date of the issuance of the final audit.**

* **Sec. 5.** AS 47.05 is amended by adding a new section to read:

Sec. 47.05.250. Fines. (a) The department may adopt regulations to impose a civil fine against a provider who violates AS 47.05, AS 47.07, or regulations adopted under those chapters.

(b) A fine 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 AS 47.05, AS 47.07, or regulations adopted under those chapters.

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

(b) In addition to the persons specified in (a) of this section, the following optional groups of persons for whom the state may claim federal financial

1 participation are eligible for medical assistance:

2 (1) persons eligible for but not receiving assistance under any plan of
3 the state approved under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act,
4 Supplemental Security Income) or a federal program designated as the successor to the
5 aid to families with dependent children program;

6 (2) persons in a general hospital, skilled nursing facility, or
7 intermediate care facility, who, if they left the facility, would be eligible for assistance
8 under one of the federal programs specified in (1) of this subsection;

9 (3) persons under 21 years of age who are under supervision of the
10 department, for whom maintenance is being paid in whole or in part from public
11 funds, and who are in foster homes or private child-care institutions;

12 (4) aged, blind, or disabled persons, who, because they do not meet
13 income and resources requirements, do not receive supplemental security income
14 under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act), and who do not
15 receive a mandatory state supplement, but who are eligible, or would be eligible if
16 they were not in a skilled nursing facility or intermediate care facility to receive an
17 optional state supplementary payment;

18 (5) persons under 21 years of age who are in an institution designated
19 as an intermediate care facility for persons with intellectual and developmental
20 disabilities and who are financially eligible as determined by the standards of the
21 federal program designated as the successor to the aid to families with dependent
22 children program;

23 (6) persons in a medical or intermediate care facility whose income
24 while in the facility does not exceed 300 percent of the supplemental security income
25 benefit rate under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act) but who
26 would not be eligible for an optional state supplementary payment if they left the
27 hospital or other facility;

28 (7) persons under 21 years of age who are receiving active treatment in
29 a psychiatric hospital and who are financially eligible as determined by the standards
30 of the federal program designated as the successor to the aid to families with
31 dependent children program;

(8) persons under 21 years of age and not covered under (a) of this section, who would be eligible for benefits under the federal program designated as the successor to the aid to families with dependent children program, except that they **do not meet the deprivation criteria under 42 U.S.C. 1396u-1(b)(1)(A)(ii)** [HAVE THE CARE AND SUPPORT OF BOTH THEIR NATURAL AND ADOPTIVE PARENTS];

(9) pregnant women not covered under (a) of this section and who meet the income and resource requirements of the federal program designated as the successor to the aid to families with dependent children program;

(10) persons under 21 years of age not covered under (a) of this section who the department has determined cannot be placed for adoption without medical assistance because of a special need for medical or rehabilitative care and who the department has determined are hard-to-place children eligible for subsidy under AS 25.23.190 - 25.23.210;

(11) persons who can be considered under 42 U.S.C. 1396a(e)(3) (Title XIX, Social Security Act, Medical Assistance) to be individuals with respect to whom a supplemental security income is being paid under 42 U.S.C. 1381 - 1383c (Title XVI, Social Security Act) because they meet all of the following criteria:

(A) they are 18 years of age or younger and qualify as disabled individuals under 42 U.S.C. 1382c(a) (Title XVI, Social Security Act);

(B) the department has determined that

(i) they require a level of care provided in a hospital, nursing facility, or intermediate care facility for persons with intellectual and developmental disabilities;

(ii) it is appropriate to provide their care outside of an institution; and

(iii) the estimated amount that would be spent for medical assistance for their individual care outside an institution is not greater than the estimated amount that would otherwise be expended individually for medical assistance within an appropriate institution;

(C) if they were in a medical institution, they would be eligible

1 for medical assistance under other provisions of this chapter; and

2 (D) home and community-based services under a waiver
3 approved by the federal government are either not available to them under this
4 chapter or would be inappropriate for them;

5 (12) disabled persons, as described in 42 U.S.C.
6 1396a(a)(10)(A)(ii)(XIII), who are in families whose income, as determined under
7 applicable federal regulations or guidelines, is less than 250 percent of the official
8 poverty line applicable to a family of that size according to the United States
9 Department of Health and Human Services, and who, but for earnings in excess of the
10 limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be
11 individuals with respect to whom a supplemental security income is being paid under
12 42 U.S.C. 1381 - 1383c; a person eligible for assistance under this paragraph who is
13 not eligible under another provision of this section shall pay a premium or other cost-
14 sharing charges according to a sliding fee scale that is based on income as established
15 by the department in regulations;

16 (13) persons under 19 years of age who are not covered under (a) of
17 this section and whose household income does not exceed **203** [175] percent of the
18 federal poverty line as defined by the United States Department of Health and Human
19 Services and revised under 42 U.S.C. 9902(2);

20 (14) pregnant women who are not covered under (a) of this section and
21 whose household income does not exceed **200** [175] percent of the federal poverty line
22 as defined by the United States Department of Health and Human Services and revised
23 under 42 U.S.C. 9902(2);

24 (15) persons who have been diagnosed with breast or cervical cancer
25 and who are eligible for coverage under 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII);

26 **(16) persons who are under 65 years of age, who are not pregnant,**
27 **whose household income does not exceed 138 percent of the federal poverty line,**
28 **including the five percent income disregard, as defined by the United States**
29 **Department of Health and Human Services and revised under 42 U.S.C. 9902(2),**
30 **and who are eligible under 42 U.S.C. 1396a(a)(10)(A)(i)(VIII), if the federal**
31 **medical assistance percentage paid to the state for the coverage is not less than 90**

1 percent.

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

3 (g) **For those persons whose Medicaid eligibility is not calculated using**
 4 **the modified adjusted gross income standard set out in 42 U.S.C. 1396a(e)(14),**
 5 **those persons'** [A PERSON'S] eligibility for medical assistance under this chapter
 6 may not be denied or delayed on the basis of a transfer of assets for less than fair
 7 market value if the person establishes to the satisfaction of the department that the
 8 denial or delay would work an undue hardship on the person as determined on the
 9 basis of criteria in applicable federal regulations.

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

11 (m) **For those persons whose Medicaid eligibility is not calculated using**
 12 **the modified adjusted gross income standard set out in 42 U.S.C. 1396a(e)(14),**
 13 **and, except** [EXCEPT] as provided in (g) of this section, the department shall impose
 14 a penalty period of ineligibility for the transfer of an asset for less than fair market
 15 value by an applicant or an applicant's spouse consistent with 42 U.S.C. 1396p(c)(1).

16 * **Sec. 9.** AS 47.07.036(b) is amended to read:

17 (b) The department, in implementing this section, shall take all reasonable
 18 steps to implement cost containment measures that do not eliminate program
 19 eligibility or the scope of services required or authorized under AS 47.07.020 and
 20 47.07.030 before implementing cost containment measures under (c) of this section
 21 that directly affect program eligibility or coverage of services. The cost containment
 22 measures taken under this subsection may include new utilization review procedures,
 23 changes in provider payment rates, **and** precertification requirements for coverage [OF
 24 SERVICES, AND AGREEMENTS WITH FEDERAL OFFICIALS UNDER WHICH
 25 THE FEDERAL GOVERNMENT WILL ASSUME RESPONSIBILITY FOR
 26 COVERAGE OF SOME INDIVIDUALS OR SOME SERVICES FOR SOME
 27 INDIVIDUALS THROUGH SUCH FEDERAL PROGRAMS AS THE INDIAN
 28 HEALTH SERVICE OR MEDICARE].

29 * **Sec. 10.** AS 47.07.036 is amended by adding new subsections to read:

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

31 (1) apply for a section 1115 waiver under 42 U.S.C. 1315(a) to use

1 innovative service delivery system models to improve care, increase efficiency, reduce
 2 costs, and expand services provided to Indian Health Service beneficiaries through the
 3 Indian Health Service and tribal health facilities;

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

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

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

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

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

22 * **Sec. 11.** AS 47.07.900(4) is amended to read:

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

27 * **Sec. 12.** AS 47.07.900(17) is amended to read:

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

30 (A) a drug or alcohol treatment center [THAT IS FUNDED
 31 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. 13.** The uncodified law of the State of Alaska is amended by adding a new section to read:

MEDICAID STATE PLAN INSTRUCTIONS. The Department of Health and Social Services shall immediately amend and submit for approval to the appropriate federal agency the state plan for provisions of medical assistance consistent with this Act.

* **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to read:

EMERGENCY REGULATIONS AUTHORIZED. (a) In order to ensure that sec. 1 of this Act, and AS 47.07.036, as amended by sec. 10 of this Act, are timely implemented to achieve a sustainable Medicaid program with cost-saving measures, including waivers, necessary for more persons to qualify for Medicaid services and thus ensure the public peace, health, safety, or general welfare, the Department of Health And Social Services may adopt emergency regulations under AS 44.62 (Administrative Procedure Act) to implement secs. 1 and 10 of this Act.

* **Sec. 15.** 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 "Medicaid cost containment and reform measures authorized."

* **Sec. 16.** Sections 13 and 14 of this Act take effect immediately under AS 01.10.070(c).

* **Sec. 17.** Except as provided by sec. 16 of this Act, this Act takes effect July 1, 2015.