

**SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 246  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION**

**BY REPRESENTATIVE ULMER**

**Introduced: 2/14/94**

**Referred: State Affairs, Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act allowing a member of the teachers' retirement system or the public  
2 employees' retirement system to assign to a Medicaid-qualifying trust the member's  
3 right to receive a monetary benefit from the system; relating to the effect of a  
4 Medicaid-qualifying trust on the eligibility of a person for Medicaid; relating to  
5 the recovery of certain Medicaid payments from estates and trusts; and providing  
6 for an effective date."

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

8 \* Section 1. PURPOSES. The purposes of this Act are to

9 (1) bring the state into compliance with federal law with respect to the recovery of  
10 Medicaid payments from the estates and trusts of individuals under certain circumstances;

11 (2) allow diversion of certain employee pension payments into Medicaid-qualifying  
12 trusts if the trusts provide that Medicaid payments made on behalf of the individual may be  
13 recovered from the trust after the individual's death.

1 • **Sec. 2.** AS 14.25.200(a) is amended to read:

2 (a) Except as provided in AS 29.45.030(a)(1), member contributions and other  
3 amounts held in the system on behalf of a member or other person who is or may  
4 become eligible for benefits under the system are exempt from Alaska state and  
5 municipal taxes and are not subject to anticipation, alienation, sale, transfer,  
6 assignment, pledge, encumbrance, or charge of any kind, either voluntary or  
7 involuntary, before they are received by the person entitled to the amount under the  
8 terms of the system, and any attempt to anticipate, alienate, sell, transfer, assign,  
9 pledge, encumber, charge, or otherwise dispose of any right to amounts accrued in the  
10 system is void. However, a member's right to receive benefits may be assigned

11 (1) under a qualified domestic relations order; or

12 (2) to a trust or similar legal device that meets the requirements for  
13 a Medicaid-qualifying trust under 42 U.S.C. 1396p(d)(4).

14 \* **Sec. 3.** AS 39.35.500 is amended to read:

15 **Sec. 39.35.500. SAFEGUARD OF EMPLOYEE FUNDS HELD BY THE**  
16 **SYSTEM.** Except as provided in AS 29.45.030(a)(1), employee contributions and  
17 other amounts held in the system are exempt from Alaska state and local taxes.  
18 Amounts held on behalf of, or payable to, any employee or other person who is or  
19 may become eligible for benefits under the system are not subject to anticipation,  
20 alienation, sale, transfer, assignment, pledge, encumbrance, or charge of any kind,  
21 either voluntary or involuntary, before being received by the person entitled to the  
22 amount under the terms of the system. An attempt to anticipate, alienate, sell, transfer,  
23 assign, pledge, encumber, charge, or otherwise dispose of a right to amounts held  
24 under the system is void. However, an employee's right to receive benefits may be  
25 assigned

26 (1) under a qualified domestic relations order; or

27 (2) to a trust or similar legal device that meets the requirements for  
28 a Medicaid-qualifying trust under 42 U.S.C. 1396p(d)(4).

29 \* **Sec. 4.** AS 47.07.020 is amended by adding a new subsection to read:

30 (f) A person may not be denied eligibility for medical assistance under this  
31 chapter on the basis of having diverted assets or income into a Medicaid-qualifying

1 trust that, according to a determination made by the department,  
2 (1) meets the requirements of 42 U.S.C. 1396p(d)(4); and  
3 (2) has provisions that require that the state will receive all of the trust  
4 assets remaining at the death of the individual, subject to a maximum amount that  
5 equals the total medical assistance paid on behalf of the individual.

6 \* Sec. 5. AS 47.07 is amended by adding a new section to read:

7 Sec. 47.07.055. RECOVERY OF MEDICAL ASSISTANCE FROM  
8 ESTATES. (a) The estate of an individual who received medical assistance payments  
9 is subject to a claim for recovery of the medical assistance after the individual's death  
10 that, except as provided in (b) of this section, may be secured by a lien filed against  
11 the individual's real property during the individual's lifetime if the

12 (1) individual was an inpatient in a nursing facility, intermediate care  
13 facility for the mentally retarded, or other medical institution;

14 (2) department required the individual, as a condition of receiving  
15 medical assistance under this chapter, to spend for medical expenses all but a minimal  
16 amount of that individual's income; and

17 (3) department determined during the individual's lifetime, after notice  
18 and opportunity for hearing, that the individual could not reasonably be expected to  
19 be discharged from the institution and to return home.

20 (b) A lien may not be filed under (a) of this section against an individual's  
21 home and a claim against that portion of the estate consisting of the home may not be  
22 brought, if the home is lawfully occupied by the individual's

23 (1) spouse;

24 (2) child under age 21;

25 (3) blind or disabled child as described in AS 47.25.615(3) or (5) or  
26 42 U.S.C. 1382(c); or

27 (4) sibling, if the sibling has an equity interest in the home and was  
28 residing in the home for at least one year before the date of the individual's admission  
29 to the institution.

30 (c) A lien and claim authorized under (a) of this section are extinguished if,  
31 during the individual's lifetime, the individual is discharged from the institution and

1 returns home. However, a new lien and claim are authorized for subsequent expenses  
2 if the circumstances described in (a) of this section occur after the individual returns  
3 home.

4 (d) In addition to recovery of medical assistance authorized under (a) - (c) of  
5 this section, after an individual's death, the individual's estate is subject to a claim for  
6 reimbursement for medical assistance payments made on behalf of the individual under  
7 this chapter for nursing facility services, home and community-based services, and  
8 related hospital and prescription drug services, to the extent that those services were  
9 provided when the individual was 55 years of age or older.

10 (e) For purposes of AS 13.16.470, the claims authorized under this section are  
11 debts with preference under the laws of the state.

12 \* Sec. 6. This Act takes effect July 1, 1994.