

SENATE BILL NO. 366

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Introduced: 3/24/94
Referred: Finance

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to medical support for children; allowing a member of the
2 teachers' retirement system or the public employees' retirement system to assign
3 to a Medicaid-qualifying trust the member's right to receive a monetary benefit
4 from the system; relating to the effect of a Medicaid-qualifying trust on the
5 eligibility of a person for Medicaid; relating to the recovery of certain Medicaid
6 payments from estates and trusts; requiring persons who receive Medicaid services
7 to be liable for sharing in the cost of those services to the extent allowed under
8 federal law and regulations; and providing for an effective date."

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

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

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

1 with respect to the establishment of medical support orders for children;

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

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

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

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

16 (2) to a trust or similar legal device that meets the requirements for
17 a Medicaid-qualifying trust under AS 47.07.020(f) and 42 U.S.C. 1396p(d)(4).

18 * Sec. 3. AS 21.36 is amended by adding a new section to read:

19 Sec. 21.36.095. COVERAGE OF CHILDREN. (a) An insurer may not deny
20 enrollment of a child under the health care insurance of the child's parent on the
21 ground that the child

22 (1) was born out of wedlock;

23 (2) is not claimed as a dependent on the parent's federal income tax
24 return;

25 (3) does not reside with the parent; or

26 (4) does not reside in the insurer's service area.

27 (b) If a parent is required under AS 25.27.020(a)(9) or 25.27.060(c) to provide
28 medical support for a child and the parent is eligible for family health coverage
29 through an insurer, the parent's insurer

30 (1) shall allow the parent to enroll the child under the family coverage
31 without regard to restrictions relating to enrollment periods if the child is otherwise

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eligible;

(2) shall, if the parent fails to apply for enrollment of a child under (1) of this subsection, enroll the child under the parent's family coverage upon application by the child's other parent or custodian, the child support enforcement agency, or the Department of Health and Social Services; and

(3) may not disenroll or eliminate coverage of the child unless the insurer has received written evidence that

(A) the parent with the insurance coverage is no longer required by court order or administrative order to provide the child's medical support; or

(B) the child is or will be enrolled in comparable health coverage through another insurer that will take effect not later than the effective date of the disenrollment or elimination of coverage.

(c) An insurer who provides health coverage of a child through family health coverage of a parent who does not have sole physical custody of the child shall

(1) provide to the child's other parent or custodian the information that may be necessary for the child to obtain benefits through the family health coverage;

(2) allow the child's other parent or custodian, or the child's health care provider with the parent's or custodian's approval, to submit claims for covered services without the approval of the parent whose insurance covers the child; and

(3) make payment on claims submitted under (2) of this subsection directly to the child's other parent or custodian, the health care provider, or a state agency to which the child's medical support rights have been assigned under AS 25.27.120 or AS 47.07.025.

(d) If an individual is covered for health benefits from an insurer, the insurer may not impose requirements on a state agency to which the rights of the individual under AS 25.27.120 or AS 47.07.025 have been assigned that are different from requirements applicable to an agent or assignee of other individuals covered by the insurer.

(e) In this section, "insurer" includes

(1) an insurer, as defined in AS 21.90.900;

1 (2) a group health plan, as defined in 29 U.S.C. 1167(l) (Employee
2 Retirement Income Security Act of 1974);

3 (3) a health maintenance organization, hospital service corporation, or
4 medical service corporation, as defined in AS 21.87.330;

5 (4) a writing carrier, as defined in AS 21.55.500; and

6 (5) an entity offering a service benefit plan, as referred to in 42 U.S.C.
7 1396g.

8 * Sec. 4. AS 25.27.020(a) is amended to read:

9 (a) The agency shall

10 (1) seek enforcement of child support orders of the superior courts of
11 the state in other jurisdictions and shall obtain, enforce, and administer the orders in
12 this state;

13 (2) adopt regulations to carry out the purposes of this chapter, including
14 regulations that establish

15 (A) schedules for determining the amount an obligor is liable
16 to contribute toward the support of an obligee under this chapter and under 42
17 U.S.C. 651 - 669 (Title IV-D, Social Security Act);

18 (B) procedures for hearings conducted under AS 25.27.170; and

19 (C) subject to AS 25.27.025 and to federal law, a uniform rate
20 of interest on arrearages of support that shall be charged the obligor upon
21 notice if child support payments are 10 or more days overdue or if payment is
22 made by a check backed by insufficient funds; however, an obligor may not be
23 charged interest on late payment of a child support obligation, other than a
24 payment on arrearages, if the obligor is

25 (i) employed and income is being withheld from the
26 obligor's wages under an income withholding order;

27 (ii) receiving unemployment compensation and child
28 support obligations are being withheld from the obligor's unemployment
29 payments under AS 23.20.401; or

30 (iii) receiving compensation for disabilities under
31 AS 23.30 and child support obligations are being withheld from the

- 1 obligor's compensation payments;
- 2 (3) administer and enforce AS 25.25 (Uniform Reciprocal Enforcement
- 3 of Support Act);
- 4 (4) establish, enforce, and administer child support obligations
- 5 administratively under this chapter;
- 6 (5) administer the state plan required under 42 U.S.C. 651 - 669 (Title
- 7 IV-D, Social Security Act) as amended;
- 8 (6) disburse support payments collected by the agency to the obligee,
- 9 together with interest charged under (2)(C) of this subsection;
- 10 (7) establish and enforce administratively under this chapter, or through
- 11 the superior courts of the state, child support orders from other jurisdictions pertaining
- 12 to obligors within the state;
- 13 (8) enforce and administer spousal support orders if a spousal support
- 14 obligation has been established with respect to the spouse and if the support obligation
- 15 established with respect to the child of that spouse is also being administered; [AND]
- 16 (9) obtain a medical support order as part of a child support order if
- 17 health care coverage is available to the obligor at a reasonable cost; the medical
- 18 support order must meet the requirements of AS 25.27.063; and
- 19 (10) act on behalf of the Department of Health and Social Services
- 20 in the enforcement of AS 47.07.025(b).

21 * Sec. 5. AS 25.27.060(c) is amended to read:

22 (c) In a court proceeding where the support of a minor child is at issue, the

23 court may order either or both parents to pay the amount necessary for support,

24 maintenance, nurture, and education of the child. The court shall issue a medical

25 support order as part of a child support order if health care coverage is available to the

26 obligor at a reasonable cost. The medical support order must meet the

27 requirements of AS 25.27.063. Upon a showing of good cause the court may order

28 the parents required to pay support to give reasonable security for payments.

29 * Sec. 6. AS 25.27.062(i) is amended to read:

30 (i) An employer shall, to the extent permitted under 15 U.S.C. 1673(b),

31 withhold the current support obligation from an obligor's wages, including the

1 obligor's share, if any, of the premium for health coverage required to be
2 withheld under AS 25.27.063(c)(4). An employer shall withhold additional income,
3 to the extent permitted under 15 U.S.C. 1673(b), from an obligor's wages for any
4 support arrearage.

5 * Sec. 7. AS 25.27 is amended by adding a new section to read:

6 Sec. 25.27.063. MEDICAL SUPPORT ORDER. (a) A medical support order
7 issued under AS 25.27.020(a)(9) or 25.27.060(c) must require that the obligor provide
8 health care coverage for the child to whom the duty of support is owed.

9 (b) If an obligor who is required to provide health care coverage under a
10 medical support order is eligible for family health coverage through an employer doing
11 business in the state, the court or agency issuing the medical support order shall send
12 a copy of the medical support order to the employer.

13 (c) An employer who receives a copy of a medical support order under (b) of
14 this section

15 (1) shall allow the employee named in the order to enroll the child
16 under the family coverage without regard to restrictions relating to enrollment periods
17 if the child is otherwise eligible and is not already enrolled under the family coverage;

18 (2) shall, if the employee fails to apply for enrollment of a child under
19 (1) of this subsection, enroll the child under the employee's family coverage upon
20 application by the child's other parent or custodian, the child support enforcement
21 agency, or the Department of Health and Social Services;

22 (3) may not disenroll or eliminate coverage of the child while the
23 employee is still employed by the employer unless the employer has eliminated family
24 health coverage for all of its employees or has received written evidence that

25 (A) the employee is no longer required by court order or
26 administrative order to provide the child's insurance coverage; or

27 (B) the child is or will be enrolled in comparable health
28 coverage through another insurer that will take effect not later than the
29 effective date of the disenrollment or elimination of coverage; and

30 (4) shall withhold from the employee's compensation the employee's
31 share, if any, of premiums for health coverage to the extent permitted under 15 U.S.C.

1 1673(b) (Consumer Credit Protection Act) and pay the withheld amount to the
2 appropriate insurer; if federal regulations allow the employer to withhold less than the
3 employee's share of the insurance premium, the employer may withhold the lesser
4 amount and pay it to the appropriate insurer.

5 * Sec. 8. AS 25.27.065(b) is amended to read:

6 (b) When the right to receive child support has been assigned to a
7 governmental entity, an agreement under (a) of this section that has not been adopted
8 as an administrative order of the agency is not effective during a period when the
9 obligee is receiving [PUBLIC] assistance under AS 47.07 or AS 47.25.310 -
10 47.25.420.

11 * Sec. 9. AS 25.27.120(a) is amended to read:

12 (a) An obligor is liable to the state in the amount of assistance granted under
13 AS 47.07 and AS 47.25.310 - 47.25.420 to a child to whom the obligor owes a duty
14 of support except that, if a support order has been entered, the liability of the obligor
15 for assistance granted under AS 47.25.310 - 47.25.420 may not exceed the amount
16 of support provided for in the support order, and, if a medical order of support has
17 been entered, the liability of the obligor for assistance granted under AS 47.07
18 may not exceed the amount of support provided for in the medical order of
19 support.

20 * Sec. 10. AS 25.27.120(d) is amended to read:

21 (d) If the agency fails to comply with (c) of this section, interest does not
22 accrue on the liability to the state unless a support order or medical support order,
23 as applicable, has been entered.

24 * Sec. 11. AS 25.27.130(b) is amended to read:

25 (b) To establish or enforce an order of support, including, if applicable, a
26 medical support order, based on the subrogation of the state, the agency is not
27 limited to the amount of assistance being granted to the child.

28 * Sec. 12. AS 25.27.130(c) is amended to read:

29 (c) The recovery of any amount for which the obligor is liable that exceeds the
30 total assistance granted under AS 47.07 and AS 47.25.310 - 47.25.420 shall be paid
31 to the obligee.

1 * **Sec. 13.** AS 25.27.130(d) is amended to read:

2 (d) Except as provided in (f) of this section, if the obligee is not receiving
3 assistance under AS 47.07 or AS 47.25.310 - 47.25.420 at the time the state recovers
4 money in an action under this section, the recovery of any amount for which the
5 obligor is liable shall be distributed to the obligee for support payments, including
6 medical support payments, that have become due and unpaid since the termination
7 of assistance under AS 47.07 or AS 47.25.310 - 47.25.420 under a support order in
8 favor of the obligee.

9 * **Sec. 14.** AS 25.27.130(e) is amended to read:

10 (e) After payment to the obligee under (d) of this section, the state may retain
11 an amount not to exceed the total unreimbursed assistance paid on behalf of the
12 obligee under AS 47.07 or AS 47.25.310 - 47.25.420.

13 * **Sec. 15.** AS 25.27.130(f) is amended to read:

14 (f) Notwithstanding (d) of this section, the state shall, if required under federal
15 law or regulations, distribute amounts recovered through offset of the obligor's federal
16 tax refund as past due support with first distribution to the state for unpaid support
17 assigned to the state under AS 47.07.025 and AS 47.25.345.

18 * **Sec. 16.** AS 39.35.500 is amended to read:

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

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

31 (2) to a trust or similar legal device that meets the requirements for

1 a Medicaid-qualifying trust under AS 47.07.020(f) and 42 U.S.C. 1396p(d)(4).

2 * Sec. 17. AS 47.07.020 is amended by adding new subsections to read:

3 (f) A person may not be denied eligibility for medical assistance under this
4 chapter on the basis of a diversion of income into a Medicaid-qualifying trust that,
5 according to a determination made by the department,

6 (1) has provisions that require that the state will receive all of the trust
7 assets remaining at the death of the individual, subject to a maximum amount that
8 equals the total medical assistance paid on behalf of the individual; and

9 (2) otherwise meets the requirements of 42 U.S.C. 1396p(d)(4).

10 (g) A person's eligibility for medical assistance under this chapter may not be
11 denied or delayed on the basis of a transfer of assets for less than fair market value
12 if the person establishes to the satisfaction of the department that the denial or delay
13 would work an undue hardship on the person as determined on the basis of criteria in
14 applicable federal regulations.

15 * Sec. 18. AS 47.07 is amended by adding a new section to read:

16 Sec. 47.07.025. ASSIGNMENT OF MEDICAL SUPPORT RIGHTS. (a) An
17 applicant for or recipient of assistance under this chapter is considered to have
18 assigned to the state, through the department and the child support enforcement
19 agency, all rights to accrued and continuing medical support that the applicant and
20 other persons for whom assistance is sought may have from all sources. The
21 assignment takes effect upon a determination that the applicant is eligible for assistance
22 under this chapter. Except with respect to the amount of any unpaid medical support
23 obligation accrued under the assignment, the assignment under this section terminates
24 when the applicant ceases to receive assistance under this chapter.

25 (b) Through the child support enforcement agency or on its own behalf, the
26 department may garnish the wages, salary, or other employment income of a person
27 who

28 (1) is required by a medical support order under AS 25.27.063 to
29 provide coverage of the costs of medical care to a child who is eligible for medical
30 assistance under this chapter;

31 (2) has received payment from a third party for the costs of the

1 services; and

2 (3) has not used the payments to reimburse, as appropriate, the other
3 parent or custodian of the child, the provider of the services, or the department.

4 (c) Garnishment under (b) of this section is limited to the amount necessary
5 to reimburse the department for expenditures for the child under this chapter. Claims
6 for current support or support arrearages take priority over claims under this section.

7 * Sec. 19. AS 47.07 is amended by adding a new section to read:

8 Sec. 47.07.042. RECIPIENT COST-SHARING. The state plan developed
9 under AS 47.07.040 shall impose deductible, coinsurance, and copayment requirements
10 or similar charges on persons eligible for assistance under this chapter to the maximum
11 extent allowed under federal law and regulations. The plan must provide that health
12 care providers shall collect the allowable charge. The department shall reduce
13 payments to each provider by the amount of the allowable charge. A provider may
14 not deny services because a recipient is unable to share costs, but an inability to share
15 costs imposed under this section does not relieve the recipient of liability for the costs.

16 * Sec. 20. AS 47.07 is amended by adding a new section to read:

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

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

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

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

30 (b) A lien may not be filed under (a) of this section against an individual's
31 home if the home is lawfully occupied by the individual's

- 1 (1) spouse;
2 (2) child under age 21;
3 (3) blind or disabled child as described in AS 47.25.615(3) or (5) or
4 42 U.S.C. 1382(c); or
5 (4) sibling, if the sibling has an equity interest in the home and was
6 residing in the home for at least one year before the date of the individual's admission
7 to the institution.

8 (c) The state may not recover the costs of medical assistance under a lien on
9 a home under (a) of this section until after the death of the individual's surviving
10 spouse, if any, and only at a time when neither of the following is lawfully residing
11 in the home:

12 (1) a sibling of the individual who was residing in the individual's
13 home for a period of at least one year immediately preceding the date of the
14 individual's institutionalization and who has continuously resided in the home since
15 the institutionalization began; or

16 (2) a son or daughter of the individual who

17 (A) resided in the home for at least two years immediately
18 preceding the date of the individual's institutionalization;

19 (B) has continuously resided in the home since the
20 institutionalization began; and

21 (C) establishes to the department's satisfaction that the son or
22 daughter provided care to the individual that allowed the individual to reside
23 in the home rather than in an institution.

24 (d) A lien and claim authorized under (a) of this section are extinguished if,
25 during the individual's lifetime, the individual is discharged from the institution and
26 returns home. However, a new lien and claim are authorized for subsequent expenses
27 if the circumstances described in (a) of this section occur after the individual returns
28 home.

29 (e) In addition to recovery of medical assistance upon sale of property subject
30 to a lien authorized under (a) - (d) of this section, after an individual's death, the
31 individual's estate is subject to a claim for reimbursement for medical assistance

1 payments made on behalf of the individual under this chapter for the following
2 services to the extent that those services were provided when the individual was 55
3 years of age or older:

4 (1) services received while an inpatient in a nursing facility,
5 intermediate care facility for the mentally retarded, or other medical institutions; and

6 (2) home and community-based services provided through a waiver
7 received from the federal government that allows home and community-based services
8 to be covered under this chapter for persons who are eligible for coverage under this
9 chapter while in an institution but who are able to avoid institutionalization because
10 of the provision of home and community-based services.

11 (f) Other than a recovery upon sale of a home, a claim under this section may
12 be made only after the death of the individual's surviving spouse, if any, and only at
13 a time when the individual has no surviving child under age 21 and no surviving child
14 who is blind or totally and permanently disabled.

15 (g) For purposes of AS 13.16.470, the claims authorized under this section are
16 debts with preference under the laws of the state.

17 * Sec. 21. APPLICABILITY. The charges provided for under sec. 19 of this Act apply
18 to services performed on or after July 1, 1994.

19 * Sec. 22. This Act takes effect July 1, 1994.