

S B

3 6 4

BILL CONTACT/ACTION

DATE	CONTACT/ACTION
2/19	NOTIFIED DEWIES' OFFICE THAT HIM UP IN
	COMMITTEE TOMORROW... REQUESTED
	BACKUP
2/24	NOTIFIED DEWIES' OFFICE OF COMMITTEE
	MEETING TOMORROW
3/10	NOTIFIED DEWIES' OFFICE
3/14	NOTIFIED DEWIES' OFFICE
4/1	NOTIFIED DEWIES' OFFICE AT 11/2 MEETING

MEMORANDUM

State of Alaska

TO Rod Betit, Director
 Division of Public Assistance
 Dept. of Health & Social Svcs

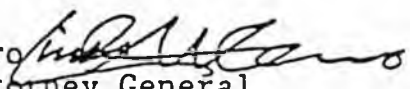
DATE June 21, 1984

FILE NO 366-516-84

TELEPHONE NO 465-3603

FROM Norman C. Gorsuch
 Attorney General

SUBJECT Retroactive Benefits
 under AS 44.77.010-
 MEDICAID SIX MONTH LAW.

By: Linda M. Cerro 
 Assistant Attorney General
 Human Services-Juneau

You have inquired whether AS 44.77.010 prohibits payment of medical claims filed greater than six months after medical service was provided or third party payment was received, in light of fair hearing or judicial decisions granting retroactive medicaid eligibility to recipients for whom claimants have submitted untimely claims.

AS 44.77.010 creates an absolute bar to payment of claims submitted after six months of the date medical service was provided or third party payment was received.

AS 44.77.010 provides in pertinent part:

Presentation of Claims. (a) Every claim for reimbursement for money expended...shall be promptly presented to the appropriate administrative or executive officer for approval and payment.

(b) For the purposes of filing claims for medical services provided under AS 47.07 or 47.25.120 - 47.25.300, "promptly", in (a) of this section, means within six months after the date the service was provided or third-party payment was received. No such claim may be paid which is not filed within that period; no inference to the contrary may be drawn from AS 09.10.050, 09.50.250 - 09.50.300, or AS 37.25.010. (Emphasis added).

The attached April 10, 1978 informal attorney general's opinion generally discusses the intent of the statute and the prohibition created. A fair hearing or judicial decision that a claimant be retroactively medicaid eligible does not cure a claimant's prior failure to have timely filed a claim for reimbursement. In light of AS 44.77.010, an adjudication of

retroactive medicaid eligibility requires retroactive payment only of those claims filed within six months of service or third-party payment. 1/

While the division must follow the mandate of the statute, that is not to suggest the statute cannot be challenged. Both the provider and recipient, however, received actual notice of the prohibition on payment of stale claims at the outset: the provider through both the provider manual and provider reimbursement agreement, and the recipient through the information booklet available to assist applicants in completing assistance applications. This fact and the division's liberal policy of accepting as timely claims filed within six months of service by providers on behalf of as yet ineligible applicants, and by applicants in conjunction with their applications for eligibility or fair hearing, weigh in the division's favor in a balancing of equities. 2/

1/ It is not intended by this opinion to suggest that the provider, whose claim has been denied by the State for untimeliness under AS 44.77.010(b), may thereafter pursue payment from the beneficiary of services.

7 AAC 43.050 prohibits providers from charging beneficiaries the difference between the amount billed and the amount received in payment from the division. It provides that beneficiaries are only responsible for payment for services not coverable under medicaid. A judicial or fair hearing decision that the services are coverable under medicaid even though not payable under the state plan due to untimely filing, arguably forbids the provider from billing the beneficiary as well. Where one of two or more parties must bear the ill consequences of a particular turn of events, in this case the denial of reimbursement for medical services rendered due to an untimely claim, it is not unreasonable to saddle the provider, the party responsible for the untimely filing, to bear the consequences of its failure to act.

2/ But see the suggestion in the April 10, 1978 opinion that a curative amendment to AS 44.77.010, allowing the department to accept stale claims when it determines that the untimely filing was not the fault of the claimant or that it resulted from excusable neglect, would narrow the affected class sufficiently to better satisfy a court's notions of equity.

Rod Betit, Director
Division of Public Assistance
366-516-84

June 21, 1984
Page 3

Should the division deny the pending claims pursuant to the prohibition at AS 44.77.010(b), a claimant may obtain review of the division's action by applying within 60 days to the Department of Administration, at Juneau. If the Department of Administration rules adversely to the claimant, the claimant must bring an action in the Superior Court within 30 days of his receipt of the notice of decision by the Department of Administration. AS 44.77.040(c).

LMC:gmw

cc: Jeff Hubbard
Kim Busch



Official Business

Alaska State Legislature
Senate

Committee on
Community and Regional Affairs

Senator Edna DeVries, Chairman
Members:
Senator Ferguson, Vice Chairman
Senator Coghill
Senator Sturgulewski
Senator V. Fischer

Pouch V
Juneau, Alaska 99511

December 19, 1985

Dr. Robert W. Robinson, II, DMD
Valley Dental Clinic, Inc.
Suite 212, Land Company
P. O. Box 871687
Wasilla, AK 99687

Dear Dr. Robinson:

Senator DeVries wanted me to send along to you the attached letter she received from Commissioner John Pugh. As of this date, Senator DeVries intends to introduce her bill (the work draft mailed to you earlier). She will be in Juneau after January 13 and will welcome any comments you may have.

Sincerely,

Yvonne M. Alford
Professional Assistant to
SENATOR EDNA DEVRIES

atch

cc: Martha Dearborn, Alaska Dental Society
Sam Kito



Alaska Dental Society
3400 Spenard Road, Suite 10
Anchorage, Alaska 99503
(907) 277-4675

CB 364
Rec'd 12/19/85

Dental payment bill
+ 47:335

December 11, 1985

Senator Edna DeVries
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator DeVries:

The draft legislation, enclosed, which was given to Sam Kito in November, was discussed and unanimously approved/endorsed by the Alaska Dental Society at their executive council meeting on December 6, 1985.

Yvonne Alford communicated to Sam that you would like an opinion (or comments) by December 13. I hope we make it....

Sincerely,

Martha A. Dearborn

Martha A. Dearborn
Executive Director/Secretary
Alaska Dental Society

cc: Sam Kito
Dr. Robert Robinson

This will sent to
Redey - 2/18/86
- 2/-
CJ

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

December 4, 1985

POUCH H 01
JUNEAU, ALASKA 99811

PHONE: (907)
465-3030

DOCUMENT #85-200

The Honorable Edna DeVries
Alaska State Senate
P.O. Box 321
Palmer, Alaska 99645

Dear Senator DeVries:

Yvonne Alford asked me to review your proposed changes to AS 44.77.010(b).

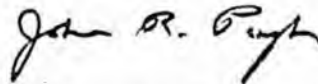
The Division of Medical Assistance has also recommended revision to this statute next session. The Division has drafted extensive changes to AS 44.77.010(b) with the assistance of the Department of Law. The Division of Medical Assistance's proposal contains a provision similar to that offered by Senator DeVries.

Please note that in the Division's proposal, a bill that is not submitted timely would only be eligible for partial payment unless it meets one of the special conditions. We feel that allowing payment up to 50% will provide some financial relief in the event of a billing error, but will also reinforce the importance of complying with the 6 month billing limitation.

Mr. Rod Betit, Director DMA, is the Department contact person on this issue. Please feel free to discuss this matter directly with him at your convenience. I hope this provides the information you need to understand our intentions relative to revision of AS 44.77.010(b).

Thank you for the opportunity to comment.

Sincerely,



John R. Pugh
Commissioner

cc: Mr. Rod Betit
Ms. Norma Lang
Ms. Iris Barnett, Assistant Attorney General



Alaska State Legislature
Senate
Committee on
Community and Regional Affairs

Senator Edna DeVries, Chairman
Members:
Senator Paul W. Otis, Chairman
Senator Eugene
Senator Stephen
Senator G. Fisher
Phone:
1-907-451-3111

November 20, 1985

To: Sam Kito

From: Yvonne *Yvonne*
for Senator Edna DeVries

Senator DeVries requests that you review the attached draft bill that deals with the payment of medical services as provided for in AS 44.77.010(b).

If you have any comments, I would appreciate receiving them no later than December 13.

Our office phone number is 745-3281.



Alaska State Legislature
Senate

Committee on
Community and Regional Affairs

Senator Edna DeVries, Chairman
Senator Ferguson, Vice Chairman
Senator Gupitt
Senator Stubbins
Senator V. Finner
Juneau, Alaska 99801

November 20, 1985

To: Dr. Robinson

From: Yvonne [Signature] for: Senator Edna DeVries

Senator DeVries requests that you review the attached draft bill that deals with the payment of medical services as provided for in AS 44.77.010(b).

If you have any comments, I would appreciate receiving them no later than December 13. Our office phone number is 745-3281.

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811

PHONE:

(907)

465-3030

DOCUMENT #85-189

October 28, 1985

The Honorable Edna DeVries
Alaska State Legislature
137 E. Arctic, Suite 102
P.O. Box 321
Palmer, Alaska 99645

Dear Senator DeVries:

This is in reply to your correspondence on behalf of Robert W. Robinson, II, D.M.D., concerning non-payment of a Medicaid billing for Kirsten Ekren.

The reason for initial denial of this billing was a determination that the bill had not been submitted timely as required by Alaska law, AS 44.77.010.

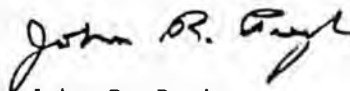
An Attorney General's opinion dated June 21, 1984 confirmed that the Department has no discretion in granting exceptions to this law. However, based on written statements secured from the involved parties, my staff have concluded that sufficient evidence exists to assume the original billing was submitted timely even though it was never received by the Department. Accordingly, we have processed the re-submitted billings for payment.

The Department is confronted with a number of late billing submissions each year that must await special legislative approval because of the rigid requirements of AS 44.77.010. We are pleased that Kirsten Ekren's bills could be spared this delay and appreciate your assistance in clearing up this problem.

For your information, the Administration intends to introduce legislation during the 1986 session that would authorize the Department of Health & Social Services greater discretion in situations like this.

Again, thank you for your help.

Sincerely,



John R. Pugh
Commissioner

cc: Bill Parker
Robert W. Robinson, II, D.M.D.

Valley Dental Clinic, Inc.

Robert Wade Robinson II, D.M.D.

SUITE 212 LAND COMPANY
P.O. BOX 871687
WASILLA, ALASKA 99687
(907) 376-3884

SEP 3 1985

call Pugh + Robinson

September 1, 1985

Mr. Rod Betit
DIVISION OF MEDICAL ASSISTANCE
4040 "B" Street, Suite 101
Anchorage, Alaska 99503

Re: Kirsten Ekren
ID# 191062902

Dear Rod:

I just called Kent Autor with your office regarding the status of my second level of appeal concerning Kirsten Ekren. Kent informed me there was not record of my submitting any information and none was on file. Kent also stated that Bob Ogden had left and was possibly handling my case at the time of his departure. Kent also informed me that August 28, 1985, was his last day!

I asked him to give you a note that I did in fact call. I do hope this was done. As you can see, this appeal was submitted May 10, 1985, and was received by your Office May 21, 1985, and again I was informed that I would hear from someone. It is now September and if I had not initiated contact I would still be in limbo.

Rod, this is what started my whole dilemma; i.e., CSC telling me I did not submit a claim. Now I am caught in the Catch 22 again!

Where does this all end???

Sincerely,

Robert W. Robinson, II, DMD

cc: Governor Sheffield
Alaska Dental Society
Senator Jay Kertula
Senator Edna DeVries
Representative Katey Hurley
Representative Ron Larsen

RWR:kh

Valley Dental Clinic, Inc.

Robert Wade Robinson II, D.M.D.

SUITE 212 LAND COMPANY
P.O. BOX 871687
WASILLA, ALASKA 99687
(907) 376-3884

September 1, 1985

State Ombudsman
STATE OF ALASKA
Pouch W0
Juneau, Alaska 99811

Re: Kirsten Ekren
ID# 191062902

Dear Sir:

I would like to request your assistance, if at all possible, regarding typical problems facing many health professionals in this State. Maybe you will see why some do not want to treat those who are on medical assistant programs.

Please review the one case in point, Kirstin Ekren, and related documents which are enclosed.

I believe you can follow the sequence of events as outlined in my letter dated May 2, 1985; Enclosure #1.

Since sending this letter, I have received responses from various representatives and senators. I appreciate their concern and time, but, as you can see, they all were told that they would hear from the Division of Medical Assistance.

Now almost another four months plus have elapsed and I have not heard from anyone. Today I called Bob Ogden only to find him not employed by the State any longer. I then talked with Kent Autor. Kent informed me there was no record for a second appeal. Here again as you can see, I'm told we did not submit but I do have a copy of a receipt of my letter, and, in addition, a hand written memo from their office.

I am enclosing a letter also written today to Rod Betit, who I am now told will handle my case.

September 1, 1985
Page Two
State Ombudsman

Please note the letter dated July 11, 1985, from Commissioner John R. Pugh stating that he would try to have an answer to me within two weeks.

I would like the public to be aware of what actually happens to health professionals. I am also curious how much time, money, and energy all of us including myself, Senators, Representatives, and yourself will spend just to obtain payment for a May 5, 1983 service!

This is not an isolated case. The same is true with Lauri Hale for \$265.00.

Thank you for your time and attention regarding this matter.

Sincerely,

Robert W. Robinson, II, DMD

RWR:kh

cc: Governor Sheffield
Alaska Dental Society
Senator Jay Kertula
Senator Edna DeVries
Representative Katie Hurley
Representative Ron Larsen

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811

PHONE: (907)
465-3030

Document No. 85-167

July 11, 1985

The Honorable Edna DeVrie
137 E Arctic, Suite 102
P.O. Box 321
Palmer, Alaska 99645

Dear Senator DeVries:

Thank you for the documents from Dr. Robinson concerning his Medicaid billing problems.

As this matter will require some time to research, I hope to have a reply to you within two weeks covering the specifics of Dr. Robinson's complaints.

Sincerely,



John R. Pugh
Commissioner

cc: Mr. Rod Betit
Robert W. Robinson II, D.M.D.



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

FEBRUARY 17, 1986

TO: SENATOR PAT RODEY
FROM: SENATOR EDNA DEVRIES *Edna*
SUBJECT: SB 364

I DON'T HAVE ANY PROBLEM WITH ADDING THE DEPARTMENT OF SOCIAL SERVICES' RECOMMENDATION EXCEPT THAT I WOULD WANT ITEM #3 TO READ "50% AFTER 12 MONTHS" INSTEAD OF "50% AFTER 6 MONTHS".

THEY INDICATED TO ME THAT THEY DID NOT SEE A PROBLEM WITH THAT AMENDMENT,

PLEASE LET ME KNOW IF I CAN BE OF FURTHER ASSISTANCE.

EDNA

ED:MAL

FEB 13 1982

POSITION PAPER

Senate Bill 364

I. Purpose of SB364

SB364 seeks to clarify the Legislature's intent regarding the six-month limitation placed on medical providers for filing medical claims.

II. Sectional Analysis

SECTION 1

This section waives the six-month filing deadline through an exclusion defined in Section 2.

SECTION 2

This section gives the state discretion to pay a claim that was not filed promptly if good cause existed for the late filing. If the filing deadline were waived, the claim would be paid in full.

III. Discussion

The Department endorses the sponsor's efforts to correct inequities in the present six-month law. The Department would recommend the following additional changes to SB364:

- (1) Language correcting those situations where the third-party payor was so late in responding to the claim that more than six months elapsed before the medical provider received the negative response. The medical provider cannot then "promptly" file the claim, and is left with no recourse.
- (2) Language correcting those situations that arise when a person has been found ineligible for Medicaid or General Relief Medical, and then successfully appeals that finding through a judicial or administrative proceeding only to discover that more than six months have elapsed since the medical services were provided. This could be corrected by permitting a medical provider to file claims within six months after the date upon which a court or administrative hearing officer finds that a person was improperly found to be ineligible for Medicaid or General Relief Medical.
- (3) Finally, while SB364 recognizes that some claims are filed late for good reasons, the Commissioner of Health & Social Services should approve payment, at no more than 50 percent of the allowed charges, of a claim not "promptly" filed, if the medical provider shows "good cause" for the failure to meet the filing deadline. This will permit partial payment of the claim, but continue to stress the importance of the filing a claim timely.

POSITION PAPER/Department of Health & Social Services

The estimated state fund impact of SB364 is \$14.6 in additional expenditures annually.

IV. Position

The Department supports SB364 as a needed clarification of the Medicaid six-month law, however, the Department recommends the changes noted in Part III of this position paper. Language for these recommended charges can be found in SECTION 1 of CS for CSHB98(HESS)

Recommended By: Rod Betit
Rod Betit, Director
Division of Medical Assistance

Date: 2/6/86

Approved By: John R. Pugh
John R. Pugh, Commissioner
Department of Health and
Social Services

Date: 2/13/86

Original sponsor: DeVries

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 364 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the criteria for payment by the
7 state of claims for certain medical services."

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

9 * Section 1. AS 44.77 is amended by adding a new section to read:

10 Sec. 44.77.015. CLAIMS FOR MEDICAL SERVICES. (a) For the
11 purposes of filing claims for medical services provided under AS 47.07
12 or 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1)
13 within six months after the date of service, or as provided in (b) or
14 (c) of this section, if there is no third-party claim, or (2) within
15 12 months after the date of service if there is a third-party claim.
16 Except as provided in (d) of this section, a claim may not be paid if
17 it is not filed promptly; an inference to the contrary may not be
18 drawn from AS 09.10.050, AS 09.50.250 - 09.50.300, or AS 37.25.010.

19 (b) In accordance with (a) of this section, a claim may be
20 considered to be filed promptly if (1) the claim was filed more than
21 six months after the date of service because the medical provider had
22 reason to believe that the beneficiary was ineligible for service
23 under AS 47.07 or AS 47.25.120 - 47.25.300; (2) a court of competent
24 jurisdiction or an administrative hearing officer finds that the
25 beneficiary was eligible for service under AS 47.07 or AS 47.25.120 -
26 47.25.300 on the date of service; and (3) the claim is filed within
27 six months after the date that the court or administrative hearing
28 officer's final decision is rendered. The beneficiary is responsible
29 for notifying the medical provider of the judicial or administrative

1 finding. If the Department of Health and Social Services has reason
2 to believe that the medical provider is unaware of the judicial or
3 administrative finding, the department shall make a good-faith effort
4 to notify the medical provider of the finding.

5 (c) In accordance with (a) of this section and for good cause
6 shown, the commissioner of health and social services may authorize
7 payment to a medical provider of a claim filed within 12 months after
8 the date of service.

9 (d) The commissioner of health and social services may authorize
10 payment to a medical provider of a claim not promptly filed, upon good
11 cause shown. Payments under this subsection may not exceed 50 percent
12 of the allowable charges presented in the claim.

13 (e) In this section,

14 (1) "beneficiary" means a person who is found to be eligi-
15 ble to receive medical services under AS 47.07 or AS 47.25.120 -
16 47.25.300;

17 (2) "medical provider" means a person, firm, corporation,
18 association, or institution that, on the date of service, was approved
19 to provide medical assistance, in accordance with regulations adopted
20 by the Department of Health and Social Services.

21 * Sec. 2. AS 44.77.010(b) is repealed.
22
23
24
25



Alaska Dental Society
3400 Spenard Road, Suite 10
Anchorage, Alaska 99503
(907) 277-4675

December 11, 1985

Senator Edna DeVries
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator DeVries:

The draft legislation, enclosed, which was given to Sam Kito in November, was discussed and unanimously approved/endorsed by the Alaska Dental Society at their executive council meeting on December 6, 1985.

Yvonne Alford communicated to Sam that you would like an opinion (or comments) by December 13. I hope we make it....

Sincerely,

Martha A. Dearborn

Martha A. Dearborn
Executive Director/Secretary
Alaska Dental Society

cc: Sam Kito
Dr. Robert Robinson

SB 364

Rec'd 12/19/85
Dental payment bill
+ 47: 335

14-1408
Bannister
11/7/85

1 IN THE SENATE

BY DEVRIES

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act permitting the state to pay certain untimely
7 claims."

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

9 * Section 1. AS 44.77.010(b) is amended to read:

10 (b) For the purposes of filing claims for medical services
11 provided under AS 47.07 or AS 47.25.120 - 47.25.300, "promptly", in
12 (a) of this section, means within six months after the date the ser-
13 vice was provided or third-party payment was received. Except as
14 provided in (d) of this section, a [A] claim may not be paid if it is
15 not filed within that period; an inference to the contrary may not be
16 drawn from AS 09.10.050, AS 09.50.250 - 09.50.300, or AS 37.25.010.

17 * Sec. 2. AS 44.77.010 is amended by adding a new subsection to read:

18 (d) The state may pay a claim that is not presented promptly if
19 the state determines that the untimely filing either was not the fault
20 of the claimant or resulted from excusable neglect.
21

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

December 4, 1985

BILL SHEFFIELD, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811

PHONE: (907)
465-3030

DOCUMENT #85-200

DEC 13 RECD

The Honorable Edna DeVries
Alaska State Senate
P.O. Box 321
Palmer, Alaska 99645

Dear Senator DeVries:

Yvonne Alford asked me to review your proposed changes to AS 44.77.010(b).


The Division of Medical Assistance has also recommended revision to this statute next session. The Division has drafted extensive changes to AS 44.77.010(b) with the assistance of the Department of Law. The Division of Medical Assistance's proposal contains a provision similar to that offered by Senator DeVries.

Please note that in the Division's proposal, a bill that is not submitted timely would only be eligible for partial payment unless it meets one of the special conditions. We feel that allowing payment up to 50% will provide some financial relief in the event of a billing error, but will also reinforce the importance of complying with the 6 month billing limitation.

Mr. Rod Betit, Director DMA, is the Department contact person on this issue. Please feel free to discuss this matter directly with him at your convenience. I hope this provides the information you need to understand our intentions relative to revision of AS 44.77.010(b).

Thank you for the opportunity to comment.

Sincerely,



John R. Pugh
Commissioner

cc: Mr. Rod Betit
Ms. Norma Lang
Ms. Iris Barnett, Assistant Attorney General

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

October 28, 1985

BILL SHEFFIELD, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811

PHONE:

(907)

465-3030

DOCUMENT #85-189

The Honorable Edna DeVries
Alaska State Legislature
137 E. Arctic, Suite 102
P.O. Box 321
Palmer, Alaska 99645

Dear Senator DeVries:

This is in reply to your correspondence on behalf of Robert W. Robinson, II, D.M.D., concerning non-payment of a Medicaid billing for Kirsten Ekren.

The reason for initial denial of this billing was a determination that the bill had not been submitted timely as required by Alaska law, AS 44.77.010.

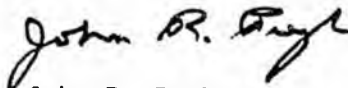
An Attorney General's opinion dated June 21, 1984 confirmed that the Department has no discretion in granting exceptions to this law. However, based on written statements secured from the involved parties, my staff have concluded that sufficient evidence exists to assume the original billing was submitted timely even though it was never received by the Department. Accordingly, we have processed the re-submitted billings for payment.

The Department is confronted with a number of late billing submissions each year that must await special legislative approval because of the rigid requirements of AS 44.77.010. We are pleased that Kirsten Ekren's bills could be spared this delay and appreciate your assistance in clearing up this problem.

For your information, the Administration intends to introduce legislation during the 1986 session that would authorize the Department of Health & Social Services greater discretion in situations like this.

Again, thank you for your help.

Sincerely,



John R. Pugh
Commissioner

cc: Bill Parker
Robert W. Robinson, II, D.M.D.

Secs. 44.74.200 — 44.74.260. Department of Fish and Game Working Capital Fund. [Repealed, § 1 ch 77 SLA 1971.]

Legislative history reports. — For report on ch. 77, SLA 1971 (SB 157), see 1971 House Journal, p. 1228.

Part 7. Claims and Liability.

Chapter

77. Claims Against the State (§§ 44.77.010 — 44.77.070)

80. Liability of the State (§§ 44.80.010 — 44.80.070)

Chapter 77. Claims Against the State.

Section

- 10. Presentation of claims
- 20. Disallowance by officer
- 30. Disallowance by Department of Administration
- 40. Hearing and judgment on appeal to department

Section

- 50. Authority of department
- 60. Request for attorney general's opinion
- 70. Application of procedure

NOTES TO DECISIONS

Stated in State v. Lundgren Pac. Constr. Co., Sup. Ct. Op. No. 1980 (File No. 3286), 603 P.2d 889 (1979).

Sec. 44.77.010. Presentation of claims. (a) Every claim for reimbursement for money expended, or for compensation for labor, materials, or supplies furnished, or services given to or for the state, whether based on a contract or on a ratification, shall be promptly presented to the appropriate administrative or executive officer for approval and payment.

(b) For the purposes of filing claims for medical services provided under AS 47.07 or 47.25.120 — 47.25.300, "promptly", in (a) of this section, means within six months after the date the service was provided or third-party payment was received. A claim may not be paid if it is not filed within that period; an inference to the contrary may not be drawn from AS 09.10.050, AS 09.50.250 — 09.50.300, or AS 37.25.010.

(c) For purposes of this chapter, "claim" includes a claim for a wrongful rejection of a bid proposal or for an arbitrary and unreasonable cancellation of a bid solicitation. (§ 15-1-1 ACLA 1949; am § 43 ch 133 SLA 1951; am §§ 1, 2 ch 24 SLA 1953; am § 1 ch 96 SLA 1974; am § 10 ch 144 SLA 1982)

Cross against th 09.50.300 see AS 44 Effect

This sec the claim: istrative r Ct. Op. No. 1257 (1976 The wo modify th ZIA, Inc., S 2518), 556 I It is app "money," "supplies," e modifier anc to construct legislature. t No. 1337 (F. (1976).

For the contract cl defined in c Inc., Sup. Ct. 556 P.2d 125 If the legis "promptly" f contract claim in mind, it ca

Collateral : 2d, States, Te §§ 76, 99 to 1: 81A C.J.S., § 307, 309.

Sec. 44.7 or executive obtain a rev Department (b) When claim shall t to the claim (c) When i ment shall re (d) The de; shall make it the officer. Tl

Valley Dental Clinic, Inc.

Robert Wade Robinson II, D.M.D.

SUITE 212 LAND COMPANY
P.O. BOX 871687
WASILLA, ALASKA 99687
(907) 376-3884

SEP 5 - RECD

call Pugh + Robinson

September 1, 1985

Mr. Rod Betit
DIVISION OF MEDICAL ASSISTANCE
4040 "B" Street, Suite 101
Anchorage, Alaska 99503

Re: Kirsten Ekren
ID# 191062902

Dear Rod:

I just called Kent Autor with your office regarding the status of my second level of appeal concerning Kirsten Ekren. Kent informed me there was not record of my submitting any information and none was on file. Kent also stated that Bob Ogden had left and was possibly handling my case at the time of his departure. Kent also informed me that August 28, 1985, was his last day!

I asked him to give you a note that I did in fact call. I do hope this was done. As you can see, this appeal was submitted May 10, 1985, and was received by your Office May 21, 1985, and again I was informed that I would hear from someone. It is now September and if I had not initiated contact I would still be in limbo.

Rod, this is what started my whole dilemma; i.e., CSC telling me I did not submit a claim. Now I am caught in the Catch 22 again!

Where does this all end???

Sincerely,

Robert W. Robinson, II, DMD

cc: Governor Sheffield
Alaska Dental Society
Senator Jay Kertula
Senator Edna DeVries
Representative Katey Hurley
Representative Ron Larsen

RWR:kh

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

*POUCH H 01
JUNEAU, ALASKA 99811*

*PHONE: (907)
465-3030*

Document No. 85-167

July 11, 1985

The Honorable Edna DeVries
137 E Arctic, Suite 102
P.O. Box 321
Palmer, Alaska 99645

Dear Senator DeVries:

Thank you for the documents from Dr. Robinson concerning his Medicaid billing problems.

As this matter will require some time to research, I hope to have a reply to you within two weeks covering the specifics of Dr. Robinson's complaints.

Sincerely,



John R. Pugh
Commissioner

cc: Mr. Rod Betit
Robert W. Robinson II, D.M.D.

Valley Dental Clinic, Inc.

Robert Wade Robinson II, D.M.D.

SUITE 212 LAND COMPANY
P.O. BOX 871687
WASILLA, ALASKA 99687
(907) 376-3884

SEP 5 - RECD

September 1, 1985

State Ombudsman
STATE OF ALASKA
Pouch WO
Juneau, Alaska 99811

Re: Kirsten Ekren
ID# 191062902

Dear Sir:

I would like to request your assistance, if at all possible, regarding typical problems facing many health professionals in this State. Maybe you will see why some do not want to treat those who are on medical assistant programs.

Please review the one case in point, Kirstin Ekren, and related documents which are enclosed.

I believe you can follow the sequence of events as outlined in my letter dated May 10, 1985; Enclosure #1.

Since sending this letter, I have received responses from various representatives and senators. I appreciate their concern and time, but, as you can see, they all were told that they would hear from the Division of Medical Assistance.

Now almost another four months plus have elapsed and I have not heard from anyone. Today I called Bob Ogden only to find him not employed by the State any longer. I then talked with Kent Autor. Kent informed me there was no record for a second appeal. Here again as you can see, I'm told we did not submit but I do have a copy of a receipt of my letter, and, in addition, a hand written memo from their office.

I am enclosing a letter also written today to Rod Betit, who I am now told will handle my case.

SEP 5 - RECO

September 1, 1985
Page Two
State Ombudsman

Please note the letter dated July 11, 1985, from Commissioner John R. Pugh stating that he would try to have an answer to me within two weeks.

I would like the public to be aware of what actually happens to health professionals. I am also curious how much time, money, and energy all of us including myself, Senators, Representatives, and yourself will spend just to obtain payment for a May 5, 1983 service!

This is not an isolated case. The same is true with Lauri Hale for \$265.00.

Thank you for your time and attention regarding this matter.

Sincerely,

Robert W. Robinson, II, DMD

RWR:kh

cc: Governor Sheffield
Alaska Dental Society
Senator Jay Kertula
Senator Edna DeVries ✓
Representative Katie Hurley
Representative Ron Larsen

Valley Dental Clinic, Inc.

Robert Wade Robinson II, D.M.D.

SUITE 212 LAND COMPANY

P.O. BOX 871687

WASILLA, ALASKA 99687

(907) 376-3884

May 10, 1985

State of Alaska
Division of Medical Assistance
4040 "B" Street, Suite 101
Anchorage, Alaska 99503

RE; Second level of appeal - Kirsten Ekren ID# 191062102

To whom it may concern;

I am beginning to understand why our bureaucracy breeds contempt and kills honest people. There is no way I can express the frustration and anger I feel over this case. I have always been an honest law abiding citizen who put faith in our "system".

On May 5, 1983, I rendered service to Kirsten Ekren in the amount of \$220.00. Then on June 22, 1983, I again rendered service in the amount of \$110.00. Nobody, including the patient or CSC denies that the services were performed and done well! A claim was submitted for these services June 22, 1983, when the case was completed. On February 2, 1984, the claim was resubmitted after we were told there was no record of this claim.

What followed has been a time consuming, costly process which I am not at all pleased with. After much correspondence, telephone calls and many hours I find a denial of "First level of appeal" dated April 26, 1985. Also in the denial letter is a paragraph stating the eligible recipient cannot be held responsible for the bill.

Now I am told the patient was eligible, the service was performed but I cannot be paid by anyone including the patient or CSC. Where is the justice in this?

The question seems to be on the billing. Our office states the claim was sent June 22, 1983, and CSC states they did not receive the claim. Why call either a liar or try to guess what happened with the Postal Service? This is not going to resolve anything.

I am enclosing a copy of a CSC print out to answer a question and to prove a point. I have been asked why we did not resubmit before February 24, 1984. Since it seems it takes 6 months to a year before alot of cases are paid, we do not pull a record or initiate an inquiry before 7-8 months. Cases in point are, Jason Welton, billed March 1, 1983,

denied March of '84

Valley Dental Clinic, Inc.

Robert Wade Robinson II, D.M.D.

SUITE 212 LAND COMPANY
P.O. BOX 871687
WASILLA, ALASKA 99687
(907) 376-3884

paid January 9, 1984. Also Kevin Johnson billed February 4, 1983, paid February 6, 1984, over a year! (I wish I did not have to pay my bills for a year, but this is not the case!) Please notice both of these cases were during the same time frame as Kirsten Ekren!

A copy of Kirsten Ekren's chart is enclosed showing our record of services rendered and our billing to CSC. This is our relevant supporting documentation. Our record keeping is done on the patients chart and is done the same way for everyone's records. I have since contacted my former receptionist who handled the claim and who documented it on the record. She stated she was in contact with CSC by telephone regarding this case even before we resubmitted on February 24, 1984.

I gave my time, knowledge, paid for supplies and lab bill. I paid my assistants a salary to work on Kirsten. I have paid a receptionist and a bookkeeper for their time to work on this case. It has been 2 years, I have out of the pocket expenses for salaries, supplies and a lab bill, and have received no compensation for my time and services. In other words I paid to treat this patient!

The services were provided in good faith to a patient who was eligible and billed in good faith. I feel two years, many hours, and especially my out of pocket expenses are more than enough to deserve payment.

RWR/lsm



Robert W. Robinson II, DMD

CC

Bob Ogden
Alaska Dental Society
Senator Jay Kertula
Senator Edna DeVries
Representative Katey Hurley
Representative Ron Larsen

AFFIX LABEL HERE

AFFIX LABEL HERE

CONTROL NUMBER FOR CSC USE ONLY

CSC
COMPUTER
SCIENCES
CORPORATION

ADJUSTMENT REQUEST/CLAIM INQUIRY

CONTROL NO.
00036857

ADJUSTMENT REQUEST INQUIRY ONLY

HEALTH CARE PROFESSIONAL (HCP) NAME AND ADDRESS		CLAIM TYPE INDICATOR CHECK ONE BOX ONLY	
Valley Dental Clinic PC. Box 271687 Wasilla AK 99687 Robert R. 11/12/01, 12/25		<input type="checkbox"/> PHARMACY <input type="checkbox"/> LTC <input type="checkbox"/> HOSPITAL INPATIENT <input type="checkbox"/> HOSPITAL OUTPATIENT/CLINIC <input type="checkbox"/> PHYSICIAN/ALLIED MEDICAL/HEALTH CLINIC VISION <input checked="" type="checkbox"/> DENTAL <input type="checkbox"/> TRANSPORTATION	
HCP I.D. NUMBER	PAYEE NUMBER	<input checked="" type="checkbox"/> UNDER PAYMENT	<input type="checkbox"/> OVERPAYMENT - PLEASE DEDUCT FROM FUTURE CLAIMS PAYMENTS
DDO 450			

PLEASE ENTER THE FOLLOWING DATA FROM YOUR REMITTANCE ADVICE (when applicable):

A. CLAIM NUMBER	B. PATIENT NAME	LAST	FIRST	MIDDLE	C. RECIPIENT I.D. NUMBER
406051040316	EKran	Kirvan		L	191062502
D. REMITTANCE ADVICE DATE	E. DATE OF SERVICE	F. BILLING AMOUNT	PAID AMOUNT		
031284	5-24-83 to 6-22-83	330.00	-		
G. MONTHLY PATIENT LIABILITY AMOUNT	EFFECTIVE DATE	H. OTHER COVERAGE/DEDUCTIONS			
K. AMOUNT OWED TO HCP	L. AMOUNT OWED TO STATE				
(94.69)					

GIVE REASON FOR ADJUSTMENT REQUEST

This claim was sent at the time of service, then resubmitted 2-24-84 at which time it was denied as Exceeds Goro limit. His dr. grandmother has been trying to pay this and is financially unable to do this without it being a genuine hardship. / we have copies of the original claim form.

I REQUEST THAT REPROCESSING OF THE CLAIM BE MADE WITH THE INFORMATION GIVEN ABOVE. THIS IS TO CERTIFY THAT THE FOREGOING IS TRUE, ACCURATE, AND COMPLETE AND IS IN COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 WHICH PRECLUDES EXCLUSION OR DISCRIMINATION ON THE GROUNDS OF RACE, COLOR OR NATIONAL ORIGIN. I UNDERSTAND THAT PAYMENT AND SATISFACTION OF THIS CLAIM WILL BE FROM FEDERAL AND STATE FUNDS, AND THAT ANY FALSE CLAIMS, STATEMENTS OR DOCUMENTS OR CONCEALMENT OF A MATERIAL FACT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS. TO THE BEST OF MY KNOWLEDGE NO OTHER RESOURCE EXISTS

SIGNATURE Buckley R. Newlon DATE 4-11-85

YOUR CLAIM HAS NOT BEEN PROCESSED FOR ONE OR MORE OF THE FOLLOWING REASONS:

- MEDICAL REVIEW
- RECIPIENT ELIGIBILITY DETERMINATION
- OTHER Please see attached letter of explanation

Ulysses FISCAL AGENT REPRESENTATIVE 042685 DATE

SEND PARTS ONE AND TWO WITH CARBON INTACT TO:

COMPUTER SCIENCES CORPORATION

GOVERNMENT HEALTH SERVICES DIVISION (907) 465-3355
4041 "B" STREET ANCHORAGE, ALASKA 99507

April 26, 1985

Robert Robinson, DDS
Valley Dental Clinic
Box 871687
Wasilla, AK 99687

Subject: First Level of Appeal - Kirsten Ekren, ID# 191062902

Dear Dr. Robinson:

This letter is in response to the first level appeal submitted to CSC following denial of a claim. On March 12, 1984, claim no. 40605104036 reflecting services rendered to recipient Kirsten Ekren, ID# 191062902, from May 24, 1983, to June 22, 1983, total charges \$330.00, was denied because the six months billing limitation was exceeded.

On April 22, 1985, your appeal was forwarded to the State of Alaska Division of Medical Assistance, Medical Review Section, and today, April 26, we were notified that it has been denied. The six months billing limitation cannot be overridden without proof of original billing, i.e., billing submitted within six months from the dates of service.

Should you wish to pursue the second level of the appeals process, a written appeal, along with a copy of the first level appeal denial and any relevant supporting documentation, must be submitted within 30 days of receipt of the first level denial. Please direct second level appeals to the State of Alaska, Division of Medical Assistance, 4040 "B" Street, Suite 101, Anchorage, AK 99503.

In addition, please be advised when proof of eligibility is presented prior to rendering services and if the services are within the scope of the program, a recipient and/or family cannot be held responsible for the bill. Alaska Administrative Code 7, AAC 43.025(d) states, ". . . when a provider furnishes a covered service to a beneficiary who, before receiving the service, has furnished the provider with a medical assistance coupon or displayed an identification card, the beneficiary is under no obligation to pay the provider for the service. However, a beneficiary is liable for the cost of a service rendered if he or she fails to furnish evidence of eligibility before receiving the service."

Robert Robinson, DDS

-2-

April 26, 1985

Thank you for your participation in our program. If we can be of further assistance, please do not hesitate to contact our office in-state toll free at Zenith 8900.

Sincerely,

Inge Lysdal

Inge Lysdal
Health Care Liaison

IL:jp

cc: Medical Review

RECIPIENT NAME SERVICE DATES	PATIENT RECORD NO SERVICE CODE	PATIENT ID NUMBER SERVICE DESCRIPTION	CLAIM CONTROL	UNITS	BILLED AMOUNT	NON-COVERED AMOUNT	ALLOWED AMOUNT	NON- REIMBURSED
*** PAID AND DENIED CLAIMS ***								
LTIN JASON W 03/01/83	00110	193509702	3069510403800		2000		2000	
*** TOTAL PAID AND DENIED CLAIMS :				1	2000	00	2000	
*** SUSPENDED CLAIMS ***								
HNSON KEVIN S 02/04/83	09940	194026101	3069510403700		2500			
HNSEND DIAN J	03310 10	159672801	3301510403000		20000			
*** TOTAL SUSPENDED CLAIMS :				2	22500			
*** SUMMARY TOTALS ***								
NO. OF CLAIMS ADJUDICATED		THIS WEEK	YEAR TO DATE					
		- 1	1					
AMOUNT OF CLAIMS PAID	\$	20.00	\$	20.00				
AMOUNT PAID ON XOVER	+\$	.00	\$	.00				
ADMINISTRATIVE PAYMENTS	+\$	.00	\$	.00				
POSITIVE ADJUSTMENTS	+\$	.00	\$	.00				
NEGATIVE ADJUSTMENTS	-\$	.00	\$	.00				
OTHER COVERAGE	-\$	.00	\$	.00				
RETURNED CHECK/REFUND	-\$	N/A	\$	.00				
NET AMOUNT PAID	\$	20.00	\$	20.00				
					1099 ADJUSTMENT			

OBINSON, ROBERT W. DDS
ALLEY DENTAL CLINIC
.O. BOX 1460
ASILLA AK 996870000

HCP
NAME AND
ADDRESS

HCP NUMBER DD0490
R/A NUMBER ****26231
R/A DATE 01/09/84
R/A SEQUENCE 02
R/A PAGE 1

ALASKA MEDICAID PAYMENT SYSTEM
REMITTANCE ADVICE
PLEASE CONSULT YOUR HEALTH CARE PROFESSIONAL
(HCP) MANUAL FOR A DETAILED EXPLANATION OF
THE ABOVE ITEMS.

PRIOR
CURRE

RECIPIENT NAME SERVICE DATES	PATIENT RECORD NO. SERVICE CODE	PATIENT ID NUMBER SERVICE DESCRIPTION	CLAIM CONTROL	UNITS	BILLED AMOUNT	NON-COVERED AMOUNT	ALLOWED AMOUNT	NON-REIMBURSED	PAID AMOUNT
*** PAID AND DENIED CLAIMS ***									
BOYLE RAYMOND J 05/10/83 - 05/16/83	03310 9	202110301 4027510401500			20000		20000		20000
JOHNSON KEITH S 02/04/83	04330	194026101 3069510403700			2500		2500		2500
PALEN JAELENE 83/02/16 83/02/16 02/16/83 - 02/22/83	07230 07240 32	174833401 4027510402100			15000 15000 30000		15000 15000 30000		15000 15000 30000
T O T A L									
TOWNSEND DINA J 10/13/83 - 10/18/83	03310 10	159072801 3301510403000			20000		20000		20000
*** TOTAL PAID AND DENIED CLAIMS :					4	72500	00	72500	72500
*** SUMMARY TOTALS ***									
		THIS WEEK	YEAR TO DATE						
NO. OF CLAIMS ADJUDICATED		4	5						
AMOUNT OF CLAIMS PAID		\$ 725.00	\$ 745.00						
AMOUNT PAID ON XOVER		+\$.00	.00						
ADMINISTRATIVE PAYMENTS		+\$.00	.00						
POSITIVE ADJUSTMENTS		+\$.00	.00						
NEGATIVE ADJUSTMENTS		-\$.00	.00						
OTHER COVERAGE		-\$.00	.00						
RETURNED CHECK/REFUND		-\$ N/A	.00		1099 ADJUSTMENT				
NET AMOUNT PAID		\$ 725.00	\$ 745.00						

RUBINSON, ROBERT W. DDS
VALLEY DENTAL CLINIC
P.O. BOX 1460
NASILLA

AK 996070000

HCP NUMBER: 000490
H.A. NUMBER: ***28160
H.A. DATE: 02/06/84
H.A. SEQUENCE: 06
H.A. PAGE: 1

ALASKA MEDICAID PAYMENT SYSTEM
REMITTANCE ADVICE
PLEASE CONSULT YOUR HEALTH CARE PROFESSIONAL
(HCP) MANUAL FOR A DETAILED EXPLANATION OF
THE ABOVE ITEMS

*REIMBURSEMENT RATE
PRIOR CURRENT

NAME				
1	2	3	4	5
DATE	SERVICES RENDERED	Fees Charged	Credits and Discounts	BALANCE
19__				
	BALANCE BROUGHT FORWARD			
5-24-33	Ph Xy / 1.50 1.8cc H 4d most LAV # 28 d ext # 29 d B AV		50 - 25 - 20 -	
	Impression and final crown prep model sent. Temp wax		125 220	
6-22-33	Ph Pt. Cup. act. 2h time Had to keep quiet because all around in chair. Xy / 1.50 2cc Neo H 20 LAV # 13 SS CR Seat Band & Loop		30 - 80 - NC -	
6-22-33	Should not get a PA of # 13		110 -	
6-23-33	Ph PA showed internal description Grandmother told to follow J will try & key in until all except		NC -	
9-22-33	Ph Band & loop house. Appt reched 9-23-33			
2-24-34	Ph back sent ins. to CSC.			
8-3-34	US Spk. to sister (grandmother) she said they will make payment on this account I said we could try to appeal the dis. money denied and if they pay we will be reimb. her.			
	BALANCE CARRIED FORWARD			

Valley Dental Clinic, Inc.

Robert Wade Robinson II, D.M.D.

SUITE 212 LAND COMPANY
P.O. BOX 871687
WASILLA, ALASKA 99687
(907) 376-3884

file

July 17, 1985

Senator Edna DeVries
Pouch V
State Capitol
Juneau, Alaska 99811

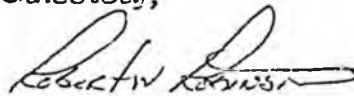
Dear Senator DeVries,

Thank you for your letter requesting my opinion on proposed regulatory changes for the Board of Dental Examiners.

I feel this is an excellent admendment which will benefit all those concerned.

Thank you for your representation.

Sincerely,



Robert W. Robinson, II, DMD

He is already on voters update code only

P.S. Thank you for your follow up on my claim from the state,

1. This goes in pending file - Robinson -
2. Code this Robert W. Robinson, II as
T-15:040 - ~~XXXXXXXXXXXXXXXXXXXX~~
3. ~~Check Edna work distribution for~~

MEMORANDUM

State of Alaska

TO Rod Betit, Director
 Division of Public Assistance
 Dept. of Health & Social Svcs

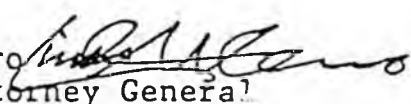
DATE June 21, 1984

FILE NO 366-516-84

TELEPHONE NO 465-3603

FROM Norman C. Gorsuch
 Attorney General

SUBJECT Retroactive Benefits
 under AS 44.77.010-
 MEDICAID SIX MONTH LAW.

By: Linda M. Cerro 
 Assistant Attorney General
 Human Services-Juneau

You have inquired whether AS 44.77.010 prohibits payment of medical claims filed greater than six months after medical service was provided or third party payment was received, in light of fair hearing or judicial decisions granting retroactive medicaid eligibility to recipients for whom claimants have submitted untimely claims.

AS 44.77.010 creates an absolute bar to payment of claims submitted after six months of the date medical service was provided or third party payment was received.

AS 44.77.010 provides in pertinent part:

Presentation of Claims. (a) Every claim for reimbursement for money expended...shall be promptly presented to the appropriate administrative or executive officer for approval and payment.

(b) For the purposes of filing claims for medical services provided under AS 47.07 or 47.25.120 - 47.25.300, "promptly", in (a) of this section, means within six months after the date the service was provided or third-party payment was received. No such claim may be paid which is not filed within that period; no inference to the contrary may be drawn from AS 09.10.050, 09.50.250 - 09.50.300, or AS 37.25.010. (Emphasis added).

The attached April 10, 1978 informal attorney general's opinion generally discusses the intent of the statute and the prohibition created. A fair hearing or judicial decision that a claimant be retroactively medicaid eligible does not cure a claimant's prior failure to have timely filed a claim for reimbursement. In light of AS 44.77.010, an adjudication of

Rod Betit, Director
Division of Public Assistance
366-516-84

June 21, 1984
Page 2

retroactive medicaid eligibility requires retroactive payment only of those claims filed within six months of service or third-party payment. 1/

While the division must follow the mandate of the statute, that is not to suggest the statute cannot be challenged. Both the provider and recipient, however, received actual notice of the prohibition on payment of stale claims at the outset: the provider through both the provider manual and provider reimbursement agreement, and the recipient through the information booklet available to assist applicants in completing assistance applications. This fact and the division's liberal policy of accepting as timely claims filed within six months of service by providers on behalf of as yet ineligible applicants, and by applicants in conjunction with their applications for eligibility or fair hearing, weigh in the division's favor in a balancing of equities. 2/

1/ It is not intended by this opinion to suggest that the provider, whose claim has been denied by the State for untimeliness under AS 44.77.010(b), may thereafter pursue payment from the beneficiary of services.

7 AAC 43.050 prohibits providers from charging beneficiaries the difference between the amount billed and the amount received in payment from the division. It provides that beneficiaries are only responsible for payment for services not coverable under medicaid. A judicial or fair hearing decision that the services are coverable under medicaid even though not payable under the state plan due to untimely filing, arguably forbids the provider from billing the beneficiary as well. Where one of two or more parties must bear the ill consequences of a particular turn of events, in this case the denial of reimbursement for medical services rendered due to an untimely claim, it is not unreasonable to saddle the provider, the party responsible for the untimely filing, to bear the consequences of its failure to act.

2/ But see the suggestion in the April 10, 1978 opinion that a curative amendment to AS 44.77.010, allowing the department to accept stale claims when it determines that the untimely filing was not the fault of the claimant or that it resulted from excusable neglect, would narrow the affected class sufficiently to better satisfy a court's notions of equity.

Rod Betit, Director
Division of Public Assistance
366-516-84

June 21, 1984
Page 3

Should the division deny the pending claims pursuant to the prohibition at AS 44.77.010(b), a claimant may obtain review of the division's action by applying within 60 days to the Department of Administration, at Juneau. If the Department of Administration rules adversely to the claimant, the claimant must bring an action in the Superior Court within 30 days of his receipt of the notice of decision by the Department of Administration. AS 44.77.040(c).

LMC:gmw
cc: Jeff Hubbard
Kim Busch



Ombudsman

John B. Chenoweth

September 10, 1985

Dr. Robert W. Robinson, II
Valley Medical Clinic, Inc.
Post Office Box 871687
Wasilla, Alaska 99687

State ✓ SE word
of prof. person
at least

State of Alaska

Reply to:

- 3201 C Street, Suite 606
Anchorage, Alaska 99503
(907) 563-3673
- F... ..
Juneau, Alaska 99811
(907) 465-4970
- P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

RE: Ombudsman Complaint J85-0631 (closed)

Dear Dr. Robinson:

Enclosed are the two legal opinions prepared by staff at the Department of Law regarding reimbursement of medical claims.

As I understand the status of your claim with the Division of Medical Assistance, you have yet to receive a response to your level two appeal letter of May 10, 1985. Further, you believe that your former receptionist will provide a written statement confirming your assertion that the receptionist submitted the claim timely, and reviewed the claim with staff of the Computer Sciences Corporation within the filing period.

Since your appeal is in process, the Office of the Ombudsman may not investigate your complaint (see 21 AAC 20.010 (2)), and the case file is closed.

If you have any questions regarding this letter, please contact me.

Sincerely,

Bruce Aronson
Ombudsman Assistant

BCA:11e

- Enclosures: - April 10, 1978 legal opinion
by Rodger W. Pegues, Assistant
Attorney General (file number J-66-608-78)
- June 21, 1984 legal opinion
by Linda M. Cerro, Assistant
Attorney General (file number 366-516-84)

cc: John R. Pugh, Commissioner
Department of Health and Social Services
Rod Betit, Director
Division of Medical Assistance
Department of Health and Social Services

STATE
of ALASKA

MEMORANDUM



o [Hon. Helen D. Beirne
Commissioner
Department of Health &
Social Services

DATE April 10, 1978

FILE NO J-65-608-78

TELEPHONE NO

FROM AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT Untimely claims
filed under AS
44.77.010(b)

By: *[Signature]*
Rodger W. Pegues
Assistant Attorney General

[Signature]

You have asked whether the claim filed by the Anchorage Neighborhood Health Center for charges incurred between October 1976 and April 1977 may be paid by you.

The short answer is no.

AS 44.77.010 provides for the presentation of certain categories of claims against the state and requires that they "be promptly presented to the appropriate administrative or executive officer for approval and payment."

In 1974, the section was amended to make it subsection (a) and to add a new subsection (b) which provides (emphasis added) as follows:

For the purposes of filing claims for medical services provided under AS 47.07 or 47.-25.120--47.25.300, 'promptly', in (a) of this section, means within six months after the date the service was provided or third-party payment was received. No such claim may be paid which is not filed within that period; no inference to the contrary may be drawn from AS 09.10.050, 09.50.250-09.50.300, or AS 37.-25.010. */

The provision is an all-inclusive restriction against paying stale claims based on the state's programs for supporting medical care for those in need. It singles out those claims as a class and imposes a particularized statute of limitations against them.

*/ AS 09.10.050 is the six-year statute of limitations. AS 09.50.250-300 provides for claims against the state. AS 37.-25.010 provides for appropriations of money to pay old debts.

cc: Deputy Comm Jued
Deputy Comm Lloyd
H. Maxwell Thorne

Commissioner Beirne
April 10, 1978
Page #2

The basis for the statutory classification is that, prior to its enactment, a large number of health providers had developed the practice of accumulating their billings until the end of the calendar year. They would then, depending on the income tax consequences, file all their claims at the end of the year, or file them all at the beginning of the next year, or split them between the two years. This created an almost impossible situation for managing the program's budget, there being no reliable trend during the year to project fiscal-year costs. It also created an almost unmanageable administrative situation, with an enormous, unnecessary bulge of claims to handle at one point on the calendar year. The classification caused the health providers to bill the state promptly and both the budgeting and administrative problems were immediately eliminated.

The department has never waived the statutory requirement, nor could it properly do so; the bar is absolute. The department does pay claims for medical services which are over six months old but for which third-party partial payments were claimed and received by the health provider, e.g., from insurers, and the remainder then claimed against the state. This is expressly permitted by AS 44.77.010(b). It also pays stale claims where the claimant proves to the department's satisfaction that the claim was timely filed originally with the department and that the stale claim is in fact a second (or third) filing. This too is allowed by the statute because it is the original filing which is required. But nothing permits an untimely original filing. */

It may be suggested that because the statute employs the word "may" rather than the word "shall" in imposing the bar against payment (and the bar against contrary inferences) that the bar is discretionary rather than absolute. Aside from its being patently contrary to the statute's obvious purpose, the argument rests on a lack of understanding of the English language and of the drafting style used by the Alaska Legislature and its draftsmen.

The MANUAL OF LEGISLATIVE DRAFTING (hereafter,

*/ The effects of, and the law on, filing requirements are set forth in *Silides v. Thomas*, 559 P.2d 80 (Alaska 1977).

Commissioner Beirne
April 10, 1978
Page 3

MANUAL) */ says, with respect to using words of prohibition, the following:

Use the words "may not" or "no person may" to impose a prohibition on someone. For a further discussion see Dickerson, The Fundamentals of Legal Drafting (1965), pp. 130 and 131. For example:

- (a) The commissioner shall issue a license ..., i.e., it is his duty to do so.
- (b) The commissioner may inspect records..., i.e., he may if the circumstances are proper, but he is not obligated to do so.
- (c) The commissioner may not issue a license ..., i.e., under the defined circumstances, it is beyond his power to issue the license.
- (d) No person may operate a ... without a license..., i.e., under the circumstances, no person is permitted to do the specified act without a license.

Thus, the use of the phrase "no such claim may be paid" means that under the defined circumstances, it is beyond the department's power to pay the claim. The phrase "no inference to the contrary may be drawn" means that drawing the stated inference is prohibited. Professor Dickerson, in the work (and place) cited by the MANUAL, puts it this way:

Don't say

No person shall

Say

No person may

He then explains, id., as follows:

*/ Alaska Legislative Affairs Agency (1977). The law provides that "[b]ills and resolutions shall be prepared and introduced in the manner and form prescribed in the uniform rules and the legislative style manual." AS 24.30.060(a). Hence, the MANUAL controls the style of legislative drafting in Alaska.

Commissioner Beirne
April 10, 1978
Page #4

Literally, 'No person shall' means that no one is required to act. So read, it negates the obligation, but not the permission to act. On the other hand, "No person may" negates also the permission and is, therefore, the stronger prohibition.

The picture becomes crystal clear by harkening back to the key words of an old childhood game. "Mother, may I?" goes the question. If the answer comes back, "No, you may not," you have no discretion at all.

Accordingly, it is our view that you have no discretion to waive the statutory bar against paying this claim.

We must advise you that in a recent order, the Alaska Supreme Court has held invalid an Anchorage charter provision which requires notice of a tort claim to be made within four months after the tort occurred. De Husson v. City of Anchorage, ___ P.2d ___ (Alaska Sup. Ct., Case No. 2996, Jan. 11, 1978). The court's opinion has yet to be entered, and therefore, we are unable to say with particularity what its reasons were. A perusal of the briefs indicates, however, that its principal reason will be that the requirement denies municipal tort claimants equal protection under the law. The basis for the classification in De Husson, while by no means identical to the basis for the classification here, is not substantively dissimilar to any great extent. The effect on the persons in the class, while not (supposedly) constitutionally relevant, is quite similar, i.e., their claims are utterly barred. In the instant case, there is a distinction. Anchorage Neighborhood Health Center will, apparently, be able to, on the basis of our rejecting its claim, get reimbursed by the federal government. Hopefully, rather than challenge the statute, it will pursue that alternative.

If you are concerned that a health provider will successfully challenge the statute, you might want to suggest a curative amendment. A new subsection (c) could be added which would allow the department to accept stale claims when it determines that the untimely filing was, as here, not the fault of the claimant or that it resulted from excusable neglect. That would, in all likelihood, narrow the class sufficiently to satisfy the court's notions of equity.

RWP/pjg