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# HOUSE COMMITTEE REPORT

(11)

Date Referred: March 20, 1989

FURTHER REFERRALS:

Date of Committee Action: 3/22/89

The FINANCE Committee considered:

CSSB 166 (HESS)

CS FOR SENATE BILL NO. 166 (HESS)

[MEDICAID PAYMENTS TO HEALTH FACILITIES]

"An Act relating to conformance between actual payments and approved payment rates to health facilities for medical care under certain state medical assistance programs; and providing for an effective date."

**RECOMMENDATIONS:**

be replaced with CS SB 166 (HESS)  the same title  
 a new title

have attached amendment(s)

do pass

do not pass

no recommendation

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

fiscal impact \_\_\_\_\_

fiscal note(s) Senate 3/7/89 DHS

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

zero with analysis \_\_\_\_\_

zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

**SIGNING:**

(Check approp. column)

Do Not Pass    No Rec    Amend

<u>[Signature]</u> HOFFMAN	<u>[Signature]</u> BROWN		X	
<u>[Signature]</u> LARSON	<u>[Signature]</u> ULMET		X	
<u>[Signature]</u> SWANKHAMMER	<u>[Signature]</u> PHILIPS		X	
<u>[Signature]</u> KOPONETZ	<u>[Signature]</u> RIEGER			X
<u>[Signature]</u> BARNES				
<u>[Signature]</u> WALLIS				

[Signature]  
Chairman's Signature

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: Relating to Medicaid Facility  
 Payment: \_\_\_\_\_  
 Sponsor: Senate HESS  
 Requestor: \_\_\_\_\_

Agency Affected: Health & Social Services  
 BRU: Medical Assistance  
 Components: Medical Facilities

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	250.0					
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>250.0</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CAPITAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>REVENUE</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	125.0					
FEDERAL FUNDS	125.0					
OTHER						
<b>TOTAL</b>	<b>250.0</b>					

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Fiscal impact is calculated based on impact to one identified facility.

Prepared by: <sup>FBI</sup> Kim Bisch, Director *Kim Bisch* Phone: 465-3355  
 Division: Medical Assistance Date: 3/6/89

Approved by Commissioner: Maura M. Munn *Maura M. Munn* Date: 3/6/89  
 Agency: Health and Social Services

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Original sponsor: Health, Education and  
Social Services Committee

1 IN THE SENATE  
2 CS FOR SENATE BILL NO. 166 (HESS)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL  
6 For an Act entitled: "An Act relating to conformance between actual pay-  
7 ments and approved payment rates to health facilities  
8 for medical care under certain state medical assis-  
9 tance programs; and providing for an effective date."  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
11 \* Section 1. AS 47.07.070 is amended by adding a new subsection to  
12 read:  
13 (e) When an actual rate paid by the department is reviewed at  
14 the end of the year for which the approved rate was established and  
15 the review is conducted to determine whether the actual rate paid was  
16 in conformance with the approved rate under this section, all or part  
17 of an adjustment for year-end conformance may be waived for the facil-  
18 ity if the facility provides proof of manifest injustice resulting  
19 from application of the adjustment for year-end conformance. When the  
20 adjustment for year-end conformance of the base year is waived, in  
21 whole or part, for a facility under this subsection, the amount waived  
22 may not be included as part of the base upon which the prospective  
23 rate is determined if the nonconformity affects both costs and  
24 charges. When the adjustment for year-end conformance of the base  
25 year is waived, in whole or part, for a facility under this subsec-  
26 tion, the amount waived shall be included as part of the base upon  
27 which the prospective rate is determined if the nonconformity affects  
28 only charges.  
29 \* Sec. 2. TRANSITIONAL PROVISION. (a) For the services provided on or

1 after January 1, 1989, an approved prospective payment rate determined for  
2 a facility for fiscal year 1989, based on a conformance review of that  
3 facility's rate for fiscal year 1987 shall be recalculated as if the pro-  
4 visions of AS 47.07.070(e), as enacted by sec. 1 of this Act, were in  
5 effect at the time of the determination of the prospective payment rate in  
6 effect for the period. If the application of this section results in a  
7 higher prospective payment rate for a health facility than that which had  
8 previously been calculated for the facility, the difference shall be  
9 promptly remitted to the health facility. If the application of this  
10 section results in a lower prospective payment rate for a health facility  
11 for fiscal year 1989 than had previously been calculated for the facility,  
12 this section may not be applied to decrease a rate to a facility for fiscal  
13 year 1989 for any part of year-end conformance waived.

14 (b) In this section, "conformance review" means the review undertaken  
15 after the end of the year for which a facility's approved rate has been set  
16 to determine whether actual payments made to a health facility under AS 47.  
17 07 and AS 47.25.120 - 47.25.300 conformed to the payment rate approved for  
18 that health facility under AS 47.07 and to determine whether the prospec-  
19 tive payment rate for that facility should be adjusted for the next rate-  
20 setting year.

21 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

**POSITION PAPER**

**SB 166**

**INTRODUCTION**

The process by which Medicaid and GRM reimbursement rates are established for health facilities includes a procedure called year end conformance. This procedure compares the Medicaid Rate Commission (MRC) approved rate with actual rate billed by the facility during the billing period. If a defined level of variance between the approved and actual charges exists, an adjustment is made to the facility's base for its future prospective rate.

In August, 1988, the MRC repealed regulations that allowed waiver of the year end conformance adjustment. After realizing that in at least two cases the regulations had an unanticipated, negative effect, the MRC adopted a regulation which allows the commission to waive all or part of the year end conformance adjustment under certain circumstances. This regulation will become effective March 25, 1989.

This bill makes waiver authority retroactive to January, 1989. Due to federal Health Care Financing Agency requirements, federal participation in the state's Medicaid Program would be jeopardized if we change any provision of rate setting for a period prior to January 1.

**ANALYSIS**

Section 1 of the bill defines the procedure, provides for a full or partial waiver of the adjustment in cases of manifest injustice, and clarifies the treatment of some technical questions associated with implementation.

Section 2 of the bill requires reanalyzing rates in effect on or after January 1, 1989, in accordance with Sec. 1 of the bill, requires the immediate payment of an amount due the facility as the result of reanalyzing rates if waiver is granted, and prohibits recoupment by the state if reanalyzing rates in accordance with Sec. 1 results in an amount due the state.

Section 3 of the bill provides for an immediate effective date. To receive federal financial participation (FFP) for the period January 1, 1989 - March 31, 1989, the state Medicaid plan amendment must be submitted prior to March 31, 1989. Therefore, SB 166 would have to be enacted into law with sufficient time for the department to prepare and submit the state plan amendment. An effective date before March 31, 1989, is essential for the state to continue to meet the federal requirements of the Medicaid Program and grant this retroactive relief.

DISCUSSION

Health facilities will benefit from a possible waiver of the year end conformance procedure under situations of manifest injustice. Situations which have been brought to the attention of the MRC to date include at least two in which facilities can demonstrate that a prudent management decision such as a reasonable rate increase has triggered the application of the procedure, and where a series of patients requiring an extraordinary level of care has triggered the application of the procedure. Other facilities may also seek relief from the year end conformance requirement, but it is not known whether they will meet the conditions for waiver.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES' POSITION

The department neither opposes nor supports Senate Bill 166.

Recommended: Kim Busch  
Kim Busch, Director  
Division of Medical Assistance

Date: March 6, 1989

Approved: Myra M. Munson  
Myra M. Munson, Commissioner  
Department of Health and  
Social Services

Date: March 6, 1989

RECEIVED

FEB 10 1989

SENATOR TIM KELLY  
SENATE PRESIDENT

## SITKA COMMUNITY HOSPITAL

209 MOLLER AVENUE • SITKA, ALASKA 99835 • (907) 747-3241

February 10, 1989

Senator Tim Kelly  
Alaska State Senate  
P.O. Box V  
Juneau, AK 99811

Dear Senator Kelly:

I recommend favorable consideration of Senate Bill 166.

Senate Bill 166 will affirm an intent and an authority which reason dictates has always been present.

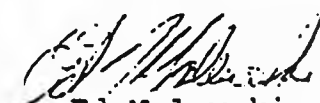
The Medicaid Rate Commission, for whatever reason, did not have a proviso in its rules and regulations after July 20, 1988 specifically stating it could waive its own rules for good reason. It appeared that it was their intent to have that authority. Nothing in their rules and regulations indicated that they did not have it.

Through a statistical quirk, our reimbursement rate was calculated at 20%. Satisfactory justification was presented for the nonconformity and the rate was adjusted. The Commissioner of Health and Social Services had made several attempts to force the Medicaid Rate Commission to recant the adjustment and reset the rate at 20%. The Commissioner has not been successful to date, but continues to try. A 20% reimbursement rate is not reasonable.

The Medicaid Rate Commission has in fact finally adopted rules and regulations which express their previous intent to have the ability to waive conformance for good reason.

Your support of SB 166 will be a vote for the affirmation of reason. Thank you. A similar letter has been sent to Senator Eliason, Representative Grussendorf and the other members of the Senate and House Health, Education and Social Services Committees.

Sincerely,

  
Ed Malewski  
Administrator

cc: HAA

EM:ck

STATE OF ALASKA  
SIILUUT UT ALAUNA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

PO BOX H  
JUNEAU, ALASKA 99811-0601  
PHONE: (907) 465-3030

January 25, 1989

Medicaid Rate Commission  
P.O. Box 240249  
3601 "C" Street, Suite 592  
Anchorage, Alaska 99524-0249

Re: Year end conformance waiver  
regulation proposal

Dear Commission Members:

The Department of Health and Social Services offers the following comments regarding proposed regulation (7 AAC 43.691(c)) to waive year-end conformance in rate-setting by the Medicaid Rate Commission. \*/ The department supports the commission having authority to waive year end conformance, provided the authority is subject to conditions. The department recognizes the need for commission flexibility to respond to unique circumstances. The department opposes unlimited authority to waive year end conformance in any case. In addition, unlimited authority will very likely produce additional work for the commission and its staff and the facilities, since the facilities will have no guidelines to suggest what petitions are likely to be accepted and which ones are not. Truly prospective rate setting and responsible budgeting by the commission, department and facilities cannot occur if every facility can petition the commission at year-end for additional funds to balance its books.

The department offers the following alternative language:

\* Section 1. 7 AAC 43.691 is amended by adding a new subsection to read:

(e) The commission will, in its discretion, waive all or part of the year-end conformance, if the facility provides justification to the commission's satisfaction,

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\*/ The department's attorney has checked with the staff of the regulations attorney and was informed that new subsection letter must be used even though the same language (as was repealed) is being proposed.

that ~~immediate~~ <sup>a illeperable</sup> and manifest injustice will result if year-end conformance is strictly applied. All or part of year-end conformance will, in the commission's discretion, only be waived if the commission finds that:

(1) the facility has taken effective measures to control costs in response to the situation upon which the waiver request is based; *and*

(2) the waiver request does not contradict a prior action of the commission as to an element of the facility's rate contained in 7 AAC 43.683, 7 AAC 43.685, and 7 AAC 43.686; and

(3) the waiver request would result in payment for only allowed costs and services authorized by the division of medical assistance under state or federal laws or both if applicable, or regulations; and

(4) the situation upon which the waiver request is based results from the provision of direct patient care or from prudent management actions improving the financial viability of the facility, *To provide patient care.*

We urge the commission to adopt the department alternative language.

We appreciate the opportunity to offer comments on this important matter. Members of my staff will be available at the upcoming meeting to further elaborate on this position.

Sincerely yours,



Myra Munson  
Commissioner

OFFICE OF THE PRESIDENT

MEMBER

TENTH ALASKA LEGISLATURE  
ELEVENTH ALASKA LEGISLATURE  
TWELFTH ALASKA LEGISLATURE  
THIRTEENTH ALASKA LEGISLATURE  
FOURTEENTH ALASKA LEGISLATURE  
FIFTEENTH ALASKA LEGISLATURE  
SIXTEENTH ALASKA LEGISLATURE



SENATOR TIM KELLY

P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 485-3822

P.O. BOX 210001  
ANCHORAGE, ALASKA 99521  
(907) 581-7612

February 2, 1989

MEMORANDUM

To: Senator Fischer, Chairman  
HESS Committee

From: Senator Kelly *TK*

Re: Introducing a committee bill to correct a problem with health facility medical rate reimbursement.

I have attached a draft of legislation that would correct a problem inadvertently caused by a Medical Rate Commission action this last summer. In this action the commission repealed one of their own regulations that had a dramatic and unanticipated effect on certain health facilities year-end conformance determinations. I have talked with Commissioner Munson and everyone is in agreement that it was an unfortunate slip up. Last week the commission re-established the particular regulation (see attached regulation sequence A, B, and C).

The problem is that there appears to be no way for the commission itself to make this regulation retroactive, causing a disparate rate setting for those facilities whose conformance determination happened to occur in the time interval of the regulation's repeal. Humana hospital is particularly affected.

The proposed draft seems to be the only avenue for redress. It essentially puts the regulation language into law and retroactively applies the law. I have tried to make the title as tight as possible so that the bill does not attract other considerations. I would appreciate your consideration to introduce the bill as a committee bill.

Cover Letter

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Dept. of Health & Social Svs  
 Title An Act relating to conformance between BRU: Medical Assistance  
 actual payments and approved rates to facilities.  
 Sponsor: \_\_\_\_\_ Components: Medicaid Facilities  
 Requestor: Senate HESS Committee

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	583.3					
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>583.3</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

CAPITAL						
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REVENUE						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	458.3					
FEDERAL FUNDS	125.0					
OTHER						
<b>TOTAL</b>	<b>583.3</b>					

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS : (Attach a separate page if necessary)**

See Attached

Prepared by: Kim Busch, Director *Kimberly Busch* Phone: 465-3355  
 Division: Medical Assistance Date: 3-9-89  
 Approved by Commissioner: Myra M. Munson *Myra M. Munson* Date: 3-10-89  
 Agency: Department of Health & Social Services

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

The Department is unable to retroactively secure federal financial participation for the period 7/1/88 - 12/31/88. Consequently, state general funds are calculated for this period. This fiscal note assumes passage of SB 166 prior to 3/31/89 and submission of a federally approvable state plan amendment prior to 3/31/89 to secure FFP for the period 1/1/89 - 3/31/89. This fiscal note further assumes regulations passed by the Medicaid Rate Commission giving it the authority to waive year end conformance become final on 4/1/89. Therefore, the impact on facilities is limited to the period 7/1/88 - 3/31/89. The Department has identified only one facility which would be impacted by this legislation.