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# HOUSE COMMITTEE REPORT

3/13

(7)

Date Referred: April 7, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 3/12/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 374

HOUSE BILL NO. 274 [MEDICAID PAYMENT FOR PSYCHOLOGISTS]

"An Act relating to psychologists' services under the state medical assistance program; and reordering the priorities for eliminating coverage under Medicaid."

RECOMMENDATIONS:

- be replaced with CSHB 274 (HESS)  the same title
- have attached amendment(s)  a new title
- 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 DHSS ✓

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

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

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

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

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

SIGNING/DO PASS:

SIGNING:

ELLIS

(Check approp. column)

Do Not Pass No Rec Amend

SIGNING/DO PASS	NAME	APPROPRIATE COLUMN	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	ELLIS	FURNACE	<input checked="" type="checkbox"/>		
<i>[Signature]</i>	BOYER	C. DAVIS	<input checked="" type="checkbox"/>		
		JACKO	<input checked="" type="checkbox"/>		
		GOLL	<input checked="" type="checkbox"/>		

*[Signature]*  
Chairman's Signature

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 274 (HESS) (3/9/90)

Page 1, line 18:

Delete "psychologists' services"

Insert "services of a clinical psychologist licensed by the Board of Psychologist and Psychological Associate Examiners"

Page 2, line 7:

Delete "psychologists' services"

Insert "services of a clinical psychologist licensed by the Board of Psychologist and Psychological Associate Examiners"

*clinical services of a psychologist  
licensed by the Board of Psych ....*



# Alaska State Legislature

Please enter into the record my testimony to the House HESS  
 committee name  
 committee on CSHB 274, dated 3/5/68  
 bill/subject

I ask that this testimony be entered in the record. The addition of psychologist services under the state medical assistance program likely will help make available the mental health services of licensed professionals to parts of the state and at levels not presently served or underserved. The Alaska Mental Health Board has supported enhanced availability of professional mental health services. While not the greatest unmet need in the state mental health program, enhanced availability of psychologist services is consistent with recommendations of the Mental Health Board.

Signed: [Signature] Exec Director

Testifier

Alaska Mental Health Board  
 Representing (Optional)

419 Cth St, Suite 121, Juneau 99801  
 Address

415-3071  
 Phone No.

ALASKA  
PSYCHOLOGICAL  
ASSOCIATION

550 East Tudor Road Suite 201, Anchorage, Alaska 99503

(907) 563-8497 FAX (907) 561-6679

Testimony given at House HESS Committee

February 14, 1990

Representative Johnny Ellis  
Po Box V  
Juneau, Alaska 99811

Representative Ellis and members of the House Educational Social Services Committee:

Thank you for taking the time to hear House Bill 274 providing for the inclusion of all Licensed providers of psychological services to be included under the State of Alaska Medicaid program.

My name is Margit Gorton, Ph.D., Licensed Clinical Psychologist, Unit Manager, Intake & Emergency Service Unit, Past President and the present Grass-roots Co-ordinator and Legislative Affairs Officer of the Alaska Psychological Association.

Currently, medicaid recipients can only receive psychological services through community mental health centers which are already heavily subsidized through State funds. As a rule, private psychologists are denied access to the medicaid system while government subsidized clinics maintain a monopoly.

Issue: Alaska Psychologists, although licensed by the State of Alaska, are omitted from the statutes which determine the type of care allowed by and covered under the Medicaid program.

The Alaska Psychological Association's position is to propose changes in the current statutes to allow Medicaid patients to receive psychological services with consumer choice regarding the licensed provider of the service.

Current statutes create a situation which:

- 1.) Discriminates against the needy and those in remote locations;
- 2.) Is more costly to the Medicaid system;

- 3.) Limits the quality of care available to all Alaskans;  
4.) Results in a restraint of trade.

The proposed changes would correct this situation and allow psychologists to receive compensation for services provided to Medicaid patients. Currently, a number of psychologists provide needed care to Medicaid patients without compensation, or they are forced to resort to the courts in legal action against agencies of the State of Alaska to receive compensation. It is currently the practice of the Alaska Attorney General's office to settle such suits out of court when possible. Many psychologists feel that reasonable changes in the statutes by the legislature are the only recourse left to them, short of joining the growing number of costly and time-consuming suits. They have elected to pursue these changes through their professional Association.

The Federal Medicaid program allows the various states to determine eligibility and types of care covered by the program.

A variety of other professional health services are provided for under Alaska statutes pertaining to Medicaid. These include optometrists, physical therapist, nurse midwives, physicians and others.

A growing number of states, currently about 30 of 50 provide for Medicaid recipients to receive independent psychological services.

People covered by private insurance and even employees of the State of Alaska covered by Alaska's employee health care plans are able to receive the services of an independent psychologist.

However, Alaskans who are Medicaid recipients may not choose freely between equally qualified providers. They are also denied equal access to treatment by care providers offering non-drug approaches. For the record I would like to make a couple of additional comments.

1. Providers: Psychologists are licensed and regulated through statute as administered by the Division of Occupational Licensing. Psychologists have completed a four year doctoral program in psychology, a one year internship, and one year of directly supervised post-doctoral experience. We are well qualified to diagnose and treat behavioral and emotional disorders using psychological procedures and techniques.

2. cost-effectiveness of psychological services. An estimated 60% of visits to medical doctors are made by the "worried well" who have no identifiable physical illness. It comes as no surprise that valium has enjoyed the limelight as being the most commonly prescribed drug in America for several years.

Even brief psychotherapeutic intervention can reduce the overutilization of medical services by 37% (Cummings research in Hawaii) resulting in tremendous savings within the health care system.

3. Psychology within Medicaid. In January, 1984 an Intergovernmental Health Policy Project published by George Washington University indicated that half of the states allowed direct payment to private psychologists under the medicaid program, currently that number has grown to about 30 states.

Research completed in Hawaii suggests that about 9% of the people enrolled in the medicaid program make use of their mental health services. When psychologists are enrolled as direct providers, there is no indication that more medicaid recipients chose to seek mental health services.

Furthermore, it should be noted that the United States Congress passed a similar bill for the inclusions of psychologists under Medicare, during it's 1989 session. This bill has been signed into law by President Bush and allows psychologists to receive medicare payments as independent practitioners without supervision of any kind.

The Alaska Psychological Association hopes that Alaska will join the majority of the other states in the Union who already include psychologists as providers under Medicaid. Psychologists are properly trained and licensed to provide psychological services as defined by state law. Inclusion of psychologists under the Medicaid program will allow psychologists to practice on a compassionate care basis rather than discriminating against the economically less fortunate citizens of our state.

Sincerely,

Margit Gorton, Ph.D.  
Past President,  
Alaska Psychological Association  
Licensed Clinical Psychologist  
Unit Manager

CC: Sharon Macklin

MG/khw

## FISCAL NOTE

**REQUEST:**

Revision Date: 2/13/90  
Title: An Act Relating to Psychologists' Services  
Sponsor: House HESS Committee  
Requestor: \_\_\_\_\_

Agency Affected: Health and Social Services  
BRU: Medical Assistance  
Medical Assistance Administration  
Components: Medicaid Non-Facility  
Claims Processing

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

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	61.2	71.4	81.8	93.7	107.4	123.1
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	291.2	703.8	862.6	1,049.8	1,277.6	1,554.9
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	352.4	780.2	944.4	1,143.5	1,385.0	1,678.0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	168.4	372.2	451.7	548.3	665.6	803.2
FEDERAL FUNDS	184.0	408.0	492.7	595.2	719.4	869.8
OTHER	0	0	0	0	0	0
TOTAL	352.4	780.2	944.4	1,143.5	1,385.0	1,678.0

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

See attached analysis. As published, HB No. 274 has no effective date. The starting date of the addition of psychologists' services to the Medicaid Program is assumed to be January 1, 1991.

Prepared by: Kimberly B. Busen Phone: 465-3355  
Division: Division of Medical Assistance Date: 2-13-90

Approved by Commissioner: Maria J. Peterson Date: 2-10-90  
Agency: Department of Health and Social Services

**Distribution (by preparer):**

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

House Bill No. 274  
Fiscal Note Attachment  
Cost Analysis for Psychologists' Services

I. Contractual Costs

- a. The Alaska Medical Payments System will require modification to pay psychologists as a new service. The contractual costs include the following: provider manuals, training, a new claims form, tables included in the system for psychologists' services, computer programming, computer reports, the addition of collocation codes, the provision of notice to providers, provider relations, and a computer system test. This is a one-time FY91 cost of 30.0. (15.0 FED, 15.0 SGFM)
- b. The Division of Medical Assistance must pay the claims processing contractor \$6.23 for each claim processed. Estimated claims volume for FY91 is 5,000, assuming a January 1, 1991 start date. FY91 processing costs = 31.2. All costs of claims processing are 75% FED, 25% SGFM.

II. New Grants/Claims Costs

- a. There is no accurate method for determining the numbers of Medicaid eligibles who will use this new coverage, the numbers of providers who will choose to enroll, and the initial costs per type of service that they will provide. Cost estimates are based on the following assumptions:
  - (1) 50 psychologists will enroll as providers in the first year.
  - (2) Approximately 24 of these new providers are currently providing services indirectly, supervised by and/or billing through a physician or psychiatrist. About half of these are billing Medicaid at a rate 15% lower than the rate charged by psychiatrists. Payments to the 12 now billing at the higher rate will be reduced by \$14,400 (15% reduction X \$8,000 current average psychiatrist's Medicaid billing per year, X 12 psychologists = \$14,400 Medicaid savings).
  - (3) Logic suggests that billings from physicians and psychiatrists who supervise the psychologists now providing services to Medicaid eligibles would decrease if these psychologists were to enroll directly. However, experience in other states that have added psychologists' services has varied so much on this point that we cannot safely assume any decrease in current billings.
  - (4) Approximately 26 psychologists in private practice who are not currently serving Medicaid recipients will enroll. Alaska Psychological Association data indicates these new providers will see an average of 21 patients per week for a total of 34 hours per week, and that they charge \$90 per hour for private sessions.

(5) We assume that psychologists will not differ from other medical professionals enrolled as Medicaid providers, in that Medicaid patients will, on average, not exceed 15% of their total patient load. Cost for new providers will be 34 hours per week X \$90/hour X 15% X 50 weeks/year X 26 psychologists = \$596,700.

(6) \$596,700 new costs minus \$14,400 savings = \$582,300 net costs for a full year of psychologists' services. The time required for data system changes, promulgation of regulations, and provider enrollment activities necessitate a starting date no earlier than January 1, 1991. FY91 costs will therefore be 50% of a full year:

145.6	SGFM
145.6	FED
<u>291.2</u>	Total

(b) Costs for FY92 through FY96 are computed from the FY90 base estimate, adjusted for a full year, and increased annually by 21.7% (7.1% for price increases, 4.2% for increases in the number of eligible recipients, and 10.4% for utilization increases).

Claims processing costs are billed at \$6.23 per claim. For FY92 through FY96, FY91 costs, adjusted for a full year, are increased by 14.6% annually (4.2% for increases in the number of eligible recipients, and 10.4% for utilization increases).

# FACT SHEET

## COST EFFECTIVENESS AND UTILIZATION OF PSYCHOLOGICAL SERVICES

- THE USE OF MEDICAL SERVICES DECREASES WHEN APPROPRIATE MENTAL HEALTH SERVICES ARE PROVIDED. NUMEROUS STUDIES SHOW A DECREASE FROM 5 TO 80 PERCENT IN MEDICAL SERVICE USE FOLLOWING MENTAL HEALTH TREATMENT. THIS "OFFSET" EFFECT HAS BEEN DOCUMENTED WITH A VARIETY OF PATIENTS IN HMO'S AND IN FEE-FOR-SERVICE SETTINGS. (Jones, O.F., & Vischi, T. (1979). Impact of alcohol, drug abuse, and mental health treatment on medical care utilization: A review of the literature. Medical Care Supplement, 17.)
- PRELIMINARY DATA FROM A PILOT PROJECT IN HAWAII PROJECTS THAT A 37% REDUCTION IN MEDICAL USE WILL RESULT FROM EVEN BRIEF PSYCHOTHERAPEUTIC INTERVENTION. THE AUTHOR CONCLUDES THAT PREPAID SYSTEMS WILL NOT CONTAIN COSTS UNTIL THE ESTIMATED 60% OF DOCTOR VISITS BY THE "WORRIED WELL" ARE ADDRESSED. (Cummings, N.A. (1985, May). Saving Health Care Dollars Through Psychological Services.)
- BY VIEWING PSYCHOLOGISTS AS HEALTH CARE PROFESSIONALS, THEY MAY BECOME INSTRUMENTAL IN REDUCING PATIENTS' PSYCHOLOGICAL STRESS LEVELS AND ACCOMPANYING MEDICAL COMPLAINTS. MENTAL HEALTH SERVICES COMBINED WITH TREATMENT FOR PHYSICAL DISORDERS RESULTS IN DECREASED HOSPITAL COSTS AT LEAST EQUAL TO THE COST OF THE MENTAL HEALTH SERVICES. A STUDY OF PERSONS WITH SEVERAL CHRONIC DISEASES SHOWED THAT THE USE OF MENTAL HEALTH SERVICES "IMPROVES THE QUALITY AND APPROPRIATENESS OF CARE AND ALSO LOWERS COSTS OF PROVIDING IT." (Schlesinger, H.J., Mumford, E., Glass, G.V., Patrick, C., & Sharfstein, S. (1983). Mental health treatment and medical care utilization in a fee-for-service system: Outpatient mental health treatment following the onset of a chronic disease. American Journal of Mental Health, 73, 422-429.; Jacobs, D.F. (1983, December). Toward a formula for professional survival in troubled times. Public Service Psychology, December 1983.)
- A REVIEW OF 13 STUDIES THAT USED POST-SURGERY OR POST-HEART ATTACK HOSPITAL DAYS AS OUTCOME INDICATORS SHOWED THAT PSYCHOLOGICAL INTERVENTION REDUCED HOSPITALIZATION BY APPROXIMATELY TWO DAYS. (Mumford, E., Schlesinger, H.J., & Glass, G.V. (1982). The effects of psychological intervention on recovery from surgery and heart attacks: A review of the literature. American Journal of Public Health, 72, 141-151.)
- CONTRARY TO THE ARGUMENT THAT INCREASED MENTAL HEALTH BENEFITS AND ACCESS TO OTHER MENTAL HEALTH CARE PROVIDERS WOULD LEAD TO AN EXCESSIVE INCREASE IN UTILIZATION OF MENTAL HEALTH CARE SERVICES, DEMAND FOR MENTAL HEALTH SERVICES WOULD NOT RISE DRAMATICALLY WITH INCREASES IN INSURANCE COVERAGE. A STUDY FROM THE PAID CORPORATION SHOWED ONLY 9% OF THOSE WITH GENEROUS MENTAL HEALTH COVERAGE SOUGHT TREATMENT. (Wells, K.B., Manning, W.G., Duan, N., Ware, J.E., & Newhouse, J.P. (1982). Cost sharing and the demand for ambulatory mental health services. (Report No. R-2960-HHS). Washington, DC: U.S. Department of Health and Human Services.)

- MENTAL HEALTH HOSPITALIZATION ACCOUNTS FOR OVER 70% OF MENTAL HEALTH DOLLARS AND FOR 25% OF ALL HOSPITAL DAYS IN THE UNITED STATES. THERE ARE NOW ALTERNATIVE TREATMENT PLANS THAT ARE MORE EFFECTIVE AND LESS EXPENSIVE THAN HOSPITALIZATION. (Kiesler, C.A. (1982). Public and professional myths about mental hospitalization: An empirical reassessment of policy-related beliefs. American Psychologist, 37, 1323-1339).
- THE USE OF PSYCHOLOGISTS HAS A "SUBSTITUTION EFFECT" ON THE MENTAL HEALTH SERVICE OF PSYCHIATRISTS AND PHYSICIANS IN THE MENTAL HEALTH CARE AREA, AND, AS A RESULT, TOTAL COSTS ARE REDISTRIBUTED (APA Monitor, January 1984). IN STATES WITH FREEDOM-OF-CHOICE LAWS (FOC), FEES FOR PSYCHIATRISTS AND PSYCHOLOGISTS ARE BETWEEN 8.3% AND 9.5% LOWER THAN IN STATES WITHOUT THESE LAWS (Frank, 1982). FURTHER UNDER FOC LAWS THERE WERE MORE VISITS TO PSYCHOLOGISTS THAN TO PSYCHIATRISTS. (Dorke, 1985).
- A SURVEY OF USE AND EXPENDITURES FOR AMBULATORY MENTAL HEALTH SERVICES IN 1980 REVEALED: 4.3% OF THE POPULATION HAD ONE OR MORE MENTAL HEALTH VISITS; EXPENDITURES AVERAGED \$253 PER PERSON AND \$11 PER CAPITA; THE AVERAGE NUMBER OF MENTAL HEALTH VISITS WAS 8.2 PER CALENDAR YEAR (ranging from 10.9 and 12.5 for office visits to 5.3 and 4.4 for organized setting visits); MORE THAN 95% OF THE POPULATION HAD NO EXPENDITURES. ALMOST 48.8% OF THOSE USING MENTAL HEALTH SERVICES HAVE LESS THAN THREE VISITS WHILE 9.8% OF THE USERS HAVE 25 VISITS OR MORE (Taube, C.A., Kessler, L., and Feuerberg, M.: Utilization and expenditures for ambulatory mental health care during 1980. National Medical Care Utilization and Expenditure Survey Data, report No. 5. National Center for Health Statistics. Public Health Service. Washington, D.C., U.S. GPO, June 1984).
- FEARS OF OVERUTILIZATION AND RUNAWAY COSTS FOR MENTAL HEALTH ARE UNFOUNDED. YEARS OF RESEARCH SHOW THAT ONLY A SMALL PROPORTION OF DISORDERED INDIVIDUALS USE OUTPATIENT MENTAL HEALTH BENEFITS; THE NUMBER OF VISITS IS GENERALLY LOW, PARTICULARLY WHEN CONTROLLED BY COPAYMENTS OR DEDUCTIBLES; EXPENDITURES FOR MENTAL HEALTH SERVICES ARE NOT DISPROPORTIONATE TO OTHER HEALTH CARE SERVICES.
- AS MORE NON-PHYSICIAN PROVIDERS ENTER THE MENTAL HEALTH FIELD, THE EFFECT ON PHYSICIANS MAY BE TO EXPAND THEIR SERVICES OR LOWER THEIR PRICES, CONCENTRATE ON PROCEDURES FOR WHICH THEIR TRAINING IS MORE VALUABLE, AND TO UTILIZE THEIR OWN RESOURCES MORE EFFICIENTLY, THEREBY LOWERING COSTS. (Bailey, Commissioner of the Federal Trade Commission, 1983).
- DATA SHOW THAT OUTPATIENT MENTAL HEALTH TREATMENT OFFSETS MEDICAL COSTS. COST-OFFSET IS PARTICULARLY APPARENT IN THE REDUCTION OF INPATIENT SERVICES. OLDER PEOPLE APPEARED TO RECEIVE THE GREATEST COST-SAVINGS BENEFIT. FOLLOWING MENTAL HEALTH TREATMENT THE AVERAGE 8.7 DAY INPATIENT HOSPITALIZATION WAS REDUCED BY 1.5 DAYS. (Munford, E., Schlesinger, H.J., Glass, G.V., Patrick, C., & Guerdon, B.A. (1984). A new look at evidence about reduced cost of medical utilization following mental health treatment. American Journal of Psychiatry, 141, 1145-1158.

POSITION PAPER  
House Bill No. 274

"An Act relating to psychologists' services under the state medical assistance program; and reordering the priorities for eliminating coverage under Medicaid."

This Act would amend AS 47.07.030(b) to add psychologists' services to the services available for needy persons who are eligible for Medicaid, and it would amend AS 47.07.035 to place this new coverage tenth in the priority listing of all optional Medicaid services authorized by the Legislature for Alaska.

Currently, there are 115 licensed psychologists in Alaska, all of whom would be eligible to enroll as Medicaid providers were House Bill No. 274 to pass. A substantial number of these psychologists are already providing services to Medicaid recipients, and indirectly receiving Medicaid payments, in work settings such as physicians' clinics or community mental health clinics where they are supervised by a physician or psychiatrist who is enrolled.

The Division of Medical Assistance has long believed that this situation is far from ideal, for these reasons:

- (1) The Division has no evidence that the supervision requirement generally results in more effective, higher-quality care. However, there is a strong conviction, here and in other states' Medicaid agencies, that supervision increases the cost of care.

Many states have specified exactly how much and what types of supervision are required, but as a practical matter, there is no cost-effective way to enforce such rules, and there is considerable disagreement over whether such rules do in fact result in any measurable improvement in the care provided. Federal Medicaid rules allow for any type of M.D. to be a supervisor, so it's frequently the case that a general practitioner, who may or may not have any formal training in psychology, is being paid to consult with and guide a certified mental health professional. This may be helpful in cases in which a person's mental problems are caused by or accompanied by physical problems, but in many cases, the only advantage in such a relationship is a financial one to the doctor, resulting in an unnecessary cost to the taxpayer.

- (2) Not only does the Division pay physicians for supervisory duties that may or may not enhance the quality of care, the "screening" effect in clinical settings which result from the supervision requirement means that Medicaid pays for services that are actually provided by any licensed person the supervisor deems appropriate. This means that Medicaid pays the rate appropriate for a psychiatrist/M.D., but the patient often gets

services from someone whose credentials would justify a lower rate.

House Bill No. 274 would enable the Division to directly enroll psychologists, which would allow the Division to better measure, monitor, and control the use and costs of psychologists' services. House Bill No. 274 offers a good possibility of slightly lowering the costs per unit of services without decreasing the quality of the service.

From the provider's point of view, adding psychologists' services to Alaska's Medicaid Program would create equity between psychologists who practice independently and those who practice under the supervision of a physician or in a community mental health clinic.

From the Medicaid recipient's point of view, adding psychologists' services would make it easier to obtain care because it would increase the number of Alaska providers offering this service. It would also make it easier for them to directly access the person who gives them care, as they would no longer have to pass through a physician's examination or a clinic's screening process.

Position:

From the Department's perspective, House Bill No. 274 is a highly desirable bill that provides a simple solution to a long-standing and growing problem. The only objection we believe could be raised to House Bill No. 274 is that it will result in new providers enrolling in Medicaid, which in turn means that more recipients may use these provider's services, which may increase the program costs. These costs are detailed in the Department's Fiscal Note. However, these same cost increases appear to be occurring to some degree already, and House Bill No. 274 would give us the administrative structure in which we could measure and control them.

The Department supports the passage of House Bill No. 29.

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

Date: 2-13-90

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

Date: 2-14-90

REC'D JAN 23 1990

STEVE COWPER, GOVERNOR

STATE OF ALASKA  
**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

January 23, 1990

REPLY TO:

1031 W 4th AVENUE SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550  
FAX: (907) 276-3697

1st NATIONAL CENTER  
100 CUSHMAN ST. SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 452-1568  
FAX: (907) 456-1317

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

465-3603

*JW  
HB274  
will file in HESS  
Committee*

The Honorable Johnny Ellis  
Alaska House of Representatives  
P.O. Box V  
Juneau, Alaska 99811

Re: Out-of-court settlement in the  
medicaid program  
Our file: 223-88-0338

Dear Representative Ellis:

Your letter of January 12, 1990, to the attorney general was referred to me for response. I am an assistant attorney general and I represent the Division of Medical Assistance.

You have requested information regarding out-of-court settlements by the State of Alaska and licensed psychologists to allow the psychologists to bill for medicaid for their services.

I have searched my files and I have found two settlements which are related to your requests. The settlements, though, concern clinics offering services of licensed psychologists and other mental health providers, under a physician's supervision. I found no settlements that enrolled licensed private psychologists independently of a clinic relationship. Indeed, such settlements would not be possible under AS 47.07.030, as private psychologists are not a selected medicaid optional service.

The two settlements are as follows:

1. Family Counseling Services v. Department of Health and Social Services, IKI-88-134 Civil. The complaint in this case was filed by a privately owned and operated psychological counseling service contesting its denial as a provider able to bill under the medicaid program. The complaint was filed on February 26, 1988. The case was settled on May 16, 1988. (See attached settlement documents, Exhibit A.) The complaint alleged

violation of federal statute, federal regulations, and state equal protection. As part of this agreement the department agreed to enroll Family Counseling Services as a medicaid provider, retroactive to January 1, 1987.

The settlement agreement initially had a nondisclosure term. The Alaska Supreme Court recently ruled in another case that such agreements are discoverable from public agencies. I alerted Family Counseling and received its agreement to release this document. (Exhibit B.)

The costs for the Office of the Attorney General to litigate the case and negotiate the settlement were \$346.70, as all services were done by "in-house" attorneys. Each side agreed to bear its own attorneys fees and costs. If you need the amount of direct medicaid billings for services to clients paid by the Department of Health and Social Services, such information is available by contacting Gordon Landes, Division of Medical Assistance at 463-3355. I do not have ready access to this information. \*/

The case was settled because it was in the best interest of the state to do so, given the costs of litigation, potential exposure, lack of precedence of the settlement agreement, and that the division could lawfully enroll the plaintiff as a clinic under the medicaid program.

2. Paul L. Craig v. Department of Health and Social Services of the State of Alaska, JAN-89-6308 Civil. The complaint in this case was filed on August 1, 1989. The complaint alleged that Dr. Craig was being denied medicaid provider status allegedly in violation of federal statute, state and federal constitution.

On September 25, 1989, settlement was reached in this case. (See Exhibit C.) By the settlement, the department agreed to enroll the plaintiff as a medicaid provider of clinic services under the direction of a physician beginning September 25, 1989.

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\*/ Since the medicaid recipient generally has free choice of providers, the medicaid recipient could have gone to another provider to receive the same services, if the plaintiff had not been enrolled by the settlement agreement. As such, it is difficult to estimate the additional costs to the program by allowing a new provider to offer services that could be obtained from already-enrolled psychiatrists and clinics.

The Honorable Johnny Ellis  
Alaska House of Representatives  
Our file: 223-88-0338

January 23, 1990  
Page 3

Dr. Craig was not enrolled as a private psychologist, as private psychologists are not presently enrolled in the medicaid program. Dr. Craig waived any claims for billings for eligible medicaid services provided prior to the settlement date. The state agreed to pay \$5,000 in attorneys fees and costs to Dr. Craig. (See Exhibit D.) The case was handled by "in-house" attorneys. The state attorneys used 12.50 hours (valued at \$962.50) in reaching the settlement and handling other matters related to the case. The exact amount of medicaid monies receiving to date by Dr. Craig can be obtained by contacting Gordon Landes (465-3355) of the Department of Health and Social Services, who has access to the accounting records.

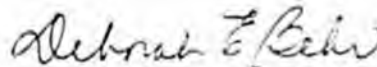
The case was settled because it was in the best interests of the state to do so, given the costs of litigation, the lack of precedent nature of the agreement, the potential exposure and that the Department of Health and Social Services could lawfully pay for Dr. Craig's services under the supervision of a physician as a clinic under the medicaid program.

If you need further information, please let me know.

Sincerely yours,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:



Deborah E. Behr  
Assistant Attorney General

DEB:jh

Enclosures

cc: Honorable Myra Munson  
Commissioner  
Department of Health and Social Services

Kim Busch, Director  
Division of Medical Assistance

Jeffrey Bush  
Assistant Attorney General

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT KETCHIKAN  
Filed in Trial Courts  
State of Alaska, First District  
at Ketchikan

FAMILY COUNSELING SERVICES, )

Plaintiff, )

vs. )

DEPARTMENT OF HEALTH AND )  
SOCIAL SERVICES OF THE )  
STATE OF ALASKA )

Defendant. )

MAY 12 1988

By \_\_\_\_\_; Deputy

No. 1KE-88-134 Civil

STIPULATION

The parties to the above-captioned case agree and stipulate that the case may be dismissed with prejudice as the parties have amicably reached settlement.

DATED: May 12, 1988

For Plaintiff:

*Roger Carlson*

Roger W. Carlson  
Attorney at Law

DATED: May 9, 1988

For Defendant:

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

*Deborah E. Behr*  
By: Deborah E. Behr  
Assistant Attorney General  
for the Defendant

ATTORNEY GENERAL, STATE OF ALASKA  
STATE CAPITOL  
PO BOX K, JUNEAU, ALASKA 99811  
PHONE 465-3600

STIPULATION

PAGE 1 OF 2

4 EXHIBIT A - PAGE 1 of 6

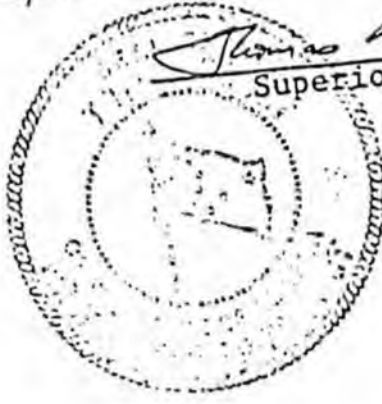
MAY 20 1988

ORDER

IT IS SO ORDERED.

DATED: 5/16/88

Thomas M. Jhale  
Superior Court Judge



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ATTORNEY GENERAL, STATE OF ALASKA  
STATE CAPITOL  
PO BOX K, JUNEAU, ALASKA 99811  
PHONE 465-3600

БНННННННННН  
Copies Distributed  
Date 5-20-88  
To Rohr  
Carlson  
\_\_\_\_\_  
By elms

STIPULATION

EXHIBIT A - PAGE 2 of 6

RECEIVED  
MAY 16 1988  
DEPT. OF LAW  
JUNEAU ALASKA 99801-134

STIPULATION

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Family Counseling Services, plaintiff, and Alaska Department of Health and Social Services, defendant,

Civil stipulate:

1. The defendant agrees to enroll the plaintiff, Family Counseling Services, as a medicaid provider, retroactive to January 1, 1987. The defendant agrees to supply the plaintiff, Family Counseling Services, with a standard provider enrollment package within ten days of signature of this agreement. The plaintiff agrees to provide a completed provider enrollment package (including a signed provider agreement) within ten days of receipt of the enrollment package from the defendant. The plaintiff and the defendant agree to comply with medicaid law and regulations. Notwithstanding the dismissal with prejudice of plaintiff's pending claims, if medicaid law or regulation as applied to plaintiff results in a loss of enrollment status, plaintiff will not be prejudiced by this stipulation to bringing a new action based on 42 U.S.C. § 1396a(a)(23) (free choice of provider provision).

2. The defendant gives notice to the plaintiff that the defendant intends to adopt regulations affecting the services provided by all mental health providers for the medicaid program. The parties agree that this stipulation does not supersede or supplant medicaid law or regulation, now or in the future.

///

STIPULATION

PAGE 1 of 4

ATTORNEY GENERAL, STATE OF ALASKA  
STATE CAPITOL  
PO BOX K, JUNEAU, ALASKA 99811  
PHONE 465-3600

EXHIBIT\_A PAGE 3 of 6

ATTORNEY GENERAL STATE OF ALASKA  
STAFF ATTORNEY  
PO BOX K, JUNEAU, ALASKA 99801  
PHONE 465-3600

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3. The plaintiff agrees to submit to the defendant all billings for which the plaintiff wishes to claim medicaid reimbursement for services performed from January 1, 1987, to date of signature of the settlement agreement within thirty days of signature of this settlement agreement by all parties. All claims so submitted shall be deemed promptly submitted for purposes of AS 44.77.015 and its implementing regulations. The defendant agrees to process the claims according to medicaid law and regulation within thirty days of receipt from plaintiff. The defendant agrees to make every effort to pay from the current available funds but gives notice that some payment may have to be delayed until shortly after July 1, 1988, if current funds are insufficient.

4. The parties agree that this document constitutes a total settlement of the issues between them and, therefore, the parties agree that the pending suit (LKE-88-134) be dismissed with prejudice. The parties agree that the pending administrative appeal before the department on these issues be dismissed with prejudice. The parties agree that this settlement is not an admission or statement regarding the merits of the plaintiff's issues contained in the above-captioned suit and the administrative appeal pending before the department.

5. The parties agree to refrain from disclosing the terms of this settlement, and that the settlement agreement is not admissible in any legal proceeding except for compelling  
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STIPULATION

PAGE 2 of 4

EXHIBIT A - PAGE 4 of 6

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compliance with the terms of this agreement for default by either party.

6. The parties agree that each side shall bear its own attorney's fees and costs.

7. The defendant designates the following person to assist the plaintiff in handling the mechanics of getting its claims processed:

Terri Keklak  
Division of Medical Assistance  
Department of Health and Social Services  
4433 Business Park Boulevard  
Anchorage, Alaska 99503  
Phone: 561-2171

DATED: May 12, 1988

□

For Plaintiff:

Stella Salter  
Family Counseling Services

DATED: May 12, 1988

Approved as to form for Plaintiff:

Roger W. Carlson  
Roger W. Carlson  
Attorney at Law

DATED: May 9, 1988

For Defendant:

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

///

STIPULATION

PAGE 3 of 4

EXHIBIT A - PAGE 5 of 6

223-88-338

STEVE COWPER, GOVERNOR

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

June 23, 1989

REPLY TO:

1031 W 4th AVENUE SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550  
FAX: (907) 276-3697

1st NATIONAL CENTER  
100 CUSHMAN ST. SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 452-1568  
FAX: (907) 456-1317

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

465-3603

Family Counseling Service  
1914 Tongass Avenue  
Ketchikan, AK 99901

Dear Sir:

This letter is to confirm my telephone call with Mr. Callentine of your office on June 19, 1989. As I indicated by telephone, I am an assistant attorney general and I represent the Alaska Department of Health and Social Services. I understand that Mr. Rosendin, Esq. referred my question to you directly since your former attorney, Roger Carlson, is no longer in practice in Ketchikan.

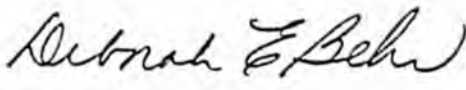
As we discussed, the Department of Law has received a request for public documents pertaining to the Family Counseling Services v. Department of Health and Social Services, (1KE-88-134 Civ.), which was settled in May 1988. As part of that agreement, we had a side-settlement in which we agreed not to disclose the details of the settlement. Since the agreement was reached, the Alaska Supreme Court has clarified the law that makes such documents generally discoverable from public agencies. Therefore, I asked Family Counsel Services's permission to release the document. I received such permission from Mr. R. Callentine on behalf of Family Counsel Services. We agreed that neither party was bound by non-disclosure provisions as contained in paragraph 5 of the side-agreement.

EXHIBIT B - PAGE 1 of 2

I appreciate your willingness to cooperate with the state on this matter.

Sincerely,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:   
Deborah E. Behr  
Assistant Attorney General

DEB:jal

cc: David W. Rosenden ✓  
Hon. Myra Munson ✓  
Kim Busch ✓

bcc: Carol L. Giles, Perkins Coie ✓  
Ronald W. Lorensen  
Elizabeth L. Shaw

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

PAUL L. CRAIG, )  
 )  
 ) Plaintiff, )  
 )  
 vs. )  
 )  
 ) DEPARTMENT OF HEALTH & SOCIAL )  
 ) SERVICES OF THE STATE OF ALASKA, )  
 )  
 ) Defendant. )

---

**COPY**  
Original Received  
Case No. 3AN-89-6308 Civil  
SEP 29 1989

Clerk of the Trial Courts

STIPULATION FOR VOLUNTARY  
DISMISSAL

COME NOW all of the parties who have appeared in this action, by and through their respective counsel, and pursuant to Alaska Civil Rule 41(a), stipulate that the above-entitled action is hereby dismissed with prejudice. Defendant will pay plaintiff Five Thousand Dollars (\$5,000.00) in attorney's fees which is due and payable on September 25, 1989. Interest on this amount shall accrue from September 25, 1989, at the statutory rate specified in AS 09.30.070 until paid in full. The parties agree that each side shall bear its own costs and any additional attorney's fees.

PERKINS COIE  
Attorneys for Plaintiff  
Paul L. Craig

DATED: September 29, 1989

By: Carol L. Giles  
Carol L. Giles

EXHIBIT C - PAGE 1 of 5

STIPULATION FOR VOLUNTARY DISMISSAL/Page 1

ATTORNEY GENERAL  
STATE OF ALASKA

DATED: September 25, 1989

By: Deborah E. Behr  
Deborah E. Behr  
Assistant Attorney General

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PERKINS COIE  
1029 WEST THIRD AVENUE, SUITE 300  
ANCHORAGE, ALASKA 99501  
(907) 279-8561

EXHIBIT C - PAGE 2 of 5

Department of Law  
JUDGMENTS/CLAIMS FOR PAYMENT

1. Case Name: Paul Craig v. Dept. of Health & Social Svcs. for the State of Alaska
2. Case No. 3AN-89-6308 Civil
3. Date ~~Settlement~~ <sup>Settlement</sup> entered: September 25, 1989 (interest to accrue from this date)
4. Amount to be paid: \$5,000
5. Interest Rate: 10.5 % Effective Date: September 25, 1989
6. Payable to: Paul L. Craig  
3300 Providence Drive, Suite 304  
Anchorage, AK 99508  
Social Security No. 506-72-9962
7. Send check to:        above address.  Departmental contact.

Departmental Contact

Departmental Approval

(Name) Deborah E. Behr

Deputy Attorney General

(Telephone no.) 907-465-3603

Date

\*\* This form will be used for the purpose of establishing the amount of claims and will expedite the payments to the claimant. If any of the information changes please advise the Deputy Director, Administrative Services Division, Pouch K, Juneau, or call (907) 465-3603 as soon as any changes are known.

EXHIBIT D - PAGE 1 of 1

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

POUCH V, STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-463-3800

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. HESS 2-14-70

H. HESS 3-12-70

Original sponsor(s): HESS Committee

1 IN THE HOUSE

BY THE HESS COMMITTEE

2 CS FOR HOUSE BILL NO. 274 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to psychologists' services under the  
7 state medical assistance program; and reordering the  
8 priorities for eliminating coverage under Medicaid."

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

10 \* Section 1. AS 47.07.030(b) is amended to read:

11 (b) In addition to the mandatory services specified in (a) of  
12 this section, the department may offer only the following optional  
13 services: case management and nutrition services for pregnant women;  
14 personal care services in a recipient's home; emergency hospital  
15 services; long-term care noninstitutional services; medical supplies  
16 and equipment; clinic services; inpatient psychiatric facility ser-  
17 vices for individuals age 65 or older and individuals under age 21;  
18 prescribed drugs; psychologists' services; physical therapy; occupa-  
19 tional therapy; chiropractic services; treatment of speech, hearing,  
20 and language disorders; adult dental services; prosthetic devices and  
21 eyeglasses; optometrists' services; intermediate care facility ser-  
22 vices, including intermediate care facility services for the mentally  
23 retarded; skilled nursing facility services for individuals under age  
24 21; and reasonable transportation to and from the point of medical  
25 care.

26 • Sec. 2. AS 47.07.035 is amended to read:

27 Sec. 47.07.035. PRIORITY OF MEDICAL ASSISTANCE. If the depart-  
28 ment finds that the cost of medical assistance for all persons eligi-  
29 ble under this chapter will exceed the amount allocated in the state

Original sponsor(s): HESS Committee

1 IN THE HOUSE

BY THE HESS COMMITTEE

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3 IN THE LEGISLATURE OF THE STATE OF ALASKA

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29 ble under this chapter will exceed the amount allocated in the state

1 budget for that assistance for the fiscal year, the department shall  
2 eliminate coverage for optional medical services and optionally eligi-  
3 ble groups of individuals in the following order:

- 4 (1) chiropractic services;  
5 (2) [ADULT DENTAL SERVICES;  
6 (3) emergency hospital services;  
7 (3) psychologists' services;  
8 (4) treatment of speech, hearing, and language disorders;  
9 (5) optometrists' services and eyeglasses;  
10 (6) occupational therapy;  
11 (7) prosthetic devices;  
12 (8) medical supplies and equipment;  
13 (9) clinic services;  
14 (10) adult dental services;  
15 (11) physical therapy;  
16 (12) [(11)] personal care services in a recipient's home;  
17 (13) [(12)] prescribed drugs;  
18 (14) [(13)] long-term care noninstitutional services;  
19 (15) [(14)] inpatient psychiatric facility services;  
20 (16) [(15)] intermediate care facility services for the  
21 mentally retarded;  
22 (17) [(16)] intermediate care facility services;  
23 (18) [(17)] pregnant women, and children five years of age  
24 or younger, with a household income that does not exceed 100 percent  
25 of the federal poverty level;  
26 (19) [(18)] individuals under age 21 who are not eligible  
27 for benefits under the federal aid to families with dependent children  
28 program because they are not deprived of one or more of their natural  
29 or adoptive parents;

1           (20) [(19)] skilled nursing facility services for persons  
2 under age 21;

3           (21) [(20)] aged, blind, and disabled individuals who,  
4 because they do not meet the income requirements, do not receive  
5 supplemental security income under Title XVI of the Social Security  
6 Act, but who are eligible, or would be eligible if they were not in a  
7 skilled nursing facility or intermediate care facility, to receive an  
8 optional state supplementary payment;

9           (22) [(21)] individuals in a hospital, skilled nursing  
10 facility, or intermediate care facility whose income while in the  
11 facility does not exceed 300 percent of the supplemental security  
12 income benefit rate under Title XVI of the Social Security Act, but  
13 who, because of income, are not eligible for the optional state  
14 supplementary payment;

15           (23) [(22)] individuals under age 21 under supervision of  
16 the department, for whom maintenance is being paid in whole or in part  
17 from public money and who are in foster homes or private child-care  
18 institutions.  
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