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166

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 17, 1999

FURTHER REFERRALS: FINANCE

Date of Committee Action: 3/20/89

The HEALTH, EDUCATION, & SOCIAL SERVICES 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 _____ [] the same title
- [] have attached anendment(s) [] a new title
- [X] 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 _____
- [] zero fiscal note _____
- [] zero with analysis _____

- [X] fiscal note(s) 3/7/89 DHS
- [] zero fiscal note(s) _____
- [] zero fn/analysis _____

SIGNING DO PASS:

J. H. Ellis

Mr. Gwendolyn

W. Turner

Op. Mr. B. Boyer

Christie Davis

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend

J. H. Ellis
Chairman's signature

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

PO BOX V
JUNEAU, ALASKA 99811
(907) 465-3822

PO BOX 210001
ANCHORAGE, ALASKA 99521
(907) 561-7612

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 In this action the commission repealed one of their own regulations that had a dramatic and unanticipated effect on certain health facilities year-end conformance determinations.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.

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						
TOTAL OPERATING	250.0	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	125.0					
FEDERAL FUNDS	125.0					
OTHER						
TOTAL	250.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

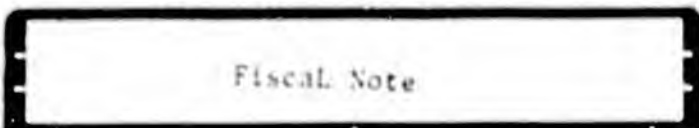
Fiscal impact is calculated based on impact to one identified facility.

Prepared by: ^{FM} Kim Busch, Director *Kim Busch* Phone: 465-5355
 Division: Medical Assistance Date: 3/6/89

Approved by Commissioner: Walter M. Munson *Walter M. Munson* 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)



MAR 15 1989

REVISED ADDENDUM TO FISCAL NOTE ON CSSB 166

Although Sitka General Hospital has also been identified as a facility which could have year end conformance waived under SB 166, the financial impact to the Department of Health and Social Services from this waiver will not significantly impact the FY 89 budget.

Other facilities may be eligible to have year end conformance waived in accordance with SB 166, however, these facilities have not contacted either the Medicaid Rate Commission or the Department of Health and Social Services requesting such a waiver. Consequently, the potential financial impact from these facilities seeking a waiver has not been included in the fiscal note. If waiver is extended to the other possibly eligible facilities, the maximum anticipated fiscal impact in FY 89 would be ^{AN ADDITIONAL} \$250.0 total funds, \$125.0 general fund match and \$125.0 federal funds.

Approved:

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

Dated:

March 15 1989

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. of Health & Social Services
 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						
TOTAL OPERATING	583.3	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	458.3					
FEDERAL FUNDS	125.0					
OTHER						
TOTAL	583.3					

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 *(in) 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 Agencies)

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.

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

7 AAC 43.686

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7 AAC 43.688 HEALTH AND SOCIAL SERVICES 7 AAC 43.691

(10) Interest, depreciation, and other capital costs will not be recognized on assets if a certificate of need was required and the facility did not secure one.

(11) Limits on operating costs provided by related organizations. Costs of services, facilities, and supplies furnished to a facility by organizations related to the facility are allowable costs only to the extent that these costs do not exceed the lower of

(A) the documented costs of the services, facilities, or supplies to the related organization; or

(B) the reasonable price of comparable services, facilities, or supplies offered by a vendor not related to the facility.

(12) Related organization cost documentation. A facility shall document the cost to a related organization for services, facilities, or supplies furnished to the facility by the related organization. The commission will permit the cost to be included in the operating base of a prospective payment rate only if the cost to be included is fully documented as prescribed in the manual. (Eff. 8/9/86, Register 99; am 7/20/88, Register 107)

Authority: AS 47.07.070
AS 47.07.073
AS 47.07.180

7 AAC 43.688. TOTAL FINANCIAL REQUIREMENTS. Repealed 8/9/86.

7 AAC 43.690. OPERATING COSTS. Repealed 8/9/86.

7 AAC 43.691. YEAR-END CONFORMANCE. (a) The commission will determine whether the rates paid by the division of medical assistance are in conformance with the commission-approved rates as follows:

*Current
regs*

(1) The actual depreciation will be substituted for the approved depreciation when considering year-end conformance.

(2) For long-term care facilities and intermediate care facilities for mentally retarded, the commission will compare the actual costs per day to the approved rate, with actual ancillary costs substituted for the approved ancillary costs. Actual ancillary costs will be calculated based on the ratio of operating expenses, less revenue offsets defined in 7 AAC 43.685(b)(4), to charges in the applicable ancillary revenue center, not to exceed 100 percent of usual and customary charges. The following apply to the ancillary costs:

(A) If actual costs are less than two percent below or above the approved rate, adjusted for actual ancillary costs, no adjustments will be made.

(B) If actual costs are two percent or more below the approved rate, adjusted for actual ancillary costs, the actual ancillary costs will be compared to the approved ancillary costs. If actual ancillary costs are below the approved ancillary costs, 90 percent of the difference will be reduced from the rate as approved by the commission in the facility's next fiscal year. If actual ancillary costs are above the approved ancillary costs, 90 percent of the difference will be added to the rate as approved by the commission in the facility's next fiscal year.

(b) For acute care hospitals and specialty hospitals, the commission will compare the actual charges billed to the division of medical assistance with the approved rate per adjusted admission. If the actual charges to the division of medical assistance exceed the allowable costs as calculated in the approved budget and adjusted in (a) of this section, the percentage of charges will be adjusted downward in the facility's next fiscal year by the amount of the difference.

(c) Repealed 7/20/88.

(d) For rural health clinics, the commission will compare the actual costs for each visit to the approved rate and,

(1) if actual costs for each visit for medical assistance recipients are equal to or above the approved rate, no adjustments will be made;

(2) if actual costs or charges for each visit for medical assistance recipients are below the approved rate, the difference between the approved rate and actual costs or charges, whichever is less, will be deducted from the rate approved by the commission for the rural health clinic's next fiscal year.

(e) Outpatient surgical clinics and hospital outpatient laboratory services are exempt from all provisions of this section. (Eff. 8/9/86, Register 99; am 5/8/88, Register 106; am 6/19/88, Register 106; am 7/20/88, Register 107)

Authority: AS 47.07.070
AS 47.07.071
AS 47.07.180

7 AAC 43.692. FUNDED DEPRECIATION. Repealed 8/9/86.

7 AAC 43.693. FACILITY AUDITS. (a) The commission will inspect the financial records of a facility receiving payments from the division of medical assistance. The commission will inspect financial records during normal business hours and will notify a facility of a proposed inspection of its records at least 10 working days before the inspection.

(b) If the commission directs, a facility receiving payments from the division of medical assistance for eligible state program recipients

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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

outdated page

7 AAC 43.691. YEAR-END CONFORMANCE. (a) The commission will determine whether the rates paid by the division of medical assistance are in conformance with the commission-approved rates as follows:

(1) The actual depreciation will be substituted for the approved depreciation when considering year-end conformance.

(2) For long-term care facilities and intermediate care facilities for the mentally retarded, the commission will compare the actual costs per day to the approved rate, with actual ancillary costs substituted for the approved ancillary costs. Actual ancillary costs will be calculated based on the ratio of operating expenses, less other operating revenue, to charges in the applicable ancillary revenue center, not to exceed 100 percent of usual and customary charges. The following apply to the ancillary costs:

(A) If actual costs are less than two percent below or above the approved rate, adjusted for actual ancillary costs, no adjustments will be made.

(B) If actual costs are two percent or more below the approved rate, adjusted for actual ancillary costs, the actual ancillary costs will be compared to the approved ancillary costs. If actual ancillary costs are below the approved ancillary costs, 90 percent of the difference will be reduced from the rate as approved by the commission in the facility's next fiscal year. If actual ancillary costs are above the approved ancillary costs, 90 percent of the difference will be added to the rate as approved by the commission in the facility's next fiscal year.

(b) For acute care hospitals and specialty hospitals, the commission will compare the actual charges billed to the division of medical assistance or Medicaid with the approved rate per adjusted admission. If the actual charges to the division of medical assistance exceed the allowable costs as calculated in the approved budget and adjusted in (a) of this section, the percentage of charges will be adjusted downward in the facility's next fiscal year.

(c) 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. (Eff. 8/9/86, Reg. 99)

Authority: AS 47.07.070

AS 47.07.071

AS 47.07.180

7 AAC 43.692. FUNDED DEPRECIATION.
Repealed 8/9/86.

7 AAC 43.693. FACILITY AUDITS. (a) The commission will inspect the financial records of a facility receiving payments from the division of medical assistance. The commission will inspect financial records during normal business hours and will notify a facility of a proposed inspection of its records at least 10 working days before the inspection.

(b) If the commission directs, a facility receiving payments from the division of medical assistance for eligible state program recipients shall produce its financial records for inspection by the commission at a location within the state or at another place agreed upon by the commission and the facility.

(c) At the request of the commission, a facility shall send copies of financial records to the commission offices within 10 working days after the request is received.

(d) The commission will review the findings of facility audits. Audit findings that determine that the division of medical assistance has overpaid or underpaid will be acted upon in the following manner:

(1) If the audit findings relate to a facility's fiscal year already ended, the division of medical assistance will be notified of amounts due from or to the facility.

(2) If the audit findings relate to a facility's fiscal year in progress, the approved rate will be adjusted to reflect a correct payment rate. The level of adjustment will be prorated to ensure that the division of medical assistance will recoup all money by the end of the facility's fiscal year or that the facility will receive all

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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,

*/ 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~~ ^{a illreputable} 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

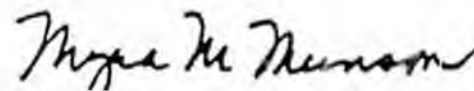
(3) the waiver request would result in payment for only allowed costs and services authorized by the division of medical assistance under state or federal laws or both if applicable, or regulations; and

(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